

SIXTH DIVISION
March 31, 2016

No. 1-13-3297

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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.)	10 CR 14482
)	
LEWIS BELL,)	Honorable
)	Kenneth J. Wadas,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Justice Hoffman and Justice Delort concurred in the judgment.

ORDER

HELD: Defense counsel's decision to call certain defense witness amounted to ineffective assistance of trial counsel requiring reversal of defendant's conviction for first-degree murder.

¶ 1 On August 13, 2010, defendant Lewis Bell was charged by indictment with first-degree murder in the gang-related shooting death of Spurgeon Jackson. The case was tried before a jury. The defense theory at trial was that defendant had been misidentified as the shooter and that the actual shooter was a woman named Yadonna Gailey who was riding in the car with defendant and the victim when the in-car shooting occurred. In support of this theory, defense counsel pointed to the fact that a gunshot residue test performed on Gailey's hands revealed her right hand tested positive for the presence of gunshot residue while her left hand tested negative, even though counsel argued that her left hand would have been closer to the firearm if defendant had discharged it as Gailey claimed. Counsel also highlighted the differences between the physical description of the defendant provided by an alleged witness to the shooting and the defendant's physical appearance and characteristics at the time of his arrest.

¶ 2 The jury rejected the defense theory and found defendant guilty of first-degree murder. Defendant was sentenced to 80 years' imprisonment, which sentence included a 35-year enhancement for personally discharging a firearm that proximately caused the victim's death.

¶ 3 Defendant raises a number of issues on appeal, one of which we find dispositive. We agree with defendant that his trial counsel was ineffective for calling a defense witness who identified defendant as the shooter and whose trial testimony contradicted the defense theory. Therefore, defendant is entitled to a new trial.

¶ 4 **BACKGROUND**

¶ 5 The following facts were borne out by the testimony and evidence presented at trial. On May 26, 2002, the day of the shooting, Yadonna Gailey went to a picnic and birthday party held in memory of Randell Island, who was deceased. The party was held at a residence near 120th and State Street in Chicago, Illinois. Among those in attendance were defendant and the victim

Spurgeon Jackson. According to Gailey, all of the men at the party were members of the Four Corner Hustlers street gang. Gailey testified that defendant's hair was braided and he wore a red baseball cap and white t-shirt bearing a photographic image of Randell Island. Gailey knew defendant through Island, who had been her boyfriend. Gailey testified she had been "intimate" with defendant. Eventually, the party group moved to a second location at 121st and LaSalle.

¶ 6 At some point, after it turned dark outside, defendant asked Gailey to take a drive with him in his girlfriend's car. He gave Gailey the keys to the car, and she, defendant, and Spurgeon Jackson left the party and drove off together. Jackson sat in the front passenger seat and defendant sat in the back. Gailey thought they were taking Jackson to another location. While they were driving, Jackson asked Gailey to stop at a neighborhood corner store. Jackson exited the vehicle and went into the store while Gailey and defendant remained in the car.

¶ 7 According to Gailey, defendant told her, "I'm about to whack this nigga." Gailey believed defendant intended to kill Jackson. Gailey looked back at defendant and saw a big gun next to him on the car seat. Gailey told defendant that if he loved her to please not to do it with her in the car. Defendant assured Gailey that she would be alright and told her he had to kill Jackson because he was a disgrace to the gang. When Jackson returned to the car, Gailey was so nervous that her leg began to shake and the car stopped. Jackson offered to drive and walked around to the drivers' side of the car. Gailey heard defendant say, "no, no, no." Gailey switched seats with Jackson and slid over to the front passenger seat, believing that if Jackson was driving the car, defendant would not shoot him.

¶ 8 Jackson drove off and eventually turned down a dark street. Gailey glanced to her left and saw defendant put the gun to the back of Jackson's head and then saw a flash of light and heard a loud noise. The car veered toward some trees and crashed into a house. Gailey testified

that the next thing she remembered was being rolled into the hospital emergency room. Gailey was kept overnight in the emergency room and received treatment for a slight concussion, neck sprain, lacerations to her knee, and bruises to her arms.

¶ 9 Takita Island and Monica Williamson were at the party with Gailey and defendant. They testified that defendant's hair was braided and he wore jeans, a red baseball cap, and a white t-shirt bearing a photographic image of Takita's brother Randell Island. Takita Island had known Gailey for about 10 years and had known defendant for about 15 years. Monica Williamson had known them for about three years. At some point, Gailey, defendant, and Spurgeon Jackson left the party together. Approximately 45 minutes to an hour later, defendant returned to the party alone wearing a different shirt and his hair was no longer in braids and he was not wearing the red baseball cap.

¶ 10 According to Takita Island and Monica Williamson, when defendant returned to the party he was acting nervous. Takita Island asked defendant where Gailey was, and at first, he would not tell her. After a while he told her that Gailey had been kidnapped by Spurgeon Jackson and he would tell her more about it later. Monica Williamson separately asked defendant where Gailey was and he responded that she was okay.

¶ 11 Detective Regina Scott and her partner responded to the scene of the shooting. Detective Scott observed a 1998 Nissan Maxima which had crashed into the side of a residence. The vehicle's front windshield and side window were cracked and the sunroof was open. There was blood on the windshield and on the front dashboard and there was a large pool of blood on the front passenger seat. The detective also observed a 9 millimeter shell casing and red baseball cap on the floorboard behind the front passenger seat.

¶ 12 Forensic investigator Carl Basic processed the crime scene and collected physical evidence. He collected a fired cartridge case and a red baseball cap from the vehicle's rear floorboard. He also collected deoxyribonucleic acid (DNA) samples from the baseball cap's head band. Fingerprints were lifted from inside and outside the car.

¶ 13 At the hospital, police performed a gunshot residue test on Gailey's hands. Subsequent test results revealed the back of her right hand tested positive for the presence of gunshot residue particles while her left hand tested negative. The test results indicated that Gailey either discharged a firearm, was in contact with an item having gunshot residue on it, or her right hand was in close proximity to a firearm when it was discharged. The trace-evidence expert explained that clouds of smoke are emitted from a firearm when it is discharged and if the smoke-cloud comes into contact with a person's hands, particles of gunshot residue can settle on their hands, especially in an enclosed environment like a motor vehicle; "[i]t would simply be a matter of where the cloud of smoke has the ability to travel to."

¶ 14 A post-mortem examination of the victim's body revealed a single gunshot wound to the right back of the head, 4.5 inches from the top and 1.5 inches to right of the midline. The wound course was from back to front and right to left. There was a crescent shaped abrasion and evidence of close range firing. The manner of death was ruled a homicide.

¶ 15 The day after the shooting, Detective Scott interviewed Gailey who identified defendant in a photo array. Gailey told detectives she was driving the car at the time of the shooting and that Spurgeon Jackson was the only passenger in the vehicle. Gailey claimed she heard a gunshot, but did not know where it came from. At trial, Gailey testified that she initially lied to the detectives about the shooting because she was afraid of defendant.

¶ 16 On May 28, 2002, Monica Williamson met with the police and told them what she had observed at the party. She also identified defendant in a photo array. Takita Island spoke with the police on May 30, 2002, and also identified defendant in a photo array.

¶ 17 Police officers who had responded to the crime scene prepared a list of possible witnesses to the shooting. This list included a man named LeRoy Chaisson, who was subsequently called to testify for the defense. Chaisson testified that on May 26, 2002, at about 10:25 p.m., he was standing on the corner of 104th and Sangamon smoking a cigarette and talking to a friend when he saw a man running towards a car that was slowly traveling down the street. The man was wearing a white t-shirt, blue jeans and his hair was in braids. The following colloquy occurred during defense counsel's direct examination of Chaisson:

"[DEFENSE COUNSEL]: What did the guy do?

[CHAISSON]: the guy with the white shirt ran towards like on the sidewalk from the car. The car is on the street, ran down, made a U turn, and jumped on top of the car.

[DEFENSE COUNSEL]: Okay.

[CHAISSON]: And shot in the car.

[DEFENSE COUNSEL]: Okay. How many times did the man shoot?

[CHAISSON]: I only heard one shot.

[DEFENSE COUNSEL]: What did the man do after the man shot into the car?

[CHAISSON]: Well, the car hit into the house, and the man jumped off the car and ran east-I mean, west. I'm sorry west.

[DEFENSE COUNSEL]: Where did he run to, if you remember?

[CHAISSON]: I'm figuring he hit that first alley that he came to."

¶ 18 Chaisson testified that he went over to the car and looked inside. He saw a young woman in the front passenger seat who was screaming and hollering. The driver of the car was slumped over with his head toward the passenger seat and Chaisson presumed he was dead. When the police arrived on the scene, Chaisson gave them a physical description of the shooter as an African-American male with a dark complexion between the ages of 18 and 25 years old, standing approximately five feet four inches tall, and weighing between 120 and 130 pounds.

¶ 19 On June 5, 2002, Chaisson met with detectives and identified defendant in a photo array. At trial, Chaisson made an in-court identification of defendant as the shooter.

¶ 20 Gailey testified that after subsequent conversations with detectives on June 1 and 18 of 2002, during which she retracted her original version of the shooting and told them defendant was the shooter, she hired an attorney and refused to speak to the police any further after she received an anonymous telephone call answered by her mother, threatening her life. Gailey testified that she refused to be interviewed about the shooting until she met with the police and asked for their protection.¹

¶ 21 On January 7, 2009, Monica Williamson and LeRoy Chaisson testified before the grand jury. In 2009, Detective Timothy Murphy from the cold-case homicide unit obtained a search warrant to take fingerprints and a buccal swab from defendant.

¶ 22 The search warrant was eventually executed in January 2010, after which defendant was released. In April 2010, the Illinois State Police notified Detective Murphy that the DNA profile from defendant's buccal swab matched DNA found on the red baseball cap recovered at the

¹ In chambers, outside the presence and hearing of the jury, the trial court sustained defense counsel's objection to the admission of evidence that after Gailey testified before the grand jury, she was relocated. The jury never heard this evidence.

scene of the shooting. The detective was also informed that fingerprints lifted from inside the car were positively identified as being those of defendant.

¶ 23 On July 7, 2010, Gailey testified before the grand jury. Shortly after her grand jury testimony, detectives obtained an arrest warrant for defendant. Defendant was arrested on July 14, 2010.

¶ 24 Defendant testified on his own behalf at trial. His testimony differed from the testimonies of the State's witnesses in a number of respects. Defendant claimed he was never a member of the Four Corner Hustlers street gang and was not aware if any of the other men attending the party on the date of the shooting were gang members. Defendant testified that when he attended the party, his hair was parted down the middle and was braided into two long pony tails. He asserted that his hair was not braided as depicted in two photographs of him (People's 9B and Defense Exhibit No. 2). Defendant claimed he did not bring a gun to the party and that there was no gun in his girlfriend's car. Defendant denied ever having a conversation with Gailey about the victim stealing from the Four Corner Hustlers street gang.

¶ 25 Defendant acknowledged he left the party with Gailey and Spurgeon Jackson and that they all drove off together in his girlfriend's car. Defendant also acknowledged that he was sitting in the back seat, Jackson was driving, and Gailey was sitting in the front passenger seat. Defendant testified that they drove to a park where some people were having a big picnic. Defendant claimed he exited the car and mingled with some people at the picnic while Gailey and Jackson remained in the car. Defendant acknowledged he was wearing a red baseball cap, but claimed he left the cap in the car because it was hot outside.

¶ 26 Defendant testified that Gailey and Jackson eventually drove off together leaving him behind at the picnic. Defendant testified that he never handled a gun on the day of the shooting,

he was not in the car when Jackson was shot, and he never told Gailey he was about to "whack a nigger."

¶ 27 Defendant claimed that after he left the picnic in the park, he walked the seven or eight blocks back to the party that was being held for Randell Island. He denied changing his hair style or telling anyone that Gailey had been kidnapped. Defendant claimed he did not learn that Jackson had been shot until a week after the shooting. Defendant testified that between the time of the shooting and his subsequent arrest, he had seen Gailey on several occasions and had never threatened her.

¶ 28 Following closing arguments, the jury found defendant guilty of first-degree murder and also found that he personally discharged a firearm that proximately caused the victim's death. The trial court denied defendant's motion for a new trial.

¶ 29 Prior to sentencing, defendant retained new counsel who filed a second motion for a new trial on his behalf. The trial court denied that motion.

¶ 30 The trial court conducted a sentencing hearing and afterwards sentenced defendant to 80 years' imprisonment; 45 years for first-degree murder and a consecutive 35 years for personally discharging the firearm that proximately caused the death during the commission of the murder. The court denied defendant's motion to reconsider sentence. This appeal followed.

¶ 31 ANALYSIS

¶ 32 As mentioned, defendant raises a number of issues on appeal. However, because we find his claim of ineffective assistance of trial counsel involving defense-witness Leroy Chaisson to be dispositive, we do not address the remaining issues.

¶ 33 Both the United States and Illinois Constitutions guarantee a criminal defendant the assistance of counsel. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § 8. This requires

not only that a person accused of a crime have the assistance of counsel for his or her defense, but also that such assistance be "effective." *United States v. Cronin*, 466 U.S. 648, 655-56 (1984).

¶ 34 The test for determining an ineffective assistance of counsel claim was established in *Strickland v. Washington*, 466 U.S. 668, 691-98 (1984), and adopted by our supreme court in *People v. Albanese*, 104 Ill. 2d 504, 526-27 (1984). The test is composed of two prongs: deficiency and prejudice.

¶ 35 A defendant must satisfy both prongs of the *Strickland* test in order to prevail on a claim of ineffective assistance of counsel. However, it is well established that if the claim can be disposed of on the ground that defendant did not suffer prejudice from the alleged ineffective performance, then the court need not decide whether counsel's performance was constitutionally deficient. *Strickland*, 466 U.S. at 697; *People v. Griffin*, 178 Ill. 2d 65, 74 (1997); *People v. Flores*, 153 Ill. 2d 264, 283-84 (1992). In this case, defendant has demonstrated both that his trial counsel's performance was deficient and that he was prejudiced by the deficient performance.

¶ 36 Defense counsel's decision to call Leroy Chaisson as a defense witness was deficient and objectively unreasonable for several reasons. Our review of the record reveals that neither defense counsel nor anyone from his office interviewed Chaisson to determine what his testimony would be in advance of trial. "An attorney who fails to conduct a reasonable investigation and interview witnesses cannot be found to have made decisions based on valid trial strategy." *People v. Cooper*, 2013 IL App (1st) 113030, ¶ 57.

¶ 37 In addition, Chaisson's testimony contradicted defense counsel's theory of the case. In his opening statement, defense counsel told the jury that the actual shooter was not defendant but

Yadonna Gailey who was riding in the car with defendant and the victim when the in-car shooting occurred. In support of this theory, defense counsel pointed to the fact that a gunshot residue test performed on Gailey's hands revealed her right hand tested positive for the presence of gunshot residue while her left hand tested negative, even though counsel argued that her left hand would have been closer to the firearm if defendant had discharged it as Gailey claimed.

¶ 38 More importantly, defendant has demonstrated that he was prejudiced by his trial counsel's deficient performance. The State's case against defendant was not as strong as the State would have us believe. Standing alone, the fact that defendant's fingerprints were found on the inside and outside of the vehicle would not be sufficient identification to support a conviction since the evidence revealed he had access to the vehicle which was owned by his girlfriend. In regard to the red baseball cap found inside the vehicle after the shooting, defendant explained he left the cap in the car when he went to the picnic because it was hot outside.

¶ 39 Other than Yadonna Gailey's testimony, the strongest identification evidence against defendant came from Chaisson. The State maintains that defense counsel strategically presented Chaisson's testimony in an attempt to create reasonable doubt as to Gailey's version of how the shooting occurred. The State's argument is unpersuasive because Chaisson's direct testimony had the primary effect of identifying defendant as the shooter. Moreover, on cross-examination by the State, Chaisson acknowledged he met with detectives and identified defendant in a photo array. Chaisson also made an in-court identification of defendant as the shooter.

¶ 40 In light of the facts that Chaisson's testimony implicated defendant as the shooter, bolstered the State's case against defendant, and explicitly contradicted defense counsel's theory of the case, we can conceive of no reasonable strategic basis for calling Chaisson as a defense witness. Therefore, we find that defendant has demonstrated that his counsel's performance was

deficient and that this deficiency prejudiced his defense sufficient to undermine our confidence in the jury's verdict. Accordingly, we reverse the conviction and remand for a new trial.

¶ 41 Reversed and remanded.