2019 IL App (3d) 170412-U

Order filed August 7, 2019
Modified Upon Denial of Rehearing October 24, 2019

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2019

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 9th Judicial Circuit, Knox County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-17-0412 Circuit No. 16-CF-142
MIGUEL A. ROMO,	)	Honorable Paul L. Mangieri,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justice Carter concurred in the judgment.
Justice McDade dissented.

ORDER

¶ 1 *Held*: (1) Evidence was sufficient to prove defendant guilty of first degree murder, residential burglary, and home invasion beyond a reasonable doubt.

(2) Trial court properly granted extension of speedy trial period from 120 days to 240 days to obtain DNA testing that was material to the case.

¶ 2 Defendant, Miguel Romo, was convicted of first degree murder (720 ILCS 5/9-1(a)(3) (West 2016)), residential burglary (720 ILCS 5/19-3 (West 2016)), and home invasion (720 ILCS

5/19-6 (West 2016)) and sentenced to 40 years in prison. He appeals, arguing that (1) the State failed to prove him guilty of the charged offenses beyond a reasonable doubt and (2) his right to a speedy trial was violated when the trial court granted the State's motion for a continuance to await deoxyribonucleic acid (DNA) testing. We affirm.

¶ 3 On March 16, 2016, several individuals broke into the home of Dakota Tinkham. Tinkham struggled with the intruders and one of them shot him in the head, resulting in his death. Defendant was charged by indictment with first degree murder under a theory of accountability, four counts of home invasion under theories of accountability, and residential burglary.

¶ 4 At a pre-trial conference on September 6, 2016, the prosecutor announced that the State was ready for trial, as did the defendant. Two weeks later, the State filed a motion to continue under the speedy-trial statute (725 ILCS 5/103(c) (West 2016)). The motion stated that evidentiary items, including a firearm, shell casings, and hair, had been sent to the Illinois State Crime Lab for DNA testing on April 12, 2016, and results were still pending. In its motion, the State noted that it had been informed by the lab that there was a nine-month backlog due to the closing of another crime lab. The State alleged that the DNA test results were material to their case and that based on the timely delivery and continued communication with the crime lab, it had exercised due diligence to obtain the material, without success. At the hearing on the motion, the State summarized its telephone conversations with the crime lab, in which the prosecutor was informed that the backlog had existed for almost two years. The trial court found that the pending DNA analysis was material to the case and that the State had exercised due diligence in attempting to procure the results. The court granted an additional 120 days to obtain the DNA results.

¶ 5 At trial, Raven Davidson testified that around midnight on March 16, 2016, she was sitting in her car in front of her house and observed a silver Pontiac near her neighbor's house. Three

men exited the vehicle wearing all black, but she could not see their faces. All three men headed toward Dakota Tinkham's apartment. Davidson got out of her car and confronted the driver of the silver Pontiac. She told him that she was going to call the police, and he drove away. Davidson went inside her house and witnessed the same three people leave Tinkham's house and run up the street. She called 9-1-1 and reported a possible burglary.

¶ 6 On cross-examination, defense counsel asked defendant to stand, and Davidson acknowledged that defendant was not thin. She also stated that the three men who entered the house were thin and that defendant's body type "does not fit the description of what I seen [sic]."

¶ 7 Alex Timmons and his girlfriend lived with Tinkham. Around 11:30 p.m., on March 16, 2016, he and his girlfriend left the apartment. They returned around midnight and witnessed two or three strangers running through the neighbor's backyard. In the apartment, Alex noticed that the door was open and items were missing, including an Xbox, a Playstation, a tablet and a Nintendo DS. He went to the back of the house and found Tinkham lying on a bed. Alex tried to resuscitate him. He noticed blood and called for emergency services.

¶ 8 Officer Kyle Winbigler reported to the scene shortly before midnight. He recovered evidence from the house and then searched the neighborhood. He found a black semiautomatic handgun inside a tree trunk in a nearby park. Officer Todd Olinger testified that the park where the gun was located was "a couple hundred yards" from Tinkham's apartment. When Winbigler and Olinger found the gun, it was loaded with a .380 caliber round in the chamber.

¶ 9 Jason List, a forensic scientist at the Morton Crime Lab, specializes in firearm identification. He examined the gun and a bullet casing found in the bedroom. The casing matched the test fired from the gun that was found in the tree. List opined that the casing came from that

gun. He testified that it was "highly unlikely" that the handgun found near the apartment did not fire the bullet that was removed from Tinkham's head.

¶ 10 Chris Jacobson, a latent print examiner at the Morton Crime Lab, examined the gun for the presence of latent finger prints. He did not find any suitable latent impressions on the gun.

¶ 11 Forensic scientist Jennifer MacRitchie is a biologist in the DNA section of the Morton Crime Lab. She signs in evidence, identifies the presence of foreign material, and conducts DNA testing on that material. She tested swabs from the handgun found in the tree trunk and compared it to DNA samples from defendant and co-defendant, Devontae Williams. Her tests revealed that the DNA was from a mixture of at least four people. She was unable to make comparisons to any known samples.

¶ 12 Forensic pathologist Amanda Youmans performed an autopsy on Tinkham. She observed a gunshot wound on his forehead, two lacerations on his head, and a cut on his finger. She believed that the lacerations on Tinkman's body were caused by a blunt object. Youmans also removed a bullet from Tinkham's head and loose hairs from the wound on Tinkham's hand.

¶ 13 Crime lab scientist Jamie Jett verified that he tested one of the strands of hair Youmans cataloged and determined it was a Caucasian head hair. On cross-examination, he noted that he had no other samples to compare to the recovered hair.

¶ 14 Jadara McKinney is Devontae Williams' girlfriend. She testified that Devontae and defendant were friends and that she had known defendant for years. She had a conversation with defendant on March 17, 2016. During the conversation, defendant told her that he was in Tinkham's apartment the night before and that Tinkham was holding a gun. He explained that he walked up to Tinkham, put his hand on the gun, and told him to put it down. He said that he "looked over," and by the time he looked back, Tinkham was on the floor and there was blood on

the wall. McKinney testified that defendant mentioned something to her about "a plan gone bad," but he did not mention that Tinkham had been shot.

¶ 15 After McKinney's testimony, the prosecutor and defense counsel approached the bench. During the sidebar, the prosecutor informed the court that co-defendants Justin Timmons and Jovendia Williams were working with the State and hoping for consideration for their testimonies and that Devontae would be testifying under a proffer, which had been disclosed to defense counsel.

¶ 16 Justin Timmons testified that he was driving his mother's silver Pontiac on the night of March 16, 2016. Devontae, Jovendia, Charles Posey, and defendant met him in a parking lot and jumped in the car. The group planned "to take a few possessions out of the house that everyone entered." Timmons stayed in the vehicle. When the others returned, they had an Xbox 360, a PlayStation 4, and some games and controllers.

¶ 17 Timmons stated that he drove away from the house but had to return later to retrieve defendant's cell phone. The second time, defendant, Devontae, and Jovendia exited the vehicle. While he was waiting for them to return, a woman exited her car and walked up to him. She said that he needed to leave before she called the police. After a few minutes, Timmons pulled up in front of the house and saw defendant, Devontae and Jovendia running out of the apartment. On cross-examination, Timmons testified that defendant entered the apartment both times and that both Devontae and defendant said they were carrying handguns. Timmons acknowledged that he was hoping for a better deal in his case based on his cooperation. He also stated that he decided to testify because "it's the right thing to do."

¶ 18 Devontae Williams took the stand and stated that he was testifying in exchange for a recommendation from the State that his sentence not exceed 45 years in prison. He admitted that

he had been facing a potential sentence of 85 years. Around 8 p.m. on March 16, 2016, Devontae was hanging out with several friends at Jamie Campbell's house, and they were all smoking marijuana. They decided to rob someone's house, so he got into a car with Timmons, Jovendia, defendant and Posey. Timmons was driving the car. The rest of the group followed in a truck. They went to Tinkham's apartment on Emery Street. Inside the apartment, defendant grabbed an Xbox, Jovendia picked up a PlayStation 4 and Posey grabbed some marijuana. They returned to Timmons car and he drove them back to Campbell's house.

¶ 19 The second time they went back to Tinkham's apartment, Devontae got out of the car with defendant and Jovendia. At the side of the house, they met Posey, who told them that no one was in the house and that they should go in and take more stuff. Posey, Jovendia and defendant went inside. A few minutes later, Devontae saw Posey run out. He went inside the apartment and witnessed defendant pointing a gun at Tinkham. Tinkham got up, rushed defendant, and tried to take the gun out of his hand. Devontae described defendant's gun as a silver .380 caliber. Devontae testified that he pulled his own gun from his waistband, tried to hit Tinkham in the head to stop the fight, and the gun "went off and shot him." Devontae turned around and ran out of the house. He ran through a yard and hid the gun in a tree stump. He did not know until later that Tinkham had been shot.

¶ 20 Devontae testified that the group returned to the house a second time to steal more marijuana. They searched outside the house for defendant's cell phone and went inside the house to get the marijuana. Devontae possessed a .380 caliber both times he entered the house. He admitted that his plea deal was the only reason he was testifying.

¶ 21 Jovendia Williams was the third co-defendant to testify. He noted that the State had not offered him anything in exchange for his testimony. But he acknowledged that the day before trial

he indicated he would be invoking his right against self-incrimination, a position he had since reconsidered after meeting with the prosecutor. During that meeting, he agreed to tell his story, as long as he was not the first co-defendant called as a witness for the State.

¶ 22 Jovendia testified that he got into a silver vehicle on March 16, 2016, with defendant, Devontae, and Timmons. They robbed Tinkham's house twice that night. During the first visit, everyone exited the vehicle except Timmons. When Posey said the coast was clear, they all went in and took items. Jovendia grabbed a PlayStation 4. The group later decided to go back to "get more stuff," and to retrieve defendant's cell phone. During the second visit, defendant and Devontae were "tussling" with Tinkham "with the gun in their hands." Devontae said he was going to "pistol-whip" Tinkham, and he hit him over the head. When Devontae hit him, the gun went off and the bullet struck Tinkham in the head. Everyone ran. Jovendia said that he did not know defendant and Devontae had guns until he went into the house. He stated that he decided to testify because he was having nightmares about what he had done.

¶ 23 After deliberation, the jury found defendant guilty of first degree murder, two counts of home invasion, and residential burglary. Defendant was sentenced to 40 years in prison.

¶ 24 ANALYSIS

¶ 25 I. Reasonable Doubt

¶ 26 Defendant first claims that the State failed to prove him guilty beyond a reasonable doubt where the primary evidence consisted of three accomplices who received consideration from the State for their testimonies.

¶ 27 In a challenge to the sufficiency of the evidence, we will not retry the defendant. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). The relevant inquiry is "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the

essential elements of the crime beyond a reasonable doubt.' " (Emphasis in original.) *Id.* (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). As a reviewing court, we should not encroach on the trier of fact's function of assessing the credibility of the witnesses, weighing the testimony, and resolving any conflicts in the evidence. *People v. Brooks*, 187 Ill. 2d 91, 131 (1999).

¶ 28 In Illinois, a person is legally accountable for the conduct of another if "[e]ither before or during the commission of an offense and with the intent to promote or facilitate that commission, he or she solicits, aids, abets, agrees, or attempts to aid that other person in the planning or commission of the offense." 720 ILCS 5/5-2(c) (West 2018). A defendant may be accountable for acts performed by another if the defendant shared the criminal intent of the principal or if there was a common criminal design, plan, or purpose. *People v. Taylor*, 164 Ill. 2d 131, 140-141 (1995). A common design can be inferred from the circumstances surrounding the crime, including participation in planning the crime, presence during the commission of the crime, and maintenance of a close affiliation with the co-defendants after the crime. *Id.* at 141. While mere presence at the scene of a crime is not enough to impose accountability for a crime, there is no requirement that a defendant actively participate to be found guilty under a theory of accountability. *Id.* at 140.

¶ 29 Accomplice testimony has inherent weaknesses, and the trier of fact should accept it with caution. *People v. Tenney*, 205 Ill. 2d 411, 429 (2002). However, "the testimony of an accomplice witness, whether corroborated or uncorroborated, is sufficient to sustain a criminal conviction if it convinces the jury of the defendant's guilt beyond a reasonable doubt." *Id.* The determination of the credibility of accomplice testimony is within the province of the jury. *People v. Lambert*, 60 Ill. App. 3d 280, 282-83 (1978).

¶ 30 Here, Devontae, Jovendia and Timmons testified that defendant was part of the group that planned to rob Tinkham on March 16, 2016. All three men testified that they drove to Tinkham's apartment two times that evening. The first time they entered the apartment, they stole a few video consoles, some electronics, and drugs. They all agreed that Timmons drove them to the apartment both times, but he stayed in the car. Devontae, Jovendia and Timmons also testified that they made a second trip back to Tinkham's apartment to steal more items and to find defendant's cell phone. During the second trip, Devontae, Jovendia and defendant went inside. Devontae and Jovendia testified that a struggle ensued between Tinkham and defendant, Devontae attempted to hit Tinkham over the head with the end of his pistol to break up the fight, and his gun discharged. Expert testimony established that a handgun that was recovered from a tree trunk near the scene fired the bullet that killed Tinkham. All three accomplices consistently testified regarding the details of their plans that evening and the eventual scenario that led to Tinkham's death. The only other occurrence witness who testified was Davidson, a neighbor and objective bystander. She corroborated Timmons's testimony, stating that she saw three men get out of the vehicle, she approached Timmons's car, and she threatened to call police. Although she stated that all three men who exited the vehicle were thin and defendant was not, she acknowledged that she did not see their faces. When viewed in a light most favorable to the prosecution, this evidence is sufficient to prove defendant guilty based on accountability beyond a reasonable doubt.

¶ 31 Defendant argues the testimony of the accomplices was unreliable because their testimony contradicted Davidson's and they testified in exchange for consideration from the State. Such deficiencies, however, go to the credibility of the witnesses and the weight of the evidence, assessments best left to the jury. At trial, Devontae, Jovendia, and Timmons were consistent in their accounts of the events that evening. All three testified that defendant was part of the group

that took items from Tinkham's apartment, that he returned with the group to the apartment the second time, and that he was struggling with Tinkham when Devontae's gun discharged. Moreover, Davidson's observations described events leading up to the group's decision to enter the apartment a second time, not the struggle that occurred inside the apartment, and her testimony corresponded with the testimonies of Devontae, Jovendia, and Timmons. Based on the similarities in the accounts of that evening, the jury likely concluded that Davidson was simply mistaken in her assessment of the physical build of the three men who exited Timmons's vehicle.

¶ 32 The jury was also informed that the accomplices had received some form of consideration. Devontae testified that he secured a plea deal with the State and Timmons stated that he was hoping to negotiate a lower sentence. Jovendia also revealed that he met with the prosecutor the day before he testified. The jury knew of the potential biases of the accomplice witnesses' and it had the responsibility to weigh their statements and assess their credibility. Given the consistency and corroboration of all three accomplice witnesses, we can only conclude that their testimony satisfied the jury that defendant was guilty of the charged offenses beyond a reasonable doubt. See *Lambert*, 60 Ill. App. 3d at 283.

¶ 33 II. Speedy Trial

¶ 34 Defendant contends that his right to a speedy trial was violated when the trial court granted the State's motion to continue the case to await DNA evidence. He argues that the court abused its discretion in finding materiality under section 103-5(c) of the Code of Criminal Procedure of 1963 (725 ILCS 5/103-5(c) (West 2018)) where the prosecution announced that it was ready for trial weeks before moving to continue.

¶ 35 Under the speedy-trial statute, every person in custody for an alleged offense shall be tried within 120 days from the date he or she was taken into custody. 725 ILCS 5/103-5(a) (West 2018).

The statute states that a continuance for DNA testing results may be granted "[i]f the court determines that the State *has exercised without success due diligence* to obtain results of DNA testing that is *material* to the case and that there are reasonable grounds to believe that such results may be obtained at a later day." (Emphasis added.) 725 ILCS 5/103-5(c) (West 2018). The speedy-trial statute must be liberally construed in a defendant's favor because it enforces a constitutional right. *People v. Swanson,* 322 Ill. App. 3d 339, 342 (2001). The State is required to show that it exercised due diligence without success. *People v. Colson,* 339 Ill. App. 3d 1039, 1047 (2003); see also *People v. Battles,* 311 Ill. App. 3d 991, 997 (2000) (noting whether due diligence has been exercised is to be determined on a case-by-case basis). It is also required to demonstrate that DNA testing is material to the case. 725 ILCS 5/103-5(c) (West 2018); see also *People v. Coleman*, 2013 IL 113307, ¶ 96 (defining material evidence as evidence that is relevant and probative of defendant's innocence).

¶ 36 We will not overturn the trial court's ruling on a motion to continue under the speedy-trial statute unless it amounts to a clear abuse of discretion. *Colson*, 339 Ill. App. 3d at 1047. An abuse of discretion occurs when the ruling is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the court. *People v. Sutherland,* 223 Ill. 2d 187, 272-73 (2006).

¶ 37 Here, the DNA test results were relevant to the State's case. If the testing confirmed that defendant's DNA, fingerprints, or hair were found on the items recovered from Tinkham's apartment, that would have been probative of defendant's innocence. Likewise, if testing demonstrated that defendant's DNA was not on the items found, that would have been equally probative. Although it is unclear why the assistant State's Attorney announced that the State was ready for trial before DNA testing had been completed, the record shows no indication that the

State was attempting to manipulate the speedy-trial statute when it filed the subsequent motion to continue. The State demonstrated that it submitted evidence for testing within weeks of the indictment, that the crime lab was unable to produce the test results within 120 days, that an additional 120 days would allow DNA testing to be completed, and that the DNA test results were material to the case. Thus, the trial court did not abuse its discretion in granting the State's motion to continue under section 103-5(c).

¶ 38 CONCLUSION

¶ 39 The judgment of the circuit court of Knox County is affirmed.

¶ 40 Affirmed.

¶ 41 JUSTICE McDADE, dissenting.

¶ 42 After reviewing the Petition for Rehearing in the above-referenced matter, I would grant it because I believe defendant has asserted a persuasive argument that some of his arguments were undervalued in reaching our decision.

¶ 43 All of the occurrence witnesses who testified against the defendant were admitted participants (and the girlfriend of a participant) in the crimes and all accrued significant benefit for their inculpating testimony.

¶ 44 Weighing against that self-serving testimony are two other pieces of evidence. First, the only *objective* occurrence witness testified to seeing the three persons who entered the apartment building and defendant could not have been one of them because they were all thin and defendant's body type excluded him.

¶ 45 Second, forensic evidence which the State convinced the judge was so material and so critical to its case that he effectively negated defendant's speedy trial demand to wait for it, yielded

nothing to corroborate the claims of the confessed co-defendants that defendant had participated in the crimes.

¶ 46 In sum, I believe the questions raised, though few in number, are significant in impact and they warrant a rehearing.