2016 IL App (1st) 140375-U

FOURTH DIVISION
March 3, 2016

No. 1-14-0375

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 CR 10614
	)	
OSCAR TURNER,	)	Honorable
	)	Thomas M. Davy,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE ELLIS delivered the judgment of the court.
Justices Howse and Cobbs concurred in the judgment.

O R D E R

¶ 1 *Held*: Defendant's conviction affirmed where defendant could not show that his trial attorney's failure to file a motion to suppress his statement prejudiced him.

¶ 2 Following a bench trial, the trial court found defendant Oscar Turner guilty of being an armed habitual criminal and sentenced him to 10 years in prison. On appeal, defendant contends that his trial counsel was ineffective for failing to file a motion to suppress his statement to a police officer that he owned the car in which a firearm was found. Because we find that no prejudice resulted from the failure to file that motion, we affirm.

¶ 3 At trial, the evidence showed that, around 9 p.m. on May 28, 2012, Officers Rubald and Harris of the Chicago police department responded to a radio call of a man with a gun on the 8200 block of South Loomis Boulevard. Both officers were in plain clothes and drove to the scene in an unmarked police vehicle. As they arrived at the scene, Rubald observed defendant "next" to a black Lexus with the passenger door open. Both Rubald and Harris saw defendant close the door. Rubald was 10 feet away from defendant and did not see any other individuals in or next to the car, but he also never saw defendant inside the car. Rubald and Harris approached defendant and told him they were police officers, and defendant ran away. Rubald chased after defendant but eventually lost sight of him.

¶ 4 Meanwhile, Harris approached the empty car and observed a "large firearm" on the passenger seat. She "believe[d]" the car was running but could not remember what happened to the car keys. She also did not remember finding any identification of ownership in the car. She admitted to handling the firearm without gloves.

¶ 5 Shortly after Rubald lost sight of defendant, he received a call that defendant was hiding in a house on the 8200 block of South Bishop Street. Rubald met Sergeant Schulz at the house, and Schulz received consent from the woman who lived in the house to search it. Rubald eventually found defendant on the second floor, in a "crawl space." Rubald placed defendant into custody, searched him, and found only cash. Before defendant was transported to the police station, Harris drove to the house. She opened the trunk of the unmarked police vehicle and showed Rubald an assault rifle containing an unloaded "magazine," which she recovered from the Lexus. The firearm was "not preserved for [finger]prints" because multiple officers, including Rubald and Harris, handled it without gloves.

¶ 6 Rubald also stated that at some point earlier in the day, he had ticketed a black Lexus for parking in front of a fire hydrant on South Bishop Street. Because the car had temporary Indiana

license plates, he could not ascertain the car's owner. Instead, he simply issued the ticket using the car's vehicle identification number. In the evening, Rubald "had contact" with defendant's mother and came to realize that the Lexus he had ticketed had been parked in front of her house.

¶ 7 At the police station, Rubald processed defendant by filling out an arrest report. In doing so, Rubald asked defendant where he lived, his date of birth, and his height and weight. Rubald then asked defendant about the car. In response to the question about the car, defendant told Rubald that he had just purchased it. Rubald admitted he did not put this statement in a police report, but he thought his vehicle impound report included the statement. The vehicle impound report indicated that defendant owned the car but did not specify that defendant admitted owning the car. Another police report also indicated defendant owned the car.

¶ 8 Schulz also spoke with defendant at the police station. After Schulz gave defendant *Miranda* warnings, defendant admitted that he "got that gun from [his] boy who asked [him] to put it up." Defendant was on South Loomis Boulevard waiting for his friend, but "he never showed up." Schulz acknowledged he did not reduce defendant's oral statement into a written version or record it. The statement was included in a general case report, although Schulz did not author it.

¶ 9 The State introduced into evidence two certified copies of prior convictions of defendant to support the charges against him, which included delivery of a controlled substance and aggravated robbery. See 720 ILCS 5/24-1.7(a) (West 2012) (conviction for armed habitual criminal requires proof of two or more qualifying offenses). Additionally, the State introduced a document from the Illinois State Police stating defendant did not have a firearm owner's identification card. The State rested, and defendant moved for a directed finding, but the trial court denied the motion.

¶ 10 Defendant's mother, Cathy Lipscomb, testified that she had never seen Rubald before and was unaware of any ticket her son received on the day in question. She denied that he drove a black Lexus that day.

¶ 11 Defendant testified that on the night in question, he had just left Foster Park on West 83rd Street and South Loomis Boulevard after drinking with some friends. While walking to another friend's house on the 8200 block of South Loomis Boulevard, he observed a car with a "for sale" sign in the passenger window. Defendant admired the car because of its "black 22-inch rims" and pulled out his cell phone to record the seller's phone number. Suddenly, he heard a "popping sound," but because it was Memorial Day, he was unsure if it was a gunshot or fireworks. Then an unmarked car pulled up near him and stopped. Because defendant was scared, he ran away and did not look back. He also said that he ran because of unpaid traffic tickets and two outstanding warrants, but that he had no idea if the vehicle was a police car. Defendant ended up at his friend Darius Folds's house, where the police eventually found him. Defendant testified that before the officers arrested him, they beat him. He denied that the car he had been admiring or the firearm in it belonged to him, or that he made a statement to an officer admitting he brought the gun to the area.

¶ 12 The parties stipulated that forensic testing revealed no usable fingerprints.

¶ 13 In rebuttal, the State admitted, for impeachment purposes only, a certified copy of a previous conviction of defendant's for felony theft, in which he pled guilty. The State also recalled Rubald and Schulz who denied defendant's allegations that they beat him.

¶ 14 After argument, the trial court found defendant guilty. The court recounted the various evidence from the trial, but highlighted that the verdict "hinge[d], of course, on the admission" to Schulz. The court noted that ideally, statements made by defendants to police officers would be recorded. While the statement to Schulz was not, the court found Schulz's testimony "credible."

The court observed that it did not matter who owned the Lexus because defendant's statement connected him to "possession of that gun." The court denied defendant's motion for a new trial and subsequently sentenced him on only the armed habitual criminal charge to 10 years in prison. This appeal followed.

¶ 15 On appeal, defendant contends he received ineffective assistance of counsel because his trial attorney failed to file a motion to suppress his statement to Rubald admitting ownership of the Lexus, which he argues was made in violation of his *Miranda* rights.

¶ 16 We evaluate claims of ineffective assistance of counsel under the two-prong approach set forth in *Strickland v. Washington,* 466 U.S. 668 (1984). See *People v. Givens,* 237 Ill. 2d 311, 330-31 (2010). Under *Strickland,* the defendant must show that his counsel was deficient and the deficiency prejudiced him. *Id.* at 331. The defendant bears the burden of demonstrating ineffectiveness. *People v. Valladares,* 2013 IL App (1st) 112010, ¶ 52. Failure to establish either prong precludes a finding of ineffective assistance of counsel. *People v. Henderson*, 2013 IL 114040, ¶ 11). A court of review may consider the prejudice prong of the test first and, if it finds prejudice lacking, may affirm on that basis alone, without considering the deficient-performance prong of the test. *Givens*, 237 Ill. 2d at 331. To show prejudice, the defendant must show that a reasonable probability exists that the outcome of his trial would have been different had the evidence been suppressed. *Henderson*, 2013 IL 114040, ¶ 15.

¶ 17 In this case, defendant cannot demonstrate that he suffered prejudice from counsel's failure to file a motion to suppress his statement to Rubald. Critically, after Sergeant Schulz gave defendant *Miranda* warnings, defendant admitted to receiving the firearm from a friend—a statement whose validity defendant does not challenge on appeal. Moreover, the trial court placed significant weight on the statement to Schulz, saying that the case "hinge[d]" on it.

¶ 18 Beyond defendant's admission to Schulz, there was further evidence of defendant's guilt. When Rubald and Harris approached defendant on the night in question, both observed him next to a Lexus and saw defendant close the door. Although Rubald, who was 10 feet away from defendant, did not see defendant in the car, he observed no one else near the car. As the officers approached defendant, defendant ran, and Rubald eventually found him hiding in the "crawl space" of a house. Defendant's proximity to the firearm, coupled with his flight, both supported the notion that the gun was his. See *People v. Davis*, 50 Ill. App. 3d 163, 168 (1977) ("[T]he general proximity of a person to an article of contraband may be logically probative of that person being in possession of the article ***."); *People v. Bolden*, 53 Ill. App. 3d 848, 854 (1977) (flight from police is evidence of defendant's guilty knowledge). Taken as a whole, the evidence that defendant possessed the gun was strong, even absent his statement to Rubald. See *People v. Ross*, 407 Ill. App. 3d 931, 935 (2011) (to prove armed habitual criminal, State must prove defendant had knowledge of weapon and "exercised immediate and exclusive control over the area when the weapon was found").

¶ 19 Because defendant cannot demonstrate a reasonable probability that the outcome of defendant's trial would have been different had his statement to Rubald been suppressed, we need not determine whether defendant's statement to Rubald would have been suppressed, had a suppression motion been filed. See *Henderson*, 2013 IL 114040, ¶ 15; *Givens*, 237 Ill. 2d at 331. We affirm the judgment of the circuit court of Cook County.

¶ 20 Affirmed.