

2018 IL App (1st) 153600-U
No. 1-15-3600
December 17, 2018

FIRST DIVISION

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	Of Cook County.
Plaintiff-Appellee,)	
)	No. 09 CR 18784
v.)	
)	The Honorable
JASON STRICKLAND,)	James B. Linn,
)	Judge Presiding.
Defendant-Appellant.)	

JUSTICE WALKER delivered the judgment of the court.
Justices Pierce and Griffin concurred in the judgment.

ORDER

¶ 1 *Held:* Police had sufficient cause to stop defendant when they saw him five blocks from the murder scene, about 30 minutes after the murder, and he and the two persons with him fit an eyewitness's general description of the offenders. Briefly transporting defendant in handcuffs for a showup did not convert the investigatory stop into an arrest. The positive identification of one of the defendant's companions, along with the tentative identification of defendant as a person seen at the crime scene, gave police probable cause to arrest defendant. Because gunshot residue found on defendant's hand supported identifications of defendant as the shooter, we find the evidence not closely balanced. The trial court's violation of Supreme Court Rule 431(b) does not require retrial.

¶ 2 A jury found Jason Strickland (Strickland) guilty of murdering Delores Myrick (Myrick). Strickland contends that police lacked probable cause to arrest him and the trial court committed plain error by failing to ask the venire the questions required by Supreme Court Rule 431(b) (Ill. S. Ct. R. 431(b) (eff. July 1, 2012)). We hold that police had grounds for a *Terry* stop, and transporting Strickland in handcuffs a few blocks for a showup identification did not convert the *Terry* stop into an arrest. The tentative identification of Strickland at the showup gave police probable cause to arrest him. Because the evidence is not closely balanced, the trial court's violation of Rule 431(b) does not require retrial. We affirm the trial court's judgment.

¶ 3 **BACKGROUND**

¶ 4 The murder of Myrick occurred less than an hour after another shooting. Police theorized that the murder avenged the earlier shooting. Around 5:30 p.m. on July 1, 2008, bullets struck Torian Collins and Damien Turner as they walked near 78th Street and Constance Avenue in Chicago. Witnesses at the scene described to police a car seen at the time of the shooting. A car driven by James Fuller crashed near 74th Street and Blackstone Avenue shortly after the shooting. Fuller went to Jackson Park Hospital for treatment. Police considered Fuller a possible suspect in the shooting of Collins and Turner.

¶ 5 Myrick, a close friend of Fuller, received a call about Fuller's injury. She went to Jackson Park Hospital with her friends, Raymond Cooks (Cooks), Winford Woods (Woods), and Jamalaha Clunis (Clunis). Outside of the hospital they encountered some young men. One of the men shot Myrick several times, killing her. Another man shot Woods in the leg. Donald Maclellan, a hospital employee who heard the shooting, told police that he arrived at

the scene right after the shooting stopped, and he saw the two shooters and a third man. He described all three men as black, 16 to 20 years old, wearing white tee shirts and blue jeans. He added that at least two of the men wore braids.

¶ 6 Officer Denise Krippel (Krippel) spoke to Maclellan at the scene and accompanied him on foot, heading east and south from the hospital, in the direction the shooters fled. Five blocks from the hospital, Krippel saw three men she considered possible suspects. Officer Cynthia Phillips (Phillips) pulled her car near Krippel and Maclellan, and Krippel pointed the way to the three men. Krippel and Maclellan returned to the hospital. Phillips stopped Strickland, Terreon Rice-Davis (Rice-Davis), and Quarnell Tarbor (Tarbor), who were wearing white tee shirts and blue jeans. Strickland was then 25 years old. Phillips handcuffed the three men together so that the backs of each man's hand touched the back of the next man's hand, and brought them back to the hospital. Maclellan positively identified Rice-Davis as a man he saw at the time of the shooting.

¶ 7 Police brought Strickland, Rice-Davis, and Tarbor to the police station. An officer used gunshot residue kits to collect residue from the hands of the three men. On July 2, 2018, the day after the shooting, Cooks, Woods, and Clunis separately viewed a lineup. All three pointed to Strickland and Rice-Davis as the shooters. Cooks, Woods, and Clunis also told police that LaParis Owens (Owens), not Tarbor, accompanied Strickland and Rice-Davis when they shot Myrick and Woods. A grand jury indicted Strickland, Rice-Davis, and Owens on charges of murdering Myrick and shooting Woods.

¶ 8 Strickland filed a motion to quash his arrest and suppress all evidence gained due to the arrest. At the hearing, Sergeant Milan Vujic (Vujic) admitted that police had only

Maclellan's general description when they searched the area for the shooters. Vujic testified that at the showup, after positively identifying Rice-Davis, Maclellan pointed to Strickland and said, "I can't be sure but I think that's the guy that was standing next to [Myrick] when she was shot." Maclellan did not identify Tarbor as a person he saw at the time of the shooting.

¶ 9 Phillips testified that she arrested the three men at the hospital, at 7 p.m., after Maclellan made his identifications. The trial court denied the motion to quash the arrest.

¶ 10 Rice-Davis negotiated a plea, and the case against Strickland and Owens proceeded to a jury trial. Strickland and Christina Jenkins (Jenkins) testified that they had been together at her home at the time of the shooting. Police handcuffed Strickland in front of Jenkins's home, shortly after Rice-Davis walked up to them, and just after Tarbor drove up. The jury found Owens not guilty on all counts, and it found Strickland not guilty of shooting Woods. The jury reached no verdict on the charge that Strickland murdered Myrick. The court declared a mistrial on that count and set that count for retrial.

¶ 11 At the outset of *voir dire* for the retrial, the court said to the venire:

"We begin proceedings with the accused presumed to be innocent.

Is there anybody here who has a disagreement or a problem with that proposition that when a criminal trial starts we presume the accused to be innocent."

¶ 12 No one raised a hand. The court said:

"The only way somebody can be guilty is if the government, who has the burden of proof, can prove guilt beyond a reasonable doubt.

Is there anybody here who has a disagreement or a problem with that?"

¶ 13 No one raised a hand. The court said:

"In a criminal trial the accused does not have to prove their innocence. An accused does not [have] to testify. They do not have to call any witnesses on their own behalf. *** An accused does not [have] to prove anything at all.

*** [I]s there anybody here who has a problem or some disagreement with that? Anybody would hold it against the accused, if they did not testify, *** or did not call witnesses in their own behalf [?]"

¶ 14 Again, no one raised a hand. Defense counsel did not object to the questions.

¶ 15 Cooks testified that Fuller shot Collins, a friend of Rice-Davis and Strickland, shortly before Fuller had the accident that put him in Jackson Park Hospital. Cooks recognized Strickland, Rice-Davis, and Owens when he saw them approaching his group outside the hospital. He knew them for years from the neighborhood and school. Cooks testified that Strickland shot Myrick. Cooks admitted that when he spoke to police officers at the hospital, he did not tell them that he recognized the shooters, and he did not tell them Strickland shot Myrick. He told detectives the next day the names of the shooters, and he identified Strickland and Rice-Davis in a lineup that day.

¶ 16 Woods testified that he, too, had known Strickland and Rice-Davis for years, and recognized them as they approached the hospital. Woods saw Strickland point a gun at Myrick, and heard Myrick say she "didn't have nothing to do with it." Woods believed

Myrick was referring to the shootings of Collins and Turner. Woods testified that Strickland shot Myrick, and Rice-Davis shot Woods. Woods demonstrated how Strickland shot Myrick. Woods used his right hand as the hand holding the gun. On cross-examination, Woods agreed that he saw the gun in Strickland's right hand. Woods admitted that when he spoke to police officers at the hospital, he did not tell them that he recognized the shooters, and he did not tell them Strickland shot Myrick. He told detectives the next day the names of the shooters, and he identified Strickland and Rice-Davis in a lineup on July 2, 2008.

¶ 17 Prosecutors could not find Clunis for the retrial, and asked the court to permit a prosecutor to read to the jury Clunis's testimony from the original trial. Defense counsel objected to the motion, and argued that the prosecution did not need the testimony because three other occurrence witnesses would testify. The court said, "I don't think it's piling on. I think this is a close case. *** I've heard this case before. One defendant was acquitted while Mr. Strickland was not convicted, although, he was not acquitted either." The court permitted a prosecutor to read to the jury Clunis's prior testimony.

¶ 18 Clunis said he went with Cooks, Woods, and Myrick to Jackson Park Hospital to see Fuller. He recognized Strickland, Rice-Davis, and Owens, as they approached. He had known them from the neighborhood for several years. Clunis did not remember what he said to police officers in the hospital. He identified Strickland and Rice-Davis in a lineup at the police station the day after the shooting. When Clunis demonstrated for the court how Strickland held the murder weapon, Clunis used his right hand.

¶ 19 Maclellan testified that he stood outside the hospital when he heard gunfire on July 1, 2008. He walked towards the shots. Looking around a wall, he saw Strickland holding a

gun, standing over Myrick. Two or three other men accompanied Strickland. They ran off, and one went a different direction. At the showup, Maclellan identified Rice-Davis as one of the men he had seen at the shooting scene. He identified Strickland and Rice-Davis in a lineup at the police station the day after the shooting.

¶ 20 Officer Phillips testified that after she spoke with Krippel a few blocks from the hospital, she stopped Strickland, Rice-Davis, and Tarbor on the street and handcuffed them. She checked their names in the police database to see if they had any outstanding warrants. She said the process took "at least 15 minutes." She then brought the men to the hospital for the showup. She arrested them after Maclellan positively identified Rice-Davis as a person he had seen run from the crime scene. Rice-Davis told Phillips that his nephew had been shot near Constance earlier that day.

¶ 21 Robert Berk (Berk) testified as an expert on trace evidence analysis. He tested the samples taken from the hands of Strickland, Rice-Davis, and Tarbor after their arrest. He found no gunshot residue on Tarbor's hands, some gunshot residue on Rice-Davis's right hand but none on his left hand, and some gunshot residue on Strickland's left hand but none on his right hand. He found more residue on Strickland's hand than on Rice-Davis's hand. In Berk's opinion, the residue on Strickland's hand came from direct exposure when he fired a gun, and not from secondary exposure, which could occur if, for example, Strickland shook hands with someone who just fired a gun. Strickland, who testified at the original trial, chose not to testify at the retrial.

¶ 22 Jenkins repeated her alibi testimony from the first trial. She testified that she met with Strickland and Collins at her home around 5:15 p.m. on July 1, 2008. Collins walked off,

and a few minutes later she heard gunshots coming from the area of 78th and Constance, less than a block from her home. She and Strickland ran to the spot where they found Collins and Turner on the ground. She and Strickland talked to Collins as they waited for the ambulance. Collins told Jenkins he did not know who shot him. After the ambulance took Collins away, she and Strickland went back to her home, where they waited for Jenkins's father to return so that he could drive them to Northwestern Memorial Hospital to see Collins. She sat waiting with Strickland on her front porch as Rice-Davis walked over and then Tarbor drove up shortly before police came.

¶ 23 Strickland also presented the testimony of Officer Aaron Chatman (Chatman), who testified that he watched the hospital's videotape from a camera pointed towards the area where Myrick was shot. Chatman said the videotape only showed trees, which blocked the view of the persons in the area of the shooting. He testified that he did not take the videotape from the hospital. He admitted that in his report he wrote that he obtained the hospital's videotape.

¶ 24 The jury found Strickland guilty of first degree murder. The trial court denied Strickland's posttrial motion and sentenced him to 50 years in prison. Strickland now appeals.

¶ 25 ANALYSIS

¶ 26 In this appeal Strickland does not rely on any of the issues raised in his posttrial motion. Instead he argues (1) the trial court violated his fourth amendment rights when it denied his motion to quash the arrest, and (2) the trial court's admonishments to the venire did not meet the requirements of Supreme Court Rule 431(b) (Ill. S. Ct. R. 431(b) (eff. July 1, 2012))

¶ 27

Forfeiture

¶ 28

The State argues that Strickland forfeited the issue concerning the motion to quash the arrest by failing to include the issue in his posttrial motion. "[C]onstitutional issues that were previously raised at trial and could be raised later in a postconviction petition are *not* subject to forfeiture on direct appeal ***. [Citation.] *** [W]hen, as here, a defendant fails to raise a constitutional issue in a posttrial motion but the issue was raised at trial and could be raised in a postconviction petition 'the interests in judicial economy favor addressing the issue on direct appeal rather than requiring defendant to raise it in a separate postconviction petition.' " (Emphasis in original.) *People v. Almond*, 2015 IL 113817, ¶ 54 (quoting *People v. Cregan*, 2014 IL 113600, ¶ 18).

¶ 29

The State contends that we must limit our review to determining whether the trial court committed plain error. But such limited review would conflict with Illinois Supreme Court precedent. As the court explained in *People v. Djurdjulov*, 2017 IL App (1st) 142258:

"The defendant in *Almond* sought review of the trial court's ruling on a motion to suppress evidence. Although the defendant did not raise the issue in his posttrial motion, our supreme court did not review the issue under the doctrine of plain error. Instead, the *Almond* court applied the standards used for preserved issues on direct appeal. *Almond*, 2015 IL 113817, ¶ 55. Similarly, in *Cregan*, the defendant sought review of the trial court's ruling on a motion to suppress evidence. Although the defendant did not raise the issue in his posttrial motion, the *Cregan* court did not review the issue under the standards for plain error.

Instead, the court applied the standards used for preserved issues on direct appeal.

Cregan, 2014 IL 113600, ¶¶ 18-23." *Djurdjulov*, 2017 IL App (1st) 142258, ¶ 45.

¶ 30 Accordingly, we find that Strickland has not forfeited review of the fourth amendment issue, and apply standards used for issues preserved for direct appeal.

¶ 31 Motion to Quash Arrest

¶ 32 When we review a trial court's ruling on a motion to quash arrest, we defer to the trial court's findings of fact, and we review *de novo* the ultimate ruling on whether to quash the arrest and suppress evidence. *People v. Holmes*, 2017 IL 120407, ¶ 9. Here, the parties do not dispute the fundamental facts. When police started to search the area around Jackson Park Hospital for the shooters, they had only a very general description of the offenders. Maclellan said only that he saw three black men, about 16 to 20 years old, wearing white tee shirts and blue jeans, and at least two of the men wore braids. Officers went in the general direction the offenders fled and stopped Rice-Davis, Strickland, and Tarbor about 30 minutes after the shooting, 5 blocks from the crime scene. All three of the young men wore white tee shirts and blue jeans, and Rice-Davis wore braids. Strickland was 25 years old. Officer Phillips admitted that she had not seen any of the men committing any offense before she handcuffed them and brought them to the hospital for the showup identification.

¶ 33 "[A] police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest." *Terry v. Ohio*, 392 U.S. 1, 22 (1968). "The reasonableness of an investigatory stop may be determined by examining whether the police were aware of specific facts giving rise to reasonable suspicion and whether the police

intrusion was reasonably related to the known facts. [Citations.] A general description of a suspect coupled with other specific circumstances that would lead a reasonably prudent person to believe the action taken was appropriate can constitute sufficient cause to stop." *People v. Ross*, 317 Ill. App. 3d 26, 29-30 (2000). "[A]n individual matching a general height, weight and racial description may be adequate to raise an articulable suspicion in a police officer if such sighting is not unreasonably removed in time and space from the crime." *People v. Starks*, 190 Ill. App. 3d 503, 508 (1989).

¶ 34 The time of the stop and proximity to the crime scene, along with the general description, suffice to justify the initial stop of Strickland. See *People v. Hopkins*, 363 Ill. App. 3d 971, 981 (2006); *People v. Robinson*, 299 Ill. App. 3d 426, 433 (1998).

¶ 35 Strickland contends that Phillips arrested him without probable cause when she handcuffed him, put him in her squad car, and brought him to the crime scene. In a case with similar facts, our supreme court said, "we also consider the transportation of the defendant the short distance involved here for purposes of a showup to have been a legitimate investigatory procedure even if one considers the grounds to have been less than probable cause to arrest. *** [A]n investigatory procedure, such as an immediate showup, can be employed by officers acting on somewhat less than probable cause to arrest." *People v. Lippert*, 89 Ill. 2d 171, 181-82 (1982).

¶ 36 Illinois courts have approved showup identifications following *Terry* stops in several cases. In *Ross*, a police officer investigating a robbery stopped Ross near the crime scene, handcuffed him, put him in a squad car and drove him back to the crime scene, where the victim identified Ross as the person who robbed him. The court held, "an eight-minute stop

with a quick determination as to the person's involvement in the crime comports with the permissible scope of an investigation after a *Terry* stop." *Ross*, 317 Ill. App. 3d at 31. See also *People v. Bennett*, 376 Ill. App. 3d 554, 564 (2007); *People v. Young*, 306 Ill. App. 3d 350, 353 (1999).

¶ 37 Here, the detention lasted considerably longer than the detentions at issue in *Ross*, *Bennett*, and *Young*. Phillips testified that she kept Strickland, Rice-Davis, and Tarbor in her squad car for "at least 15 minutes" while she checked their names in the police department database. She then kept them several additional minutes while she drove them to the crime scene for the showup.

¶ 38 "[A]n investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop." *Florida v. Royer*, 460 U. S. 491, 500 (1983). "[I]n assessing the effect of the length of the detention, we take into account whether the police diligently pursued their investigation." *United States v. Place*, 462 U.S. 696, 709 (1983). In *United States v. Sharpe*, 470 U.S. 675 (1985), the United States Supreme Court held that a 20 minute detention did not convert a *Terry* stop into an arrest, because the officer who stopped the suspect diligently worked to contact other officers during the detention, and he did not extend the detention any longer than needed to effect the purpose of the stop. *Sharpe*, 470 U.S. at 687-88.

¶ 39 Here, Phillips explained that checking the database for information about the three men took longer than usual because of slow response times on a particularly busy night. No evidence contradicts Phillips, and no evidence suggests that the police used the detention for any purpose other than the initial purpose of the stop. See *People v. Brownlee*, 186 Ill. 2d

501, 516-19 (1999). We find that Phillips diligently pursued the investigation and acted reasonably in detaining Strickland, Rice-Davis, and Tarbor long enough to find the information she sought before bringing them to the crime scene for the showup.

¶ 40 At the showup Maclellan positively identified Rice-Davis and tentatively identified Strickland as the persons he saw at the crime scene. "Even a tentative identification may contribute to probable cause." *In re Edgar C.*, 2014 IL App (1st) 141703, ¶ 121. Police found Strickland, a young black man wearing blue jeans and a white tee shirt, five blocks from the crime scene 30 minutes after the shooting in the company of a man positively identified as one of the men who ran from the crime scene, and an eyewitness tentatively identified Strickland as a person at the crime scene. We find that the totality of the circumstances justified the arrest. The trial court correctly denied the motion to quash the arrest and suppress the evidence gained as a consequence of the arrest.

¶ 41 Rule 431(b)

¶ 42 The State concedes that the trial court violated Rule 431(b) when it failed to ask the venire members whether they understood that they must presume the defendant innocent and they must not hold it against the defendant if he chooses not to testify. See *People v. Wilmington*, 2013 IL 112938, ¶ 32. Strickland concedes that his counsel did not preserve the issue for review, as defense counsel failed to object to the incomplete questioning and counsel failed to raise the issue in the posttrial motion. We limit our review to determining whether the trial court committed plain error. *People v. Sebbby*, 2017 IL 119445, ¶¶ 51-52.

¶ 43 Strickland does not claim that he has presented evidence that the violation produced a biased jury. Therefore, we will reverse the conviction only if the evidence at trial was

closely balanced. *Sebby*, 2017 IL 119445, ¶ 52. We "evaluate the totality of the evidence and conduct a qualitative, commonsense assessment of it within the context of the case." *Sebby*, 2017 IL 119445, ¶ 53.

¶ 44 The jurors in the original trial failed to reach a verdict on the murder charge, and they found the defendants not guilty on the other charges. Their inability to reach a verdict suggests that the jurors found the evidence closely balanced. See *Jordan v. Medley*, 711 F.2d 211, 219 (D.C. Cir. 1983). The trial court said, "[T]his is a close case." Strickland emphasizes that two eyewitnesses, when asked to demonstrate how Strickland held the gun, used their right hands. One testified that he saw the murderer use his right hand to shoot. But Strickland's right hand bore no gunshot residue. Police did not retain a video recording of the area of the shooting, and Strickland never had an opportunity to view the recording. The three eyewitnesses who knew Strickland all failed to name him when they first spoke to police in the hospital. Strickland presented an uncontradicted alibi.

¶ 45 Nonetheless, after reviewing all of the evidence, we cannot find this case closely balanced. Less than a day after the shooting, three eyewitnesses who knew Strickland for years separately identified him as the person who shot Myrick. Maclellan, who did not know Strickland, identified him in court as the person he saw near Myrick holding a gun. Maclellan's testimony leads to the conclusion that a person who looked a lot like Strickland held a gun over Myrick, and the three eyewitnesses who knew Strickland strongly support the conclusion that Maclellan did not mistake Strickland for someone else. An expert testified that his tests showed that Strickland's left hand held gunshot residue a few hours after the shooting. The expert specified that in his opinion secondary contact could not

explain the amount of residue he found. The uncontested evidence that police found Strickland in the area of the shooting, in the company of another man identified by several eyewitnesses as a shooter who also had gunshot residue on his hands, further supports the conviction. Because we do not find the evidence closely balanced, the violation of Rule 431(b) does not require retrial. See *Sebby*, 2017 IL 119445, ¶ 52.

¶ 46

CONCLUSION

¶ 47

The general description of persons seen at the crime scene, together with the proximity in time and location, justified the *Terry* stop of Strickland. Under the circumstances of this case, handcuffing and transporting Strickland did not convert the *Terry* stop into an arrest. Police had probable cause to arrest Strickland when an eyewitness tentatively identified him as a person he saw near the victim right after the shooting. The trial court erred by failing to ask the venire members whether they understood that they must not hold it against Strickland if he chose not to testify. However, because we find the evidence not closely balanced, we hold that the error does not require retrial. Accordingly, we affirm the trial court's judgment.

¶ 48

Affirmed.