2015 IL App (4th) 130666-U

NO. 4-13-0666

FILED
May 27, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Vermilion County
DEMETRIUS GOLDEN,	)	No. 11CF686
Defendant-Appellant.	)	
	)	Honorable
	)	Nancy S. Fahey,
	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: The appellate court affirmed defendant's convictions, finding (1) the State's evidence proved him guilty beyond a reasonable doubt and (2) his posttrial counsel did not render ineffective assistance.

¶ 2 In July 2012, the trial court found defendant, Demetrius Golden, guilty of aggravated battery with a firearm and aggravated discharge of a firearm. In June 2013, the court sentenced him to prison.

¶ 3 On appeal, defendant argues (1) the State failed to prove him guilty beyond a reasonable doubt and (2) his case should be remanded for further proceedings based on posttrial counsel's alleged ineffectiveness. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In April 2012, the State charged defendant by second amended information with one count of aggravated battery with a firearm (count I) (720 ILCS 5/12-3.05(e)(1) (West 2010)),

alleging he knowingly discharged a firearm and caused injury to Zechariah Patton. The State also charged defendant with one count of aggravated discharge of a firearm (count II) (720 ILCS 5/24-1.2(a)(2) (West 2010)), alleging he knowingly discharged a firearm in the direction of a vehicle he knew or reasonably should have known to be occupied by a person. Defendant pleaded not guilty.

¶ 6 In July 2012, defendant's bench trial commenced. Zechariah Patton testified he had known defendant, known as "Li'l D," since 2001 or 2002. They had gone to school together and were friendly with each other. In late October or early November 2011, Patton attended a party with defendant. While there, a fight over a girl broke out between Patton's cousin and a man named Justin, also known as "Insane." Defendant hit Patton's cousin, and Patton hit defendant. Several days later, a female knocked on Patton's door and stated defendant wanted to fight him. Fights ensued between defendant and Patton's cousin and between Patton and "Insane." After a shot was fired, everyone left.

¶ 7 Late in the evening on November 21, 2011, Patton was sitting in a vehicle with Alvin Beasley and Tonja Montgomery. Patton stated Beasley, known as K.C., sat in the driver's seat, Patton was in the front passenger seat, and Montgomery was in the back. While the trio sat in the car, Beasley asked Patton, " 'Is that the person that you went into it with?' " Patton responded, "Yes, that's them." Patton saw four individuals, including defendant and "Insane." Defendant wore a hooded sweatshirt and his hair had dreadlocks. Patton saw a black gun, and two shots were fired. One shot busted out the car window and the other went through the door. Patton stated defendant fired as he was running. Patton was shot in the leg, and he said, "Li'l D hit me." Patton stated he never saw anyone else with a gun. Beasley then drove Patton to the hospital. The next day, Patton identified a mug shot of defendant and stated he was the shooter.

¶ 8 Patton testified to writing a jailhouse letter, known as a "kite," to defendant in 2012. Therein, Patton mentioned he had medical bills from the bullet remaining in his leg. He wanted defendant to pay restitution in exchange for Patton agreeing not to cooperate with the State. Patton testified he did not want to testify but did so "for [his] own safety" and the safety of his family.

¶ 9 Tonja Montgomery testified she was sitting in the car with Patton and Beasley when someone came up and said " 'Li'l D is standing by the bootleg,' " which was a house where items could be purchased at low prices. She heard "five or six" shots. She then heard Patton say to Beasley, " 'Li'l D just shot me, Cuz.' " Beasley drove Patton to the hospital. Sometime later, officers spoke with her about the shooting. Although she did not see the shooting, she picked out defendant from a photo array as being the man who Patton said had shot him.

¶ 10 On cross-examination, Montgomery testified Patton did not say " 'I think' Li'l D just shot me, Cuz." She acknowledged she may have told officers that Patton used the phrase "I think."

¶ 11 Danville police officer Ralph Dunham testified he responded to the hospital in reference to a gunshot victim being treated on November 21, 2011, at approximately 10:55 p.m. Dunham found Patton in the emergency room with blood on the inside of his left knee. Patton told him he had been shot by defendant. Patton stated he was sitting in the front passenger seat of a vehicle when defendant walked up and fired two shots, striking him once on the inside of his left knee. Patton described defendant as wearing a brown vest and a black hooded sweatshirt. Patton described the gun as a silver and black handgun.

¶ 12 Danville police officer Mike Bransford testified he met with Patton on November 22, 2011. Patton stated he was sitting in a parked vehicle when defendant fired two shots.

Patton also stated he had known defendant for several years.

¶ 13 Danville police officer Troy Hogren testified he met with Patton on November 22, 2011. Hogren showed him a picture of defendant, and Patton stated it was "Li'l D." Patton stated he had known defendant for 10 years. Hogren also met with Montgomery in December 2011. He showed her a six-person photo array, and Montgomery picked out the man she knew as "Li'l D." Hogren stated Montgomery was in the backseat of the vehicle when Patton was shot. She heard Patton say, " 'I think Li'l D shot me.' "

¶ 14 Danville police detective Bruce Stark testified he spoke with defendant in December 2011 at the Public Safety Building in reference to the shooting. Stark advised defendant of his rights and received a signed waiver. Thereafter, defendant stated he did not shoot Patton and did not know him. Defendant also stated he did not remember where he was or who he was with on the evening of November 21, 2011.

¶ 15 For the defense, Amanda Marlatt testified she and defendant were friends and spent nights together in November 2011. She believed she was at defendant's grandmother's house on the evening of November 21, 2011.

¶ 16 Defendant testified he had nothing to do with shooting Patton. At the time the shooting occurred, defendant stated he was at his grandmother's house. He remembered being interviewed by Detective Stark and told him he did not know anything about the shooting. He remembered saying something about being with a girl but not knowing who the girl was. Defendant stated he did not tell Stark about being with Marlatt because he was under the influence of drugs at the time of the interview and he did not trust Stark. Defendant testified he did not remember getting into a fight with Patton on a prior occasion. Defendant stated he received a letter from Patton while he was in jail.

¶ 17 On cross-examination, defendant testified he was under the influence of ecstasy and marijuana when he spoke with Stark on December 5, 2011. Defendant stated those drugs made him "feel high" and "paranoid." He told Stark he did not remember where he was on November 21, 2011, which was untrue.

¶ 18 Following closing arguments, the trial court found defendant guilty on both counts. In September 2012, defendant filed a *pro se* posttrial motion, claiming his trial counsel was ineffective. Thereafter, the trial court appointed new counsel. In January 2013, counsel filed an amended motion for a judgment of acquittal or a new trial. Therein, counsel argued, *inter alia*, that trial counsel was ineffective for not calling defendant's brother or mother in support of his alibi; for not impeaching Patton with his prior burglary conviction; and for not contacting Beasley, who would have said defendant was not the shooter. Counsel attached affidavits from defendant, his mother, Patton, and Stephen Lucas.

¶ 19 In May 2013, the trial court conducted a hearing on the posttrial motion. Stephen Lucas testified he was serving a prison sentence for armed robbery. He had a conversation with Patton in July 2012, while both were residing at the Public Safety Building. Patton stated he had been offered a deal to terminate his probation if he was willing to testify against defendant.

¶ 20 Teresa Galloway, defendant's mother, testified her son was living with her on November 21, 2011. On that date, defendant spent the evening at his grandmother's house down the street. She testified she was available to testify to her knowledge but she was not called as a witness.

¶ 21 Zechariah Patton testified defendant was not the shooter. He stated he only named defendant because the State offered him a deal to reduce his residential burglary charge to burglary and change his robbery charge to a misdemeanor. On cross-examination, Patton denied

defendant had threatened him with a shank to testify at the posttrial hearing.

¶ 22 Defendant testified he talked with his trial counsel, Robert McIntire, several times prior to trial. He stated he told counsel he was at his grandmother's house on November 21, 2011, and gave him the names of his mother, his grandmother, his brother, his uncle, his sister, and Amanda Marlatt. Counsel told him he was going to call them as witnesses. Prior to trial, defendant stated he received letters from Patton asking for money. Defendant denied threatening Patton with a shank.

¶ 23 Jacqueline Lacy, the Vermilion County public defender, testified her office represented Patton in his probation revocation case. They met with the prosecutor in July 2012 and no promises were made to Patton in exchange for his testimony against defendant.

¶ 24 Billie Hurt, an investigator with the Vermilion County sheriff's department, testified he met with Patton at the jail in January 2013. Patton stated he was approached in the jail by defendant, who displayed a shank and threatened him. Patton indicated he testified truthfully at trial and wrote the affidavit because he was mad at the State for not keeping its promise to give him probation.

¶ 25 Robert McIntire, defendant's trial counsel, testified he met with him two or three times prior to trial and spoke to him over the phone. McIntire looked into calling Beasley as a witness and spoke to his attorney. Beasley would have said defendant was present at the time of the shooting but Patton shot first. McIntire stated this testimony would have been inconsistent with defendant's claim that he was not present. Defendant never gave him his mother's name as an alibi witness. McIntire also stated he was unable to contact defendant's brother.

¶ 26 The trial court denied defendant's posttrial motion. In its docket entry, the court stated the witnesses presented by the defense at the hearing were not credible. The court found

the State's witnesses were credible.

¶ 27 In June 2013, the trial court sentenced defendant to 15 years in prison on count I and imposed a concurrent sentence of 10 years in prison on count II. In July 2013, defense counsel filed a motion to reduce the sentence. In August 2013, the court denied the motion. This appeal followed.

¶ 28 II. ANALYSIS

¶ 29 A. Sufficiency of the Evidence

¶ 30 Defendant argues the State failed to prove him guilty beyond a reasonable doubt. We disagree.

¶ 31 " 'When reviewing a challenge to the sufficiency of the evidence in a criminal case, the relevant inquiry is whether, when 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.' " *People v. Ngo*, 388 Ill. App. 3d 1048, 1052, 904 N.E.2d 98, 102 (2008) (quoting *People v. Singleton*, 367 Ill. App. 3d 182, 187, 854 N.E.2d 326, 331 (2006)). The trier of fact has the responsibility to determine the credibility of witnesses and the weight given to their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from the evidence. *People v. Jackson*, 232 Ill. 2d 246, 281, 903 N.E.2d 388, 406 (2009). "[A] reviewing court will not reverse a criminal conviction unless the evidence is so unreasonable, improbable[,] or unsatisfactory as to create a reasonable doubt of the defendant's guilt." *People v. Rowell*, 229 Ill. 2d 82, 98, 890 N.E.2d 487, 496-97 (2008).

¶ 32 The identification by a single witness can be sufficient to sustain a conviction, provided "the witness viewed the accused under circumstances permitting a positive identification." *People v. Lewis*, 165 Ill. 2d 305, 356, 651 N.E.2d 72, 96 (1995). However, an

identification will be found insufficient "if it is vague or doubtful." *People v. Slim*, 127 Ill. 2d 302, 307, 537 N.E.2d 317, 319 (1989). In evaluating identification testimony, courts consider the following circumstances:

> "(1) the opportunity the victim had to view the criminal at the time of the crime; (2) the witness' degree of attention; (3) the accuracy of the witness' prior description of the criminal; (4) the level of certainty demonstrated by the victim at the identification confrontation; and (5) the length of time between the crime and the identification confrontation." *Slim*, 127 Ill. 2d at 308, 537 N.E.2d at 319.

¶ 33 In the case *sub judice*, defendant argues Patton had a limited opportunity to view the shooter, his degree of attention was limited, and he only gave a general description of the shooter as a man with dreadlocks wearing a hoodie. At trial, Patton testified he knew defendant, known as "Li'l D," and the two had a confrontation several weeks before the shooting. Late in the evening on November 21, 2011, Patton sat in the front passenger seat of a vehicle driven by Beasley. Montgomery was lying down in the backseat. Patton saw four individuals, including defendant, and responded in the affirmative when Beasley asked if that was the person "you went into it with." Patton said defendant fired two shots from a black gun. After being hit in the leg, Patton said, "Li'l D hit me." Montgomery testified she heard five or six shots but did not see the shooting. She then heard Patton say, " 'Li'l D just shot me, Cuz.' "

¶ 34 At the hospital, Patton told Officer Dunham that he had been shot by defendant. He described defendant as wearing a brown vest and a black hooded sweatshirt. He also described the handgun as black and silver. The next day, Officer Bransford spoke with Patton,

who stated defendant fired two shots. Patton identified a picture of defendant to Officer Hogren, and Montgomery picked defendant out of a photo array and identified him as "Li'l D."

¶ 35 The evidence in this case indicates Patton had the opportunity to view defendant, someone he had known for years. Further, Patton's degree of attention was good enough to see defendant, the gun, and defendant's clothing. Also, upon being shot, Patton said, "Li'l D shot me," and identified defendant as the shooter shortly after the shooting, when he was being treated at the hospital. Thus, Patton's testimony offered sufficient evidence that defendant was the shooter.

¶ 36 Defendant also argues Patton's testimony was unreliable, considering his jailhouse letter to defendant asking for money for medical bills in exchange for not testifying against defendant. However, Patton explained he was concerned about his medical bills and for his safety and that of his family. He reiterated the person who shot him was defendant.

¶ 37 We note the trial court was aware of Patton's letter, which called into question his credibility. The court was also aware Montgomery did not see the shooter and her testimony was inconsistent at times with that of Patton's testimony. However, it is the responsibility of the trier of fact to determine the credibility of witnesses and the weight to be given to their testimony. The court here heard the State's witnesses, including the eyewitness, as well as defendant's testimony. Any inconsistencies in the number of shots or whether the car was parked or moving were matters for the trier of fact to resolve. Based on a review of the testimony, a rational trier of fact could have found the elements of the crimes charged beyond a reasonable doubt. As the evidence was not so unreasonable, improbable, or unsatisfactory as to create a reasonable doubt of defendant's guilt, his convictions will be sustained.

¶ 38 B. Assistance of Posttrial Counsel

¶ 39 Defendant argues his cause should be remanded for further proceedings under *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984), claiming posttrial counsel appointed to represent him on his claims of ineffective assistance of trial counsel failed to question trial counsel about why he never spoke to defendant's grandmother to confirm his alibi once counsel was told she was an invalid and could not leave the house.

¶ 40 When confronted with a defendant's posttrial allegations of ineffective assistance of counsel, our supreme court set out the procedural steps to follow in *People v. Moore*, 207 Ill. 2d 68, 797 N.E.2d 631 (2003) (noting the rule that had developed since *Krankel*).

> "New counsel is not automatically required in every case in which a defendant presents a *pro se* posttrial motion alleging ineffective assistance of counsel. Rather, when a defendant presents a *pro se* posttrial claim of ineffective assistance of counsel, the trial court should first examine the factual basis of the defendant's claim. If the trial court determines that the claim lacks merit or pertains only to matters of trial strategy, then the court need not appoint new counsel and may deny the *pro se* motion. However, if the allegations show possible neglect of the case, new counsel should be appointed." *Moore*, 207 Ill. 2d at 77-78, 797 N.E.2d at 637.

If new counsel is appointed, he or she should "undertake an independent evaluation of the defendant's claim and present the matter to the court from a detached, yet adversarial, position." *People v. Jackson*, 131 Ill. App. 3d 128, 139, 474 N.E.2d 466, 474 (1985). After a hearing, if the trial court finds the defendant did not receive the effective assistance of counsel, a new trial shall be ordered. *Krankel*, 102 Ill. 2d at 189, 464 N.E.2d at 1049.

¶ 41 In this case, defendant made posttrial claims that his trial counsel was ineffective for failing to call witnesses at trial. The trial court appointed new counsel, who filed a motion for judgment of acquittal or a new trial. The court then conducted a hearing on defendant's claims. On appeal, defendant argues his posttrial counsel was ineffective for failing to ask trial counsel, Robert McIntire, about why he never spoke to defendant's grandmother to confirm his alibi once McIntire was told she was an invalid and could not leave the house.

¶ 42 Argument of a posttrial motion has been held to be a critical stage of a criminal proceeding in which a defendant has a right to legal representation. *People v. Abdullah*, 336 Ill. App. 3d 940, 950, 785 N.E.2d 863, 872 (2002). A defendant's claim of ineffective assistance of counsel is analyzed under the two-pronged test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Cathey*, 2012 IL 111746, ¶ 23, 965 N.E.2d 1109. To prevail on such a claim, "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, 219-20, 808 N.E.2d 939, 953 (2004) (citing *Strickland*, 466 U.S. at 688). 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).

¶ 43 At the posttrial hearing, defendant's mother, Teresa Galloway, testified she was not called as a witness at defendant's trial, but if she had been, she would have been able to

testify that her son was at the house of his grandmother, Willa Mae Washington, at the time of the offenses. Galloway testified she was at Washington's home several times throughout the evening of November 21, 2011, and defendant was there throughout the evening.

¶ 44 McIntire testified he had conversations with defendant and he understood defendant's alibi to be that defendant was riding around with Marlatt at the time of the offenses. They also discussed that after riding around, defendant and Marlatt arrived at Washington's house at some point in the evening. However, witnesses were not able to remember with specificity when the two arrived at Washington's house. McIntire stated his concerns about calling Washington, believing she was physically unable to appear and she may have had a warrant out for her arrest. McIntire explained that in formulating defendant's alibi, he considered the police reports wherein it was reported that defendant had indicated to Detective Stark, at the time of his arrest, that he was riding around Danville with his girlfriend when the shooting occurred. Thus, the alibi defense McIntire filed involving Marlatt and driving around Danville was consistent with the statement defendant gave to the police. McIntire also testified he did not speak with Washington.

¶ 45 Here, defendant's claim that posttrial counsel failed to further investigate McIntire's reasons for not speaking with Washington fails to establish ineffective assistance of counsel under *Strickland*. McIntire clearly explained his reasons for not speaking with Washington. Thus, the trial court had to determine whether McIntire's conduct constituted ineffective assistance of trial counsel. However, defendant has failed to satisfy the prejudice prong of the *Strickland* standard. The evidence in this case included statements of the victim identifying defendant as the shooter, which were consistent with the statements Patton made at the scene and to police immediately after the shooting. The court was in the best position to

weigh the evidence and determine the credibility of the witnesses, and it is clear the court was not persuaded McIntire was ineffective for not contacting Washington. Thus, as defendant has not established posttrial counsel was ineffective for not inquiring further into why McIntire chose not to speak with Washington, the cause need not be remanded for a new *Krankel* hearing.

¶ 46 III. CONCLUSION

¶ 47 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.

¶ 48 Affirmed.