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2018 IL App (1st) 160045-U

SIXTH DIVISION
SEPTEMBER 21, 2018

No. 1-16-0045

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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. 11 CR 9948 (03)
)	
BRANDON JONES,)	Honorable
)	
Defendant-Appellant.)	Joseph M. Claps, Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Connors and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The defendant's convictions for home invasion and first degree murder are affirmed and defense counsel did not render ineffective assistance.

¶ 2 Following a bench trial, the defendant-appellant, Brandon Jones, was convicted of home invasion and first degree murder. On appeal, the defendant contends that his trial counsel was ineffective for not arguing that the photospread identification testimony should be suppressed and for not citing legal authority to support suppression of the in-person lineup identifications. For the reasons stated below, we affirm the judgment of the circuit court of Cook County.

Appx. A

¶ 3

BACKGROUND

¶ 4 The State charged the defendant and his codefendants, Maurice Jefferson and Deauty Thompson, with several counts of home invasion and first degree murder in connection with the February 27, 2011 beating death of Christopher Williams (Williams). The three codefendants had severed but simultaneous bench trials.¹

The Hearing on the Defendant's Motion to Suppress

¶ 5 Prior to the defendant's trial, he filed a motion to suppress identification testimony. The motion alleged that the composition and construction of the photospread and lineups were suggestive of the defendant.

¶ 6 At the hearing on the motion to suppress, Detective Brian Drees testified that he investigated the beating death of Williams. Witnesses described the offenders as three or four black males, including a man with dreadlocks who beat Williams with a baseball bat. One of the witnesses reported the license plate number from the vehicle in which the offenders fled. Detective Drees learned that the vehicle was registered to the defendant. Detective Drees then used a computer program to create a photospread of individuals with similar characteristics as the defendant. The program generated a photospread of five other black males, all of whom had braids or dreadlocks.

¶ 7 Detective Drees showed the photospread separately to three witnesses: Charles Anderson (Anderson), Ariyonna Williams (Ariyonna), and Andre Ross (Ross). Detective Drees did not tell the witnesses whom to identify nor did he threaten them or promise them anything in order to make an identification. Each of the three witnesses independently identified the defendant in the photospread as the man with dreadlocks who beat Williams with a bat.

¹ Codefendants Jefferson and Deauty are not parties to this appeal.

¶ 8 Detective Russell Egan also testified at the hearing. Detective Egan conducted two lineups involving the defendant on June 2, 2011. The first lineup was conducted in the afternoon, and was viewed by Anderson, Ross, and Taiesha Cannon (Cannon). At that time, the printers at the police station were not working and a hard copy of the lineup advisory form could not be provided to the witnesses. Instead, Detective Egan verbally advised the witnesses of the content of the lineup advisory form, and he obtained their consent to sign their names on the forms later. Anderson identified the defendant from the lineup as the person he saw beat Williams with a bat. Ross identified the defendant from the lineup as the man he saw standing over Williams and holding a bat. Cannon was unable to identify anyone from the lineup. Detective Egan later printed the lineup advisory forms and signed each of the witnesses' names. He did not indicate on the forms or in any report that he signed the witnesses' names on their behalf.

¶ 9 Detective Egan conducted a second lineup later that day, at approximately 9:00 p.m., which was viewed by Ariyonnah. The printer at the police station was working by then, so Detective Egan printed out the lineup advisory form for her. Ariyonnah, a minor, signed the lineup advisory form and viewed the lineup in the presence of her grandmother. She identified the defendant from the lineup as the man she saw beat Williams with a bat.

¶ 10 The defendant rested on his motion. The State moved for a directed finding, arguing that the lineup and photospread were not suggestive, based on the allegations made in the defendant's written motion. Defense counsel did not orally argue to suppress the photospread based on its suggestive nature. Instead, defense counsel argued that the lineup advisory forms must be actually signed the witnesses, and that the lineup identifications by Anderson and Ross should be suppressed because Detective Egan signed their names on the forms. The trial court asked defense counsel if she could cite legal authority for the proposition that Detective Egan's actions

required suppression of the identification testimony. Defense counsel did not provide any legal authority in response.

¶ 11 The court then granted the State's motion for a directed finding and denied the defendant's motion to suppress, stating:

"Clearly, [the witnesses] didn't sign it, clearly [Detective Egan] signed it, and clearly I have yet to see a case that says a remedy of this requirement is *** to suppress the identification. I have yet to see a case that says that, and I don't think you're going to find one. Now, it would be apples and oranges, apples and oranges if witnesses were called, any of these three, who said they never – that's different. I don't have any of those witnesses. The motion for a directed finding is granted. The motion [to suppress] is denied."

The Trial

¶ 12 The defendant's case proceeded to trial. The State called Tiffany Lott (Tiffany), who testified that her sister, Chaunese Lott (Chaunese) had four children with codefendant Maurice Jefferson (codefendant Jefferson) and one child with Williams. In February 2011, Chaunese and all five of her children were living with Williams in an apartment at 4428 West Jackson Boulevard in Chicago (the apartment). Prior to the week of February 27, 2011, Tiffany's nephew, twelve-year-old Maurice Jefferson, Jr. (Maurice Jr.), told her that he and Williams had an altercation. Specifically, Maurice Jr. told her that Williams had hit him with a stick, threw the television, took all of his clothes out of the drawers, and told him to get out.

¶ 13 On February 27, 2011, Tiffany and her family decided to remove the children from the apartment. Tiffany called codefendant Jefferson, whom she had known since 1994 and who went by the nickname "Juicy." She told him about the altercation between Williams and Maurice Jr. and asked him to assist her in removing the children from the apartment. That same day, Tiffany, along with two other relatives, went to the apartment and packed up the children's belongings. Williams was at the apartment at the time and Tiffany spoke with him briefly. Codefendant Jefferson was not there, but one of Tiffany's relatives telephoned codefendant Jefferson to speak with Williams. Tiffany testified that Williams and codefendant Jefferson appeared to have an argument during their telephone conversation. Tiffany and the other relatives left the apartment with the children. Tiffany later called codefendant Jefferson and told him that he did not need to go to the apartment. That evening, codefendant Jefferson called Tiffany and told her that "they had f***ed him up and that they drug him down the stairs, and he didn't know if [Williams] was dead or alive."

¶ 14 The State also called Ariyonnah Williams (Ariyonnah), Williams' daughter². She testified that in February of 2011, she was twelve years old and lived with her grandmother, but she occasionally stayed with her father at the apartment. Ariyonnah was at the apartment when Tiffany came to pick up the other children on February 27, 2011.

¶ 15 At approximately 10:30 or 10:45 p.m. that evening, Ariyonnah was in the bedroom of the apartment with her younger cousin. Williams was watching television in the living room with his uncle, Charles Anderson. Ariyonnah heard knocking on the front door. The bedroom was located directly across from the front door. Ariyonnah could see into the living room. She saw Williams crack open the door, and then saw several men rush inside. She recognized one of the men as

² Ariyonnah is Williams' daughter from a different mother than Chaunese.

codefendant Jefferson. After they rushed in, the men began to attack Williams, punching and kicking him all over his body. The men and Williams ended up in the bedroom, so Ariyonna left the bedroom and stood by the front door. As the men continued to beat Williams in the bedroom, Ariyonna saw a man with dreadlocks hit Williams with a baseball bat multiple times. She then called the police.

¶ 16 After Ariyonna called the police, she saw one of the men drag Williams by his feet out of the bedroom, out the front door of the apartment, and down a flight of stairs. The men left Williams, who was "bloody," on the landing between the first and second floors. As the men were leaving, she saw the man with dreadlocks hit Williams in the head with the bat one last time.

¶ 17 The next day, Ariyonna viewed a photospread and identified the defendant as the man with dreadlocks who beat Williams with a bat. Ariyonna later identified the defendant again from an in-person lineup and again in court during the trial.

¶ 18 Charles Anderson (Anderson), Williams' uncle, testified that he was at the apartment on February 27, 2011, when Tiffany came to pick up the children. At about 10:45 p.m. that evening, he was still at the apartment and was watching television in the living room with Williams when someone knocked on the front door. Williams cracked the door open and some men rushed inside the apartment. Williams and some of the men went into the bedroom and the men began beating Williams. Anderson stayed by the front door because one of the men made a suggestive gesture and told him not to move. From where he was standing, Anderson saw the men fighting with Williams in the bedroom. Williams initially had a bat in his hands, but the men overpowered him and took it from him. The man with the dreadlocks began beating Williams with the bat.

¶ 19 Anderson ran outside and called the police. On his way back to the apartment, Anderson saw the men get into a white Chevy conversion van. Anderson was still on the line with the 911 operator and reported the license plate number. Anderson then found Williams in the stairway. Williams was bleeding and told him that "Juicy" had attacked him.

¶ 20 The next day, Anderson identified the defendant from a photospread as the man with dreadlocks who beat Williams with a bat. Anderson later identified the defendant again from an in-person lineup and again in court during trial.

¶ 21 Taisha Cannon (Cannon) testified that on February 27, 2011, she was living in a third floor apartment at 4428 West Jackson Boulevard with her fiancé, Andre Ross. She knew Williams, who lived on the second floor. Cannon acknowledged that she had testified in front of a grand jury on June 15, 2011, but she testified that she did not remember telling the grand jury that she heard loud, rumbling sounds downstairs, and went outside. She denied her grand jury testimony that she saw Williams stumbling in the stairway bleeding from the head and her testimony that she saw a man with dreadlocks standing over Williams and beating him with a bat.

¶ 22 Andre Ross (Ross) testified that on February 27, 2011, at approximately 11:00 p.m., he stepped into the hallway of his apartment building because he heard loud noises. He observed an altercation and saw men standing in the hallway talking. Ross went back into his apartment. Ross later went to the first floor of the apartment building and saw Williams bleeding from his face. Ross acknowledged that he had testified before a grand jury on June 15, 2011, but denied that he told the grand jury that he saw a black man with dreadlocks standing in Williams' doorway holding a bat. Instead, Ross testified only that he recalled seeing a black man with dreadlocks in the apartment building that evening.

¶ 23 Ross admitted that he later identified the defendant from a photospread as a man he saw in the hallway, but he denied telling police that he saw the defendant standing over Williams with a baseball bat. Ross also admitted that he viewed an in-person lineup, and again identified the defendant as a man he saw in the hallway of his apartment building, but denied telling police that the defendant had a baseball bat and was standing over Williams.

¶ 24 Detective Drees testified that he investigated the beating death of Williams. In the early morning hours of February 28, 2011, he went to 4428 West Jackson Boulevard. He saw blood on the bedding and on the headboard inside the bedroom of the apartment. A trail of blood led from the bedroom to the landing between the first and second floors. Detective Drees went to the hospital where Williams had been taken. There, he spoke to Ariyonna and Anderson, who both told him that they saw a man with dreadlocks beat Williams with a baseball bat. Detective Drees then learned that the license plate number Anderson had reported to the 911 operator was registered to the defendant. Using a computer program, he produced a photospread with the defendant's picture. He subsequently showed the photospread to Ross and Cannon. Ross identified the defendant as the man he saw standing over Williams with a baseball bat. Cannon was unable to make an identification from the photospread. Detective Drees then returned to the hospital and showed the photospread to Ariyonna and Anderson. They both identified the defendant as the man with dreadlocks who beat Williams with a bat.

¶ 25 Dr. Eimad Zakaria, an assistant medical examiner with the Cook County Medical Examiner's Office, testified that he examined the autopsy protocol, Williams' medical records, and photographs of Williams' injuries. He further testified that a CT scan revealed that Williams had multiple complex skull fractures. Williams also had a hemorrhage inside his skull. Dr.

Zakaria testified that he believed Williams died from blunt force trauma to the head, and opined that it was likely that the complex fractures were caused by a hard object.

¶ 26 The State then entered several impeachment stipulations. Detective McCarthy testified by way of stipulation that on June 2, 2011, Ross identified the defendant in an in-person lineup as the person he saw with a baseball bat standing by Williams on the landing between the first and second floors of the apartment building. Assistant State's Attorney Samuel Shim (ASA Shim) testified by way of stipulation that Ross testified before the grand jury as follows: "and I initially got up, I went to the hallway and I went down a couple of stairs, looked over my banister where I could see into [Williams'] apartment, and I seen him – you know, a guy standing in his doorway holding an aluminum bat."

¶ 27 Additionally, Detective Drees testified by way of stipulation that on February 28, 2011, Cannon told him that she saw three or four black males drag Williams by his feet to the landing between the first and second floors. ASA Shim testified by way of stipulation that before a grand jury, Cannon testified that: on February 27, 2011, she heard loud noises underneath her floor, so she went into the hallway and looked over the banister; she saw Williams' "body laying on the stairs" being dragged; she saw a black male with "dreads" come down the stairs with a bat in his hand; she heard the sound of a bat hit someone; she then ran downstairs and saw Williams laying in the hallway bleeding "everywhere." Following the stipulated testimony, the State rested its case in chief.

¶ 28 The defendant testified in his own defense. On February 27, 2011, he was driving his white Chevy van with two other men named Tim and Jay, as well as some of his children's friends. While in the car, the defendant received a call from codefendant Jefferson. The defendant then picked him up, as well as codefendant Deauty Thompson. The men dropped the

children off, and codefendant Jefferson asked the defendant to drive to the apartment, where Chaunese lived. The defendant knew Chaunese and knew that she had children with codefendant Jefferson. The defendant pulled up in front of the apartment and codefendant Jefferson asked everyone to go into the apartment with him. All the other men exited the van while the defendant parked. The defendant went up the stairs of the apartment building about 20 or 30 seconds after the other men. He then walked into the second-floor apartment and a man he did not know slammed a door in the apartment shut. The man then emerged holding a baseball bat. The defendant was confused as to what was happening. The defendant testified that the man started swinging the bat, and the defendant guarded himself with his arm. The man then said he was going "get [his] gun." Codefendant Jefferson tackled the man and the defendant took the bat from him. The defendant admitted that he hit the man with the bat a couple of times, but only because he was scared that the man was going to get a gun and kill him. Codefendant Jefferson then dragged the man out of the apartment and down the stairs. The defendant later learned that the man was Williams. He testified he did not go to the apartment intending to get into a fight or hurt Williams. The defense offered no other testimony.

¶ 29 At the conclusion of trial, the court found the defendant guilty of all the home invasion and first degree murder counts. The court then merged all the first degree murder counts into one count and all the home invasion counts into one count. Following a sentencing hearing, the court sentenced the defendant to consecutive sentences of 12 years for home invasion and 31 years for first degree murder. This appeal followed.

¶ 30

ANALYSIS

¶ 31 We note that we have jurisdiction to review the trial court's judgment, as the defendant filed a timely notice of appeal. Ill. S. Ct. R. 603 (eff. Feb. 6, 2013); R. 606 (eff. July 1, 2017).

¶ 32 On appeal, the defendant requests this court to reverse his convictions for home invasion and first degree murder and to remand his case for a new trial on the basis that he received ineffective assistance of counsel. The defendant specifically contends that he received ineffective assistance of counsel two times, both in relation to his motion to suppress. First, he argues that he received ineffective assistance when defense counsel failed to argue that the photospread was unduly suggestive. Second, he contends that he also received ineffective assistance when defense counsel failed to cite legal authority when she argued that the lineup identification testimony should be suppressed because Detective Egan signed the witnesses' signatures on the lineup advisory forms. We take each argument in turn.

¶ 33 The defendant first argues that defense counsel rendered ineffective assistance when she failed to argue that the photospread was unduly suggestive. He claims that in the photospread, he is the only one with thick dreadlocks. He avers that the other five photographs in the photospread are readily distinguishable from him. Three of the men have cornrows that are tight to the scalp, one of the men has short hair in mini-twists, and the other man has hair "that could be described as long braids or thin dreadlocks, but his hair is pulled back from his face." The defendant argues that because the witnesses described the offender as a man with dreadlocks, the photospread "effectively placed a spotlight" on him and suggested to the witnesses that he was the perpetrator. He accordingly argues that defense counsel had a duty to move for suppression of the identification testimony based on the suggestive photospread.³ The defendant contends that had defense counsel argued this point, there is a reasonable probability that the identifications from the photospread would have been suppressed, and in turn, that the following lineup and in-

³ The defendant notes that while defense counsel *did* file a motion to suppress identification testimony, alleging that the composition and construction of the photospread and lineups were suggestive, she did not orally argue the issue at the hearing.

court identifications would have also been suppressed. He claims that the lineup and in-court identifications were influenced by the witnesses' initial identification of the defendant in the suggestive photospread, and not based on their independent recollections of the offense. Without these identifications, the defendant claims, the State would only have been able to prove that the offenders used his van as the getaway car, and nothing more. He acknowledges his testimony admitting that he was at the apartment and that he did hit Williams with the bat. He argues, nevertheless, that if the identification testimony had been suppressed, the State's case would have been weaker, his trial strategy would have been different, and he would not have testified.

¶ 34 Claims of ineffective assistance of counsel are reviewed through a two-part test that was announced by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984), and was adopted by our supreme court. *People v. Burrows*, 148 Ill. 2d 196, 232 (1992). To prevail on a claim of ineffective assistance of counsel, a defendant must show both that (1) counsel's representation fell below an objective standard of reasonableness, and (2) counsel's substandard representation so prejudiced the defense as to deny the defendant a fair trial. *Id.* Prejudice is a reasonable probability of a different result of the proceeding absent counsel's deficiency, and a reasonable probability is probability sufficient to undermine confidence in the outcome. *People v. Veach*, 2017 IL 120649, ¶ 30. When a reviewing court addresses an ineffective assistance of counsel claim, it need not apply the two-part test in numerical order. *Burrows*, 148 Ill. 2d at 232. If the ineffective assistance claim can be disposed of on the ground that the defendant did not suffer prejudice, the reviewing court need not decide whether counsel's performance was constitutionally deficient. *People v. Jones*, 322 Ill. App. 3d 675, 679 (2001). We review claims of ineffective assistance of counsel *de novo*. *People v. Demus*, 2016 IL App (1st) 140420, ¶ 21.

¶ 35 We find that, due to the lack of prejudice, we need not separately analyze whether defense counsel was unreasonable in failing to argue that the photospread was unduly suggestive. Even assuming *arguendo*, that defense counsel had successfully suppressed the photospread, along with all of the other identification testimony, including the lineup and in-court identifications, there is still overwhelming evidence of the defendant's guilt. This remains true even without the defendant's testimony. Multiple witnesses testified that they saw codefendant Jefferson and several other black men attack Williams, and that a man with dreadlocks hit Williams several times with a baseball bat. The defendant, a friend of codefendant Jefferson's, is a black man with dreadlocks. Most importantly, it is undisputed that the defendant's white Chevy van was used as the getaway car. From this evidence, the trier of fact could find, beyond a reasonable doubt, that the defendant was with codefendant Jefferson and the other men on the night that they beat Williams to death and that the defendant specifically hit Williams with the baseball bat. See *People v. Hall*, 194 Ill. 2d 305, 330 (2000) (it is sufficient if all of the circumstantial evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt). With this overwhelming evidence, even if defense counsel had succeeded in suppressing all the identification testimony, it is not reasonably probable that the outcome of the defendant's trial would have been different. In turn, the defendant cannot establish that he was prejudiced by defense counsel's actions. Accordingly, the defendant did not receive ineffective assistance when defense counsel failed to argue for suppression of the identification testimony on the basis of an unduly suggestive photospread.

¶ 36 The defendant also argues that he received ineffective assistance when defense counsel failed to cite to legal authority supporting her argument that Detective Egan's signing of the witnesses' names warranted suppression of the lineup identification testimony. The defendant

cites to a statute mandating that witnesses acknowledge in writing their receipt of the instructions contained in the lineup advisory form. 725 ILCS 5/107-A2(j)(1) (West 2015) (any violation of the requirements of the lineup procedure shall be a factor to consider in adjudicating a motion to suppress identification testimony). The defendant acknowledges that the statute was not yet in effect by the time of the motion to suppress hearing, but argues that it became effective before the trial started and therefore, defense counsel should have moved to reopen the motion to suppress and made the trial court aware of the statute. Again, the defendant argues that had defense counsel successfully suppressed the lineup identification testimony on this basis, there would not have been enough evidence to find him guilty beyond a reasonable doubt.

¶ 37 Similar to our preceding analysis of the defendant's first ineffectiveness claim, we need not scrutinize whether defense counsel's actions fell below the objectively reasonable standard because we find no prejudice. Had defense counsel reopened the motion to suppress and had the court granted that motion, only the lineup identifications from Anderson and Ross would have been suppressed. All of the other identification testimony, including the witnesses' photospread identifications and Ariyonna's lineup identification, would have remained. This is even more evidence of the defendant's guilt than from our preceding analysis. We find no reasonable probability that the suppression of Anderson and Ross' lineup identifications would have led to a different outcome at the defendant's trial. Accordingly, the defendant was not prejudiced by defense counsel's failure to cite to legal authority in support of her motion to suppress. We find that the defendant did not receive ineffective assistance of counsel.

¶ 38

CONCLUSION

¶ 39 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 40 Affirmed.



SUPREME COURT OF ILLINOIS

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May 22, 2019

In re: People State of Illinois, respondent, v. Brandon Jones, petitioner.
Leave to appeal, Appellate Court, First District.
124628

The Supreme Court today DENIED the Petition for Leave to Appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on 06/26/2019.

Very truly yours,

Carolyn Taft Gossboll

Clerk of the Supreme Court

Appx B