2012 IL App (5th) 080373-U

NO. 5-08-0373

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Madison County.
	)	
v.	)	No. 01-CF-1062
	)	
JERAMEY BROWN,	)	Honorable
	)	James Hackett,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Presiding Justice Donovan and Justice Wexstten concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence against defendant overwhelmingly established his guilt and the discovery response by the State was harmless under the circumstances.

¶ 2 After a second jury trial, defendant, Jeramey Brown, was convicted of the first-degree murder of Michael Keller in the circuit court of Madison County. On appeal, defendant raises issues as to: (1) whether the evidence against defendant established his guilt beyond a reasonable doubt and (2) whether defendant was denied a constitutional right to confront a witness.

¶ 3 FACTS

¶ 4 A brief review of a few of the witnesses for the prosecution lays the groundwork for discussion of defendant's appeal. The prosecution presented testimony from two other people charged with the murder of Keller and several witnesses testifying to surrounding events.

¶ 5 Robert Brooks, an asset protection manager at the Sears store in Alton, Illinois,

testified that shortly before 8 p.m. on April 16, 2001, a group consisting of three people entered the store and purchased items using a credit card belonging to Keller. Brooks described a series of purchases. The group first purchased four pairs of athletic shoes, then Cardinals T-shirts and two pairs of Levi jeans. They finally purchased children's clothing and a Cardinals cap.

¶ 6 Brooks preserved surveillance videos which began at 7:56 p.m. when the group exited a white car on the parking lot. He stated that the group drew his attention as they did not appear to be "really shopping"; instead, they were "just grabbing stuff off the shelf." The surveillance videos were presented to the jury.

¶ 7 On the day after Easter, Mary Weaver saw a person she knew as defendant, Jeramey Brown, driving a white car with Eugene Swafford as a passenger. She saw the two take items out of the car, putting some of the items in a trash can. Later, Weaver checked the trash can and found a hat for a Ponderosa employee and vehicle registration in the name of Michael Keller. Weaver was unable to identify defendant in open court.

¶ 8 On April 19, 2001, Eugene Swafford directed police to a silo in Madison, Illinois, where the body of Keller was located. Keller's throat had been cut and he had been stabbed in the back with the knife remaining in his body. His body was bound by electrical cords and wrapped in sheets similar to those found in Keller's house.

¶ 9 The officer who arrested defendant testified that when defendant was arrested on April 20, 2001, he was wearing what apparently was a new pair of Levi jeans with a Cardinals shirt and cap.

¶ 10 Sylena Segerson testified that on the afternoon of April 16, 2001, she smoked marijuana with Swafford, Allen Hozian, and defendant. She stated that Swafford suggested that they burglarize Keller's home, believing Keller to be at work at a Ponderosa restaurant. Segerson stated that she and Hozian stayed outside as lookouts while Swafford and defendant

broke into the house. Approximately 10 minutes later, Keller arrived home. At that time, Segerson, Hozian, and Swafford were outside the house and they talked to Keller in an attempt to stall him because defendant was still in the house. Segerson became anxious and left. Segerson testified she returned to the house approximately half an hour later and saw defendant driving Keller's car with Swafford as a passenger. At that time, Swafford gave Segerson a jar full of cash with instructions to buy gas and cigarettes, which she did. She stated that later that day, Swafford and defendant picked her up and drove to Weaver's and then to the Alton Sears store where they purchased several items using a credit card in Keller's name.

¶ 11 Segerson testified that she did not know Keller was missing until Swafford was arrested. Prior to defendant's trial, Segerson was prosecuted, convicted of first-degree murder, and sentenced to 28 years' imprisonment. Segerson testified that she had been untruthful at her trial and the trial of Swafford. Segerson admitted that she had agreed to testify at defendant's trial in return for a reduction of the charges against her to residential burglary with a sentence of 15 years. This meant that Segerson would be eligible for release in about a year with day-for-day good-time credit.

¶ 12 Allen Hozian testified that on April 16, 2001, Swafford, Segerson, and defendant came over to his house and, after sharing some marijuana, they decided to burglarize Keller's residence. Hozian testified that defendant broke into Keller's house while Hozian, Swafford, and Segerson acted as lookouts. About 15 minutes after they arrived, Keller came home and Swafford and Segerson tried to delay him outside. Keller entered the house and Segerson drove off. Swafford then entered the house.

¶ 13 A few minutes later, Hozian entered the house and saw that Keller had been bound to a chair by wires and that Swafford and defendant were beating on Keller. Hozian saw defendant hold a knife to Keller's throat. While they were ransacking the house, defendant

stabbed Keller in the back so hard that the handle of the knife broke. He later cut Keller's throat with a different knife. After midnight, Hozian returned with Swafford and defendant to the house, where they wrapped up Keller's body and transported it in the trunk of Keller's car to a silo where they disposed of it.

¶ 14 Hozian pled guilty to first-degree murder and residential burglary and was sentenced to 27 years' imprisonment. Hozian stated that he had previously lied to police and under oath about the incident. Hozian agreed to testify in return for a reduction of his sentence to 20 years and transfer to a medium-security facility.

¶ 15 Defendant presented numerous witnesses at trial, but, on appeal, defendant labels as most telling the testimony of Monte Morgan and Sandra Malady. Both testified that Segerson and Swafford had visited them on the day of the incident without defendant. Morgan, called as a witness by the prosecution, testified that, on April 16, 2001, Segerson and Swafford came by the house where he lived with his girlfriend in the "late morning, early afternoon." Morgan testified that Swafford and Segerson had their children with them. While at the house, Swafford shot birds with a BB gun in the backyard and they ordered pizza. On cross-examination, Morgan testified that he had told the police that they had arrived between 12 and 12:30 and hung out for about an hour.

¶ 16 Sandra Malady, Morgan's girlfriend, was called by the defense. She testified that Swafford and Segerson often came to her house with their children. Malady could not recall which children they brought on April 16, 2001, but was certain that they left with at least one child. Malady testified that on that date, they came to her house between 11 and noon, or "around lunchtime." They ordered pizza, and while Monte and Swafford shot a BB gun in the backyard, she watched a movie with Segerson. Malady testified that Segerson and Swafford left between 2 and 3 p.m.

¶ 17 A jury returned a verdict of guilt for first-degree murder. The trial court sentenced

defendant to 75 years' imprisonment.

¶ 18 ANALYSIS

¶ 19 Defendant contends that his conviction should be overturned because the evidence raises a reasonable doubt as to his guilt. *People v. Schott*, 145 Ill. 2d 188, 206, 582 N.E.2d 690, 699 (1991); *In re Winship*, 397 U.S. 358, 364 (1970). On review, the standard of review is whether, after reviewing the record in a light most favorable to the State, the evidence is so unsatisfactory that no rational fact finder could have found defendant guilty beyond a reasonable doubt. *Schott*, 145 Ill. 2d at 206, 582 N.E.2d at 699.

¶ 20 The weakness of defendant's argument is illustrated by looking at the testimony he calls most telling. On appeal, defendant argues that the timeline given by Morgan and Malady is inconsistent with his participation with the murder of Keller. Coworkers of Keller testified that his shift ended at 4 p.m. but that he would have been able to leave earlier if his work had been completed. The State concedes that it is reasonable to conclude that Keller first arrived home and found his house being burglarized around 3:30 p.m.

¶ 21 Defendant contends that if Morgan and Malady are believed, this would not have allowed Swafford and Segerson enough time to meet defendant at their house, smoke marijuana, and conceive the ill-fated plan of burglary. Aside from issues of their credibility, neither Morgan nor Malady testified with exactitude that their visitors left at so late a time they would not have been able to meet with defendant as Segerson testified. The strongest witness from defendant's perspective, Malady, placed their leaving at between 2 and 3 p.m. In contrast to defendant's strained argument of alibi, the evidence of his guilt is overwhelming.

¶ 22 Defendant argues that his conviction was based on the contradicted testimony of witnesses who lack credibility. Defendant correctly asserts that the jury should have viewed with caution the testimony of Segerson and Hozian. *Lee v. United States*, 343 U.S. 747, 757

(1952); *People v. Ash*, 102 Ill. 2d 485, 493, 468 N.E.2d 1153, 1156 (1984). Nonetheless, the jury was informed of the agreements that Segerson and Hozian had reached with the prosecution and of their prior inconsistent statements. The jury was in the best position to evaluate their credibility.

¶ 23 Defendant also contends that the jury had reason to doubt other witnesses for the State. For example, defendant argues that the testimony of Mary Weaver lacked credibility as she could not identify defendant in court. The State, however, argues that the delay before trial and Weaver's advanced age explain her testimony. The State also presented testimony from other witnesses that defendant had often been with Swafford and Segerson at Weaver's residence. From this, the jury could have readily found that she would have recognized defendant in 2001.

¶ 24 In any event, other evidence presented by the prosecution points strongly to defendant's guilt–not the least of which was defendant purchasing items with Keller's credit card on the night of the murder. The evidence of defendant's guilt goes well beyond the standard for review on appeal.

¶ 25 The difficulty with the case against defendant rests in the conduct of the prosecution. Defendant contends that he was denied his right to confront Hozian because the prosecution failed to disclose statements made in pretrial interviews.

¶ 26 Defendant contends that the State violated Supreme Court Rule 412 (eff. Mar. 1, 2001). The disclosure requirements of Rule 412 guard against surprise. *People v. Heard*, 187 Ill. 2d 36, 63, 718 N.E.2d 58, 73 (1999). Failure to comply with the rule can deny a defendant the ability to cross-examine a witness and result in reversible prejudice. *People v. Szabo*, 94 Ill. 2d 327, 334, 447 N.E.2d 193, 201 (1983).

¶ 27 Defendant points to *People v. Szabo*, 94 Ill. 2d 327, 334, 447 N.E.2d 193, 201 (1983). In *Szabo*, an assistant State's Attorney destroyed notes of approximately 20 conversations

with a codefendant. *Szabo* noted that the codefendant was "[t]he State's principal witness at trial." *Szabo*, 94 Ill. 2d at 334, 447 N.E.2d at 196. At the beginning of the trial, defense counsel orally requested all memoranda summarizing the codefendant's statements in the conversations, and the prosecution objected that the notes were work product and offered to provide an outline prepared in anticipation of trial or to reconstruct the notes if so ordered by the court. The court denied the defendant's motion. *Szabo*, 94 Ill. 2d at 343, 447 N.E.2d at 200.

¶ 28 *Szabo* found that once a defendant has made a specific demand for such notes and laid the foundation of the statement's pertinence to the trial, a court should order the statement to be directly delivered to the defense for possible use at trial. *Szabo*, 94 Ill. 2d at 346, 447 N.E.2d at 202 (citing *People v. Bassett*, 56 Ill. 2d 285, 289, 307 N.E.2d 359, 362 (1974)). *Szabo* found that the determination of what would be useful rests with the defense, not the trial court. *Szabo*, 94 Ill. 2d at 345, 447 N.E.2d at 201. *Szabo* noted that if the State resists disclosure on the grounds that a statement is privileged or irrelevant, the court should conduct an *in camera* review and give to the defense any portion of the statement that could be said to be the witness's own words. *Szabo*, 94 Ill. 2d at 345, 447 N.E.2d at 201. Defendant argued that the trial court's ruling effectively denied him the right to cross-examine the witness and thereby denied him his constitutional right to confrontation and a fair trial. The *Szabo* court could not determine what opportunities for cross-examination were denied by the nondisclosure and remanded the matter. *Szabo*, 94 Ill. 2d at 349, 447 N.E.2d at 203.

¶ 29 On appeal, the State takes two different general tracks against defendant's argument. First, the State claims that defendant should not be heard on appeal to contest the State's response to discovery requests at trial. The State points out that defendant never moved for an *in camera* inspection or raised any issues during trial or objected to Hozian's testimony. The State also contends that the record indicates that defendant was not prejudiced by any

supposed inability to impeach Hozian.

¶ 30 In the end, any error that occurred was harmless beyond a reasonable doubt. *People v. Young*, 128 Ill. 2d 1, 42-43, 538 N.E.2d 461, 469-70 (1989) (citing *Chapman v. California*, 386 U.S. 18 (1967); *Delaware v. Van Arsdall*, 475 U.S. 673, 684 (1986)). *Young* found that, under the standards of *Szabo*, the State had committed error, but that such error was harmless. *Young* held that a discovery violation was subject to harmless error analysis under *Chapman* and *Van Arsdall*. *Young* stated:

> "Rejecting the argument that a blanket prohibition against exploring potential bias is error that warrants reversal of a conviction regardless of actual prejudice, the Court concluded that the proper test is 'whether, assuming that the damaging potential of the cross-examination were fully realized, a reviewing court might nonetheless say that the error was harmless beyond a reasonable doubt.' ([*Van Arsdall*,] 475 U.S. at 684, 89 L. Ed. 2d at 686, 106 S. Ct. at 1438.) In determining whether such an error is harmless in *a particular* case, the [*Van Arsdall*] Court directed reviewing courts to consider a host of factors, including 'the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecution's case.' [*Van Arsdall*,] 475 at 684, 89 L. Ed. 2d at 686-87, 106 S. Ct. at 1438." (Emphasis in original.) *Young*, 128 Ill. 2d at 43-44, 538 N.E.2d at 470.

¶ 31 *Young* proceeded to distinguish *Szabo*. *Young* noted that *Szabo* was unable to determine from the record on appeal whether the error from nondisclosure was prejudicial or harmless. *Young*, 128 Ill. 2d at 44, 538 N.E.2d at 470. *Young* noted that in *Szabo* the witness "was the only occurrence witness," "central to the State's case," and "the only

evidence tending to establish that Szabo premeditated the murders." *Young*, 128 Ill. 2d at 44, 538 N.E.2d at 470. However, in *Young*, the witness was not an occurrence witness, nor was the State's case centered on the testimony of that particular witness. In contrast to *Szabo*, the witness in *Young* was not the only witness tending to establish that the defendant committed the murder. *Young*, 128 Ill. 2d at 44, 538 N.E.2d at 470. Thus, the error was harmless. *Young*, 128 Ill. 2d at 44, 538 N.E.2d at 470.

¶ 32 The case at hand resembles *Young*. The case against the defendant was overwhelming. As in *Young*, effective cross-examination of Hozian was not critical to the defense. Defendant's contention that Hozian, like the codefendant in *Szabo*, was the only witness tending to establish that defendant premeditated the murder ignores both the extensive testimony regarding premeditation by the witness in *Szabo* and the strength of the record against defendant in the case at hand. For example, Segerson also placed defendant inside Keller's residence when he interrupted the burglary. The State also presented witnesses describing defendant's participation in a string of events surrounding the interrupted burglary. Again, the evidence against defendant was overwhelming.

¶ 33 This should not be taken as an endorsement of the prosecution's handling of the discovery response. Even under the rubric of inadvertence, such failure to fully respect and participate in the discovery process would run the risk of prejudice under other circumstances.

¶ 34 Accordingly, the judgment of the circuit court is hereby affirmed.

¶ 35 Affirmed.