

2019 IL App (1st) 161227-U

No. 1-16-1227

Order filed February 15, 2019

Fifth Division

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 DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No.14 CR 17608
)	
ANTHONY NEWMAN,)	Honorable
)	Charles P. Burns,
Defendant-Appellant.)	Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Rochford and Justice Hoffman concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's claim of ineffective assistance of counsel must fail when he cannot establish that trial counsel's strategic decision to attack a witness's credibility during cross-examination was objectively unreasonable.

¶ 2 Following a jury trial, defendant Anthony Newman was found guilty of aggravated fleeing or attempting to elude a peace officer (625 ILCS 5/11-204.1(a)(1) (West 2014)), and sentenced to 21 months in prison. On appeal, defendant contends that he was denied the effective

assistance of counsel when counsel elicited evidence from a State's witness that "bolstered" the State's case. We affirm.¹

¶ 3 At trial, Chicago police officer Brendan Bruno testified that on August 13, 2014, he and his partner Officer Jason Streeper were in an unmarked police vehicle with municipal plates. The officers were not in uniform but wore police-issued vests and duty belts. Around 10:30 p.m., they heard "loud reports," which they believed to be gunfire. The officers were also monitoring the police radio at that time. He was "not 100 percent sure" if they "were the ones who put the call out," but a call came over the radio shortly thereafter that there were "loud reports" or shots fired, in the area. The officers then pulled up behind a red Ford Taurus and activated their vehicle's lights and sirens. Bruno observed two individuals inside the vehicle. The Taurus did not pull over or stop; rather, it accelerated to a "high rate of speed." The officers chased the Taurus, and contacted the Office of Emergency Management to state that a "vehicle was attempting to elude us by driving erratically." At trial, Bruno identified defendant as the Taurus's driver.

¶ 4 As the officers followed the Taurus, it accelerated, crossed a median and began to drive "southbound in the northbound lane of traffic at a high rate of speed." During the chase, Bruno observed the Taurus disregard two stop signs. Ultimately, the Taurus went through an alley, attempted to turn into a "park area" and struck a cement pole or post. The officers' vehicle, with its lights and sirens activated, was "right on the bumper" of the Taurus when it stopped. Defendant then opened the driver's side door and fled on foot. Another person exited the

¹ In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

passenger side of the Taurus and ran away. Bruno and his partner pursued defendant, and took defendant into custody 15 to 20 yards away.

¶ 5 During cross-examination, Bruno testified that he wrote the arrest report and that nowhere in that report did it indicate that the Taurus crashed into a pole; rather, it stated that the Taurus stopped. Similarly, the incident report did not state that the Taurus crashed into anything. However, Bruno indicated that the incident report was a “summation report.” When the Taurus stopped, both of its occupants got out and ran. Bruno testified that to his knowledge, nothing illicit was recovered from a pat-down of defendant. No weapons were recovered from defendant.

¶ 6 Counsel then asked whether Bruno searched the Taurus. Bruno replied that he searched the Taurus and that he believed that narcotics were recovered from the Taurus. Counsel then asked where, in the arrest report, that it was indicated that narcotics were recovered from the vehicle. Bruno acknowledged the arrest report merely stated that narcotics were recovered. Counsel then asked whether it was correct that the narcotics were actually recovered from the vehicle’s passenger. Bruno testified that the passenger was also taken into custody and that narcotics were recovered from that person “as well as” from the Taurus. Counsel then showed Bruno a report authored by a different officer and asked whether it was accurate. Bruno stated that this report was accurate and indicated that suspect cannabis was recovered from the Taurus.

¶ 7 Bruno then testified that his attention was drawn to the Taurus due to its rate of speed and the way it turned. He did not see gunshots coming from the Taurus, or anyone running to it or exiting it. Bruno explained that when one hears gunshots and then sees a vehicle “taking off at a high rate of speed,” it was reasonable to at least investigate the possibility that the vehicle might be involved. The following exchange then took place:

“Q. All right, [y]ou didn’t have any other information that this vehicle was involved?

A. We were actually flagged down *** by an individual stating that that vehicle was involved.

Q. Was involved?

A. Yes.

Q. Did they tell you, in fact, that the vehicle had been shot at?

A. They just said that that vehicle was just involved.

Q. How long did this stop take? You said you were flagged down.

A. Seconds.

Q. Seconds? And then you see this vehicle—

A. It was still in sight. It was still at the end of the block.

Q. The shots that had been fired, was this also seconds before?

A. Yeah.

Q. At this point, someone says, [t]hat car was involved in the shooting, correct?

A. Yes.

Q. So it wasn’t just you on a hunch that said, [w]ell, we think this car is driving away, right?

A. Well, it was driving at a fast rate of speed. And that also confirmed that we might want to investigate this vehicle when we were flagged down and told that that vehicle was involved in the shooting.

Q. Did you notice this car driving at a high rate of speed first or were you flagged down first?

A. We noticed the vehicle first.

Q. Why did you stop for someone flagging you down?

A. Because, again, we're investigating at this point. We don't know exactly what happened. That's why we're investigating."

¶ 8 After Bruno's testimony, the defense made a motion for a directed finding. The trial court denied the motion.

¶ 9 Defendant then testified that he lived in Elgin and was responsible for caring for his four children. He had stopped working due to high blood pressure and heart failure. He was on his way home from a friend's house on August 13, 2014 when he heard "a lot" of gunshots and stopped his vehicle. He then picked up a man who got into the backseat and he began to drive to a hospital. However, when defendant learned that the man was "grazed" rather than "hit," he turned in order to drop the man off. As he was driving through an alley, he looked back and saw vehicles "coming real fast." He saw lights flashing and believed that these were police vehicles. It was "not long at all," or seconds, between when he first saw the vehicles and when he pulled over. Between picking up his passenger and being pulled over, defendant encountered one stop sign. He was "not really sure" if he came to a complete stop. As soon as defendant pulled over, his passenger exited the vehicle and ran away. Defendant got out and "laid down" on the ground.

He explained that he panicked when he saw the cars and sirens. A police officer then came up to defendant, grabbed him, and hit him. Defendant was taken into custody and put into the back of a police vehicle. He did not see where his passenger ran, but later saw the man at a police station. Defendant explained that all the windows in his vehicle were tinted. He denied purposefully attempting to get away from any police vehicles.

¶ 10 During cross-examination, defendant testified that he stopped his vehicle when he heard the gunshots. He did not call 911. Although he did not see anyone shooting a gun, he did see someone run around the corner. Defendant did not know this person well, but knew his nickname and let him into the vehicle. He turned around and began to drive toward a hospital. He was rushing because he believed that his passenger had been shot and did not notice a vehicle with flashing lights. When the man told defendant that he was alright, defendant turned. When defendant saw flashing lights, he knew that it was the police. He did hear sirens, but once he saw the lights, he stopped. He denied that his vehicle crashed into a concrete pole or planter. Defendant denied that there was cannabis in his vehicle.

¶ 11 The State then recalled Officer Bruno in rebuttal. Bruno testified that he and his partner approached defendant at the same time. His partner reached defendant first, and he did not see his partner strike defendant. He denied that defendant immediately got on the ground.

¶ 12 During closing argument, the State argued that defendant made the choice not to pull over when he saw “flashing blue lights” and heard police sirens. In its closing argument, the defense argued that as soon as defendant “realize[d]” there were flashing lights, he stopped his car and got on the ground. The defense then argued that Officer Bruno “couldn’t get anything right,” that is, he was not sure whether he and his partner called in the report of shots fired and,

although he testified that the officers' attention was drawn to the Taurus by its rate of speed, "when questioned further," he indicated that "somebody *** flagged them down." The defense further argued that although Bruno testified that there was a "high-speed chase" there was no testimony regarding any car accidents during the chase and that Bruno stated "for the first time yesterday" that the Taurus crashed, when the arrest report that he authored stated that the car "stopped." The defense next argued that it did not make any sense that the officers let the passenger run off when they did not know if that person had a gun, and, posited that it did not make any sense because "that is not what happened." Rather, Bruno ran after the passenger and did not know what happened to defendant. The defense concluded that defendant was unimpeached and more credible than Bruno.

¶ 13 The jury found defendant guilty of aggravated fleeing or attempting to elude a peace officer. The trial court denied defendant's motion for a new trial and sentenced him to 21 months in prison.

¶ 14 On appeal, defendant contends that he was denied the effective assistance of counsel when counsel elicited testimony from Officer Bruno during cross-examination that bolstered the State's case by giving defendant a motive to flee from officers, that is, defendant's apparent involvement in two other crimes. Defendant argues that evidence that his vehicle was identified as involved in a shooting and that narcotics were recovered from the vehicle "rendered" the State's theory of the case more "plausible."

¶ 15 Ineffective assistance of counsel claims are governed by the test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). A defendant raising a *Strickland* claim "must show that

counsel's performance was deficient" and "that the deficient performance prejudiced the defense." *Id.* at 687.

¶ 16 To establish that counsel's performance was deficient " 'defendant must prove that counsel made errors so serious, and that counsel's performance was so deficient, that counsel was not functioning as the "counsel" guaranteed by the sixth amendment.' " *People v. Jones*, 2017 IL App (1st) 143766, ¶ 41 (quoting *People v. Evans*, 186 Ill. 2d 83, 93 (1999)). To make this showing, a defendant must overcome the strong presumption that counsel's challenged action or inaction may have been the result of counsel's sound trial strategy. *Id.* The failure to satisfy either prong of the *Strickland* test precludes a finding of ineffective assistance of counsel. *People v. Graham*, 206 Ill. 2d 465, 476 (2003).

¶ 17 Generally, decisions on cross-examination and impeachment of witnesses are matters of trial strategy immune to claims of ineffective assistance of counsel. *People v. Pecoraro*, 175 Ill. 2d 294, 326 (1997). The manner in which counsel cross-examines a particular witness involves the exercise of professional judgment, and is entitled to substantial deference from a reviewing court. *Id.* at 326-27. A defendant can only prevail on a claim of ineffective assistance of counsel by showing that counsel's approach to the cross-examination was objectively unreasonable. *Id.* at 327.

¶ 18 With respect to the cross-examination of Officer Bruno, Bruno testified on direct examination that after hearing gunshots, he and his partner pulled up behind a Taurus, activated their vehicle's lights and sirens and then chased the Taurus as it accelerated at a high rate of speed. He further testified that the Taurus ultimately struck a cement pole or post and that defendant exited the vehicle and attempted to flee on foot. During cross-examination, counsel

questioned Bruno regarding the arrest report that he authored, and Bruno acknowledged that this report stated that the Taurus came to a stop rather than that it crashed into something.

¶ 19 Bruno also testified during cross-examination that neither weapons nor anything “illicit” were recovered from defendant. Counsel then inquired whether Bruno searched the Taurus, and Bruno replied that he believed that narcotics were recovered from the Taurus. Counsel then asked him where, in the arrest report that he authored, it indicated that narcotics were recovered from the vehicle. Bruno then acknowledged that the arrest report merely stated that narcotics were recovered. Counsel next asked whether it was true that the narcotics were recovered from the passenger. Bruno replied that narcotics were recovered from both the passenger and the Taurus. Counsel then produced a second report authored by a different officer and asked whether this report was accurate. Bruno indicated that this document, which stated that suspect cannabis was recovered from the Taurus, was accurate.

¶ 20 In the case at bar, both the State and the defense presented one witness at trial. Thus the outcome rested on credibility, that is, which version of events the jury found more credible. Officer Bruno testified that the Taurus led officers on a chase and defendant testified that he stopped the car as soon as he observed flashing lights. Accordingly, counsel attempted to attack the credibility of the State’s sole witness through impeachment. Counsel highlighted the contradictions between Bruno’s testimony at trial regarding how the Taurus came to a stop and the police report that he authored at the time. Counsel also examined Bruno regarding the details of the contraband recovered in this case. Although the police report authored by Bruno stated that narcotics were recovered, Bruno testified that narcotics were recovered from the vehicle and the passenger. He also acknowledged that a report authored by a different officer was accurate.

¶ 21 In case at bar, counsel was attempting to highlight the difference between Bruno's recitation of the facts in the arrest report and his recollection at trial. Counsel's strategic decision to attack Bruno's credibility does not "appear irrational and unreasonable in light of the circumstances that defense counsel confronted at the time," *i.e.*, Bruno was the State's sole witness. See *People v. Faulkner*, 292 Ill. App. 3d 391, 394 (1997) (counsel's strategy "must be shown to be more than unsuccessful to overcome a presumption of soundness"). In other words, defendant has not established that counsel's decision to impeach the State's sole witness during cross-examination was objectively unreasonable. See *Pecoraro*, 175 Ill. 2d at 327.

¶ 22 Counsel further examined Bruno as to why the officers began to follow the Taurus. Bruno responded that he did not see gunshots coming from the Taurus or anyone exiting or entering the vehicle, rather, he noticed the vehicle's speed and thought it reasonable to investigate the possibility that it was involved with the shots fired. Counsel then asked whether Bruno had "other information" indicating that the vehicle was involved. Bruno replied that a person flagged the officers down on the street and indicated that the vehicle was involved. In other words, the officers stopped their initial pursuit of the Taurus to speak to a person, and then resumed their pursuit.

¶ 23 Counsel's questions regarding why officers began to follow the Taurus was another attempt to attack Bruno's credibility by drawing notice to this omission in his direct testimony as well as to highlight that the only information that officers had was that this vehicle was "involved." By cross-examining Bruno regarding what drew his attention to the vehicle, counsel was both noting that he failed to mention the bystander on direct examination and highlighting the fact the officers chose to stop their pursuit to speak to a bystander. This court has previously

determined that “[i]mpeachment by omission of facts may be used where *** it is shown that the witness had the opportunity to make a statement about the omitted facts and, under the circumstances, a reasonable person ordinarily would have included the facts.” *People v. McWhite*, 399 Ill. App. 3d 637, 642 (2010).

¶ 24 As discussed above, considering that Bruno was the State’s sole witness, counsel’s decision to attack his credibility was not objectively unreasonable. See *Pecoraro*, 175 Ill. 2d at 327. Defendant testified that it was seconds between when he saw the flashing lights and when he pulled over and that he immediately got on the ground. Bruno, on the other hand, testified that defendant led the police on a chase and then attempted to flee on foot. Thus, the outcome of trial rested on who the jury found to be more credible. Here, counsel’s strategy at trial was to attack Bruno’s credibility by highlighting the contradictions between his testimony on direct examination that they immediately pulled up behind the Taurus, activated their lights and embarked on a high speed chase, and his testimony on cross-examination that that officers stopped pursuing a vehicle they believed might be involved in a shooting in order to speak to a bystander. The record reveals that counsel argued during closing argument that defendant was unimpeached whereas Bruno “couldn’t get anything right.” Considering the context of this case, defendant has not established that counsel’s cross-examining of Bruno was not the product of sound trial strategy. See *Jones*, 2017 IL App (1st) 143766, ¶ 41.

¶ 25 We are unpersuaded by defendant’s reliance on *People v. Orta*, 361 Ill. App. 3d 342 (2005). In *Orta*, the defendant was charged with possession of a controlled substance with intent to deliver, and defense counsel elicited evidence that defendant had prerecorded funds in his possession on a previous day that he received after selling drugs to a police informant. *Id.* at 344-

45. In other words, counsel's actions elicited testimony that allowed the State to establish that the defendant was a drug dealer. *Id.* at 347. On appeal, the court found that the evidence of the prerecorded funds prejudiced the defense with no legitimate tactical purpose. *Id.*

¶ 26 In the case at bar, unlike *Orta*, counsel's cross-examination of Bruno did not enable the State to prove an essential element of the charged offense, that is, fleeing or attempting to elude a peace officer. Rather, counsel attempted to cast doubt on Bruno's credibility by cross-examining him regarding his recollection of his encounter with defendant and contrasting that recollection with a contemporaneous report that he authored.

¶ 27 Accordingly, because counsel's chosen tactic was not objectively unreasonable, defendant has failed to overcome the strong presumption that counsel's decision regarding how to cross-examine Bruno constituted sound trial strategy. *Pecoraro*, 175 Ill. 2d at 326-27. Defendant's ineffective assistance of counsel claim must therefore fail. *Graham*, 206 Ill. 2d at 476 (a defendant's failure to satisfy either prong of the *Strickland* test precludes a finding of ineffective assistance of counsel).

¶ 28 For the forgoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 29 Affirmed.