

2017 IL App (2d) 150077-U
No. 2-15-0077
Order filed May 19, 2017

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Winnebago County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 10-CF-605
)	
JEREMY L. HASSENFELT,)	Honorable
)	John S. Lowry,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Hutchinson and Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* The defendant's conviction for first degree murder was affirmed where he was not prejudiced by his attorney's introduction into evidence of a gun not used in the crime or the giving of a jury instruction on other crimes.

¶ 2 In a second superseding indictment, a Winnebago County grand jury charged defendant, Jeremy L. Hassenfelt, with eight counts of first degree murder (720 ILCS 5/9-1(a)(1), 1(a)(2) (West 2010)), one count of being an armed habitual criminal (720 ILCS 5/24-1.7(a) (West 2010)), and one count of aggravated unlawful use of weapons (720 ILCS 5/24-1.6(a)(1)(3)(C) (West 2010)), arising from the shooting death of James Wyatt on February 21, 2010, in

Rockford, Illinois. Before trial, the court severed the counts alleging armed habitual criminal and aggravated unlawful use of weapons. The State proceeded to trial on four counts of first degree murder. On September 20, 2012, a jury convicted defendant, and the court sentenced him to 57 years in the Illinois Department of Corrections. We affirm.

¶ 3

I. BACKGROUND

¶ 4 The State presented the following evidence at trial. On the evening of February 21, 2010, Sherry Yoake agreed to sell Eric Hentges crack cocaine. Yoake and her boyfriend, James Wyatt, arranged to meet Hentges at the 1400 block of Latham Place in Rockford at about 10 p.m. Wyatt parked in an area that was well lighted. It was cold and snowing heavily. Wyatt was driving a gray Ford Ranger pickup truck, and Yoake was in the passenger seat. Earlier in the day, Yoake and Wyatt smoked crack cocaine and marijuana.

¶ 5 Yoake had three convictions for possession of a controlled substance, two convictions for prostitution, and one conviction for forgery. Yoake had known defendant as “J Rock” for approximately 10 years. They did not get along.

¶ 6 Hentges did not have the money to buy drugs, so he asked defendant, whom he had known as “J” for approximately a year, to loan him the money. Defendant agreed. Defendant then accompanied Hentges and his girlfriend, Tara Short, to the meeting with Yoake and Wyatt. Defendant told Hentges that he wanted to purchase drugs for himself. Hentges drove a blue Buick sedan. Short sat in the front passenger seat, and defendant sat in the backseat behind Short. At the scene, Hentges parked 30 feet behind Wyatt’s pickup truck.

¶ 7 Hentges had been convicted of aggravated driving while under the influence, aggravated driving while his license was revoked, and domestic battery. At the time of trial, he was serving

a sentence for aggravated driving under the influence. Earlier in the day on February 21, 2010, Hentges and Short smoked crack cocaine and drank alcohol.

¶ 8 Yoake testified that when Hentges pulled in behind Wyatt's pickup truck, she approached the passenger side of Hentges's car. Defendant got out of the car and asked Yoake, "Where's your nigger at?" Yoake responded, "He's not with me." Gun in hand, defendant started toward the pickup truck. Yoake tried to stop him, but defendant pushed her to the ground. Yoake saw defendant lean inside the passenger door of the truck. Yoake then heard a shot and saw sparks fly from the gun. Defendant got back into Hentges's car, and the Buick drove away. Yoake rushed to the pickup. Seeing that Wyatt had been shot, she was crying and hysterical. Wyatt put the truck in gear, but then he put it back in park. He died in Yoake's arms. Later, at the police station, Yoake identified defendant's photograph from a lineup.

¶ 9 According to Hentges, Yoake and Short were conversing through the Buick's passenger-side window when defendant got out of the car and began arguing with Yoake. Defendant walked to the truck and extended his arm into the open passenger-side door. Hentges heard a gunshot and saw a flash. Then defendant got back into the rear passenger seat of the Buick and told Hentges to "take off." Hentges drove defendant to where his car was parked. Upon exiting the Buick, defendant handed Short a baggie containing crack cocaine. Hentges and Short returned home and smoked some of the drugs. That night, defendant called Hentges and suggested that he, Hentges, and Short leave town. They departed in the Buick, but they were stopped by police, who had them under surveillance. At the police station, Hentges at first was not truthful, because he thought that the police had stopped him for driving without a license. When the police told him that Wyatt had died, Hentges identified defendant as the shooter.

¶ 10 Short's married name at trial was Tara Spellman. She had been convicted of possession of a controlled substance, misuse of a credit card, and retail theft. Spellman testified that she and Hentges picked defendant up on the night of February 21, 2010, and then Hentges drove to the rendezvous with Wyatt and Yoake. Spellman had known defendant as "J Rock" for three or four months. According to Spellman, Yoake walked toward Hentges's car, and defendant got out of the Buick and went toward the truck. Spellman saw defendant push Yoake out of his way, and then she saw defendant shoot into the passenger side of the truck. Defendant got back inside the Buick and told Hentges to drive away. They let defendant out at his car, and defendant gave Spellman four bags of crack cocaine. Spellman and Hentges smoked some of the drugs at home, and then they left. They were stopped by police and removed from the car at gunpoint. At the police station, Spellman identified defendant as the shooter from a photo lineup.

¶ 11 On April 22, 2010, defendant was arrested in Doniphan, Missouri. The police found him hiding under a bed in his cousin's home.

¶ 12 The autopsy on Wyatt determined that he died of hemorrhagic shock caused by a bullet injury of the lung resulting from a gunshot wound to the chest. According to forensic pathologist, Dr. Mark Peters, the bullet entered Wyatt's right armpit area, and it exited on the left side of his back, grazing the back of his right arm. The bullet traveled from right-to-left, front-to-back, in a slight upward angle. It entered the right chest cavity, fracturing ribs, went through the right lung and through the T 7 vertebrae, into the left chest cavity, and it exited out the back, fracturing ribs on the left side. Dr. Peters observed hemorrhaging in both chest cavities.

¶ 13 The Rockford police did not find a gun, bullets, or shell casings at the scene. They found a bullet hole in the interior of the driver's door of the pickup truck from which they extracted a bullet. There were no fingerprints that were suitable for comparison on the truck's exterior. The

police collected items from Hentges's Buick, but none of those items contained defendant's DNA.

¶ 14 Following the court's denial of defendant's motion for a directed verdict, defendant presented the following evidence. Francisco Altamore was working at a restaurant near where the shooting took place. He was shoveling snow when he heard a gunshot. He saw a truck and a blue sedan on Latham Place. He also saw a man and a woman standing outside the vehicles. According to Altamore, as he pictured the scene in his mind at trial, it seemed that the man got into the driver's side of the sedan and drove away, but he was not positive.

¶ 15 Loves Park, Illinois, police officer, Terry Hayes, testified that he went to defendant's apartment on February 22, 2010, to serve an arrest warrant. Defendant was not present. Defendant's girlfriend, Shanequa Reaves, and a child were home. One of the police officers with Hayes accidentally kicked a pillow on the floor, revealing a Colt .25 caliber handgun under the pillow. On cross-examination, the State elicited testimony that the police also found two pipes used for smoking cannabis in defendant's apartment. Ballistics evidence later determined that the .25 caliber handgun was not the murder weapon.

¶ 16 Reaves testified that she had charges of aiding a fugitive and obstructing justice pending against her. She also testified that defendant was not wearing braids when Wyatt was murdered. That concluded defendant's case-in-chief.

¶ 17 Based on the evidence that defendant was arrested in Missouri, at the preliminary jury instruction conference the State offered Illinois Pattern Jury Instructions, Criminal, No. 3.14 (4th ed. 2000) (hereinafter IPI Criminal 4th No. 3.14) titled "Proof of Other Offenses or Conduct." The State argued that defendant's flight justified the instruction, but the prosecutor agreed to reserve that instruction until the final instructions conference. At the final conference, the State

again offered the instruction and argued that the evidence of flight and the gun and drug paraphernalia that were found in defendant's apartment justified the instruction. The court agreed that flight was a proper subject for instruction and gave IPI Criminal 4th No. 3.14 over defendant's objection:

“Evidence has been received that the defendant has been involved in conduct other than that charged in the indictment.

This evidence has been received on the issues of the defendant's intent and lack of mistake and may be considered by you only for that limited purpose.

It is for you to determine whether the defendant was involved in that conduct and, if so, what weight should be given to this evidence on the issues of intent and lack of mistake.”

¶ 18 The jury found defendant guilty. The court denied defendant's fourth amended posttrial motion, although it agreed with defendant that IPI Criminal 4th No. 3.14 should not have been given. The court found that its error in giving the instruction was harmless, and it sentenced defendant to 57 years' imprisonment. Defendant filed a timely notice of appeal.

¶ 19

II. ANALYSIS

¶ 20 Defendant's first contention is that his trial counsel rendered ineffective assistance when she introduced evidence that the police found a gun in his apartment. Defendant maintains that the introduction of the gun allowed the prosecutor to elicit testimony that defendant possessed two cannabis smoking pipes. He argues that this evidence led the jury to conclude that he lived a “criminal lifestyle” and had the propensity to commit “bad acts.” The State asserts that the decision to introduce the gun into evidence was strategic. The State argues that showing that defendant's gun was not involved in the shooting bolstered his defense that he was not present at

the scene. The State further maintains that, even if counsel were ineffective, the error was harmless. The State also argues that defendant waived the issue of counsel's ineffective assistance with regard to the cannabis smoking pipes, because he makes no specific argument about them. We disagree with this last contention, because at page 12 of his opening brief, defendant argues that the gun and the drug paraphernalia portrayed him in a bad light.

¶ 21 To determine whether a defendant was denied effective assistance of counsel, we apply the two-pronged test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). To prevail on a claim of ineffective assistance of counsel, a defendant must show that counsel's performance was deficient and that the deficient performance resulted in prejudice to the defendant. *Strickland*, 466 U.S. at 687; *People v. Patterson*, 217 Ill. 2d 407, 438 (2005). To establish deficient performance, the defendant must show that his attorney's performance fell below an objective standard of reasonableness. *People v. Evans*, 209 Ill. 2d 194, 219 (2004). Prejudice is established when a reasonable probability exists that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Evans*, 209 Ill. 2d at 219-20. A "reasonable probability" is a probability sufficient to undermine confidence in the outcome, in that counsel's deficient performance rendered the trial unreliable or the proceeding unfair. *People v. Watson*, 2012 IL App (2d) 091328, ¶ 23. The failure to satisfy either prong of the *Strickland* test precludes a finding of ineffective assistance of counsel. *People v. Lofton*, 2015 IL App (2d) 130135, ¶ 24.

¶ 22 There is a strong presumption that trial counsel's conduct was reasonable and that the challenged action or inaction was the product of trial strategy. *Lofton*, 2015 IL App (2d) 130135, ¶ 24. An exception to the presumption arises when counsel's chosen trial strategy is so unsound that he entirely fails to conduct any meaningful adversarial testing. *People v. Fountain*, 2016 IL

App (1st) 131474, ¶ 45. In reviewing claims of ineffective assistance of counsel, we use a bifurcated standard of review. *People v. Nowicki*, 385 Ill. App. 3d 53, 81 (2008). We defer to the trial court's findings of fact unless they are against the manifest weight of the evidence, but we make a *de novo* assessment of the ultimate legal issue of whether counsel's conduct supports an ineffective assistance claim. *Nowicki*, 385 Ill. App. 3d at 81.

¶ 23 We need not decide whether counsel's performance was deficient, because defendant cannot establish that he was prejudiced. If a defendant's ineffective assistance claim can be disposed of on the ground that he did not suffer prejudice, a court need not decide whether counsel's performance was constitutionally deficient. *People v. Griffin*, 178 Ill. 2d 65, 74 (1997).

¶ 24 Defendant argues that there was no physical evidence linking him to the crime, and the three eyewitnesses, who were all using drugs on the day of the murder, were impeached with their prior convictions, which made their testimony unbelievable. Defendant asserts that the jury could have found that the testimony of Yoake, Hentges, and Spellman was insufficient to find him guilty. The central flaw in defendant's argument is positing that the absence of physical evidence linking him to the crime is evidence that he was not present at the scene. Defendant's logic is like saying that, because the police did not find the murder weapon, no murder weapon existed. Three eyewitnesses placed defendant at the scene. The State is not required to present physical evidence to corroborate eyewitness testimony. *People v. Herron*, 2012 IL App (1st) 090663, ¶ 23. Yoake, Hentges, and Spellman were all consistent in their accounts that defendant shot Wyatt. There was no evidence that they conspired to frame defendant. They had each known defendant for significant periods of time. The area was well lighted. There was no evidence that any of them were under the influence at the time of the murder. No witness

contradicted their testimony, as Altamore admitted that he was not positive that he saw a man get into the driver's side of the Buick. The lack of physical evidence linking a defendant to a shooting does not raise a reasonable doubt where an eyewitness positively identifies the defendant as the perpetrator of the crime. *People v. Rouse*, 2014 IL App (1st) 121462, ¶ 58.

¶ 25 Also, the autopsy evidence corroborated the three eyewitnesses. Yoake, Hentges, and Spellman testified that defendant shot Wyatt from the passenger side of the truck. Dr. Peters testified that the bullet struck Wyatt's right armpit and traveled in a right-to-left direction, front-to-back, in a slight upward angle. This is consistent with the shooter standing or leaning into the passenger side of the pickup truck.

¶ 26 Defendant asserts that the other-crimes instruction cemented the prejudice, because it invited the jury to use the gun found in his apartment as evidence of his guilt of the crime charged. However, defense counsel demonstrated that the gun was not used to kill Wyatt. The count of the indictment charging that defendant was an armed habitual criminal had been severed, so the jury was not aware that defendant's possession of the gun was a crime. Indeed, many people who are not criminals possess handguns. Also, the presence of drug paraphernalia was no more prejudicial than Hentges's testimony that defendant lent him money to buy drugs and then accompanied Hentges and Spellman to the rendezvous so that defendant could purchase drugs from Yoake. The jury had already heard that defendant was involved with drugs. Consequently, defendant cannot demonstrate that the jury would have reached a different result absent the evidence concerning the gun and drug paraphernalia. Accordingly, his claim for ineffective assistance of counsel fails.

¶ 27 Defendant's second issue is that the court erred in giving the other-crimes instruction. The murder occurred on February 21, 2010, and defendant was arrested in Missouri, hiding

under a bed, in April 2010. The court believed that the instruction was appropriate on the issue of flight. Defendant asserts that no instruction should be given on flight, and that IPI Criminal 4th No. 3.14 was not a flight instruction, in any event. IPI Criminal 4th No. 3.14 instructed the jury to consider defendant's involvement in conduct other than that charged in the indictment on the issues of his intent and lack of mistake. Although the giving of jury instructions is usually reviewed for abuse of discretion, the standard of review is *de novo* when the question is whether the applicable law was accurately explained to the jury. *People v. Anderson*, 2012 IL App (1st) 103288, ¶ 34.

¶ 28 The sole function of jury instructions is to convey to the jury the correct principles of law applicable to the evidence submitted. *People v. Gonzalez*, 326 Ill. App. 3d 629, 637 (2001). The gun was not introduced on the issues of intent and lack of mistake. Consequently, it was error to give the instruction. However, defendant acknowledges that an error in instructing the jury will not require reversal if the evidence that supports the conviction is so clear and convincing that the verdict would not have been different. *People v. Furdge*, 332 Ill. App. 3d 1019, 1032 (2002).

¶ 29 Defendant maintains that the three eyewitnesses were not credible. He relies on *People v. Naylor*, 229 Ill. 2d 584 (2008). In *Naylor*, the court determined that the defendant was erroneously impeached with a prior conviction, and then it considered whether the evidence was closely balanced, using a plain-error analysis. *Naylor*, 229 Ill. 2d at 606. The court noted that it was faced with two different versions of events, both of which were credible. *Naylor*, 229 Ill. 2d at 608. Two police officers testified that they arrested the defendant in a drug raid, and the defendant testified that he was minding his own business when he was maced. *Naylor*, 229 Ill. 2d at 606. No extrinsic evidence was presented to corroborate or contradict either version.

Naylor, 229 Ill. 2d at 607. In our case, the error was preserved, but a harmless-error analysis requires the same sort of inquiry as does plain-error review. *People v. Herron*, 215 Ill. 2d 167, 181 (2005). *Naylor* is distinguishable because in our case we do not have two opposing versions of the event. As noted above, the absence of physical evidence linking defendant to the murder is not evidence of his absence from the scene. Yoake, Hentges, and Spellman were consistent in relating what happened. They all knew defendant as “J” or “J Rock,” and they identified him to police as the shooter. As discussed above, the autopsy evidence corroborated the eyewitness accounts. Consequently, the evidence in the present case was not closely balanced, but was so clear and convincing that the verdict would not have been different had the other-crimes instruction not been given. Accordingly, we hold that the State has demonstrated that the error was harmless.

¶ 30

III. CONCLUSION

¶ 31 For the foregoing reasons, the judgment of the circuit court of Winnebago County is affirmed.

¶ 32 Affirmed.