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No. 3--09--0126

Order filed April 6, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of the 21st Judicial Circuit,
)	Kankakee County, Illinois,
Plaintiff-Appellee,)	
)	
v.)	No. 99--CF--229
)	
JAVAR L. HOLLINS,)	Honorable
)	Clark E. Erickson,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Presiding Justice Carter and Justice Lytton concurred in the judgment.

ORDER

Held: The trial court's response to a jury question seeking clarification of the relationship between the charges in a felony murder case was not an abuse of discretion; the original jury instructions were clear and complete.

After a jury trial, the defendant, Javar Hollins, was convicted of two counts of first degree murder (720 ILCS 5/9--1(a)(1) (West 1998), one count of armed robbery (720 ILCS 5/18--2(a) (West 1998), and one count of unlawful use of a weapon (720

ILCS 5/24--1(a)(4) (West 1998). On direct appeal, the convictions were reversed, and his case was remanded for a new trial. *People v. Hollins*, 366 Ill. App. 3d 533 (2006). After a second jury trial, the defendant was again convicted of all four charges and sentenced to natural life imprisonment for the two murders, 30 years' imprisonment for armed robbery, and five years' imprisonment for unlawful use of a weapon. In this, the direct appeal from the second jury trial, the defendant argues that the trial court abused its discretion by refusing to clarify a point of law for the jury. We affirm.

FACTS

The evidence presented at the second jury trial showed that on March 18, 1999, the victims, Lazerick Martin and Michael Cox, died as a result of gunshot wounds. Martin was found dead on the floor of an apartment kitchen, and an examination of the body revealed that he had a shotgun wound to his right leg and a close-range gunshot wound to his forehead. Cox was found several blocks from the scene after he crashed his car into a bank sign. Cox suffered a shotgun wound to his buttocks, a gunshot wound to his right arm, and a fatal gunshot wound to the chest. He apparently died trying to drive himself to the hospital.

At the second trial, the State argued that the defendant was guilty of murder under the felony murder rule because the defendant, along with Dana Dixon and Joe Mason, planned and

participated in the armed robbery of Martin. In support of its theory, the State presented the testimony of Cleveland Ivy and Terry Taylor who, along with Dixon and Mason, were members of the Insane Mafia Vice Lords gang. Ivy testified that on the night of the murders he was in a room at the Avis motel. Ivy stated that while in the motel room, Dixon, Mason, and the defendant went into the motel bathroom and Dixon said they were going rob somebody. After exiting the bathroom, Dixon specified that they were going to rob Martin. At trial, Taylor was impeached with a statement he gave in April of 1999. In that statement, Taylor claimed that he was in the motel room when Mason and the defendant returned. Taylor said the defendant was dancing, partying, and bragging about "popping somebody on Merchant[.]"

The defendant gave a total of three different versions of what happened on March 18, 1999. In his first statement, given on April 1, 1999, he claimed that Mason, Dixon, and another Insane Mafia Vice Lord member, Terrell Geiger, had committed the crimes. When the defendant was further questioned on April 2, 1999, he admitted to being the lookout.

On May 22, 1999, Assistant State's Attorney William Dickenson, the original prosecutor in the case, received a letter from the defendant stating that he was tired of not being able to sleep at night and that he had to set the record straight on what happened. In the letter, the defendant stated that on the day of

the murders, Dixon had lost money and drugs at the Days Inn motel. Dixon and Mason planned to rob Martin, a drug dealer, to recover their losses. Dixon, Mason, and the defendant went to an apartment on Merchant and Elm Street, and Mason ordered the occupant to leave. When Martin arrived, Mason told Martin to come inside. Martin entered the apartment, and the defendant came out of the living room with a gun while Dixon remained in the kitchen with the shotgun. Mason took two ounces of cocaine and some money from Martin, and then Dixon shot Martin in the leg. Mason told the defendant to "blow [Martin's] head off," but the defendant refused. Mason took the gun, and Martin pleaded for his life. Mason shot Martin in the head.

Mason, Dixon, and the defendant ran outside, and both Mason and Dixon shot into Martin's car, where Cox was sitting while he waited for Martin. They hid the guns under a backyard bench and then returned to the Avis motel, where Mason burned the defendant's coat in a bathtub.

At trial, the defendant testified that the first statement that he had given on April 1, 1999, was the correct version of events. He explained that he had given the two false statements because he believed that if he did not give the police and the prosecutors better information then he would possibly receive the death penalty.

After the defendant testified, the defense rested. At the

jury instructions conference, the defendant's attorney asked whether there was an instruction informing the jury that each count had to be considered separately from the others. When the trial court stated there was no such instruction, trial counsel did not request one. The jury was given the standard Illinois Pattern Jury Instructions.

After a couple hours of deliberating, the jury sent a question to the judge asking "if all four counts have to be the same verdict or are they separate and not tied together?" The trial court informed counsel of the question and acknowledged that it had a duty to help the jury arrive at a verdict. The defense attorney suggested returning an answer that informed the jury that each count had to be viewed separately. When the trial court asked counsel for the State what was prejudicial about that response, counsel replied that such a response would invite legally inconsistent verdicts. The State further argued that the jury instructions were already clear.

The trial court also suggested sending back a response informing the jurors that they had already been instructed as to the applicable law. The court reasoned that, if such a response was given, "then hopefully they would be able to figure it out and they would come to a consensus which would be that, well, nowhere does it say we have to find him all guilty or all not guilty." The trial court eventually responded "you have heard

the evidence and been instructed as to the applicable law. No other answer can be given to your inquiry."

Fifteen minutes later, the jury returned its verdicts and found the defendant guilty on all four counts. The jury was polled and all the jurors affirmed their verdicts, although one juror stated that he disagreed with the law but nonetheless followed it. The trial court accepted the verdict and released the jury. The court then offered to answer the jurors' questions. One juror asked, "I guess I still don't understand why we had to come to-- agree on all four counts if we didn't agree with all four counts?" She elaborated, "[t]hat was our question back to you *** I *** was always under the assumption that if they're separate counts, there could be some that's not guilty and guilty. So why did we have to say for all four of them to be one?" The trial court responded by stating that the question had been answered.

The defendant filed a motion for a new trial, which was denied. The defendant appealed.

ANALYSIS

The defendant's sole argument on appeal is that the trial court erred by refusing to clarify that each count should be viewed separately. The trial court's response to a jury question is reviewed for an abuse of discretion. *People v. Sanders*, 368 Ill. App. 3d 533 (2006).

The general rule is that the trial court has a duty to provide clarification to the jury where it has posed a question of law. *People v. Childs*, 159 Ill. 2d 217 (1994). This duty exists even if the jury was properly instructed in the first place. *People v. Kittinger*, 261 Ill. App. 3d 1033 (1994). However, a trial court may properly decline to answer a jury's question if: (1) the jury instructions are legally correct and understandable; (2) further instruction would mislead the jurors; (3) the jurors raise questions of fact; or (4) answering the question would likely direct a verdict. *People v. Hill*, 315 Ill. App. 3d 1005 (2000).

In *People v. Reid*, 136 Ill. 2d 27 (1990), the defendant was on trial for murder and armed robbery. During deliberations, the jury asked if it could find the defendant guilty of one charge but not the other. *Reid*, 136 Ill. 2d 27. Both parties agreed that the trial court could respond by telling the jury to continue deliberating based on the instructions it had received. *Reid*, 136 Ill. 2d 27. Several hours later, the defense attorney suggested that the court inform the jury that they could find the defendant guilty of one charge and not the other. *Reid*, 136 Ill. 2d 27. The trial court declined to do so. *Reid*, 136 Ill. 2d 27. At a hearing on the motion for a new trial, a juror testified that a number of jurors switched their votes from acquittal to conviction after the trial court answered the question. *Reid*,

136 Ill. 2d 27.

Our supreme court reversed the appellate court and held that the trial court's response was proper. *Reid*, 136 Ill. 2d 27. The appellate court had reasoned that reversible error occurred because the jury's question demonstrated that the jury was confused on a legal issue pertinent to the case and the jury had not received an instruction stating that a finding of guilty on one count did not require a finding of guilty on the other count. *Reid*, 136 Ill. 2d 27. However, the supreme court accepted the trial court's finding that the jury had received clear written instructions, the jury was not manifestly confused, and that the written instructions were sufficient to clear up any confusion the jury displayed. *Reid*, 136 Ill. 2d 27. Moreover, while acknowledging that the trial court could have answered the question, the supreme court held that there was no duty to do so under the circumstances. *Reid*, 136 Ill. 2d 27.

The defendant relies heavily on *Childs* to argue that the trial court erred in not answering the jury's question. *Childs*, 159 Ill. 2d 217. In *Childs*, the jury asked "[c]an the defendant be guilty of armed robbery and voluntary or involuntary manslaughter or must murder be the only option with armed robbery?" *Childs*, 159 Ill. 2d at 225. Without seeking advice from counsel, the court responded with "[y]ou have received your instructions as to the law, read them and continue to

deliberate." *Childs*, 159 Ill. 2d at 225.

The supreme court held that the trial court's *ex parte* communication to the jury was prejudicial error. *Childs*, 159 Ill. 2d 217. In reaching that decision, the court noted that the jury instructions were unclear because the jurors were instructed "whether to return a verdict of 'guilty of murder,' 'guilty of voluntary manslaughter' and guilty involuntary (*sic*) manslaughter." (Emphasis in original.) *Childs*, 159 Ill. 2d at 230. The court emphasized that the determinative inquiry was whether the instructions were clearly understandable to the jury. *Childs*, 159 Ill. 2d 217. In addition, since the question posed was confusing, and the trial court was unsure what the jury was asking, the court had a duty to contact counsel, seek clarification, and attempt to dispel the jury's confusion. *Childs*, 159 Ill. 2d 217.

This case is more analogous to *Reid* than to *Childs*. In the instant case the jury instructions were clear and complete. See *Reid*, 136 Ill. 2d at 42 (referring to the jury's set of instructions as "complete" even though there were no instructions informing jury that each charge had to be evaluated separately). Like in *Reid*, the jury received the Illinois Pattern Jury Instructions on the presumption of innocence, legal accountability, murder, and armed robbery. *Reid*, 136 Ill. 2d 27. Moreover, these instructions have only changed minimally from the

time they were given in Reid's trial to the present day. Compare Illinois Pattern Jury Instructions, Criminal, Nos. 2.03, 5.03, 7.01, 7.02, 14.01, 14.02 (2d ed. 1981) with Illinois Pattern Jury Instructions, Criminal, Nos. 2.03, 5.03, 7.01, 7.02, 14.05, 14.06 (4th ed. 2000). The jury was also given separate verdict forms for each count.

Like in *Reid*, the instructions in this case provided a definition, set forth the propositions to be proven, and instructed the jury to acquit the defendant of that charge if any proposition was not proven beyond a reasonable doubt. *Reid*, 136 Ill. 2d 27. Although there was not a jury instruction that directed the jury to consider each count separately, each instruction for murder, armed robbery, and unlawful use of a weapon specified that "[i]f you find from your consideration of all the evidence that each one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty." Accordingly, we believe that *Reid* squarely addresses the defendant's argument, and we hold that the trial court's response was not an abuse of discretion because the instructions were readily understandable and sufficiently explained the relevant law. See also *People v. Coleman*, 223 Ill. App. 3d 975 (1991) (holding that because the jury received substantially the same instructions as the jury in *Reid* the trial court did not abuse its discretion in referring jury back to

written instructions) (overruled on other grounds by *People v. Coleman*, 155 Ill. 2d 507 (1993)).

The major difference between this case and *Reid* is one juror's post-verdict statement that she was confused about the relationship between the charges. The defendant argues that we should consider this statement when evaluating whether the trial court abused its discretion by referring the jury back to the written instructions. In support of this argument, the defendant states that the *Reid* court only affirmed the trial court's decision because the post-verdict evidence demonstrated that ultimately the jury was not manifestly confused, whereas in this case the post-verdict evidence suggests that at least one juror was confused.

We disagree with the defendant's assertion. The *Reid* court did not make a finding on the jury's confusion and instead simply accepted the circuit court's determination that the jury was not manifestly confused and that the written instructions would suffice to clear up any confusion. *Reid*, 136 Ill. 2d 27. Contrary to the defendant's argument, the *Reid* court only used the juror's post-verdict testimony to evaluate whether the defendant suffered any prejudice from the trial court's response, not whether an error was committed in the first place. *Reid*, 136 Ill. 2d 27; see also *People v. Falls*, 387 Ill. App. 3d 533 (2008) (stating that the trial court's error was magnified when jurors

post-verdict told trial attorneys they were confused on a legal issue that court did not clarify during deliberations). While the juror's statement may be entirely relevant to whether the defendant was prejudiced, we do not reach that issue because we hold that no error occurred. See *Kittinger*, 261 Ill. App. 3d 1033 (court first found that trial court had committed an error before evaluating whether the error prejudiced the defendant).

CONCLUSION

In conclusion, the trial court did not abuse its discretion when it declined to answer the jury's question. The court had provided clear and complete instructions on felony murder, and each instruction specified that the jury was to acquit the defendant if each proposition was not proven beyond a reasonable doubt. Accordingly, the judgment of the Circuit Court of Kankakee County is affirmed.

Affirmed.