2019 IL App (4th) 160921-U

NO. 4-16-0921

FILED
April 25, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
JAMES EDWARD MOORE,	)	No. 15CF984
Defendant-Appellant.	)	
	)	Honorable
	)	Robert L. Freitag,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Steigmann and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The State presented sufficient evidence for a rational trier of fact to convict defendant of armed robbery while armed with a firearm.

(2) Defendant failed to establish his trial counsel was constitutionally ineffective.

¶ 2 In August 2015, a grand jury indicted defendant on charges of armed robbery while armed with a firearm (a handgun) (720 ILCS 5/18-2(a)(2) (West 2014)) and aggravated robbery (indicated he was armed with a firearm or dangerous weapon) (720 ILCS 5/18-1(b)(1) (West 2014)). After a bench trial, the trial court found defendant guilty of both charges. In October 2016, the court sentenced defendant to 30 years in prison for armed robbery while armed with a firearm. The aggravated robbery and armed robbery convictions merged. In December 2016, the court denied defendant's motion to reconsider sentence. On appeal, defendant argues the State failed to prove beyond a reasonable doubt he took part in the robbery.

In the alternative, even if the State met its burden of proving he was involved in the robbery, defendant argues the State failed to establish he was armed with a firearm. Defendant also argues his trial counsel was constitutionally ineffective because he failed to move to exclude segments of defendant's recorded interrogation and recorded telephone calls with his mother. Finally, defendant argues the circuit clerk imposed an excessive fee on him. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant's bench trial began in May 2016. Tarra Jennings, a store manager at the Dollar Tree in Normal, testified she worked the night of November 7, 2014. After closing the store at 9 p.m. with Tami Hagglund, a cashier, Jennings prepared a bank deposit of approximately $688, placing the store's money in a black bag with other paperwork. She also had a purse, which contained a mobile phone, $30 of her own money, her house keys, a spare car key, and a credit/debit card issued by Dollar Tree.

¶ 5 At approximately 9:15 or 9:20 p.m., Jennings and Hagglund walked out of the store and locked the door. When the two women reached their respective vehicles, which were parked together, Jennings heard someone running towards her from behind and felt something at her back. Jennings partially turned and saw a light-skinned black man who was 6 feet tall pointing a gun at Hagglund's head. She said the gun was not a pistol but more like an AK-47. Jennings testified she grew up around guns when she lived with her grandparents. Her grandfather was a hunter and had shotguns and handguns at his house.

¶ 6 The man behind Jennings told her to give him the money. Jennings denied having any money. The suspect moved in front of her and pointed his gun, which she said was a semi-automatic handgun, at her stomach and again demanded the money. Jennings described the suspect as a male, approximately 5 feet 9 inches tall. He was wearing a Halloween-style

stocking mask. She identified the mask in a photograph presented by the State. According to her testimony, the man holding the gun on her was the same height and build as defendant and also shared the same eye color.

¶ 7 After Jennings denied she had any money, the man took her bags and ran. The other man grabbed Hagglund's bag and also ran. Both men ran northwest toward a business called Moe's. Jennings did not see anyone else in the area. Jennings and Hagglund went to another business and called 9-1-1. The police arrived within a minute or two. Within a few hours of the robbery, Jennings's credit card had been used at a White Castle in Chicago and to purchase minutes for a prepaid cellular phone.

¶ 8 Jennings knew defendant because he had been in a relationship at the time of the robbery with an assistant manager at the Dollar Tree store named Ivey Buchanan. Jennings testified all Dollar Tree employees are familiar with the store's closing procedures, which includes the manager making nightly cash deposits at a local bank. Jennings had talked to defendant a few times in the store prior to the robbery. She did not suspect defendant was involved in the robbery until Detective Park informed her of defendant's arrest. According to her testimony, she did not recognize defendant's voice during the robbery. She believed the assailant was trying to disguise his voice.

¶ 9 Tami Hagglund testified she was working with Jennings at the Dollar Tree store the night of the robbery. She and Jennings left the store together. Jennings had the cash deposit for the bank. When she and Jennings reached their respective vehicles, she heard a shuffling noise and then felt something on the back of her neck. When she turned to her right, she saw a light-skinned black man, approximately 6 feet tall, holding what looked like an assault rifle. She did not see the other person but heard him telling Jennings to give him the money. The man

holding the AK-47 grabbed her purse and ran. Hagglund testified no one else was in the parking lot at the time. The next morning, she discovered her credit card had been used after the robbery at Vesta T-Mobile in Chicago and a White Castle.

¶ 10 The State presented evidence the responding police officers found a black and white skeleton-type Halloween mask near the location of the robbery. Defendant's deoxyribonucleic acid (DNA) was found on the mask.

¶ 11 Detective Bradley Park of the Normal Police Department investigated the robbery. According to his testimony, credit cards taken from Jennings and Hagglund were used to add minutes to a prepaid phone number linked to the name "Chico Montana," which was an alias for Antonio Jackson. Defendant's sister, Wakesha Boswell, had a child with Antonio Jackson's brother. Phone records showed numerous calls and text messages both before and after the robbery between Antonio Jackson's phone number and a phone number belonging to Boswell. The State presented evidence defendant had provided Boswell's number as a number he could be contacted at in the past.

¶ 12 Park also testified Jennings's credit card was used at a White Castle on South Halstead in Chicago on November 8 at 12:41 and 1:43 a.m. Hagglund's credit card was also used in the same way as Jennings's credit card.

¶ 13 Park interviewed defendant in August 2015. Defendant claimed he saw Antonio Jackson in the early morning hours of November 8, 2014. According to defendant, he saw Jackson at a gas station across the intersection from the White Castle in Chicago where the stolen credit cards were used. Park showed defendant a picture of the mask found near the crime scene. Defendant said he had never seen the mask. He also denied wearing the mask.

¶ 14 The State played a redacted version of the recorded interview between Detective

Park and defendant for the trial court. The State also played two recorded conversations between defendant and his mother while defendant was in jail. The first conversation took place on August 13, 2015, after defendant spoke with Detective Park. Defendant asked his mother to get him a lawyer because he was going to be charged with the Dollar Tree robbery. He stated the police said a mask containing his DNA was found near the crime scene. Defendant told his mother he told the detective he did not know anything about the mask. During the call, defendant's mother stated Antonio Jackson had never been to Bloomington. In the second recorded conversation with his mother, which occurred on August 20, 2015, defendant continued to deny any involvement with the robbery, but he and his mother discussed whether he would have worn a mask and then left a mask near the crime scene had he been involved in a robbery. Defendant said he would have worn a mask so he would not be recognized. He also said he could have left a mask if he was rushed. Defendant's mother commented that if anyone was listening, her son did not commit this robbery. She and her son were only discussing possible scenarios.

¶ 15 On cross-examination, Detective Park testified he never interviewed Antonio Jackson or Wakesha Boswell. Park testified the police received a video from the White Castle restaurant in Chicago but could not determine who was using the two credit cards. Four individuals were associated with the person using the credit cards at White Castle. No one in the video was defendant.

¶ 16 Defendant testified he was living in Chicago with his cousin and her children at the time of the robbery. On the day of the robbery, he stated he babysat Wakesha Boswell's children and his younger brother at his cousin's home in Chicago because his sister and some other family members attended a get-together with Antonio Jackson's family. The family

returned at 10 p.m. Defendant and his sister then went to her residence, which was also in Chicago.

¶ 17 As to his interview with Detective Park, defendant testified he was not specifically asked where he was on November 7, 2014. He claimed he did not know this was the date the detective was interested in at first. When confronted with the evidence on the robbery, defendant testified he was frantic and did not think about what he had been doing when the robbery occurred. Defendant also noted the interview occurred a year after the robbery.

¶ 18 However, defendant told Detective Park he remembered seeing Antonio Jackson in the early morning hours of November 8, 2014. Defendant said Antonio Jackson was with a car full of people, including a very tall man. Jackson asked defendant if defendant wanted anything to eat, which defendant thought was strange because he and Jackson did not get along. Defendant was surprised when he saw Jackson had some credit cards. Jackson and the people with him were flaunting cash they had. Defendant said Jackson told him he had just returned from Bloomington.

¶ 19 After seeing Jackson by the White Castle where the credit cards were used, defendant testified he went back to Boswell's residence. Jackson came to the same place about 2 a.m. Jackson, defendant, and a few other men slept at Boswell's place that night. The next morning, defendant went back to his cousin's house where he was living. Ivey Buchanan called defendant and told him about the robbery and the fact a mask was found. Buchanan told defendant the suspects took a purse, credit cards, and money. At that point, defendant suspected Jackson robbed the Dollar Tree.

¶ 20 Defendant testified he had seen the mask found at the scene of the robbery around Halloween 2014 in his sister's car. When asked why he told Detective Park he had never seen or

worn the mask, defendant said he was scared because he did not want to get charged with the robbery. Defendant testified he knew he had worn the mask several times prior to the robbery and his DNA could be on the mask. He still denied taking part in the robbery.

¶ 21 When explaining its decision in this case, the trial court stated it did not accept defendant's version of events because it did not believe anything defendant said on direct examination about the mask and his contact with it. The court noted the only issue in its view was whether the State met all the elements of armed robbery. The court stated Jennings gave "pretty detailed descriptions" of both weapons in this case and testified she was familiar with firearms. According to the court, Jennings's testimony was sufficient to prove defendant was armed with a firearm when he committed this robbery. The court found defendant guilty of both charges.

¶ 22 In October 2016, the court sentenced defendant to 30 years in prison for armed robbery while armed with a firearm. The aggravated robbery conviction merged with the armed robbery while armed with a firearm charge. In December 2016, the court denied defendant's motion to reconsider sentence.

¶ 23 This appeal followed.

¶ 24 II. ANALYSIS

¶ 25 A. Sufficiency of the Evidence

¶ 26 Defendant first argues the State failed to prove beyond a reasonable doubt he took part in the robbery at issue in this case. In the alternative, even if a rational trier of fact could have determined defendant was involved in the robbery, defendant argues the State failed to prove beyond a reasonable doubt he used a firearm.

¶ 27 When a defendant challenges the sufficiency of the evidence to convict him of the

crime at issue, we determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt when the evidence is viewed in the light most favorable to the prosecution. *People v. Piatkowski*, 225 Ill. 2d 551, 566, 870 N.E.2d 403, 411 (2007). This includes giving the trier of fact's credibility determinations much weight considering it was able to see the witnesses testify. *People v. Beasley*, 384 Ill. App. 3d 1039, 1046, 893 N.E.2d 1032, 1038 (2008).

¶ 28 In this case, the most damaging evidence was the mask containing defendant's DNA found at the scene of the crime. When interviewed by Detective Park, defendant denied knowing anything about the mask or seeing it before. However, at trial, he testified he did recognize the mask because it belonged to his sister. Defendant testified he had worn the mask before while riding around in his sister's car. However, he denied wearing it during the robbery or being involved in the robbery at all. The trial court stated it did not find defendant's explanation why his DNA was on the mask credible. Based on the record before this court, we do not conclude the trial court erred in making this credibility determination.

¶ 29 The evidence in this case was sufficient for a rational trier of fact to find beyond a reasonable doubt defendant was the individual who robbed Jennings. Defendant's height and build matched the masked suspect. Further, defendant's DNA was found on the mask worn by the suspect and left at the scene of the robbery. Defendant also lied to the police about the mask. Moreover, defendant admitted to interacting with individuals who, within hours of the robbery, used the stolen credit cards in Chicago. Finally, he was involved in a relationship with an individual who worked at the Dollar Tree. The court heard testimony all Dollar Tree employees knew about the closing procedures for the store which included at least one employee carrying cash from the store each night to deposit at a local bank.

¶ 30 As to defendant's argument the State did not establish defendant was armed with a firearm, we again disagree. A rational trier of fact, viewing the evidence in a light most favorable to the prosecution, could have found defendant was armed with a firearm when the robbery occurred. Jennings testified the assailant interacting with Hagglund had what looked like an AK-47. She testified her assailant, who matched defendant's description and wore the mask recovered at the scene, had a semiautomatic handgun. Jennings testified she was familiar with guns and had grown up around them.

¶ 31 The trial court found Jennings's testimony reliable with regard to the weapons. According to the court, Jennings was familiar with guns and provided a detailed description of the weapons. The court stated:

> "The Court is bound to look at all the evidence and determine whether the evidence is credible enough to support a conclusion that it was a firearm. When I do that and I look at her testimony regarding her background, her familiarity with weapons, and the way she described it, the Court believes that it is in fact sufficient in this case to prove beyond a reasonable doubt that the defendant was in fact armed with a firearm when he committed this offense."

¶ 32 Defendant takes issue with the State's lack of any objective evidence he was armed with a firearm. However, Jennings's testimony was sufficient to establish defendant had a firearm during the robbery. In *People v. Wright*, 2017 IL 119561, ¶¶ 76-77, 91 N.E.3d 826, our supreme court found eyewitness testimony was enough to establish a defendant was armed with a firearm. Defendant attempts to distinguish *Wright* because the State presented the eyewitness testimony of three lay witnesses. However, in reaching its decision in *Wright*, the supreme court noted in *People v. Washington*, 2012 IL 107993, 969 N.E.2d 349, it "relied on the testimony of a

single eyewitness and concluded that a rational trier of fact could infer from the testimony that the defendant possessed a 'real gun.' " *Wright*, 2017 IL 119561, ¶ 76. As a result, the testimony of one witness can be sufficient to establish a defendant was armed with a firearm.

¶ 33 B. Ineffective Assistance of Counsel

¶ 34 Defendant next argues his trial counsel was ineffective because he did not move to redact portions of defendant's recorded interview with Detective Park and portions of defendant's recorded telephone conversation with his mother. For a defendant to establish his counsel provided ineffective assistance of counsel, he must prove his attorney's actions or omissions fell below an objective level of reasonableness, and a reasonable probability exists the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 690, 694 (1984). A strong presumption exists counsel's performance fell within the wide range of reasonable professional assistance. *People v. Bates*, 2018 IL App (4th) 160255, ¶ 47, 112 N.E.3d 657.

¶ 35 Based on the record in this case, defendant cannot establish he suffered any prejudice by his attorney not asking the court to redact portions of the recorded interview and defendant's phone calls with his mother. We note defendant does not argue the portion of his recorded interview with Detective Park where defendant provides his alibi for the night in question and denies any knowledge of the mask was inadmissible.

¶ 36 Contrary to defendant's assertions, the State had substantial evidence against defendant. As noted, Jennings testified the masked suspect who held her at gunpoint, demanded money, and ran off with her bags was the same height and build as defendant. The police recovered the mask near the crime scene, and defendant's DNA was found on the mask. At the time of the robbery, defendant was in a relationship with another Dollar Tree employee who

knew the process used to close the store, which included having an employee take money from the store for deposit at a local bank. Defendant's denial of any knowledge of the mask which contained his DNA showed a consciousness of guilt, which damaged his credibility and strengthened the State's case.

¶ 37 As a result, defendant cannot establish a reasonable probability the result in this trial would have been different had his attorney moved to redact portions of his interview with Detective Park and his telephone conversations with his mother. Based on the strength of the State's case, defense counsel probably believed he had nothing to lose and everything to gain by not moving to redact portions of the interview and conversation because defendant consistently denied any involvement in the crime.

¶ 38 C. Sheriff's Fees

¶ 39 Defendant next argues this court should vacate a $67 sheriff's fee imposed on defendant because the State performed "duplicate service" of a subpoena on witness Tami Hagglund. Defendant argues this was unnecessary because a court order continued Hagglund's subpoena for the second day of defendant's trial. Defendant did not challenge this $67 fee in the trial court.

¶ 40 Recently, our supreme court adopted Illinois Supreme Court Rule 472 (eff. Mar. 1, 2019). Pursuant to this rule, we will not address defendant's argument. Rule 472 states:

> "(a) In criminal cases, the circuit court retains jurisdiction to correct the following sentencing errors at any time following judgment and after notice to the parties, including during the pendency of an appeal, on the court's own motion, or on motion of any party:
>
> (1) Errors in the imposition or calculation of fines, fees,

assessments, or costs;

* * *

(4) Clerical errors in the written sentencing order or other part of the record resulting in a discrepancy between the record and the actual judgment of the court.

* * *

(c) No appeal may be taken by a party from a judgment of conviction on the ground of any sentencing error specified above unless such alleged error has first been raised in the circuit court. When a post-judgment motion has been filed by a party pursuant to this rule, any claim of error not raised in that motion shall be deemed forfeited." Ill. S. Ct. R. 472(a), (c) (eff. Mar. 1, 2019).

If defendant wishes to pursue his argument he was improperly imposed this $67 fee, he must first raise the issue in the trial court pursuant to Rule 472.

¶ 41 III. CONCLUSION

¶ 42 For the reasons stated, we affirm defendant's conviction in this case. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 43 Affirmed.