2016 IL App (4th) 140436-U

NO. 4-14-0436

FILED
March 28, 2016
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.	)	Macon County
LELAND L. GREEN,	)	No. 13CF9
Defendant-Appellant.	)	
	)	Honorable
	)	Timothy J. Steadman,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Knecht and Justice Pope concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed defendant's conviction for unlawful possession of a weapon by a felon and vacated his conviction for obstruction of justice.

¶ 2 In April 2014, defendant, Leland L. Green, was found guilty of unlawful possession of a weapon by a felon and obstructing justice following a bench trial. Thereafter, the trial court sentenced him to concurrent terms of 10 and 3 years in prison, respectively.

¶ 3 On appeal, defendant argues (1) he was denied a fair trial and (2) the State failed to prove him guilty of obstruction of justice beyond a reasonable doubt. We affirm in part and vacate in part.

¶ 4 I. BACKGROUND

¶ 5 In January 2013, the State charged defendant with one count of unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2010)), alleging he, a person

who had been convicted of a felony, knowingly possessed on or about his person a firearm. The State also charged defendant with one count of obstruction of justice (720 ILCS 5/31-4(a) (West 2010)), alleging he, with the intent to obstruct the apprehension or the prosecution of himself, knowingly concealed a Colt .38-caliber revolver. Defendant pleaded not guilty.

¶ 6 In April 2014, defendant's bench trial commenced. Shemika Sanders testified she was in her residence when she heard a knock at the door. Upon opening the door, a sheriff's detective asked to come inside to look for a man named Devante Reed. Sanders allowed the detective inside and took him to the room where Reed was located. During that time, the detective asked Sanders if there was a firearm in the residence. Sanders told him there was. When the detective asked her to take him to where the gun was located, Sanders took him into her bedroom. Sanders then showed the detective a "trash bag full of clothes" inside her closet. She knew there was a gun inside because defendant "took it in there."

¶ 7 On cross-examination, Sanders stated she was in the house with her two children, her sister, defendant, Reed, and Aaliyah Reed. Sanders was on the phone in her bedroom when she heard the knock at the door. She stated defendant was asleep at the time. She stated she was looking at the front door as she approached it.

¶ 8 Macon County police detective Christopher Thompson testified he went to a Decatur, Illinois, residence on December 6, 2012, in an attempt to locate an individual based on a tip. After Thompson knocked on the door "for several minutes," Sanders answered the door. Thompson asked if he could step inside, and Sanders allowed him to do so. Upon entering, Thompson saw defendant walking into the living room. Thompson secured defendant, while another detective secured Devante Reed. Thompson asked Sanders whether any of the men had a firearm on them. Sanders stated, when Thompson knocked on the door, defendant went to the

back bedroom and took a gun with him. Thompson went to the bedroom and, after being directed to the closet by Sanders, found a loaded handgun on top of a bag of clothes.

¶ 9 Detective Thompson testified he later spoke with defendant at the sheriff's office regarding the handgun. Thompson stated defendant "very clearly" stated the handgun belonged to him. Defendant stated he thought Thompson "looked like the police" when he knocked on the door, so he "put the firearm up because he didn't want to have it on his person." Defendant ended the discussion by asking "how soon he could plead guilty and said that he would take an 18 month sentence on that date."

¶ 10 Defendant testified in his own defense. He stated he was asleep in the bedroom when Thompson arrived. Upon hearing the doorbell, defendant walked into the living room. He stated he did not have a weapon on him and did not hide one. He also denied making any statements to Thompson.

¶ 11 In his closing argument, defense counsel argued Sanders was not a credible witness. In rebuttal, the prosecutor pointed out defendant, not Sanders, had a conviction for a felony of dishonesty and neither Sanders nor Thompson had any motive to testify falsely.

¶ 12 The trial court found Thompson and Sanders to be credible and found defendant's testimony was "not believable." The court found defendant guilty on both counts. The court then sentenced defendant to 10 years in prison on count I and a concurrent term of 3 years on count II. This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 A. Fair Trial

¶ 15 Defendant argues he was denied a fair trial where the State failed to disclose, and defense counsel failed to discover, that Sanders had been convicted of retail theft and was

serving a term of supervision at the time of his trial. We disagree.

¶ 16 In *Brady v. Maryland*, 373 U.S. 83, 87 (1963), the United States Supreme Court held the prosecution violates a defendant's constitutional right to due process by failing to produce evidence favorable to the accused and material to guilt or punishment. See *People v. Beaman*, 229 Ill. 2d 56, 73, 890 N.E.2d 500, 510 (2008). "To comply with *Brady*, the prosecutor has a duty to learn of favorable evidence known to other government actors, including the police." *Beaman*, 229 Ill. 2d at 73, 890 N.E.2d at 510.

> "A *Brady* claim requires a showing that: (1) the undisclosed evidence is favorable to the accused because it is either exculpatory or impeaching; (2) the evidence was suppressed by the State either wilfully or inadvertently; and (3) the accused was prejudiced because the evidence is material to guilt or punishment. [Citation.] Evidence is material if there is a reasonable probability that the result of the proceeding would have been different had the evidence been disclosed. [Citations.] To establish materiality, an accused must show ' "the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." ' [Citation.]" *Beaman*, 229 Ill. 2d at 73-74, 890 N.E.2d at 510.

¶ 17 Defendant argues the State failed to mention Sanders had been convicted of retail theft and her term of supervision had not been discharged at the time of his trial.

> "As a general rule, a defendant may cross-examine a witness who had pled guilty to misdemeanor theft, a crime of dishonesty, about

> that conviction to impeach the witness's credibility. [Citation.] However, when, as in this case, the witness has pled guilty to theft and is serving a sentence of supervision, which if successfully completed will result in dismissal of the charge (730 ILCS 5/5-1-21 (West 2004)), such cross-examination is prohibited. *People v. Williams*, 127 Ill. App. 3d 231, 234, 468 N.E.2d 807 (1984) ('[A] witness may not be impeached by the mere fact that he was on supervision. *** [S]upervision [is] effectively the same as having a criminal charge pending')." *People v. Buckner*, 376 Ill. App. 3d 251, 254-55, 876 N.E.2d 87, 90-91 (2007).

However, our supreme court has stated that, although evidence of arrests or other charges is not admissible to impeach credibility generally, such evidence is admissible to show that the "witness' testimony might be influenced by bias, interest, or a motive to testify falsely." *People v. Bull*, 185 Ill. 2d 179, 206, 705 N.E.2d 824, 837-38 (1998). The court also stated "the evidence that is used must give rise to the inference that the witness has something to gain or lose by his or her testimony" and it "must not be remote or uncertain." *Bull*, 185 Ill. 2d at 206, 705 N.E.2d at 838.

¶ 18 In the case *sub judice*, the State did not disclose to defendant that Sanders had been placed on supervision for retail theft. Assuming it was required to do so, no evidence indicates the failure to disclose was willful, and thus we assume it was inadvertent. However, the disclosure of Sanders' term of supervision could have been used by defendant to impeach her and attempt to show her testimony may have been influenced by bias, interest, or motive to testify falsely. See *People v. Triplett*, 108 Ill. 2d 463, 475-76, 485 N.E.2d 9, 15 (1985). Thus,

we must determine whether a reasonable probability existed that had the evidence of Sanders' status been disclosed to defendant, the outcome of the trial would have been different.

¶ 19 Even if we were to disregard Sanders' testimony, we would find the State's evidence was sufficient to find defendant guilty of unlawful possession of a weapon by a felon. Detective Thompson testified he spoke with defendant at the sheriff's office and defendant stated "very clearly" the handgun belonged to him. In that interview, defendant stated he thought Thompson "looked like the police" when Thompson came to the door, so he "put the firearm up because he didn't want to have it on his person." Defendant also inquired about pleading guilty and indicated his desire for an 18-month sentence. The trial court found Thompson credible and noted defendant's testimony was not believable. Thus, this evidence was sufficient to find defendant guilty beyond a reasonable doubt. Given Thompson's testimony, even if the State had disclosed Sanders' retail-theft conviction, no reasonable probability existed that the result of the proceeding would have been different.

¶ 20 Defendant also argues in the alternative that, if the State was not required to disclose the information about Sanders' status to the defense, defense counsel was ineffective for failing to discover and impeach Sanders with that information.

¶ 21 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, 808 N.E.2d 939,

953 (2004) (citing *Strickland*, 466 U.S. at 687-88). 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).

¶ 22 Here, we have already found defendant was not prejudiced by the State's failure to disclose Sanders' retail-theft sentence to the trial court. As there was no reasonable probability the result of defendant's trial would have been different had counsel impeached Sanders with her legal status, defendant cannot satisfy the prejudice prong of the *Strickland* standard. Thus, his claim of ineffective assistance of counsel fails.

¶ 23 B. Obstruction of Justice

¶ 24 Defendant argues the State failed to prove him guilty of obstruction of justice, claiming the State's evidence did not establish he knowingly concealed physical evidence to impede the administration of justice. We agree.

¶ 25 " '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)). This standard of review applies when reviewing the sufficiency of the evidence in all criminal cases, including cases based on direct or circumstantial evidence. *People v. Jackson*, 232 Ill. 2d 246, 281, 903 N.E.2d 388, 406 (2009). "Circumstantial evidence alone is sufficient to sustain a

conviction where it satisfies proof beyond a reasonable doubt of the elements of the crime charged." *People v. Pollock*, 202 Ill. 2d 189, 217, 780 N.E.2d 669, 685 (2002).

¶ 26 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. *Jackson*, 232 Ill. 2d at 281, 903 N.E.2d at 406. "[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).

¶ 27 Section 31-4(a)(1) of the Criminal Code of 1961 sets forth the offense of obstructing justice and provides, in part, as follows:

> "(a) A person obstructs justice when, with intent to prevent the apprehension or obstruct the prosecution or defense of any person, he or she knowingly commits any of the following acts:
>
> (1) Destroys, alters, conceals or disguises physical evidence, plants false evidence, [or] furnishes false information." 720 ILCS 5/31-4(a)(1) (West 2010).

¶ 28 In *People v. Comage*, 241 Ill. 2d 139, 149, 946 N.E.2d 313, 319 (2011), our supreme court stated as follows:

> "The subject addressed by section 31-4 is 'obstructing justice.' Obstruction of justice is an attempt to interfere with the administration of the courts, the judicial system, or law enforcement agencies. 'The phrase "obstructing justice" as used in

> connection with offenses arising out of such conduct means impeding or obstructing those who seek justice in a court or those who have duties or powers of administering justice in courts.' 67 C.J.S. *Obstructing Justice* § 1, at 67 (2002). Thus, in enacting section 31-4, the legislature intended to criminalize behavior that *actually* interferes with the administration of justice, *i.e.*, conduct that 'obstructs prosecution or defense of any person.' " (Emphasis in original.)

The court went on to state "a defendant who places evidence out of sight during an arrest or pursuit has 'concealed' the evidence for purposes of the obstructing justice statute if, in doing so, the defendant actually interferes with the administration of justice, *i.e.*, materially impedes the police officers' investigation." *Comage*, 241 Ill. 2d at 150, 946 N.E.2d at 125.

¶ 29 Defendant argues the State failed to establish he intended to obstruct justice when he put the gun in the closet. "State of mind or intent need not be proved by direct evidence, but can be inferred from the proof of surrounding circumstances." *People v. Jackiewicz*, 163 Ill. App. 3d 1062, 1065, 517 N.E.2d 316, 318 (1987). Here, the State's evidence relied on defendant's statements to Thompson, where he said the gun was his, he tried to hide the gun because he thought Thompson looked like the police, and he wanted to plead guilty and would accept an 18-month sentence. However, even if true, defendant's statement does not establish an intent to conceal evidence to obstruct a prosecution. Defendant's belief that a police officer was outside the house does not imply he knew Thompson would be invited inside to apprehend any of the occupants. The State did not establish defendant knew why Thompson was at Sanders' front door or whether defendant suspected he might be the subject of an investigation. As

Thompson did not announce he was there looking for defendant or a gun, defendant cannot be said to have "materially impede[d] the police officers' investigation." *Comage*, 241 Ill. 2d at 150, 946 N.E.2d at 125; see also *People v. Jenkins*, 2012 IL App (2d) 091168, ¶ 27, 964 N.E.2d 1231 (finding insufficient evidence where the defendant gave false information to a police officer when the defendant did not know the officer sought an individual in a criminal matter or a prosecution).

¶ 30 Moreover, the State failed to show defendant actually impeded Thompson's mission of arresting Reed or his investigation into the existence of a firearm in the house. Defendant could not have compromised Thompson's investigation of Reed unless the firearm belonged to Reed, which the State does not argue. Thompson also never asked defendant to disclose if there was a firearm in the house at the time of his arrest, and he recovered the firearm immediately after asking Sanders if any guns were present in the house. As defendant's conviction for obstruction of justice is not supported by the State's evidence, we vacate that conviction. See *Jenkins*, 2012 IL App (2d) 091168, ¶ 29, 964 N.E.2d 1231 (finding the State's insufficient evidence barred retrial under the double-jeopardy clause).

¶ 31 III. CONCLUSION

¶ 32 For the reasons stated, we affirm defendant's conviction for unlawful possession of a weapon by a felon and vacate his conviction for obstruction of justice. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 33 Affirmed in part and vacated in part.