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2012 IL App (3d) 100424-U

Order filed March 8, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,) Appeal from the Circuit Court
) of the 10th Judicial Circuit,
) Peoria County, Illinois,
Plaintiff-Appellee,)
) Appeal No. 3-10-0424
v.) Circuit No. 09-CF-1319
)
WARREN WILSON,) Honorable
) Glenn H. Collier,
Defendant-Appellant.) Judge, Presiding.

PRESIDING JUSTICE SCHMIDT delivered the judgment of the court.
Justices Carter and McDade concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant's trial counsel was not laboring under an actual conflict of interest merely because his counsel worked for the public defender's office, which also represented the victim in this case. No error occurred when defendant stood trial wearing inmate clothing because he did not object to being tried in such clothing.
- ¶ 2 Following a bench trial, defendant, Warren Wilson, was found guilty of aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1) (West 2008)) and unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2008)). The conviction for unlawful possession

of a weapon by a felon merged into the conviction for aggravated battery with a firearm, and defendant was sentenced to 10½ years' imprisonment. On appeal, defendant argues that: (1) his trial counsel was operating under an actual conflict of interest because his counsel was from the public defender's office, which also represented the victim in defendant's case; and (2) the trial court erred by allowing defendant to be tried while wearing inmate clothing. We affirm.

¶ 3

FACTS

¶ 4 Defendant was accused of shooting Rodney Brazelton on November 25, 2009, at Robert Smith's trailer home. Defendant was charged by indictment on December 8, 2009, with aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1) (West 2008)) and unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2008)). Defendant pled not guilty, and the cause proceeded to a bench trial on March 8, 2010. Defendant was represented by Peoria County Assistant Public Defender Hugh F. Toner III.

¶ 5 At trial, Smith testified that on November 24, 2009, he went to a friend's house, where he purchased crack cocaine from Brazelton, smoked it, and then went back to his house with Brazelton. Smith and Brazelton stayed at the house all night, except for two occasions: when Smith and Brazelton went to Steve McMillan's house to borrow money, and when Brazelton left at one point to bring a woman back.

¶ 6 Smith testified that around 9 or 10 a.m. on November 25, 2009, McMillan arrived. Smith informed McMillan that he was uncomfortable with Brazelton staying at his house, and asked if McMillan could help remove him from the house. McMillan agreed to help, but told Smith he would let him know within the hour what he would be able to do. Smith told Brazelton that McMillan would be coming by the house to bring marijuana. McMillan returned to the house

one to two hours later with a person in a Carhartt-type trench coat. Smith identified this person in court as defendant, who was wearing a jail outfit.

¶ 7 Smith further testified that he, McMillan, and defendant walked into Smith's house. Defendant walked up to Brazelton, a few words were exchanged, and then defendant pulled out a gun and fired a shot. McMillan immediately went out the front door. Smith saw the first shot, then went into the back bedroom and jumped into the bathtub, where he heard a second shot fired. Smith later saw that Brazelton was shot in the left upper thigh, and Smith called 911. Smith testified that he was not under the influence of any drug at the time the shots were fired. On November 25, 2009, he was shown a photo lineup that did not include defendant. Smith did not identify anyone from this lineup. Then on November 27, 2009, he, McMillan, and McMillan's wife went to the sheriff's department. Smith was shown another photo lineup and identified defendant as the shooter.

¶ 8 Brazelton was the next witness to testify. Prior to Brazelton's testimony, Peoria County Public Defender Thomas J. Penn, Jr., informed the court that Brazelton requested to speak with Penn regarding his rights under the circumstances. After speaking with Penn, Brazelton decided to testify. Brazelton testified that he was unsure if defendant shot him because he was high at the time. Brazelton did remember that the shooter was wearing a Carhartt coat. Brazelton admitted that during questioning with police, he asked if there was anything the State's Attorney could do regarding his charge for possession. On November 27, 2009, Brazelton was shown a photo lineup and identified defendant as the shooter. On cross-examination, Brazelton admitted that he was incarcerated for being charged with possession at the time he identified defendant in the photo lineup. Brazelton also stated that in defendant's photo, it did not look like he was wearing

a jail jumpsuit. Brazelton further testified that on the day in question, he did not think he overstayed his welcome at Smith's house.

¶ 9 McMillan testified that when Smith asked him to remove Brazelton from his house, he called Breon Wilson to assist him. Breon was unable to help, so he called defendant, who then called McMillan. Thereafter, McMillan went to Breon's house and picked up defendant, who identified himself as Breon's cousin. After the shooting, McMillan was in jail when defendant was later placed in his holding cell. McMillan notified the guard and identified defendant as the shooter.

¶ 10 Defendant testified that he was not at Smith's house at the time of the shooting, but instead he was at the hospital with his daughter. Defendant also testified that he was Breon's cousin.

¶ 11 Following closing arguments, the trial court found defendant guilty on both counts. Defendant appeals.

¶ 12 ANALYSIS

¶ 13 I. Conflict of Interest

¶ 14 On appeal, defendant first argues that his trial counsel was laboring under an actual conflict of interest because both his and the victim's counsel were from the public defender's office. Defendant further asserts that the trial court erred by failing to inquire as to the nature of the potential conflict.

¶ 15 The sixth amendment of the United States Constitution guarantees the right to effective assistance of counsel. U.S. Const., amend. VI. This right entitles a criminal defendant to the undivided loyalty of his attorney, free from conflicting interests or inconsistent obligations.

People v. Flores, 128 Ill. 2d 66 (1989). Our supreme court created a framework for analyzing conflict of interest cases in *People v. Spreitzer*, 123 Ill. 2d 1 (1988). The first step is to determine whether a *per se* conflict of interest exists. *Id.* Here, defendant admits that no *per se* conflict of interest existed.

¶ 16 If there is no *per se* conflict, the analysis depends on when defendant raised the issue. *Id.* Where a potential conflict is brought to the court's attention at an early stage, the court has a duty to inquire into the possibility of a conflict of interest. *Id.* If the trial court is not made aware of the potential conflict, then the conviction will be reversed only upon a defendant showing that an actual conflict of interest adversely affected counsel's performance. *People v. Taylor*, 237 Ill. 2d 356 (2010).

¶ 17 Here, the trial court was not alerted to a possible conflict of interest; therefore, defendant must establish that an actual conflict of interest adversely affected his counsel's performance. See *Taylor*, 237 Ill. 2d 356. Defendant alleges that Toner's cross-examination of Brazelton was deficient because Toner did not broach any subjects where Brazelton would run the risk of incriminating himself. Specifically, defendant claims Toner should have questioned Brazelton regarding his prior convictions, what drugs he consumed and with whom, whether he sold drugs to individuals connected to the incident, who the woman was that he brought back to Smith's residence, and whether he received or hoped to receive any disposition relating to drug charges from the incident. Defendant attributes this defect to a conflict of interest between Toner and Penn, alleging that the nature of Penn's representation of Brazelton influenced Toner during cross-examination of Brazelton.

¶ 18 Upon review of the record, we conclude that defendant failed to establish an actual

conflict of interest from the fact that defendant and Brazelton were represented by public defenders, and furthermore that the alleged conflict adversely affected Toner's performance at trial. See *Taylor*, 237 Ill. 2d 356. Penn only consulted with Brazelton once during the trial regarding his fifth amendment rights. Penn also allegedly represented Brazelton regarding a drug charge, which was separate from defendant's trial. Defendant merely asserts that because he and Brazelton had adverse interests and were both represented by public defenders that a conflict existed. However, these facts alone do not establish a conflict of interest. Defendant's conviction will not be reversed based on possible or hypothetical conflicts. See *Taylor*, 237 Ill. 2d 356. Without any evidence to suggest that a conflict existed, apart from the fact that they worked for the same office, defendant's claim must fail. See *Taylor*, 237 Ill. 2d 356, 375 ("[T]his court has consistently held that a conflict of interest is not inherent in joint-representation situations merely by virtue of such representation").

¶ 19 Additionally, our review of the record does not reveal any defects in Brazelton's cross-examination that were attributable to the alleged conflict. Toner fully and adequately cross-examined Brazelton. Defendant's alleged defects fail to show how Toner's loyalty and commitment to defendant were divided in any way. See *People v. Davis*, 142 Ill. App. 3d 630 (1986). Toner's cross-examination of Brazelton sufficiently attempted to challenge Brazelton's credibility and undermine his identification of defendant. Accordingly, we find that defendant has not shown that his trial counsel labored under an actual conflict of interest that adversely affected his performance.

¶ 20 II. Prison Uniform

¶ 21 Defendant further contends that the trial court erred by allowing him to stand trial in

inmate clothing. He acknowledges that he did not raise an objection at trial, and thus defendant's argument must be reviewed under the plain error doctrine. *People v. Hammonds*, No. 1-08-0194, 2011 WL 2694579 (Ill. App. May 6, 2011). However, under the first step of the plain error test, we must first determine whether an error occurred. *Id.* In the instant case, we find that there was no error because defendant was not compelled to stand trial while wearing inmate clothing.

¶ 22 In *Estelle v. Williams*, 425 U.S. 501 (1976), the Supreme Court recognized that presenting the accused before a jury in prison attire could possibly affect a juror's judgment. However, the Court also stated that if defendant fails to object to standing trial in prison clothing, no constitutional violation occurs. *Id.* The Court reasoned that some defendants may prefer to be tried in prison clothing so as to garner sympathy from the jury, and therefore a constitutional violation only occurs when defendant is compelled to be tried in inmate clothing. *Id.*

¶ 23 The record reflects that defendant never objected to wearing an inmate uniform, and therefore he was not compelled against his will to be tried in prison clothing. Nor is the trial court required to ask defendant or his counsel if defendant was deliberately standing trial in jail clothing. *Id.* Accordingly, no error occurred regarding defendant's clothing at the time of trial, and as a result there was no plain error.

¶ 24 CONCLUSION

¶ 25 For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed.

¶ 26 Affirmed.