2019 IL App (4th) 190290-U

NO. 4-19-0290

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
October 1, 2019
Carla Bender
4th District Appellate
Court, IL

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| *In re* J.L., a Minor | ) | Appeal from the |
| (The People of the State of Illinois, | ) | Circuit Court of |
| Petitioner-Appellee, | ) | McLean County |
| v. | ) | No. 18JD151 |
| J.L., | ) | |
| Respondent-Appellant). | ) | Honorable |
| | ) | Jason J. Chambers, |
| | ) | Judge Presiding. |

JUSTICE DeARMOND delivered the judgment of the court.
Justices Steigmann and Cavanagh concurred in the judgment.

**ORDER**

¶ 1 *Held*: The appellate court reversed and remanded, concluding respondent did not knowingly waive defense counsel's *per se* conflict of interest.

¶ 2 In March 2019, the trial court adjudicated respondent, J.L., born in 2002, a delinquent after he was found guilty of the offenses of aggravated battery with great bodily harm, aggravated battery with use of a deadly weapon, and aggravated battery in a public place. The trial court sentenced respondent to the Illinois Department of Juvenile Justice until his twenty-first birthday with eligibility for good time credit.

¶ 3 On appeal, respondent argues (1) he did not knowingly waive trial counsel's *per se* conflict of interest; (2) he received ineffective assistance of counsel when trial counsel allowed the admission of prejudicial videotapes; (3) he received ineffective assistance of counsel when trial counsel stipulated to respondent stabbing the victim, causing great bodily harm;

(4) the State did not prove the crime occurred in a public place; and (5) one of his crimes should be vacated under the one-act one-crime doctrine. We reverse and remand.

¶ 4 I. BACKGROUND

¶ 5 In November 2018, the State filed a petition for adjudication of wardship against J.L., alleging he committed the offense of aggravated battery causing great bodily harm (paragraph A) (720 ILCS 5/12-3.05(a)(1) (West 2018)), aggravated battery with use of a deadly weapon (paragraph B) (720 ILCS 5/12-3.05(f)(1) (West 2018)), and aggravated battery in a public place (paragraph C) (720 ILCS 5/12-3.05(c) (West 2018)), when he, while in a public park, stabbed E.M. in the back with a knife causing E.M.'s lung to collapse. In November 2018, the State filed a notice of intent to prosecute respondent as a habitual juvenile offender. See 705 ILCS 405/5-815 (West 2018). Respondent pleaded not guilty, received a jury trial on paragraph A, and requested a bench trial for the other two paragraphs. See 705 ILCS 405/5-815(d) (West 2018) ("Trial on such petition shall be by jury unless the minor demands, in open court and with advice of counsel, a trial by the court without jury.").

¶ 6 In January 2019, the State filed a motion to disqualify Arthur Feldman, respondent's appointed public defender, because he was, at that time, representing the victim, E.M., in an unrelated pending matter. In February 2019, the trial court held a hearing on the motion, where respondent and his mother were present. The State said Feldman represented E.M. in a delinquency matter, which has pending petitions to revoke probation, creating a *per se* conflict because he would know information about E.M. that was not discoverable. Feldman stated his belief the conflict could be resolved through waiver. He said he had spoken to respondent, E.M., and their families about that. E.M. and respondent expressed their willingness

to waive the conflict. During the court's consideration of the motion, it asked rhetorical questions about how it would affect cross-examination and said:

> "Does his closing argument become different in terms of offering or making argument in terms of believability of the witness because of that representation. That is the concern that we have is his representation of [respondent] now hindered in some way or limited beyond the scope of strategy, but simply by the representation because of that fact."

The court continued the matter to another date where the court said it would issue its ruling and respondent and his parents did not need to appear.

¶ 7 At the February 2019 hearing, the trial court denied the motion stating Feldman would withdraw his representation of E.M. and another public defender would be appointed. The court stated the matter involving E.M. was from an early 2018 negotiated plea in an aggravated battery case unrelated to respondent or the respondent's case before the court. Feldman on a later date filed a waiver, which was signed by respondent and his mother. The waiver read as follows:

> "Now comes the Defendant, [J.L.], by his attorney, AJF. I fully understand that my attorney, AJF, has previously represented another minor, E.M., in another unrelated juvenile matter. I understand that E.M. is expected to testify in the current matter, and that I expect Mr. Feldman to cross examine E.M. as part of this case. I understand that Mr. Feldman may ask E.M. about the case in which he represented E.M., but only as it relates to potential impeachment of E.M. as a witness.

I agree to waive any potential conflict of interest on behalf of Mr. Feldman, and I wish Mr. Feldman to remain my attorney in this matter. I have fully discussed this matter with Mr. Feldman, and I am signing this waiver of my own free will."

¶ 8 At a March 2019 hearing, the trial court admonished respondent with his mother present about whether he understood he was waiving his rights to argue about conflict of interest and verifying he wanted Feldman to represent him. Respondent answered in the affirmative to these questions.

¶ 9 Later in March 2019, the trial court conducted a combined jury and bench trial on all the allegations. The State called seven witnesses.

¶ 10 A. Officer Jordan Krueger

¶ 11 Jordan Kreuger is a police officer with the Normal Police Department and was the first officer on the scene of the November 2018 stabbing of E.M. He testified he received a call to go to Anderson Park regarding a stabbing at approximately 4:53 p.m. on the date in question. When he arrived, the victim said he was stabbed in the back by an unknown person whom E.M.'s friends described as a "younger male with long hair." Officer Kreuger called the Normal Fire Department to attend to E.M. Once they arrived, Sasha, a young woman who was applying pressure to E.M.'s wound, allowed them take care of E.M. E.M. was transported to the emergency room where Officer Kreuger spoke with E.M., his parents, and medical staff. Officer Kreuger was wearing a body-worn camera, which recorded while he was at the hospital. Two videos were played for the jury—one from his squad car at the park and one from his body-worn camera at the hospital.

¶ 12 The first video, from Officer Krueger's squad car, recorded the scene when he drove to Anderson Park. When Officer Krueger arrived on the scene, E.M. was lying on his stomach in the grass, shirtless, with a woman presumably attending to his wound while his friends looked on. Officer Krueger asked where the suspect went. The people present said the suspect and two others fled in a white Lincoln MKX. When asked who stabbed E.M., it appeared as if E.M. said, "We don't know. They just f*** came up." E.M.'s friends said it was a white male with long hair. While he was interviewed at the park, E.M. said he did not know why he was stabbed and was crying in pain. E.M said he did not know the suspect, but he had long hair. When the officer asked if they were arguing, he said, "[N]o. He just kind of popped out while we was [*sic*] walking on the street." E.M. said he did not see the knife. He mentioned there were three people who showed up—two older men and one man about his age. Officer Krueger, when talking about the younger man, asked "the guy who stabbed you?" E.M. responded, "No." He later said, "The older guy stabbed me."

¶ 13 In the second video played for the jury, Officer Krueger is at the hospital when E.M. is transported on a stretcher from the ambulance. The video depicts E.M. lying facedown on the table and saying he was short of breath and in pain. He is also heard screaming as the doctor measured the depth of the wound. The medical staff said the stab wound was about an inch deep, and E.M. said his pain level was a 10 on a scale of 1 to 10. The medical staff ordered a chest X-ray and had to roll E.M. over since he was unable to do so himself. He explained he was experiencing pain from his chest to his stomach.

¶ 14 Officer Kreuger testified the victim had a collapsed lung from a stab wound. On cross-examination, Officer Kreuger admitted the victim was not in good shape when he was

talking to him at Anderson Park and did not know who stabbed him. As Officer Kreuger was helping E.M. into the car, E.M. mentioned an older person stabbed him.

¶ 15 B. Sasha Biedenharn

¶ 16 Sasha Biedenharn knew E.M. because his home was a foster placement for a friend of hers. In November 2018, she was on her way to pick up her sister from work when she saw what appeared to be a cluster of people fighting at Anderson Park. She described it as a "pile-on" and said there were seven people there. She then saw three people run to a white Lincoln MKX and head eastbound. Someone came up to her, said his friend had been stabbed, and requested her help. Sasha is a certified nursing assistant (CNA) and, at the time of trial, was working toward receiving her emergency medical technician (EMT) certification. She applied pressure to the wound on the lower left side of his back to stop the bleeding. She did not know it was E.M. until the police arrived and, upon their arrival, she transferred E.M.'s care to them.

¶ 17 C. James Whittington

¶ 18 James Whittington is a friend of E.M. and testified he was playing basketball with E.M. and two other friends, Javon Murff and Terrell Stevens, the day E.M. was stabbed. After about 30 minutes of playing, E.M. walked away from the basketball courts, saying he would be back, when three people arrived in a sport utility vehicle (SUV). One of the people who arrived had long hair and a chest tattoo. He exchanged words with E.M. before fighting. Whittington testified respondent and E.M. were "[j]ust tussling overall, punching." He testified he could not hear what they were talking about or what started the fight. During the fight, he stated he was next to the basketball court while the people who showed up in the SUV were closer to the fight. He did not see anyone get involved in the fight other than respondent and E.M. He did not see E.M. get stabbed. He only realized E.M. had been stabbed when the SUV left and E.M. cried out

that he had been stabbed. When the police arrived, he spoke to the officers, but when they asked him to make a full statement, he declined because he wanted to go home. He identified E.M. from photographs.

¶ 19 D. Javon Murff

¶ 20 Javon Murff is another friend of E.M. who was playing basketball at Anderson Park. Murff testified they were playing basketball when three people exited a car and approached E.M. talking about a "one-on-one fight." He said there was a male and female in their forties or fifties and another male who was around 18 years of age. The younger male had tattoos on his chest and stomach. When shown a picture of respondent in court, he said he could not tell if the tattoo was the same but said the long hair the person had looked the same. The woman spoke to Murff, asking why he had a problem with her son. He testified he told her he had no problem with her son. While he was still talking with the woman, E.M. and the younger male started to fight on the ground. During the fight, Whittington and the woman were standing near Murff, while the older male and Stevens were standing closer to the fight. He stated Stevens did not get involved in the fight. He testified he did not know the fight was going to happen and did not see E.M. get stabbed. When the three people walked toward their car, E.M. took off his shirt, and Murff saw he was bleeding. At some point before leaving, the older woman pulled a handgun out of her pocket and held it by her side. On cross-examination, Murff stated respondent's nose was "leaking" when he left.

¶ 21 E. E.M.

¶ 22 E.M. testified he had two aggravated-battery convictions in 2018. In November 2018, the day of the incident, he played basketball with Murff, Whittington, and Stevens at Anderson Park in Normal. While playing basketball, he was messaging respondent through the

Snapchat application on his cell phone, challenging him to fight, which respondent accepted. Respondent arrived at the park in a car driven by his parents, and the three of them exited the car as E.M. approached.

¶ 23 E.M. and respondent did not talk before the fight. They took their shirts off and emptied their pockets. E.M. took a lighter and a cell phone out of his pocket, which he gave to a friend, and said he saw respondent empty his pockets. The fight consisted of punching and then E.M. was slammed twice. The fight lasted, in E.M.'s estimation, two to three minutes until Stevens jumped into the fight because E.M. was losing. E.M. did not know how many punches Stevens threw, but it was enough to allow E.M. to stand up. The fight ended when E.M. was stabbed in the lower left side of his back, piercing his left lung. He testified respondent's father stabbed him. He thought it was the father because E.M. described his location as "he was right there next to me. I mean [Stevens] had [respondent]. So only comment, I heard his voice. His voice, I could tell he was close to me. He was the only one close to me." E.M. admitted he did not realize right away he had been stabbed and that it took him a few seconds. He put his hand on his back, saw blood on his hand, and lay down. Respondent and his parents ran over to the car and drove off while Biedenharn came and put pressure on the wound. E.M. stated, when the police talked to him at the park and the hospital, he was more concerned about the stab wound than anything else.

¶ 24 At the hospital, E.M. was treated for a collapsed lung due to the stabbing. He said he was hospitalized for approximately a week or a week and a half. E.M. said he was surprised he got stabbed because it was "a one-on-one fight. I didn't know anyone had anything." On cross-examination, he affirmed his belief that it was respondent's father, and not respondent, who stabbed him because respondent's father was closest to him at that point in the fight and

respondent was involved with E.M.'s friend Stevens. He acknowledged talking to Ryleigh Whitesell on the Facetime application on his phone while in the hospital. On redirect, he admitted telling an officer at the scene and another at the hospital he was stabbed by respondent.

¶ 25 F. Officer Ryan Thomas

¶ 26 Ryan Thomas is a police officer for the city of Normal and was dispatched to Anderson Park the day of the stabbing. On that day he was in "plain clothes and a plain car" with emergency lights. The officers at the scene said an unknown suspect fled the area in a "lighter colored Lincoln MKX SUV." An hour after that call, he went to the police department, found the address where the vehicle was registered, and, along with another officer, went to that address. After seeing a vehicle which matched the description on the way, they followed it to the residence. Once parked, four people "immediately started jumping out of the vehicle." Officer Thomas and the other officer briefly detained the individuals for questioning. They were found to be respondent's mother, who was driving, respondent, who exited from the passenger's side, and two other males. Respondent's mother was cooperative. After looking in the car, Officer Ryan observed blood in the middle rear seat and on a jacket that was hanging on a rear seat.

¶ 27 On cross-examination, Officer Thomas said he did not notice any blood or cuts on respondent's face or hands at the time of the stop but acknowledged it was an hour or so after the initial call. He also stated respondent's father was not in the vehicle at the time of the stop but instead exited the residence when the officers were questioning the others.

¶ 28 Before the State called its last witness, it sought to admit several stipulations into evidence. Counsel for the State and defense discussed only the last stipulation at any length, with the State indicating "it relates to the affirmative defense of self-defense that was raised." The stipulation read: "That as a matter of law, [E.M.] suffered great bodily harm when he received a

stab wound from [respondent], resulting in a collapsed lung." Defense counsel stated he was stipulating "[t]o that particular finding." He continued, saying, "[t]here is no question about suffering great bodily harm. The issue is without legal justification in this matter based on the affirmative defense that's been raised and was noticed to the State."

¶ 29 G. Detective Nicole Bruno

¶ 30 Nicole Bruno is a detective with the Normal Police Department who also responded to the situation at Anderson Park. When she received the call she was informed the victim had been taken to the hospital so she went there first to speak with him. While at the hospital, she observed E.M. was in noticeable pain and did not seem interested in talking to her. She spoke to him again about five days after his release from the hospital but he still seemed to be in a "tremendous amount of pain" and had been taking prescribed narcotic medication for pain. Both times E.M. spoke to Detective Bruno, he said he was unsure of who stabbed him and she believed it was in the second conversation when E.M. told her he did not think it was respondent. He said it was because once he realized he was stabbed, respondent was standing up and was "away from him."

¶ 31 After Detective Bruno's testimony, the court read the stipulations into the record. After the reading of the stipulations, the State rested. The Defense argued for a directed finding. Among other things, defense counsel contended no witness identified respondent as the person who stabbed E.M. The State referenced the stipulation where respondent agreed great bodily harm was suffered by his hand. The court denied the motion, stating, "if not for the stipulation maybe there would have been more testimony given, but the evidence stipulation does not say just that [E.M.] suffered great bodily harm but its—the agreement in the stipulation is great

bodily harm when he received a stab wound from [respondent]." Respondent's case consisted of one witness.

¶ 32 H. Ryleigh Whitesell

¶ 33 Ryleigh Whitesell had known E.M. and respondent for about five years and three years, respectively. She said she did not talk to respondent about the incident before it happened, though she talked to E.M. by phone when he was in the hospital a few hours afterward. E.M. said it was supposed to be a one-on-one fight but his friend jumped in. At the beginning of the call, E.M. said it was respondent who stabbed him, but later said "he could have sworn it was his dad, but—[respondent's] dad."

¶ 34 In closing arguments, the State mentioned the stipulation and said respondent admitted he "knowingly stabbed [E.M.] in the back causing a pneumothorax or a collapsed lung." Defense counsel argued the State had to prove "respondent caused great bodily harm and there was no legal justification for that." He said the State had to prove both beyond a reasonable doubt. Defense counsel stated, "First of all, was it actually [respondent]? Or was the force he used unreasonable?"

¶ 35 During jury deliberations, the jurors asked, "Are the evidence stipulations considered as facts by both the State and the respondent?" After discussion by the parties, the trial court gave the third paragraph of Illinois Pattern Jury Instructions, Criminal, No. 1.01 (4th ed. 2000) to the jury, stating, "It is your duty to determine the facts and to determine them only from the evidence in this case. You are to apply the law to the facts and in this way decide the case." Shortly thereafter, the jury found respondent guilty of aggravated battery causing great bodily harm. The trial court found respondent guilty of the two paragraphs of aggravated battery, (1) with a deadly weapon (paragraph B) and (2) in a public place (paragraph C).

¶ 36 At sentencing, the trial court took judicial notice of respondent's prior adjudications, which consisted of felony theft, burglaries, and criminal damage to property. Based on those prior adjudications, respondent was subject to the habitual juvenile offender statute (705 ILCS 405/5-815 (West 2018))—a point respondent does not dispute in this appeal. The court found respondent met the criteria for a habitual juvenile offender and sentenced him to 36 months' probation on paragraphs B and C. On paragraph A, the court sentenced respondent to the Illinois Department of Juvenile Justice for no longer than his twenty-first birthday.

¶ 37 This appeal followed.

¶ 38 II. ANALYSIS

¶ 39 A. *Per se* Conflict of Interest

¶ 40 Respondent argues this court should reverse respondent's adjudications and remand for a new trial because respondent did not knowingly waive a *per se* conflict of interest. We agree.

¶ 41 "[A] criminal defendant's sixth amendment right to effective assistance of counsel includes the right to conflict-free representation." *People v. Fields*, 2012 IL 112438, ¶ 17, 980 N.E.2d 35. There are two types of conflicts of interest: *per se* and actual. *Fields*, 2012 IL 112438, ¶ 17. A *per se* conflict exists "[w]hen a defendant's attorney has a tie to a person or entity that would benefit from an unfavorable verdict for the defendant." *People v. Hernandez*, 231 Ill. 2d 134, 142, 896 N.E.2d 297, 303 (2008). That danger exists: "(1) where defense counsel has a prior or contemporaneous association with the victim, the prosecution, or an entity assisting the prosecution; (2) where defense counsel contemporaneously represents a prosecution witness; and (3) where defense counsel was a former prosecutor who had been personally involved in the prosecution of defendant." *People v. Taylor*, 237 Ill. 2d 356, 374, 930 N.E.2d 959, 971 (2010).

The question of whether a *per se* conflict exists is reviewed *de novo*. *Fields*, 2012 IL 112438, ¶ 19.

¶ 42 In this case, defense counsel represented respondent and the victim up until a little over two weeks before respondent's trial. At that point, defense counsel had already meaningfully participated in defendant's pretrial process by responding to two motions *in limine* and filing a notice of intent to offer an affirmative defense of self-defense. It is undisputed defense counsel represented respondent and the victim contemporaneously. As a result, this would constitute a *per se* conflict. If there is a *per se* conflict, "a defendant need not show that the conflict affected the attorney's actual performance," and unless the defendant waives the conflict, it is automatic grounds for reversal. *Fields*, 2012 IL 112438, ¶ 18.

¶ 43 Here, the trial court accepted respondent's waiver of conflict after removing respondent's counsel from any further representation of E.M. before the trial began. The question is whether the waiver of the conflict is valid. A waiver of a conflict of interest is not valid and made knowingly unless "the defendant is admonished regarding the existence and the significance of the conflict ***." *People v. Poole*, 2015 IL App (4th) 130847, ¶ 34, 39 N.E.3d 1086. Though there is no talismanic admonishment courts are required to give, "[a] defendant must actually understand how the conflict could affect his attorney's representation, before his right to a conflict-free attorney can be knowingly waived." *People v. Coleman*, 301 Ill. App. 3d 290, 301, 703 N.E.2d 137, 145 (1998). Courts of review are to err on the side of caution, looking at every reasonable presumption against waiver of constitutional rights and not presume acquiescence. See *People v. Stoval*, 40 Ill. 2d 109, 114, 239 N.E.2d 441, 444 (1968); see also *Poole*, 2015 IL App (4th) 130847, ¶ 34. "In determining whether there has been an intelligent

waiver of the defendant's right to conflict-free counsel, the circumstances surrounding the claimed waiver must be considered." *Poole*, 2015 IL App (4th) 130847, ¶ 34.

¶ 44 In *Stoval*, 40 Ill. 2d at 114, our supreme court stated the defendant did not knowingly waive the conflict of interest since he was not informed of the significance of the conflict and it was not clear "that he understood how a conflict could affect, sometimes subtly, a client's representation." There, the defense counsel was appointed to represent the defendant who robbed a jewelry store. He also had previously represented the jewelry store and owner, who were robbed by the defendant, and the store and owner were still represented by counsel's firm at the time of trial. *Stoval*, 40 Ill. 2d at 112. The court asked whether the defendant understood it was the State prosecuting him and not the jewelry store, to which he responded he did. The court then asked whether the fact there was any connection made any difference to him, to which defendant said no. Though the attorney told the defendant about his representation of the jewelry store, was found to have conducted a defense "with diligence and resoluteness," and the defendant was admonished by the trial court, the waiver was found invalid. *Stoval*, 40 Ill. 2d at 113-14.

¶ 45 In *People v. Acevedo*, 2018 IL App (2d) 160562, 121 N.E.3d 530, the Second District reviewed whether the defendant's waiver of a conflict of interest was knowing. In that case, it stated the waiver was not made knowingly because the record did not reveal the defendant was informed about the possible ramifications of the conflict or knew about the possible impact on his counsel's ability to zealously advocate on his behalf. *Acevedo*, 2018 IL App (2d) 160562, ¶ 20. The conflict was brought to the trial court's attention and discussed with the defendant. The defendant's counsel represented a state's witness who had another case pending with the defendant as a codefendant as well. The State informed the court what they

expected the witness to say, and the court received assurances of counsel he discussed with the defendant, "the conflict, the ramifications of that, what we expect to happen if [the witness creating the conflict] is called as a witness and how it affects [the defendant] and his rights." *Acevedo*, 2019 IL App (2d) 160562, ¶ 19. The court informed the defendant about possible issues, which may arise during the trial, and asked if he had discussed these with counsel, which he acknowledged.

¶ 46 While agreeing the defendant was aware of the *existence* of the conflict, the Second District found the record failed to adequately reflect the defendant was advised of the *significance* of the conflict. *Acevedo*, 2018 IL App (2d) 160562, ¶ 20. It noted the record revealed none of the specific discussions between counsel and the defendant. There was no indication counsel told the trial court what information he gave the defendant about the possible effects of the conflict on his representation, nor did the defendant say whether he knew how that might affect counsel's zealous representation of him. *Acevedo*, 2018 IL App (2d) 160562, ¶ 20. The court in *Acevedo* acknowledged the trial court informed the defendant the conflict was "serious," and that there were issues which might arise, but pointed out it was "never explained to defendant, in a way he might understand, how the conflict could impact counsel's representation of him," citing this court's decision in *Poole*, 2015 IL App (4th) 130847. *Acevedo*, 2018 IL App (2d) 160562, ¶ 20.

¶ 47 Here, respondent was merely advised there was a conflict and his attorney would probably have to cross-examine the victim, who had, until very recently, been represented by defense counsel. The trial court did not discuss the written waiver with him other than to characterize what it said in the most general of terms. Counsel did not go into the conversations he had with respondent, nor did the court inquire about the specifics. There were no discussions

about the various issues which may arise because of the conflict or the effect on counsel's representation. Respondent was not adequately informed of the possible significance or ramifications of this conflict. Although the State argues respondent's knowledge of the court system should be sufficient, the *Acevedo* court noted we said in *Poole* the waiver was invalid, in part, because "the record does not reveal whether defendant was advised of the conflict in a way he might understand how it could affect his representation." (Internal quotation marks omitted.) *Acevedo*, 2018 IL App (2d) 160562 ¶ 20 (citing *Poole*, 2015 IL App (4th) 130847, ¶ 36). Regardless of respondent's prior involvement with the juvenile court system, not only is it highly unlikely he has previously been represented by an attorney who also represented the victim in his other cases, there is nothing in the record from which to draw the conclusions sought by the State. There is no indication respondent has ever had a conversation about a conflict of interest situation or that he knew what effect such a conflict may have on counsel's representation. A trial court may look to the language and holdings of our courts since *Stoval* and ask itself, "How are we to adequately cover all the possible circumstances which may arise in these conflict situations in order to fully advise a defendant seeking a waiver?" Perhaps that was the point of the supreme court when it said "[t]he difficulty in appropriately advising an accused of this right [to conflict-free counsel] almost directs that counsel, especially one appointed, be free from any such conflict." *Stoval*, 40 Ill. 2d at 114.

¶ 48 When a trial court does seek to ascertain whether a defendant receives an adequate admonishment on his prospective waiver of conflict, it must be mindful of its purpose. The admonishment's primary purpose is to ensure a defendant understands both the existence and significance of the conflict of interest. *Poole*, 2015 IL App (4th) 130847, ¶ 34. In most cases, both trial and reviewing courts may have to speculate about the possible problems, which might

arise due to a conflict in order to determine whether a defendant was adequately admonished. Here, respondent was not fully informed about the significance of the conflict, even though one glaring example was mentioned by counsel himself. The fact that counsel indicated he had no intention to further interview E.M., the victim, who had identified both respondent and, later, his father as the assailant, and would instead rely solely on the statements contained in the police reports is indicative of the prejudicial effect this conflict had. Interviewing, or at least attempting to interview, the victim is fairly basic pretrial preparation for defense counsel in a criminal case. In doing so, counsel either gleans additional information, obtains conflicting or corroborative information, or learns the victim does not wish to speak with him or her. Here, considering he was the witness' attorney until two weeks before trial, it was highly unlikely E.M. was not going to speak with him. By limiting himself to representations in a police report, which, in most instances, are not statements taken under oath but merely a police officer's rendition of their recollection of what a witness said, counsel had already restricted his level of pretrial preparation. More importantly, since there was apparently a real issue regarding who stabbed E.M., it was even more important for counsel to at least attempt to determine what E.M. was going to say at trial. Was he going to identify respondent, his father, or someone else? Knowing this was critical to any decision to assert a claim of self-defense, especially in light of the fact counsel was not going to call respondent to testify. Establishing self-defense, which by definition requires some evidence of the defendant's state of mind at the time of the offense, without putting him on the stand, would be an uphill battle under the best of circumstances. If E.M. was going to remain adamant in his identification of respondent's father as the assailant, counsel would have no need to rely on self-defense and would not have had to enter into the extremely damaging stipulation. It was also important to find out how E.M. would seek to explain his

conflicting identifications on cross-examination, especially since he was the victim. The fact that counsel would make no pretrial effort to see which version of the offense E.M. was going to tell, considering it could impact the entire defense of his case, is perhaps the best indicator of the prejudice respondent suffered.

¶ 49 Recognizing a wrong decision on a *per se* conflict issue will never result in "harmless error," we question why a trial court confronted with the circumstances present in this case would not immediately grant the State's motion to disqualify appointed counsel. Counsel's representation of the victim until shortly before respondent's trial would have been a sufficient reason. Once counsel announced he intended to make no attempt to interview arguably both the most damaging and helpful witness in respondent's case, there was no reason to endeavor to retain appointed counsel. Although perhaps understandable if counsel had been retained and of respondent's own choosing, we find nothing in this record to support the court's undoubtedly well-intentioned efforts to support waiver of the conflict in this case.

¶ 50 Respondent was never informed of the effect of his waiver with any degree of specificity and clearly was not told about the possible effects of counsel's decision to decline to interview the most important witness against him. Without a complete explanation, respondent cannot be found to have fully understood the significance of his waiver. As such, we find there was no waiver of the conflict of interest and reverse and remand for a new trial. We make no finding on whether respondent could waive the conflict if admonished properly or whether defense counsel should be substituted; that is for the trial court to address on remand.

¶ 51 While we must reverse respondent's conviction, we find the evidence was sufficient to prove respondent guilty beyond a reasonable doubt. The jury was perfectly justified in believing the testimony adduced by the State at trial and the stipulation to make a finding of

guilt. See *People v. Wheeler*, 226 Ill. 2d 92, 114-15, 871 N.E.2d 728, 740 (2007) ("The trier of fact is best equipped to judge the credibility of witnesses, and due consideration must be given to the fact that it was the trial court and jury that saw and heard the witnesses."). Thus, we find there is no double jeopardy impediment to a new trial. See *People v. Hale*, 2012 IL App (4th) 100949, ¶ 26, 967 N.E.2d 476. However, we reach no conclusion regarding defendant's guilt that would be binding on retrial. See *People v. Naylor*, 229 Ill. 2d 584, 611, 893 N.E.2d 653, 670 (2008).

¶ 52 B. Other Issues

¶ 53 Respondent argues ineffective assistance of counsel, sufficiency of the evidence, and a violation of the one-act, one-crime doctrine. As we are sending the case back for retrial, we need not address these issues.

¶ 54 III. CONCLUSION

¶ 55 For the reasons stated, we reverse the trial court's judgment and remand for a new trial.

¶ 56 Reversed and remanded.