2019 IL App (1st) 170312-U
No. 1-17-0312
June 28, 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.
Respondent-Appellee,	)	
	)	No. 14 CR 14191
v.	)	
	)	The Honorable
KENNETH HOBSON,	)	Nicholas Ford,
	)	Judge Presiding.
Petitioner-Appellant.	)	

JUSTICE WALKER delivered the judgment of the court.
Presiding Justice Mikva and Justice Griffin concurred in the judgment.

ORDER

¶ 1 *Held*: When a defendant shows in an evidentiary hearing on his postconviction petition a reasonable probability that he would have achieved a better result if not for trial counsel's errors, the court must vacate the conviction and remand for a new trial. Trial counsel committed unprofessional errors when he failed to investigate the backgrounds of the State's primary witnesses, causing him to fail to discover evidence of the special favors accorded those witnesses for their testimony to the grand jury on which the State relied.

¶ 2 Kenneth Hobson appeals from the denial of his postconviction petition following an evidentiary hearing. He contends he received ineffective assistance of counsel at his murder trial. We find that Hobson showed his counsel committed unprofessional errors by (1)

failing to find and present evidence of the favors witnesses received in exchange for testifying against Hobson; (2) failing to object to the substantive use of some out-of-court statements; and (3) failing to impeach a detective who assembled the case against Hobson. We also find that Hobson showed a reasonable probability that he would have achieved a better result had counsel not so erred. We reverse the trial court's judgment and remand for a new trial.

¶ 3 I. BACKGROUND

¶ 4 On October 27, 2001, police found Shaughnessy Tate in his bullet-riddled car, dead from multiple gunshot wounds. Police found two different kinds of glass near the car, and some shards of glass surrounded a cartridge. Police soon discovered that Hobson, who knew Tate, rented a van on October 25, 2001, and before Hobson returned the van to the rental agency, a shop repaired one of the van's windows. Hobson and Demond Williams, who rented the van, filed a police report alleging that some men broke the window in the course of an altercation with Hobson and Williams.

¶ 5 In 2004, prosecutors asked a grand jury to indict Hobson for Tate's murder. Along with the evidence of the rented van with the broken window, prosecutors presented testimony from three witnesses: Valerie Harper, Hobson's sister; Rashaan Smith, father of Harper's children; and Travis Weston, a friend of Hobson.

¶ 6 Prosecutors relied on the grand jury testimony of the three witnesses and their statements to police. According to the statement Weston signed at the police station in 2004, on October 27, 2001, Hobson drove a van with the Jermaine Rayton, Derrick Rayton (the Rayton brothers), Weston, and one other person as passengers. Hobson saw Tate and pulled up next

to Tate's car. The Rayton brothers shot through the van's window at Tate. Hobson then drove to Harper's home, where they met Harper and Smith. The Rayton brothers told Smith they shot Tate. Hobson celebrated with the Rayton brothers. Weston testified before the grand jury in accord with the signed statement.

¶ 7 Smith testified to the grand jury that he went to Harper's home on October 27, 2001, where he saw Hobson with Weston and the Rayton brothers, and "all of them were bragging about how they just shot [Tate]." Hobson exchanged high fives with the others to celebrate. Smith's written statement matched the grand jury testimony.

¶ 8 The statement Harper signed at the police station asserted that the Rayton brothers, Smith, Hobson, and one other person came to her home on October 27, 2001. The Rayton brothers:

> "were talking about shooting someone. Jermaine and Derrick Rayton were saying *** that the boy started running and tried to jump a fence but that he might have got hit because he fell.
>
> ***
>
> *** [W]hile Jermaine Rayton and Derrick Rayton were talking about how they shot the boy, *** Hobson *** was standing there."

¶ 9 In her testimony to the grand jury, Harper stated that Hobson said "those stupid asses were shooting and they shot the windows out." Smith told her the person they shot was Tate. The grand jury returned the indictment that the prosecutor sought.

¶ 10 At trial, the prosecutor relied on the same evidence at the bench trial in 2005. All three witnesses recanted their grand jury testimony and explained the pressure police used to induce them to testify as they did to the grand jury.

¶ 11 Weston testified that after police arrested him on unrelated charges in 2004, Detective Mike Dyra of the Chicago Police Department threatened to charge Weston with the murder of Tate. Weston stated:

> "[Dyra said ']you'll save all of your buddies if you just cooperate, won't nobody be charged.['] He is like the best thing for you to do he suggested that I say that Derrick [Rayton] killed [Tate] because Derrick was deceased, he was like Derrick can't get charged with the murder. He like he told me to say that Jermaine Rayton also was the shooter because he was in federal custody at the time and he stipulated to me that Jermaine couldn't get prosecuted."

¶ 12 Weston and Dyra "went over everything" before Weston spoke with an assistant State's Attorney (ASA). Weston "told [the ASA] what the cop said" for him to tell the ASA. Weston testified that he did not know anything about the murder.

¶ 13 Smith testified that in 2003 he went to the police station because he "had a case pending." Dyra coerced Smith into signing an untrue statement about Tate's murder. Smith hoped he would receive a lesser sentence on a pending charge if he said what police wanted him to say. According to Smith, "[Police] already had a story ***. [A] lot of stuff was fabricated *** towards Mr. Hobson." Smith testified falsely to the jury, in accord with what police wanted him to say, but he recanted at trial. He said, "I can't *** send a man to jail for something he didn't do."

¶ 14 Harper testified that in 2004 detectives took her to the police station and asked her whether she knew anything about Tate's murder. She said no. The detective said, "I know your brother didn't kill Shaughnessy Tate ***, we already know who did it." The detective told Harper that Harper would speak with an ASA. According to Harper, the detective "was telling me what to say and he said tell [the ASA] Jermaine Rayton and Derrick Rayton did it. And he was like but the only person we can charge is Jermaine Rayton because Derrick Rayton is dead." Harper testified that she did not remember the night of October 27, 2001. Harper agreed that one night Smith, the Rayton brothers, and two others came to her home, saying they shot someone. Hobson may have been in the room with the others. Harper admitted that she told the ASA that somebody said "'you all are stupid asses, you shot right through the window."

¶ 15 Dyra testified that he did not know about any warrant when he questioned Weston. Dyra swore he did not threaten to charge Weston with murder, and no one told Weston what to say about the events of October 27, 2001.

¶ 16 Williams testified that on October 29, 2001, Hobson persuaded Williams to co-sign a report to police about the van's broken window. Williams did not get into any altercation that led to the window breaking, and he did not know how the van's window broke.

¶ 17 Judge Michael Toomin stated, "the court found credible the earlier statements of these witnesses, particularly some of them, Travis Weston, Rashaan Smith given to the police, given to the grand jury which implicated the defendant." Judge Toomin found Hobson guilty of murder and sentenced Hobson to 35 years in prison. The appellate court affirmed the

judgment. *People v. Hobson*, No. 1-05-3944 (2007) (unpublished order under Supreme Court Rule 23).

¶ 18 Hobson filed a postconviction petition in which he argued that he did not receive effective assistance of counsel at trial because Hobson's trial attorney failed to investigate the case adequately and failed to object to the admission into evidence of prior inconsistent statements as substantive evidence of the content of those statements. *People v. Hobson*, 2014 IL App (1st) 110585, ¶¶ 14-15. Judge Nicholas Ford dismissed the postconviction petition, holding that Hobson failed to make a substantial showing of a constitutional violation. This court reversed the judgment and remanded the case to the trial court for an evidentiary hearing. *Hobson*, 2014 IL App (1st) 110585.

¶ 19 At the hearing on remand, Sergeant Dominick Luciano of the Westchester Police Department testified that he arrested Weston in 2004 as part of an investigation in Westchester. He checked the police database and discovered outstanding Cook County warrants for Weston's arrest. When Luciano placed Weston in Dyra's custody, Luciano told Dyra about the outstanding warrants. Other evidence showed that after Weston testified to the grand jury, Dyra took Weston to the home of one of Weston's relatives. Dyra did not execute the arrest warrants.

¶ 20 Hobson's trial attorney, Dennis Sherman, admitted he did not investigate Weston's criminal background, so he was not aware of the no-bail warrants that the Cook County court had issued before Weston testified to the grand jury. Also, Sherman did not know that Luciano could impeach Dyra's trial testimony by testifying that Luciano told Dyra about the warrants when he transferred Weston to Dyra's custody.

¶ 21 Sherman also admitted that he did not investigate Smith's criminal background, and he did not know that when Smith spoke with police in 2003, Smith faced a substantial sentence on charges of drug possession. Sherman admitted that he did not know that two days after Smith testified before the grand jury concerning Hobson, Smith pled guilty to a lesser drug offense and received a sentence that permitted him to leave prison after 90 days. Defense counsel at the evidentiary hearing presented a 2003 indictment of Smith charging him with two different class 1 felonies. Because of Smith's several prior convictions, if the court found Smith guilty as charged, Smith could have been sentenced to 30 years in prison. See 730 ILCS 5/5-5-3(c)(8); 5-8-1-(a)(3) (West 2002).

¶ 22 Sherman admitted that he did not realize the court could not rely on the statements Smith and Harper signed at the police station as substantive evidence of the shooting. He did not realize that the out-of-court written statements did not constitute substantive evidence, unless the person who signed the statement had personal knowledge of the events at issue. See *Hobson*, 2014 IL App (1st) 110585 ¶ 24. Sherman testified that if he had known the pertinent facts and the law, he would have brought to the trial court's attention Weston's and Smith's motivations for saying anything police wanted them to say to the grand jury, he would have objected to the substantive use of Harper's and Smith's written statements, and he would have impeached Dyra.

¶ 23 The ASA who negotiated Smith's plea bargain testified that he did not know about Smith's grand jury testimony or his role in the case against Hobson when he negotiated the plea. The ASA recommended 3 years in prison, but Smith received 18 months.

¶ 24 At the conclusion of the evidentiary hearing, Judge Ford found:

"[Hobson] fails to present any evidence demonstrating that the non-execution of the warrant was a direct result of Weston's grand jury testimony in the instant matter. Accordingly, petitioner fails to demonstrate by a preponderance of the evidence that his trial counsel was ineffective for failing to present evidence that demonstrated that Weston had a warrant out at the time he gave his handwritten statement and grand jury testimony.

Petitioner also contends that his trial counsel was ineffective for failing to impeach Detective Dyra's testimony ***. [P]etitioner fails to demonstrate that the non-execution of the warrant was a direct result of Weston's grand jury testimony in the instant matter. Accordingly, petitioner fails to demonstrate prejudice resulting from counsel's failure to impeach Detective Dyra regarding the warrant.

* * *

*** [P]etitioner fails to demonstrate that the sentence Smith received was a direct result of Smith's grand jury testimony in the instant matter. *** Accordingly, petitioner fails to demonstrate by a preponderance of the evidence that his trial counsel was ineffective for failing to present evidence regarding the circumstances surrounding Rashaan Smith's written statement and grand jury testimony.

***

*** It is undisputed that Harper and Smith were not present for the shooting, and thus they lacked the requisite personal knowledge for these statements to be

> admitted under section 115-10.1(c)(2). However, petitioner's claim nevertheless fails because petitioner fails to demonstrate by a preponderance of the evidence that were it not for this error, the outcome of the trial would have been different. Other witnesses, including Travis Weston and Demond Williams, made statements linking petitioner to the shooting. Accordingly, petitioner fails to demonstrate prejudice."

¶ 25 Hobson now appeals.

¶ 26 ANALYSIS

¶ 27 On appeal, Hobson argues that he proved his counsel provided ineffective assistance. "[W]e review the circuit court's denial of a postconviction petition following an evidentiary hearing to determine whether it was manifestly erroneous." *People v. Ortiz*, 235 Ill. 2d 319, 333 (2009).

¶ 28 We note that Judge Ford used an improper standard for assessing prejudice. Judge Ford imposed on Hobson a burden of proving he would have obtained a better result but for counsel's errors. However, Hobson needed to prove only "a reasonable probability that he would have achieved a better result if his trial counsel had not committed unprofessional errors." *Hobson*, 2014 IL App (1st) 110585, ¶ 29; see *People v. Towns*, 182 Ill. 2d 491, 506 (1998).

¶ 29 Hobson's trial counsel erred by failing to (1) object to the substantive use of the evidence of Smith and Harper's statements to police, (2) find and present evidence about the charges Smith and Weston faced, and (3) impeach Dyra with evidence that he lied under oath when he said he did not know about the outstanding warrants for Weston's arrest. Judge Ford

found that the evidence of the penalties Smith and Weston faced would not have made any difference because Hobson did not definitively establish a direct *quid pro quo*. Judge Ford applied an improper standard. "The pending charges of a witness may be shown or inquired into where it would reasonably indicate that his testimony might be influenced by bias, interest, or a motive to testify falsely." *People v. Paisley*, 149 Ill. App. 3d 556, 560 (1986). "[B]ias impeachment cannot be confined to formal offers of leniency from the prosecution." *People v. Dace*, 182 Ill. App. 3d 444, 447 (1989). "A defendant need not show that the witness has been promised leniency; the evidence must only give rise to the inference that the witness has something to gain by testifying." *People v. Anthony Roy W.*, 324 Ill. App. 3d 181, 187 (2001). "[E]ven if there is no evidence of any quid pro quo ***, it is the fact that [the witness] had a strong reason to lie, and to testify in a manner that would help the prosecutor, in the hopes of getting favorable treatment from the Commonwealth, that establishes the potential bias that would have been extremely compelling impeachment evidence." *Grant v. Lockett*, 709 F.3d 224, 236 (3d Cir. 2013).

¶ 30 In assessing the prejudicial effect of trial counsel's errors, we consider first the weakness of the State's case against Hobson. See *People v. Coleman*, 168 Ill. 2d 509, 538-39 (1995). The State proved that Hobson rented a van on October 25, 2001, and before he returned the van on October 29, 2001, he had a window repaired. Williams testified that Hobson asked him to lie in a report to police about how the window broke. Police found two kinds of glass on the street near the car where Tate died, but no witness testified that the glass on the street matched the glass of the van's broken window. No witnesses testified that they saw a van at or near the scene of the shooting. No witnesses tied Hobson, Weston, or the Rayton brothers

to any of the physical evidence found at the scene. No witness at trial claimed to have seen Hobson, Weston, or the Rayton brothers near the crime scene. No witness at trial claimed to have seen Hobson, Weston, or the Rayton brothers with the murder weapons.

¶ 31 The three witnesses on whom the prosecution relied all testified about the methods police used to procure their testimony to the grand jury. Harper, Weston, and Smith all testified that police said they would save Hobson from jail by blaming the Rayton borthers for the murder. The statements signed at the police station provided no new, corroborated information to police. See *People v. Sanchez*, 2018 IL App (1st) 143899, ¶ 78. The statement Harper signed at the police station said the Rayton brothers spoke of shooting a "boy [who] started running and tried to jump a fence." Prosecutors presented no evidence that such a boy witnessed the murder of Tate. The evidence showed that the bullets hit Tate as he sat in his car.

¶ 32 Judge Toomin heard the testimony of the three witnesses about police pressure, and he found the testimony to the grand jury and the signed statements more credible than their testimony in court. However, Judge Toomin did not hear evidence of the full extent of the advantages Smith and Weston actually obtained after they testified to the grand jury. Smith testified in court that he appeared before the grand jury "in the hope that somehow [he] would get a lesser sentence" on a pending charge. Judge Toomin never heard that Smith faced a sentence of up to 30 years on the pending charges, and after he testified to the grand jury he pled guilty to a much lesser charge that permitted him to walk free after 90 days. Judge Toomin heard evidence Weston faced outstanding arrest warrants when he testified before the grand jury. Judge Toomin did not hear that Dyra released him, without enforcing

the warrants, and drove him home after he testified to the grand jury. Judge Toomin did not hear evidence that Dyra lied under oath when he said he did not know about the outstanding warrants for Weston's arrest. Judge Toomin, like defense counsel, did not acknowledge that the written statements Smith and Harper signed did not qualify for use as substantive evidence that Hobson drove the van when the Rayton brothers shot Tate by shooting through the van's window.

¶ 33 We find that Judge Ford committed manifest error by applying wrong standards for determining whether Hobson showed that he received ineffective assistance of counsel. See *People v. Davis*, 105 Ill. App. 3d 549, 558 (1982) (trial court's ruling on motion to suppress vacated because the court applied the wrong standard); *Estate of Ragen*, 79 Ill. App. 3d 8, 14 (1979). We find that the evidence establishes a reasonable probability that the court would have found the trial testimony of the three witnesses more credible than their testimony to the grand jury if the court had known the full extent of the favors Smith and Weston received after they testified to the grand jury; if the court had realized that the statements Harper and Smith signed did not constitute admissible substantive evidence corroborating their grand jury testimony about the shooting; and if the court had known Detective Dyra lied under oath at trial about whether he knew of Weston's outstanding warrants. Accordingly, we reverse the trial court's judgment and remand for a new trial.

¶ 34 CONCLUSION

¶ 35 Hobson's counsel erred by failing to investigate sufficiently the criminal backgrounds of the witnesses, by failing to realize that the court could not rely on two written statements as substantive evidence concerning the shooting, and by failing to find and present evidence

impeaching Detective Dyra. Hobson has shown a reasonable probability that he would have achieved a better result at trial if his counsel had not erred. Accordingly, we reverse the trial court's judgment and remand for a new trial.

¶ 36 Reversed and remanded.