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2013 IL App (3d) 110231-U

Order filed February 25, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT
A.D., 2013

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of the 14th Judicial Circuit,
)	Rock Island County, Illinois,
Plaintiff-Appellee,)	
)	Appeal No. 3-11-0231
v.)	Circuit No. 08-CF-1150
)	
MARCUS D. NORTHERN,)	Honorable
)	F. Michael Meersman,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justice Holdridge concurred in the judgment.
Justice McDade specially concurred.

ORDER

- ¶ 1 *Held:* (1) The evidence was sufficient to prove defendant guilty of first degree murder beyond a reasonable doubt where the witnesses' testimony allowed the jury to reasonably infer that defendant committed the crime.
(2) Defense counsel's decision not to call two witnesses was a matter of trial strategy and did not result in ineffective assistance of counsel.
(3) The trial court properly imposed the maximum nonextended term of 60 years in prison.
- ¶ 2 Defendant Marcus D. Northern was charged with two counts of first degree murder (720

ILCS 5/9-1(a)(2), (3) (West 1998)). A jury convicted defendant, and he was sentenced to the maximum nonextended term of 60 years in prison. On appeal, defendant argues that (1) the State failed to prove him guilty beyond a reasonable doubt, (2) he received ineffective assistance of counsel, and (3) the cause should be remanded for resentencing because the trial court erred in imposing the maximum nonextended term. We affirm.

¶ 3 In November of 2008, defendant was charged with the murder of Robert Blanks. The indictment alleged that on January 10, 1999, defendant, while acting with others, stabbed and killed Blanks knowing that such act created a strong probability of death or great bodily harm.

¶ 4 At trial, Zeneta Jones testified that she lived with Blanks and their three children in Moline in 1999. Zeneta's mother lived next door. Zeneta also testified that Blanks made a living by selling cocaine. On January 10, 1999, Blanks came home around 10 p.m. and got in the shower. Zeneta fell asleep on the bed. She awoke to a man holding a gun to her forehead. Two other men were also in the room. One of them was holding a knife to her side. All of the men wore masks and hooded sweatshirts. The man with the gun told Zeneta to call Blanks from the shower. She did, and the men rushed into the bathroom and attacked him.

¶ 5 Zeneta ran to her mother's house to get help. As she ran, she realized that she had been stabbed, and she saw Blanks standing on the porch of their house naked. He ran next door as well. When Blanks got to the house, he fell to the floor. Zeneta noticed that he had been stabbed several times. Zeneta's brother, Edward Jones, ran to Zeneta's house and got the children. A man known as "the furniture guy" came over and asked if he should call Blanks' mother. Zeneta said "yes."

¶ 6 Zeneta testified that, although she recognized their voices, she could not identify any of the attackers. She thought one of them might have been a man named Van Williams, or "Taz."

¶ 7 Robert and Qunitta Jones were 8 and 9 years old at the time of their father's death. At trial, Robert was 18 and Qunitta was 19. Robert testified that on the evening of the attack, he looked out his bedroom door and saw blood on the floor, three men dressed in black standing over his father, and his father trying to fight back. He and his sisters hid in the closet. When his uncle came to get him, he saw blood everywhere: on the walls, on the snow outside, and in his grandmother's house.

¶ 8 Qunitta heard screaming that night. She went to the bedroom door and saw her father being chased by two men. A man with a gun came into the bedroom and told them not to move. When he left, she and her brother and younger sister shut themselves in the closet. Later, her uncle came and got them, and they ran next door.

¶ 9 Paramedic James Versluis testified that when he arrived at the scene, the victim was already dead; he had multiple stab wounds. Versluis treated Zeneta, who had a stab wound to her abdomen, and transported her to the hospital.

¶ 10 Officer Steve Wilson spoke to Zeneta at the hospital. She said she recognized one of the voices of the three men as Van Williams. She told Wilson that Williams and Blanks had several heated arguments in the past week.

¶ 11 Pathologist Larry Blum testified that Blanks suffered 30 to 32 stab wounds to his body. One of the inflicted wounds severed Blanks' aorta and caused his death.

¶ 12 Leslie Masengarb lived with defendant's cousin in Rock Island in 1999. She testified that she recalled driving defendant to the hospital in Davenport, Iowa, late one night in 1999. Defendant did not say why he needed her to take him there, but she noticed blood on the passenger seat after he got out.

¶ 13 Driesst McAdams, a nurse at Genesis Medical Center, testified that she treated a patient

named “Steve Callaway” in the emergency room around at 2:34 a.m. on January 11, 1999. The patient had a serious wound to his left hip. He told her that he suffered the injury when he fell on a sharp metal object. She thought it looked like a stab wound. The patient later refused treatment and asked to sign himself out. As he signed the release form, he started to write his first name, looked at his wristband and said he made a mistake. He then crossed it out and wrote “Steve Callaway.”

¶ 14 Dr. Christopher Posey treated defendant at Genesis. Defendant was bleeding from the hip and said he had fallen on a piece of metal. In Dr. Posey’s opinion, the wound appeared to be a stab wound. Posey called police because he was “suspicious that maybe something else was going on.” He also called a trauma surgeon to assess the wound. The trauma surgeon agreed that the injury was a stab wound.

¶ 15 Officer Maureen Hammes responded to Dr. Posey’s call at Genesis. She spoke to a patient named “Steve Callaway.” She asked for identification, and he did not have any. She then transported the man to the police station. At the station, several officers, including Officer Hitchcock, identified the man as defendant Marcus Northern. The man then admitted that he was Marcus Northern.

¶ 16 Officer Kim Hankins was one of the officers who identified defendant. On cross-examination, she also testified that she spoke with Zeneta’s mother, Belinda Jones, on the night of the murder. Belinda told her that she went over to Blanks’ house after the stabbing and saw someone there. When defense counsel asked who that person was, the prosecution objected based on hearsay. The trial court sustained the objection.

¶ 17 The State then presented corroborative testimony from three witnesses: Christopher McAfee,

Cordney Smith, and Sean Lewis. McAfee initially admitted that he had been convicted of homicide in 1992 and possession with intent to deliver marijuana in 2005 and that he was currently in prison on another 2008 charge. He then testified that he and defendant were close friends. They grew up together and were members of the same gang, the Vice Lords. In May of 2005, a fellow Vice Lord, Robert Johnson, was arrested on a federal charge. Defendant told McAfee that he was concerned that Johnson was a “weak link” and that federal agents would pressure him about Blanks’ murder. McAfee testified that he believed defendant or Johnson or both were involved in the murder. On cross-examination, McAfee admitted that he and defendant were not as close as they had once been because defendant slept with the mother of McAfee's children.

¶ 18 Cordney Smith, who was in federal prison for drug conspiracy, testified that he was a friend of Blanks, that he and Blanks were Gangster Disciples, and that both of them sold drugs. About three or four months before Blanks’ death, Smith and Blanks were sitting outside Blanks’ mother’s house when defendant, Johnson and two or three other men walked by the house. All of them were members of a rival gang, the Vice Lords. Smith testified that he thought the men were “casing the spot out” and he “thought something was going to happen.” Smith further testified that in 2000, he encountered defendant outside a club, and defendant said, “You Disciples ain’t put enough work in. You all didn’t put enough work in, you all need to get your murder game up to par.” Smith interpreted his statement to mean that he murdered Blanks. Smith admitted that he was incarcerated in federal prison and that he was testifying pursuant to a “proffer agreement.” According to the terms of the agreement, his time in prison might be reduced if he testified in other cases.

¶ 19 Sean Lewis testified that he also was in federal prison at the time of trial and was also testifying based on a signed proffer agreement. Lewis was a drug dealer and a member of the Vice

Lords. He testified that in January of 1999, he was in Memphis, Tennessee, on the run from authorities when he heard that Blanks had been stabbed and killed. Near the end of January, defendant called him and said he needed a place to stay. Lewis sent him a bus ticket, and defendant went to Memphis to live with Lewis. Several days after defendant arrived, Lewis took him on a tour of Memphis. While they were driving around, defendant told Lewis that he and two other Disciples, Johnson and Perry Slater, went to Blanks' house to rob the place; defendant had a knife and Johnson had a pistol. Defendant also told Lewis that they caught Blanks coming out of the shower, that Blanks was naked, and that "the whole robbery went haywire." Defendant said that he was wounded during the attack and that they killed Blanks. Defendant told Lewis that they "stabbed [Blanks]up" but "[i]t was a blank mission," meaning that they failed to get anything from the house. Lewis was later arrested in March of 1999. He told defendant that he could stay at his place in Memphis.

¶ 20 Lewis further testified that defendant said Blanks was in the house with his kids and Zeneta. Defendant described the house in Moline and told Lewis it was next door to Blanks' in-laws' house. Lewis stated that he had never been to the victim's house.

¶ 21 On cross-examination, Lewis admitted that he was incarcerated with Slater in 2005 and that Slater also told him about the murder. Lewis was surprised to learn that defendant pled guilty to giving false information to law enforcement in Scott County, Iowa, in February 1999. Lewis thought that defendant was with him in Memphis in February of 1999. He was also unaware that defendant was in prison in Illinois in April of 2000. He thought that defendant continued to live in his house in Memphis for two or three years after Lewis was arrested and incarcerated in March of 1999.

¶ 22 Next, the State attempted to call defendant's former girlfriend, Chrystal Brooks. Defense counsel objected. In an offer of proof, Brooks testified that defendant was the father of her seven-

year-old child. In 1999, she and defendant were dating. In April of 1999, she moved to Colorado; defendant lived with her in Rock Island until she left for Colorado. When she returned to Illinois six months later, defendant was still in Rock Island. During the time that Brooks was gone, defendant said he was in Memphis, but Brooks did not know if that was true. The trial court ruled that the State could not call Brooks as a witness because her testimony failed to establish that Northern was in Memphis.

¶ 23 Defendant called Lewis and Officer Douglas Garrison. During his testimony, Lewis stated that defendant never specifically said that he stabbed Blanks. He acknowledged that he told the grand jury he believed defendant committed the murder because defendant gave him “semi-scenarios,” and he then talked to other friends and “put two and two together.”

¶ 24 Garrison testified that during his investigation of the murder, he failed to discover any other witness who saw defendant in Memphis with Lewis. In addition, he found no physical evidence that defendant was ever in Memphis.

¶ 25 The jury found defendant guilty of both counts of first degree murder. Defendant filed a posttrial motion for a new trial, alleging that counsel was ineffective for failing to call several witnesses at trial, including Belinda Jones and Chrystal Brooks.

¶ 26 At the posttrial hearing, defendant’s trial attorney, Herbert Schultz, Jr., testified that he did recall reading in discovery that Belinda Jones said she went with her son to get the children after the attack and that she saw “the furniture man” in Blanks’ house going through Blanks’ clothes. He did not interview Jones personally; he did not believe her statement was important. Counsel also decided not to call Brooks after he interviewed her and she was “all over the map.” Defendant also told Schultz that there was “bad blood” between them and that he did not trust her on the stand.

¶ 27 The trial court denied defendant's motion, finding that counsel had a strategic reason for his decisions and that calling Brooks was a "double-edged sword." Specifically, the court stated:

"And it's one of those situations where, again, it's—it boils down to trial strategy as to why or why not you call a witness. There's some witnesses you call and you have to live with what they testify. You may want one nugget out of there, but you got to live with all the dirt they're throwing on your client. At the same point in time, my belief from sitting here and listening to Mr. Lewis was he was totally unbelievable and why bolster anything he had to say by putting an ex-girlfriend on the stand that may have dumped some more dirt on him but then would have verified the—the ultimate point, that [Lewis] was called by the State, that [defendant] was in Memphis, Tennessee."

* * *

"Everybody who was not either a police officer or a [sic] emergency room personnel or the doctor that night was impeached all over the place because of the fact that they had all [sic] stakes in what was going on here. They either knew the defendant, they knew the victim, they knew somebody who evidently was involved.

And it was up to the jury to make a decision as to the believability of the witness, the totality of the evidence, and, basically, they spent eight hours going through all this, sifting through all of this, and reached a conclusion that Mr. Johnson was not guilty; Mr. Northern was guilty.

And I think the difference in the case was—the two cases was the fact of the testimony of the medical personnel and the police officers in the state of Iowa

relating to what happened at Genesis that night.

And it's—I can't say that Mr. Schultz's performance fell below a reasonable standard, and I don't think Mr. Northern was prejudiced ***. So the motion for new trial is denied."

¶ 28 At sentencing, the trial court imposed a maximum nonextended term of 60 years in prison on count I, first degree knowing murder. The court denied defendant's motion to reconsider.

¶ 29 I

¶ 30 Defendant contends that the State failed to prove him guilty beyond a reasonable doubt because there was no physical evidence to support the verdict and the witnesses' testimony was unreliable.

¶ 31 When considering a challenge to the sufficiency of the evidence on appeal, it is not the function of the reviewing court to retry the defendant. *People v. Collins*, 106 Ill. 2d 237 (1985). Rather, the relevant question is "whether, after viewing the evidence in the light most favorable to the state, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *People v. Perez*, 189 Ill. 2d 254, 265-66 (2000). The weight to be given witnesses' testimony, the witnesses' credibility, and the reasonable inferences to be drawn from the evidence, are all the responsibility of the fact finder. *People v. Steidl*, 142 Ill. 2d 204 (1991). In addition, circumstantial evidence is sufficient to sustain a criminal conviction, so long as the elements of the crime have been proven beyond a reasonable doubt. *People v. Gilliam*, 172 Ill. 2d 484 (1996). The jury need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances. *People v. Hall*, 194 Ill. 2d 305 (2000). "It is sufficient if all of the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt." *Id.* at 330. A

reversal is warranted only if the evidence is so improbable or unsatisfactory that it creates reasonable doubt regarding the defendant's guilt. *Collins*, 106 Ill. 2d at 261.

¶ 32 Here, the evidence was sufficient to support the jury's verdict. McAfee, Smith and Lewis, who admitted to the jury that they were convicted felons and in prison, testified that defendant made suspicious statements that lead them to believe defendant committed the murder. McAfee and Smith testified that they had conversations with defendant in which he suggested that he was involved in Blanks' murder; both witnesses testified that they believed defendant stabbed Blanks to death. Further, Lewis testified that defendant specifically told him that he stabbed and killed Blanks and that he injured himself during the fight. All three witnesses admitted to the jury that they were convicted felons and in prison. All three witnesses were thoroughly examined as to the substance of their allegations and the motives for their testimony. The jury was fully cognizant of the infirmities in their testimony; nevertheless, it chose to believe these witnesses rather than defendant.

¶ 33 Defendant admits that Lewis provided "the most damning" testimony but argues that his statement that defendant confessed to the stabbing while he was in Memphis was impeached to such an extent that it was unbelievable. We disagree. Although the specific date of defendant's admission to Lewis was questionable, the jury could reasonably infer that defendant was in Memphis sometime after the January 10 incident and admitted to Lewis that he killed Blanks.

¶ 34 In addition, the testimony of three medical professionals demonstrated that defendant appeared in a Davenport hospital hours after the murder and was suffering from a serious stab wound. Defendant's injury and his attempt to disguise his identity further supports the jury's reasonable inference that defendant was involved in the attack.

¶ 35 Reversal in jury cases is not warranted simply because defendant alleges that witnesses are

not credible, or that a jury gave too much weight to certain evidence. See *People v. Evans*, 209 Ill. 2d 194 (2004). We are not in a position to reweigh evidence or reassess credibility. In this case, the jury considered the circumstantial testimony of the witnesses, along with the testimony of the medical personnel, weighed all the evidence and made the reasonable inference that defendant stabbed Blanks. After reviewing the record, we are not prepared to say that the jury's verdict was so improbable or unsatisfactory that the conviction must be reversed.

¶ 36

II

¶ 37 Next, defendant claims that trial counsel was ineffective in failing to call Belinda Jones and Chyrstal Brooks as witnesses for the defense.

¶ 38 To succeed on a claim of ineffective assistance of counsel, a defendant must show that (1) counsel's performance was deficient, and (2) that the deficient performance prejudiced the defendant. *Strickland v. Washington*, 466 U.S. 668 (1984). Counsel's performance is deficient if it fails to satisfy an objective standard of reasonableness. *Id.* at 687. A review of counsel's performance is made under the strong presumption that his or her actions were the result of sound trial strategy and not incompetence. *People v. Johnson*, 128 Ill. 2d 253 (1989). The decision whether to cross-examine or impeach a witness is a matter of trial strategy that will not support a claim of ineffective assistance of trial counsel. *People v. Pecoraro*, 175 Ill. 2d 294 (1997).

¶ 39 At the posttrial hearing, trial counsel testified that he decided not to call Belinda Jones as a witness after reviewing her grand jury testimony because he believed her statement that she saw another person in the victim's house was insignificant given that three men attacked the victim. As for Brooks, counsel discussed calling her with defendant, and he interviewed her. Based on issues of unreliability, counsel decided not to call her as a witness. Counsel further testified that he

believed any benefit of impeaching Lewis with Brooks's testimony could be offset by her corroboration of the State's claim that defendant was in Memphis in 1999. We find that both decisions are attributable to trial strategy. Accordingly, defendant has failed to establish a claim of ineffective assistance of counsel.

¶ 40

III

¶ 41 Defendant also argues that the trial court erred in sentencing him to the maximum nonextended term and that we should remand the cause for a new sentencing hearing.

¶ 42 Here, defendant was found guilty of first degree murder (720 ILCS 5/9-1(a)(2) (West 1998)). He was therefore eligible for a sentence between 20 and 60 years' imprisonment. 730 ILCS 5/5-8-1(a)(1)(a) (West 1998). If any of the factors set forth in section 5/5-5-3.2(b) of the Unified Code of Corrections (Code) (730 ILCS 5/5-5-3.2(b) (West 1998)) were found to exist, defendant would have been eligible for an extended term sentence of between 60 and 100 years' imprisonment. The current version of section 5-5-3.2(b) of the Code contains an extended term provision based on juvenile offenses that would be considered adult felonies. See 730 ILCS 5/5-5-3.2(b)(7) (West 2008). However, that provision was not in effect at the time defendant committed his 1999 crime. See Pub. Act 91-119, § 5 (eff. Jan. 1, 2000) (adding 730 ILCS 5/5-5-3.2(b)(10)). In sentencing defendant, the trial court noted that defendant was extended term eligible based on his juvenile adjudication of a Class 1 felony but sentenced him to a nonextended term of 60 years.

¶ 43 Defendant argues that the cause should be remanded for resentencing because the trial court's "mistaken belief" that defendant was extended term eligible based on a prior juvenile offense likely influenced its decision to sentence defendant to the maximum nonextended term. We decline to remand the case for two reasons.

¶ 44 First, even though the trial court improperly noted that defendant was eligible for an extended term, our review of the record does not indicate that the trial court relied on that finding in imposing the nonextended sentence. The prosecution requested a 55-year sentence, and the trial court sentenced defendant to a 60-year term; a sentence within the statutory range of a nonextended term. See *People v. Mays*, 2012 IL App (4th) 090840 (maximum sentence within the nonextended range is not an abuse of discretion unless manifestly disproportionate to nature of offense). The court's statements did not result in an unlawfully imposed sentence.

¶ 45 Second, although defendant was not eligible under the juvenile provision of section 5-5-3.2(b), he appears to have been extended term eligible under other provisions of the 1998 Code. Defendant's criminal history states that he was convicted as an adult of aggravated discharge of a firearm in 1995 (Class 1 felony) and possession with intent to deliver cocaine in 1996 (Class 1 felony). Defendant's 1996 conviction would render defendant eligible for an extended term under section 5-5-3(c)(2)(D) as a violation of the Illinois Controlled Substances Act. See 730 ILCS 5/5-5-3(c)(2)(D); 5-5-3.2(b)(7) (West 1998). The 1996 conviction would also render defendant extended term eligible under section 5-5-3(c)(2)(F). See 730 ILCS 5/5-5-3(c)(2)(F); 5-5-3.2(b)(7) (West 1998) (conviction for a Class 2 or greater felony where the offender had been convicted of a Class 2 or greater felony within 10 years of the date on which the offender committed the offense). Thus, although the trial judge cited an inapplicable statute, he was not mistaken in his belief that defendant was extended term eligible. The sentence was properly imposed and was not an abuse of the court's discretion.

¶ 46 CONCLUSION

¶ 47 The judgment of the circuit court of Rock Island County is affirmed.

¶ 48 Affirmed.

¶ 49 JUSTICE McDADE, specially concurring.

¶ 50 I concur in the majority's decision but write separately to make the following observations regarding defendant's claim that the State failed to prove him guilty beyond a reasonable doubt. At the outset, I note that the record is devoid of any direct evidence that defendant murdered Robert Blanks – no blood or DNA evidence, no fingerprints, no footprints, no murder weapon, no self-incriminating statements, no possession of stolen property, no eye witness testimony. The lack of any direct evidence likely explains why defendant was not charged with Blanks' murder until the appearance of unknown "snitches" nine years after its occurrence.

¶ 51 The only evidence supporting defendant's conviction and his sentence of 60 years' imprisonment is (1) defendant's visit to the Genesis Medical Center (Genesis, Iowa), and (2) the testimony of three jailhouse "snitches." I personally find this "evidence" extremely troubling and, at best, circumstantial. However, I acknowledge that our standard of review, as set out in *People v. Collins*, 106 Ill. 2d 237 (1985), requires that we affirm defendant's conviction.

¶ 52 The Genesis evidence establishes that a few hours after Blanks was stabbed to death, defendant sought treatment at Genesis for a wound to his hip. Defendant gave a false name to Genesis staff. A Genesis doctor later testified that defendant's wound was the result of being stabbed with a knife. Even subject to our standard of review, the Genesis evidence, taken in isolation, does not establish defendant's presence at this crime scene and support his ultimate conviction.

¶ 53 The three jailhouse "snitches" all gave varying testimony regarding defendant's involvement in Blanks' murder. Significantly, two of the "snitches" never directly implicated

defendant in the murder. Instead, they only *assumed* defendant murdered Blanks based on his ambiguous statements allegedly made to them regarding the incident. The third "snitch," Sean Lewis, testified that defendant confessed to him that he murdered Blanks. Lewis' testimony, along with that of the other two "snitches," however, was so severely impeached that the trial court, during a hearing on a post trial motion, stated that it did not "put any credence at all in what any of the snitches said because they were all over the map and they were all over the place in relation to being proffered deals in relation to testimony."

¶ 54 Viewed objectively, the evidence of the jailhouse "snitches" does not appear sufficiently reliable to support defendant's conviction beyond a reasonable doubt. However, I recognize that the supreme court has held that it is not our role to reweigh the credibility of trial witnesses once it has been determined by the trier of fact. See *Collins*, 106 Ill. 2d at 261. Moreover, as the majority correctly explains, "the relevant question is whether, after viewing the evidence *in the light most favorable to the prosecution*, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (Emphasis added.) See *Collins*, 106 Ill. 2d at 261. Viewed in that light, the State was armed with a confession.

¶ 55 While I do not believe either the Genesis information or the jailhouse "snitches" testimony either standing alone or in concert objectively establishes defendant murdered Blanks, I am forced to agree with the majority's holding that when the whole of the evidence is viewed (1) in the light most favorable to the prosecution, and (2) with the weight of the jury's apparent determination of credibility, we, acting as a court of review and thus bound by the stated standard of review, must affirm defendant's conviction.