

NOTICE
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2012 IL App (4th) 101011-U

Filed 3/30/12

NO. 4-10-1011

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Livingston County
RICO D. SMITH,)	No. 10CF183
Defendant-Appellant.)	
)	Honorable
)	Jennifer H. Bauknecht,
)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Appleton and McCullough concurred in the judgment.

ORDER

¶ 1 *Held:* Where defendant cannot show he was prejudiced by trial counsel's alleged error, his ineffective-assistance-of-counsel claim has no merit.

¶ 2 In October 2010, defendant, Rico D. Smith, pleaded guilty to one count of unlawful possession of cannabis. A jury found him guilty of one count of obstructing justice. In December 2010, the trial court sentenced him to six months in jail and two years' probation.

¶ 3 On appeal, defendant argues he was denied the effective assistance of counsel at trial. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In October 2010, the State charged defendant by amended information with two counts of obstructing justice (counts I and II) (720 ILCS 5/31-4(a) (West 2010)) and one count of unlawful possession of cannabis (count III) (720 ILCS 550/4(a) (West 2010)). In count I, the

State alleged defendant committed the offense of obstructing justice in that he, with the intent to obstruct the apprehension of himself upon a warrant for his own arrest that he believed might exist, knowingly furnished false information to Illinois State Trooper Christopher Lempke, by telling him his name was Marcus Sommerville. In count II, the State alleged defendant committed the offense of obstructing justice in that he, with the intent to obstruct the criminal prosecution of himself in his own name and with regard to his own criminal history, knowingly furnished false information to Lempke by stating his name was Marcus Sommerville. In count III, the State alleged defendant committed the offense of unlawful possession of cannabis in that he knowingly possessed not more than 2.5 grams of a substance containing cannabis.

¶ 6 Prior to the commencement of defendant's jury trial, defendant pleaded guilty to the cannabis charge in count III. At trial, Trooper Lempke testified that on July 2, 2010, he was patrolling on Interstate 55 when he observed a vehicle traveling above the posted speed limit. After initiating a traffic stop, Lempke walked up to the vehicle and noticed two females in the front and two males in the back. Defendant was seated on the right side. Lempke asked the two males for identification. Defendant began to reach for his pocket but then said he did not have any identification. Lempke proceeded to address the speeding issue with the driver. While Lempke was working on a ticket, a canine unit arrived. The dog was walked around the car and positively alerted for the presence of drugs. Lempke searched the vehicle but did not find any contraband.

¶ 7 Trooper Lempke then had a discussion with defendant. After asking for his name, defendant said his name was Marcus Sommerville. Lempke then asked for his middle initial. Defendant looked over to the driver and asked what his middle initial was. When Lempke asked

him to spell it, defendant asked the driver how to spell it. Lempke believed defendant was lying to him and asked him to be straight with the trooper. Defendant then stated his name was Rico Smith. Lempke arrested defendant. A search revealed a small quantity of cannabis. When he was in the squad car with defendant, Lempke asked why he would lie to him. Defendant stated he did not want to go to jail and thought there might be a warrant for his arrest.

¶ 8 On cross-examination, Trooper Lempke testified he ran defendant's real name and found no warrants for his arrest. Lempke's search revealed "a small amount" of cannabis, weighing approximately 0.1 grams.

¶ 9 After the State rested, defense counsel moved for a directed verdict on both counts. The trial court granted the motion as to count II. Defendant rested without presenting any evidence. Following closing arguments, the jury found defendant guilty on count I.

¶ 10 In November 2010, defendant filed a motion for a new trial and other posttrial relief. In December 2010, the trial court denied the motion. Thereafter, the court sentenced defendant to 180 days in jail with credit for 159 days served and placed him on two years of probation. This appeal followed.

¶ 11 **II. ANALYSIS**

¶ 12 Defendant argues he was denied the effective assistance of counsel when the trial court admitted other-crimes evidence and counsel failed to ensure the jury received a limiting instruction that such evidence could only be considered for a limited purpose and not as evidence of guilt of the crime charged. We disagree.

¶ 13 "To prevail on a claim of ineffective assistance of counsel, a defendant must show both that counsel's performance was deficient and that the deficient performance prejudiced the

defendant." *People v. Petrenko*, 237 Ill. 2d 490, 496, 931 N.E.2d 1198, 1203 (2010). To establish deficient performance, the defendant must show his attorney's performance fell below an objective standard of reasonableness. *People v. Evans*, 209 Ill. 2d 194, 219, 808 N.E.2d 939, 953 (2004) (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). Prejudice is established when a reasonable probability exists that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Evans*, 209 Ill. 2d at 219-20, 808 N.E.2d at 953 (citing *Strickland*, 466 U.S. at 694). A defendant must satisfy both prongs of the *Strickland* standard, and the failure to satisfy either prong precludes a finding of ineffective assistance of counsel. *People v. Clendenin*, 238 Ill. 2d 302, 317-18, 939 N.E.2d 310, 319 (2010).

¶ 14 "It is well established that evidence of other offenses is not admissible for the purpose of showing the defendant's disposition or propensity to commit crime." *People v. Illgen*, 145 Ill. 2d 353, 364, 583 N.E.2d 515, 519 (1991). "Such evidence overpersuades the jury, which might convict the defendant only because it feels he or she is a bad person deserving punishment." *People v. Lindgren*, 79 Ill. 2d 129, 137, 402 N.E.2d 238, 242 (1980). "Such evidence is admissible, however, where relevant to prove *modus operandi*, intent, identity, motive or absence of mistake." *Illgen*, 145 Ill. 2d at 364-65, 583 N.E.2d at 519. When evidence of other crimes is introduced for a limited purpose, trial courts should provide a limiting instruction to the jury at the time the evidence is first presented and again at the close of the case. *People v. Tolbert*, 323 Ill. App. 3d 793, 800, 753 N.E.2d 1193, 1200 (2001) (citing Illinois Pattern Jury Instructions, Criminal, No. 3.14 (3d ed. 1992)).

¶ 15 In the case *sub judice*, the jury heard evidence that defendant possessed a small amount of cannabis. No limiting instruction was requested by counsel and none was given by the

trial court. Defendant argues defense counsel's performance was deficient for failing to request a limiting instruction and the failure to do so prejudiced defendant by increasing the likelihood that the jury convicted him simply because it believed he was a bad person deserving of punishment.

¶ 16 The State charged defendant with obstructing justice. 720 ILCS 5/31-4(a) (West 2010). To find defendant guilty on this charge, the jury must find (1) he knowingly furnished false information and (2) he did so with the intent to prevent the apprehension of himself. See Illinois Pattern Jury Instructions, Criminal, No. 22.20 (4th ed. 2000). A review of the record indicates the evidence of defendant's guilt was overwhelming.

¶ 17 Trooper Lempke testified he asked defendant for his name, and defendant responded Marcus Sommerville. When Lempke asked for a middle initial, defendant asked the driver for help. After Lempke asked defendant how to spell it, defendant again asked the female driver how to spell his name. Believing defendant to be lying, Lempke asked him to be straight with him. Defendant admitted his name was Rico Smith. In the squad car, defendant explained he lied to Lempke because he did not want to go to jail and feared he might have an arrest warrant out for him.

¶ 18 In this case, the State's evidence makes clear that no reasonable probability existed that the jury would have found a lack of criminal intent on defendant's part had they been given a limiting instruction pertaining to the small amount of cannabis he possessed. Defendant gave the false name, not out of any concern that he was in possession of cannabis, but because he feared having an outstanding arrest warrant. The State's closing argument focused on two things—that defendant lied and he did so because he thought he had an outstanding warrant. No mention was made of the cannabis. Given the overwhelming evidence, defendant has failed to demonstrate a

reasonable probability that the result would have been different had counsel not committed the alleged error. Thus, his ineffective-assistance-of-counsel claim is without merit.

¶ 19

III. CONCLUSION

¶ 20 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 21 Affirmed.