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2012 IL App (3d) 100543-U

Order filed February 23, 2012

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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 13th Judicial Circuit,
Plaintiff-Appellee,	)	La Salle County, Illinois,
	)	
v.	)	Appeal No. 3-10-0543
	)	Circuit No. 10-CF-66
	)	
GREGORY K. WILLIAMS,	)	Honorable
	)	H. Chris Ryan,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE O'BRIEN delivered the judgment of the court.  
Presiding Justice Schmidt and Justice Lytton concurred in the judgment.

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**ORDER**

¶ 1 *Held:* (1) Counsel was not ineffective for failing to file a motion to suppress defendant's confession; (2) the comments made by the State in closing arguments did not prejudice defendant; and (3) defendant was proved guilty beyond a reasonable doubt.

¶ 2 After a jury trial, defendant, Gregory K. Williams, was convicted of unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2010)). Defendant appeals, arguing that: (1) he received ineffective assistance of counsel because trial counsel did not file a motion to

suppress his confession; (2) comments made by the State in its closing arguments prejudiced defendant; and (3) he was not proved guilty beyond a reasonable doubt. We affirm.

¶ 3

### FACTS

¶ 4 Defendant was charged by information with unlawful possession of a controlled substance. The information alleged that defendant possessed less than 15 grams of a substance containing cocaine on February 1, 2010.

¶ 5 On May 10, 2010, defendant's case proceeded to jury trial. Jack William Ferguson testified that he saw defendant lying unconscious in a street as he was driving through Ottawa, Illinois. Ferguson called the police, and Officer James Bell responded. Bell testified that defendant was unconscious when he arrived. Bell shook defendant's shoulder until he regained consciousness. Defendant allegedly told Bell that he was on his way home from a local bar. Bell noticed that defendant smelled strongly of alcohol, his eyes were red and glassy, he mumbled, and he was unsteady on his feet. Bell stated that he placed defendant under arrest for intoxicated pedestrian in the roadway and transported him to the Ottawa police station.

¶ 6 Bell testified that once at the police station, he conducted a search of defendant's person and found a folded-up dollar bill inside defendant's pant pocket. Inside the dollar bill was a white powdery substance that tested positive for cocaine. Bell stated that he read defendant his *Miranda* rights. Defendant acknowledged that he was willing to speak to the police without the presence of an attorney and signed a written waiver. Defendant declined to have his interview video-recorded. During the interview, defendant allegedly told Bell that the cocaine in his pocket was for his personal use and he forgot that he even had it in his pocket. Officer Matthew Fischer testified that he was present during the interview and confirmed that defendant admitted to

ownership of the cocaine. Defendant declined to put his statement in writing.

¶ 7 After the State rested, defendant did not testify, and the case proceeded to closing arguments. During closing arguments, the State made the following remarks: (1) "[d]on't over think the case"; (2) "[s]ometimes things are as simple as they sound"; (3) "it's uncontested, [that the substance] was cocaine"; (4) "[i]t was in his pocket, it's as simple as that, ladies and gentlemen. The evidence shows in this case that the defendant is guilty of the offense"; and (5) "[t]hink about the evidence that was presented, and that's what the State would ask you to find him guilty of."

¶ 8 After deliberations, the jury returned a guilty verdict. Defendant filed a motion for a new trial or judgment notwithstanding the verdict. The court denied defendant's motion and sentenced defendant to 180 days in jail and 30 months' probation. Defendant appeals.

¶ 9 ANALYSIS

¶ 10 I. Ineffective Assistance

¶ 11 Defendant argues that he received ineffective assistance of counsel because trial counsel did not file a motion to suppress his statement to police. Defendant contends that his motion would have been granted because he did not knowingly waive his *Miranda* rights due to his level of intoxication.

¶ 12 To prevail on an ineffective assistance of counsel claim, defendant must show: (1) that his attorney committed such serious errors as to fall below an objective standard of reasonableness; and (2) without those errors, there was a reasonable probability that the result of his trial would have been different. *Strickland v. Washington*, 466 U.S. 668 (1984). There is a strong presumption that counsel's conduct fell within a wide range of reasonable professional

assistance. *People v. Gutierrez*, 2011 IL App (1st) 093499.

¶ 13 We find that defendant did not receive ineffective assistance of counsel. First, the decision to file a motion to suppress defendant's statement is a matter of trial strategy. *People v. Rodriguez*, 312 Ill. App. 3d 920 (2000). Generally, errors in trial strategy or judgment alone do not establish that counsel was incompetent. *People v. Howard*, 94 Ill. App. 3d 797 (1981). Second, defendant has not shown that the motion to suppress would have been successful. Bell testified that defendant voluntarily waived his *Miranda* rights and that defendant confessed to owning the drugs found in his pocket. Although defendant was intoxicated when he was found lying in the street, there is no indication of how much time passed between the incident and defendant's statement. Moreover, intoxication does not warrant suppression of defendant's statement; rather, a defendant must be so grossly intoxicated that he lacks the capacity to waive his rights. *People v. Garcia*, 165 Ill. 2d 409 (1995). Thus, defendant did not receive ineffective assistance of counsel.

¶ 14 II. Closing Argument

¶ 15 Next, defendant argues that statements made by the State in its closing argument resulted in substantial prejudice and therefore warrants a new trial. In making this argument, defendant acknowledges that he waived review of this issue because he failed to include the issue in his posttrial motion. Nevertheless, he requests that we review this issue for plain error. See Ill. S. Ct. R. 615(a) (eff. Aug. 27, 1999).

¶ 16 The first step in plain error analysis is determining whether error occurred. *People v. Thompson*, 238 Ill. 2d 598 (2010). The State has wide latitude in making closing arguments. *People v. Foster*, 322 Ill. App. 3d 780 (2000). The State's remarks on the strength of its case or

appeals to the jury to use their common sense are not prejudicial so long as they do not reduce the burden of proof or shift the burden to the defendant. See *People v. Averett*, 381 Ill. App. 3d 1001 (2008). Moreover, although it is improper for the State to make comments that are calculated solely to arouse the prejudice and inflame the passions of the jury, the arguments must be viewed in their entirety. *People v. Clark*, 335 Ill. App. 3d 758 (2002). We will not disturb a verdict unless the State's remarks resulted in substantial prejudice, such that absent those remarks, the verdict would have been different. *People v. Simms*, 192 Ill. 2d 348 (2000).

¶ 17 The statements made during closing arguments did not result in substantial prejudice to defendant. The State's remarks did not minimize its burden of proof; instead, they served to explain the relevance of the evidence and its application to the elements of the charged offense. Thus, no error occurred.

¶ 18 III. Sufficiency of the Evidence

¶ 19 Finally, defendant argues that he was not proved guilty beyond a reasonable doubt because the State failed to prove that he knowingly possessed cocaine.

¶ 20 When reviewing the sufficiency of the evidence, the relevant question 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 crime beyond a reasonable doubt.' " (Emphasis omitted.) *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). Reversal is warranted only if the evidence is so palpably contrary to the weight of the evidence or so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *People v. Leach*, 398 Ill. 515 (1948).

¶ 21 To convict a person for unlawful possession of a controlled substance, the State must

prove that the person: (1) had knowledge of the presence of the controlled substance; and (2) had immediate and exclusive possession or control of the substance. 720 ILCS 570/402 (West 2010).

¶ 22 Here, we find that the State presented sufficient evidence for the jury to find defendant guilty of the charged offense beyond a reasonable doubt. Bell testified for the State that defendant waived his *Miranda* rights and then admitted that the cocaine found in his pocket belonged to him. Fischer confirmed defendant's admission. Further, the white powder found on defendant tested positive for cocaine. Thus, we find that the evidence was sufficient to prove that defendant knowingly possessed a controlled substance.

¶ 23 **CONCLUSION**

¶ 24 For the foregoing reasons, the judgment of the circuit court of La Salle County is affirmed.

¶ 25 Affirmed.