2016 IL App (2d) 140120-U
No. 2-14-0120
Order filed May 20, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Winnebago County.
Plaintiff-Appellee,	)	
v.	)	No. 12-CF-1080
JAMAR MONEY,	)	Honorable J. Edward Prochaska,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Presiding Justice Schostok and Justice Spence concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in preventing defendant from referring, in closing argument, to certain evidence, as the evidence was not admitted at trial; in any event, any error was harmless, as the evidence was of nebulous importance, defendant was still able to make his case in closing argument, and the State's case against defendant was overwhelming.

¶ 2 After a jury trial, defendant, Jamar Money, was convicted of home invasion (720 ILCS 5/12-11(a)(2) (West 2012)) and residential burglary (720 ILCS 5/19-3(a) (West 2012)) and sentenced to concurrent prison terms of 18 years and 10 years, respectively. Defendant appeals,

contending that the trial court abused its discretion in denying his counsel's request to refer in her closing argument to certain physical evidence. We affirm.

¶ 3 The indictment alleged first that defendant committed home invasion in that, not being a peace officer, he knowingly and without authority entered into Seth Lighthart's apartment, having reason to know that Lighthart was present there, and intentionally caused injury to Lighthart by beating him. The indictment alleged second that defendant committed residential burglary by knowingly and without authority entering Lighthart's apartment with the intent to commit theft. Originally, defendant and David Vang were charged together, but their cases were severed for trial. We summarize the evidence at defendant's trial.

¶ 4 Vernon Sims, a Rockford police officer, testified as follows for the State. On April 12, 2012, at 11:42 p.m., he was sitting in his squad car on the northeast corner of Flintridge and East State Streets when he saw a black male, whom he identified in court as defendant, walking west on State. Defendant was carrying a television set. He crossed Flintridge and entered a convenience-store parking lot. Sims pulled up alongside defendant. Defendant did not run away. He and Sims spoke for about five to seven minutes while Sims sat in his squad car.

¶ 5 Sims testified that, as they were talking, he noticed that defendant's right shoe had a stain that looked like dried blood. Another officer approached. Sims exited his squad car, placed defendant into the backseat, and strapped the TV to the roof of the car. He then drove defendant three or four blocks to the 4700 block of East Lawn. At trial, Sims identified two photographs, later admitted into evidence. One was a full shot of defendant, including his shoes, and the other was a close-up photograph of defendant's right pants leg and the shoe with the stain.

¶ 6 Tera Nailor testified on direct examination as follows. On April 12, 2012, she resided in a second-floor apartment, facing a rear courtyard, at 4760 East Lawn. Immediately below her

apartment was Lighthart's. The view out her window was aided by streetlights. On that evening at about 11:30 p.m., she was awoken by banging on Lighthart's patio door. She heard the sliding door open and Lighthart say, " 'Get out of my apartment.' " Another man said something, and Lighthart said, " 'Uh,' " as though he had been punched. Nailor dialed 911. She looked out her window and saw a man, apparently white, standing outside. He was saying, " 'Come on, let's go,' " and " 'Leave him alone.' "

¶ 7 Nailor testified that the white man walked away and a black man emerged, carrying a TV. Lighthart walked to the complex's maintenance building, just across the courtyard. His face was covered with blood. He knocked on the manager's door, with no answer. Nailor, still on her phone with the police, walked downstairs. When the police arrived, she saw the white man walking away past the police cars and pointed him out. An officer then drove her up alongside the black man and shined a light on him. Nailor identified him as the man who had taken the TV. In court, she identified defendant as this man and testified that, on first looking out her window, she had seen his face clearly with the aid of the streetlights.

¶ 8 Nailor testified on cross-examination that she did not recall her testimony at a hearing held December 7, 2012. She did not deny that, at that hearing, she testified that she had seen the black man enter Lighthart's apartment twice, walking onto the grass the first time and emerging with the TV the second as the white man walked away. At trial, she was unsure how many times the black man had gone in and out of the apartment.

¶ 9 Dan Basile, a Rockford police officer, testified as follows. On April 12, 2012, at about 11:30 p.m., he went with other officers to 4760 East Lawn. The patio door to Lighthart's apartment was unlocked. Nearby on the ground was what appeared to be a mixture of blood and vomit. Nobody was inside the apartment at the time. A man who Basile later learned was

Lighthart exited the building directly across from the apartment; his face and hands were covered in blood. As the emergency responders arrived to treat Lighthart, Basile saw a man, matching the description of a suspect and later identified as Vang, exit the building. Basile entered Lighthart's apartment and saw blood stains on the walls and on the mattress in the bedroom.

¶ 10 Basile testified that, in short order, Vang and another suspect, whom Basile identified at trial as defendant, were returned to the area. Basile heard over his radio that Sims had found defendant with the TV. Both men were shown to Lighthart and Nailor. Both Lighthart and Nailor identified them. Sims returned to the scene, carrying the TV. Inside the apartment was a box for the same brand of TV. The serial number on the box was the one on the TV.

¶ 11 Lighthart testified on direct examination as follows. On April 12, 2012, he resided alone in his apartment. Late that evening, he was asleep in his bedroom but woke up to see a man whom he identified in court as defendant standing there. The light from the hallway was sufficient to enable him to see defendant. Lighthart started to shout that someone was in his apartment and for defendant to get out. Defendant backed off and went outside.

¶ 12 Lighthart testified that he went to the patio door and tried to close it, but defendant reached through a gap and punched him in the face several times. Lighthart blacked out, woke up, pushed defendant away, and went to the manager's office. The manager did not respond to his knocks on the door, so he left. He then saw defendant and another man running away. Defendant was carrying Lighthart's TV. Shortly afterward, the police arrived. From the main hallway of his apartment building, Lighthart looked out a window as police shined a spotlight on two men. Lighthart identified defendant as the one who had been punching him. He also recognized a tattoo on defendant's neck. At trial, Lighthart looked at a photograph of defendant, taken by the police at the station, and pointed out the tattoo.

¶ 13 Lighthart testified on cross-examination as follows. He had told the police that one man had entered his apartment but that he had seen two running from the area. He did not tell the police that one man had punched him in the bedroom. He had testified at an earlier hearing that the apartment's lights had been off during the intrusion, but he explained now that the hallway light enabled him to see the intruder. On redirect, Lighthart testified that, at first, defendant punched him through a gap in the sliding patio door, but then he entered the dining room, where they wrestled until Lighthart got free and went to the manager's building.

¶ 14 Scott Olson, a Rockford police crime-scene detective, testified on direct examination as follows. On April 12, 2012 (or early April 13, 2012), he processed the scene at 4760 East Lawn. There was blood in the apartment, especially in the bedroom. Olson saw a box for a TV, with a serial number matching the one on the TV that Sims had retrieved. Olson photographed Lighthart's injuries. At the police station, he collected items of clothing from Vang, placing them separately into individual bags, sealing these bags, and placing them into a larger bag. At trial, Olson identified People's exhibit No. 16 as (quoting the prosecutor) "that larger bag." He testified that the exhibit was in substantially the same condition as when he received and packaged Vang's clothing. The prosecutor then showed Olson People's exhibit No. 16-A; he identified it as the packaging from the shirt that Vang had worn and said that the shirt had tested positive for the probable presence of blood, though not necessarily human blood.

¶ 15 Olson identified three photographs that he took at the station. One was a front view of defendant; another was a side view; and the third was of defendant's right shoe, including what Olson believed was a blood stain. Defendant told him that it was a Kool-Aid stain. At Olson's direction, defendant removed his clothing. Olson placed the articles into small bags and then placed the small bags into a large bag. Olson took the items to an office and examined them. He

saw the suspected blood on the right shoe and, on the shirt that defendant had been wearing underneath a sweatshirt, a few small spots. Olson tested the shoe; it was positive for the probable presence of blood. He did not test the shirt. The examination continued:

"Q. I want to show you what has been marked as People's 15—actually, let's start here. Do you recognize what this is?

A. Yes.

Q. What is it?

A. That's the packaging of the clothing I collected from [defendant].

Q. Okay. And is this tagged with your evidence tag?

A. Yes, it is.

Q. And inside there are a variety of bags of evidence; is that correct?

A. Of the individual clothing items, yes.

Q. Right. And, particularly, I want to show you People's 15-A; do you recognize what this is?

A. Yes. That would be from the tan shirt.

Q. Okay. And except for the opening made for trial, is this in the same or substantially the same condition as when you received it from [defendant] on that night?

A. Yes, with the addition of the crime scene.

Q. Okay. That's the green tape at the bottom?

A. Yes, from the state police lab.

Q. Okay. And you recognize your own seal, a red seal at the top of this bag?

A. Yes, with my initials and the date.

Q. Okay. Is People's Exhibit 15-A in the same or substantially the same condition then but for these openings?

A. Yes.

Q. And the same thing with People's 15, this also, except for the various openings made by the crime lab and for trial, this is in the same condition as when you placed it into the secure evidence facility when you were done with your testing?

A. Yes."

The trial court later admitted People's exhibit Nos. 15 and 15-A, both without objection.

¶ 16 Olson also testified that he obtained DNA from Lighthart. Jeffrey Houde, a Rockford police detective, testified that, on September 12, 2012, he collected DNA from defendant.

¶ 17 Kia Tate, a forensic scientist at the state police crime laboratory in Rockford, testified as follows. She was trained in blood-stain identification. In September 2012, she received People's exhibit No. 15; took notes about the outer packaging; cut the bag open and observed five small bags inside; and created "subexhibits." The prosecutor asked Tate whether she recognized "a subexhibit that [the State] marked 15-A"; Tate responded that she had created "Laboratory [subexhibit] 2-A," which was "labeled as a tan shirt." In the lab, she opened the bag containing the shirt; circled "bloodlike stains" she saw on the front of the shirt; and tested one of the stains. The test was "positive for the indication of blood." Tate cut out the stain and placed it inside a tube, which was then put into a vault in preparation for a DNA test. She did not test the other stains or (in the prosecutor's words) "do anything with the remaining packages that were inside Exhibit 15." Tate did not examine the shoes in People's exhibit No. 15.

¶ 18 Laurie Lee, a forensic scientist with the Rockford forensic science laboratory, was qualified as an expert in DNA analysis. She testified as follows. She performed DNA analysis

of standards taken from defendant, Vang, and Lighthart. The samples were not mixed together during the testing, and her supervisor performed the same tests and confirmed her results. On blood from Vang's shirt, she identified a major male DNA profile that matched Lighthart's but not Vang's or defendant's. On a stain from defendant's shirt, Lee identified the same major DNA profile matching Lighthart's but neither Vang's nor defendant's. This profile would be expected to occur in "approximately 1 in 580 quintillion black, 1 in 100 quintillion white, or 1 in 690 quintillion Hispanic unrelated individuals."

¶ 19 The parties stipulated that, if recalled, Basile would testify that Lighthart told him that two men had entered his bedroom; that he yelled at them to get out of his apartment; and that, without warning, one of the men began punching him, knocking him to the floor.

¶ 20 Defendant testified as follows. On April 12, 2012, at about 2:30 p.m., he visited his sister, nieces, and nephews. Next, he went to a mini-mart, bought some beer and drank it, and returned to his sister's home. At about 9:30 p.m., he visited the home of "Dan" and "Tracey," two long-time close friends whose last names he did not know. Defendant stayed about an hour, then started to walk back to his sister's apartment building. As he was walking along, he saw a man who was lying on the ground. The man was white, and defendant had never seen him before. Although he was afraid of getting into trouble near the end of his probation term (for an unspecified offense), he started to pick the man up. The man said to get off of him. Defendant noticed that the man was bleeding; there was now blood on defendant's shoe, so he walked away. The man then called, " 'Hey.' " Defendant kept walking. The man said " 'Hey' " again. Defendant looked back. The man asked defendant whether he wanted a TV. Defendant responded, " 'A TV?' " The man said yes and added, " 'Matter of fact, I'll go get it for you.' "

¶ 21 Defendant testified that he followed the man back a short distance to 4760 East Lawn. The man entered an apartment, and defendant heard "wrecking all in the house." The man emerged with a TV and told defendant that he could have it. Defendant thought that his nieces and nephews would " 'love this TV,' " so he took it and thanked the man. The man replied, " 'No problem.' " Defendant walked away.

¶ 22 Defendant testified that, as he was crossing East State, a police officer drove up and asked him where he had gotten the TV. Defendant responded that he had just broken up with his girlfriend and had taken his TV. He made up the girlfriend's name, age, and address; he knew no such person. He did not tell the officer about the man in the street or the blood on his shoe. Soon, the officer received a dispatch and asked defendant to ride with him in the squad car. Defendant agreed. The officer strapped the TV to the roof and drove off with defendant. They reached 4760 East Lawn. Defendant told the officer that he had never been on that street before; that was a lie. Someone shined a spotlight on him, and he was arrested. At the police station, defendant told Olson that the stain on his shoe was Kool-Aid.

¶ 23 After the close of the evidence, the parties and the court went over the admission of evidence. At one point, defendant's attorney stated that, in her closing argument, she would like to refer to defendant's clothing. She contended that Olson had testified that People's exhibit No. 15 included both the large bag and its contents. The prosecutor disagreed, arguing that the exhibit consisted only of the large bag. She contended that defendant's attorney ought not be allowed to refer to any specific items of defendant's clothing, other than People's exhibit No. 15-A, the shirt and the small bag that held it. She argued that the shirt was the only article of defendant's clothing that Olson actually identified on the stand as one that defendant had been

wearing and that was in the same condition as when Olson had received and packaged it. No foundation had been laid for any other piece of defendant's clothing.

¶ 24 Defendant's attorney responded that, were the court to accept such reasoning, she at least should be allowed to argue a negative inference from the fact that the State did not want the jury " 'to look at the bottom of the shoes.' " The prosecutor conceded this point, and the judge agreed. However, the judge agreed with the prosecutor that no proper foundation had been laid for any specific items inside People's Exhibit No. 15, other than the shirt (People's exhibit No. 15-A). After a recess, defendant's attorney again moved for permission to use, in her closing argument, "the contents of People's exhibit No. 15 *** other than 15-A." Because there was no evidence of any tampering, she moved to admit the remaining contents of People's exhibit No. 15, *i.e.*, the hat, pants, sweatshirt, and shoes. The prosecutor again argued that a proper foundation had been laid only for the shirt. The judge denied defendant's motion.

¶ 25 In her closing argument, defendant's attorney attacked the identifications by Nailor and Lighthart. She argued that he had been set up by the man in the street. At one point, she told the jury, "Now, what is missing? We have no phone. We have no shoes. All we have is a photo of shoes, but we don't have shoes. *** We have no blood on the bottom of shoes. You most certainly would expect that he would have had blood on the bottom of the shoes and you would have heard about it if it was there, and you're not going to be allowed to look at the shoes ***."

¶ 26 The jury found defendant guilty of both charges. The court denied his posttrial motion, in which he claimed error as to the court's treatment of People's exhibit No. 15. After the court sentenced him as noted, defendant timely appealed.

¶ 27 On appeal, defendant contends that the trial court abused its discretion in denying his attorney the opportunity to use, in her closing argument, the shoes that Olson had collected from

defendant and placed in a separate bag inside the large bag that also contained People's exhibit No. 15-A. Defendant contends that a sufficient foundation had been laid for this evidence, because Olson's testimony established a proper chain of custody and there was no evidence of tampering. Defendant maintains that the trial court erred in holding that there had to be identification testimony from Olson in order to lay the foundation.

¶ 28 We shall not disturb the trial court's ruling on the admission of evidence unless the court abused its discretion. *People v. Reid*, 179 Ill. 2d 297, 313 (1997). The trial court abuses its discretion when its ruling rests on an error of law or no reasonable person would adopt it. *CitiMortgage, Inc. v. Bermudez*, 2014 IL App (1st) 122824, ¶ 57. Defendant is correct that a proper foundation for physical evidence may be laid *either* through its identification by a witness *or* through the establishment of a chain of possession. *People v. Kabala*, 225 Ill. App. 3d 301, 305 (1992). Thus, to the extent that the trial court required identification testimony and did not consider whether a proper chain of possession was established, it appears that the court erred.

¶ 29 Nonetheless, we may affirm the trial court and its ruling on any ground of record. *Hawkes v. Casino Queen, Inc.*, 336 Ill. App. 3d 994, 1005 (2003). We conclude that the trial court did not abuse its discretion in refusing to allow defendant's attorney to make direct use of the shoes in her closing argument—for the reason that, as the prosecutor maintained at trial, the shoes themselves were not actually admitted into evidence.

¶ 30 The transcript portions that we have referenced and cited show that People's exhibit No. 15 actually consisted of the large bag that contained People's exhibit No. 15-A. The prosecutor asked Olson to identify "People's 15—actually let's start here. Do you recognize what this is?" Olson answered this question (which of course is somewhat ambiguous to us, as we cannot see " 'this' ") by identifying "the *packaging* of the clothing I collected from [defendant]."

(Emphasis added.) The prosecutor then moved on to People's exhibit No. 15-A, but returned to People's exhibit No. 15 and established that, except for the "various openings," it was in the same condition as it had been when Olson placed it into the secure evidence facility.

¶ 31 The references to openings implies that the large bag, not any of the small bags within it, was what was meant by "People's Exhibit No. 15," and that the only smaller bag identified or moved to be admitted into evidence was the one that, along with the tan shirt, composed People's exhibit No. 15-A—and People's exhibit No. 15-A was ultimately what the prosecutor was concerned with introducing, so that the primary reason to introduce the preceding exhibit was to support the admission of the small bag and its contents, which we know actually contained probative evidence. The prosecutor expressed this understanding in the subsequent argument over defendant's request to use the shoes directly in closing argument. Also, Olson's testimony in regard to People's exhibit Nos. 16 and 16-A, relating to Vang's clothing, is consistent with this distinction. Olson testified in essence that People's exhibit No. 16-A consisted of Vang's shirt and the smaller package that contained the shirt. But he agreed with the prosecutor that People's exhibit No. 16 was only "that larger bag."

¶ 32 The trial court thus did not err in refusing to allow defendant's attorney to use the shoes directly in her closing argument: the shoes were never themselves admitted into evidence. We note that, had defendant's attorney wished to have the shoes in evidence, she could easily have moved to do so explicitly and directly, laying the required foundation.

¶ 33 In any event, even if the foregoing analysis is unduly metaphysical or even mistaken, we conclude that any error was harmless. First, we note, the evidence of defendant's guilt was extremely strong; this was not a close case at all. Lighthart and Nailor positively identified defendant, both shortly after the incident and at trial, and established through their testimony that

he had entered Lighthart's apartment and exited with Lighthart's TV. Lighthart was undoubtedly assaulted and bloodied, and defendant's shirt was stained with blood that realistically could have come only from Lighthart. Defendant was seen with the TV a few blocks from the apartment shortly after the entry. He lied to Sims about his conduct and lied to Olson about the stain on his shoe. He told the jury that he accepted a generous offer from a total stranger, who happened to have been lying in the street bleeding, to break into a home, steal a TV, and give it to him for free.

¶ 34 We note second that defendant cannot show how he was prejudiced by the trial court's ruling. In his closing argument, defendant was still able to ask the jury to consider that the State had failed to produce evidence that any blood had been found on the bottoms of his shoes, even though that failure undercut the State's proof. He was also able to pursue his main lines of argument, *i.e.*, (1) the weaknesses in the eyewitness identifications and (2) alternative narratives that placed him outside Lighthart's apartment or otherwise minimized his involvement (although he conceded that he was proved guilty of theft, a less severe charge than the others).

¶ 35 In his brief, defendant does not explain with any specificity how he was prejudiced by being unable to use the shoes themselves. Defendant (1) asserts in the most general terms that the ruling prevented him from making his "preferred closing argument," and (2) notes that his posttrial motion contended that the evidence was "exculpatory." We have just disposed of (1). And (2) simply proves nothing. Indeed, with no evidence adduced about the bottoms of defendant's shoes (other than that they made contact with the victim's apartment and much of the surrounding pavement), only speculation supports defendant's claim of prejudice. Given the strong evidence against defendant, the nebulous importance of the evidence that he could not use, and the great leeway he still had in closing argument, we deem any error harmless.

¶ 36 The judgment of the circuit court of Winnebago County is affirmed. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2014); see also *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

¶ 37 Affirmed.