

FIRST DIVISION
May 2, 2011

No. 1-08-1870

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 97 CR 24870
)	
ANTHONY WHITFIELD, TERRANCE POLK and)	
VAN WHITFIELD,)	Honorable
)	William G. Lacy,
Defendant-Appellant.)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hall and Justice Hoffman concurred with the judgment.

O R D E R

HELD: Denial of defendants' post-conviction petition following an evidentiary hearing was not manifestly erroneous; denial of defendants' request to have a minister testify as an expert at the evidentiary hearing was not an abuse of discretion.

Defendants, Anthony Whitfield, Terrance Polk and Van Whitfield, appeal from an order of the circuit court of Cook County denying their petition for relief under the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2008)) following an evidentiary hearing. Defendants contend this decision should be reversed and the matter remanded for a new trial because the State violated their rights to confrontation and due process by withholding the addresses of its three key trial witnesses. Defendants also claim the court's denial of their request to have Reverend John Selph testify as an expert witness at the evidentiary hearing denied them their right to due process.

Defendants are members of the Mickey Cobras gang, who, in the year 2000, were convicted by a jury of the first-degree murder of two members of a rival gang, the Black Disciples. These

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convictions were largely based on the testimony of three witnesses: Kaneita Billups, Venus Smith, and Darlene Billups. Defendants were sentenced to natural life imprisonment on their murder convictions, and this court affirmed those judgments on direct appeal. *People v. Whitfield*, No. 1-00-1303 (2002) (unpublished order under Supreme Court Rule 23).

In *Whitfield*, defendants argued, in relevant part, that they were denied their right to confront witnesses when the circuit court refused to require the State to disclose the addresses of its witnesses. Defendants maintained that the failure to disclose the addresses prevented them from discovering the bias and prejudice that Kaneita Billups and Venus Smith had in favor of the Black Disciples, which was revealed at the subsequent trial of their co-defendants, Christopher Whitfield and Terrence Thomas. This court observed that there was no evidence of such a ruling in the record on appeal, and, because defendants failed to provide a complete record, this court presumed that any ruling by the circuit court to that effect was in accordance with the law and had a sufficient factual basis. *Whitfield*, order at 18-19.

In May 2001, defendants filed a post-conviction petition alleging the State asserted at trial that the three witnesses who accused them of murder were neutral with no special relationships to the gangs, but the State knew and withheld information that the witnesses had familial relationships with members of the Black Disciples. Defendants claimed Kaneita Billups and Venus Smith had children with Black Disciple members, that Darlene Billups was the mother of Kaneita Billups, and, therefore, connected to the Black Disciples. Defendants also claimed these relationships were divulged at their co-defendants' subsequent trial and that the State prevented them from learning this information by refusing to provide them with the witnesses' addresses, and, thus, the State's conduct deprived them of their rights to confrontation and due process. Defendants maintained the State violated *Brady v. Maryland*, 373 U.S. 83 (1963), because the withheld information related to the credibility of the witnesses.

The record shows the State subsequently filed a motion to dismiss defendants' petition, that

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defendants filed a response, and that the State filed a reply, however, none of these pleadings have been included in the record. On January 24, 2003, defendants filed a memorandum claiming the allegations and records from their trials and those of their co-defendants were sufficient to require an evidentiary hearing. Defendants claimed the "special" relationships of the three witnesses to Black Disciples members were "crucial to their bias and interest," and that they were foreclosed from discovering this information when the State prevented them from obtaining the addresses of these witnesses. Defendants also noted the State indicated in its motion to dismiss that its witnesses were under protection in a relocation program, and defendants' motion to produce their addresses was denied.

On March 28, 2003, the circuit court denied the State's motion to dismiss, and advanced defendants' petition to the third stage of proceedings for an evidentiary hearing. The matter was called and continued numerous times, until July 27, 2006, when an evidentiary hearing was held. The transcript of that hearing which consisted of testimony from the State's three key witnesses, was attached as an exhibit to one of defendants' post-judgment motions.

The testimony of Darlene Billups, recorded therein, shows that, before defendants' trial, her daughter, Kaneita, told her that "Poppa," a Black Disciple, might be the father of her unborn child. Darlene knew defendants were in the Mickey Cobras gang, which was a rival gang to the Black Disciples. At the time she testified against defendants, Darlene thought Poppa would support and look after her grandchild, but she did not consider that when she first began cooperating with police a week after the shooting. Darlene also stated that when she testified against defendants, her daughter's relationship with Poppa and her grandchild's parentage did not affect her testimony.

Kaneita Billups testified that, just before defendants' trial, she gave birth to a child and thought the father of the child was Poppa, a Black Disciple. Kaneita knew that the Black Disciples were rivals of the Mickey Cobras, and she expected Poppa to help with and support her child. Kaneita stated that, when she testified against defendants, she thought about how her child would

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be raised by Poppa, and how her testimony might affect their relationship. She further testified that she did not testify against defendants to have them incarcerated, but testified to what she saw on the evening in question. Kaneita stated that her relationship with Poppa and Poppa's relationship with her child, did not affect her trial testimony, and she testified truthfully. Kaneita also acknowledged she has not had a blood test, and Poppa might not be the father of her child.

Venus Smith testified that, when she started cooperating with police a week after the shooting and testified in front of the grand jury, she was not pregnant. At the time of defendants' trial, however, she was pregnant, and believed the father of her child was David, a Black Disciple. She believed David would help support and care for this child. Smith testified that her belief she could be pregnant with a Black Disciples' child did not affect her trial testimony, and she later learned through a blood test that David was not the father of her child.

Defense counsel then informed the court that its next witness was a minister, who would testify on August 28, 2006. The State observed the defense was planning on calling the minister as an expert in gang familial relationships, and asked for the minister's *curriculum vitae*. The State also informed the court that it had some objections, but would raise them on the next court date depending on how the defense proceeded. The matter was continued to August 28, 2006.

The record filed on appeal does not contain a transcript of the August 28, 2006, proceedings, and the memorandum of orders shows the matter was called several times after that date, however, no transcripts of any of those proceedings have been included in the record. On November 21, 2006, defendants filed a memorandum in support of their request to have Reverend Selph testify as an expert on Chicago gangs. They alleged his background in dealing with Chicago gangs was sufficient for him to testify on the crucial issue of interest and bias. Defendants subsequently filed another motion to allow Reverend Selph to testify as an expert, alleging he had extensive experience and knowledge relating to the inner workings and hierarchical structures of gangs and their families, loved ones and others in their communities. Defendants claimed the reverend's testimony was

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necessary to establish whether the witnesses' intimate relationships with the Black Disciple members biased their testimony. An entry in the memorandum of orders for April 4, 2007, shows the court denied defendants' request.

On October 18, 2007, defendants filed a memorandum claiming that, during the argument following the evidentiary hearing, the court asked both parties whether Poppa was involved in a fight with defendants. Defendants claimed Smith's trial testimony about "Little Papa" showed that "Poppa" was in a fight with members of the Mickey Cobras before the murders, and, thus, they claimed the State's witnesses had a strong motive to lie against them based on their relationship with "Poppa."

On June 26, 2008, the circuit court entered a written order denying defendants' petition for post-conviction relief. The court noted that the State indicated the "subject" relationships did not exist when the witnesses cooperated in the initial investigation and testified before the grand jury, and that they had relationships with members of both gangs. The court observed that Smith later learned David was not the father of her child, that Kaneita indicated at the hearing that someone other than Poppa could be the father of her child, and there was no evidence that David or Poppa had any connection to the crime or defendants. The court then noted it had observed the demeanor of the three witnesses, each of whom testified that the relationships did not affect their testimony, and found their testimony credible.

The court additionally found the State did not commit a *Brady* violation where it learned of the subject relationships for the first time at co-defendants' subsequent trial and that it was not incumbent upon the State to ask every pregnant or female witness the identity of the father of her child and if he is a gang member. The court further found that, any information gleaned from the witnesses, would have been wrong or untrustworthy, and even if defendants had the information, the outcome of the trial would not have been different. This appeal follows.

Defendants first claim the State violated their right to confrontation and due process by

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denying them the addresses of its three key witnesses. Defendants maintain that, if they had this information, they would have learned that the witnesses had "special relationships" with defendants' rival gang, and, in turn, the jury would have found the witnesses were biased against them. Defendants thus seek reversal of the circuit court's decision and request their cause be remanded for a new trial.

In this post-conviction case, defendants' petition was advanced to the third stage for an evidentiary hearing (725 ILCS 5/122-6 (West 2008)), where the State's three key trial witnesses were questioned about their pretrial situations and affiliations with members of defendants' rival gang, the Black Disciples. Following such a hearing, where fact-finding and credibility determinations are made, the circuit court's decision will not be reversed unless it is manifestly erroneous, *i.e.*, error that is "clearly evident, plain, and indisputable." *People v. Beaman*, 229 Ill. 2d 56, 72-73 (2008) citing *People v. Harris*, 224 Ill. 2d 115, 125 (2007); *People v. Pendleton*, 223 Ill. 2d 458, 473 (2006) and *People v. Caballero*, 206 Ill. 2d 75, 87-88 (2002). This deferential standard reflects the understanding that the circuit court is in the best position to observe and weigh the credibility of the witnesses. *People v. Coleman*, 183 Ill. 2d 366, 384-85 (1998).

Defendants claim that the State's withholding of the addresses of these witnesses prevented them and the jury from learning of the witnesses' bias against them, namely their relationships with members of the Black Disciples. They maintain the trial evidence against them was not strong, and that the withheld evidence would have affected the jury's determination of the witnesses' bias and credibility.

A *Brady* claim, however, requires a showing that the undisclosed evidence was favorable to the accused because it is exculpatory or impeaching, that the evidence was suppressed by the State willfully or inadvertently, and the accused was prejudiced because the evidence is material to guilt or punishment. *Beaman*, 229 Ill. 2d at 73-74. Evidence is material if there is a reasonable probability that the result of the trial would have been different had the evidence been disclosed to

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the defense. *United States v. Bagley*, 473 U.S. 667, 682 (1985).

The circuit court, in denying defendants' petition, found the three witnesses testified credibly, and any relationships they had with members of the Black Disciples at the time of defendants' trial did not affect their trial testimony. The court also found no indication of a *Brady* violation where the facts learned at the evidentiary hearing showed the State was unaware of the relationships at the time of defendants' trial. The court also found the State had no duty to ask the witnesses the identity of the fathers of the children they were carrying, or if they were gang members, and any information from them would have been wrong or untrustworthy.

We find no manifest error in the court's determination. There is nothing in the record to contradict the State's position that it was unaware of the intimate relationships the witnesses had with members of the Black Disciples at the time of defendants' trial. The common law record shows defendants were advised through pretrial discovery that Kaneita Billups, Venus Smith, and Darlene Billups were potential State witnesses, and based on the testimony presented at trial, it was apparent they had ties to both gangs. As we found on appeal, there was no record evidence that the court refused a request from defendants for further identification information. The record also discloses no attempt by defendants to interview these witnesses, which defendants could have requested prior to trial.

In addition to the failure to show any willful or inadvertent suppression of evidence by the State, defendants also failed to show the evidence sought was favorable to them because it was exculpatory or impeaching. The trial record reveals the witnesses testified to their familiarity with members of both gangs, and Kaneita and Darlene Billups testified that they were friendly with defendants. Furthermore, the witnesses testified at the evidentiary hearing that their relationships with members of the Black Disciples did not affect their trial testimony against defendants, and they were testifying to the facts of the evening without regard to any personal ties to defendants or the other gang. The circuit court found the witnesses credible, and we find no basis for disturbing that

determination. *Coleman*, 183 Ill. 2d at 384-85.

Moreover, the evidence against defendants was strong where they were identified by the three witnesses who told essentially the same story at trial regarding defendants' involvement in the murders. In light of this evidence, and the fact that the witnesses' ties to both gangs were disclosed at trial, we find no reasonable probability that, had the information regarding the intimate relationships of two of the witnesses with certain Black Disciples been disclosed, it would have affected the outcome of the trial. *People v. Barrow*, 195 Ill. 2d 506, 537 (2001). The court's conclusion, that the evidence regarding the potential fathers of two of the witnesses' children, had nothing to do with the subject crime, and that there was no *Brady* violation by the State, was not manifestly erroneous. *People v. Rish*, 344 Ill. App. 3d 1105, 1112 (2003).

Defendants next contend the circuit court erred in denying their request to have Reverend Selph testify as an expert witness at the evidentiary hearing. The State responds that defendants failed to provide a copy of the transcript of the hearing on this matter, and this requires us to presume the court's decision was in conformity with the law.

The memorandum of orders for February 21, 2007, shows the court continued the matter on the question of whether to allow Reverend Selph to testify as an expert, and, on April 4, 2007, the court denied defendants' request. Although the State contends a hearing was held on the matter, this claim is not substantiated in the record, and it appears the court's decision was based on the pleadings. In such a case, the absence of a transcript or an acceptable substitute will not bar review. *Walker v. Iowa Marine Repair Corp.*, 132 Ill. App. 3d 621, 625 (1985).

Defendants contend the trial court erred in denying their request to have Reverend Selph testify at the evidentiary hearing where he had extensive experience relating to the inner workings and structures of gangs and their relationships with others. They maintain that the Reverend's testimony was relevant to establish whether the witnesses' intimate relationships with members of the Black Disciples affected their testimony.

Expert testimony should only be permitted if the expert has knowledge and qualifications uncommon to laypersons. Additionally, expert testimony may be permitted where the testimony would help the trier of fact understand an aspect of the evidence it otherwise would not understand, without invading the trier of fact's province to determine credibility and assess the facts of the case. Finally, expert testimony must reflect generally accepted scientific or technical principles. *People v. Randall*, 363 Ill. App. 3d 1124, 1131 (2006). Whether to allow the appointment of an expert and the introduction of his testimony are questions within the discretion of the trial court. *People v. Hall*, 157 Ill. 2d 324, 339-40 (1993).

Here, the testimony of Reverend Selph proffered by defendants concerned the witnesses' intimate relationships with members of the Black Disciples, and how that might bias their testimony against defendants. These matters, however, directly relate to their credibility, a purpose for which expert testimony should not be used. *Randall*, 363 Ill. App. 3d at 1131. Moreover, this type of knowledge is not foreign or uncommon to laypersons, nor does it rest on scientific or technical principles. In addition, as proposed, Reverend Selph's testimony would have been general in nature, and, thus, speculative, and would not have provided the trier of fact with any useful information. To the contrary, it would have invaded the province of the court to determine the credibility of the witnesses and assess the facts of the case. *Randall*, 363 Ill. App. 3d at 1131. We, therefore, conclude the circuit court did not abuse its discretion in refusing to allow Reverend Selph to testify at the evidentiary hearing.

In light of the foregoing, we affirm the judgment of the circuit court of Cook County denying defendants' petition for post-conviction relief after an evidentiary hearing.

Affirmed.