

2012 IL App (2d) 110574-U
No. 2-11-0574
Order filed September 21, 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 Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 10-CF-506
)	
ANDRES CORONADO,)	Honorable
)	Blanche Hill Fawell,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Hutchinson and Zenoff concurred in the judgment.

ORDER

Held: Defendant forfeited his foundational objection by failing to make it contemporaneously in the trial court, and in any event the objection went to the weight of the evidence, not its admissibility, and thus did not require the exclusion of the evidence.

¶ 1 Defendant, Andres Coronado, was convicted of being an armed habitual criminal (720 ILCS 5/24-1.7(a)(1) (West 2010)) and sentenced to 28 years' imprisonment. He appeals, contending that the trial court erred by permitting a fingerprint expert to testify that prints found at the crime scene matched defendant's without the State establishing any foundation for her opinion. We affirm.

¶ 2 The charges stemmed from an armed robbery of Amigo's Gifts in Bensenville. At trial, Hyo Lim, the proprietor of Amigo's Gifts, testified that he had a practice of cashing checks for customers and, consequently, kept large amounts of cash on hand. On November 6, 2009, he obtained about \$25,000 in cash from his bank and placed it in various locations in the store. At about 10 a.m., two men entered the store. A man wearing a gray hooded sweatshirt pointed a gun at Lim and grabbed the cash register on the counter. Lim struggled with the man briefly before a second man, somewhat larger than the first, jumped over the counter and pushed Lim to the ground. After emptying the register, the men left the store. Lim was unable to identify the robbers.

¶ 3 Vincente Nunez testified that in November 2009 he owned a yellow Ford van. He had loaned it to two men he knew only as Andres and Rudy. Nunez identified insurance papers that had been in the van when he loaned it to them. When Nunez got the van back, the insurance papers were missing.

¶ 4 Bensenville police officer Christopher Oliva viewed surveillance video from Amigo's Gifts taken the morning of the robbery. The video showed one of the men carrying an envelope that he dropped on the counter. During the ensuing struggle, the envelope fell to the floor. Oliva recovered the envelope.

¶ 5 Defendant became a suspect after the police received an anonymous phone call. Police officers interviewed defendant, who denied committing a robbery at Amigo's Gifts.

¶ 6 Jennifer Cones, a forensic scientist at the Du Page County crime lab, processed fingerprints recovered from the counter at Amigo's Gifts and from the insurance documents, which were left behind by one of the robbers. She compared them to defendant's fingerprints and concluded that the prints left at the store were made by defendant.

¶ 7 The jury found defendant guilty of armed robbery and being an armed habitual criminal. The trial court merged the robbery count into the armed-habitual-criminal count and sentenced defendant to 28 years' imprisonment. Defendant timely appeals.

¶ 8 Defendant contends that the trial court erred by permitting Cones to testify to her conclusion that latent prints at the crime scene were left by defendant. He contends that the State provided no foundation for her conclusion. The State responds that defendant forfeited the issue where he did not contemporaneously object to the lack of foundation, which the prosecutor might have been able to provide. We agree with the State.

¶ 9 A party must lay a sufficient foundation to establish the reliability of an expert's opinion. *Petraski v. Thedos*, 382 Ill. App. 3d 22, 28 (2008). "Expert opinions based on guess, speculation, or conjecture are inadmissible." *People v. Mitchell*, 2011 IL App (1st) 083143, ¶ 80. Generally, the admission of an expert's testimony is within the trial court's discretion. *Hiscott v. Peters*, 324 Ill. App. 3d 114, 122 (2001). However, whether the foundational requirements have been met is a question of law that we review *de novo*. *Id.* at 122-23.

¶ 10 Here, Cones testified extensively about her qualifications and about the general methodology she followed in comparing fingerprints. She testified about the steps she took in this particular case. Nevertheless, defendant contends that there was no foundation for her opinion that defendant's prints matched those at the crime scene, because she never testified to the number of points of comparison that she found, the State did not introduce the scanned images of the latent prints, Cones did not state which of defendant's prints corresponded with the latent lifts, and the Automated Fingerprint Identification System record prints were not before the jury.

¶ 11 Defendant relies extensively on *People v. Safford*, 392 Ill. App. 3d 212 (2009), but that case is distinguishable. There, a fingerprint examiner testified that a fingerprint found at a crime scene belonged to defendant. He testified that he did not take notes of the number of points of comparison and that he did not record how or why he came to his conclusions. *Id.* at 216-17, 220. On appeal, the court held that the trial court erred in admitting the expert's conclusion without any testimony about how he arrived at it. *Id.* at 223.

¶ 12 The court noted that as few as four or five points of similarity had been held sufficient to establish a match (*People v. Campbell*, 146 Ill. 2d 363, 384 (1992)) and that, generally, the number of points of similarity goes to the weight of the evidence. However, the court held that, as the number of points approaches zero, the question becomes one of admissibility. Moreover, when the basis of an opinion is withheld, and thus not subject to cross-examination, a concern arises about whether the opinion is really the product of a scientific technique at all. *Safford*, 392 Ill. App. 3d. at 225. Thus, the court held that the opinion should not have been admitted. *Id.*

¶ 13 Here, unlike in *Safford*, defendant never objected to the lack of foundation for Cones's opinion. Cones testified in detail about processing the fingerprints. The record shows that defense counsel extensively cross-examined Cones about fingerprint analysis in general and about her work on this case. Counsel generally demonstrated a thorough knowledge of the subject. However, he never asked Cones about a specific number of points of comparison. Under the circumstances, it would not be unreasonable to assume that counsel made a strategic decision not to ask this particular question. In any event, defendant forfeited the issue.

¶ 14 In *People v. McNeal*, 405 Ill. App. 3d 647 (2010), the court found that the defendant had forfeited the issue of the lack of foundation for the expert's opinion. The court noted that, to

preserve an issue for review, a defendant must object at trial and include the issue in a posttrial motion. *Id.* at 669. “ ‘This rule is particularly appropriate when a defendant argues that the State failed to lay the proper technical foundation for the admission of evidence, and a defendant’s lack of a timely and specific objection deprives the State of the opportunity to correct any deficiency in the foundational proof at the trial level.’ ” *Id.* (quoting *People v. Woods*, 214 Ill. 2d 455, 470 (2005)).

¶ 15 Had defendant here timely objected to the foundation for Cones’s opinion, the State could likely have supplied the missing information. Moreover, if defendant believed, for example, that the number of points of comparison was critical to her opinion, he could simply have asked her that question. Having failed to do so, defendant cannot complain on appeal that the foundation for her opinion was inadequate.

¶ 16 Defendant insists that he preserved the issue by raising it pretrial and posttrial. However, as the State points out, defendant’s pretrial motion was concerned with the reliability of fingerprint evidence in general and whether it met the standard for reliability set forth in *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923). Defendant never specifically objected to the lack of a foundation for Cones’s opinion. See *People v. Cuadrado*, 214 Ill. 2d 79, 89 (2005) (specific objection forfeits all other, unspecified grounds). More importantly, as noted, defendant did not contemporaneously object to her testimony, depriving the State of an opportunity to cure the alleged defects.

¶ 17 Even disregarding the forfeiture, the trial court properly admitted the evidence. As defendant concedes, foundational objections generally go to the weight of the evidence, not its admissibility. Only where a foundation is completely lacking does the issue become one of admissibility. See *Safford*, 392 Ill. App. 3d at 225. Here, Cones’s direct testimony occupies nearly 30 pages of

transcript, and her cross-examination approximately 25 more pages. As noted, she testified extensively about her qualifications, about the process in general, and about her actions in this particular case. Defense counsel thoroughly cross-examined her on these points. Defendant's appellate argument does little more than list several evidentiary items that the State might have covered, but did not, and simply concludes that a foundation for her opinion was completely lacking. There was more than sufficient foundation here that the trial court was not required to strike, *sua sponte*, Cones's testimony.

¶ 18 The judgment of the circuit court of Du Page County is affirmed.

¶ 19 Affirmed.