2014 IL App (2d) 121282-U
No. 2-12-1282
Order filed July 8, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. DEANDRE L. LINDSEY, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Kane County. No. 11-CF-2320 Honorable Marmarie J. Kostelny, Judge, Presiding.

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices McLaren and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: Any error in the trial court's exclusion of evidence was harmless, as the admitted evidence was overwhelming and the excluded evidence in part was cumulative.

¶ 2 Following a jury trial in the circuit court of Kane County, defendant, Deandre L. Lindsey, was found guilty of two counts of aggravated battery based on his having thrown a caustic substance (hot cooking oil) onto two victims (720 ILCS 5/12-3.05(a)(2) (West 2010)) and was sentenced to consecutive six-year terms of imprisonment. He appeals, contending that he is entitled to a new trial, because the trial court improperly excluded evidence of two alleged batteries committed by one of the victims after the charged offenses and because the court

incorrectly barred a disclosed defense witness from testifying about the other victim's reputation for being violent. Because the exclusion of the evidence of the two batteries and of the reputation evidence was harmless, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Before trial, defendant filed a motion *in limine*, seeking to have the court admit evidence that one of the victims, Antwan McGee, had two convictions of battery and evidence of two incidents in which the other victim, Allen Lane, had allegedly committed batteries. The trial court ruled that evidence of the batteries by Lane was inadmissible because they occurred after the charged offenses. The court reserved its ruling regarding McGee's battery convictions until trial.

¶ 5 The following evidence was developed at defendant's trial. On October 12, 2011, Officer Ramon Lazcano of the Elgin police department was dispatched to a convenience store to investigate a report of a battery. Upon arriving, Officer Lazcano encountered McGee and Lane. McGee and Lane reported that they had been at a nearby apartment and that someone had thrown hot cooking oil on them. They were taken by ambulance to Sherman Hospital. Following a photo lineup at the hospital, McGee and Lane each identified defendant as the assailant.

¶ 6 Detective Heather Robinson of the Elgin police department investigated the incident. In doing so, she met with McGee and Lane at the hospital. Both victims had burns on their faces and necks. Detective Robinson took statements from both victims. Neither one appeared to be under the influence "of anything." Dr. Adam Glassman, an emergency room physician, treated both McGee and Lane. He opined that they had both been drinking alcohol that night. Detective Robinson later tried to serve McGee with a subpoena for his appearance in the case but was unable to locate him.

¶ 7 At approximately 4:45 a.m. on October 13, 2011, Detective Robinson arrived at the apartment identified by the victims. Defendant and his girlfriend, Danielle Brassel, were the only occupants. Upon entering the apartment, Detective Robinson smelled a fresh and "really strong odor of, like, cooking oil." There was a "sheen" on areas of the walls, stains on the carpets, oil drops on some paperwork, oil drippings on the television, oil stains on a window, and oil splatters on a wall plaque. She opined that it was oil because it was still wet and smelled "very much like cooking oil." There was no part of the apartment that did not have the smell or appearance of oil in it. She observed a "nearly empty" bottle of cooking oil on top of the refrigerator in the kitchen.

¶ 8 She described the studio apartment as very small. It consisted of one main room, a bathroom, and an extremely small kitchen that could not accommodate two people at the same time. There was an air mattress and a television in the main room. She did not notice any bowls or coffee cans anywhere or see any cups around the air mattress. Nor did she see any items related to smoking marijuana or smell any marijuana.

¶ 9 Detective Robinson observed that defendant's right thumb was bandaged with gauze. There were gauze pads and a prescription burn cream that belonged to defendant on top of the television. When she examined his thumb, it appeared dark and discolored and had a "little bit of maybe blood along the bottom side *** and along the fingernail edge." Although defendant told her that he had cut it earlier that evening, in her opinion the thumb had not been cut.

¶ 10 According to Lane, at shortly before 7 p.m. on October 12, 2011, he and McGee picked up Danielle at the apartment and dropped her off at a party. After eating tacos, McGee and Lane picked up Danielle and returned to the apartment.

¶ 11 When they arrived at the apartment, defendant, who lived there with Danielle, was lying on the air mattress. Defendant got up, and McGee and Lane sat next to each other on the air mattress. According to Lane, defendant, who had been in the kitchen, threw a pot of hot cooking oil on him and McGee. Danielle was not present, as she had gone momentarily to a neighbor's apartment.

¶ 12 Lane denied that there was a fight in the apartment before defendant threw the oil. He admitted that about a week earlier he prevented a fight between defendant and McGee. He denied seeing McGee with a knife at the apartment. He denied that he or McGee had been drinking alcohol or smoking marijuana at the apartment, although he admitted that he drank half a shot of vodka earlier that day.

¶ 13 After he and McGee were hit with the oil, they both ran from the apartment. Although they went different directions, they met at a nearby convenience store. They then called 911.

¶ 14 Defendant testified that on October 12, 2011, at around 9 p.m., Danielle returned to the apartment with McGee and Lane. Defendant saw a bottle of alcohol in McGee's pants pocket. Defendant got up from the air mattress to allow McGee and Lane to sit.

¶ 15 The two sat on the mattress, smoked marijuana, and drank alcohol with Danielle. At one point, Danielle went to the neighbor's aprtment down the hall to retrieve a cooking pot.

¶ 16 After Danielle left, defendant told McGee and Lane that it was time for them to go. Defendant leaned over to pick up his cell phone to call the neighbor to let her know that Danielle was on her way. McGee then shoved defendant. Lane grabbed defendant from behind and held him while McGee punched him. McGee removed a knife from his pocket and swung it at defendant's face. Defendant thought that McGee was trying to kill him.

¶ 17 Defendant kicked McGee in the stomach, headbutted Lane, and broke free. McGee got up and charged defendant. Defendant made his way into the kitchen, where McGee and Lane trapped him. Defendant grabbed a pot, a coffee can, and a bowl and threw those items at the two. Defendant did not know what was in the pot. After he threw the pot, McGee and Lane ran out.

¶ 18 According to defendant, because he knew that McGee was a gang member and had said that he was going to kill defendant, he believed that he had to defend himself. His thumb was cut during the struggle, and he was also burned.

¶ 19 On cross-examination, defendant could not recall what type of pants McGee wore, which pocket held the bottle of alcohol, or in which hand McGee held the knife. He could not recall what happened to the bottle of alcohol, which was not found in the apartment. Nor could he identify in any of the photos of the apartment the three cups used to drink the alcohol. He also could not identify a coffee can or bowl in any of the photos.

¶ 20 He went to the emergency room that evening to have his thumb treated for a burn and a cut. He was given a cream for the burn, but he denied having read any follow-up care instructions for the cut. He surmised that, although he told the emergency room staff about the cut and the burn, they must have referred only to the burn in his discharge papers. Defendant denied knowing whether he had any bruises from the altercation, even though he had showered before going to the hospital. He denied heating any oil but admitted that Danielle had been cooking before she left the apartment.

¶ 21 Following defendant's testimony, the trial court reconsidered defendant's motion *in limine* regarding the testimony of two witnesses, Staci Mayfield and Preona Mayfield, who were the respective victims of the two batteries of which McGee had been convicted. The court

allowed them to testify about the incident underlying the battery convictions. It barred Staci, however, from testifying to McGee's reputation for violence because defendant, who disclosed Staci as a witness, failed to indicate his intent to have her testify about McGee's reputation.

¶ 22 According to Staci, in August 2008, McGee, whom she had known for four or five years, stopped by her house. After talking with Staci about dating her younger sister, McGee struck Staci in the face, knocking her to the ground. When her daughter, Preona, stepped in to help her, McGee grabbed Preona by the hair and began kicking her in the face and back.

¶ 23 Preona described the 2008 incident in which McGee struck her mother. When she tried to pull him away from her mother, he grabbed her hair and punched her in the face and stomach.

¶ 24 The jury found defendant guilty of aggravated battery as to both McGee and Lane. Defendant filed a motion for a new trial, contending, among other things, that the trial court erred in excluding evidence of Lane's batteries that occurred after the charged incident and in excluding Staci's testimony as to McGee's reputation for violence. A proffer in support of the motion stated that Staci would have testified that she had lived in Elgin until 2008, that she knew McGee and his family, and that she had heard of his reputation for violence.

¶ 25 The trial court denied the motion for a new trial. The court sentenced defendant to six years' imprisonment on each conviction. Defendant filed this timely appeal.

¶ 26 II. ANALYSIS

¶ 27 On appeal, defendant contends that he is entitled to a new trial for two reasons. First, he argues that the trial court improperly excluded evidence of Lane's two batteries after the charged offenses. Second, he asserts that the court erred in excluding evidence of McGee's reputation for violence. The State concedes that it was error to exclude evidence of Lane's two batteries but contends that such error was harmless beyond a reasonable doubt. The State further responds

that the court properly excluded the reputation evidence as to McGee, because defendant failed to identify that testimony when he disclosed Staci as a witness. Alternatively, the State maintains that any error in that latter respect was harmless.

¶ 28 A. Exclusion of Evidence of Lane's Batteries

¶ 29 The State concedes that the trial court erred in excluding evidence that Lane committed two batteries after the date of the offenses charged in this case. However, it contends that such error was harmless beyond a reasonable doubt.

¶ 30 An evidentiary error is harmless beyond a reasonable doubt if there is no reasonable probability that the jury would have acquitted the defendant absent the error. *In re E.H.*, 224 Ill. 2d 172, 180 (2006). Whether the erroneous exclusion of evidence is harmless beyond a reasonable doubt may be decided by considering whether: (1) the error contributed to the conviction; (2) the other evidence presented overwhelmingly supported the conviction; or (3) the evidence that was excluded was duplicative or cumulative of that admitted. *People v. Tabb*, 374 Ill. App. 3d 680, 690 (2007) (citing *People v. Gonzalez*, 104 Ill. 2d 332, 338-39 (1984)).

¶ 31 In this case, the other evidence that was admitted overwhelmingly supported defendant's convictions. Lane testified that defendant threw the hot oil on him and McGee without being provoked. He denied that either he or McGee attacked defendant and denied seeing McGee with a knife.

¶ 32 Defendant did not deny that he threw hot oil on Lane and McGee. Rather, he claimed that he did so in self-defense. To that end, he testified that he was attacked by Lane and McGee. His version of events, however, was inconsistent with much of the physical and testimonial evidence.

¶ 33 For example, although he testified that he threw the pot of oil only after being backed into the kitchen, there was oil virtually all over the apartment, including the area where, according to Lane, he and McGee were sitting on the air mattress. Defendant testified that McGee had a bottle of alcohol in his pants pocket. Yet, he could not recall which pocket held the bottle or what type of pants McGee wore. Nor was any such bottle found at the scene. Similarly, although defendant testified that Lane, McGee, and Danielle drank alcohol from cups, no cups were found. Defendant testified that McGee swung a knife at him, but he could not remember in which hand McGee held the knife. Defendant further testified that the two victims smoked marijuana, but Detective Robinson saw no indication of marijuana use and did not smell any marijuana. Finally, although defendant claimed that his thumb was cut during the attack by McGee, Detective Robinson, who examined the thumb, opined that it had not been cut.

¶ 34 When the evidence is viewed collectively, it overwhelmingly supports defendant's convictions. Thus, any error in excluding evidence of Lane's two batteries was harmless beyond a reasonable doubt.

¶ 35 B. Exclusion of Evidence of McGee's Violent Reputation

¶ 36 We next address defendant's contention that the trial court erred in excluding evidence of McGee's reputation for violence. Although it was arguably error to have excluded that evidence based on defendant's failure to specify that Staci would testify regarding McGee's reputation (Compare Ill. S. Ct. R. 412(a) (eff. Mar. 1, 2001) (requiring the State to disclose any witnesses related to any defenses and to submit a "specific statement as to the substance of the testimony [that the disclosed witnesses] will give at the trial of the cause") with Ill. S. Ct. R. 413(d)(i) (eff. July 1, 1982) (requiring defendant to disclose any witnesses related to his defenses but not

requiring a disclosure of the substance of their testimony)), we need not decide that question, as we reject defendant's contention because any error was harmless.

¶ 37 Defendant was allowed to introduce evidence of McGee's violent propensities via the testimony of Staci and Preona. That undisputed testimony painted a picture of an angry, aggressive young man who attacked and beat two women. That strongly supported defendant's theory that McGee was the aggressor. Staci's proposed testimony that McGee had a reputation for violence would have been incrementally beneficial at best and clearly cumulative. Because the proposed evidence was merely cumulative, any error in excluding it was harmless beyond a reasonable doubt. See *Tabb*, 374 Ill. App. 3d at 690.

¶ 38 III. CONCLUSION

¶ 39 For the reasons stated, we affirm the judgment of the circuit court of Kane County.

¶ 40 Affirmed.