2015 IL App (2d) 130515-U
No. 2-13-0515
Order filed May 6, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Winnebago County.
Plaintiff-Appellee,	)	
v.	)	No. 10-CF-2035
ALEXANDER G. CASTILLO,	)	Honorable Joseph G. McGraw,
Defendant-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE SCHOSTOK delivered the judgment of the court.
Justices McLaren and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Defense counsel was not ineffective for failing to move to suppress identification evidence, as there was no reasonable probability that the motion would have succeeded: despite a potentially ambiguous exchange between the witness and an investigator, the evidence as a whole indicated a proper identification procedure; (2) the State proved defendant guilty beyond a reasonable doubt of home invasion: although the evidence might have supported an inference that defendant was granted access to repay a debt, the jury was entitled to infer that he entered with the intent to kill them, invalidating the grant of access; (3) defendant's two convictions of home invasion (based on one entry, though with two victims) violated the one-act, one-crime rule, and thus we vacated one.

¶ 2 Following a jury trial in the circuit court of Winnebago County, defendant, Alexander G. Castillo, was convicted of two counts each of first-degree murder (720 ILCS 5/9-1(a)(1) (West 2010)) and home invasion (720 ILCS 5/12-11(a)(5) (West 2010)). Defendant was sentenced to natural-life prison terms for the first-degree-murder convictions and a 51-year prison term for each home-invasion conviction. The trial court ordered the sentences for the home invasion convictions to be served concurrently with one another but consecutively to the sentences for first-degree murder. In this appeal, defendant argues that: (1) he was deprived of his right to the effective assistance of counsel, inasmuch as his attorney failed to move to suppress identification evidence; (2) the State failed to prove beyond a reasonable doubt that he committed the crime of home invasion; and (3) that the evidence does not support multiple home-invasion convictions. We affirm in part and vacate in part.

¶ 3 The record on appeal establishes the following facts. In the early morning hours of May 10, 2010, Christa Clark and her husband, Michael Clark, were shot to death in their Rockford home. Christa's seven-year-old son, A.B., and her infant daughter, Ani, were in the house at the time of the shooting. After the shooting, A.B. went to the home of a neighbor, David Saunders. Saunders testified that his daughter woke him at about 2 a.m. and told him that someone was knocking on the door. When Saunders answered the door, A.B. told him that a friend of Christa had shot and killed Christa and Michael. Saunders contacted the police. Saunders's daughter testified that when she heard knocking she looked at her clock, which indicated that it was 2:13 a.m.

¶ 4 Rockford police officer Melissa Sundly testified that she spoke to A.B. both at Saunders's house and at SwedishAmerican Hospital. A.B. told Sundly that he saw the man who had shot Christa. The man was a friend of Christa and Michael, and A.B. knew him as "Blizz."

A.B. told Sundly that Blizz looked through Christa's pockets for money after shooting her. A.B. described Blizz as a white male who was 18 years old or possibly in his 20's. Blizz lived in Wisconsin and drove a red car or a black truck.

¶ 5 Kevin Nordberg, a detective with the Rockford police department, testified that he spoke to A.B. at the hospital. A.B. stated that he had been awoken by gunshots. A.B. saw Blizz—whom he had seen on two prior occasions—point a gun at Christa and then pull the trigger. A.B. saw Blizz going through Christa's pockets. A.B. told Nordberg that he saw money lying near Christa. After Blizz left the house, A.B. saw that Michael had also been shot. A.B. told Nordberg that he picked up a cell phone and unsuccessfully tried to call his "dad," Jack Buttita. A.B. did not recognize the cell phone; he told Nordberg that it must have belonged to Blizz. A.B. had a cell phone of his own, but it was out of minutes. A.B. told Nordberg that Blizz was supposed to come to their house to give Christa some money so that she could purchase more minutes for A.B.'s phone. A.B. told Nordberg that Blizz lived in Janesville, Wisconsin, and drove a red car or a black truck. Nordberg testified that the police learned that "Blizz" was the nickname of an individual named Jeremy Haynes, who lived in Rockford.

¶ 6 Buttita testified that he was not A.B.'s father, but had dated Christa at one point and had stayed in contact with her and with A.B. Buttita received four phone calls at around 2 a.m. on May 10, 2010. The calls were from a number with a 608 area code, which is a Wisconsin area code. Buttita did not recognize the number, so he did not answer the calls. Shortly thereafter Saunders called Buttita. Although Buttita did not recognize the number, he answered the call. Saunders told Buttita that Christa and Michael had been killed and that A.B. and his sister had been taken to the hospital. At some point that morning, Buttita informed a detective with the Rockford police department about the four calls he had received from the number with the 608

area code. Buttita told the detective that he dialed the number and his call was transferred to voicemail for someone named Alex. Buttita recalled that Christa had mentioned in passing that she had a friend named Alex. The State presented evidence that the number with the 608 area code was assigned to a telephone registered to defendant and that U.S. Cellular was defendant's service provider.

¶ 7 Nordberg additionally testified that at about 9 a.m. he and Detective John Eissens showed a photo lineup to A.B. Before doing so Nordberg explained that the lineup might not include a photograph of a suspect and that A.B. was not obligated to make an identification. A.B. signed a written acknowledgment that he understood. When shown the photo lineup, A.B. pointed to a photograph of defendant and said, " 'That's Blizz.' "

¶ 8 Eissens testified that he had received custody of a cell phone from another detective. Eissens showed the cell phone to A.B., who indicated that the phone was Michael's. Eissens testified that there were three text messages sent from Michael's phone to defendant's phone on May 9, 2010. The first message stated, " 'I'm on my way to your house.' " The second message stated, " 'We don't have any money to get home.' " The third message stated, " 'You don't call my wife right now. I am going to punch you in the face, promise.' " On cross-examination, Eissens testified that he did not point to defendant's picture and say " 'they got him' " while showing A.B. the photo lineup.

¶ 9 Defendant was arrested in Janesville, Wisconsin, on the afternoon of May 10, 2010. He was arrested after leaving his girlfriend's house and driving off in a Pontiac Sunfire. A search of that vehicle resulted in the discovery of the cell phone that had been used to call Buttita. Two detectives with the Rockford police department interviewed defendant the afternoon of his arrest. Defendant stated that he had owed Christa $3,450 and had gone to the victims' house at about

12:30 a.m. to repay her. Defendant indicated that Christa had been texting him all day and had been making various threats. Christa informed defendant that someone called "Spanky" had been giving her a hard time. Defendant told the detectives that he did not go to the victims' house right away, because he was afraid that Spanky would be there. When defendant arrived, he waited around the corner. Michael found defendant and told him that there was nothing to worry about. Defendant left the victims' home a little after 1 a.m. After the detectives informed defendant that A.B. had used defendant's cell phone to call Buttita, defendant related that he had left his cell phone at the victims' house. Defendant indicated that he returned to the house about 15 minutes later to retrieve his cell phone. When he arrived, he observed that Christa and Michael had been shot. Defendant denied that he was responsible for the shooting.

¶ 10 Nordberg testified that he met with A.B. again on July 1, 2010. Nordberg showed A.B. a photograph of Haynes. A.B. responded, " 'That's Blizz.' " A.B. indicated that Haynes was not the individual he had seen in his house on May 10. Nordberg testified that A.B. thought that defendant went by the name Blizz.

¶ 11 A.B. testified that defendant had been at Michael and Christa's wedding. A.B. had also seen defendant on May 9, 2010, when A.B. traveled with Michael, Christa, and Ani to defendant's apartment complex in Janesville. A.B.'s account of the events of the early morning hours of May 10, 2010, was essentially consistent with the account he provided to police. A.B. testified that when he spoke with the police he thought that defendant's nickname was "Blizz." A.B. identified defendant in open court as the individual who had shot Christa.

¶ 12 Edward Papineau, an assistant performance engineer with U.S. Cellular, testified about activity on defendant's phone from May 9 to the early morning hours of May 10. According to Papineau's testimony, there were several dozen phone calls during that time frame between

defendant's cell phone and cell phones registered to Christa. From 11 p.m. onward, the records showed calls to defendant from Christa's phone at 11:09 p.m., 11:13 p.m., 11:22 p.m., 11:26 p.m., 11:27 p.m., 11:30 p.m., 11:31 p.m., 11:37 p.m., 11:38 p.m., 11:44 p.m., 11:53 p.m., 12:12 a.m., and 12:27 a.m. The records showed a call made from defendant's phone at 1:54 a.m. Papineau testified that the calls from 11:37 p.m. until 1:54 a.m. used several cell-phone towers in the vicinity of the victims' house.

¶ 13 David Reimann testified that in December 2015 he shared a cell in the Winnebago County jail with defendant. At one point, after defendant visited with his attorney, he spoke to Reimann about the circumstances of the crimes. Defendant told Reimann that he had had feelings for Christa and that there was a "confrontation" via text messages. Defendant stated that he had gone to the victims' house at approximately 12:15 a.m. or 12:30 a.m. on the day of the killings, but did not get inside. Defendant told Reimann that he returned to the victims' home at about 2:15 or 2:30 a.m. He then entered the dwelling and shot Michael and Christa. Reimann testified that he had not been promised any consideration in exchange for his testimony. Reimann acknowledged that, shortly before his testimony, he had told the prosecutor that he did not recall what defendant had told him. Reimann had said the same thing to defense counsel and one or more defense investigators in the preceding week or two. Reimann acknowledged that he had been convicted of multiple felonies.

¶ 14 Monica Heatherington testified for the defense that, in May 2010, she was employed by the Rockford police department as a detective. She had received training in interviewing children in connection with criminal investigations. On May 13, 2010, she interviewed A.B. The interview was recorded. During Heatherington's testimony, the following exchange took place:

Q. *** Did you say to [A.B.] and did he give you this answer. *Okay. Did you see a gun?* And [A.B.] said *Just a gun and his hand.*

A. Yes.

Q. Did you then say to [A.B.] *You saw–did you see his face?* And [A.B.] said *No.*

A. Yes.

Q. Did you then say to him *Mm-'kay. Now, then—how did you know it was Alex, then?* And did [A.B.] say to you *Because they—when I went to the hospital, they showed me a picture and I—and then, they told me that they, they got him.* Did [A.B.] give you that answer?

A. Yes, but that's not the end of the sentence. Yes.

Q. And you said *Okay* and [A.B.] said *and it was him.*

A. Yes. That is correct." (Emphases in original.)

¶ 15 We first consider defendant's argument that did not receive the effective assistance of counsel. Defendant maintains that his attorney performed incompetently by failing to move to suppress A.B.'s identification testimony. On a motion to suppress, the defendant bears the burden of establishing that, under the totality of the circumstances, the pretrial identification was so unnecessarily suggestive that it gave rise to a substantial likelihood of an unreliable identification. *People v. Jones*, 2012 IL App (1st) 100527, ¶ 24. Defendant contends that A.B.'s conversation with Heatherington suggests that the identification was the product of suggestive procedures.

¶ 16 Claims of ineffective assistance of counsel are evaluated under the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), which requires a showing that counsel's performance "fell below an objective standard of reasonableness" and that the deficient

performance was prejudicial in that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 688, 694. We agree with the State that the record does not show a reasonable probability that a motion to suppress would have succeeded. Defendant contends that A.B.'s statement to Heatherington, that the police showed A.B. a picture and told A.B. that they " 'got him,' " shows that, when conducting the photo lineup, the police improperly suggested that the perpetrator's photograph was in the lineup and that the police knew the identity of the perpetrator. It appears however, that A.B. and Heatherington might have been talking past one another in that particular exchange. Heatherington was evidently curious whether A.B. had gotten a good enough look at the perpetrator to identify him from a photograph. Given that, when A.B. first identified defendant's photograph, he said " 'That's Blizz,' " it is quite likely that A.B. thought that Heatherington wanted to know how A.B. knew that the perpetrator's name was Alex. We agree with the State that the evidence as a whole indicates that A.B. was capable of reliably identifying the perpetrator and that the pretrial identification procedures were conducted properly. There is no reasonable probability that a motion to suppress would have succeeded.

¶ 17 We next consider defendant's argument that the State failed to prove beyond a reasonable doubt that he was guilty of home invasion. The gravamen of the offense of home invasion is unauthorized entry. *People v. Braboy*, 393 Ill. App. 3d 100, 113 (2009). Defendant argues that the State failed to prove that he lacked authority to enter the victims' home.

¶ 18 A reviewing court will not set aside a criminal conviction unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). When reviewing a challenge to 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 in original.) *Id.* (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). The trier of fact is responsible for resolving conflicts in the testimony, weighing the evidence, and determining what inferences to draw, and a reviewing court ordinarily will not substitute its judgment on these matters for that of the trier of fact. *People v. Cooper*, 194 Ill. 2d 419, 431 (2000).

¶ 19 In *People v. Bush*, 157 Ill. 2d 248 (1993), our supreme court observed that "when a defendant comes to a private residence and is invited in by the occupant, the authorization to enter is limited and *** criminal actions exceed this limited authority." *Id.* at 253 (citing *People v. Peeples*, 155 Ill. 2d 422, 487 (1993)). The *Bush* court added:

> "No individual who is granted access to a dwelling can be said to be an authorized entrant if he intends to commit criminal acts therein, because, if such intentions had been communicated to the owner at the time of entry, it would have resulted in the individual's being barred from the premises *ab initio*. [Citation.] Thus, the determination of whether an entry is unauthorized depends upon whether the defendant possessed the intent to perform a criminal act therein at the time entry was granted. [Citations.] If *** the defendant gains access to the victim's residence through trickery and deceit and with the intent to commit criminal acts, his entry is unauthorized and the consent given vitiated because the true purpose for the entry exceeded the limited authorization granted. Conversely, where the defendant enters with an innocent intent, his entry is authorized, and criminal actions thereafter engaged in by the defendant do not change the status of the entry." *Id.* at 253-54.

¶ 20 According to defendant, "the evidence shows that [defendant's] entry into the Clarks' home was authorized, as his original intent was the repayment of the debt he owed." Defendant posits that it was only after he entered the victims' home that he formed the intent to harm them. There is substantial evidence that defendant owed money to one or both of the victims and that the victims were eager, perhaps even desperate, to have the money repaid. However, the evidence that the debt was repaid is not nearly as clear as defendant would have us believe. The only direct evidence that the debt was repaid is defendant's statement to police, which was largely self-serving and part of an account that strains credulity as a whole. Defendant would have the jury believe that he had nothing to do with the murder of his friends, but also did nothing to alert authorities after innocently discovering the crimes. The jury was under no obligation to credit the exculpatory portions of defendant's implausible statement to police.

¶ 21 Defendant also asserts that there was evidence that Michael saw defendant parked near the house and invited him in. Again, however, the evidence in question is simply defendant's self-serving statement to police. Similarly unavailing is defendant's claim that he stayed at the victims' house for an "extended period of time, as evidenced by cell phone calls utilizing the towers around the house and lasting from 12:37 a.m. to 1:54 a.m." Defendant argues that "[t]his is certainly longer than it would have taken if [defendant] had intended to effectuate any planned criminality." The flaw in this argument is that the cell-phone-tower data shows only that defendant's phone was located in the general vicinity of the victims' home; it does not establish that he was in the home at any particular point. Indeed, the 12:37 a.m. call came from Christa's phone. If defendant was at Christa's house at that point, there would be no reason for her to call him.

¶ 22 Defendant also stresses A.B.'s testimony that there was money near Christa's body. According to defendant, the testimony is significant because of Michael's text message the preceding day stating, " 'We don't have any money to get home.' " Defendant contends that the presence of money near Christa's body shows that he paid Christa the money he owed. That is, perhaps, a permissible inference, but by no means the only reasonable inference to be drawn.

¶ 23 The evidence shows that defendant owed money to the victims and that, after they persistently and aggressively demanded repayment, he traveled to their home and killed them. The jurors were entitled to infer that defendant entered their home for precisely that purpose and that his entry, whether invited or not, was therefore unauthorized. The presence of an unknown amount of money of unknown origin does not give rise to a reasonable doubt as to defendant's intent.

¶ 24 We agree with defendant, however, as does the State, that because there is evidence of only a single unlawful entry, only one conviction of home invasion may stand. See *People v. Cole*, 172 Ill. 2d 85, 102 (1996).

¶ 25 For the foregoing reasons we vacate one conviction of home invasion. In all other respects the judgment of the circuit court of Winnebago County is affirmed. As part of our judgment, we grant the State's request that the defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2012); see also *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978)

¶ 26 Affirmed in part and vacated in part.