

2012 IL App (2d) 110513-U
No. 2-11-0513
Order filed September 19, 2012

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Winnebago County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 08-CF-1184
)	
FREDRICK R. LAMBERT, JR.,)	Honorable
)	Gary V. Pumilia,
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hudson and Birkett concurred in the judgment.

ORDER

Held: (1) Defense counsel was not ineffective for failing to make a Montgomery objection to the admission of defendant's juvenile delinquency adjudications as impeachment evidence: defendant did not show prejudice, as the evidence against him was strong and the impeachment evidence received little emphasis; (2) defendant forfeited his Montgomery objection by failing to raise it in the trial court.

¶1 Following a jury trial, defendant, Fredrick R. Lambert, Jr., was found guilty of armed robbery (720 ILCS 5/18-2 (West 2008)) and aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1) (West 2008)). On appeal, defendant argues that he received ineffective assistance of counsel and

that the trial court erred in allowing him to be impeached with his prior juvenile delinquency adjudications. For the reasons that follow, we affirm.

¶ 2

BACKGROUND

¶ 3 Defendant was charged with one count of armed robbery and one count of aggravated battery with a firearm. Prior to trial, the State filed a motion *in limine*, seeking permission, should defendant testify at trial, to impeach defendant with four retail theft and one felony theft delinquency adjudications. Following a hearing on the matter, the trial court granted the State's motion with respect to two of the retail theft adjudications and the felony theft adjudication.

¶ 4 At trial, Lavonne Wyatt gave the following testimony. On April 1, 2008, she, her daughter, and her husband, Charles Wyatt, returned home from grocery shopping at around noon. Once they parked in front of their house, Lavonne got her daughter out of the car and began bringing groceries into the house. At this point, she noticed a car parked behind them. When she came back outside to retrieve more groceries, Lavonne noticed Charles talking to two black males whom she had never seen before that day. At trial, she identified defendant as one of those men. As she was retrieving the last of the groceries, she noticed that the man who was not defendant had a gun. She returned to the house, but then returned to the porch where she saw Charles running toward the door. Lavonne went to check on her daughter and heard Charles shut the door, closing her and her daughter in the house. She then heard some fighting and a gunshot on the porch. She was headed to the back door with her daughter when she heard Charles calling for her. She returned to Charles, who had by then made his way into the house, and observed that he had a gash on his forehead and had been shot in the leg. Because the battery on her cell phone was dead, she drove Charles to the emergency room.

¶ 5 Charles Wyatt testified as follows. On April 1, 2008, he, his daughter, and his wife went grocery shopping and returned home around noon. When he pulled onto his street, he noticed an unfamiliar car behind him. After he parked the car and as Lavonne was bringing groceries into the house, he went over to the unfamiliar car. Inside the car were two black men—defendant in the driver’s seat and Romeo Trammel in the passenger seat. Charles knew defendant through defendant’s uncles. Charles had been having some problems with defendant’s uncles over money and guns. Charles asked defendant and Trammel what was up, and they responded by pointing two guns in his face. Each man had a gun. Trammel got out of the vehicle and walked around behind Charles where he demanded that Charles “give it up.” Charles told him that he had \$20 in his front pocket. One of the men—Charles could not recall which—reached into Charles’s pocket and removed the money. When Charles felt Trammel reach into his left back pocket to grab more money, Charles smacked Trammel’s hand and then ran toward the house to get a weapon. When he reached the front door, Charles turned around to see where the men were, and Trammel hit him in the head with the gun. Charles then attempted to take the gun from Trammel and a struggle ensued. During the struggle, the gun went off, shooting Charles in the leg. Trammel then ran back to the car, the men drove away, and Lavonne drove him to the hospital.

¶ 6 On September 28, 2010, Charles prepared and signed a handwritten statement in which he stated, “I swear that Fredrick Lambert, Junior, was not involved in the robbery or the shooting of me on April 1st, 2008.” Charles testified that he wrote the statement at the request of defendant’s mother, because he did not want to go any further with the case against defendant. He did not want to have to come to court, and he was also being warned by defendant’s family members not to

proceed any further. As a result, Charles felt afraid for his family and wanted the case dismissed.

The handwritten statement was not true.

¶ 7 Detective Scot Mastroianni of the Rockford police department testified that on April 2, 2008, he showed two lineups to Lavonne and Charles. Both identified defendant from the lineups as one of the individuals involved in the robbery and shooting of the previous day. Charles also identified Trammel from a lineup as the man who shot him.

¶ 8 Defendant's mother, Willie Sherette Rosser, gave the following testimony. On April 1, 2008, defendant lived with her. He woke up there that morning and spent the entire day with her at home, except when they went grocery shopping together. He did not leave the house without her until about 8 p.m. Rosser denied ever threatening or coercing Charles into doing anything. She did not recall telling any of defendant's previous attorneys that he was with her all day on April 1, 2008, but she did not really have any contact with any of those attorneys.

¶ 9 When defendant took the stand to testify, his attorney asked him about the delinquency adjudications the trial court allowed pursuant to the State's motion *in limine*. No further questions were asked about the adjudications. Defendant did, however, offer the following further testimony. On April 1, 2008, he lived at his mother's house with her and his little brothers. That morning, he woke up at home and spent all day at home, except when the family went to the grocery store. He did not leave the house without his family until approximately 8 p.m. He did not go to Charles's house, nor did he attempt to rob or shoot Charles. He did not see Charles at all that day. He acknowledged that Charles dealt with his uncles and that Charles had been having problems with them.

¶ 10 The jury found defendant guilty of both counts, and, following an unsuccessful motion for a new trial, the trial court sentenced him to 17 years' imprisonment on each count, to be served concurrently. Defendant then brought this timely appeal.

¶ 11 ANALYSIS

¶ 12 On appeal, defendant argues that he received ineffective assistance of counsel when defense counsel failed to offer a proper objection to the admission of defendant's prior adjudications of delinquency and that the trial court erred in allowing defendant to be impeached by those prior adjudications. Because defendant has failed to show that any deficiency on the part of defense counsel prejudiced him, and because he has forfeited his contention that the trial court erred in admitting the adjudications, we affirm.

¶ 13 Defendant contends that he received ineffective assistance of counsel because defense counsel failed to object to the admission of the adjudications on the basis that *People v. Montgomery*, 47 Ill. 2d 510, 517, 519 (1971), generally prohibits the admission of juvenile adjudications. At the hearing on the motion *in limine*, defense counsel stated that he was aware of recent caselaw allowing the admission of juvenile adjudications and requested that the trial court apply the balancing test of *Montgomery*, which required the judge to weigh the probative value of the evidence against the danger of unfair prejudice (*Montgomery*, 47 Ill. 2d at 516). Defense counsel made no mention of *Montgomery*'s adoption of then-proposed Federal Rule of Evidence 609, which generally prohibited the admission of juvenile adjudications (*Montgomery*, 47 Ill. 2d at 517).

¶ 14 A claim of ineffective assistance of counsel requires a defendant to establish that (1) his attorney's performance fell below an objective standard of reasonableness and (2) there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding

would have been different. *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984). A defendant must meet both prongs of the *Strickland* test to prevail on an ineffective-assistance claim. *People v. Colon*, 225 Ill. 2d 125, 135 (2007). The State concedes that defense counsel was deficient for failing to object based on *Montgomery's* general prohibition on the admission of juvenile adjudications, but argues that defendant has failed to establish that the result of the proceeding would have been different absent counsel's errors. Without expressing an opinion on whether defense counsel's performance was deficient, we agree that defendant has failed to establish that, but for counsel's alleged error, the result of the proceeding would have been different.

¶ 15 Defendant argues that the admission of his juvenile adjudications "may have" affected the jury's decision because the evidence at trial boiled down to a credibility contest and because the fact that the adjudications were for theft might have overpersuaded the jury that he had a propensity for stealing. Defendant's conclusory and speculative claims that the admission of the adjudications might have affected the jury's decision are unavailing, as there was strong evidence supporting defendant's conviction and very little emphasis was placed on his adjudications. Both Lavonne and Charles Wyatt positively identified defendant as one of the culprits, first from lineups presented by police the day after the incident and then again in court. Charles testified that he recognized defendant from his dealings with defendant's uncles. Defendant acknowledged that Charles dealt with his uncles and that Charles had been having problems with his uncles. Moreover, very little attention was given to defendant's adjudications. Defendant's attorney asked defendant at the start of his testimony whether defendant had been found guilty of those offenses, and defendant answered that he had. Defense counsel also made sure to point out that the adjudications were from many years ago when defendant was 13. No other mention of the adjudications was made during the

course of the trial. The State did not cross-examine defendant on them, nor did the State raise them during closing arguments. In fact, more emphasis was placed on Charles's convictions of manufacturing and delivering crack cocaine, domestic battery, and violating an order of protection than on defendant's adjudications. Throughout closing arguments, defendant's attorney emphasized Charles's status as a felon, in an effort to undermine his credibility. Apparently, however, the jury placed little weight on Charles's more recent, more serious criminal record in assessing his credibility, suggesting that they would have given even less weight to defendant's juvenile record. Based on the positive identifications by Lavonne and Charles, Charles's dispute with defendant's uncles, and the minimal emphasis placed on defendant's adjudications, defendant has not demonstrated a reasonable likelihood that he would not have been convicted had his attorney objected to the admission of his adjudications based on *Montgomery*.

¶ 16 Defendant also argues that the trial court erred in allowing him to be impeached by his juvenile adjudications, because juvenile adjudications are generally not admissible for impeachment purposes. See *Montgomery*, 47 Ill. 2d at 517, 519. The State concedes that defendant's juvenile adjudications were improperly admitted, but argues that defendant has forfeited his contention that the trial court erred in allowing their admission, because defendant failed to object to the admission of the adjudications on the basis of *Montgomery* at the hearing on the motion *in limine* and in his motion for a new trial.

¶ 17 As discussed above, at the hearing on the motion *in limine*, defense counsel did not offer a *Montgomery*-based objection to the admission of the adjudications. Similarly, no mention of *Montgomery*'s general prohibition on the admission of juvenile adjudications was made in defendant's written motion for a new trial. Rather, in his motion for a new trial, defendant argued

only that the trial court erred in allowing the admission of the adjudications because the adjudications were too remote and improperly swayed the jury. Accordingly, defendant has forfeited this contention on appeal. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (“Both a trial objection and a written post-trial motion raising the issue are required for alleged errors that could have been raised during trial” (emphases in original)). Although defendant did object on the grounds that the adjudications were too remote and unfairly prejudicial, he did not object on the ground that juvenile adjudications are generally inadmissible. As the State points out, “[a] specific objection at trial forfeits all grounds not specified.” *People v. Lovejoy*, 235 Ill. 2d 97, 148 (2009). Accordingly, we conclude that defendant has forfeited this issue by failing to properly raise it in the trial court.

¶ 18

CONCLUSION

¶ 19 For the foregoing reasons, the judgment of the circuit court of Winnebago County is affirmed.

¶ 20 Affirmed.