2019 IL App (4th) 170330-U

NO. 4-17-0330

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
August 9, 2019
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macon County
ROBERT L. HOWELL,	)	No. 16CF1413
Defendant-Appellant.	)	
	)	Honorable
	)	James R. Coryell,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Cavanagh and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The trial court did not err in allowing a police officer to testify the blood he observed on the sidewalk at 105 South Hilton Street appeared to be drops and spray from a fresh wound.

(2) The trial court did not err by allowing the State to introduce recorded phone calls made by defendant from the county jail.

(3) The State presented sufficient evidence for a rational trier of fact to find defendant guilty of aggravated battery by causing great bodily harm.

¶ 2 On March 8, 2017, a jury found defendant, Robert L. Howell, guilty of aggravated battery by causing great bodily harm. On April 13, 2017, the trial court sentenced defendant to six years in prison. Defendant appeals, arguing as follows: (1) the State failed to prove beyond a reasonable doubt he acted without justification in stabbing Louis Jackson; (2) the trial court erred in allowing a police officer who did not witness the stabbing to give opinion testimony as to when and where the stabbing occurred based on the pattern of blood he found on a sidewalk; and

(3) the trial court erred in allowing the State to introduce recordings of irrelevant and highly prejudicial phone calls allegedly made by defendant from the county jail. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On October 21, 2016, the State charged defendant by information with armed robbery (720 ILCS 5/18-2 (West 2016)) and aggravated battery (720 ILCS 5/12-3.05 (West 2016)). The State alleged defendant, while carrying a knife, knowingly took money from Louis Jackson by use of force and knowingly caused bodily harm to Jackson by cutting Jackson's face.

¶ 5 At a pretrial hearing on March 7, 2017, the trial court and the parties discussed the admissibility of recordings made of defendant's phone calls from the county jail in which defendant told various people they needed to take care of business before his trial on Monday morning. Defense counsel stated he had not heard the edited version of the calls the State sought to introduce. However, he argued any references to defendant being in the Department of Corrections would need to be removed. Counsel also noted any references to witnesses in the calls were not made by defendant. According to defense counsel, defendant did not say anything in the phone calls linking defendant to the victim and State's witness in this case, Louis Jackson.

¶ 6 In response, the State noted defendant made repeated demands to the individuals he called to handle his business soon because he was going to trial on Monday at 8:30 a.m. Some of the various individuals defendant called told defendant someone had moved, had not been seen, and would not be able to be located by the police. The State noted Jackson, the victim, was the only eyewitness who would be testifying against defendant. The State argued the calls were relevant to show defendant's consciousness of guilt.

¶ 7 The trial court ruled the recorded phone calls were admissible. However, the court did not rule the State would not have to provide a proper foundation for the evidence at

trial. The court noted defendant was talking about taking care of his business a few days before his trial. According to the court, defendant's directions for people outside of the jail to take care of his business had probative value, considering the timing of the phone calls. The court noted it would be up to the trier of fact to determine the weight to give the recordings based on the context in which the calls were made.

¶ 8 Defendant's jury trial was held in March 2017. Louis Jackson, 41, testified he was living at 670 East Wood Street in Decatur on October 4, 2016. Jackson admitted he had a felony conviction in Macon County in 2005 for manufacture and delivery of cocaine. About 2:30 or 3:00 p.m., Jackson left his house and walked to the Escape Lounge on the corner of Prairie and Hilton Streets, cutting through Castle Court to get there. He did not see anyone on the way to the Escape Lounge. After leaving the Escape Lounge, he started back to his house. As he reached Hilton Street, he saw defendant, who he knew as "Little Bob." He and defendant started talking, and defendant asked Jackson for $5. When Jackson removed his money from his pocket, defendant told Jackson to give defendant all of Jackson's money. Jackson quickly put the money back in his pocket. Defendant then pulled out a knife and started cutting Jackson. Jackson said defendant cut him in the face twice and stabbed him in the chest.

¶ 9 Jackson believed defendant took money from him during the incident. Jackson saw defendant run away and get in a silver PT Cruiser. From the record, it is not clear who owned the PT Cruiser. Because blood was squirting out of his face, Jackson took off his T-shirt and held it over the wound. Jackson then started walking back to his house and encountered a friend who helped him get home. Jackson walked down Hilton Street and then up the alley by Wood Street. He was bleeding profusely the entire way back to his house. Jackson thought he passed out on his front porch. He woke up in the hospital. Jackson denied being armed when

the incident occurred.

¶ 10 On cross-examination, Jackson testified he was a little "hungover" on the day in question from attending a party the night before, where he took a "party pill." He did not know what the pill had in it.

¶ 11 Jackson denied ever going to 160 North Hilton Street, which was a house directly east of the Escape Lounge. He also denied knowing Claudia Outlaw, who was a defense witness and lived at that address. Later, he did suggest he had seen Outlaw before while working near the Escape Lounge. Jackson admitted he knew of a woman named Sonia Kinnon, another defense witness, but had never talked to her.

¶ 12 Officer Ryan Wicks of the Decatur Police Department testified he was dispatched to 670 East Wood Street on October 4, 2016, at approximately 4:30 p.m. because of a reported stabbing. He approached the residence and saw Louis Jackson come out the front door. Jackson had a shirt up to his face and a significant amount of blood on his face and chest.

¶ 13 Jackson told Officer Wicks he left the Escape Lounge and was approached by a man known as "Little Bob." "Little Bob" asked him for some money. When "Little Bob" saw the significant amount of money Jackson was carrying, "Little Bob" asked for all the money. Jackson refused. "Little Bob" then pulled a knife and attacked Jackson, stabbing him in the face and chest. Wicks saw the laceration on Jackson's face. Blood was still squirting from the cut. Jackson had a less significant laceration, which was also still bleeding, on his chest. Jackson did not tell Wicks where the stabbing occurred, but Wicks testified he figured it happened between Jackson's residence and the Escape Lounge. Jackson passed out while speaking with Wicks. He was taken to St. Mary's Hospital. Officer Wicks observed a blood trail from the back door into the house, through the house, and then at the front door leading to the porch. Inside Jackson's

house, the police found a digital scale with a white powdery substance that tested positive for cocaine. The police seized $540.41 from Jackson because they believed the money was obtained through selling narcotics.

¶ 14 After speaking with Jackson and others, the police suspected defendant, whose nickname was "Little Bob," was the individual who stabbed Jackson. Jackson later identified defendant in a photo lineup.

¶ 15 Officer Austin Lewis of the Decatur Police Department was dispatched to the area of Hilton and Main Streets on October 4, 2016, at 4:40 p.m. He started looking for a potential crime scene. He looked on the east side of Hilton Street both north and south of Main Street, which ran perpendicular to Hilton, and did not find anything. He then started looking on the west side of Hilton Street and found a large amount of blood near an abandoned building at 105 South Hilton. Officer Lewis also found blood between this concentrated area and an alley south of 105 South Hilton near Wood Street. Lewis described the blood trail as being comprised of small droplets of blood every few feet, thinning out the farther the trail went from the large concentrated area. Lewis stopped finding blood around the alley, which was just north of a Sherwin-Williams store at the corner of Wood and Hilton Streets.

¶ 16 When asked to describe the blood found at 105 South Hilton, Officer Lewis testified, "105 South Hilton had a larger quantity of blood, and when you look at it, you can see the blood is in droplets, it's more of a spray, like somebody had just been injured." Defense counsel objected to Officer Lewis offering his opinion. The trial court directed Lewis to confine his testimony to what he observed. Lewis then testified, "From my training and experience as a police officer, the blood we located where the large quantity was, it wasn't droplets. It was a spray from the—[.]" Defense counsel objected again, but the court ruled the officer could testify

the blood appeared to have been from a spray instead of droplets. The State then asked Lewis to describe the concentrated blood found at 105 South Hilton. Lewis testified, "I would describe it as a spray of blood with both blood droplets in it like a fresh injury, and then the blood droplets that go south traveling to the alleyway would be blood droplets."

¶ 17 Officer Lewis testified he was familiar with the property located at 160 North Hilton, which was on the opposite side of the street from where he found the blood. He searched the area in front of 160 North Hilton and did not find any blood there. Lewis also stated 160 North Hilton Street is approximately 371 feet from 105 South Hilton Street where he found the large amount of blood.

¶ 18 On cross-examination, Officer Lewis testified no tests were done on the blood he found and the only training he received with regard to blood splatter and blood splatter interpretation was during his training to be a police officer at the police academy. He acknowledged he had not published anything in any treatises or scholarly journals with regard to blood splatter evidence. Lewis testified he did not find any blood in the alley. Lewis did not go to the home located at 160 North Hilton.

¶ 19 The State called Sergeant Kris Thompson of the Macon County Sheriff's Department to lay the foundation for introducing the recorded telephone calls defendant made from the jail. Sergeant Thompson testified he was currently in charge of second shift at the county jail and was familiar with its systems, practices, and records, including the inmate phone system. Thompson stated all inmate calls made from the jail are recorded and stored by the jail. Each inmate is assigned a specific pin number to enter when calling out of the jail. Sergeant Thompson also testified he was familiar with defendant and his voice. He identified defendant in the courtroom.

¶ 20 Sergeant Thompson testified he located phone calls made under defendant's name based on the dates and times requested by the State and recorded those calls. After recording the calls, he also listened to the calls and recognized defendant's voice. Thompson also checked the recorded video footage from the jail's video system for the specific dates and times provided by the State and identified defendant as an individual using the phone at those times.

¶ 21 Before the trial court allowed the State to play the audio recording for the jury, the court asked defense counsel whether he had any additional objections. Defense counsel said he did not, noting the court and parties had already discussed his objections. Defense counsel did not object to the foundation presented by the State to play the recordings.

¶ 22 Claudia Outlaw testified defendant was at her residence at 160 North Hilton Street on October 4, 2016. She lived across the street from the Escape Lounge. She had been friends with defendant since she was in the sixth grade. Further, Louis Jackson had been to her house numerous times, drinking, selling drugs, and harassing people.

¶ 23 According to Outlaw, defendant, Sonia Kinnon, and Outlaw were partying at her residence at 160 North Hilton on October 4, 2016. They called Jackson because they wanted some drugs. Jackson came to the house and stayed for a couple of hours. At some point, Jackson started "talking crazy" and said he had a gun. Jackson then appeared to reach for his gun. Based on his movements, Outlaw believed Jackson was going to pull a gun and start shooting. At that point, defendant used a knife to cut Jackson to defend himself and everyone else in the house. Jackson then left the house out the front door, leaving blood on the front steps but not in the house. Outlaw did not call the police after this happened. She also saw police officers later but did not tell them what happened.

¶ 24 Sonia Kinnon testified she had been convicted for possession of a controlled

substance in 2015 and 2016. She had known defendant for over 30 years and Louis Jackson for about 15 years. On October 4, 2016, she was at Outlaw's home at 160 North Hilton. They were partying and called Jackson to come to the house. Defendant gave Jackson $10 to purchase some drugs. Jackson was drunk and became irate. Jackson went out the door but then turned around and came back inside, cussed at defendant, said he had a gun in his pocket, and then crouched down and put his hand in his pocket. Defendant then defended himself and cut Jackson. She did not see from where defendant got the knife. Jackson then left. She did not tell the police about the incident.

¶ 25 The jury found defendant guilty of aggravated battery with great bodily harm but not guilty of armed robbery.

¶ 26 On April 13, 2017, the trial court sentenced defendant to six years in prison.

¶ 27 This appeal followed.

¶ 28 II. ANALYSIS

¶ 29 A. Police Officer Testimony

¶ 30 We first address defendant's argument the trial court erred in allowing Officer Lewis to testify the blood splatter on the sidewalk at 105 South Hilton appeared to have come from a "fresh" wound when he was neither an eyewitness nor an expert witness. Where defendant stabbed and cut Jackson was an important question at defendant's trial. Defendant did not deny he both cut and stabbed Jackson. Instead, he claimed he acted in self-defense.

¶ 31 According to defense witnesses, defendant acted in self-defense at the home of his friend, Claudia Outlaw, at 160 North Hilton. Defendant only used the knife on Jackson after Jackson said he had a gun, threatened defendant with the gun, and moved as if he were going to pull the weapon on defendant. However, the State presented testimonial evidence from Jackson

that defendant attacked him as Jackson was walking home from the Escape Lounge along Hilton Street after he refused to allow defendant to take his money. The State also presented evidence of blood found at 105 South Hilton and a blood trail leading from 105 South Hilton to an alley leading to defendant's home. Jackson testified he had never been in a residence at 160 North Hilton.

¶ 32 We will not disturb a trial court's evidentiary ruling unless the court abused its discretion. *People v. Caffey*, 205 Ill. 2d 52, 89, 792 N.E.2d 1163, 1188 (2001). "An abuse of discretion will be found only where the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court." *Caffey*, 205 Ill. 2d at 89, 792 N.E.2d at 1188. After reviewing Officer Lewis's testimony, we find the trial court did not abuse its discretion by allowing Officer Lewis to testify the blood evidence on the sidewalk appeared to be from drops and spraying.

¶ 33 The State did not present Officer Lewis as an expert witness. Further, the State did not try to elicit any opinion testimony from Lewis but instead simply asked Lewis what he observed.

> "[ASSISTANT STATE'S ATTORNEY]: And, officer, is—how would you describe the amount of blood depicted in this picture [from near the Sherwin Williams store] as the amount of blood you found in front of 105 South Hilton?
>
> [OFFICER LEWIS]: 105 South Hilton had a larger quantity of blood, and when you look at it, you can see the blood is in droplets, it's more of a spray, like somebody had just been injured and the—and the—if you cut an—
>
> [DEFENSE COUNSEL]: Objection, Your Honor, as to opinion.
>
> [THE COURT]: Okay. What was the question?

[ASSISTANT STATE'S ATTORNEY]: I asked him to describe the difference between the appearance of the blood in this picture and the appearance of the blood that he discovered in front of 105 South Hilton.

[THE COURT]: He can testify as to his observations. It's not an opinion. It's an observation.

[DEFENSE COUNSEL]: Part of his answer, Judge, he started talking about as if someone sprayed that sort of thing, that's an opinion only experts—

[THE COURT]: He can testify to what he saw. If it appears to be sprayed, fine. If it appears to be a droplet, fine. He can testify to what he observed.

So just confine your answer to what you observed.

[OFFICER LEWIS]: Yes, sir. From my training and experience as a police officer, the blood we located where the large quantity was , it wasn't droplets. It was a spray from the—

[DEFENSE COUNSEL]: Objection, Your Honor. We have no foundation as to his training or expertise as to—

[THE COURT]: He can—he's—he's got two eyes, he can look and he can say this appears to be sprayed as opposed to just being a drop.

[DEFENSE COUNSEL]: But, Judge, my objection—

[THE COURT]: Overruled.

[ASSISTANT STATE'S ATTORNEY]: So to clarify, officer, how would you describe the concentrated blood found at 105 South Hilton in front of that?

[OFFICER LEWIS]: I would describe it as a spray of blood with both

> blood droplets in it like a fresh injury, and then the blood droplets that go south traveling to the alleyway would be blood droplets."

Although Lewis's testimony included his conjecture the sprayed blood found on the concrete at 105 South Hilton came from a fresh wound, we find the essence of his testimony was meant to tell the jury what he saw and not to provide an opinion.

¶ 34 To the limited extent Officer Lewis offered an opinion, we agree with the State's argument his opinion falls under Illinois Supreme Court Rule of Evidence 701 (eff. Jan. 1, 2011), which states:

> "If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness, and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702."

Any opinion Officer Lewis offered was based on his own on-scene investigation of 105 South Hilton and the surrounding area shortly after the police were notified someone reportedly had been stabbed. His testimony was helpful to the jury in determining where defendant stabbed and cut Jackson. Any opinion Officer Lewis offered was not based on scientific, technical, or other specialized knowledge.

¶ 35 Defendant also argues Officer Lewis's testimony was improper because it went to an ultimate question of fact, which was where the stabbing occurred. However, Illinois Supreme Court Rule of Evidence 704 (eff. Jan. 1, 2011) states: "Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be

decided by the trier of fact."

¶ 36 Even assuming, *arguendo*, the trial court abused its discretion by allowing Officer Lewis to offer opinion testimony, the error was harmless beyond a reasonable doubt as the properly admitted evidence overwhelmingly supported defendant's conviction. *People v. Hunley*, 313 Ill. App. 3d 16, 32, 728 N.E.2d 1183, 1199 (2000). Defendant proceeded under a theory of self-defense. He did not deny cutting and stabbing Jackson. He put on two witnesses who testified he was defending himself inside a residence at 160 North Hilton. However, the physical evidence in the case contradicted their testimony. The police searched the area around 160 North Hilton for blood evidence and found none. The closest blood evidence was found 371 feet away from 160 North Hilton at 105 South Hilton. Further, neither of these witnesses reported the incident to the police on the day in question.

¶ 37 While the physical evidence did not support the testimony of the defense witnesses, it did support Jackson's testimony. As Officer Lewis properly testified, the largest amount of blood he observed was at 105 South Hilton. This blood was the closest blood found to 160 North Hilton. Officer Lewis also properly testified he found a sporadic blood trail south of 105 South Hilton. He lost the blood trail at an alley just north of Wood Street.

¶ 38 Jackson testified blood was "squirting" from the cut on his face, which is why he took off his shirt and held it over the wound. This offers an explanation why Officer Lewis found what appeared to be sprayed blood on the concrete at 105 South Hilton but only blood droplets along the sidewalk south of 105 South Hilton.

¶ 39 As a result, the testimony of defendant's witnesses, who were also defendant's long-time friends, likely lacked credibility in the eyes of the jurors. Jackson testified defendant attacked him while Jackson was walking along Hilton Street to get to his home on East Wood

Street. After the attack, Jackson testified he continued walking south on Hilton and then took the alley which runs behind his residence. The State also presented evidence of a blood trail on defendant's back porch, leading through his house to his front door.

¶ 40 When defendant arrived back at his house, he asked a friend to call 9-1-1. Officer Ryan Wicks arrived on the scene and made contact with Jackson on the porch. Jackson had a T-shirt up to his face, and his face and chest were covered with blood. Wicks testified Jackson told him "Little Bob" attacked him with a knife while Jackson was walking home from the Escape Lounge because Jackson refused to give "Little Bob" his money. Jackson later identified defendant as his attacker.

¶ 41 B. Jail Phone Calls

¶ 42 We next address defendant's argument the trial court erred in allowing the State to play recordings of telephone calls defendant made from the jail in the days before his trial. According to defendant, the recordings were irrelevant. Further, even if relevant, defendant argues the prejudicial effect of the recordings far outweighed their probative value. Defendant also contends the State failed to lay a proper foundation for the recordings.

¶ 43 As stated earlier, we will not disturb a trial court's evidentiary ruling unless the court abused its discretion. *Caffey*, 205 Ill. 2d at 89, 792 N.E.2d at 1188. We conclude the trial court did not abuse its discretion in allowing the State to use these recordings because the recordings were relevant to show defendant's consciousness of guilt. Further, the prejudicial impact of the recordings did not outweigh their probative value.

¶ 44 A defendant's attempt to intimidate a witness is admissible to show the defendant's consciousness of guilt. *People v. Spraggins*, 309 Ill. App. 3d 591, 593, 723 N.E.2d 359, 361 (1999). As the State argues, the recordings showed defendant's efforts to prevent a

witness from testifying at defendant's trial or at least to affect the substance of the witness's testimony. The recorded phone calls show defendant repeatedly asking various people to find a witness who had been subpoenaed for trial. The calls also showed defendant's frustration the recipients of his phone calls had not found the subpoenaed witness and were not making any effort to find this witness before defendant's trial.

¶ 45 Defendant also argues the State did not lay a proper foundation to introduce the recorded phone calls. However, defendant did not make an objection with regard to the foundation for the recordings. As a result, defendant failed to preserve its technical argument the State failed to lay a sufficient foundation for the recorded calls. Our supreme court has stated the waiver rule is "particularly appropriate when a defendant argues that the State failed to lay the proper technical foundation for the admission of evidence, and a defendant's lack of a timely and specific objection deprives the State of the opportunity to correct any deficiency in the foundational proof at the trial level." *People v. Woods*, 214 Ill. 2d 455, 470, 828 N.E.2d 247, 257 (2005).

¶ 46 Finally, even if the trial court had abused its discretion in allowing the State to introduce these recordings, the error would have been harmless beyond a reasonable doubt for the same reasons specified earlier in this decision.

¶ 47 C. Sufficiency of Evidence

¶ 48 We next address defendant's argument the State failed to establish beyond a reasonable doubt defendant acted without justification in stabbing Jackson because two witnesses, Claudia Outlaw and Sonia Kinnon, testified Jackson threatened defendant and appeared to be reaching for a gun. According to these two witnesses, defendant only cut Jackson inside Outlaw's residence after Jackson threatened defendant and made a move like he was going

to pull a gun from his pants. As we stated earlier, the physical evidence does not support the testimony of defendant's two friends. However, it does support Jackson's testimony with regard to him being attacked on Hilton Street between the Escape Lounge and his home and walking south down Hilton Street to the alley by East Wood Street and then walking via the alley to his home on East Wood Street.

¶ 49 Jackson denied the incident occurred inside Outlaw's house. Instead, according to his testimony, defendant approached Jackson by Hilton Street and asked Jackson for money. When defendant saw Jackson had a large amount of money, defendant told Jackson to give him all the money. When Jackson refused, defendant pulled a knife and cut him on the face and chest. As previously addressed in this decision, the police searched the area in question. Officer Lewis testified he found a blood trail between 105 South Hilton and the alley by East Wood Street, which ran behind Jackson's home. Officer Lewis did not find any blood north of 105 South Hilton, including near Outlaw's residence which was 371 feet from 105 South Hilton.

¶ 50 When a defendant challenges the sufficiency of the State's evidence to convict, a reviewing court determines whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt after viewing the evidence in the light most favorable to the prosecution. *People v. Phillips*, 215 Ill. 2d 554, 569-70, 831 N.E.2d 574, 583 (2005). This case required the trier of fact to determine which witnesses it found to be credible. The jury was in the best position to judge the credibility of witnesses because it was actually able to see and hear their testimony. *People v. Wheeler*, 226 Ill. 2d 92, 114-15, 871 N.E.2d 728, 740 (2007).

¶ 51 If a defendant raises a self-defense claim, the State must both prove beyond a reasonable doubt the defendant committed the crime in question and did not act in self-defense.

People v. Grayson, 321 Ill. App. 3d 397, 401-02, 747 N.E.2d 460, 464 (2001). To establish a defendant did not act in self-defense the State must establish beyond a reasonable doubt at least one of the following: (1) the defendant was not responding to a threat of unlawful force, (2) the defendant was the aggressor; (3) the danger of harm was not imminent; and/or (4) the use of force was not necessary. *Grayson*, 321 Ill. App. 3d at 402, 747 N.E.2d at 464-65.

¶ 52 Based on evidence in this case, a rational trier of fact could have found Outlaw and Kinnon were not credible witnesses. Further, this same rational trier of fact could have found the State proved beyond a reasonable doubt defendant cut and stabbed Jackson near 105 South Hilton and was not acting in self-defense but instead was the aggressor in the situation.

¶ 53 III. CONCLUSION

¶ 54 For the reasons stated, we affirm defendant's conviction.

¶ 55 Affirmed.