

No. 1-10-2852

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 08 CR 182
	)	
WILLIAM ANDERSON,	)	Honorable
	)	Stanley Sacks,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE FITZGERALD SMITH delivered the judgment of the court.  
Presiding Justice Howse and Justice Lavin concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The trial court exercised proper discretion in refusing to give the jury any "addict" instructions where the credibility of the witnesses, based on their addictions, was fully addressed during the witness's testimony and closing arguments.
- ¶ 2 Following a jury trial, defendant William Anderson was convicted of first degree murder for participating in the shooting of Derrick Smith. He and his co-defendant, Bennie Casey,<sup>1</sup> were

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<sup>1</sup> Casey was convicted following a simultaneous but severed jury trial and currently has an appeal pending before this court in case number 1-12-3241.

sentenced to 45 years in prison. On appeal, defendant contends that the trial court abused its discretion in refusing the defense's non-Illinois Pattern Instructions (IPI) jury instructions concerning the effects of drugs on a witness's credibility. We affirm.

¶ 3 According to the State's theory of the case, the victim, a drug dealer, was shot by members of a rival gang as retaliation for an earlier beating inflicted by one of the victim's fellow gang members. The State supported its theory of the case with, *inter alia*, the testimony of Tongula Ayers and Shanice Wright, two admitted drug addicts. Ayers and Wright testified that they bought drugs from the victim shortly before the shooting and saw defendant and Casey with guns in their hands. Defendant did not deny being present during the shooting, but argued that he was merely a look out for what he anticipated would be a fist fight. Defendant argued that his statement to the police revealed that he never had a gun, and that Ayers and Wright were unreliable witnesses because of their drug use.

¶ 4 At trial, Erik Smith, the victim's identical-twin brother, testified that on November 18, 2007, he and his brother Derrick were at 1936 West Washington, a building located in the Chicago Housing Authority's now demolished Henry Horner Homes. He and Derrick smoked marijuana on the second floor as Derrick sold crack cocaine. He observed Derrick sell crack cocaine to a woman named Tongula Ayers. After Ayers left, Erick heard noises coming from the front of the building. Derrick told him to look out the window to see if the police were in front. He did not see the police, and proceeded down the stairs around 5:30 a.m.

¶ 5 When Erick got to the ground floor he saw defendant and Casey standing in the hallway. Casey grabbed his collar and told him to leave. Casey then aimed a Tech 9 semi-automatic pistol at Erick. Erick left the building, but returned immediately once he realized his brother was still inside. Upon returning, he saw Casey shoot Derrick with defendant standing next to him unarmed. Erick ran out the building, and noticed that defendant was running behind him.

Defendant pointed at Erick, and then ran into a pole. Erick looked back toward the building, and saw Casey running with a gun. Casey pointed the gun at Erick, and threatened him as he ran away.

¶ 6 Tongula Ayers testified that she bought heroin from Derrick a few minutes before he was killed. She admitted that she had been a heroin addict for over 10 years, and needed to take heroin every day to function. She also admitted that she worked as a prostitute. She stated that she immediately ingested the drugs before meeting her friend Shanice Wright in the hallway of the ground floor. As she went down the stairs to leave with Wright, Ayers saw both defendant and Casey in the hallway, each holding a gun. The men ordered both women out of the building at gun point, and they left. Ayers stayed in the parking lot in order to retrieve her bike from the building. She observed Erick leave the building, and return. Ayers then heard one gunshot, and saw Erick running away from the building as both defendant and Casey chased him. Once the men left, she retrieved her bike and rode to a nearby fire station for help.

¶ 7 On cross-examination, defense counsel attempted to impeach Ayers by highlighting that on direct examination she had testified that she bought heroin from Derrick, and had not used crack cocaine in over 10 years. However, she testified before the grand jury that she had bought crack cocaine from Derrick immediately before he was murdered. Counsel also elicited testimony from Ayers that established that she had testified before the grand jury that she could not tell whether defendant was holding a gun when he left the building, but during trial she said that defendant was holding a gun.

¶ 8 Shanice Wright testified that she was on the ground floor of the 1936 building waiting for Ayers to finish smoking the crack cocaine that she had just bought from Derrick. She admitted to being addicted to both crack cocaine and heroin, but had been clean for 10 months prior to trial. She stated that she intended to accompany Ayers to buy heroin because Derrick only sold

crack cocaine. As she waited for Ayers, she encountered defendant and Casey. Defendant pointed a gun at her, told her to be quiet, and instructed her to leave the building. Ayers joined her, and the women quickly exited the building. On cross-examination, Wright revealed she "probably" smoked crack cocaine earlier in that evening, before midnight.

¶ 9 Alfonzina Wright testified that she bought a rock of crack cocaine from Derrick before he was murdered, and went to the third floor of the building. She heard one gun shot, and then went down the stairs, where she saw Derrick on the floor. Erick was struggling to make a 911 call, and she took the phone and spoke with the operator. She then ran out of the building.

¶ 10 Chicago police detective Daniel Gallagher testified that he and his partner, Michael Kelly, interviewed Erick Smith, Tongula Ayers, and Shanice Wright. The detectives showed a photo array to each of them, and each identified defendant and Casey as the men they saw at the 1936 building on the night that Derrick was killed. After the men were arrested, each identified the men in a line-up.

¶ 11 Sergeant Michael Kelly testified that defendant initially denied any involvement in Derrick's murder. However, defendant eventually told Kelly that he and Casey went to the building to start a fight with an individual named "Rooster," a member of a rival gang. He did not have a gun, and did not see Casey with one. He was going to the 1936 building to act as a lookout for Casey, but never intended to kill anyone.

¶ 12 During the closing arguments, defendant argued against the credibility of both Ayers and Wright. Defendant argued that Ayers's inconsistencies regarding her use of heroin and crack cocaine and whether defendant was armed "proves she can't be trusted." Defendant also attacked the credibility of Wright's testimony because she had ingested crack cocaine the night of Derrick's murder.

¶ 13 During the instruction conference, the defense submitted several non-IPI instructions, including three concerning the reliability of testimony from drug users.

¶ 14 Instruction 10 stated "[t]he testimony of a drug abuser must be examined and weighed by the jury with greater care than the testimony of a witness who does not abuse drugs. Tongula Ayers may be considered to be an abuser of drugs. The jury must determine whether the testimony of the drug abuser has been affected by drug use or the need of drugs."

¶ 15 Instruction 11 stated: "[t]he testimony of a drug abuser must be examined and weighed by the jury with greater care than the testimony of a witness who does not abuse drugs. Shanice Wright may be considered to be an abuser of drugs. The jury must determine whether the testimony of the drug abuser has been affected by drug use or the need of drugs."

¶ 16 Instruction 12 stated: "[t]he testimony of a narcotics addict is subject [*sic*] due to the fact that habitual users of narcotics become notorious liars."

¶ 17 The court refused to offer any of the three addict instructions. The court stated that "the women admitted they were long time drug users and the jurors were aware of that. They decide the credibility like any other witness' credibility is decided without singling those two women out."

¶ 18 The jury found defendant guilty of first degree murder. Thereafter, the trial court denied defendant's posttrial motions and sentenced defendant to 45 years in prison.

¶ 19 On appeal, defendant contends that the trial court abused its discretion in refusing the defense's non-IPI jury instructions concerning the effects of drug abuse on a witness's credibility, where the trial evidence established that two of the State's key witnesses, Tongula Ayers and Shanice Wright, were drug addicts who were high on drugs at the time of the offense.

¶ 20 A court reviews a trial court's decision regarding instructions using an abuse of discretion standard. *People v. Reed*, 405 Ill. App. 3d 279, 288 (2010). The purpose of jury instructions is

to provide the jury with a complete and accurate set of legal principles applicable to the evidence so that the jury can reach the correct conclusion in accordance with both the law and the evidence. *People v. Bannister*, 232 Ill. 2d 52, 81 (2009). It is within the discretion of the trial court to determine the applicability of specific jury instructions. *People v. Castillo*, 188 Ill. 2d 536, 540 (1999). A trial court abuses its discretion in refusing a non-IPI instruction only where there is no IPI instruction that applies to the particular subject. *People v. Simms*, 192 Ill. 2d 348, 412 (2000). The trial court does not abuse its discretion by refusing to give a non-IPI instruction if there is an applicable IPI instruction or the essence of the refused instruction is covered by other instructions. *Id.*

¶ 21 Because a witness's habitual drug use is relevant to overall credibility, it is well settled that parties must be allowed to cross-examine a witness about her narcotics use. *Reed*, 405 Ill. App.3d at 288. However, courts are not required to provide the jury with specific instructions about how to evaluate an addict's credibility. *People v. Steidl*, 142 Ill. 2d 204, 238 (1991). It is the function of the jury to determine the credibility of witnesses. *People v. Foster*, 322 Ill. App. 3d 780, 789 (2000), citing *People v. Armstrong*, 183 Ill. 2d 130, 146 (1998). Accordingly, "it is not reversible error to deny a tendered addict instruction, where evidence of the addiction is before the jury so that it can make its own determination of the believability of the witness." *Steidl*, 142 Ill. 2d at 238. Furthermore, courts have expressed concern that a non-IPI addict instruction may place undue emphasis on the witness's narcotics use. *Reed*, 405 Ill. App. 3d at 288. Thus, no specific jury instruction regarding addiction is needed because "the general instruction regarding jurors weighing witness credibility [i]s sufficient." *Foster*, 322 Ill. App. 3d at 789.

¶ 22 Although the court refused the proposed non-IPI addict instructions, the jury received an applicable IPI instruction on determining the credibility of a witness. The trial court instructed

the jury as follows: “[o]nly you are the judges of the believability of the witnesses and of the weight to be given the testimony of each of them. In considering the testimony of any witness, you may take into account his ability and opportunity to observe, his memory, his manner while testifying, any interest, bias or prejudice he may have, and the reasonableness of his testimony considered in the light of all the evidence in the case.” Illinois Pattern Jury Instructions, Criminal, No. 1.02 (4th ed. 2000) (IPI 1.02). Because the court is only obligated to give applicable IPI instructions in order to help the jury reach the correct conclusion, the general instruction of IPI 1.02 regarding jurors weighing witness credibility is sufficient. *Foster*, 322 Ill. App. 3d at 789.

¶ 23 The court did not abuse its discretion when it refused to give specific addict instructions. Here, although no specific addict instructions were given, the jurors were allowed to discern the credibility of the witness during the testimony and closing arguments. Ayers and Wright both admitted their drug use on direct examination, and defendant was given an opportunity to cross-examine the witnesses on this issue. On cross-examination, Tongula admitted to being a heroin addict for over 10 years and to still using the drug at the time of the trial. Shanice admitted to using both heroin and crack cocaine. She also revealed that on the night of Derrick's murder, she had "probably" smoked cocaine sometime around midnight, and was looking to buy heroin. Additionally, in closing arguments, the defendant argued against the credibility of Ayers and Wright based on their drug use. Defendant also used its closing argument to highlight the inconsistencies in Ayers's testimony regarding her drug use and whether defendant was armed when she saw him. Thus, the parties presented ample evidence to aid the jury in determining the credibility of each witness.

¶ 24 Defendant acknowledges that in *Steidl*, 142 Ill. 2d at 239, *Armstrong*, 183 Ill. 2d at 146, *People v. Adams*, 109 Ill. 2d 102, 123 (1985), *People v. Iniguez*, 361 Ill. App. 3d 807, 815

(2005), *People v. Huffman*, 177 Ill. App. 3d 713, 728 (1988), and *People v. West*, 156 Ill. App. 3d 608, 612 (1987), the reviewing court held that a trial court's refusal to tender an addict instruction to the jury is proper where evidence of the addiction is before the jury. However, he argues that in this case the defense's jury instruction concerning how drugs affected the drug-addicted witness's credibility was warranted because the case involved not one, but two witnesses who were under the influence of crack cocaine and the testimony of both were littered with inconsistencies. This argument is unconvincing. We refuse to ignore supreme court precedent affirming the discretion of the trial court in issuing addict instruction on the basis of the number of witnesses involved in a particular case. The jury had proper information to make a credibility determination of each witness, and an addict instruction would have placed undue emphasis on the witnesses' drug use. *Reed*, 405 Ill. App. 3d at 288. Instead, IPI 1.02 adequately informed the jury of the basis on which it should evaluate the testimony of Ayers and Wright, including the women's ability to observe and recall the events on the night in question. Accordingly, the trial court did not abuse its discretion in refusing defendant's addict instructions.

¶ 25 Finally, defendant argues that the IPI drafting committee recognizes that the evidence of a particular case could call for "an instruction informing the jury that it could consider the evidence that a witness was addicted to drugs at the time of the crime in judging the witness' credibility." IPI Criminal, No. 1.02, Committee Notes (4th ed.), citing *People v. Franz*, 54 Ill. App. 3d 550, 554-55 (1977). However, the committee note and the *Franz* case precede the *Steidl* case, where the supreme court specifically held that it is a proper exercise of discretion to deny a tendered addict instruction where evidence of the addiction is before the jury. *Steidl*, 142 Ill. 2d at 238. Therefore, the more recent supreme court decision controls, and the committee notes

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have limited value. Furthermore, we note that IPI committee notes are not binding authority.

See, e.g. *People v. Edwards*, 343 Ill. App. 3d 1168, 1176 (2003).

¶ 26 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 27 Affirmed.