

No. 1-14-1669

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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. 10 CR 6381
)	
MAURICE JACKSON,)	Honorable
)	Stanley J. Sacks,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hoffman and Hall concurred in the judgment.

ORDER

¶ 1 *Held:* We affirmed defendant's conviction of first degree murder, finding no ineffective assistance of trial counsel.

¶ 2 A jury convicted defendant, Maurice Jackson, of first degree murder and the trial court sentenced him to 60 years' imprisonment. On appeal, defendant contends his trial counsel provided ineffective assistance. We affirm.

¶ 3 On November 8, 2009, Demetrius Madden was shot and killed while sitting in a vehicle on the 4300 block of South Evans Avenue in Chicago. The State charged defendant with the first degree murder of Mr. Madden in connection with this shooting. Prior to trial, defendant filed a motion *in limine* to admit evidence of a prior shooting committed by Mr. Madden on September 18, 2009. Defendant alleged that on September 18, 2009, a grey Chevy Impala drove

No. 1-14-1669

to 4315 S. Evans Avenue in Chicago. Mr. Madden, one of the persons in the vehicle, fired multiple gunshots that struck Pierre Clanton and Raymond Jones, who were standing on the block. Defendant alleged that when he later shot Mr. Madden on November 8, 2009, he was "aware of" Mr. Madden's prior involvement in the September 18, 2009, shooting and that this awareness established the reasonableness of his decision to shoot in the direction of Mr. Madden's vehicle and helped him form the subjective belief that he was acting in self-defense.

¶ 4 Defendant also filed a second motion *in limine* requesting the admission of evidence of certain prior acts (other than the September 18, 2009, shooting) committed by Mr. Madden pursuant to *People v. Lynch*, 104 Ill. 2d 194 (1984).

¶ 5 With respect to the first motion, the trial court ruled that, if defendant produced evidence of self-defense at trial, he would be allowed to testify to the September 18, 2009, shooting and provide brief, corroborative testimony from officers who responded to that shooting. With respect to the second motion, the trial court ruled that if defendant produced evidence of self-defense at trial, he could bring out evidence of certain other bad acts committed by Mr. Madden as long as they were not over 10 years old.

¶ 6 At trial, Kimberly Peppers testified that in November 2009 she liked "hanging out" with Samantha Patterson and with defendant at 43rd Street and Evans Avenue. Ms. Patterson was pregnant with defendant's child.

¶ 7 At about 6 p.m. on November 8, 2009, Ms. Peppers entered a van with defendant and they picked up a young woman named Shea and then went to 43rd Street and Evans Avenue. Ms. Peppers left the van and went across the street to where Ms. Patterson was sitting on the porch outside her house. Meanwhile defendant and another person, Big Moe, began talking to some other females.

¶ 8 Ms. Peppers told Ms. Patterson that Shea wanted to fight her. Ms. Patterson began yelling at defendant, who was across the street. Defendant left for a minute, then came back, and he and Big Moe began walking down the street in the direction of 43rd Street and Cottage Grove Avenue. Defendant was holding a gun behind his back and Ms. Peppers heard him say: "what up?" She also heard him say at some point: "I don't give a f***. I don't give a f*** about nothing." Then defendant fired his gun at a white vehicle at 43rd Street and Cottage Grove Avenue. There was one person sitting in the driver's seat of the white vehicle, whom Ms. Peppers had never seen before; that person did not have a weapon in his hand. No one other than defendant had a gun.

¶ 9 After defendant fired his gun, the white vehicle drove off and crashed into another vehicle at the end of the block. The police arrived at the scene, but Ms. Peppers left without telling them what she had observed. Ms. Peppers called her mother and asked what she should do; her mother told her to "speak up." Ms. Peppers then spoke with the police and told them that defendant was the shooter.

¶ 10 On cross-examination, Ms. Peppers testified that, on November 8, 2009, just prior to the shooting, she saw the white vehicle driving fast and "all crazy and stuff," two or three times up and down the block.

¶ 11 After the shooting, Ms. Peppers left Chicago and was on misdemeanor probation in Iowa for criminal mischief when she testified in this case.

¶ 12 Samantha Patterson testified that, in November 2009, she lived at 4333 South Evans Avenue with her mother and grandmother and was pregnant with defendant's child. At about 6 p.m., on November 8, 2009, she was on the front porch of her grandmother's house when she saw defendant get out of a van with his new girlfriend and Ms. Peppers, along with Big Moe,

No. 1-14-1669

whose real name was Timothy Jackson. Ms. Peppers came over and told Ms. Patterson that Big Moe was plotting to have some girls "jump" her.

¶ 13 Ms. Patterson then began yelling at defendant, who was across the street. As she was yelling at defendant, Ms. Patterson noticed a white vehicle being driven by Mr. Madden. Leonard Walls was a passenger in the vehicle. She did not see any guns with them. The white vehicle drove down South Evans Avenue three or four times and eventually parked near an "old folks center" on 43rd Street.

¶ 14 Ms. Patterson heard defendant say: "on that car;" meaning they had to "watch out for cars that ride down our block." Defendant subsequently walked to the corner of 43rd Street and Evans Avenue, pulled a gun out from behind his back, and fired multiple shots at the white vehicle parked at the senior center. While defendant continued to shoot at it, the white vehicle drove down 43rd Street toward Langley Street, and then crashed into another parked vehicle.

¶ 15 The police arrived at the scene, but Ms. Patterson did not then tell them what she had witnessed. She eventually spoke with the police in March 2010 and identified defendant as the shooter.

¶ 16 On cross-examination, Ms. Patterson testified that she thought it was unusual for the white vehicle to drive down South Evans Avenue four times, and she also testified to her knowledge that the passenger in the vehicle, Mr. Walls, did not like defendant due to "previous things that happened."

¶ 17 Ms. Patterson testified she had seen the white vehicle in her neighborhood about one month before the November 8, 2009, shooting, but that Mr. Walls was driving it on that occasion instead of Mr. Madden. Ms. Patterson testified that defendant was not with her at the time she

No. 1-14-1669

saw Mr. Walls driving the white vehicle about one month before the November 8, 2009, shooting.

¶ 18 Defendant attempted to impeach Ms. Patterson's grand jury testimony that persons in the white vehicle, including Mr. Walls, had previously shot at both she and defendant and had "robbed [them] in a dice game." The State objected and a sidebar was held in which the court sustained the State's objection, finding that defendant was attempting to improperly impeach Ms. Patterson on a collateral issue.

¶ 19 At the time of trial, Ms. Patterson was on felony probation for forgery.

¶ 20 Chicago Fire Department paramedic, Sergio Gomez, testified that he received a call at 6:04 p.m. on November 8, 2009, to respond to a gunshot victim at 4300 South Langley Street. Within 10 minutes, Mr. Gomez arrived to find the victim dead inside a vehicle with a gunshot wound to the head. Mr. Gomez saw no gun around the victim and he did not see anyone leaving the vehicle.

¶ 21 Dr. Evan Hapner, an optometrist, testified that he lived at 4330 South Evans Avenue on November 8, 2009. The rear of the building contained a small parking lot and a space with three city garbage cans. At around 6 p.m., Dr. Hapner was pulling into his parking spot when he heard approximately 10 gunshots coming from the north and the east, and then he heard the sound of someone running down the alley. He saw a person run behind his vehicle and place something into one of the garbage cans. The person then headed east. Dr. Hapner called 9-1-1 and told the operator that someone had probably just hidden a weapon in a garbage can. The police arrived soon thereafter, and Dr. Hapner directed them to the garbage can.

¶ 22 Officer Stephen Austin received a call on November 8, 2009, that a citizen had seen a person place a handgun into a garbage can in an alley located at 4330 South Evans Avenue.

No. 1-14-1669

Officer Austin and his partner went to the alley and recovered the gun from one of the garbage cans there. Officer Austin protected the scene until an evidence technician came and recovered the weapon.

¶ 23 Shortly after 6 p.m., on November 8, 2009, Detective David Minelli and Detective Brian Lutzkow went to the area of 43rd Street and Evans Avenue to investigate Mr. Madden's shooting. The vehicle Mr. Madden had been driving, a white Caprice, had sideswiped three or four vehicles, and then came to rest at an angle on 705 East 43rd Street. It was on the south side of the street facing west, meaning it was on the wrong side of the street facing oncoming traffic. Mr. Madden was sitting in the driver's seat with a blood-stained shirt and a gunshot wound to the back left of his head. There were two cell phones in the vehicle, one on the driver's side floorboard, and one on the passenger side floorboard. The phones were sent to the Illinois State Police crime lab and Mr. Walls' DNA was discovered on one of the phones. There were no weapons found in the vehicle.

¶ 24 There were bullet holes on the driver's side and the windows had been shot out. At the intersection of 43rd Street and Evans Avenue there were approximately 20 spent shell casings on the roadway, parkway, and sidewalk. The placement of the cartridge shells on the street indicated that the shooter began to shoot on Evans Avenue and walked around the corner and continued to shoot on 43rd Street.

¶ 25 While at the scene, the detectives spoke with "people on the street that said a passenger ran from the car." However, the detectives were given no information identifying the passenger. Detective Minelli received a call from Detective Carr, after which Detective Minelli contacted Ms. Peppers. Ms. Peppers named defendant as the shooter and identified him in a photographic array.

No. 1-14-1669

¶ 26 Officer Maurice Henderson, a forensic investigator, processed the crime scene at 4300 South Evans Avenue. He found 20 cartridge cases on the street. At 705 East 43rd Street he saw Mr. Madden's white Chevy, as well as other vehicles which it had struck while trying to flee the scene. Mr. Madden was in the driver's seat and the vehicle had sustained damage from gunshots. There were nine bullet strikes to the vehicle and there were metal fragments inside the vehicle. There were no firearms found inside the vehicle.

¶ 27 Officer Henderson went to an alley located at 4330 South Evans Avenue and recovered a gun that had been found in a garbage can by police.

¶ 28 The ballistics evidence was examined by Aaron Horn from the Illinois State Police crime lab. He noted that the gun recovered from the garbage can had an obliterated serial number. After testing the fired bullets and the bullet fragments recovered from the crime scene, he was unable to determine whether they were fired from the recovered gun, but he was able to determine that the 20 spent cartridge cases were fired from the recovered gun. There were no latent fingerprint impressions on the gun and no DNA was recovered which was suitable for comparison.

¶ 29 The autopsy on Mr. Madden showed that he suffered a gunshot wound to the left side of the head that fractured his skull, entered his brain, went through his brain, and lodged into his skull on the other side of his head. To a reasonable degree of scientific certainty, the cause of death was a gunshot wound to the head and the manner of death was homicide.

¶ 30 Carol Stream police officer Matthew Tax testified that on February 12, 2010, he received information from the Chicago police department about defendant being a suspect in the shooting of Mr. Madden, and that defendant was possibly staying at an apartment complex in Carol Stream. On February 18, 2010, Officer Tax and his partner went to the apartment complex and

No. 1-14-1669

encountered defendant outside the building. Officer Tax recognized defendant from his photograph and asked him his name. Defendant said his name was "Phil Pike." The officers arrested him, after which he admitted his actual name and stated that he had been staying in Carol Stream since November 2009 because the Chicago police were looking for him.

¶ 31 Defendant testified at trial that at about 6 p.m. on November 8, 2009, that he was in front of his residence at 4336 South Evans Avenue. Defendant had been drinking; he had about three cups of vodka. Ms. Patterson, whom he had been dating for about two years, was across the street yelling at him because she saw him with another woman. Defendant ignored her and began walking toward the north side of 43rd Street and Evans Avenue.

¶ 32 When he got to the corner of 43rd Street and Evans Avenue, defendant saw a white vehicle heading west on 43rd Street. It came to a stop across the street and to the right of defendant near a senior center. Defendant recognized both the vehicle and its driver, Mr. Madden, who had previously harassed defendant for selling marijuana at 43rd Street and Evans Avenue.

¶ 33 The passenger in the white vehicle, subsequently identified as Leonard Walls, exited the vehicle and walked about 10 feet from the vehicle. Defendant did not recognize Mr. Walls and had never seen him before. Mr. Walls began "fiddling with his waistband," pulled out a gun, and pointed it at defendant. Defendant was scared that Mr. Walls was going to kill him, so he pulled out his own gun and began firing at Mr. Walls. Defendant does not remember whether Mr. Walls ever actually fired at him.

¶ 34 After defendant fired the first shot, Mr. Walls ducked behind the white vehicle. Defendant fired four more shots and then Mr. Walls stood up and began to run away. Defendant fired 15 more shots at Mr. Walls as he ran away; Mr. Walls was not pointing his gun at

defendant as he ran. Meanwhile, the white vehicle pulled out and crossed the line of fire between defendant and Mr. Walls; defendant stated he was aiming only at Mr. Walls and did not purposely aim for the white vehicle.

¶ 35 After Mr. Walls ran away, defendant ran down Evans Avenue and into an alley, where he threw the gun into a garbage can. He then went to his mother's house in Carol Stream.

¶ 36 Defendant testified that he had seen the white vehicle six weeks before, on September 18, 2009. That day, defendant was with his friends, Raymond Jones and Pierre Clanton, about a block away from 43rd Street and Evans Avenue, when the white vehicle approached. Mr. Madden was a passenger in the white vehicle that day. He said: "what's up," and then pulled a gun and started firing at them. Mr. Jones and Mr. Clanton were shot, and then defendant ran away. Defendant never spoke to the police about this incident.

¶ 37 Defendant testified he was in possession of a gun on November 8, 2009, because he was "constantly coming in contact with [Mr. Madden] and other people that handle with him," and that they were threatening him. Defendant denied trying to kill Mr. Madden on November 8, 2009. Instead, defendant was trying to stop Mr. Walls from shooting at him.

¶ 38 After defendant testified, the defense introduced a certified copy of conviction showing that Mr. Madden was convicted of aggravated battery, causing great bodily harm on April 24, 2001.

¶ 39 Following all the evidence, the jury convicted defendant of first degree murder, and the trial court sentenced him to 60 years' imprisonment. Defendant appeals.

¶ 40 On appeal, defendant contends that his trial counsel provided ineffective assistance. A claim of ineffective assistance of counsel is judged according to the two-prong test established in *Strickland v. Washington*, 466 U.S. 668 (1984). See *People v. Lawton*, 212 Ill. 2d 285, 302

(2004). To obtain relief under *Strickland*, a defendant must prove defense counsel's performance fell below an objective standard of reasonableness and that this substandard performance caused defendant prejudice by creating a reasonable probability that, but for counsel's errors, the trial result would have been different. *People v. Wheeler*, 401 Ill. App. 3d 304, 313 (2010).

¶ 41 Defendant's claim of ineffective assistance of counsel relates to his trial counsel's failure to seek the introduction at trial, pursuant to *People v. Lynch*, 104 Ill. 2d 194 (1984), of Ms. Patterson's grand jury testimony concerning the September 18, 2009, incident in which Mr. Madden allegedly shot at defendant, Mr. Clanton, and Mr. Jones.

¶ 42 "The *Lynch* court held that when self-defense 'is properly raised, evidence of the victim's aggressive and violent character may be offered for two reasons: (1) to show that the defendant's knowledge of the victim's violent tendencies affected [his] perceptions of and reactions to the victim's behavior; and (2) to support the defendant's version of the facts where there are conflicting accounts of what happened.' " *People v. Figueroa*, 381 Ill. App. 3d 828, 841 (2008) (quoting *People v. Nunn*, 357 Ill. App. 3d 625, 631 (2005)). Under the first approach, the evidence is relevant only if defendant knew of the victim's violent acts. *Id.* Under the second approach, defendant's knowledge is irrelevant, but there must be conflicting accounts of what occurred for the evidence to be admissible. *Id.*

¶ 43 Defendant argues on appeal that, at trial, his theory of self-defense rested on the jury believing that he had a good reason to fear the occupants of Mr. Madden's white vehicle on November 8, 2009, and that evidence of Mr. Madden previously shooting at defendant and his friends from the white vehicle on September 18, 2009, was relevant and admissible under both *Lynch* prongs. Defendant acknowledges that he was allowed to testify at trial about the September 18, 2009, incident, but contends his testimony would have had a substantially greater

impact on the jury had it been bolstered by Ms. Patterson's corroborative grand jury testimony regarding that incident. Defendant argues that defense counsel failed in his pretrial motions *in limine* and at trial to specifically seek admission of Ms. Patterson's corroborative grand jury testimony about the September 18, 2009, incident pursuant to *Lynch* but, rather, erroneously sought its admission as impeachment, and the trial court refused to allow it into evidence; defendant argues that by seeking to admit Ms. Patterson's grand jury testimony based on the wrong legal theory, instead of under *Lynch*, his trial counsel's conduct fell below an objective standard of reasonableness and constituted ineffective assistance.

¶ 44 Initially, we note the State's argument:

"[T]he really interesting thing about any evidence of Demetrius Madden's prior bad acts [on September 18, 2009] is that they relate to the person defendant was *not* trying to shoot. It is crystal clear from defendant's testimony that defendant was not concerned about or afraid of Madden or the white car [on November 8, 2009]. He was shooting only at [Mr. Walls]. He was not shooting at Madden at all. Thus, the *Lynch* evidence came in [*via* defendant's trial testimony] against the person that was *not* the initial aggressor; no witness said that Madden did anything at all [on November 8, 2009] other than drive the car and defendant himself *never* said that Madden did anything aggressive at all that day. It was in this context that the trial court, in an excess of caution, decided to allow *Lynch* evidence [*via* defendant's trial testimony] in under a sort of initial aggressor by implied accountability theory. *** Defendant's counsel deserves praise not condemnation for getting the judge to go this far in a case where *Lynch* probably should not have even been applicable regarding the past of Demetrius Madden." (Emphases in original.)

¶ 45 Defendant counters that his trial counsel did not go far enough, and that he should have argued for the admission of Ms. Patterson's corroborative grand jury testimony under *Lynch*.

¶ 46 Review of the record indicates, though, that Ms. Patterson's grand jury testimony would not have corroborated defendant's account of Mr. Madden shooting at him and his two friends from the white vehicle on September 18, 2009. During a sidebar discussion of Ms. Patterson's grand jury testimony, the trial court read into the record the portion of her grand jury testimony that defendant sought to introduce:

"Q. What happened in the past between that white car and [defendant]?"

A. The white car shot at us and they robbed us in a dice game.

Q. Was [Mr. Madden] involved in that?

A. No, [Mr. Walls].

Q. Only [Mr. Walls] was involved in that?

A. Yes."

¶ 47 Thus, Ms. Patterson's grand jury testimony related to an incident on an unidentified date prior to Mr. Madden's murder on November 8, 2009, in which defendant and Ms. Patterson were shot at and robbed by the occupant or occupants of the white vehicle, one of whom was Mr. Walls; she specifically stated that the incident she was testifying to did *not* involve Mr. Madden. Ms. Patterson's grand jury testimony therefore was not corroborative of defendant's trial testimony regarding the September 18, 2009, incident, as his testimony thereof related to a confrontation between defendant and Mr. Madden in which *Mr. Madden* shot at him and his two friends. Rather than corroborate defendant's trial testimony, Ms. Patterson's grand jury testimony regarding the participation of Mr. Walls in the shooting and robbery of defendant and she on an

unidentified date prior to Mr. Madden's murder *contradicted* defendant's testimony at trial that he had never seen Mr. Walls prior to shooting at him on November 8, 2009.

¶ 48 The jury in this case obviously found defendant's testimony at trial to be incredible, as they disbelieved his testimony that he fired at Mr. Walls (killing Mr. Madden who was in the line of fire) while acting in self-defense and, instead, convicted him of first degree murder based on the contrary evidence that he fired numerous shots at Mr. Walls while he was running away, and that defendant was the only person with a gun. It is reasonably probable that Ms. Patterson's grand jury testimony, which was not corroborative of defendant's trial testimony but, rather, contradicted his account of having never before seen Mr. Walls, would only have cast further doubt on defendant's credibility in the eyes of the jury. As such, defendant has failed to show a reasonable probability that the result of the trial would have been different had Ms. Patterson's grand jury testimony been admitted under *Lynch* and, therefore, his claim that his trial counsel provided ineffective assistance by not seeking the admission of her grand jury testimony under *Lynch*, fails for lack of prejudice.

¶ 49 For the foregoing reasons, we affirm the circuit court.

¶ 50 Affirmed.