2015 IL App (1st) 130921-U

THIRD DIVISION
September 23, 2015

No. 1-13-0921

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. 12 CR 2826
	)	
SHEDDRICK ANDERSON,	)	Honorable
	)	James L. Rhodes,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Fitzgerald Smith and Lavin concurred in the judgment.

O R D E R

¶ 1 *Held*: Defendant has not shown he was prejudiced by counsel's decision not to investigate medical records to corroborate his account that he was beaten by a police officer while being arrested.

¶ 2 Following a bench trial, defendant Sheddrick Anderson was convicted of possession of a stolen motor vehicle and sentenced to six years in prison. On appeal, defendant contends his trial counsel was ineffective in failing to subpoena hospital records or otherwise investigate his medical claims to corroborate his testimony that he was repeatedly beaten upon his arrest by a

Harvey police officer in retaliation for a civil lawsuit filed against the Harvey Police Department. We affirm.

¶ 3 Defendant was charged with stealing a parked car in the early morning hours of October 14, 2011, at a Marathon gas station near the intersection of 167th Street and Halsted in Harvey. Daniel Reyes testified that he parked his 2000 Ford Taurus near the door of the gas station and went inside to make a purchase, leaving the car running and the doors closed. As Reyes looked around the inside of the gas station for a clerk, he looked back out toward his car and saw a black man enter the vehicle. Reyes testified he "ran out from the gas station towards my car and tried to catch the guy," but the offender "jumped inside my car and slammed the door on me" and "took off with my car."

¶ 4 Reyes went to a pay phone to call 911 but then saw a police officer drive into the gas station parking lot. Reyes approached the officer and explained the situation, and the officer drove in the same direction as the offender. Reyes waited inside the gas station, and about five minutes later, a different police officer arrived at the gas station and drove Reyes to his car, which had been "all crashed up in front." Reyes identified defendant at the scene and in court as the person who stole his vehicle. Reyes did not know defendant.

¶ 5 On cross-examination, Reyes acknowledged he did not give police a physical description of the offender prior to identifying defendant where his car was found. Reyes said defendant was not handcuffed but was flanked by police officers when he was identified. Reyes stated that his car was parked three or four steps from the gas station's door. He first spotted defendant when defendant was about 20 feet from the vehicle.

¶ 6 Reyes noticed defendant standing near a pay phone outside the gas station and thought defendant would approach him and ask for change. Reyes looked at defendant for three minutes before getting out of his car and going into the station. Reyes said he also viewed defendant for three minutes from inside the store. He acknowledged he was standing at the checkout, which was about five steps from the door. When questioned about the length of time he viewed defendant, Reyes responded, "I don't know if I took maybe less time but yeah, like around three minutes, around that time."

¶ 7 Harvey police officer Steven Kelley testified he had been with the department since 2009. On the night in question, Officer Kelley was alone in a marked squad car and drove into the parking lot of the gas station, where Reyes flagged him down. After speaking with Reyes, the officer followed the gold Taurus east on 167th Street. The driver of the Taurus crashed the car at 17001 State Street in South Holland.

¶ 8 Officer Kelley testified that after the crash, he observed a black man get out of the Taurus and flee. He pursued the offender until the offender turned around to face him "kind of in an aggressive manner." Officer Kelley sprayed pepper spray and subdued the offender, who he identified in court as defendant. About 10 minutes later, Reyes identified the offender in a "show-up" identification.

¶ 9 On cross-examination, Officer Kelley said he did not retrieve any fingerprints from the site of the totaled car. The officer said he had not seen defendant that night prior to arriving at the site of the car, and he was asked if he had "ever had any contact" with defendant prior to that night. Over the State's objection, the officer answered, "I don’t recall." He said Reyes did not

give him a description of the man who drove away in his car. Officer Kelley said defendant did not request medical attention.

¶ 10 The court also examined Officer Kelley, asking him if he observed the car crash. The officer said he saw the Taurus crash into a building and saw defendant run south through a field. Defendant eventually ran back to the area where the Taurus crashed and where Kelley's police car was parked. After that testimony, the State rested, and the defense's motion for a directed verdict was denied.

¶ 11 In the defense case, defendant testified he first encountered Officer Kelley in July or August of 2006 when defendant's cousin was training to become a Harvey police officer. The following colloquy then occurred:

> "MS. GROGAN [assistant State's Attorney]: Judge, at this point in time, we're going to object. We're going to ask if there's any discovery information that has not been tendered to the State?
>
> THE COURT: Is there any discovery information that has not been tendered to the State?
>
> MR. PORTER [assistant public defender]: No, Judge.
>
> MS. GROGAN: Judge, at this time, we're going to ask that this be barred. It has nothing [to] do with the facts of this case. This occurred on October 14, 2011. Going to what happened in 2006 has no relevance to the charges in this case.
>
> MR. PORTER: Your Honor, I believe that it is relevant.
>
> THE COURT: Excuse me, Mr. Porter.
>
> MR. PORTER: Oh, I'm sorry, Judge. I'm sorry, Judge.

THE COURT: I didn't ask for any argument.

MR. PORTER: Okay.

THE COURT: Overruled."

¶ 12 Defense counsel continued to question defendant, asking him about his interactions with Officer Kelley in 2006. The State again objected to the line of questioning, arguing it was "never given any information from the defense with regard to any of this and are taken totally by surprise." The court overruled the State's objection.

¶ 13 Defendant testified he had "negative contact" with Officer Kelley previously and that he had sued the Harvey Police Department in 2006. The court again overruled the State's objection that they had no documentation regarding that matter. Defendant testified Officer Kelley and three other officers were named parties in that suit, which settled and for which he received a monetary judgment.

¶ 14 As to the events of October 14, 2011, defendant testified he first saw Officer Kelley driving east on 159th Street while defendant walked in his cousin's backyard at 158th and Paulina. Defendant testified he then saw Officer Kelley when he was standing at a stoplight in front of an abandoned liquor store and the officer pulled his car up near defendant. Defendant said the officer looked at him from his car but they did not exchange words.

¶ 15 Defendant testified he saw Officer Kelley a third time at 160th and Halsted, where he was walking down the street, and the officer drove his squad car nearby and "slowed down, like right next to me, and then sped up, and kept going." Defendant said he and the officer again looked at each other.

¶ 16 Defendant next saw Officer Kelley while walking on 167th Street after leaving the Marathon gas station. Defendant said he was "going down" and said he and the officer again exchanged glances. Defendant testified the officer got out of his squad car, approached him and placed a weapon to defendant's head, saying, "You think this is over with." The State's objection to that testimony was overruled.

¶ 17 Defendant further testified that Officer Kelley told him to get on the ground, and defendant complied, and the officer then "started whacking me" with a baton. Defendant said he did not know why the officer was striking him with the baton, and defendant tried to protect his head. Defendant said the officer sprayed him with pepper spray, handcuffed him and put him in the back of the squad car. All of this occurred on 167th Street about "30 steps" away from the gas station. When asked what the officer's remark referenced, defendant said he was "referring to the civil suit that I filed against Harvey police station, which the guy – his partner at [the] time I think, is no longer working with the police department." Defendant denied stealing Reyes' car.

¶ 18 On cross-examination, defendant said he did not know what time he encountered Officer Kelley on the night in question. Defendant's cousin lived at 15834 South Paulina. Defendant said he went to the gas station to buy food and did not see a gold Taurus parked near the door.

¶ 19 Defendant said Officer Kelley hit him in the forearms with his baton. When asked how many times he was struck, defendant replied: "I couldn't tell you. Cermak records could tell you that, the hospital records at the County." Defendant stated that the officer struck him on his head, causing a knot, and broke his rib, and that the officer also hit him on his forearms, thighs and back. Defendant denied telling Officer Kelley when he was arrested that he had used crack cocaine that day.

¶ 20 When asked if he filed a complaint with the Harvey police department that day, defendant responded he was considering filing a civil lawsuit against Officer Kelley. Defendant said he filed a complaint with an agency that investigates police. Defendant said his first lawsuit was filed because he had been run over by a squad car.

¶ 21 Defendant was transported to Cook County jail and asked to be taken to Ingalls Hospital because his arms were swollen and he could not breathe. He also said he wanted to see "if anything was wrong with my head." Defendant said he was denied medical attention.

¶ 22 Defendant further stated: "When I got to Cermak at the Cook County jail, the man said I was in dire need of help." His cross-examination continued as follows:

"MS. GROGAN: Do you have the records there, from Cook County?

A. Cermak – you can call Cermak, they got it. I don't have no records, but it's on record.

Q. You didn't – you didn't bring any records from Cermak?

A. I didn't – I can't get my records. They won't give an inmate [] hospital records in Cook County jail. But you can rest assured, I tried to do everything in my power to show –

Q. Judge, at this point in time, we would ask the defense if they have any records?

MR. PORTER: No.

DEFENDANT: It's on record, though, and it was documented as severe trauma, man."

¶ 23 On redirect examination, defendant said his cousin, Terry Brown, and Officer Kelley knew each other. The defense rested.

¶ 24 The State introduced evidence of defendant's prior felony convictions for retail theft in 2006, possession of a stolen motor vehicle in 2007, and burglary in 2009. After some additional discussion, the prosecution addressed the court:

"MS. GROGAN: Well, Judge, we would point out that we were – there were numerous items that the Defense was allowed to get into that we were given absolutely no notice of, Judge []. There are, apparently, many documents that cover this area, but we weren't tendered any of those documents. We were not given any notice of that, Judge.

THE COURT: You were not. I'm going to give them the value that they're due.

MS. GROGAN: Okay, Judge.

THE COURT: I don't even know that they exist. There was testimony. There has been no effort to present those documents.

MS. GROGAN: We would call –

THE COURT: Counsel, you want a continuance to bring in these documents?

MS. GROGAN: No, Judge."

¶ 25 The State rested in rebuttal. In closing, the prosecutor argued that Reyes had no reason to falsely identify defendant at the scene of his car crash and there was "really no time for the police officer to go find somebody and beat the daylights out of them."

¶ 26 The following exchange then took place between the court and defense counsel:

"THE COURT: What is the reason why you don't want to have documents to corroborate your client's testimony?

MR. PORTER: Judge, I would just ask that you give – It's up to you to judge the credibility, and we'd ask that – that you do that, Judge, based on the credibility of their testimony."

¶ 27 Defense counsel argued in closing that the case rested on the identifications of Reyes and Officer Kelley. Counsel noted Reyes lacked a motive to falsely identify defendant but asserted Reyes did not give police a physical description of the car thief. Counsel also asserted Reyes's identification was suspect.

¶ 28 Defense counsel further argued:

"And then we have the situation with Officer [Kelley]. Now Officer [Kelley] says, 'I don't know him, never seen him before.' However, based on the testimony of the [d]efendant, they met each other through a cousin, through a co-worker of his some five years ago. In fact, based on the testimony of my client, there was a legal proceeding and, also, based on the testimony of my client, there were at least three prior contacts[.] Now, again it's up to the Court to determine the credibility of witnesses. But I would submit, based on my client's testimony, that Officer Kelley did have an axe to grind, that he was upset about the prior contacts."

¶ 29 Defense counsel asserted Reyes's identification was a case of "mistaken identity" and the State did not meet its burden because of "the lack of clarity with the identification."

¶ 30 After those arguments, the court continued the case for approximately one month. On the next court date, counsel asked if each side had "[a]nything further." The State then addressed the court:

"MS. GROGAN: Yes, Judge. With regards to this case, Judge, the Court was concerned about some allegations that the defendant made during his testimony that had not been presented to the Court. There has been no back-up information presented to the Court. He made some allegations against the police officer, Officer [Kelley]. We tendered to the defense – I tried to find the information with regards to this and was unable to find it, really any information until yesterday when I talked with Mr. Porter who was able to give me a case number on the federal case that the defendant was complaining about.

At that point in time, Judge, I was able to contact the attorney who handled that case and I receive from them a fax of the first amended complaint and Officer [Kelley] is not a named individual in that complaint, Judge. I did tender a copy of that today to counsel. In addition, it stemmed out of an arrest that the defendant had for another incident and I was able to obtain the police report on that incident. Officer [Kelley] is not named as participating in the case in the police reports.

In addition, your Honor, I was able to speak with the police department over at the city of Harvey. The incidents –

THE COURT: So I'm just wondering. Why are you saying all of this?

MS. GROGAN: Because Judge, when there was a trial, the defendant –

THE COURT: You're not a witness.

MS. GROGAN: No, Judge. I am tendering –

THE COURT: Are you saying this because you intend to call some witnesses?

MS. GROGAN: Well, if the Court will allow that.

THE COURT: We had a trial.

MS. GROGAN: Correct."

¶ 31 After further discussion, the court told the State it would need to re-open its case if it sought to present additional evidence. Defense counsel told the court he provided information to the State regarding defendant's lawsuit against the city of Harvey. The State asked to re-open its rebuttal case to present witnesses on that point. The court denied the State's motion and found defendant guilty. Defense counsel filed a motion for a new trial, which was denied.

¶ 32 At sentencing, the State asserted defendant was eligible for a Class X sentence due to his prior convictions. In mitigation, defense counsel argued, *inter alia*, that "it is our contention that Mr. Anderson was a victim of harassment from the police officer, Officer [Kelley], which originated out of that earlier lawsuit, Judge. We brought that information to the Court, Judge." Defendant addressed the court and stated, among other remarks, that he believed Officer Kelley "had it out for me." The court sentenced defendant to six years in prison.

¶ 33 On appeal, defendant contends his trial counsel was ineffective for failing to investigate his claims that he was struck by Officer Kelley or seek to obtain his medical records from Cermak Hospital. Defendant argues a reasonable probability existed that the outcome of his trial would have been different had counsel investigated his medical claims, and he contends medical records would have corroborated his trial testimony and strengthened his credibility.

¶ 34 The State responds defendant's claim that his medical information should have been considered asks this court to consider evidence outside the record and would be more properly raised in a post-conviction petition. As to the merits, the State asserts defense counsel provided effective representation in pursuing a trial strategy based on defendant's innocence and

challenging the credibility of the State's witnesses. The State contends the evidence of defendant's guilt was overwhelming and points out that any medical records would not have countered the testimony of Reyes and Officer Kelley that defendant was the person who stole Reyes's car.

¶ 35 A defendant's challenge to the performance of counsel is reviewed under the familiar test of *Strickland v. Washington*, 466, U.S. 668, 687 (1984), which requires him to demonstrate both: (1) his attorney's representation fell below an objective standard of reasonableness; and (2) a reasonable probability exists that, but for counsel's error, the result of the proceeding would have been different. See also *People v. Simpson*, 2015 IL 116512, ¶ 35. Because a defendant must satisfy both prongs of this test, the failure to establish either prong is fatal to the claim. *People v. Clendenin*, 238 Ill. 2d 302, 317 (2010). The concern in such a case is whether the conduct of defendant's counsel "so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Strickland*, 466 U.S. at 686. A defendant must overcome the strong presumption that the challenged action or inaction of counsel was the product of sound trial strategy, not incompetence. *Clendenin*, 238 Ill. 2d at 317.

¶ 36 Trial counsel has a professional duty to conduct "reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Strickland*, 466 U.S. at 690-91; see also *People v. Domagala*, 2013 IL 113688, ¶ 38 (noting that duty derives from counsel's basic function "to make the adversarial testing process work in the particular case"). A lack of investigation is to be judged against a standard of reasonableness given all of the circumstances, and a "heavy measure of deference" is to be applied to counsel's judgments. *People v. Kokoralies*, 159 Ill. 2d 325, 329 (1994).

¶ 37 The United States Supreme Court in *Strickland* specifically spoke to the duty of counsel to investigate:

> "These standards require no special amplification in order to define counsel's duty to investigate. * * * [S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and *strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation*." (Emphasis added.) *Strickland*, 466 U.S. at 690-91.

¶ 38 Similarly, our supreme court has concluded "any decision by counsel to conduct a less-than-complete investigation would fall within the wide range of professionally competent assistance" if the decision is supported by a reasonable professional judgment. *People v. Harris*, 206 Ill. 2d 1, 56 (2002). Furthermore, *Strickland* noted that a decision by defense counsel not to investigate "must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." *Strickland*, 466 U.S. at 691; see also *People v. Cloutier*, 191 Ill. 2d 392, 402-03 (2000). Where circumstances known to counsel at the time of his investigation do not reveal a sound basis for further inquiry in a particular area, it is not ineffective for the attorney to forgo additional investigation. *People v. Pecoraro*, 175 Ill. 2d 294, 324-25 (1997).

¶ 39 In such cases, prejudice will not be presumed from defense counsel's failure to investigate. *People v. Glenn*, 363 Ill. App. 3d 170, 173, citing *People v. Johnson*, 128 Ill. 2d 253, 271 (1989). A defendant has not met his burden on the prejudice requirement of establishing a reasonable probability that the subject evidence would lead to a different result, where there is

nothing in the record to indicate the evidence would have been favorable to the defendant. *Johnson*, 128 Ill. 2d at 173-74; see also *People v. Ashford*, 121 Ill. 2d 55, 77-78 (1988).

¶ 40 In the case at bar, the record establishes defense counsel was aware of defendant's claim that he was treated for physical injuries after his arrest. During defendant's testimony, the State asked if defendant was in possession of any hospital records from Cermak Hospital. Defendant's counsel responded no, and defendant stated it was "on record" and "documented as severe trauma." Prior to defense counsel's closing, the court asked counsel why he did not want to "have documents to corroborate" defendant's testimony. Counsel responded by asking the judge to weigh the credibility of the testimony that was presented. Defendant's position is based on a presumption that: (1) medical records of his injuries exist, and; (2) those records would corroborate his claims that his injuries resulted from being beaten by Officer Kelley. See, *e.g.*, *People v. Williams*, 139 Ill. 2d 1, 21 (1990). Therefore, the record shows that defendant's counsel made a reasonable decision not to delve into defendant's claims of police misconduct.

¶ 41 In support of his position that the absence of medical records prejudiced his case, defendant relies on *People v. Howard*, 74 Ill. App. 3d 138 (1979), and *People v. Murphy*, 160 Ill. App. 3d 781 (1987). We find both of those cases distinguishable from the facts here, as they involved the issue of the fitness of the defendants in those cases to stand trial.

¶ 42 In *Howard*, defense counsel was deemed ineffective for failing to investigate and discover medical records relating to the defendant's commitment to a mental hospital, in a case involving the defendant's competency for purposes of fitness to stand trial and for a possible trial defense. *Howard*, 74 Ill. App. 3d at 142. This court held defense counsel "lacked a full and

complete knowledge of his client's case" and that counsel likely would have presented a different defense had he known of the contents of those records. *Id*.

¶ 43 Similarly, in *Murphy*, the defendant was found fit to stand trial, based in part on the trial court's reliance on the statutory presumption of fitness. *Murphy*, 160 Ill. App. 3d at 784. However, on appeal, this court agreed with defendant that his counsel was ineffective in failing to investigate his medical records and obtain records of his prior hospitalizations. *Id*. at 789-90. This court found defense counsel was aware the defendant had been assigned to a residential treatment unit within the Cook County Department of Corrections but did not fully investigate the defendant's history. *Id*. Finding the decision in *Howard* to be dispositive, the *Murphy* court held that defense counsel's failure to further investigate the defendant's psychiatric history was manifestly unreasonable and that the absence of such investigation prevented the defendant's counsel from fully considering an insanity defense. *Id*. at 789-90.

¶ 44 In the instant case, unlike in *Howard* and *Murphy*, defendant's fitness to stand trial and his mental or psychiatric state were not at issue. Moreover, in those two cases, the record indicated that defense counsel's failure to investigate was prejudicial to the defense case. Here, in contrast, defendant has not established a reasonable probability that the medical records, if any, would lead to a different result, where there is nothing in the record to indicate what those records contained and whether the evidence would have supported his testimony that he was beaten by the officer. Furthermore, Officer Kelley's identification of defendant was corroborated by the testimony of Reyes.

¶ 45 Accordingly, the judgment of the trial court is affirmed.

¶ 46 Affirmed.