

NO. 105437

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Appellate Court
	)	of Illinois,
Plaintiff-Appellee,	)	First District,
	)	Second Division,
	)	Appellate Court No. 06-1761
)	_____
v.	)	There on Appeal
	)	from the Circuit Court
TERRANCE WALKER,	)	of Cook County,
	)	Criminal Division,
	)	No. 92 CR 14706
Defendant-Appellant.)	
	)	The Honorable
)	John E. Morrissey,
)	Judge Presiding.

BRIEF AND ARGUMENT FOR PLAINTIFF-APPELLEE

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ISSUES PRESENTED FOR REVIEW

1. Whether the circuit court abused its discretion in denying defendant's request for a continuance.
2. Whether defendant was afforded effective assistance of counsel.

STATEMENT OF FACTS

On June 15, 1992, defendant, Terrance Walker, was arrested and charged with the first-degree murders of Terry Matthews and Damian Stanford that occurred on June 8, 1992. (CL 18-20) After a bench trial before the Honorable John E. Morrissey, defendant was convicted of one count of first-degree murder and one count of second-degree murder, and sentenced to sixty years' and fifteen years' imprisonment, respectively. (CL 69)

After his arrest, defendant confessed to shooting the victims. In his confession, which was admitted into evidence at trial, defendant admitted to arming himself with a loaded .22 caliber semi-automatic pistol that he purchased on North Avenue. (Supp.R.3) Defendant told the felony review prosecutor that "he knew that he might use the gun to shoot Terry [Matthews] that night." (Supp.R.3) While the two victims sat in the front seat of the car, defendant "took out his gun and shot 'Wild'[Damien Stanford] several times in the back of the head." (Supp.R.5) Defendant "had to jump back a little bit so that he would not get blood on his clothes." (Supp.R.5) Defendant immediately "shot Terry in the back of the head by his right ear" and shoulder. (Supp.R.5-6) Both victims

were facing forward when defendant shot them in the head. (Supp.R.6) Finally, the victims were not armed when defendant shot them. (Supp.R.6)

The parties stipulated that the autopsy performed on Stanford revealed four gunshot wounds to the back of the head. (R.44) The autopsy performed on Terrance Matthews revealed one gunshot wound to the back of head behind the right ear and another gunshot wound to the back of his right shoulder. (R.45) Officer James Brewer of the Chicago Police Department, a latent print examiner, testified that he received sixteen latent prints lifted from the car, out of which only one matched that of defendant's known print. (R.25-28)

During the defense's case, defendant entered the following stipulation: "It would be stipulated between the parties that if Detective Schak and/or Detective Fleming were called to testify, they would testify that after the arrest of [defendant] they interviewed him, and that he told them that he had known Terry Matthews for a long time. He stated that Terry Matthews and a friend of his had accused him of stealing some dope, and that he was afraid of them. He stated that he knew these individuals to have a gun, and he thought that they would hurt him or his family." (R.46-47)

Assistant Public Defenders (APD) Rouse then argued the following in her closing argument: "Your Honor, as you have seen from the statement, both of the companions of Mr. Matthews at one time while they were in the defendant's presence the day of the shooting had weapons and had shown those. As you heard by way of stipulation that the defendant had been threatened. His family had been threatened. Also, you can see from the statement and from the testimony of Miss Bernard, the defendant at

the time was 15 years of age, a very young man, and his fear of Mr. Matthews and the other two men that he had been with earlier in the day is a reasonable fear. We would ask that the Court find the defendant not guilty of first degree murder.” (R.49)

The circuit court found defendant guilty of one count of first-degree murder and one count of second-degree murder. (R.50-52) In so doing, the circuit court found:

The saddest aspect of his case is that everyone involved was not older than 18. (R.49) The defendant Walker was 15 at the time of this incident, and the two victims were 17 and 18. But the most salient footnote is society has shown what happens when young men decide to mix drugs and guns with their own lives. The evidence in this case is that the two victims were found unarmed in the front seat of the automobile, found dead and unarmed. There is no question that they were shot to death.

Mr. Walker’s statement, which is not disputed, indicates that the two victims had threatened him. They felt that he, Walker, had stolen their drugs. Mr. Walker was attempting to buy time, and then to perhaps get the two victims away from him, off his back. He was unable to do that. He resorted to urban violence and killed them by the use of a handgun that he had in his possession. Looking not beyond the four corners of this seven-page document that I as trier of facts certainly could in attempting to conjure circumstantial evidence as to why this happened, I find that the defendant Walker was fearful, and that the victim, Mr. Stanford, known as Wild from the defendant’s statement, had displayed a handgun to Walker

on the date of this incident. But that the handgun had been "put up" to use the statement quoted in the statement Terrance Walker, by the victim, which means, according to Walker, that the victim Wild or Stanford had hidden the gun in an alley. Defendant Walker, 15, afraid for his own life thought that he must defend himself. (R.50-51)

As to the victim Stanford, I find that the prosecution has proved the elements of first degree murder as defined in the Illinois Murder Statute, 720 ILCS 9-1, but that in performing the acts which caused the death of Mr. Stanford, the defendant, Terrance Walker, was unreasonably relying on the doctrine of self-defense. His belief that he could rely on that statute was mistaken because in fact Stanford was unarmed at the time.

I feel that there are sufficient extenuating circumstances in the record of this trial that warrant a finding of second degree murder, given again, the defendant's age, mental state, the fact that drugs and guns are a principal ingredient in this tragedy. (R.51-52) As to the victim Stanford, finding of guilty of the lesser included offense of second degree murder. The defendant acted and relied upon a reasonable belief that he had to defend himself.

As to the victim Mr. Matthews, Mr. Matthews was no more than an innocent person at the time of the act. He was sitting in the driver or passenger's side of the car unaware that Mr. Walker had armed himself. The statement shows that Mr. Walker's observation of Matthews with a

gun was minimal, and that Matthews was not the instigator as far as any threats direct or implied to Walker. It was Walker who felt threatened, not by any acts of Mr. Matthews. (R.52)

The prosecution has proved beyond a reasonable doubt Terrance Walker committed murder ending the life of the victim Matthews. There is a finding of guilty of first degree murder in the manner and form of Count 1 in the indictment as to the victim Matthews. (R.52)

Defendant was subsequently sentenced to sixty years' imprisonment for first-degree murder conviction and fifteen years' imprisonment for the second-degree murder, the sentences to be served concurrently. (R.62)

The defendant did not file a notice of appeal within thirty days of the final judgment, which was February 15, 1994. Rather, he filed a motion for trial transcripts and the common law record on August 24, 1994, which was denied. (CL 7) On April 28, 1995, defendant filed a petition to vacate the judgment which was also denied. (CL 7, 54) On August 22, 1995, defendant filed another petition to vacate the judgment which was denied. (CL 8) On September 14, 1995, defendant filed a motion for leave to file a late notice of appeal, which was denied on March 7, 1996. (CL 8, 59-60,64)

On March 16, 2006, defendant filed a motion for supervisory order in the Illinois Supreme Court, requesting that the Presiding Judge of the Criminal Division of the Circuit Court of Cook County be directed to properly admonish defendant pursuant to Rule 605(a) and allow him to file a notice of appeal. In response, the People maintained that there was no basis for the extraordinary relief in the form of a supervisory order

since defendant had not availed himself of the collateral relief under the Post Conviction Hearing Act (725 ILCS 5/122-1 et seq.) or in the form of a motion for relief from judgment under 735 ILCS 5/2-1401.

In addition, the People maintained that under Supreme Court Rule 606(c), any motion to file a late notice of appeal was due “within six months of the expiration of the time for filing a notice of appeal.” Since defendant failed to file anything in the appellate court until August of 1995, almost one year after the latest due date for a motion to file a late notice of appeal, the appellate court did not have jurisdiction to grant such a motion.

On May 10, 2006, however, this Court entered a supervisory order directing the circuit court to reopen defendant’s case and to admonish defendant of his rights under the Supreme Court Rule 605(a) and to allow him to file a notice of appeal from the original judgment within thirty days of the admonishment. (CL 10,66) On June 16, 2006, defendant was admonished of his rights under Rule 605(a) and given leave to file his notice of appeal. (CL 11,71)

On direct appeal, defendant claimed that he was denied effective assistance of counsel and that the court abused its discretion in denying defense counsel’s motion for a continuance. On September 4, 2007, in an order pursuant to Supreme Court Rule 23, the First District Appellate Court affirmed defendant’s convictions. In so doing, the appellate court rejected defendant’s reliance on *People v. Hattery*, 109 Ill. 2d 449 (1985). Unlike *Hattery*, the appellate court noted, defense counsel in the instant case “never admitted defendant’s guilt but, rather, expressly argued that defendant should not be found guilty of first degree murder.” Order at 8.

More importantly, the appellate court found that the “record clearly shows that counsel did not entirely fail to subject the prosecution’s case to any meaningful adversarial testing.” Order at 8. The appellate court properly noted that defense counsel had called into question defendant’s guilt by eliciting the fact that only one out of sixteen latent prints matched that of defendant’s known prints. In addition, the appellate court noted that counsel had cross-examined the felony review prosecutor about the presence of a youth officer during defendant’s interview with Detective Fleming. Order at 8. Finally, the appellate court found that the defense’s stipulation tended to prove that defendant was acting in self-defense. Order at 9.

The appellate court then rejected defendant’s contention that the circuit court erred in denying his request for a continuance. The court found that in light of the overwhelming evidence of defendant’s guilt, coupled with the circuit court’s rejection of defense counsel’s excuse for not being prepared, the circuit court did not abuse its discretion in going forward with the trial. In addition, the appellate court declared that “[e]ven assuming the trial court abused its discretion, defendant fails to demonstrate that he suffered prejudice as a result. Accordingly, we will not disturb the trial court’s decision.” Order at 12-13.

On January 30, 2008, this Court granted defendant’s petition for leave to appeal.

ARGUMENTS

I.

THE CIRCUIT COURT PROPERLY EXERCISED ITS DISCRETION IN DENYING DEFENDANT'S REQUEST FOR A CONTINUANCE.

Defendant contends that he was forced to proceed to trial when his trial counsel was unprepared. (Def. Br. 10) According to defendant, the circuit court refused to consider the factors relevant to the exercise of its discretion, and insisted on proceeding to trial solely because the case had been set for trial. The People maintain that the trial court properly exercised its discretion in denying defendant's last minute request for a continuance.

Initially, defendant has forfeited review of this claim where he failed to include it in his post-trial motions. *People v. Enoch*, 122 Ill. 2d 176 (1988). As this Court explained in *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007), under Supreme Court Rule 615, a defendant may obtain relief on a forfeited issue when either of two situations is present: (1) "a clear or obvious error occurs and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error," or (2) "a clear or obvious error occurs and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence."

The burden is on the defendant to demonstrate that one of these two prongs has been satisfied in order to obtain review under the plain error rule. *People v. Thurow*, 203 Ill. 2d 352, 363 (2003). In the instant case, defendant cannot and indeed does not argue

