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SECOND DIVISION
APRIL 26, 2011

1-09-3106

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 09 CR 7435
)	
CORDARO MOON,)	Honorable
)	Nicholas R. Ford,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Connors and Harris concurred in the judgment.

ORDER

Held: Where trial counsel provided effective assistance when he did not file a futile motion to suppress statements made by defendant to police, the trial court's judgment was affirmed.

Following a bench trial in October 2009 in the circuit court of Cook County, defendant Cordaro Moon was convicted of residential burglary and sentenced to boot camp. On appeal, defendant contends that he was not provided effective assistance of counsel because his trial attorney failed to file a motion to suppress his confession as the fruit of his unlawful arrest. For the reasons that follow, we affirm defendant's conviction.

The evidence at trial showed that Younous Turner lived in a first floor apartment at 6506 South St. Lawrence Avenue in Chicago, Illinois, on December 29, 2008. At approximately 2 p.m. that day, Turner activated her alarm and left her apartment. Shortly thereafter, Turner received a call

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from Brinks Home Security informing her that someone was inside of her residence. When Turner returned home, she saw that her rear back window and back door, which were closed when she left the apartment, were open. The storm window that was on the outside of her kitchen window was removed and on the floor. In addition, her television, which was normally located on a stand, was missing.

Toni Evans, who lived in a second floor apartment in the same building, heard dogs barking at approximately 3:38 p.m. on the date in question. Evans looked out of her window, heard Turner's door slam, and saw a young man walking down the stairs. He was carrying a television across the alley to an abandoned building. Evans called the police. When the police officers arrived, she described the man she saw as black, about 17 to 19 years old, about 5 feet, 10 inches tall, and wearing a brown, hooded sweatshirt. At trial, Evans could not identify defendant as the person she saw leaving the first floor apartment.

Police detective Jerry Ivory investigated the residential burglary in question and determined that the kitchen window was the point of entry. He noted that a television was taken from the residence. Yvonne Cary, an evidence technician, arrived at the scene and obtained finger and palm prints from the kitchen window. She testified that she obtained the prints from the outside of the kitchen window which was behind a storm window. Cary also obtained prints from the television stand. Cary could not tell the age of the prints, and it was not in her training to be able to determine such information. Ivory testified that the prints lifted from the scene were sent to the crime lab for analysis, and that he requested that the lab enter the palm print that was recovered from the window into the Automatic Fingerprint Identification System. Ivory subsequently learned that the prints from the window belonged to defendant, who was 17 years old at the time of trial. There was no evidence presented that the prints taken from the television stand matched defendant.

After showing defendant's photograph to Turner, and establishing that she did not know him or give him permission to enter her residence, Ivory issued an investigative alert for defendant's

arrest. Defendant was arrested on April 7, 2009, and Ivory met with him on that day. Defendant waived his *Miranda* rights and Ivory informed defendant that his fingerprints were recovered from the scene of the crime. Defendant admitted entering Turner's apartment through a window and removing a television. Defendant also stated that he hid the television in a garbage container. He removed the television later that day and sold it.

On April 7, 2009, police contacted Evans and had her view a lineup. Ivory testified that Evans identified a man other than defendant as the person she saw leaving the residence with the television.

Following argument, the trial court found defendant guilty of residential burglary. In doing so, the court held that defendant's finger and palm prints were not located in a place that a person would randomly touch. Further, the court ruled that the print evidence and defendant's admission proved his guilt. Defendant was subsequently sentenced to boot camp.

On appeal, defendant contends that he was provided ineffective assistance of counsel because his counsel failed to file a motion to quash arrest and suppress defendant's statement. He specifically maintains that his statement to Detective Ivory was the fruit of an unlawful arrest because the police did not have probable cause to arrest him. Defendant argues that his arrest was unlawful because it was based solely on the presence of his finger and palm prints of unknown age on a generally accessible first floor exterior window. Defendant thus argues that a motion to quash the arrest and suppress the statement had a reasonable probability of success; further, the outcome at trial would have been different had the evidence been suppressed.

A defendant alleging ineffective assistance of counsel must demonstrate that his counsel's representation fell below an objective standard of reasonableness and that he was prejudiced by the deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687-94 (1984). A defendant's failure to satisfy either prong of the *Strickland* test precludes a finding of ineffective assistance of counsel. *People v. Enis*, 194 Ill. 2d 361, 377 (2000) (citing *Strickland*, 466 U.S. at 697).

In order to prevail on a claim of ineffective assistance based on counsel's failure to file a motion to suppress, a defendant must show a reasonable probability that (1) the motion would have been granted; and (2) the outcome of the trial would have been different had the evidence been suppressed. *People v. Bew*, 228 Ill. 2d 122, 128-29 (2008) (quoting *People v. Patterson*, 217 Ill 2d 407, 438 (2005)). The question of whether to file a motion to suppress evidence is generally considered a matter of trial strategy and is given great deference. *People v. Bryant*, 128 Ill. 2d 448, 458 (1989). Counsel is not required to make futile motions in order to provide effective assistance. *People v. Stewart*, 365 Ill. App. 3d 744, 750 (2006). Where, as here, the dispositive question is whether a motion to quash and suppress probably would have been granted, our review is *de novo*. *People v. Bailey*, 375 Ill. App. 3d 1055, 1059 (2007).

The analysis of whether sufficient probable cause exists is case-specific and the totality of the circumstances must be examined. *People v. Sims*, 192 Ill. 2d 592, 615 (2000). Probable cause exists where a reasonable person, having the knowledge possessed by the police officer at the time of the arrest, would believe the defendant committed the offense. *People v. Bobiek*, 271 Ill. App. 3d 239, 241 (1995). In evaluating whether an officer has probable cause to arrest an individual, “the focus is on probabilities and should not be unduly technical in deciding whether probable cause existed.” *Id.*

Here, defendant's ineffective assistance claim fails because a motion to quash arrest and suppress evidence did not have a reasonable probability of success. The evidence at trial established that the police had probable cause to arrest defendant when they determined that the kitchen window was the point of entry, gathered finger and palm prints from the outside of the kitchen window that was behind a storm window, determined that the prints belonged to defendant and ascertained from Turner that she did not know defendant or give him permission to enter her residence.

Nevertheless, defendant maintains that evidence of finger and palm prints, found on a generally accessible exterior window, without more, is insufficient to establish probable cause to

arrest. We first note that the evidence at trial established that the prints were not found in a generally accessible area. In fact, the prints were located on the exterior side of a kitchen window, which was covered by an outside storm window. In order to access the kitchen window, the storm window had to be removed. The trial court stated in its findings that the prints were located in an area that a person would not randomly touch.

Defendant speculates that even assuming the outside storm window was in place when the burglary occurred in December in Chicago, defendant could have impressed his finger and palm prints on the exterior of the kitchen window at a time when the storm window had been removed for purposes such as cleaning or seasonal non-use. To the extent, if any, this speculation has validity, the evidence suggests otherwise.

Turner testified that when she returned home after the burglary, she saw that the storm window had been removed. This fact indicates that the storm window had been in place before she left. The police determined that the point of entry for the burglar was the kitchen window because the door was not damaged. The trier of fact determined that the kitchen window, which faced an alley, was not generally accessible. Any inference as to the age of the prints does not favor defendant.

The case of *People v. Rhodes*, 85 Ill. 2d 241 (1981), is instructive to the case at bar. In the *Rhodes* case, the victim testified that the windows of his home were intact when he left for work in the morning, but when he returned, the window of the kitchen door was broken. The defendant's fingerprints were recovered from the previously covered kitchen window. *Rhodes*, 85 Ill. 2d at 250. Similarly, Turner's apartment was intact when she left home, but in disarray upon her return and defendant's palm and finger prints were recovered from the previously covered kitchen window.

The court in *Rhodes* held that the evidence clearly pointed to the fact that the fingerprint was left at the time of the commission of the burglary. *Id.* Following the reasoning in the *Rhodes* case, we conclude that the clear inference from the evidence in this case is that defendant's prints were left

at the time of the crime. See also *People v. Summers*, 100 Ill. App. 3d 170, 175 (1981) (holding that the recovered fingerprints enabled the detective to form a reasonable belief that the defendant committed the offense, and there was probable cause to arrest).

In reaching this conclusion, we find *People v. Clay*, 349 Ill. App. 3d 24 (2004), relied on by defendant, distinguishable from the case at bar. In the *Clay* case, the reviewing court determined that even though the defendant matched the description of one of the offenders and his wallet was found near the scene of the crime, the evidence did not establish that he was connected to the crime. *Id.* at 29-30. Here, however, the evidence established that defendant was connected to the crime scene because his palm and finger prints were found where police determined the point of entry to the home occurred. The prints were lifted from a window behind the storm window that the victim said had been removed during the crime.

In light of the evidence, the police had probable cause to arrest defendant. Therefore, defendant's confession to the police was not, as advanced by defendant, the fruit of an unlawful arrest. Accordingly, defendant has failed to demonstrate that a motion to suppress his confession had a reasonable probability of success and his counsel cannot be considered ineffective for failing to file such motion.

For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

Affirmed.