

2019 IL App (1st) 160463-U
No. 1-16-0463
March 4, 2019

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. 14 CR 4061
v.)	
)	The Honorable
JOVAN WILLIAMS,)	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:* The trial court did not abuse its discretion in permitting the State to play a surveillance video of a shooting four times during the testimony of each of the four different witnesses because any prejudicial effect the showings may have had on the jury did not substantially outweigh the probative value of corroborating the witnesses' testimony. Defense counsel's alleged elicitation of damaging testimony did not have an adverse effect on defendant due to the quality and quantity of corroborating evidence establishing defendant as the shooter.

¶ 2 A jury found defendant Jovan Williams guilty of attempt first-degree murder (720 ILCS 5/8-4(a) (West 2014)), aggravated battery with a firearm (720 ILCS 5/12-3.05(e)(1) (West

2014)), and armed habitual criminal (720 ILCS 5/24-1.7(a) (West 2014)), in a January 30, 2014 shooting of Ebrima Jarju. The trial court merged the attempt first-degree murder and aggravated battery with a firearm verdicts and sentenced Williams to 55 years in prison on attempt first degree murder, and to 30 years in prison as an armed habitual criminal, with the sentences to be served concurrently. On appeal, Williams contends that (i) he was deprived of a fair jury trial when the State played the full-length video of the shooting of Jarju four times during trial, and (ii) he was deprived of the right to effective assistance of counsel because his counsel elicited crucial evidence against him, which bolstered the State's case and undermined his defense theory.

¶ 3 We find the trial court did not abuse its discretion in permitting the State to play the video four times because any prejudicial effect of the three additional videotape showings did not substantially outweigh the probative value of corroborating the witnesses' testimony. We also find Williams did not receive ineffective assistance of counsel because Williams's counsel's elicitation of alleged damaging testimony did not have an adverse effect on his defense due to the quality and quantity of the corroborating evidence presented by the State establishing Williams as the shooter.

¶ 4 **BACKGROUND**

¶ 5 On March 7, 2014, Williams was charged by indictment with attempt first-degree murder (720 ILCS 5/8-4(a) (West 2014)), aggravated battery with a firearm (720 ILCS 5/12-3.05(e)(1) (West 2014)), armed habitual criminal (AHC) (720 ILCS 5/24-1.7(a) (West 2014)), unlawful use or possession of a weapon by a felon (UUWF) (720 ILCS 5/24-1.1(a)

(West 2014)) and unlawful use of a weapon (Uuw) (720 ILCS 5/24-1(a) (West 2014)), stemming from Jarju's shooting.

¶ 6 Jarju, who also goes by the name Abraham, testified that he was the owner of Sonia's Supermarket (Sonia's), located at 2441 West 63rd Street, Chicago, Illinois. During Jarju's testimony, the State introduced and published surveillance video of the shooting to jurors, and Jarju identified himself in the video. On cross examination, Jarju stated that he did not see the person who shot him.

¶ 7 The surveillance camera captured the shooting from a camera angle just east of Sonia's, facing westward on 63rd street toward Campbell Avenue. The video depicts Jarju pulling Sonia's shutters on the store front. There were several individuals across the street at a bus stop. A little person is seen walking towards Sonia's. As the little person is walking towards Jarju, a dark colored sedan appears, traveling east on 63rd street. Thereafter, Jarju appears to bend down, almost to his knees, when an individual in dark colored clothing and what appear to be black gloves enters the frame, walking west to east on the sidewalk. The individual walks up to the little man and Jarju, reaches into his clothing with his right arm and extends the arm towards Jarju, at which point a loud sound is heard. The individual turns around, appears to reach with his right hand and place an object into the left side of his clothing, and runs across 63rd street, then north on Campbell Avenue past the individuals at the bus stop. A dark colored sedan is then seen heading west on 63rd street, and turning right to head north on Campbell. The little man next to Jarju reaches into his clothing and pulls out what appears to be a cell phone. Another individual appears in the frame running from the bus stop towards where Jarju was standing. A few seconds later, two marked Chicago Police

Department vehicles appear in the frame, two police officers emerge from the car, and appear to tell other individuals gathered around Jarju to move away from the area.

¶ 8 Chicago Police Officer Jeremy Sikorksi (Sikorski), testified that on January 30, 2014, he was traveling eastbound on 63rd street in an unmarked Ford Crown Victoria along with his partner, Officer Tony Martin (Martin). The officers drove past Sonia's and were sitting in traffic when they heard a loud gunshot. Sikorksi looked behind him and saw a black male, dressed in all black, running across 63rd street while holding his side. The officers drove back towards Sonia's and made a right turn to head north on Campbell Avenue to pursue the suspect. The officers saw the suspect slip and fall but he continued running. Sikorksi stepped out of the vehicle and pursued the suspect on foot into an alley. Sikorksi testified that he lost sight of defendant for a few seconds during the chase as they cut the corners, but no one else in the area was dressed in all black. Sikorksi caught up to the suspect in front of a house on Campbell Avenue when the suspect's shoe became caught in a fence. Sikorksi removed the suspect from the fence and placed him in handcuffs. Martin arrived in the unmarked squad car. The State played the surveillance video a second time, and Sikorksi identified the squad car in the video as the one he and Martin were in that day. He also identified the person running in the video as Williams.

¶ 9 Charles Tate (Tate) testified that he was the little man standing next to Jarju in the surveillance video. Tate was talking to Jarju when "somebody came out and shot him and ran." Tate never saw the face of the shooter because the shooter was wearing a black mask, all black clothing, and gloves. Over defense objection, the State published the surveillance

video for a third time. Tate identified himself in the video and narrated the events depicted therein.

¶ 10 Alfred Pipes (Pipes) testified he was standing with two friends at a bus stop across the street from Sonia's when the shooting occurred. Pipes noticed an unmarked squad car heading towards Western Avenue. Pipes also saw Jarju standing across from him talking to Tate. Pipes then heard a gunshot, immediately looked across the street, saw an individual in a face mask, and wearing dark clothing. Pipes believed the individual had a gun tucked in his pants. The individual ran across the street from Sonia's towards the bus stop and headed north on Campbell Avenue. Pipes then noticed the same unmarked squad car he originally saw driving towards Western begin to follow the individual towards Campbell Street. Thereafter, Pipes saw a police officer chase the individual into an alley. Pipes ran across the street to check on Jarju and noticed that Jarju had been shot in the head. The State published the video for the fourth time, again over defense objection. Pipes identified himself in the surveillance video and narrated the events depicted therein.

¶ 11 Officer John Clark (Clark) testified that on January 30, 2014, he went to 2441 West 63rd street to provide aid in the shooting investigation. When Clark arrived at Sonia's, he spoke with Sikorksi who showed him the path which Sikorksi pursued the suspect. Clark walked the path and recovered a handgun at 6250 South Campbell Avenue. Clark never touched the gun, taped off the area and waited for Nancy DeCook (DeCook), a forensic investigator, to recover the handgun.

¶ 12 DeCook testified that when she arrived at Sonia's, she took pictures of the area, and she also recovered a black knit cap, a fired cartridge casing, and another black winter hat with a

fur-like trim. The knit cap had blood and a fired bullet stuck into it. She described the casing as a .380 caliber shell that was ejected from a semiautomatic. After she recovered and inventoried this evidence near Sonia's, she then recovered the handgun at 6250 South Campbell Avenue. The gun had a .380 cartridge that was in the chamber and a .380 cartridge in the magazine. DeCook took the gun to a crime lab for DNA swabbing. The gun was later sent to the Illinois State Police for further testing. DeCook also administered a gunshot residue evidence collection kit on Williams at the police station.

¶ 13 Jennifer Hanna (Hanna), a forensic scientist and firearm's examiner with the Illinois State Police, testified as an expert witness in the case. She testified that her lab received a gun, magazine, fired bullet, and unfired cartridge. Hanna conducted tests on the materials and concluded the bullet that was stuck in the knit cap recovered at Sonia's was fired from the gun recovered at 6250 South Campbell Avenue.

¶ 14 Robert Berk (Berk), a trace evidence analyst with the Illinois State Police testified that he analyzed the gunshot residue test (GSR) that was conducted on Williams. He also conducted tests on Williams's gloves and vest. Berk only detected gun residue on the left pocket of the vest. Berk concluded the presence of the residue indicated the "pocket had either contacted an item with primer gunshot residue on it, or the pocket was in the environment of a discharged firearm."

¶ 15 Scott Reiff (Reiff), a detective with the Chicago police department, testified that he was assigned to investigate the shooting along with his partner, Detective Stanek (Stanek). Reiff and Stanek interviewed Williams in custody for the first time on January 30, 2014 at 12:40 p.m. Reiff testified that before interviewing Williams, Stanek advised Williams of his

Miranda rights and Williams agreed to be interviewed. They interviewed him at different times until around 6:30 p.m. At some point during this time frame, Antara Nath Rivera (Rivera), an assistant State's Attorney, joined Reiff and Stanek in conducting Williams's interview. Reiff stated Williams admitted to shooting Jarju, and Williams accepted a money offer from a subject known as Billy, who worked at a store next door to Sonia's, to shoot and kill Jarju. Williams consented to have his admissions videotaped with all three present. During the course of the investigation, Reiff learned that Billy's name was Bahlah Abubakr, and he worked at the store next to Sonia's.

¶ 16 On cross examination, Reiff acknowledged that he started interrogating Williams around 12 p.m., but did not start videotaping until after 6 p.m. During his first interview, which was not videotaped, Williams denied any involvement in the shooting. However, around 3 p.m., in another interview that was not videotaped, Williams mentioned he was hired by Billy to shoot Jarju. Billy was arrested. The detectives investigated phone calls made between Williams and Billy and discovered there was contact between the two cell phones and those calls were consistent with Williams's videotaped statement. However, Reiff could not recall whether they received phone records from the day they were requested until the day of trial—a period spanning 20 months. Billy was never charged with any involvement in the shooting and was released.

¶ 17 Williams testified in his own defense. Williams stated that while walking on 63rd Street, he heard a gunshot and ran towards a gate "to take cover." As he was running, Sikorski yelled at him, "freeze." Williams put his hands up and Sikorski and Evans handcuffed him and placed him in a police SUV.

¶ 18 Williams was transported to a police station and placed in an interrogation room with both of his hands handcuffed to a bench. Williams stated he made up his confession and included Billy's name in it to get back at him because Billy disrespected Williams's girlfriend a couple of days prior. Williams further stated he was forced to come up with a story because he was afraid the police would have pushed his head against the wall if he did not admit to the shooting. Williams further explained that even though he told Rivera on the confession tape that the police treated him well, he was not telling the truth because the detectives that pushed his head against the wall were still in the room. Williams feared if he told Rivera the truth, the detectives would have retaliated with "excessive force." Finally, Williams stated that he did not shoot Jarju and he did not have a gun on January 30, 2014.

¶ 19 On cross examination, Williams testified he was wearing the vest that tested positive for gunshot residue, but he did not shoot Jarju. Williams further explained he was wearing the all black clothing introduced throughout the trial, and he was around the area of 63rd Street and Campbell Avenue the day Jarju was shot. Williams denied using a black t-shirt as a mask. Williams also testified that the story he confessed to on tape came from the police.

¶ 20 At this point, the State sought and was granted leave to admit State's exhibit 56, which is Williams's conviction under 11 CR 01411-01, a conviction of AUUW, and State's exhibit No. 57, which is Williams's conviction under 12 CR 06689-01 for UUW by a felon.

¶ 21 ASA Rivera testified that on January 30, 2014, she met with Officers Stanek and Wright as part of the investigation of Jarju's shooting. She learned the facts of the case from the two detectives and then proceeded to speak with Williams. Rivera noted that her initial conversation with Williams was not videotaped and he was not handcuffed. Rivera advised

Williams of his rights which Williams indicated that he understood and he agreed to speak with Rivera. Williams admitted he shot Jarju. Williams never complained of sustaining injuries as a result of police officers in custody. Williams agreed to be recorded. Rivera also spoke with Williams, alone and off camera, about how he had been treated. Williams stated that he had been treated well by all the officers.

¶ 22 A jury found Williams guilty of attempt first-degree murder (720 ILCS 5/8-4(a) (West 2014)), aggravated battery with a firearm (720 ILCS 5/12-3.05(e)(1) (West 2014)), and armed habitual criminal (720 ILCS 5/24-1.7(a) (West 2014)). The trial court merged the attempt first-degree murder and aggravated battery with a firearm and sentenced Williams to 55 years in prison on attempt first degree murder, and to 30 years in prison for being an armed habitual criminal, with the sentences to be served concurrently. This appeal followed.

¶ 23

ANALYSIS

¶ 24

On appeal, Williams first argues the trial court abused its discretion when it allowed the State to play the video of the "execution-style" shooting of Jarju four times during Williams's trial. Williams contends that playing the video once had probative value, but any additional showing of the video was cumulative and failed to establish the ultimate issue at trial – the shooter's identity. It inflamed the jury's emotions and incited their passion, which prejudiced Williams and deprived him of a fair and impartial jury trial. Williams argues that by playing the video four times, the State preyed on the jurors' tendency to mistake what is repeated for what is true, which improperly reinforced the State's theory upon the jurors that the person in the video was indeed Williams.

¶ 25 The State argues playing the video four times did not prejudice Williams because it did not cast him in a negative light for reasons unrelated to the case. The State maintains the video had significant probative value to verify the victim's and eyewitnesses' accounts of their locations and observations of the shooting, especially the witnesses' descriptions of the shooter and the shooter's actions after the shooting. The State contends playing the video, in conjunction with the witnesses' testimony, was necessary to assist the jury in determining whether the evidence established beyond a reasonable doubt that the individual who shot Jarju was the same individual Sikorksi saw, pursued, arrested, and identified as Williams.

¶ 26 The admission of a surveillance videotape is within the sound discretion of the trial court, and its decision will not be disturbed absent an abuse of discretion. *People v. Taylor*, 2011 IL 110067, ¶ 27. A trial court abuses its discretion when no reasonable person would adopt the trial court's view. *Id.* A trial court may, at its discretion, exclude relevant evidence if its prejudicial effect substantially outweighs its probative value. *People v. Walker*, 211 Ill. 2d 317, 337 (2004). Evidence with sufficient probative value may be admitted despite its gruesome or inflammatory nature, and should not be excluded merely because it may arouse feelings of horror. *People v. Degorski*, 2013 IL App (1st) 100580, ¶ 100. Gruesome evidence may be admitted into evidence if it is relevant to establish any fact at issue, and may specifically be relevant where it is used to corroborate oral testimony. *People v. Degorski*, 2013 IL App (1st) 100580, ¶ 97. However, evidence will have a prejudicial effect when it casts a negative light upon a defendant for reasons that have nothing to do with the case on trial such that the "jury would be deciding the case on an improper basis, such as sympathy, hatred, contempt, or horror." *People v. Pelo*, 404 Ill. App. 3d 839, 867 (2010). The

prejudicial effect of the evidence depends on the circumstances of the case, and it is the trial court's function to weigh the probative value and potential prejudicial effect of such evidence. *People v. Williams*, 181 Ill. 2d 297, 314 (1998).

¶ 27 Williams does not dispute the probative value of the video when it was played the first time as Jarju was testifying, but contends that playing it three additional times was substantially prejudicial to him. We disagree. Playing the video three additional times did not cast a negative light upon Williams for reasons unrelated to the events surrounding the shooting. *Pelo*, 404 Ill. App. 3d at 867. Rather, the video was used to corroborate oral testimony of Pipes, Tate, and Sikorski, who observed the events surrounding the shooting. *Degorski*, 2013 IL App 100580, ¶ 97. The video had significant probative value to verify the witnesses' accounts as they narrated their locations, actions, observations and more importantly, the witnesses' descriptions of the shooter. *Id.* Furthermore, the surveillance videotape did not display the offense at close range and was not bloody or graphic. Because the video was played to corroborate each witness's account of the shooting, and the footage of the video is not bloody or graphic, we hold that any prejudicial effect of the three additional showings of the videotape did not substantially outweigh the probative value of corroborating the witnesses' testimony. *Walker*, 211 Ill. 2d at 337. Therefore, the trial court did not abuse its discretion in permitting the State to play the video three additional times. *Taylor*, 2011 IL 110067, ¶ 27.

¶ 28 Next, Williams argues he was deprived of his right to effective assistance of counsel because during the cross examination of Reiff, Williams's counsel elicited testimony that detectives investigated phone calls made between Williams and Billy. Detectives discovered

there was contact between Williams's and Billy's cell phones, and those calls were consistent with Williams's videotaped statement. Williams contends this testimony directly contradicted Williams's defense that he made up the claim that Billy hired him. Accordingly, Williams argues that his own counsel's elicitation of this incriminating evidence was prejudicial to Williams.

¶ 29 In response, the State argues Williams's counsel's line of questioning to Reiff was part of the defense's trial strategy. The State supports their assertion by noting that during the defense's closing argument, Williams's counsel used, as argument, the lack of the police investigation to obtain phone records and the paper on which Jarju wrote his phone number. The State contends this undermined the veracity of Williams's videotaped statement, thereby bolstering Williams's testimony that he fabricated being hired by Billy. The State also argues there is no reasonable probability that the result of the trial would have been different had the defense not elicited the information.

¶ 30 Where facts surrounding a defendant's contention that the defendant received ineffective assistance of counsel are not disputed, the defendant's contention is reviewed *de novo*. *People v. Stanley*, 397 Ill. App. 3d 598, 612 (2009). In *Strickland v. Washington* (1984), 466 U.S. 668, the United States Supreme Court provided a two-part test to determine whether a defendant received effective assistance of counsel, which Illinois adopted in *People v. Albanese* (1984), 104 Ill. 2d 504. *People v. Barrow*, 133 Ill. 2d 226, 247 (1989). Under *Strickland*, a defendant must show both that (i) the advice of counsel fell outside the range of competence demanded of attorneys in criminal cases and (ii) there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been

different. *Id.*, (citing *Strickland*, 466 U.S. at 687). With respect to the first element, a defendant must overcome a strong presumption that the challenged action of counsel was the product of sound trial strategy and not of incompetence. *Id.* This strong presumption can be overcome where counsel's decision is so irrational and unreasonable that no reasonably effective defense attorney, facing similar circumstances, would pursue such a strategy. *People v. Wilborn*, 2011 IL App (1st) 092802, ¶ 81. Since a defendant must satisfy both prongs of the *Strickland* test, it is not enough that defendant shows particular errors of counsel were unreasonable. *Strickland*, 466 U.S. at 693. The defendant must show that the errors actually had an adverse effect on the defense. *Id.* Ineffectiveness claims under the two-prong *Strickland* test may be resolved by reaching only the second prong, the prejudice component, for lack of prejudice renders irrelevant the issue of counsel's performance. *People v. Wiley*, 205 Ill. 2d 212, 230–31, (2001).

¶ 31 Without consideration of Williams's counsel's alleged elicitation of damaging testimony, the State presented overwhelming evidence to establish Williams's guilt. The State's evidence included eye witness testimony from Tate (who stood right next to Jarju when Jarju was shot), Pipes and Sikorski, describing the shooter's dark clothing and his path of flight; Sikorski's pursuit and detention of the shooter dressed as described by the witnesses along the pathway also described by the witnesses; recovery of a bullet in front of Sonia's that was traced to the gun recovered along the path of flight; discovery of GSR in the left pocket of the vest recovered from defendant; and the videotaped statement of Williams admitting to being the shooter. Based on the aforementioned evidence, we find that Williams's counsel's alleged elicitation of damaging testimony did not have an adverse effect on the defense.

Strickland, 466 U.S. at 693. Accordingly, we find that Williams has not met the prejudice component of the *Strickland* test, thus we need not address the first prong of the test. Therefore, we hold that Williams did not receive ineffective assistance of counsel. *Wiley*, 205 Ill. 2d at 230–31.

¶ 32 Finally, Williams argued that his AHC conviction should be reversed because the State failed to establish that Williams had two qualifying prior convictions required to serve as predicates for a charge of AHC. Williams contended one of the qualifying prior convictions - - aggravated unlawful use of a weapon - - that was used to convict him as an armed habitual criminal is void *ab initio* because it was premised on a statute that has since been found facially unconstitutional in *People v. Aguilar*, 2013 IL 112116. Accordingly, Williams argues that the AUUW conviction's invalidity means it cannot serve as a predicate for a charge of armed habitual criminal.

¶ 33 The State cited *People v. McFadden*, 2015 IL 117424, 24, and argued Williams's prior conviction for AUUW, even though declared unconstitutional in *Aguilar*, may properly serve as proof of the predicate felony conviction for AHC if at the time of the gun possession, the defendant had not yet had the prior AUUW conviction vacated. However, on August 9, 2018, our Supreme Court in *In re N.G.*, 2018 IL 121939, overruled *McFadden* and held that convictions resulting from a facially unconstitutional statute are illegal and void, a nullity to which no court may give adverse effect in any proceeding against the defendant. Pursuant to the Supreme Court's reversal of *McFadden*, the State filed a motion for leave to cite additional authority -- *In re N.G.*, 2018 IL 121939 -- deciding to no longer rely on their argument under *McFadden*. However, the State maintained that Williams's conviction for

AHC was proper because Williams's prior conviction was not based upon the subsection of the statute found unconstitutional in *Aguilar*.

¶ 34 The certified copy of Williams's conviction introduced at trial did not indicate under which specific subsection of AUUW Williams was charged. It only indicated Williams was charged with three counts of AUUW and a plea of guilty was entered on Count II. When the Supreme Court issued *In re N.G.*, the State obtained the charging instrument from the case and found Williams was charged under Count II with AUUW for carrying a firearm when he "had not been issued a currently valid firearm owner's identification card," which is not the section that was found unconstitutional in *Aguilar*. The State admits the charging instrument was not part of the record on appeal, and they did not seek to supplement the record with that document until the issuance of the *In re N.G.* decision.

¶ 35 In light of the charging instrument indicating that Williams was not charged under the subsection deemed unconstitutional in *Aguilar*, Williams withdrew this argument. We find that because Williams was convicted for the offense of AUUW for carrying a weapon when he had not been issued a currently valid firearm owner's identification card pursuant to section 5/24-1.6(a)(1), (a)(3)(c), and was not convicted for the offense of AUUW pursuant to section 5/24-1.6(a)(1), (a)(3)(A), (d), a section found facially unconstitutional under *Aguilar*, Williams's conviction is valid, thus properly serving as proof of the predicate felony conviction for Williams's AHC conviction.

¶ 36 CONCLUSION

¶ 37 We find the trial court did not abuse its discretion in permitting the State to play the video three additional times because any prejudicial effect of the three additional videotape

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showings did not substantially outweigh the probative value of corroborating the witnesses' testimony. We also find that Williams did not receive ineffective assistance of counsel because Williams's counsel's alleged elicitation of damaging testimony did not have an adverse effect on his defense due to the quality and quantity of the corroborative evidence presented.

¶ 38 Affirmed.