

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).

2019 IL App (4th) 160573-U

NO. 4-16-0573

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

March 7, 2019
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
MICAH J. HOPKINS,)	No. 14CF862
Defendant-Appellant.)	
)	Honorable
)	Heidi N. Ladd,
)	Judge Presiding.

PRESIDING JUSTICE HOLDER WHITE delivered the judgment of the court. Justices Steigmann and Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed in part and remanded with directions, concluding (1) remand for an evidentiary hearing was necessary to determine whether defendant's posttrial counsel had a *per se* conflict of interest while representing defendant and (2) defendant failed to prove the evidence demonstrated he unreasonably believed he acted in self-defense.

¶ 2 In June 2014, the State charged defendant, Micah J. Hopkins, by information with (1) aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2014)), (2) aggravated unlawful possession of a firearm by a felon (720 ILCS 5/24-1.1(a) (West 2014)), and (3) first degree murder (720 ILCS 5/9-1(a)(1), (2) (West 2014)). The charges arose from a shooting that occurred on June 24, 2014, on Hedge Road in Champaign, Illinois.

¶ 3 In April 2015, the matter proceeded to a jury trial. At the close of trial, in addition to a first degree murder instruction, the trial court instructed the jury on self-defense and second degree murder. Subsequently, the jury found defendant guilty of unlawful possession of

a weapon by a felon, first degree murder, and personally discharging a firearm during the commission of the offense of first degree murder. The trial court found the unlawful possession of a weapon by a felon conviction merged into the first degree murder conviction and sentenced defendant to a prison term of 45 years plus a 20-year enhancement.

¶ 4 In May 2015, defendant filed a *pro se* motion for a new trial alleging ineffective assistance of trial counsel. Defendant's appointed counsel filed a motion to reconsider defendant's sentence. In June 2015, the court appointed new counsel, Edwin Piraino, to represent defendant on his *pro se* motion for a new trial. In November 2015, Piraino filed an amended motion for a new trial. In June 2016, the court denied the amended motion. In July 2016, the court denied the previously filed motion to reconsider sentence.

¶ 5 Defendant appeals, asserting (1) Piraino operated under a *per se* conflict of interest while representing him in posttrial matters because Piraino previously represented the victim and (2) defendant's conviction should be reduced to second degree murder where the evidence demonstrated that he unreasonably believed he was acting in self-defense. For the following reasons, we affirm in part and remand with directions.

¶ 6 I. BACKGROUND

¶ 7 In June 2014, the State charged defendant with (1) aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2014)) for discharging a weapon in the direction of Cortlyn Hill; (2) aggravated unlawful possession of a firearm by a felon (720 ILCS 5/24-1.1(a) (West 2014)); and (3) first degree murder (720 ILCS 5/9-1(a)(1), (2) (West 2014)), alleging defendant personally discharged a firearm causing the death of Allen Redding.

¶ 8 A. Defendant's Jury Trial

¶ 9 In April 2015, the jury heard the following evidence over three consecutive days.

¶ 10

1. *Physical Evidence*

¶ 11 On June 24, 2014, at 1514 Hedge Road in Champaign, police responded to the scene of a shooting where they found Redding lying in the front yard, unresponsive with several gunshot wounds. Redding sustained eight gunshot wounds, including a fatal wound to the right lower chest. Also inflicted were one shot in his right elbow, two shots in his right buttock, three shots in his left leg, and one shot through his lower left back.

¶ 12 Champaign Police Lieutenant Nathan Rath, the first officer at the scene, testified that when he arrived at the scene of the shooting, he observed an unresponsive male in the front yard of 1514 Hedge Road and encountered a large crowd of people. Rath noticed a black firearm on the ground between Redding and the house at 1514 Hedge Road. Due to the large crowd of people, Rath collected and secured the firearm in the trunk of his squad car. The firearm, identified as a Cobra .380, had the safety on, included a partially inserted magazine, and contained one round in the chamber. Deoxyribonucleic acid (DNA) swabbings from the Cobra .380 handgun were unsuitable for comparison.

¶ 13 Redding's hands were swabbed for gunshot residue, and an expert witness in the field of forensic primer gunshot residue testing concluded that Redding "[(1) discharged a firearm, [(2) was in the vicinity of a discharged firearm, or [(3) came in contact with a primer gunshot residue-related item." The expert stated it was possible that Redding was "merely within a three-to-twelve-foot area of a gun having been discharged[.]"

¶ 14 Police found shell casings six to eight feet west of where they found an unresponsive Redding. They also recovered two shell casings in front of a white vehicle located in the driveway of 1516 Hedge Road. In the driveway of 1512 Hedge Road, officers found a wallet containing identification for Cortlyn Hill, a cell phone, and more spent shell casings. The

evidence eliminated the Cobra .380 handgun found between Redding and the house at 1514 Hedge Road as the source of any fired projectiles.

¶ 15 *2. Erron Hedrick*

¶ 16 Erron Hedrick, Redding's cousin, testified that on June 24, 2014, he drove Redding, accompanied by Hill and a man named Nolan, to his sister Ashley Britton's house at 1514 Hedge Road in Champaign. Hedrick testified that once they arrived on Hedge Road, he backed his car in the driveway of an abandoned house next to Britton's house and listened to music. After about five minutes, Redding got out of Hedrick's vehicle and went to Britton's house.

¶ 17 Hedrick testified that Tommy Pettigrew pulled up in a van on Hedge Road to talk with Hedrick. As Pettigrew got out of his van, two gunshots came from the direction of Britton's house, behind Hedrick and to his right. Hedrick "got low." Pettigrew jumped back in his van and drove away. As Hedrick started to follow Pettigrew, Hill jumped out of the vehicle. Hedrick did not look back or see who fired the shots. He later returned to Britton's house and saw Redding on the ground and a girl giving him cardiopulmonary resuscitation (CPR). Hedrick testified that he did not see Redding, Hill, or Nolan with a firearm on June 24, 2014.

¶ 18 *3. Theresa Carr*

¶ 19 Theresa Carr testified that on June 24, 2014, her nephew, Pettigrew, drove her in his van to get dinner at her sister's house at 1517 Hedge Road. After they left Carr's sister's house, Pettigrew drove down Hedge Road where Carr saw, in Hedrick's vehicle, Hedrick, Hill, and another man she did not recognize. Carr testified that Pettigrew stopped his van in front of Britton's house to speak with Hedrick but before he could get out of his vehicle, gunshots rang out.

¶ 20 Carr testified that she saw two gunmen to the right of Britton's house, near Markita Davis's driveway at 1516 Hedge Road. She stated that a young man, later identified as Redding, was leaving Davis's front door when the two men began firing at him. Carr testified that she thought Redding intended to go toward Hedrick's vehicle. Carr identified defendant in court as one of the shooters and identified Devon Craig as the other shooter.

¶ 21 According to Carr, a bullet first hit Redding in the back, which caused him to fall. As he lay on the ground with his hands up, defendant walked over and continued to shoot him, then kicked him. Carr and Pettigrew left the scene and, as they were driving away, she looked back and saw Hill shooting from Hedrick's vehicle.

¶ 22 Carr testified that she later returned to her sister's house at 1517 Hedge Road, where she saw defendant approach Markeeta McFarland in the driveway and overheard him say, "I got that MF[,] " as he pounded his fists. Carr testified that defendant stood in the crowd and talked to McFarland for about 15 minutes. After defendant left, McFarland boasted to Carr that she knew the shooting was going to occur. Carr admitted waiting three days before calling the police and telling them what she saw and heard. Carr testified that she neglected to point out defendant to the police the night of the shooting when considering her own safety. She noted the police never asked her if she witnessed the shooting.

¶ 23 *4. Ashley Britton*

¶ 24 Britton testified that on June 24, 2014, around 4 p.m., her son went outdoors. Seconds later, she heard three gunshots coming from the right side of her house. Britton and her aunt, Delshea Greer, ran to the door to call for her son, who ran inside. Britton saw Redding on the ground, leaning on his left arm. Britton testified that she could tell Redding had been shot. Redding was shielding a child from the bullets, and a woman ran out of the house next door and

grabbed the child as the shooting continued. Britton testified that she did not see Redding with a weapon in his hands that day.

¶ 25 Britton stated that Redding could not talk but that he was looking at her as if he wanted her to come help him, so she ran out the door to him. As she did so, she heard a second series of gunshots and saw on the right side of her house between 1514 and 1516 Hedge Road "a buff arm" holding a gun and firing. Britton held Redding's head as he struggled to breathe and she saw a man run by with a gun, upon whom someone from the left side of her house fired gunshots. Britton testified the man ran to a car and left the scene. However, Britton also testified that she thought the shooter left in Devon Craig's silver truck because it drove away after the shooting stopped.

¶ 26 *5. Delshea Greer*

¶ 27 Greer testified that while visiting her niece, Britton, on June 24, 2014, she was in the front room when she saw her great-nephew Redding walk across Britton's front yard toward the house on the right. Greer observed Redding knock on the front door of the house and then leave when no one answered. Redding was walking toward Britton's house when Greer heard gunshots from between 1514 and 1516 Hedge Road. Greer testified that Redding was hit "in his butt, and he fell." He "proceeded to get up, but he couldn't."

¶ 28 Greer ran toward Redding when she heard a second gunshot, which hit Redding in the back. Greer testified that "Chuck" fired the first two shots and then fired at someone across the street. She did not see Chuck in the courtroom.

¶ 29 Greer saw defendant shooting from the driveway between 1514 and 1516 Hedge Road. Defendant's first shots did not hit Redding, but as defendant got closer to Redding, "that's when the bullets start hitting Allen." Greer testified that from not "even seven feet away," Greer

begged defendant to stop shooting her nephew. Greer observed defendant run to the back of the house while Chuck continued to shoot at someone on the opposite side of Britton's house. She noticed the front of Craig's silver SUV near the vacant house. Greer testified that she did not see Redding with a gun.

¶ 30 Greer testified that she saw defendant the day before the shooting, "[i]n the car with Allen," and at Davis's house earlier on the day of the shooting. Around 2 p.m. on June 24, 2014, Greer saw Chuck, Craig, and "Splash" in Craig's SUV talking to defendant, who was standing outside the vehicle. Greer testified that she heard Craig say, "Fuck them niggers, they going to die. These niggers just ain't going to take my shit and think that it's okay. On my mama, on my kids, they going to die." She heard defendant reply, "Cuz, we got guns. We got a lot of guns. Them niggers going to die today." Greer testified that she was in the front doorway of Britton's house, about 25-30 feet away, "just really trying to listen."

¶ 31 *6. Defendant*

¶ 32 An interview of defendant at the Mississippi County Detention Center in Luxora, Arkansas, conducted on July 31, 2014, played for the jury. During the interview, defendant told police Redding was disloyal to him.

¶ 33 Defendant testified at his trial that on June 24, 2014, he was walking to Davis's house while talking to Redding on the phone. Defendant stated that he told Redding where he was and, shortly after, Redding pulled up in a car with three other men. Defendant testified that both Redding and Hill jumped out of the vehicle and he could tell Hill had a gun.

¶ 34 Defendant explained that Redding wanted defendant to get him a rental car as he previously had done but that defendant told Redding he wanted the \$300 Redding owed defendant returned, instead of spending more money on Redding. Defendant stated that Redding

became angry and started pounding his fists, then told defendant that if he did not get him the rental, "it's going to be on[.]" Redding turned sideways and reached for a gun, then defendant pulled out his gun. Defendant testified that he feared Redding would shoot him, so he shot first, striking Redding on the side and back. Redding turned and aimed his gun at defendant, who shot at Redding again. Redding then turned to run, so defendant also decided to run.

¶ 35 Defendant testified that as he turned, he heard shots and he fired behind himself as he ran. Defendant ran through the back of Hedge Road and across the railroad tracks.

Defendant testified that he heard two or three more shots, so he hid in a garage. He stated that he fired five shots at Redding before he heard any other shots. Defendant denied returning to the scene of the shooting or talking to McFarland.

¶ 36 *7. Jury's Verdict*

¶ 37 At the close of the evidence, the court instructed the jury on first degree murder, in addition to self-defense and second degree murder. The jury found defendant guilty of unlawful possession of a weapon by a felon and first degree murder, also finding that defendant, during the commission of the first degree murder, personally discharged a firearm.

¶ 38 *B. Posttrial Proceedings*

¶ 39 During the May 15, 2015, sentencing hearing, the trial court found the conviction for unlawful possession of a weapon by a felon merged into the first degree murder conviction, and sentenced defendant to a prison term of 45 years plus a 20-year enhancement.

¶ 40 On May 21, 2015, defendant filed a *pro se* motion for a new trial alleging ineffective assistance of trial counsel. A few days later, defendant's appointed counsel filed a motion to reconsider defendant's sentence asserting the trial court failed to take into account all mitigating factors and improperly applied aggravating factors.

¶ 41 In June 2015, the trial court appointed new counsel, Edwin Piraino, to represent defendant on his *pro se* motion for a new trial. In November 2015, Piraino filed an amended motion for a new trial alleging ineffective assistance of trial counsel. In June 2016, the court held a hearing and denied the amended motion for a new trial finding effective assistance of trial counsel. In July 2016, the trial court denied the previously filed motion to reconsider sentence.

¶ 42 This appeal followed.

¶ 43 II. ANALYSIS

¶ 44 On appeal, defendant argues (1) Piraino operated under a *per se* conflict of interest while representing him in posttrial matters where Piraino previously represented the victim and (2) his conviction should be reduced to second degree murder because the evidence demonstrated that he unreasonably believed he was acting in self-defense. We turn first to the *per se* conflict of interest allegation.

¶ 45 A. *Per Se* Conflict of Interest

¶ 46 Defendant argues Piraino had a *per se* conflict of interest while he represented defendant because he previously represented Redding. Specifically, defendant asserts this conflict tainted proceedings on his amended motion for a new trial and motion to reconsider sentence. The State refutes that Piraino had a *per se* conflict of interest and challenges the sufficiency of defendant's proof that Piraino represented Redding. Here, the State argues that the transcript supplemented to the record fails to show that counsel Piraino and defendant Redding in the supplemented transcript are the same people in this case.

¶ 47 The fundamental right to effective assistance of counsel "includes the right to have the undivided loyalty of counsel, free from any conflict of interest." *People v. Dickerson*,

393 Ill. App. 3d 531, 534, 913 N.E.2d 610, 612 (2009). The Illinois Supreme Court has recognized three situations in which a *per se* conflict of interest exists:

"(1) where defense counsel has a prior or contemporaneous association with the victim, the prosecution, or an entity assisting the prosecution; (2) where defense counsel contemporaneously represents a prosecution witness; and (3) where defense counsel was a former prosecutor who had been personally involved with the prosecution of defendant." *People v. Fields*, 2012 IL 112438, ¶ 18, 980 N.E.2d 35 (citing *People v. Taylor*, 237 Ill. 2d 356, 374, 930 N.E.2d 959, 971 (2010)).

¶ 48 Well settled is the rule of Illinois jurisprudence that there is a *per se* conflict of interest where counsel has represented both the defendant and the alleged victim of the crime. *People v. Stoval*, 40 Ill. 2d 109, 112-13, 239 N.E.2d 441, 443-44 (1968). The representation of the victim need not still be "active" under this test for a *per se* conflict; rather, a " 'prior relationship falls within this category.' " *People v. Cleveland*, 2012 IL App (1st) 101631, ¶ 45, 981 N.E.2d 470 (quoting *People v. Hernandez*, 231 Ill. 2d 134, 151, 896 N.E.2d 297, 308 (2008)). When defendant's attorney operates under a *per se* conflict of interest, the defendant is not required to show actual prejudice; rather, reversal is automatic unless the record shows defendant's awareness of the conflict and his knowing waiver. *Hernandez*, 231 Ill. 2d at 143. "Where the record shows that the facts are undisputed, the question of whether a *per se* conflict exists is a legal question we review *de novo*." *Id.* at 144.

¶ 49 Defendant argues the record fails to reflect that defendant knew of Piraino's prior representation of Redding and nothing in the record shows defendant waived his right to conflict-

free counsel. Thus, defendant asserts a *per se* conflict of interest exists. Defendant asks this court to take judicial notice of a transcript of proceedings in another case showing an Edwin Piraino represented an Allen Redding during a 2009 guilty plea for attempted robbery. (Champaign County case Nos. 08-CF-1353 and 08-CF-1651). See *People v. Davis*, 65 Ill. 2d 157, 164, 357 N.E.2d 792, 796 (1976) ("[A] court may take judicial notice of other proceedings in other courts, at least where those proceedings involved the same parties and are determinative of the cause [*s*]ub *judice*.") In addition, defendant argues we must vacate the trial court's dismissal of his amended motion for a new trial and his motion to reconsider sentence. Lastly, defendant urges us to remand this cause to the trial court for the appointment of conflict-free counsel to represent him on the previously dismissed motions.

¶ 50 The State agrees that defendant was unaware of Piraino's prior representation of Redding. However, the State argues that taking judicial notice is not proper where the transcript fails to verify that the Piraino and Redding in this matter are the same people in Champaign County case Nos. 08-CF-1353 and 08-CF1651. The State advocates requiring defendant to raise this issue in collateral proceedings.

¶ 51 We agree that nothing in the record indicates that defendant knew of Piraino's prior representation of Redding or that he waived his right to conflict-free counsel. However, we cannot determine whether a *per se* conflict arose because the transcripts in Champaign County case Nos. 08-CF-1353 and 08-CF1651 are insufficient to prove Piraino and Redding in those matters are the same people in this case. Thus, we decline to take judicial notice that the prior representation included the same parties as in this case. See *People v. Fife*, 65 Ill. App. 3d 805, 806, 382 N.E.2d 1234, 1235 (1978) (a court of review declined to take judicial notice that

defense counsel was also a special Attorney General and remanded the cause to the trial court for an evidentiary hearing to determine whether or not a conflict of interest existed.)

¶ 52 After all, we are mindful that a reviewing court is not the proper forum for fact finding upon which a legal question will turn. *Cleveland*, 2012 IL App (1st) 101631, ¶ 53. An evidentiary hearing is necessary so the "reviewing court will have at its disposal a fully established factual record and will be in a position to fully assess the [trial] court's decision on the issue." *Id.* Therefore, we remand to the trial court with directions to conduct an evidentiary hearing to determine whether Piraino and Redding in this matter are the same people in Champaign County case Nos. 08-CF-1353, 08-CF-1651.

¶ 53 B. Defendant's Imperfect Self-Defense Claim

¶ 54 Defendant argues no rational trier of fact could have found that he did not have an unreasonable belief in self-defense, and he contends that his conviction must be reduced to second degree murder. He maintains his testimony and confession support a finding that Redding confronted him and he believed Redding intended to shoot him. He further asserts that discrepancies in the State's witnesses' testimony rendered them unworthy of belief. The State disagrees and argues the evidence is overwhelming that defendant lacked an unreasonable belief in self-defense, meaning defendant committed first degree murder, not second degree murder.

We agree with the State.

¶ 55 In order to establish second degree murder, a defendant must prove one of two statutory mitigating factors by a preponderance of the evidence. *People v. Blackwell*, 171 Ill. 2d 338, 357, 665 N.E.2d 782, 790 (1996). The mitigating factor of "imperfect self[-]defense" is applicable where the "defendant acknowledges that he committed first degree murder but 'at the time of the killing he *** believe[d] the circumstances to be such that, if they existed, would

justify or exonerate the killing ***, but his *** belief [was] unreasonable.' " *People v. Hoy*, 2017 IL App (1st) 142596, ¶ 31, 89 N.E.3d 821 (quoting 720 ILCS 5/9-2(a)(2) (West 2014)).

When a defendant appeals on this ground, we consider whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found lacking the mitigating factor of unreasonable belief in self-defense. *Blackwell*, 171 Ill. 2d at 357-58. " This standard of review does not allow the reviewing court to substitute its judgment for that of the fact finder on questions involving the weight of the evidence or the credibility of the witnesses.' " *People v. Hardman*, 2017 IL 121453, ¶ 37, 104 N.E.3d 372 (quoting *People v. Jackson*, 232 Ill. 2d 246, 280-81, 903 N.E.2d 388, 406 (2009)).

¶ 56 Defendant testified that he subjectively believed he was justified in defending himself from Redding, even if his belief was unreasonable. According to defendant, Redding confronted him wanting more money, while an armed Hill positioned himself nearby. After defendant refused to give Redding money, Redding turned sideways and reached for a gun. Defendant then drew his gun and fired.

¶ 57 Defendant tries to discredit eyewitness testimony by relying on *People v. Hister*, 60 Ill. 2d 567, 571, 328 N.E.2d 531, 533 (1975). There, our supreme court reversed the defendant's conviction for murder when eyewitness accounts of the events could not be reconciled, finding "[t]he remarkable differences inherent in these two versions of the events makes it obvious that one or both of the witnesses was grossly mistaken or untruthful." Specifically, defendant argues that Britton testified she saw Redding shielding a child but that neither Greer nor Carr mentioned seeing a child during the shooting. Also, defendant argues that no other witness besides Carr testified that defendant kicked Redding after shooting him.

¶ 58 As the court of review, we decline to substitute our judgment for that of the fact finder on questions of witness credibility and the weight of evidence. While there are some discrepancies in the eyewitness testimony, defendant's testimony describes an entirely different scenario from all of the eyewitness accounts. Ultimately, in making credibility and weight of evidence determinations, the jury found defendant incredible and decided the evidence weighed against defendant.

¶ 59 While defendant testified he shot Redding after Redding reached for a gun, no other eyewitnesses testified Redding had a gun. Absent is conclusive physical evidence that the Cobra .380 handgun found near Redding's body belonged to him. Defendant also testified that he shot Redding during an argument about \$300 for a rental car. However, no other eyewitness saw defendant near Redding or in an argument with him before the shooting. Carr and Greer testified that Redding was coming from Davis's front door when defendant shot him. Witness testimony and physical evidence refute defendant's testimony that Redding faced defendant and pointed a gun at defendant before defendant fired his weapon. All eight gunshot entrance wounds to Redding's body indicate he turned away from defendant or was on the ground when the shots hit him. Britton, Carr, and Greer all testified that Redding fell when the first shot hit him.

¶ 60 Carr's testimony that after the shooting defendant told McFarland, "I got that MF[,] and McFarland boasting about knowing about the shooting prior to it happening is consistent with the conversation Greer overheard earlier in the day between defendant and Craig.

¶ 61 The evidence overwhelmingly shows that defendant committed first degree murder. The jury could rationally conclude the inconsistencies defendant asserts in the eyewitness' testimony were irrelevant to whether he had an unreasonable belief in the need for

self-defense. After viewing the evidence in the light most favorable to the State, we find the jury rationally found absent the mitigating factor of an unreasonable belief in self-defense.

¶ 62

III. CONCLUSION

¶ 63

For the reasons stated, we affirm defendant's conviction but remand with directions to conduct an evidentiary hearing to determine whether the Piraino and Redding in this matter are the same people in Champaign County case Nos. 08-CF-1353, 08-CF-165. Upon conducting a hearing on remand, the trial court should decide what, if any, action is appropriate regarding defendant's amended motion for a new trial and his motion to reconsider sentence. As a part of our judgment, because the State successfully defended a portion of this appeal, we award the State its \$50 statutory assessment against defendant as costs of this appeal. *People v. Smith*, 133 Ill. App. 3d 613, 619-20, 479 N.E.2d 328, 333 (1985).

¶ 64

Affirmed in part and remanded with directions.