

No. 1-13-0710

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 08 CR 17293
)	
TERRELL WESLEY,)	Honorable
)	Carol A Kipperman,
Defendant-Appellant.)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Delort and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant was not denied his right to present closing arguments when the trial court began to issue its findings prior to the parties' closing arguments. After defense counsel brought this error to the court's attention, the court apologized and permitted the parties to make their closing arguments. The court further stated that, in ultimately finding defendant guilty, it had reconsidered the evidence in light of those closing arguments.

¶ 2 Following a bench trial, defendant Terrell Wesley was found guilty of murder and sentenced to 50 years in prison. On appeal, he contends that he was denied due process and his right to counsel when the trial court announced its findings before the parties presented their closing arguments. We affirm.

¶ 3 Defendant's arrest and prosecution arose from the fatal shooting of the victim, Everett Brown, on July 17, 2008, at a grocery store in Maywood.

¶ 4 At trial, Ata Alaraj testified that he was working at the grocery store and had just served a customer when he heard gunshots. Although the customer asked Alaraj to call the police because someone was shooting at him, Alaraj ran to the back of the store. He then heard two more gunshots. When he ultimately went back into the store, the customer was on the floor and there was a lot of blood.

¶ 5 Dwayne Ross, who was driving a truck accompanied by his coworker, Larry Gates, testified that after hearing two or three gunshots, he saw an African-American man wearing a white t-shirt walking backward while pointing a gun at a grocery store. The man had "stringy-like hair," that is, dreadlocks or braids. The man turned, put the gun away, and got into the passenger side of a black Pontiac. Gates testified consistently with Ross regarding the two or three gunshots and described the man with the gun as having "dreads" and wearing a white t-shirt. However, Gates said that he saw the man get into the front driver's side of a black car. Neither Gates nor Ross saw the man's face.

¶ 6 Jason Ervin testified that he saw defendant coming out of a store holding a gun. Defendant was wearing a white t-shirt and had short dreads. Ervin heard three to four shots. Defendant walked backward away from the store, got into a black Pontiac, and was driven away by a female driver. Ervin wrote down the license plate, called it in, and later spoke to police.

¶ 7 Ramon Mendez testified that he was almost in an accident with a black car driven by a black woman who was "driving crazy." After a second near-collision, Mendez followed the car because he was mad. Although he lost sight of the car at one point, he was able to write down the

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license plate and called 911. He saw the car pull up in front of a grocery store, but did not see anyone get inside. His attention was on the car and he was not paying attention to anything else.

¶ 8 Shara Cannon, defendant's girlfriend at the time of the shooting, testified that although she reviewed her written statement to police, she did not write the statement out or edit it herself. On the day of the shooting, she drove an Enterprise rental car looking for "weed" before going home. Defendant was not with her. She did not recall certain testimony she had given before the grand jury.

¶ 9 Before the grand jury, Cannon had earlier testified that defendant had a "two-strand twist" hairstyle. On the day of the shooting, she drove with defendant, who was wearing a white t-shirt, looking to purchase marijuana. At one point defendant asked her to stop so that he could "holler" at someone at a convenience store. She stopped so that he could exit the car, then drove around before picking him up. Defendant got into the passenger side of the car and directed her to drive to Leon Thomas's house. When they arrived, defendant went inside for a few minutes. Defendant and Thomas then got into the car and Cannon drove home. Once there, she began to clean. Defendant and Thomas were later joined by Pierre Robinson, Delvin Williams, and Tangeric Washington. The men chatted and smoked marijuana. At one point, Cannon heard defendant say that he tapped on a window, that a guy ran into the store, and that he pointed and shot.

¶ 10 During cross-examination at trial, Cannon testified that she did not remember her answers before the grand jury because they were given more than two years prior. She denied seeing defendant with a gun on July 17, 2008. When Cannon was taken into custody, she was told it was because drugs were recovered from her home. Once she was at a police station, she

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was told that things could be easier if she cooperated, *i.e.*, if she said that defendant shot a person. Although Cannon made a written statement, she had been in custody for more than 24 hours when she signed it. Cannon was still in police custody when she testified before the grand jury.

¶ 11 Pierre Robinson, who had known defendant for most of his life, testified that when he exited Cannon's home with Thomas and Washington, the group was detained by police. Defendant and Williams were not there. Although he admitted that he appeared before the grand jury, he denied giving certain answers.

¶ 12 Before the grand jury, Robinson had testified that on the day of the shooting, defendant had "little braids" and that Williams picked him up and took him to Cannon's home. When defendant learned that the victim was dead, defendant said that no witnesses were going to tell on him now. Defendant further said that when he tried to shoot the victim, the gun jammed, so the victim ran inside the store. However, the victim came back outside and taunted defendant. Defendant kept "messing with the gun" and was able to shoot the victim.

¶ 13 During cross-examination at trial, Robinson testified that police told him that if he did not "agree" with the statement that defendant shot someone, he would be charged with murder. On re-direct, he admitted that he had given certain answers before the grand jury, but only because the police threatened him and gave him a script to use when he testified before the grand jury.

¶ 14 At the close of the State's case, the defense made a motion for a directed finding. The court then heard argument on the motion and denied the motion. After being informed that defendant would not testify, the court questioned defendant about that decision. The trial was then continued until the next day.

¶ 15 The next day, the trial court stated that it had reviewed the evidence and exhibits, and that it found:

"[L]ooking at the evidence, you have a man pointing his gun outside of the store. He is running backwards. He has been identified by one witness. He had the gun in his hand, and he was trying to put it back under his shirt. He was wearing a white T-shirt. These facts have been corroborated. You have him getting into a vehicle, where there is some issue as to whether he got into the passenger's side or the driver's side. The Court would find in many cases there are discrepancies. However, he got—he did get into a car that was identified.

* * *

In addition, with regard to the grand jury testimony, the court would accept the impeached parts as the—the impeaching testimony as substantive evidence and it further ties up this case with regard to the testimony of Shara [Cannon] and also Robinson."

¶ 16 Defense counsel then reminded the court that the parties had not presented closing arguments; rather, they had merely argued a motion for a directed finding at the close of the State's case. The court apologized and indicated it would let the parties argue. The State then asked if that was the court's ruling on the directed finding and the court answered in the affirmative. The defense then rested and the parties presented their closing arguments.

¶ 17 In finding defendant guilty of murder, the court stated that it had considered the parties' "lengthy closing arguments," as well as the "testimony which the witnesses on various details corroborate each other with regard to hairstyles, with regard to the clothes that the defendant was wearing, with regard to the car, with regard to a person pointing a gun and walking backwards from the store, with regard to identification" and the grand jury testimony of Cannon and Robinson. The court further found that although Cannon and Robinson did not testify credibly at trial, their testimony before the grand jury was accepted as impeaching testimony and therefore substantive evidence.

¶ 18 The defense then filed a motion and a supplemental motion for a new trial alleging, *inter alia*, that the court erred when it found defendant guilty prior to closing arguments. In denying the motion, the court stated:

"[The Court's] indication of the way that [it] was going to rule, that was premature and it was immediately brought to [the court's] attention at which point we had lengthy closing arguments.

As counsel is aware, there were also lengthy arguments for the motion for directed finding in this case. And while [the court] was incorrect in making the way [the court] was going to rule, [it] did hear the complete closing arguments and *** reconsidered everything that was brought to [its] attention in those closing arguments, and it was on that basis that [the court] made [its] final ruling."

¶ 19 Defendant was ultimately sentenced to 50 years in prison.

¶ 20 On appeal, defendant contends that he was denied his right to a fair trial and the right to counsel because the trial court prejudged his case before allowing the parties to present their closing arguments.

¶ 21 Although the State argues that defendant has forfeited review of this claim, the record reveals that defense counsel immediately informed the trial court that the parties had not yet made their closing arguments and also raised this issue in the motion for a new trial. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (to preserve an error for appellate review, a defendant must raise the issue at trial and in a posttrial motion). Accordingly, defendant has preserved this issue for appeal.

¶ 22 The question before this court therefore is whether the trial court's alleged error requires remand for a new trial or whether it was harmless. See *In re Brandon P.*, 2014 IL 116653, ¶ 50 (an error is harmless when "it appears beyond a reasonable doubt that the error at issue did not contribute to the verdict obtained at trial").

¶ 23 A criminal defendant's right to make a closing summation before the fact finder is a fundamental right derived from the sixth amendment guarantee of assistance of counsel. *People v. Stevens*, 338 Ill. App. 3d 806, 810 (2003). The trial court has no discretion to deny a defendant his right to make a proper closing argument on the evidence and applicable law in his favor, and the denial of this right is grounds for reversal regardless of whether the defendant was prejudiced. *Id.*

¶ 24 In the case at bar, defendant correctly argues that the trial court began to state its factual and legal findings before the parties commenced closing arguments. However, the record also reveals that when defense counsel brought this error to the court's attention, the court apologized

and instructed the parties to make their closing arguments. Consequently, we reject defendant's contention that he was denied the right to make closing arguments, as the record reveals that defendant was afforded the opportunity to present a closing argument.

¶ 25 This court is unpersuaded by defendant's reliance on *People v. Faint*, 396 Ill. App. 3d 614 (2009), and *People v. Stevens*, 338 Ill. App. 3d 806 (2003). In *Faint*, the trial court did not allow the defendant to present any evidence or a closing argument. *Faint*, 396 Ill. App. 3d at 619-20. In *Stevens*, the trial court interrupted defense counsel, imposed a time limit, and exhibited its prejudgment of the case by stating that the State had proven the defendant guilty before counsel completed his argument. *Stevens*, 338 Ill. App. 3d at 810.

¶ 26 In the case at bar, however, the trial court did not impose a time limit upon the defense's closing argument. To the contrary, defense counsel presented a lengthy closing argument during which he was able to argue defendant's theory of the case to the trial court.

¶ 27 Defendant further argues that the trial court's initial findings of fact and law indicate that the court prejudged his case prior to closing argument. The State responds that the trial court admitted that it made a mistake when it prematurely began to indicate how it was going to rule, but the court corrected that mistake when it instructed the parties to make closing arguments and stated that it reconsidered its conclusions in light of those closing arguments. We agree with the State.

¶ 28 In ultimately finding defendant guilty of murder, the trial court acknowledged that it had prematurely begun to issue its ruling, but that after this error was brought to its attention, the parties made "lengthy" closing arguments. The court also stated, when it denied defendant's motion and supplemental motion for a new trial, that after hearing the complete closing

arguments, the court had "reconsidered everything" in light of those arguments before the court made its final ruling. We have no reason to question the trial court's statement that it reconsidered the evidence in light of the parties' closing arguments. Consequently, we reject defendant's argument that the court prejudged the case.

¶ 29 Even if this court was to disregard the trial court's statement that it reconsidered the evidence in light of the parties' closing arguments and assume that the trial court prejudged the outcome of the case, such an error would be harmless in light of the evidence of guilt at defendant's trial. One witness saw defendant's face as he backed away from the store holding a gun, and two other witnesses saw a man with dreads or braids wearing a white t-shirt and holding a gun. That description fit the defendant at the time of the shooting as given by the witnesses. Both witnesses saw the defendant get into a black car. In addition, the grand jury testimony of Cannon and Robinson established that defendant, who sported a twist or braid haircut, admitted that he shot a man at a store. See *People v. Nitz*, 219 Ill. 2d 400, at 410 (2006) (under a harmless error analysis the State must prove beyond a reasonable doubt that the result would have been the same absent the error). Accordingly, defendant's argument must fail.

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

¶ 31 Affirmed.