No. 3–09–0925

Order filed May 10, 2011

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois,
Plaintiff-Appellee,	)	
v.	)	No. 09–CF–146
QUINTON M. SCOTT,	)	Honorable Michael Brandt,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Presiding Justice Carter and Justice Lytton concurred in the judgment.

ORDER

Held: Counsel provided effective assistance because any acknowledgment that defendant ran from a police officer was part of trial strategy. Furthermore, because the arrest warrant included the offense of disregarding a stop sign, defendant has earned sufficient $5 per day presentence incarceration credit to offset the fine imposed for it.

A jury convicted defendant Quinton M. Scott of driving with a revoked license (625 ILCS 5/6--303(a) (West 2008)), disregarding a stop sign (625 ILCS 5/11--1204(b) (West 2008)), resisting or obstructing a peace officer (720 ILCS 5/31--1(a) (West 2008)), and aggravated

battery (720 ILCS 5/12--4(b)(18) (West 2008)). The court sentenced him to a three-year term of imprisonment for the aggravated battery conviction, to be served concurrently with six-month jail terms for the resisting a peace officer and driving with a revoked license convictions, and a $75 fine for disregarding a stop sign.

Defendant appeals, contending he did not receive effective assistance of counsel because defense counsel conceded defendant was guilty of resisting a peace officer. Defendant also alleges he should not be required to pay the $75 fine for disobeying a stop sign because he earned sufficient presentence incarceration credit pursuant to section 110--14 of the Code of Criminal Procedure of 1963 (the Code) (725 ILCS 5/110--14 (West 2008)) to satisfy this fine. We affirm the convictions and grant defendant credit of $75 on the traffic fine.

FACTS

The State charged defendant with disregarding a stop sign, driving with a revoked license, resisting a peace officer, and aggravated battery. Regarding the offense of resisting a peace officer, the State charged defendant with "knowingly resist[ing] the performance of Bryan Sylvester of an authorized act within his official capacity being the arrest of [defendant] knowing [Sylvester] to be a peace officer engaged in the execution of his official duties in that [defendant] moved his body in a manner that interferred [sic] with Bryan Sylvester's ability to handcuff him." The State further alleged that defendant committed the offense of aggravated battery because he bit Sylvester.

The police took defendant into custody for these offenses on January 9, 2009, the evening the incidents occurred, and defendant posted bond on January 11, 2009. Upon defendant's January 11 release, defendant received a notice to appear for the offenses of driving with a revoked license,

resisting a peace officer, and aggravated battery. Thereafter, on February 18, 2009, defendant received a notice to appear on the charges of disregarding a stop sign, driving with a revoked license, resisting a peace officer, and aggravated battery. Defendant subsequently failed to appear at a pretrial hearing on July 1, 2009, and the court issued an arrest warrant for defendant indicating that defendant was sought to answer to the charges of disregarding a stop sign, driving with a revoked license, resisting a peace officer, and aggravated battery. A Peoria police officer arrested defendant pursuant to this warrant on July 9, 2009, and he has remained in custody since that time.

The trial began on September 22, 2009. Defense counsel stated during opening statement that while defendant drove without a valid license, failed to stop at a stop sign, and ran away from Sylvester, "two wrongs [did not] make a right[,]" and asserted that his client did not bite the officer. Defense counsel further stated to the jury that, "[a]t the end of this case, [they would] get a number of verdicts. The traffic offense [defendant was] guilty of. Resisting a police officer from running, yes. As far as the aggravated battery, there [was] no way in the world [they would] find that the State [would] meet their burden beyond a reasonable doubt on that [offense]."

Officer Sylvester testified that he was in uniform and on patrol in a marked squad car around 7:30 p.m. on January 9, 2009. At that time, Sylvester saw the driver of a white Mercury Grand Marquis speeding and fail to stop at a stop sign and activated his squad car's overhead lights and siren. As the officer followed the Grand Marquis, he watched the driver, later discovered to be defendant, stop and exit the car and run into a nearby alley. Sylvester followed defendant on foot, but he could not catch defendant.

Sylvester, Peoria police officer Rory Poynter, and four other police officers subsequently went to a single-family residence at 709 West Columbia Terrace in Peoria to look for defendant.

Defendant's mother, Mary Forest, answered the door and gave the officers permission to search her home for defendant.

During this search, the police officers located defendant in the basement hiding behind a large rack of hanging clothing. According to Sylvester, he announced that he was a police officer and ordered defendant to show his hands and to come out from behind the clothing. Defendant did not comply with either request. Once Sylvester fully descended the stairs into the basement, he grabbed defendant and forced defendant to lie on the ground on his stomach so he could place defendant in handcuffs.

According to Sylvester, defendant then began "a rather large struggle" to avoid the officers' attempts to place him in handcuffs. Poynter testified that as the officers attempted to place handcuffs on defendant, defendant thrashed around on the ground and continuously screamed someone's name. During this struggle, Sylvester was on defendant's right side, Poynter was on defendant's left side, and both officers were trying to handcuff defendant while defendant kept his hands under his torso near his face. At some point during their attempt to handcuff defendant, Sylvester "shouted to the [other] officers at that time that [he] was bitten and to take action as necessary." Sylvester hit defendant once in the face, and Poynter struck defendant in the head three or four times with his flashlight, causing the lens to break.

Sylvester further testified that he was wearing lightweight leather gloves at the time defendant bit him, and that as a result of the bite, he bled and sustained torn skin near the end of his fingernail, but he did not need medical attention. He further explained that he knew defendant bit him because he felt extreme pain, but acknowledged that defendant did not leave an impression of his teeth on Sylvester's finger or glove.

The State admitted photographs of defendant taken after the struggle that indicated defendant had blood on his lip. According to Sylvester and Poynter, no one struck defendant until after defendant bit Sylvester, no officer placed defendant in a choke hold, and defendant did not lose consciousness at any time during the struggle.

Forest, defendant's mother, testified that she consented to the officers' request to search her home to look for defendant. After police entered the basement, she heard them say "come out." She also heard defendant scream. When the officers walked upstairs with her son in handcuffs, she noticed that his eyes were bloodshot.

Defendant's sister, Lekrista Scott, testified that when she entered the basement and turned on the light, she saw defendant on the ground on his stomach, and a police officer with a nightstick around defendant's neck. She testified that defendant's eyes rolled back into his head. She heard officers say "do [not] resist" to defendant. Lekrista stated that after police successfully handcuffed defendant, defendant's face was bloody and his eyes were bloodshot.

Defendant testified, and acknowledged that he was driving with a revoked license on the night in question and "ran from the car[,]" into his mother's home, where he hid from the officers in the basement behind a rack of clothing. Defendant explained that although he ran from the police and hid to avoid detection, by the time the police found him in the basement he had "given up." Defendant denied biting an officer at any time that evening.

According to defendant, once he saw an officer make eye contact with him, he showed the officer his hands by placing them through the clothing. At that point, the officer grabbed defendant's hands, pulled him to the floor, and began punching him in the face. Defendant responded by placing his hands over his face, and shouting to the officers that he was not able to

place his hands behind his back because they were hitting him. Defendant stated that while he was on the basement floor, he felt a flashlight hit him in the back of the head and felt one officer hold his neck and face up with a baton while another officer punched him in the face. Defendant stated "by that time, [he] had to have passed out because it was, like, all of a sudden [he] woke up, and [he] was still being punched and hit." Defendant testified that he sustained a swollen lip and "a lot of bruises around [his] face."

During their closing argument, the State contended that it was "not even at issue" that defendant struggled and resisted the officers' attempts to arrest him. The State thus contended that "there only seem[ed] to be an issue about the aggravated battery." In his closing argument, defense counsel asserted that defendant's "posture on the [basement] floor [was] defensive, and it [was] certainly more consistent with [defendant's explanation] with his hands up not under his body *** but up trying to protect his face." Defense counsel further acknowledged that defendant should not have been driving on the night in question, and should not have run from police. However, counsel contended that there was "no evidence whatsoever that [defendant] committed the offense of aggravated battery[,]" and "respectfully ask[ed the jury] to find [defendant] not guilty certainly of the aggravated battery."

The jury convicted defendant as charged. On November 6, 2009, the trial court sentenced defendant, as aforesaid. Defendant appeals.

ANALYSIS

On appeal, defendant argues that counsel rendered ineffective assistance by conceding that defendant committed the offense of resisting a peace officer, thus effectively leaving defendant without a defense. Defendant contends that this court should assess counsel's assistance under the

more lenient standard of *United States v. Cronic*, 466 U.S. 648 (1984), but also argues defense counsel's assistance was deficient under *Strickland v. Washington*, 466 U.S. 668 (1984).

To prevail on a claim of ineffective assistance of counsel, a defendant must establish both that his attorney's conduct fell below an objective standard of reasonableness, and that there is a reasonable probability that but for counsel's errors, the result of the proceeding would have been different. *Strickland*, 466 U.S. 668; *People v. Albanese*, 104 Ill. 2d 504 (1984). In determining the effectiveness of counsel, the reviewing court examines the totality of counsel's conduct, not isolated incidents. *People v. Mitchell*, 105 Ill. 2d 1 (1984).

An exception to *Strickland* exists in a narrow class of cases where defense counsel "entirely fails" to subject the State's case to meaningful adversarial testing. *People v. Jones*, 322 Ill. App. 3d 675, 680 (2001); see also *Cronic*, 466 U.S. 648; *People v. Hattery*, 109 Ill. 2d 449 (1985). In such an instance, a reviewing court will consider the adversary process presumptively unreliable; thus, defendant need not meet the burden of demonstrating actual prejudice. *Hattery*, 109 Ill. 2d 449.

Concession of defendant's guilt by defense counsel is not *per se* ineffective assistance such that defendant may avoid application of *Strickland* to counsel's performance. *People v. Reed*, 298 Ill. App. 3d 285 (1998). Rather, prejudice is presumed only when "defense counsel has unequivocally conceded every significant aspect" of defendant's guilt. *People v. Abt*, 269 Ill. App. 3d 831, 839 (1995); compare *People v. Chandler*, 129 Ill. 2d 233 (1989) (defense counsel conceded that defendant broke into victim's home but defendant's accomplice stabbed the victim, and counsel did not present the testimony of defendant or any witnesses on his behalf; court concluded that counsel rendered ineffective assistance under *Cronic* because counsel's concession

left the jury no choice but to find defendant guilty of felony murder), with *People v. Shatner*, 174 Ill. 2d 133 (1996) (counsel made a strategic decision to concede defendant's involvement in a lesser offense while trying to avoid a conviction for a greater offense, and also called witnesses on defendant's behalf and cross-examined almost all of the State's witnesses; court concluded that counsel provided effective assistance under *Strickland*).

We first conclude that the exceptional circumstances required to invoke the *Cronic* exception do not exist in this case. Our review of the record indicates that defense counsel presented a vigorous defense that defendant was innocent of aggravated battery, the most serious of the charges facing defendant. Counsel also presented the testimony of defendant and two witnesses on his behalf. Additionally, in his closing argument, counsel contended that while defendant was lying on the ground in the basement, it was more likely that his hands were in a defensive position, as defendant contended, than it was that defendant was keeping his hands away from the police officers. Thus, the record does not show that counsel entirely failed to subject the State's case to meaningful adversarial testing. Consequently, we will assess defendant's claim of ineffective assistance of counsel under the *Strickland* standard.

In this case, we conclude that defense counsel did not render an objectively deficient level of assistance in his representation of defendant. Here, the State alleged that defendant committed the offense of resisting a peace officer because he moved his body in a manner that interfered with Sylvester's ability to place defendant in handcuffs.

Our review of the record reveals that counsel did not concede this offense as charged, as counsel only stated that defendant ran from Sylvester. Counsel made this comment in the context of arguing that defendant acted improperly when he ran from Sylvester, but that defendant did not

bite Sylvester and was therefore not guilty of the greater offense of aggravated battery. During his testimony, defendant testified that he ran away from Sylvester. Accordingly, any mention of this fact by counsel was not objectively unreasonable, and was consistent with defense counsel's strategy to convince the jury that defendant was a credible witness and was not guilty of aggravated battery.

To establish his counsel's deficient performance, the defendant must overcome the strong presumption that his counsel's actions were the result of sound trial strategy (*People v. Evans*, 186 Ill. 2d 83 (1999)), as errors in trial strategy generally will not render counsel's performance deficient (*People v. Myers*, 246 Ill. App. 3d 542 (1993)). Consequently, since defendant has not overcome this strong presumption, we conclude that defendant cannot establish a claim of ineffective assistance of counsel under *Strickland*.

Defendant next contends that he is entitled to the $5 per day credit of section 110--14 of the Code for 132 days spent in presentence incarceration, satisfying the $75 fine that the court imposed for disregarding a stop sign. The State agrees that defendant has earned this credit, although we are not bound by the State's concession (see *People v. Craig*, 47 Ill. App. 3d 242 (1977)).

We do not agree defendant was held on the minor traffic offense for 132 days as alleged. After being released on bond on January 11, 2009, two days after his arrest on January 9, 2009, defendant was issued a notice to appear on February 18, 2009. When he subsequently failed to appear for the traffic offense of disregarding a stop sign on July 1, 2009, the court issued an arrest warrant on that date for disregarding a stop sign, driving with a revoked license, resisting a peace officer, and aggravated battery. A Peoria police officer arrested defendant pursuant to this warrant

on July 9, 2009, and defendant remained in custody since that time on the minor traffic offense and other charges.

While we disagree that defendant was incarcerated for 132 days as defendant contends, we do agree he was held on the warrant which included the traffic offense of disobeying a stop sign for more than 15 days which would satisfy the $75 fine imposed after allowing the monetary $5 per day credit. Therefore, defendant has earned sufficient credit pursuant to section 110--14 of the Code to offset the $75 fine imposed for this offense and we grant the credit. See 725 ILCS 5/110--14 (West 2008).

CONCLUSION

For the foregoing reasons, the judgment of the trial court of Peoria County is affirmed.

Affirmed as modified.