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2012 IL App (3d) 110080-U

Order filed August 17, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

In re J.T., a Minor)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit
(The People of the State of Illinois)	Peoria County, Illinois
)	
Petitioner-Appellee,)	Appeal Nos. 3-11-0080 and 3-11-0081
)	Circuit Nos. 09-JD-315 and 10-JD-457
v.)	
)	Honorable
J.T.,)	Chris L. Fredericksen
Respondent-Appellant).)	Judge Presiding

JUSTICE LYTTON delivered the judgment of the court.
Presiding Justice Schmidt and Justice Holdridge concurred in the judgment.

ORDER

¶1 *Held:* Fingerprint expert laid adequate foundation for admission of his testimony where he explained similarities between latent fingerprints taken from crime scene and defendant's fingerprints.

¶2 One year after being placed on two years' probation, the State filed a petition alleging that J.T. was in violation of his probation for committing residential burglary. Following an adjudicatory hearing, the trial court found J.T. had committed residential burglary and was delinquent. The court sentenced J.T. to the Department of Juvenile Justice until his 21st birthday. J.T. appeals, arguing

that he was not proven guilty of residential burglary beyond a reasonable doubt because the fingerprint expert failed to lay a proper foundation for his testimony. We affirm.

¶ 3 In August 2009, the State filed a petition alleging that J.T. was a delinquent minor because he committed burglary of a school building. J.T. admitted the allegations of the petition. In September 2009, the trial court adjudicated J.T. delinquent, made him a ward of the court, and placed him on probation for two years with the condition that he not violate any criminal law or municipal ordinance within that period.

¶ 4 Two months later, the State filed a new petition alleging that J.T. violated the terms of his probation by committing residential burglary. J.T. admitted the allegations of the petition and was found to be in violation of his probation. The trial court made J.T. a ward of the court, sentenced him to 30 days' detention, and placed him on two years' probation.

¶ 5 In October 2010, the State filed a petition alleging that J.T. again violated the terms of his probation by committing retail theft. One month later, the State filed another petition alleging that J.T. violated the terms of his probation by committing residential burglary of a home owned by Joe Jones on April 15, 2010. J.T. pled not guilty to both petitions.

¶ 6 At the adjudication hearing on the October and November 2010 petitions against J.T., Joe Jones testified that she left her residence to go to work on April 15, 2010, at approximately 5:40 a.m. When she returned home between 2:40 to 2:45 p.m. that day, she saw that the back door had been kicked in. When she went to the kitchen, she saw that her crock pot was gone. She then went to her bedroom. She saw that it had been "ransacked" and that her jewelry box was gone. She also noticed that two boxes of checks that she kept in her bedroom dresser drawer had been opened. One of the boxes was on the dresser and the other was on her bed. Some checks were missing. After Jones saw

the condition of her house, she called the police. The police came and dusted for fingerprints while she waited outside. Jones testified that she does not know J.T. and never gave him permission to be in her home.

¶ 7 Josilynn Jones testified that she lived with her mother, Joe Jones, on April 15, 2010. Josilynn left the home that day at 5:45 a.m., returned at 9:45 a.m., left again at about 11:30 a.m., and returned at 5:45 p.m. When she came home at 9:45 a.m., she did not find anything unusual, and no one came into the house between 9:45 and 11:30 a.m. When Josilynn returned home that evening, she found that the back door was off its frame. In her bedroom, the drawers were open, and her jewelry box was gone. She does not know J.T., and there would be no reason for him to be in her mother's house.

¶ 8 Todd Leach testified that he interviewed J.T. in November 2010, regarding the April 15, 2010, burglary of Jones' residence. When Leach first asked J.T. about the burglary, J.T. said that he had never been in Jones' house. J.T. later admitted that some of his friends wanted him to break into the house, but he refused because it was too close to his own home. Thereafter, he explained that while he was walking home on April 15, 2010, he saw that the back door to Jones' house was opened, so he went inside. He found his friends in the house and told them to leave. He said the only thing he touched was the back door of the house. He denied taking anything but said his friends took a jewelry box.

¶ 9 Eric Ellis testified that he works for the Peoria Police Department in the crime scene unit and specializes in fingerprint identification. His duties as a fingerprint examiner include searching for fingerprint evidence and then comparing latent fingerprint evidence and standards. He explained that he uses a four-step process for identification of fingerprints from a known print to a latent print. The

process is commonly referred to as ACE-V, which stands for analysis, comparison, evaluation and verification. The first step in the process involves three levels of comparison. Level one is the pattern type, such as whirls, loops or arches. Level two is known as Galton details, which includes bifurcations, ending ridges, and dots. Level three involves comparing the unique formations of a ridge line. The State moved that Ellis be accepted as an expert in fingerprint identification. J.T. did not object, and the court ruled that he was accepted as an expert.

¶ 10 Ellis testified that he was dispatched to the home of Joe Jones on April 15, 2010. He searched areas for latent fingerprints. He found several boxes of checks that had been opened and developed latent prints off the boxes. He obtained the prints by applying magnum powder to the boxes and then lifting them off with lift tape. He created a latent lift card containing the prints from the boxes. On December 9, 2010, Ellis took fingerprints from J.T. He then compared the prints from the lift card with J.T.'s fingerprints. He determined that the middle print on the lift card taken from the box of checks was the right thumbprint of J.T.

¶ 11 On cross-examination, Ellis explained that the latent print on the lift card and J.T.'s thumbprint were not "identical" in that the latent print was smaller because of the nature of the lift. Ellis stated that he did not know the margin of error for fingerprint identification, as there is an ongoing debate about that in the scientific community.

¶ 12 Ellis explained on cross-examination that in analyzing the prints, he used two levels of comparison. Pursuant to level one, both the latent print and known print had right-sloping loop patterns. Pursuant to level two, the prints contained the same ridge endings and bifurcations, including dots. He did not note the level three details because he did not believe they were necessary since "the availability of the level two detail was sufficient enough to make the identification."

¶ 13 Ellis testified that the latent prints he obtained in this case were good and that the middle lift on the lift card showed many similarities to J.T.'s thumbprint, including a right-sloping loop, a clear crease, and Galton details. Ellis did not know exactly how many points of identification there were between the latent print and J.T.'s print but knew that there were "many more" than one. He testified that based on his training and experience, he had "no doubt" that the fingerprint from the lift card came from J.T.

¶ 14 The State moved that Exhibit 1, the latent lift card, and Exhibit 2, the card containing J.T.'s fingerprints, be admitted into evidence. J.T. objected based on Ellis' testimony concerning the margin of error and "the degree of examination in this particular case by this examiner." The court overruled the objection and admitted the exhibits.

¶ 15 J.T. testified that he has never been inside the home of Joe Jones. He testified that he was interviewed on November 16, 2010, about a burglary at that house. J.T. told the officer who interviewed him that his friends came to him at about 3:00 p.m. on April 15, 2010, and said they were going to rob the house. J.T. refused to participate because it was too close to his own house. Later that day, J.T. went to the store. As he was on his way home, he walked through an alley behind Jones' house. He noticed papers and a jewelry box in the alley. He then looked at the house and saw that the back door had been "kicked down." He went to the back door and yelled inside, but no one answered. J.T. did not go inside the house and only touched the doorknob. He denied telling any police officer that he went inside Jones' house. He also denied aiding or assisting in the burglary.

¶ 16 During closing argument, J.T.'s counsel argued that J.T. should be found not guilty because of the paucity of the fingerprint expert's testimony. After the hearing, the trial court adjudicated J.T. delinquent based on the petition filed in November 2010, alleging that J.T. committed residential

burglary on April 15, 2010. The court also found J.T. in violation of probation, as alleged in both the October and November 2010 petitions.

¶ 17 J.T. filed a motion for acquittal or a new trial, arguing that the State failed to prove him guilty beyond a reasonable doubt of residential burglary. The motion argued, in part, that Ellis' testimony was not credible or reliable. At the hearing on the motion, J.T.'s counsel stated that he would stand on his objections at trial as well as his closing argument. The trial court denied the motion.

¶ 18 At sentencing, the trial court ordered that J.T. be made a ward of the court and committed him to the Illinois Department of Juvenile Justice for an indeterminate term not to exceed his 21st birthday with credit for time served.

¶ 19 ANALYSIS

¶ 20 J.T. argues that the trial court erred in allowing Ellis' fingerprint testimony because it lacked an adequate foundation. The State responds that J.T. forfeited this issue by failing to raise it in the trial court. The State alternatively contends that Ellis laid a proper foundation. Finally, J.T. argues that he was denied effective assistance of counsel because his counsel's cross-examination of Ellis helped Ellis lay a foundation for the fingerprint evidence.

¶ 21 I. Forfeiture

¶ 22 In order to preserve an issue for appellate review, the defendant must both object at trial and raise the issue in a posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). The purpose of this two-fold requirement is to allow the trial court the opportunity to address and correct errors if necessary. *People v. Jackson*, 391 Ill. App. 3d 11, 37 (2009). There is no forfeiture where the trial court had an opportunity to review the same essential claim that was later raised on appeal. *People v. Hieder*, 231 Ill. 2d 1, 18 (2008). Forfeiture applies when the defendant asserts a claim that is

completely different than the one he raised below. See *id.*

¶ 23 Here, J.T.'s counsel objected at trial to the admission of the fingerprint evidence, arguing that "the degree of examination in this particular case by this examiner" was insufficient. Thereafter, in closing argument, J.T.'s counsel argued that the fingerprint evidence presented by Ellis was insufficient to establish defendant's guilt. Finally, in his posttrial motion, J.T. argued that Ellis' testimony was not credible or reliable. While J.T. more articulately argued on appeal that Ellis did not provide an adequate foundation for his fingerprint testimony, J.T.'s arguments below adequately raised the issue of the sufficiency of Ellis' testimony. Based on J.T.'s objection and posttrial motion, the trial court was given an opportunity to review J.T.'s claim that Ellis' testimony was insufficient to establish that J.T.'s fingerprints matched those found at the crime scene. Thus, the issue was properly preserved for review.

¶ 24 II. Foundation

¶ 25 In order for expert testimony to be admissible, the proponent must lay an adequate foundation establishing that the information upon which the expert based his opinion is reliable. *People v. Safford*, 392 Ill. App. 3d 212, 221 (2009). Whether the foundational requirements have been met is a question of law that we review *de novo*. *Id.*

¶ 26 In the area of fingerprint evidence, expert testimony based on scientific knowledge is necessary. *People v. Hunley*, 313 Ill. App. 3d 16, 29 (2000). When a fingerprint expert provides testimony, he must lay an adequate foundation explaining how he reached his conclusion. *Safford*, 392 Ill. App. 3d at 223. Such a foundational showing is necessary to ensure that the expert's result is trustworthy and reliable. *Id.* Without such testimony, the jury has no way of evaluating the expert's testimony, and the defendant cannot adequately challenge the testimony through cross-

examination. *Id.* at 224-226. If fingerprint testimony is provided without foundational facts or reasons, the defendant's right to a fair trial is affected. *Id.* at 223.

¶ 27 In *Safford*, the State's fingerprint expert "testified he looks at three levels of detail of each fingerprint undergoing an analysis, explaining what he looked for at each level." *Id.* at 220. He then testified that he twice compared a latent print recovered from the crime scene and defendant's prints and concluded that the latent print could belong "to no other person than the defendant." *Id.* However, the expert failed to explain the level one, two or three details that he observed that led him to conclude that the two prints matched. *Id.* at 221, 226. He was unable to describe what he saw in common between the latent print and the known print. *Id.* at 20, 23. Because the expert provided no testimony as to how he arrived at his conclusion that the latent print could only belong to the defendant, his testimony lacked an adequate foundation and was inadmissible. *Id.* at 226.

¶ 28 In *People v. Mitchell*, 2011 IL App (1st) 083143, decided two years after *Safford*, the defendant argued that pursuant to *Stafford*, the testimony of the State's fingerprint expert lacked an adequate foundation. However, the First District found that the facts of *Mitchell* stood "in contrast to the fingerprint examiner's testimony in *Safford*." *Id.* at ¶ 26. In *Mitchell*, the fingerprint expert explained the procedure she followed to make a comparison of the latent prints and the defendant's known prints. *Id.* She then did a side-by comparison of the two sets of prints, looking for "certain things like pattern type, ridge flow and things such as this *** [Like] ridges that end, ridges that split into two, and short ridges or dots." *Id.* at ¶ 14. She took that information and matched the defendant's prints to the latent prints taken from the crime scene. *Id.* at ¶ 26.

¶ 29 The court in *Mitchell* found *Safford* to be distinguishable because, unlike the fingerprint expert in *Safford* who failed to explain his conclusion, the expert in *Mitchell* made specific points

of comparison. *Id.* at ¶ 27. The points of comparison identified by the expert in *Mitchell* provided ample grounds for defendant to challenge her opinion that the recovered prints matched the known prints of the defendant. *Id.*

¶ 30 The testimony of the fingerprint expert in this case is more like the testimony provided by the expert in *Mitchell* than in *Safford*. Here, Ellis testified to the three levels of analysis he uses when comparing latent and known prints. He then explained the similarities that he found between the prints taken from the box of checks and those taken from defendant using two of those levels, including their right-sloping loop patterns, the presence of the same ridge ending and bifurcations, including dots, and the presence of a noticeable crease. The testimony in this case is unlike that presented in *Safford*, where the expert failed to present any testimony regarding level one, two or three details and failed to describe what he saw in common between the latent print and the defendant's print. Here, Ellis presented sufficient details supporting his conclusion that the latent fingerprints and J.T.'s fingerprints matched based on his level one and two analyses, which showed that both sets of prints contained a right-sloping loop, a clear crease and the same Galton details. Ellis laid an adequate foundation for his testimony, and the trial court properly allowed it.

¶ 31 III. Ineffective Assistance

¶ 32 Finally, J.T. argues that if a sufficient foundation was laid, it was done through his counsel's cross-examination of Ellis, and not the State's direct examination. He argues that his counsel's cross-examination, which elicited more details about Ellis' comparison, amounted to ineffective assistance.

¶ 33 To prevail on a claim of ineffective assistance of counsel, a defendant must show (1) that defense counsel's performance fell below an objective standard of reasonableness; and (2) a reasonable probability that, but for defense counsel's unprofessional errors, a different result would

have been achieved. *People v. Bostelman*, 325 Ill. App. 3d 22, 30 (2001). Because a defendant's failure to establish either part of the test will defeat an ineffectiveness claim, a court need not address both components of the inquiry if the defendant makes an insufficient showing on one. *Id.*

¶ 34 A reviewing court must give great deference to the performance of counsel and not second-guess a particular decision. *People v. Gordon*, 378 Ill. App. 3d 626, 639 (2007). Where counsel vigorously presents a defense and argues his client's positions to the jury, his performance is reasonable, and there is no ineffective assistance. *People v. Warren*, 217 Ill. App. 3d 778, 784 (1991).

¶ 35 Here, when J.T.'s counsel vigorously cross-examined Ellis, Ellis more fully explained how he determined a match between the fingerprints found on the box of checks in Jones' home and J.T.'s fingerprints. Although defense counsel's cross-examination elicited more information from Ellis about his fingerprint analysis, the cross-examination also revealed deficiencies in Ellis' analysis, specifically that (1) the prints from the check box were not "identical" to J.T.'s print, (2) Ellis did not know the margin of error for fingerprint analysis, (3) Ellis did not record a level three analysis, and (4) Ellis did not know how many points of identification were in common between the latent and known prints. Additionally, counsel reiterated in closing argument that Ellis' testimony was unreliable and did not provide a sufficient basis to prove J.T. guilty.

¶ 36 While the additional information obtained from Ellis by J.T.'s counsel during cross-examination assisted the State by providing a more solid foundation for the fingerprint testimony, it also pointed out weaknesses in the State's case. J.T.'s counsel vigorously presented a defense and argued J.T.'s positions to the jury. J.T. was not denied effective assistance of counsel. See *Warren*, 217 Ill. App. 3d at 784.

¶ 37 The order of the circuit court of Peoria County is affirmed.

¶ 38 Affirmed.