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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Winnebago County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 08-CF-4775
	)	
DENNIS LYLES,	)	Honorable
	)	John R. Truitt,
Defendant-Appellant.	)	Judges Presiding.

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PRESIDING JUSTICE JORGENSEN delivered the judgment of the court.  
Justices Bowman and Zenoff concurred in the judgment.

**ORDER**

*Held:* We reject defendant’s various claims of ineffective assistance based on counsel’s failure to object to certain police testimony: (1) as to alleged hearsay testimony concerning defendant’s identity, defendant cannot show prejudice because evidence of defendant’s identity was overwhelming; (2) as to alleged opinion testimony that video surveillance depicted defendant holding a gun, defendant cannot show deficient performance because counsel *did* object; and (3) as to testimony concerning other bad acts, defendant cannot rebut the presumption that counsel’s decision was tactical—evidence of the bad act provided the jury with an alternative explanation for defendant’s presence at the scene. Additionally, evidence was sufficient to convict.

¶ 1 A jury convicted defendant, Dennis Lyles, of armed robbery (720 ILCS 5/18-2(a)(2) (West

2008)), and the court sentenced him to 27 years' imprisonment (including a 15-year add-on for using a firearm during the commission of the offense). Defendant appeals, claiming: (1) ineffective assistance of trial counsel; and (2) insufficient evidence. For the reasons that follow, we affirm.

¶ 2

## I. BACKGROUND

¶ 3 Defendant was charged with armed robbery. At trial, the State called three witnesses and presented eight exhibits, including a video and surveillance camera photos. Defendant presented no evidence, and he did not testify.

¶ 4 This court has viewed the black-and-white surveillance video, which filmed the crime taking place in the parking lot of the Central Park Tap. The video shows defendant, wearing a distinctive, damask-patterned sweatshirt look head-on into the camera. Defendant briefly leaves the scope of the camera. Then, minutes later, the video shows the two victims, Rodney Holliman and Uriah Smith, walk past. A man wearing the same damask-patterned sweatshirt returns to the scene waving an object at the victims. Smith leaves the scope of the camera, running hurriedly. Defendant, standing near the passenger side of a parked car, walks toward Holliman while pointing the object at him. Holliman moves quickly to the driver's side of the car, where he falls to a position lower than the car (and outside the scope of the camera). Defendant stands over Holliman and moves as though taking something from him. Finally, defendant flees, leaving the scope of the camera.

¶ 5 Rodney Holliman, the victim, testified that, at around 12 a.m. on the night in question, he drove to the Central Park Tap to buy liquor. While in the store, he saw an acquaintance, Uriah Smith, and they exited the store together. Holliman stated that, after they left the store, a man (whom he later identified as defendant), held them up at gunpoint. The gun was a silver revolver. The defendant's only words were, "You know what it is." Defendant held the gun to Holliman's head

and he fell to his knees near the driver's side of the parked car. Defendant reached into Holliman's pocket, took \$500 in cash, and ran away. Holliman left the scene and, 20 minutes later, called the police. The next day, detectives showed Holliman a photo lineup consisting of six men. Holliman identified the photo of defendant, which he circled and signed.

¶ 6 As part of his testimony, Holliman reviewed the surveillance video and commented on it before the jury. Holliman conceded that the video showed him facing away from the robber, but Holliman stated that, at some point, he had looked over his shoulder and saw the robber's face. Additionally, Holliman conceded that he had never seen defendant before the robbery (and, therefore, was not familiar with his appearance).

¶ 7 Next, Rockford police officer Shawn Toepfer testified that he investigated the armed robbery at issue. He spoke with Holliman and obtained a description of the suspect: African American, approximately 18 years old, 5' 10", 140 pounds, wearing jeans and a black sweatshirt with white designs on it.

¶ 8 Finally, Rockford police detective Scott Mastroianni testified that he also investigated the armed robbery at issue. He obtained the surveillance video from the owner of the Central Park Tap. While at the Tap watching the video, an unidentified informant approached Mastroianni and told him that he recognized the robber on the video to be "Johnny McFadden's brother." Mastroianni then checked his files and learned that Johnny McFadden had a brother named Dennis Lyles, *i.e.*, defendant. Mastroianni obtained a photo of defendant (which apparently was already on record at the police station) and compared it to the surveillance photos, opining that it was the same person. Defendant was subsequently arrested. Defense counsel did not object to this portion of Mastroianni's testimony.

¶ 9 Mastroianni and another detective interviewed defendant upon arrest. When asked if he knew why he was at the police station, defendant replied that it was because of “the Central Park shit.” Mastroianni then told defendant that he was featured in the Central Park Tap’s surveillance video, and defendant agreed that he had been at the Tap. The police showed defendant a still frame from the surveillance video, and defendant said, “It’s me.” However, defendant stated that he was only there to make a drug deal. Defense counsel did not object to this testimony at trial. During the interrogation, Mastroianni reminded defendant to be truthful. Mastroianni testified:

“[W]e told him to be truthful. We told him that we spoke to the victim, and he didn’t mention anything about a drug [deal]. And then we showed him the video and that clearly showed that he had a handgun. And he denied it.”

Again, defense counsel did not object to the testimony.

¶ 10 Finally, the State showed Mastroianni a picture of Exhibit 8. Mastroianni testified that Exhibit 8 was a still photo from the surveillance video that showed defendant pointing a gun at Holliman and Smith. The defense objected, stating that the still photo did not depict defendant’s face. The court overruled the objection, stating that the Mastroianni was merely providing a foundation that the still frame came from the video surveillance.

¶ 11 On cross-examination, Mastroianni conceded that defendant, during the interrogation, consistently maintained that he did not have a gun.

¶ 12 At the close of the State’s evidence, the defense unsuccessfully moved for a directed verdict. The defense presented no evidence. The jury found defendant guilty of armed robbery. It also returned a special verdict, which read: “We, the jury, find the allegation that the defendant was armed with a firearm during the commission of the offense of armed robbery was proven.” This

appeal followed.

¶ 13

## II. ANALYSIS

¶ 14

### A. Ineffective Assistance

¶ 15 Defendant alleges that trial counsel was ineffective for failing to object to Mastroianni's testimony during direct examination regarding: (1) information given by the unidentified informant that the robber was "Johnny McFadden's brother;" (2) his conclusion that the photograph of defendant in the police files matched the surveillance footage; (3) his opinion that the surveillance photographs showed defendant *holding a handgun*; and (4) defendant's statement that he was in the parking lot to make a drug deal.

¶ 16 To succeed on a claim of ineffective assistance, a defendant must show that: (1) counsel's performance was deficient; and (2) the deficient performance prejudiced him or her. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). As to the first prong, effective assistance of counsel means competent—not perfect—representation. *People v. Rodriguez*, 364 Ill. App. 3d 304, 312 (2006). To establish deficient performance, the defendant must overcome the strong presumption that counsel's action or inaction was sound trial strategy. *People v. Perry*, 224 Ill. 2d 312, 342 (2007). Only the most egregious tactical errors bring counsel's representation below the *Strickland* standard of objective reasonableness. *Rodriguez*, 364 Ill. App. 3d at 312. As to the second prong, the defendant must show a reasonable probability that counsel's performance prejudiced him. *Strickland*, 466 U.S. at 694. A reasonable probability is that which is sufficient to undermine confidence in the verdict. *Id.* The defendant's claim will fail if either prong is not met, and, therefore, the prejudice prong may be addressed first where efficiency dictates. See *Perry*, 224 Ill. 2d at 342.

¶ 17 i. Claims 1 and 2: Identifying Information

¶ 18 We quickly reject defendant's first two ineffective assistance claims, because defendant cannot show prejudice. Defendant argues that Mastroianni's testimony concerning the informant and concerning defendant's photograph already on file at the police station prejudiced defendant because, if the jury had any doubts regarding defendant's identity, it likely would have acquitted defendant. However, evidence of defendant's identity was overwhelming. The victim identified the defendant in a photo line-up. Defendant initially *admitted* to police that he was the man depicted in the surveillance video, but insisted that he did not have a gun and was only there to make a drug deal. Additionally, at one point, defendant looked directly into the surveillance camera, providing the jury with a virtually unobstructed view of his face. It would be a stretch to say defendant's identity was at issue in this case.

¶ 19 ii. Claim 3: "Opinion" that Defendant Held a Handgun

¶ 20 We also reject defendant's third ineffective assistance claim, because defendant cannot show counsel's performance was deficient. Defendant complains that counsel did not object to either of Mastroianni's two statements that the surveillance photographs showed defendant holding a handgun. Defendant argues that these "opinions" were improper because it was for the jury to determine what the surveillance photographs depicted. See *People v. Hooker*, 253 Ill. App. 3d 1075, 1089 (1993) (lay witness should not testify to facts outside his or her personal knowledge).

¶ 21 Contrary to defendant's position, the first statement was not an opinion. Mastroianni described his interview with defendant, in which he told defendant that the surveillance video "clearly showed" him holding a handgun to the victims. Faced with this accusation, defendant continued to "deny it." Therefore, Mastroianni did not opine that the surveillance video showed

defendant holding a handgun. Rather, Mastroianni testified that he confronted defendant with an accusation that defendant denied.

¶ 22 As to the second statement, defense counsel *did* object. Mastroianni looked at the State's Exhibit 8. Mastroianni testified that Exhibit 8 was a still frame from the surveillance video that showed defendant pointing a gun at the victims. Defense counsel objected, arguing that the still frame did not clearly depict defendant (implying that a determination of the identity of the man in the still should be left for the jury). The court overruled the objection, stating that the Mastroianni was merely providing foundation that the still frame came from the video surveillance. Given the court's ruling, defense counsel may have felt it futile to argue that the particular still frame did not clearly depict the subject holding a handgun (as opposed to a different object). The court's ruling likely would have been the same—Mastroianni's testimony was admissible as foundation that the still frame came from the surveillance video. Perhaps defense counsel could have objected again or requested a limiting instruction regarding the evidentiary value of Mastroianni's statements, but we cannot say that the failure to do so was so egregious that counsel's inaction fell below an objective standard of reasonableness. This is particularly true where counsel made efforts to minimize potential damage caused by Mastroianni's statement. Counsel elicited from Mastroianni on cross-examination that, during the interrogation, defendant consistently maintained he did not have a gun. Additionally, counsel argued in closing that "there [wa]s no gun," reminding the jurors that it was *their* role to determine what the stills showed.

¶ 23 iii. Claim 4: Evidence of a Drug Deal

¶ 24 Finally, we reject defendant's fourth ineffective assistance claim, because defendant cannot show that counsel's performance was deficient. Counsel did not object to Mastroianni's testimony

that, during the interrogation, defendant stated that he was present at the scene of the crime to make a drug deal (rather than to commit the charged offense of armed robbery). Defendant contends this was improper evidence of other crimes. See, e.g., *People v. Robinson*, 167 Ill. 2d 53, 62 (1995). However, defendant cannot overcome the strong presumption that his counsel's inaction was sound trial strategy. See, e.g., *Perry*, 224 Ill. 2d at 341. Here, evidence of the potential drug deal provided the jury with an alternative explanation for defendant's presence at the scene.

¶ 25 B. Sufficiency

¶ 26 Defendant next argues that the State failed to prove him guilty beyond a reasonable doubt of armed robbery. Specifically, defendant argues that the State failed to prove that a firearm was used in the commission of the offense. A person commits robbery when he or she takes property from another by use of force or by threatening the imminent use of force. 720 ILCS 5/18-1(a) (West 2008). A person commits armed robbery when he or she violates section 18-1, cited above, and "he or she carries on or about his or her person or is otherwise armed with a firearm." 720 ILCS 5/18-2(a)(2) (West 2008).

¶ 27 Where a defendant challenges the sufficiency of the evidence, the standard of review 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 offense beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). A reviewing court will not retry a defendant or substitute its judgment for that of the trier of fact on questions involving the weight assigned to the evidence, the credibility of witnesses, or the inferences drawn therefrom. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009).

¶ 28 Viewing the evidence in a light most favorable to the State, a rational trier of fact could have

found that a firearm was used in the commission of the offense. The presence of a firearm may be inferred from the evidence, even if the weapon itself was neither seen nor accurately described by the victim. *People v. Lampton*, 385 Ill. App. 3d 507, 512 (2008). Here, the victim *was* able to see and describe the firearm. The victim testified that defendant held a silver revolver to his head, causing him to drop to his knees. The surveillance video corroborates the victim's testimony. The video shows that, before the victim dropped to his knees near the driver's side of the vehicle, he was in front of the vehicle. There, the victim looked over his shoulder and saw defendant, on the passenger side of the vehicle, pointing a silver object toward him. A credible victim's testimony that defendant placed a revolver to his head during the commission of a robbery is sufficient to sustain a conviction for armed robbery. See, e.g., *People v. Toy*, 407 Ill. App. 3d 272, 289 (2011); *People v. Lee*, 376 Ill. App. 3d 951, 955 (2007); and *People v. Hill*, 346 Ill. App. 3d 545, 549 (2004). In sum, the evidence was sufficient to convict.

¶ 29 The cases cited by defendant, *People v. Ross*, 229 Ill. 2d 255 (2008) and *People v. Thorne*, 352 Ill. App. 3d 1062 (2004), are inapposite. In those cases, the question was whether the gun at issue was a "dangerous weapon" under the 1998 version of the armed robbery statute. See *Ross*, 229 Ill. 2d at 272-77; *Thorne*, 352 Ill. App. 3d at 1070-73. The 1998 statute under which the defendants in *Ross* and *Thorne* were prosecuted required that a dangerous weapon be used in the commission of a robbery. Hence, the question in those cases was whether the BB gun used in the commission of the offenses qualified as a dangerous weapon. The question was not, as would be analogous to our case, whether the defendant had a gun at all.

¶ 30

### III. CONCLUSION

¶ 31 For the aforementioned reasons, we affirm the trial court's judgment.

¶ 32 Affirmed.