

No. 1-09-2446

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

FOURTH DIVISION  
February 17, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 08 CR 9323
	)	
REGINALD GEORGE,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE LAVIN delivered the judgment of the court.  
Presiding Justice Gallagher and Justice Pucinski concurred  
in the judgment.

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**ORDER**

*Held:* Where defendant failed to show that trial counsel labored under a conflict of interest, we affirm the trial court's judgment.

Following a bench trial, defendant Reginald George was convicted of aggravated unlawful use of a weapon (UUW) and sentenced to 18 months' probation. On appeal, defendant contends that trial counsel labored under a *per se* conflict of interest

and an actual conflict of interest. We affirm.

At trial, Officer Jay Gaeta testified that on April 30, 2008, he and his partner saw defendant alone in a car that was double parked near 79th Street and Hermitage Avenue in Chicago. As Gaeta attempted to exit his unmarked squad car, defendant sped away. Gaeta and his partner followed defendant in their vehicle, and, at 80th Street and Hermitage Avenue, defendant got into a collision with two other cars. Gaeta approached the accident scene, and saw defendant remove a handgun from his waistband and throw it to the floorboard of the passenger side of the vehicle. Gaeta subsequently arrested defendant and found a small bag of cannabis on him.

Defendant testified that on April 30, 2008, he left his home in his parent's vehicle. The following colloquy took place between defense counsel Michael Clancy and defendant:

"Q. And who did you leave with?

A. I left with one of my friends, Roy.

Q. What's Roy's name?

A. Oh, I'm not exactly sure of his full name.

It's Roy. That's how I know him."

Defendant drove his parent's vehicle, with Roy in the passenger seat, to a barbershop near 79th Street and Hermitage Avenue. As they were driving, defendant and Roy were smoking marijuana. When defendant arrived, he parked his vehicle across the street

from the barbershop. Defendant exited the car first and was at the door of the barbershop when Roy exited the car. Roy walked across the street and met defendant in the barbershop. Defendant never saw a weapon in the vehicle at any time prior to going into the barbershop, and he did not know if Roy had a gun with him.

While defendant waited for his haircut, he saw a parking space open up in front of the barbershop. He decided to leave and move his car into the open space because he could not be parked in his current space after 4 p.m. At about 3:40 p.m., defendant went outside alone in order to move the car. Defendant did not have a weapon with him and did not see a weapon anywhere inside the car. When defendant did a U-turn in order to access the open parking space, he noticed an unmarked police car behind him flashing its lights. Defendant panicked because he was "high" and had marijuana in his pocket. Defendant sped down the wrong way of a one-way street, hit a car, and became "dazed." Police took defendant out of the car, placed him in their squad car, and took him to the police station. Defendant never took anything out of his pocket, nor did he throw anything onto the floorboard of the car.

Following argument, the trial court found defendant guilty of aggravated UUW. In doing so, the court stated that the dispute in this case was over "whether the gun that was recovered came from [defendant] or from some unknown mystery source in the

car he was driving." The court found that Officer Gaeta was credible and compelling and, therefore, believed that defendant threw the gun onto the floor of the car.

Defendant filed a posttrial motion. Defense counsel Michael Clancy argued that Officer Gaeta's version of the events in question was not possible because defendant was too dazed after the accident to take a gun out of his waistband and throw it on the floor. The court denied the motion stating that no error occurred.

Thereafter, defendant, represented by new counsel, Eric Bell, filed his "First Supplemental Motion for New Trial," alleging that he was denied his right to counsel at trial because his previous counsel, Michael Clancy, operated under a conflict of interest. At the hearing on defendant's motion, defendant testified that while he was in the hospital being treated for injuries caused by the accident in question, Clancy gave defendant's brother his reference card. Defendant subsequently learned that Roy requested Clancy's presence at the hospital. Defendant discussed the case with Clancy several times, telling him that Roy was the person who had the gun. Clancy did not ask defendant any subsequent questions regarding Roy, and never told him that he knew Roy or previously represented him. Defendant stated that he knew Roy, but did not know his full name at the time of trial. Defendant further testified that although it was

true that he went into the hallway with his mother and Clancy after trial, they did not yell at him for failing to state Roy's full name.

Steven George, defendant's father, testified at the hearing that he attended a meeting with his wife at Clancy's office. Clancy never mentioned that he had previously represented Roy. Mary George, defendant's mother, testified that she met with Clancy in person about four or five times and she heard defendant tell Clancy that the gun belonged to Roy. Clancy never asked any further questions regarding the identity of Roy. During one of the meetings with Clancy, Mary stated that Clancy told her that he had "made a lot of money off of Roy."

Michael Clancy testified that he received a phone call from a prior client, Royal (Roy) Ward. Clancy admitted to representing Roy in the past, but stated that he did not represent him on any pending matters on April 30, 2008. Roy told Clancy that defendant was in the hospital and that he had been arrested. Clancy contacted a family member of defendant, and spoke with that family member on the phone on his way to the hospital. After arriving at the hospital, Clancy met with defendant's brother. At some point between the day defendant was admitted to the hospital and defendant's preliminary hearing, Clancy met with defendant and his mother. Clancy had several subsequent meetings with defendant and prepared him for trial.

Clancy stated that the first time defendant was in his office they discussed Roy, and he told defendant how he knew Roy and that he was a former client. Clancy noted that he specifically asked defendant Roy's last name during trial, and, to his surprise, defendant stated that he did not remember Roy's full name. Following trial, Clancy, defendant, and defendant's mother were all in the hallway outside of the courtroom. Clancy and defendant's mother were both angry at defendant for withholding Roy's last name.

Following argument, the trial court denied defendant's motion. In doing so, the court held that Clancy aggressively represented defendant at trial, and that Clancy was not laboring under any conflict of interest.

On appeal, defendant contends that defense counsel was laboring under both a *per se* and actual conflict of interest that adversely affected the outcome of his case. He specifically maintains that a conflict of interest existed because defendant theorized at trial that the gun found in the car belonged to Roy, and Clancy would not want to implicate Roy in the crime having previously represented him in criminal proceedings. The State contends, however, that Clancy was not laboring under a conflict of interest where he did not represent Roy at any time during his representation of defendant, and his prior representation of Roy did not impact defendant's case.

A *per se* conflict exists "where certain facts about a defense attorney's status engender, by themselves, a disabling conflict." *People v. Taylor*, 237 Ill. 2d 356, 374 (2010). Specifically, the three circumstances involving a *per se* conflict include where defense counsel (1) has a prior or contemporaneous association with the victim, the prosecution, or an entity assisting the prosecution, (2) contemporaneously represents a prosecution witness, and (3) was a former prosecutor who was involved in the prosecution of defendant. *Taylor*, 237 Ill. 2d at 374; *People v. Morales*, 209 Ill. 2d 340, 345-46 (2004).

In this case, none of the *per se* conflict scenarios are applicable. There was no victim in this case, nor was there any evidence in the record that Clancy had any association with the prosecution or an entity assisting the prosecution. Furthermore, Clancy did not contemporaneously represent the prosecution witness in this case, *i.e.*, Officer Gaeta. Moreover, there was no evidence that defense counsel was a former prosecutor who was involved in the prosecution of defendant. Therefore, defendant failed to show that a *per se* conflict of interest existed.

In reaching this decision, we find the cases relied on by defendant distinguishable because, unlike here, they involve scenarios encompassed within the three enumerated examples of *per se* conflicts. See, *e.g.*, *People v. Hernandez*, 231 Ill. 2d 134, 151-52 (2008) (conflict existed where defense counsel represented

defendant and the victim); *People v. Thomas*, 131 Ill. 2d 104, 113-14 (1989) (defense counsel contemporaneously represented the defendant in his murder trial and also his cousin, an informant/witness, in her welfare fraud case); but see *People v. Graham*, 206 Ill. 2d 465, 474 (2003) (no conflict existed where the witness for the prosecution and defense counsel had no attorney-client relationship).

We also find that defendant has failed to show an actual conflict of interest. An actual conflict generally involves joint or multiple representation of codefendants. *Taylor*, 237 Ill. 2d at 375. While there is always the possibility that the interests of codefendants may diverge, the mere fact of joint representation does not establish a conflict. *Taylor*, 237 Ill. 2d at 375. Although defense strategy in multiple representation situations will often invite, through hindsight, conceived notions that the representation adversely affected a defendant at some point during trial, a conflict of interest is not inherent in joint representation situations merely by virtue of such representation. *Taylor*, 237 Ill. 2d at 375.

Where a potential conflict of interest is not brought to the court's attention, a defendant must establish that an actual conflict of interest adversely affected defense counsel's performance. *Taylor*, 237 Ill. 2d at 375. In order to prevail on a claim of ineffective assistance of counsel due to a conflict, a

defendant must show that an actual conflict of interest manifested itself at trial, *i.e.*, defendant must point to a specific defect in his counsel's strategy which contributed to a conflict of interest. *Taylor*, 237 Ill. 2d at 375-376.

Here, defendant failed to show the existence of an actual conflict because defense counsel did not represent joint or multiple codefendants. Clancy only represented defendant in the case at bar and had no professional commitment to Roy, particularly where his earlier representation of him in unrelated matters had terminated. There was no evidence in the record showing that Clancy owed any kind of allegiance to Roy due to their previous attorney-client relationship. Roy had no stake in the outcome of the case at bar where he was not charged with a crime, was not a witness, and was not a victim.

More importantly, the evidence at trial clearly showed that Clancy attempted to elicit testimony from defendant that the gun at issue belonged to Roy. Clancy specifically asked defendant questions regarding Roy's identity, but defendant failed to provide that information. Clancy further testified at the hearing on defendant's supplemental motion for a new trial that he was surprised that defendant did not elaborate as to the identity of Roy at trial. Clancy also recalled that both he and defendant's mother were angry at defendant for trying to protect Roy's identity. Clancy's representation of defendant at trial,

and his subsequent testimony at the supplemental motion for a new trial, established that Clancy was not loyal to Roy, and that there was no actual conflict.

In determining that no actual conflict existed, we find the cases cited to by defendant distinguishable from the case at bar. Unlike the case at bar, the cases defendant cited involved joint representation of codefendants with antagonistic defenses. See, e.g., *People v. Ware*, 39 Ill. 2d 66, 67-68 (1968) (conflict existed where defense counsel represented defendant and his codefendant); but see *People v. Turner*, 375 Ill. App. 3d 1101, 1107 (2007) (no conflict existed where the attorney-client relationship between defense counsel and codefendant was severed; defense counsel was free to represent the defendant in a singular capacity).

We also reject defendant's contention that Clancy breached an attorney-client privilege to Roy in order to represent defendant. Defendant specifically maintains that because an attorney has a "duty of absolute fidelity" to a former client, Clancy could not instruct defendant to implicate Roy in the crime at bar. Illinois Rule 1.9 of the Illinois Rules of Professional Conduct provided, in pertinent part, that a lawyer who has formerly represented a client in a matter shall not represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the

interests of the former client. Ill. S. Ct. R. 1.9(a) (eff. Aug. 1, 1990).

Here, Clancy's unrelated representation of Roy terminated before defendant's arrest, and the record is devoid of any evidence revealing that this prior representation had any bearing on the instant prosecution. Therefore, Clancy did not breach any attorney-client privilege in his representation of defendant.

We also reject defendant's argument that Clancy failed in his obligation to bring to the trial court's attention the facts of this case that may have created a conflict. Because no conflict of interest was present, Clancy did not have to make the court aware of his prior, unrelated representation of Roy. In a related argument, defendant maintains that he never waived his right to representation free from a conflict of interest. However, as just stated, we have found that no conflict of interest existed. We thus do not reach the issue of whether defendant waived the purported conflict. *Graham*, 206 Ill. 2d at 474.

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

Affirmed.