2018 IL App (3d) 160604-U

Order filed May 2, 2018

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2018

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois.
Plaintiff-Appellee,	)	
	)	Appeal No. 3-16-0604
v.	)	Circuit No. 13-CF-1667
	)	
CHRISTOPHER L. THOMPSON,	)	Honorable Daniel J. Rozak,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Holdridge and McDade concurred in the judgment.

ORDER

¶ 1 *Held*: A trial court order denying a defendant's motion for an evidentiary hearing into allegations of misconduct by jurors was reversed and remanded for a hearing. A juror's unsolicited letter to the court specifically indicated that at least one juror read newspaper reports of the case and shared that information with the jury, and the newspaper reports contained other information that could have affected the verdict.

¶ 2 The defendant, Christopher Thompson, appeals from his conviction for first degree murder and sentence of 60 years plus natural life.

¶ 3 FACTS

¶ 4 The defendant was indicted on two counts of first degree murder, 720 ILCS 5/9-1(a)(1), (2) (West 2012), for the shooting death of Gerardo Franchini on or about August 3, 2013. The shooting occurred at Louis' Restaurant in Joliet, between 9 a.m. and 10 a.m. on Saturday, August 3, 2013.

¶ 5 Prior to trial, the defendant filed several motions *in limine*. Relevant to this appeal, the defendant's third motion *in limine* sought the right to question the police regarding why they disregarded exculpatory evidence and other suspects. Specifically, the defendant wanted to ask about Merced Costilla, a Hispanic male, who was allegedly shot by Franchini in 2007. Franchini also allegedly killed Costilla's girlfriend but had been acquitted of the murder. The trial court denied the motion *in limine* with regard to the 2007 murder and references to Costilla but did not limit the defendant's ability to cross-examine the investigators regarding their techniques or whether they looked at any other suspects.

¶ 6 At trial, Officer Brian Lanton, with the City of Joliet Police Department, testified that he was called at 9:41 a.m. and he arrived at Louis' Restaurant at 9:43 a.m. on August 3, 2013. Patrons outside the restaurant advised Lanton that the suspect had fled. Lanton went in the restaurant and located Franchini in the horseshoe-shaped booth in the left corner of the restaurant. Franchini had a gunshot wound to the head. Franchini's wife was sitting next to him.

¶ 7 Franchini's wife, Edna Franchini, testified that she, her husband, her five-year-old daughter, and her four-year-old niece went to breakfast at Louis' around 10 a.m. on Saturday, August 3, 2013, and were seated in the horseshoe-shaped booth at the back of Louis'. Edna testified that the defendant came into the restaurant and was talking to the girl he was with about Franchini. The defendant was irate and agitated and was pointing at Franchini. Edna testified that

the defendant and the girl left the restaurant, but the defendant returned about 15 minutes later. Edna saw him walking toward them really fast, pointing a gun at Franchini, and shooting. Edna identified in court the defendant as the man who shot her husband. Edna is also heard on the recording of the 911 call identifying the defendant, who she knew as "Little," as the shooter, and Edna also identified the defendant in a photo lineup just after the shooting.

¶ 8 A customer in Louis' Restaurant on the morning of August 3, 2013, Bill Nussbaum, testified that he saw the defendant yelling from the entryway of the restaurant at someone in the other section of the restaurant. Nussbaum also saw a black female pushing the defendant away from the other section. About 15 to 20 minutes later, Nussbaum heard six or seven gunshots and looked up to see an individual jogging out of the restaurant with a gun and trying to shield his face. Nussbaum identified the defendant as that individual. A waitress working at the restaurant that morning, Valerie Venegas, also identified that defendant as the person who had the altercation and then ran out of the restaurant after the gun shots. Witnesses in the restaurant provided varying descriptions of the shooter, including descriptions that suggested he was a light-skinned African-American or Hispanic.

¶ 9 The defendant's friend, Tuesday Henderson, testified that she and the defendant went to breakfast at Louis' Restaurant in the morning of August 3, 2013. The defendant's nickname is "Little." She testified at trial that they had breakfast and then left prior to the shooting. She did not recall any altercation in the restaurant. Henderson was impeached with her videotaped interview at the police station at 9:32 p.m. on the day of the shooting where she told the police that the defendant got up to use the restroom at Louis' and got into an argument.

¶ 10 After the shooting, the police set up surveillance outside 2342 Carnation Drive, where the defendant lived with his girlfriend, Shannyn Barr. At the hearing on the defendant's motion to

suppress, Barr testified that she returned from work in the morning of August 3, 2013, around 10 a.m. and the defendant was sitting on the couch in his pajamas. She went to work for a few hours, and returned around 1:30 p.m. and the defendant was still on the couch. She did not notice anything unusual. Barr testified that she was cooking on the right stove burner when she went outside and then was never allowed back in by the police. She could not remember if she left the burner on. Barr testified that the police went in her apartment before a warrant was issued. Police asked for her permission to enter her apartment but she declined to consent. She did consent to the search of her car. Barr testified that her landlord did not give consent for the search either.

¶ 11 The landlord, Daniel Kallan, testified that he gave the police permission to knock on the door of the apartment when none of Kallan's keys worked. Kallan testified that the police told him that a person of interest was in the apartment, so he went and got keys, but none of them worked. The police never mentioned the stove to him. Joliet Police Sergeant Joseph Rosado testified that the defendant had already surrendered to police when Barr expressed concern that she had left the stove on. Around that time, Kallan arrived on the scene. Rosado testified that Barr gave police permission to enter the apartment and check to see if the stove was off. According to Rosado, the police broke in, did a protective sweep, confirmed the stove was off, and exited the apartment to wait for a search warrant. They did not locate any evidence. After the warrant was issued, the police made entry into the apartment and collected evidence. The trial court denied the defendant's motion to suppress the evidence seized from 2342 Carnation.

¶ 12 The jury deliberated for five hours and found the defendant guilty. Five days later, on February 23, 2016, Juror #4 sent a letter to the judge. The letter indicated that: (1) the first alternate, Juror #7, knew from the newspaper that Juror #2 had been excused from the jury; (2) Jurors #7 and #5 said during deliberations that the defendant had been arrested before, even

though the defendant's arrest record was not in evidence; and (3) Juror #3, in reference to the videotape of the questioning of the defendant, stated that "these guys are probably all high on drugs." Juror #4 attached two newspaper articles regarding the case to her letter; news of the dismissal of one juror was in the last sentence of the first article.

¶ 13 Defense counsel filed a motion for a new trial, and a supplemental motion for a new trial based upon Juror #4's letter, but a new trial was denied. The trial court also denied the defendant's alternative request that the trial court conduct an evidentiary hearing into the allegations of juror misconduct. The trial court found that the juror's letter was based on speculation and conjecture. The trial court sentenced the defendant to 60 years in prison, plus a term of natural life. The defendant appealed.

¶ 14 ANALYSIS

¶ 15 The defendant argues that his constitutional right to confront witnesses was denied when the trial court limited his cross-examination of police officers regarding their failure to investigate other possible suspects. The State contends there was no error, and if there was, it was harmless. We review *de novo* a defendant's claim that he was denied his Sixth Amendment right to confront witnesses against him. *People v. Lovejoy*, 235 Ill. 2d 97, 141 (2009).

¶ 16 In the defendant's third motion *in limine*, the defendant specified that he wanted to cross-examine the police and investigators to show that they failed to adequately investigate exculpatory evidence and other suspects, *i.e.*, a failure to investigate defense. The defendant argued that the statements made to the investigators were not hearsay under this theory of the defense; the statements were offered to prove that the statements were made, not to prove the truth of the statements. At the hearing on the motion, the State sought to limit any references to Costilla and the 2007 murder of which Franchini was accused and acquitted, but did not seek to

limit the defense in its ability to cross-examine the investigators regarding their techniques or whether they looked at any other suspects. The State argued that the prejudice outweighed the probative value where there were no leads pointing to Costilla. The trial court denied the defendant's third motion *in limine* with regard to the 2007 murder, finding that the prejudicial effect outweighed the probative value where the murder occurred seven years earlier and there was no other connection to Costilla, other than the vague description by some of the witnesses.

¶ 17 A defendant has the right to cross-examine witnesses against him, but the latitude permitted on cross-examination is a matter within the sound discretion of the trial court. *People v. Kliner*, 185 Ill. 2d 81, 130 (1998). Trial courts may impose reasonable limits on cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, repetition, or marginal relevance. *Delaware v. VanArsdall*, 475 U.S. 673, 679 (1986). In *VanArsdall*, the Supreme Court concluded that the defendant was denied his Sixth Amendment right of confrontation at his murder trial when the trial court prohibited all inquiry into the possibility that a witness would be biased as the result of the State's dismissal of a public drunkenness charge. *Id.* The Supreme Court remanded the case for a determination of whether the constitutionally improper denial of the defendant's opportunity to impeach the witness for bias was harmless error. *Id.* at 680.

¶ 18 In this case, the defendant was allowed to cross-examine the police officers regarding whether the police inadequately investigated the case by focusing on the defendant and ignoring other potential evidence or suspects. The defendant was also allowed to cross-examine detectives about a man nicknamed "Bump" who was seen outside the restaurant at the time of the shooting. The only thing that was not allowed was questions involving the 2007 shooting and Costilla. Since the trial court did allow fairly extensive cross-examination on issues regarding inadequate

investigation, and there was no evidence from the scene pointing to Costilla, it was not an abuse of discretion to limit that line of questioning on the basis of confusion and marginal relevance.

¶ 19 Next, the defendant argues that trial court erred in denying his motion to suppress evidence found in Barr's apartment after the police conducted a warrantless search of the apartment. The State argues that there was no warrantless search: the police had consent to enter the apartment to check the stove, which police did, along with a protective sweep, and then the search was done pursuant to a warrant. When reviewing a trial court's ruling on a motion to suppress, factual findings are upheld unless such findings are against the manifest weight of the evidence, but the ultimate suppression ruling is a question of law that is reviewed *de novo*. *People v. Gherna*, 203 Ill. 2d 165, 175-76 (2003).

¶ 20 The defendant's motion to suppress alleged that he had surrendered to police at approximately 3 p.m. and that neither he nor Barr gave consent to search the apartment. The defendant also alleged that no exigent circumstances existed. The motion further alleges that, at 5:02 p.m., police officers entered the apartment without a warrant. A warrant was then obtained, and executed at approximately 5:20 p.m. The defendant sought to suppress all physical evidence discovered in the apartment.

¶ 21 The fourth amendment to the United States Constitution guarantees the right to be free from unreasonable searches and seizures. *Gherna*, 203 Ill. 2d at 176. The trial court found the police officers to be credible and believed that Barr gave consent to enter the apartment to check the stove. She did not give consent to search, and the trial court made the factual finding that there was no search for evidence, only a protective sweep for officer safety. Thus, the motion was denied. The factual findings that Barr gave consent to enter and check the stove, and that no search for evidence was conducted, are not against the manifest weight of the evidence.

¶ 22 "A protective sweep is a 'quick and limited search of premises, incident to an arrest and conducted to protect the safety of police officers and others,' and is limited to a cursory visual inspection of places in which a person may hide." *People v. Davis*, 398 Ill. App. 3d 940, 953 (2010) (quoting *Maryland v. Buie*, 494 U.S. 325, 327 (1990). While the testimony was that the sweep was done for officer safety, and consisted of a cursory search for people, it was done after the defendant's arrest. The defendant argues that since the sweep was done after the defendant was already in custody, it was not incident to the arrest. Protective sweeps, though, can be warranted even when the suspect is in custody, especially in cases where a weapon is unaccounted for or there are reports that the defendant had an accomplice. *People v. Free*, 94 Ill. 2d 378, 397 (1983). In this case, the defendant surrendered outside the apartment, so there was no need to enter the apartment. However, since the gun was unaccounted for, and police did not know if there were any other subjects in the apartment, a protective sweep while checking the stove was reasonable. There was no error in denying the motion to suppress.

¶ 23 As a final matter, the defendant argues that the trial court abused its discretion when it denied the defendant's supplemental motion for an evidentiary hearing or a new trial based on a juror's letter to the court five days after trial. The defendant contends that the juror's letter indicated that the defendant was deprived of his Sixth Amendment right to a trial by an impartial jury and that the trial court denied his right to due process by not granting a new trial or at least an evidentiary hearing. The defendant also argues that the juror's letter implies a racial bias. The State argues that the defendant failed to establish prejudice by showing that the extraneous information may have influenced the verdict because the juror's letter contained only speculation. We review a trial court's ruling on a motion for a new trial for an abuse of discretion. *People v. Willmer*, 396 Ill. App. 3d 175, 181 (2009).

¶ 24 Impeaching a jury verdict is very restrictive, and a party may not admit a juror's testimony or affidavit to show, the motive, method, or process by which the jury reached its verdict. *Id.* Such evidence may be admitted, though, to show that the jury was exposed to improper extraneous information. *Id.* That evidence must be specific, detailed, and nonconjectural. *People v. Kuntu*, 188 Ill. 2d 157, 161 (1999). The party challenging a verdict on this basis must show that the information relates directly to something at issue in the case and that it may have influenced the verdict. *Willmer*, 396 Ill. App. 3d at 181. If the moving party makes such a showing, the burden shifts to the nonmoving party to establish that the incident was harmless. *Id.* After considering all of the facts and circumstances, it is then within the discretion of the trial court to determine whether prejudice occurred. *Thornton v. Garcini*, 364 Ill. App. 3d 612, 617 (2006).

¶ 25 In this case, we find that the juror's letter established that the jury had been exposed to some form of improper extraneous information. At a minimum, the letter indicates that there was information given to the jury that was specifically excluded by the court. While the dismissal of Juror #2 may not have influenced the verdict, there was other information in the newspaper articles that could have influenced the verdict. Thus, we conclude that the defendant made a sufficient showing to require the trial court to hold an evidentiary hearing to make that determination. At the evidentiary hearing, the issue of whether the letter also alleged a racial bias should be addressed. See *Pena-Rodriguez v. Colorado*, 137 S. Ct. 855, 869 (2017) (where a juror makes a clear statement that indicates he or she relied on racial stereotypes or animus to convict a criminal defendant, the Sixth Amendment requires that the no-impeachment rule give way in order to permit the trial court to consider the evidence of the juror's statement and any resulting denial of the jury trial guarantee).

¶ 26 CONCLUSION

¶ 27 The judgment of the circuit court of Will County is affirmed in part and reversed in part. The trial court's order denying the defendant's motion for an evidentiary hearing on jury misconduct is reversed and the matter is remanded for an evidentiary hearing on that issue.

¶ 28 Affirmed in part; reversed in part; remanded.