

2014 IL App (2d) 120959-U
No. 2-12-0959
Order filed March 7, 2014

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 09-CF-104
)	
JARRIET E. BRANNON,)	Honorable
)	Allen M. Anderson,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices McLaren and Hudson concurred in the judgment.

ORDER

¶ 1 *Held:* (1) Defense counsel was not ineffective for introducing evidence of an otherwise inadmissible conviction, as defendant did not show prejudice: because the State did not rely on that conviction, which was dissimilar to the charged offenses, defendant could only speculate that the jury did; (2) the trial court did not abuse its discretion in refusing to release subpoenaed documents to defendant, as our *in camera* review demonstrated that the documents contained no information that could have been relevant to defendant's case.

¶ 2 After a jury trial, defendant, Jarriet E. Brannon, was convicted of one count of aggravated battery (720 ILCS 5/12-4(b)(18) (West 2008)) and sentenced to six years in prison. On appeal, he argues that (1) his trial attorney was ineffective for introducing evidence of his prior

conviction, which the trial court had barred; and (2) this court should review, *in camera*, documents that defendant subpoenaed but the trial court sealed, and decide whether the court abused its discretion in refusing to release these documents to defendant. We affirm.

¶ 3 On July 8, 2009, defendant was charged with two counts of aggravated battery, one to Allen Collette and one to Lisa Hernandez, at the Aurora police station jail on January 8, 2009. Each alleged victim was a court detention technician (CDT). On September 1, 2009, defendant served the City of Aurora (City) with a subpoena to produce “[t]he complete personnel [*sic*] files for CDT Collette, including but not limited to, oath of office, description of duties, training received, complaints of excessive [*sic*] force, complaints of injury [*sic*] filed by CDT Collette as a result to [*sic*] incident on or about January 8, 2009 and prior claims of work[-]related injury.” On September 23, 2009, the City moved to quash the subpoena, contending that the requested documents were privileged (see *In re Marriage of Daniels*, 240 Ill. App. 3d 314, 329 (1992)) and that defendant had no need for the documents so as to overcome the privilege.

¶ 4 On October 22, 2009, the trial judge informed the parties that, having reviewed the documents, he had found “nothing that *** [was] disclosable [*sic*] or [was] to be turned over, not necessarily discoverable, but even to be turned over that would touch on anything relevant to this case.” He could find “no reference *** to any event involving this Defendant, involving the date of this offense or the alleged contact.” The judge allowed defendant to file a request specifying any evidence allegedly subject to disclosure.

¶ 5 On November 12, 2009, defendant requested the turnover of (1) information relating to Collette’s training and any prior complaints that he had used excessive force; and (2) videotapes, if any, of Collette’s encounters with civilians. That day, the judge denied the request, noting that the files contained a “memorandum of appointment of Mr. Collette on August 9th, 2004,” and

“routine periodic reviews that [were] not specific to individuals in terms of complaints or anything else and a certificate of training, and that’s it.” The judge had seen nothing that touched on defendant’s case.

¶ 6 On March 22, 2012, the State moved to admit evidence of defendant’s convictions of (1) robbery, a Class 1 felony (1999); (2) unlawful possession of a controlled substance, a Class 4 felony (2006); (3) obstructing justice, a Class 4 felony (2008); and (4) unlawful possession of a controlled substance, a Class 4 felony (2011). The trial court allowed in only the obstructing justice conviction.

¶ 7 At trial, Collette testified for the State as follows. He was 5’10” tall and weighed 290 pounds. On January 8, 2009, he was working with fellow CDTs Hernandez and Sam Roman at the jail in the police station. At about 9:15 a.m., he was in the temporary holding facility with defendant. The other CDTs were nearby. Defendant was “[i]rritated, upset because he was in jail.” Defendant had told Collette that he had just come from the hospital after being in a car accident and that he had pain in his back. Collette asked defendant whether he had money to bond out; defendant said no.

¶ 8 Collette testified that he then directed defendant to remove various articles of clothing, including one of the two pairs of pants he had on, for a search. Defendant protested that he was in too much pain. Collette led defendant into a holding cell so that he could sit on a metal bench and remove his pants. Defendant turned around but refused to sit down. He took off his shoes and the outer pair of pants. He threw the pants at Collette, who caught them. Collette asked defendant to remove his socks, but defendant said “Fuck you” and asked to speak to a sergeant. Collette replied that he would call a sergeant after the search was over. He repeatedly told defendant to sit down and remove his socks, but defendant refused.

¶ 9 Collette testified that he then placed his right hand on defendant's upper arm and his left hand on defendant's belt loop and told him to sit on the bench and remove his socks. Collette tried to "guide [defendant] down." He did not throw him down. Defendant suddenly flipped over onto his belly, landed on the bench, turned onto his side away from Collette, and screamed, " 'You hurt me, you hurt me.' " Defendant started to slide off the end of the bench, so Collette, who was still holding onto defendant's arm (though not the belt loop), tried to pull him back up. Collette did not knee defendant in the back or get on top of him. Hernandez, who had just entered the room, went around in back of the bench and tried to push defendant up. Defendant swung at Collette with a closed left hand and hit his right arm. Collette swung back and grazed defendant's head. Eventually, Collette, Hernandez, and Roman cuffed defendant, and an ambulance took defendant to the hospital.

¶ 10 Hernandez testified for the State as follows. She was 5'6" tall and weighed 250 pounds. When defendant arrived at the station, she was aware that he had just been arrested and had come from the hospital after a car accident. Soon after starting to search defendant, Collette took him from the holding area to a cell. Hernandez stayed back but could see what was happening in the cell. She saw defendant throw his pants at Collette and refuse to sit down. After a few minutes, Hernandez went to the cell. Collette was trying to get defendant to sit. Defendant "kicked his feet up in the air," landed "stomach first" on the bench, and started to slide and roll over. His feet were hanging off the bench. Hernandez walked behind the bench to try to help defendant sit up while Collette tried to pull defendant up from the front. Defendant was yelling at Collette.

¶ 11 Hernandez testified that, as she and Collette tried to get defendant to sit up on the bench, he turned around, swung his left arm, and hit Collette's arm with his fist. Defendant's fist then

struck Hernandez in the back of her shoulder. Collette swung back and grazed defendant. Roman came in, and the three CDTs cuffed defendant. They never threw him onto the floor.

¶ 12 The State rested. Tamika Bailey testified that, on January 8, 2009, she visited defendant at the hospital. He appeared to be in pain and had a large lump on his back, making it difficult for him to stand. Police officers arrived. They arrested defendant for driving with a suspended license and took him to the police station. Defendant's mother, Christine Brannon, testified that she visited defendant at the hospital. He was in pain and had a large knot in his back. After the police drove him to the station, Christine drove there. She tried to "bond him out" but was told that "there wasn't any bond" and to come back the next day. She went home.

¶ 13 Defendant testified next. His attorney, Juanita Archuleta, asked him, "[B]efore we get started talking about the events of January 8th, 2009, have you been convicted of a robbery in 1999, Class 1 felony?" Defendant responded, "Yes." His testimony continued as follows.

¶ 14 Defendant was 5'9" tall and weighed 170 pounds. On the morning of January 8, 2009, he got into a serious car accident. He injured his back, neck, and wrists; his lower back was "swollen real bad." At the hospital, he spent several hours in considerable pain. His mother and other people visited. Police officers arrived, arrested defendant for driving on a suspended license, and drove him to the station. Defendant's mother said that she would pay his bond.

¶ 15 Defendant testified that he was taken to the station's booking area. He was going slowly because he could hardly walk. Collette told him to remove several pieces of clothing. Defendant was wearing his sweat pants and sweat shorts; Collette told him to take off the pants. Defendant asked permission to keep the pants on, as he was in pain, but Collette angrily said no. Defendant was trying to comply with Collette's orders, but any movement gave him pain. When he said that he was unable to remove his pants, Collette told him to enter a cell nearby and sit down.

¶ 16 Defendant testified that he entered the cell and tried to sit on a metal bench that was bolted to the floor in the middle. The pain was so sharp, however, that he gave up and instead stood against a wall. Collette asked defendant to sit down, but defendant said that he could not. Collette then grabbed defendant's shoulder and tried to push him down onto the bench, which was only about a foot and a half wide. As a result of the push, defendant fell on his face. Collette then came around the bench, grabbed defendant's wrist, and bent it back. Defendant, in pain, yelled at Collette to get off his back. Collette put his knee into defendant's back. At that point, defendant felt Hernandez "on [his] legs," and both CDTs started punching defendant. He could not hit back, because he was lying face down and his back was already twisted.

¶ 17 Defendant testified that a lieutenant and Roman came to the door. The lieutenant asked defendant what had happened. Defendant responded that Collette and Hernandez had attacked him. The lieutenant replied that whatever happened had been recorded on a camera that was pointed at defendant. Defendant told the lieutenant that he had done nothing to provoke the attack and that he wanted to return to the hospital. The lieutenant told him to get off the floor. Defendant responded that his mother was there to bond him out on the traffic charge. The lieutenant told defendant to get off the floor and he could get bonded out. Defendant said that he could not get off the floor. Defendant, who had been handcuffed, was driven to the hospital.

¶ 18 Defendant testified on cross-examination as follows. Collette never told him to remove his socks, and he never told Collette that he would not do so. In the holding cell, he took off his pants, but he did not throw them at Collette. When Collette pushed defendant down, he "pushed too hard." Defendant "flipped over the bench," which was how he ended up on the floor. Collette and Hernandez then both jumped on defendant and started punching him. They never

tried to lift him up. Defendant denied having said terms such as “fuck you” to the officers; he wanted only to get bonded out and go home.

¶ 19 The defense rested. In rebuttal, Collette testified that defendant had had no difficulty removing his pants. Defendant was angry and kept telling Collette that he would not do as he was told. There were no cameras that pointed into the cell or would have provided a view of where defendant had been in the cell. Hernandez testified that, although there were cameras in the detention area, none were pointed toward any holding cell. Defendant had not had the money to bond out; if he had, the police would have stopped inventorying his property. However, if somebody tells the police that another person will be coming with bond money, the police continue with the booking process.

¶ 20 The trial court admitted evidence of the obstructing justice conviction. The judge admonished the jury that the conviction could be considered only as it might affect defendant’s believability as a witness and not as evidence of his guilt of the charged offenses.

¶ 21 In closing argument, the State emphasized the evidence that Collette had tried to accommodate defendant by taking him to a cell where he could sit down and obey Collette’s order to remove certain articles of clothing. The prosecutor noted that Hernandez had corroborated Collette’s account of the pants-throwing incident and that there was evidence that defendant had been uncooperative and verbally abusive before he punched Collette and Hernandez. The prosecutor did not mention defendant’s prior convictions.

¶ 22 Archuleta argued in response that the evidence showed that, when defendant arrived at the police station, he was suffering injuries, pain, and limited mobility as a result of the car accident. Thus, it was “simply unbelievable” that he could have gone through the contortions that Collette had described, such as kicking out his legs, flipping over, landing on his stomach,

and then punching the two officers. The evidence supported defendant's testimony that he had tried to cooperate with the officers so that he could go home after his mother bonded him out. More likely than the officers' account was that Collette and Hernandez lost patience with defendant and took drastic action against a person who was much smaller than either of them.

¶ 23 In rebuttal, the prosecutor stressed the evidence that defendant had not wanted Collette to search him and that, by his actions, he had gotten his wish. The officers had had no reason to persecute defendant over a traffic offense. Had they wanted to fabricate a crime, they could have made up a better story than the account they gave of defendant's unusual actions. The prosecutor did not mention defendant's prior convictions.

¶ 24 The jury convicted defendant of aggravated battery to Collette but acquitted him of aggravated battery to Hernandez. In a posttrial motion, defendant contended in part that Archuleta had been ineffective for eliciting his 1999 conviction of robbery. The motion noted that, before trial, the court had ruled the conviction inadmissible. The court appointed new counsel on the claim. New counsel filed a motion raising the issue and stating in part that Archuleta had admitted that she had made a mistake.

¶ 25 After hearing argument, the court denied the ineffectiveness claim. The judge explained that the jury had been instructed that any conviction was to be considered solely as it bore on defendant's credibility and not as evidence of guilt; that the 1999 offense, robbery, was dissimilar to the offenses charged here; and that "there was no emphasis made upon the multiple number of convictions." Thus, the error did not affect the outcome of the trial. After defendant was sentenced, he timely appealed.

¶ 26 On appeal, defendant contends first that Archuleta rendered ineffective assistance for eliciting evidence of his 1999 conviction of robbery even though the trial court had ruled it

inadmissible. Defendant reasons that the error could not have been trial strategy, especially as Archuleta had admitted that she had erred. The State concedes that Archuleta made a mistake, but it maintains that defendant has not established prejudice. We agree with the State.

¶ 27 To prevail on an ineffectiveness claim, a defendant must demonstrate that (1) counsel's performance was objectively unreasonable; and (2) it is reasonably probable that, but for counsel's unprofessional errors, the result of the proceeding would have been different. To prevail on an ineffectiveness claim, a defendant must establish that (1) counsel's performance was objectively unreasonable; and (2) it is reasonably probable that, but for counsel's unprofessional error, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984); *People v. Manning*, 241 Ill. 2d 319, 326 (2011).

¶ 28 We agree with the State and the trial court that defendant cannot satisfy *Strickland's* prejudice prong. After Archuleta mistakenly elicited defendant's testimony about his robbery conviction, nothing more was said about it. The State did not mention the conviction in its closing or rebuttal argument. (For that matter, the State did not draw the jury's attention to the prior conviction that had been properly admitted). Thus, defendant can only speculate that the jury considered the robbery conviction as bearing on his credibility.

¶ 29 Further, it is even more speculative to argue that the jury considered the robbery conviction as evidence of defendant's guilt of the present charges. As the judge noted in denying defendant's posttrial motion, robbery was dissimilar to the charged offenses, aggravated battery, lessening the likelihood that the jury would reason that defendant's guilt of one made it more probable that he committed the others. In sum, defendant cannot show prejudice, and we reject his first claim of error.

¶ 30 We turn to defendant's second argument. Defendant requests that we examine, *in camera*, the documents that the trial court sealed and declined to turn over to defendant. The State agrees that we may do so in order to decide whether the trial court abused its discretion in denying defense counsel access to the records.

¶ 31 We agree with the parties that there is precedent for the requested review. In *People v. Bean*, 137 Ill. 2d 65 (1990), a murder case, the defendant moved to disclose the mental-health records of a State witness. The trial court subpoenaed the records, examined them *in camera* without the parties present, and ruled that some of the records were admissible. The court, however, also ruled other records inadmissible because they were privileged and were not relevant. The court did not disclose the content of these records to the parties. *Id.* at 90-91.

¶ 32 The defendant was convicted and sentenced to death. On appeal, he contended that the trial court's refusal to give him access to all of the witness's mental-health records had violated his constitutional right to cross-examine the witness. *Id.* at 89. The supreme court held first that the trial court had not violated the defendant's constitutional rights by reviewing the privileged records *in camera* and disclosing only such information that the court, in its discretion, found material. *Id.* at 99-100. Having approved the trial court's procedure, the court then affirmed its decision on the merits, holding that it had not abused its discretion in denying the defendant access to records that the court had reasonably concluded were irrelevant. *Id.* at 102.

¶ 33 In *People v. Csaszar*, 375 Ill. App. 3d 929 (2007), the defendant was charged with soliciting an undercover agent of the Bureau of Alcohol, Tobacco, and Firearms (ATF) and an undercover confidential informant (CI) for the ATF to commit murder for hire. The defendant subpoenaed the ATF, seeking documents relating to its relationship with the CI. The ATF provided documents with some information redacted. The defendant objected to the redactions.

The trial court reviewed the unredacted documents *in camera*, concluded that the redacted information was not relevant to the defense, and refused to order the ATF to tender that information to the defense. *Id.* at 932-33.

¶ 34 On appeal from his convictions, the defendant argued that the trial court had abused its discretion in refusing him access to the redacted information. He requested that the appellate court review the information and decide whether the trial court had erred. *Id.* at 940. The appellate court did so and held that the trial court had not abused its discretion, as none of the undisclosed information was relevant to the defense. *Id.* at 942.

¶ 35 We note the following. As both parties stressed, this case came down to credibility: the State's witnesses, Collette and Hernandez, provided one account of the events of January 8, 2009, and defendant provided a different account. Defendant had previously sought records that related to Collette's employment history, apparently on the basis that Collette's prior treatment of detainees might bear on how he had acted on January 8, 2009, toward defendant.

¶ 36 Leaving aside the question of whether specific evidence of Collette's treatment of other detainees would even have been legally relevant to this case, we cannot disturb the trial court's conclusion that no such specific evidence is to be found in the subpoenaed documents. We have reviewed the documents *in camera*. They are almost entirely general and unrelated to the specifics of Collette's job performance, let alone the facts of this case. They consist primarily of hiring information; nonspecific performance reviews; paperwork relating to injuries; and requests for leave or permission to pursue secondary employment. There is an audiotape of an interview that Collette had as part of an internal investigation into his encounter with an "uncooperative" arrestee, but it is undated and has no apparent relevance to this case. We cannot

say that the trial court erred in refusing to turn any of the subpoenaed documents over to defendant. Therefore, we reject defendant's second claim of error.

¶ 37 The judgment of the circuit court of Kane County is affirmed.

¶ 38 Affirmed.