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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Winnebago County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 11-CF-3186
)	
LUIS EDUARDO ANAYA,)	Honorable
)	Joseph G. McGraw,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Zenoff and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held:* (1) Defense counsel was not ineffective for failing to request an accomplice-witness instruction, as counsel thoroughly attacked the witnesses' credibility and the jury was instructed to consider the witnesses' bias or motive; (2) defense counsel was not ineffective for failing to object to the State's rebuttal argument, as the State's comment was permissible hyperbole.

¶ 2 Following a jury trial, defendant, Luis Eduardo Anaya, was convicted of first-degree murder (720 ILCS 5/9-1(a)(1), (a)(2) (West 2010), and aggravated discharge of a firearm (*id.* § 24-1.2(a)(2), and sentenced to 50 years' imprisonment. He appeals, contending that his counsel was ineffective where he failed to (1) request that the jury be instructed to consider with

caution the testimony of alleged accomplices and (2) object to the prosecutor's statement in closing argument that defendant's flight was the equivalent of a confession. We affirm.

¶ 3

I. BACKGROUND

¶ 4 At trial, David Mordick testified that on November 11, 2011, he was at Murphy's Pub in Rockford with his girlfriend, Charmaine Lambaren, and some friends. At one point, Mordick and Brandon Wright went outside to look for Lambaren. Wright spotted her hugging defendant. Mordick confronted defendant and punched him in the face. Wright and others pulled Mordick off of defendant.

¶ 5 As Mordick walked toward his car, he saw defendant in the backseat of another car. Defendant said something and Mordick took a swing at him. Mordick got in his car and left. He learned later that Wright had been shot and he went to the scene.

¶ 6 Marandus Deon Williams testified that he was with Mordick at Murphy's Pub but did not witness the fight. Later, he saw Mordick, still very angry, approach a car and attempt to punch someone in the backseat.

¶ 7 Williams collected Lambaren and his own girlfriend, Yesenia Sanchez, and left the bar. Wright's car was behind his but passed him at some point as they traveled south on Perryville Road. Williams followed Wright into the right-turn lane at Linden Road. As Williams was turning, he heard gunshots and saw a silver car on his left side, going south on Perryville. He then saw Wright's car in a ditch. He stopped to check on Wright, discovered that he had been shot, and called 911. Wright died from a gunshot wound to the head.

¶ 8 On cross-examination, Williams said that he wrote in his statement to police that a driver's-side window on the silver car was about a third of the way down. He did not recall if it was the front or rear window.

¶ 9 Marshaun Malone helped break up the fight between defendant and Mordick. As he drove away from the bar, he was near the rear of a line of cars going south on Perryville. When he reached the intersection with Linden, he saw a car in the ditch and other cars pulled over. Most of the cars turned right onto Linden, but one continued straight.

¶ 10 Jeremy Rodriguez testified that on November 11, 2011, he drove to Murphy's with Eduardo Ramirez and defendant. He helped break up the fight between defendant and Mordick. Then he, defendant, and Ramirez started to leave in his fiancée's new gray Chevrolet Malibu. Rodriguez drove with defendant in the front passenger seat and Ramirez in the back. While still in the parking lot, he heard something hit his car.

¶ 11 Rodriguez stopped at a nearby McDonald's to check for damage and saw a little dent on the car. He was not angry about it. He continued south on Perryville. Rodriguez was becoming nervous as people in the other cars began to notice them, but defendant was talking about following "them" to see where they were going.

¶ 12 As they approached the intersection with Linden, two other cars were turning right. Rodriguez heard gunshots from the side of the car. He looked over and saw defendant leaning out the window from the front passenger seat. He could not see anything in defendant's hand, but heard two more gunshots.

¶ 13 Rodriguez made a U-turn and proceeded north on Perryville. As he passed Linden Road again, he did not notice anything unusual. Later that day, Ramirez called and told him what happened.

¶ 14 Rodriguez had owned a .40-caliber Glock handgun but had sold it. He did not have it the night of the incident, nor did he give it to defendant. Rodriguez admitted that he did not

immediately contact the police. He spoke with police on November 13, when he accompanied them to Chicago to look for defendant.

¶ 15 On cross-examination, Rodriguez testified that the dent on the car was on the rear passenger-side door. He did not tell the police that he had sold the Glock, because they never asked. They searched his house looking for a gun but did not find one.

¶ 16 Ramirez testified that, after the fight, he left in Rodriguez's car with defendant in the front passenger seat. As they were leaving, Mordick ran up to the car and punched it on the passenger side. They then drove south on Perryville, in the opposite direction of Rodriguez's house. Ramirez did not hear any conversation, because music was playing.

¶ 17 As they passed through the intersection, defendant pulled out something and started shooting through an open window. Ramirez did not see anything in defendant's hands. Rodriguez made a U-turn and drove back to his house. Ramirez then gave defendant a ride home.

¶ 18 On cross-examination, Ramirez admitted to having told the police a different story. He first said that he was not at the bar, then changed his story and said that his wife picked him up from the bar at 10 p.m.

¶ 19 Forensic scientist David Welte testified that the fired cartridge casings recovered from the scene were fired from the same gun and were .40-caliber. The cartridges could have been fired from a Glock.

¶ 20 Winnebago County sheriff's deputy Gerard Collins testified that he processed the evidence at the scene. Six shell casings and bullet fragments were found near the yellow line in the center of Perryville Road. None were found on the shoulder on the east side of the road.

¶ 21 Police contacted defendant's parents, who confirmed a tip that defendant had left for Mexico. On September 2, 2015, deputy Jason Newell learned that Mexican authorities had found defendant. Newell and Detective Bob Juanez picked up defendant in Houston.

¶ 22 Newell testified on cross-examination that, when a gun is fired, casings are ejected to the left and the right. If defendant had been hanging out the right side of a car going south and the car were in its correct lane, Newell would expect to find casings on the side of the road. If the car had been traveling north and a person fired out of the driver's window, Newell would expect the casings to be in the middle of the road.

¶ 23 In closing, defense counsel, Frank Edwards, argued that Rodriguez committed the murder while defendant was asleep in the back seat. Edwards contended that Rodriguez and Ramirez lied to cover up their involvement, conveniently blaming defendant, who "made a mistake" by fleeing to Mexico and thus was not available to tell his side of the story. Edwards theorized that Rodriguez, after making a U-turn and heading north on Perryville, fired out the driver's-side window. Edwards cited Williams's testimony that, although the car he saw was to his left, he could see that the driver's-side window was open; evidence that the shell casings were found in the middle of the road rather than the right shoulder; and the fact that Rodriguez had admittedly owned a gun of the same caliber as the murder weapon.

¶ 24 In rebuttal, the prosecutor argued that defendant "as good as confessed" by fleeing the jurisdiction. The jury was instructed, *inter alia*, that, in evaluating a witness's credibility, it should consider "any interest, bias or prejudice he may have."

¶ 25 The jury found defendant guilty of three counts of first-degree murder and one count of aggravated discharge of a firearm. The court sentenced defendant to 25 years' imprisonment plus a

25-year add-on for personally discharging a firearm that proximately caused a death. The other convictions were merged. Defendant timely appeals.

¶ 26

I. ANALYSIS

¶ 27 Defendant contends that he received ineffective assistance of counsel. He argues that, although there was evidence that Rodriguez and Ramirez were involved in the offense either as principals or as accomplices, Edwards did not submit an instruction informing the jury that their testimony should be considered with caution. Further, he failed to object to the prosecutor's comment in rebuttal that defendant "as good as confessed" when he fled to Mexico.

¶ 28 A claim of ineffective assistance of counsel requires a defendant to establish that (1) his attorney's performance was objectively unreasonable and (2) a reasonable probability exists that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984). Courts indulge a strong presumption that counsel's conduct is the result of strategic choices rather than incompetence. *People v. Evans*, 186 Ill. 2d 83, 93 (1999).

¶ 29 Given the natural tendency of participants in a criminal enterprise to shift blame away from themselves and onto others, courts have long recognized that the testimony of accomplice witnesses is inherently suspect. In this vein, the Illinois Pattern Jury Instructions provide:

"When a witness says he was involved in the commission of a crime with the defendant, the testimony of that witness is subject to suspicion and should be considered by you with caution. It should be carefully examined in light of the other evidence in the case." Illinois Pattern Jury Instructions, Criminal, No. 3.17 (4th ed. 2000).

¶ 30 The accomplice-witness instruction should be given at a defendant's request if all the evidence and reasonable inferences therefrom establish probable cause to believe that the witness

participated in the crime, either as a principal or under a theory of accountability. *People v. McCallister*, 193 Ill. 2d 63, 89 (2000). This is so even if the witness denies involvement. *Id.* at 89-90. “The instruction’s purpose is to warn the jury that the witness might have a strong motivation to provide false testimony for the State in exchange for immunity or some other lenient treatment.” *People v. Hunt*, 2016 IL App (2d) 140786, ¶ 52.

¶ 31 A defendant’s guilt may be established under an accountability theory by showing that:

“(c) either before or during the commission of an offense, and with the intent to promote or facilitate such commission, he or she solicits, aids, abets, agrees, or attempts to aid that other person in the planning or commission of the offense.” 720 ILCS 5/5-2(c) (West 2010).

¶ 32 Defendant contends that considerable evidence suggested either that Rodriguez acted alone in shooting the victim or that, at the very least, Rodriguez and Ramirez were complicit in the shooting. Defendant relies primarily on *People v. Campbell*, 275 Ill. App. 3d 993 (1995), where two witnesses were with the defendant at the crime scene. Both had plea deals requiring them to testify for the State, and the witnesses were dating each other. *Id.* at 998. The court held that counsel was ineffective for not tendering the accomplice-witness instruction. *Id.* at 999.

¶ 33 The State responds that the evidence showed no more than that both men were present at the time of the shooting. This, the State contends, was not enough to make them accomplices.

¶ 34 We need not decide whether Rodriguez and Ramirez could have been considered accomplices, because, even assuming that the instruction should have been given, defendant cannot show the requisite prejudice from the failure to do so. In reviewing ineffective-assistance claims, we evaluate counsel’s conduct as a whole rather than focusing “upon isolated instances of alleged incompetence called into question by the defendant.” *People v. Flores*, 128 Ill. 2d 66,

107 (1989). Here, Edwards thoroughly cross-examined Rodriguez about the suspicious disappearance of the Glock and Rodriguez's reluctance to talk to the police. He questioned Ramirez about his evolving story. He advanced a plausible theory, based on the evidence, that Rodriguez was the shooter.

¶ 35 Edwards postulated several specific reasons why Rodriguez's and Ramirez's testimony was unreliable, in particular that they blamed defendant for the crime in order to cover up their own involvement. Moreover, the jury was instructed that, in evaluating a witness's testimony, it should consider any interest, bias, or motive the witness might have. See Illinois Pattern Jury Instructions, Criminal, No. 1.02 (4th ed. 2000).

¶ 36 Moreover, defendant points to no evidence directly supporting his theory that Rodriguez could have been the shooter. No one testified to seeing Rodriguez's car turn around and go back north on Perryville. Indeed, Williams's testimony corroborated Rodriguez's about the car's direction of travel when the shots were fired. Thus, it is unlikely that instructing the jury of a general presumption that accomplice testimony is unreliable would have persuaded the panel to reject Rodriguez's and Ramirez's testimony.

¶ 37 In *McCallister*, which defendant cites, the court held that, even if defense counsel was deficient in failing to tender the accomplice-witness instruction, the defendant was not prejudiced. The court found that the defendant's testimony was weak and contrary to much of the physical evidence, whereas the State's case was strong. *McCallister*, 193 Ill. 2d at 98. The court further noted that the jury received the general instruction on witness credibility. The court distinguished *Campbell*, in which the evidence was much closer. *Id.*

¶ 38 Similarly, in *People v. Love*, 285 Ill. App. 3d 784, 792 (1996), the court held that defense counsel should have requested an accomplice-witness instruction but found no prejudice to the

defendant where the jury heard about the witness's prior convictions and pending charges and the defense vigorously argued his lack of credibility. In *People v. Lewis*, 240 Ill. App. 3d 463, 467 (1992), the court found that the instruction should have been given but that reversal was not required on that basis alone where the jury was instructed to consider any bias or motive that the witness might have. Here, Edwards articulated a plausible theory that Rodriguez was the shooter and, in general, vigorously argued his lack of credibility. Also, the jury was told to consider the witnesses' motives to testify falsely.

¶ 39 Defendant next contends that counsel should have objected to the prosecutor's rebuttal argument that defendant "as good as confessed" when he fled to Mexico. He argues that, while flight is considered circumstantial evidence of consciousness of guilt, it is not equivalent to a confession. The State responds that the prosecutor engaged in permissible hyperbole and that the jury would have understood that "as good as" a confession did not mean that defendant's flight was actually a confession.

¶ 40 Generally, evidence of flight is admissible to show consciousness of guilt. *People v. Harris*, 225 Ill. 2d 1, 23 (2007). Thus, to the extent the prosecutor argued that defendant's flight to Mexico could be an acknowledgement of guilt, this was a correct statement of the law. Moreover, prosecutors are afforded wide latitude in closing argument and we should hesitate to second-guess those arguments when "they constitute nothing more than hortatory language concerning how the jury should regard the evidence before it." *People v. Roe*, 228 Ill. App. 3d 628, 638 (1992) (citing *People v. Thompkins*, 121 Ill. 2d 401, 445 (1988)). In *Roe*, the court found that the prosecutor's statement that the defendant's fingerprints found at the scene were "100 percent absolute proof" that the defendant committed the crime was permissible hyperbole. *Id.*

¶ 41 Here, the prosecutor's statement in rebuttal came in response to Edwards's argument that defendant's flight to Mexico was an innocent mistake and that Rodriguez and Ramirez were more likely suspects. In this context, the statement was permissible hyperbole, and Edwards was not ineffective for failing to object.

¶ 42

III. CONCLUSION

¶ 43 The judgment of the circuit court of Winnebago County is affirmed.

¶ 44 Affirmed.