



SUPREME COURT OF ILLINOIS

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May 29, 2024

In re: People State of Illinois, respondent, v. David W. Buck Jr.,
petitioner. Leave to appeal, Appellate Court, Fourth District.
130496

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 07/03/2024.

Very truly yours,

Cynthia A. Grant

Clerk of the Supreme Court

NOTICE
This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2023 IL App (4th) 230151-U

NO. 4-23-0151

IN THE APPELLATE COURT
OF ILLINOIS

FILED
December 5, 2023
Carla Bender
4th District Appellate
Court, IL

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Macoupin County
DAVID W. BUCK JR.,)	No.18CF28
Defendant-Appellant.)	
)	Honorable
)	Joshua A. Meyer,
)	Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Justices Zenoff and Doherty concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed in part and vacated in part, finding (1) defendant’s conviction for unlawful possession of a stolen firearm and unlawful possession of a weapon by a felon violated the one-act, one-crime rule, (2) the evidence was sufficient for a jury to reasonably conclude defendant was guilty beyond a reasonable doubt on all of the remaining offenses, (3) trial counsel did not provide ineffective assistance by failing to file a motion to suppress defendant’s statements or object to the State’s references to defendant’s statements, and (4) defendant forfeited his chain-of-custody argument.

¶ 2 Defendant, David W. Buck Jr., was convicted by a jury of first degree murder (720 ILCS 5/9-1(a)(1) (West 2018)), unlawful possession of a stolen motor vehicle (625 ILCS 5/4-103(a)(1) (West 2018)), possession of a stolen firearm (720 ILCS 5/24-3.8) (West 2018)), unlawful possession of a weapon by a felon (*id.* § 24-1.1(a)), and aggravated unlawful restraint (*id.* § 10-3.1(a)). On appeal, defendant argues (1) the evidence was insufficient to convict him on all charges, (2) his conviction for unlawful possession of a weapon by a felon should be vacated

because it violates the one-act, one-crime doctrine, (3) trial counsel was ineffective for not moving to suppress defendant's statements during a custodial interrogation, (4) the State's use of defendant's invocation of his right to counsel was reversible error, and (5) the State failed to establish a sufficient chain of custody to permit testimony regarding a firearm identification. We affirm in part and vacate in part.

¶ 3 I. BACKGROUND

¶ 4 In February 2018, defendant was charged by information with first degree murder for shooting and killing Rachel Warren. Defendant was also charged with unlawful possession of a stolen motor vehicle, possession of a stolen firearm, unlawful possession of a weapon by a felon, aggravated unlawful restraint, and aggravated fleeing and eluding (625 ILCS 5/11-204.1(a)(1) (West 2018)). The matter proceeded to a jury trial in January 2023.

¶ 5 A. Jury Trial

¶ 6 At trial, Allen Wheeler testified he was in an intimate, but not serious, relationship with Warren. On February 8, 2019, Wheeler met Warren at her home and they both went to Alton, Illinois, together so Wheeler could purchase a countertop. Wheeler and Warren then drove back to Chesterfield, Illinois, to get Wheeler's black Ford pickup truck. While driving back to Chesterfield, Wheeler noticed defendant walking and offered to give him a ride back to his father's home in Medora, Illinois. The three of them proceeded back to Warren's home so Warren could unlock the door to her home to allow her children to enter when they came home from school. Wheeler went into Warren's home to use the bathroom while defendant was standing outside smoking a cigarette.

¶ 7 When Wheeler came out of the bathroom, defendant was in Warren's home. Wheeler stated defendant then shot Warren in the head. Wheeler recalled falling to the ground

and begging for his life. Defendant then ordered Wheeler out to his truck at gunpoint. Defendant walked out first and then suddenly turned around. Wheeler believed defendant was about to shoot him, so a struggle ensued for the gun. At that point, Wheeler believed he had lost his glasses and wallet. Defendant assured Wheeler he was not going to kill him and wanted Wheeler to drive him somewhere near Medora. Wheeler drove fast, with the intention of being noticed by the police. Wheeler drove down to a dead-end road with a creek. Defendant told Wheeler to jump down to the creek bed and dig a hole to bury the gun. Wheeler refused to comply, believing defendant wanted Wheeler to jump down to the creek bed so defendant could shoot him and leave his body there. Eventually Wheeler complied and began digging a hole for the gun with a trowel.

¶ 8 Both Wheeler and defendant heard a gunshot off in the distance. Wheeler then used the momentary distraction to wrestle the gun away from defendant. The gun fell into the creek bed. However, defendant pulled out another gun. Wheeler explained to defendant that he had no money, and the truck was almost out of fuel. Wheeler drove defendant to Wheeler's mother's home, where he had some money. Wheeler gave the money to defendant. Defendant said he would kill Wheeler's family and then drove away in Wheeler's truck.

¶ 9 Wheeler then drove his other car, a Ford Taurus, to his brother's home to make sure defendant did not go there. Wheeler explained he would not call the police because he did not trust them. Wheeler was facing pending gun charges in Macoupin County. Wheeler decided to drive to a bar in Chesterfield, where he told Ronnie Joe Reiher, a former police officer and someone Wheeler knew personally and trusted, what had happened. Wheeler and Ronnie left the bar together in Ronnie's truck and drove to Warren's home. On cross-examination, Wheeler denied having made a deal with the State in exchange for his testimony.

¶ 10 Albert Mize testified he lived across the street from Warren. Mize was operating a loud dual-action sander when the behavior of his dogs captured his attention. Mize observed a man he did not recognize wearing brown Carhartt coveralls walking on the sidewalk in front of Warren's home. Carol Rose lived across the street from Wheeler's mother's home and observed Wheeler's truck in the driveway with two people in the truck. Rose saw Wheeler go into the house and a male passenger get out of the truck and get into the driver's seat. Wheeler returned and had a short conversation with the male driver. Rose heard the truck "spin out" as it left.

¶ 11 Jersey County Sheriff Nicholas Manns testified he learned a female had been shot in Macoupin County and a suspect vehicle—a black Ford F-150 pickup truck—was heading to Medora. Manns decided to assist by heading toward Medora to watch for the suspect vehicle. Manns spotted the vehicle and began pursuit. The vehicle eventually stopped, and defendant was arrested. Manns recovered a .40-caliber Smith & Wesson magazine.

¶ 12 Quinn Reiher, chief deputy for the Macoupin County Sheriff's Office, testified he was in Royal Lakes, Illinois, working on an unrelated missing person case when he learned Warren was shot in Chesterfield. While Reiher was traveling north on Route 111, he observed a black Ford F-150 pass him in the opposite lane, heading south. Reiher pursued the vehicle along with other deputies from the Jersey County Sheriff's Office. Deputies eventually stopped the truck and arrested defendant as the sole occupant of the truck. While Reiher was pursuing the truck, he did not observe defendant throw anything from the truck.

¶ 13 Detective Paul Bouldin of the Macoupin County Sheriff's Office testified he took Wheeler to a roadside location outside of Chesterfield that Wheeler described as looking "familiar." Bouldin observed a hole in the ground near the roadside and trowel nearby. Bouldin also observed "skid marks" consistent with an individual coming down the embankment. He did

not find a weapon at the location. Wheeler told Bouldin they were looking for a “small semi-automatic pistol, possibly a .22,” and a second, larger gun, “possibly a .45.” Bouldin recalled Wheeler speaking with his attorney on the phone. Wheeler’s attorney advised him to stop cooperating and leave Bouldin’s vehicle. Bouldin offered Wheeler the opportunity to leave or continue to cooperate. Wheeler chose to continue cooperating with Bouldin’s investigation.

¶ 14 Sergeant Roger Diveley of the Macoupin County Sheriff’s Office testified he took his canine officer to the scene where Wheeler stated defendant dropped his gun in the creek bed. No gun was located. Several days later, when Diveley returned to work, he searched the roadside of Route 111 where defendant had been fleeing police. Diveley located a black Ruger .380-caliber firearm.

¶ 15 Master Sergeant Jamie Brunnworth of the Illinois State Police testified he observed video from the Sportsman Inn off of Route 111 outside of Chesterfield. The video showed a Taurus similar to Wheeler’s arrive. The video also showed Wheeler’s truck pass by on Route 111.

¶ 16 Master Sergeant Timothy LeMasters of the Illinois State Police testified he investigated and photographed Warren’s home after she had been shot. LeMasters observed a pair of sunglasses with a broken piece missing and a wallet with Wheeler’s driver’s license in it. LeMasters discovered a discharged .380-caliber cartridge case. LeMasters examined the clothing of both Wheeler and defendant. LeMasters observed gunshot residue on a tan jacket that was worn by defendant. LeMasters preserved two samples from each sleeve of the jacket for further testing. Sergeant Benjamin Koch of the Illinois State Police testified he performed a gunshot residue collection on Wheeler and defendant.

¶ 17 Special Agent Randall Custer of the Illinois State Police learned defendant occasionally stayed at Ryan Lenington's home. Lenington reported the day after Warren was killed that two firearms from his home had been stolen.

¶ 18 Lenington testified he was friends with defendant and that defendant occasionally stayed at Lenington's home. Lenington stated in February 2018, he owned two firearms, a "Smith and Wesson .40 and a Ruger LCP .380." Lenington stated defendant was aware he owned firearms and had showed defendant the Smith & Wesson firearm. Defendant told Lenington he wanted to use Lenington's Smith & Wesson to "apply pressure towards" Wheeler because Wheeler owed defendant money. Lenington was at work when he learned that defendant was involved in a police chase and later that someone had been shot. Lenington contacted his brother and asked him to check if Lenington's firearms were still at his home. Lenington's brother did not see any firearms where Lenington told him to look. Lenington checked for the firearms himself when he returned home from work on February 8 around 10 or 10:30 p.m. Lenington did not find his firearms where had last stored them. Lenington never told Wheeler about his firearms. Lenington stated he never locked his doors and that defendant was aware he did not lock his doors. Lenington confirmed the Ruger recovered on the roadside was identical to the Ruger that went missing from his home. Lenington last recalled seeing his firearms on February 5, 2018.

¶ 19 Special Agent Custer and Sergeant Koch both interviewed defendant on the date of the incident. Defendant stated he was with Wheeler. At one point, "Sis," who Custer identified as Warren, was with both Wheeler and defendant. Defendant stated he was trying to stay out of trouble and left Texas because he thought people were after him. Defendant stayed at his father's home in Medora the night before and got a ride for part of the way to Chesterfield that day.

Defendant walked the rest of the way to Wheeler's home. Defendant wanted to borrow Wheeler's truck to look for work. Custer was never able to ask defendant about any kind of shooting. Defendant kept asking Custer and Koch why he was there and what was going on. On cross-examination, Custer stated defendant was rocking back and forth in his chair.

¶ 20 John Carnes, a forensic scientist for the Illinois State Police, testified he was unable to retrieve latent fingerprints from various items submitted for testing. Sergeant Joshua Easton of the Illinois State Police performed an inventory search of the Ford F-150 pickup truck. Easton found a brown purse with Warren's identification in it and receipt from a Walmart in Godfrey, Illinois, dated February 8, 2019, at 1:08 p.m.

¶ 21 Scott Rochowicz, a forensic scientist for the Illinois State Police, testified neither Wheeler nor defendant had gunshot residue on either hand. Wheeler's jacket tested negative for gunshot residue. Warren's right hand tested positive for gunshot residue. The right pocket of defendant's tan jacket tested positive for gunshot residue.

¶ 22 Kelly Maciejewski of the Illinois State Police Forensic Sciences Laboratory testified she performed DNA analysis of various items submitted for testing. Maciejewski concluded at least two people handled the trowel. The firearm showed at least three people handled it. Maciejewski was unable to obtain identifiable DNA from these items to identify a match.

¶ 23 Dr. Nathaniel Patterson, a forensic pathologist, testified Warren's cause of death was a gunshot wound to the head. Patterson also observed bruising on Warren's neck and left leg that were older than the gunshot wound. Patterson recovered a bullet from Warren's head.

¶ 24 Katherine Doolin, a forensic scientist for the Illinois State Police, testified she analyzed the .380-caliber firearm and the bullet recovered from Warren's head. Doolin concluded the bullet was fired from the .380-caliber Ruger recovered from the roadside.

¶ 25 The parties stipulated that defendant was a convicted felon for the purposes of the unlawful possession of a weapon by a felon charge. After the State rested, defendant moved for a directed verdict. The State conceded there was insufficient evidence to support the aggravated fleeing and eluding charge. The court granted defendant's motion per the State's concession and denied defendant's motion as to the remaining charges.

¶ 26 Defendant called Deputy Jacob Zimmer of the Macoupin County Sheriff's Office. Zimmer spoke with Lenington regarding the stolen firearms from Lenington's home. Zimmer recalled Lenington stating the .40-caliber Smith & Wesson had two magazines that were both loaded. Lenington never told Zimmer that Wheeler owed defendant money.

¶ 27 Bouldin testified Wheeler never stated he went inside Warren's house to use the restroom. Bouldin recounted Wheeler stating he and Warren picked up defendant and went back to Warren's home so she could unlock the door for her children to get in after they returned from school. "They" went in Warren's home to get a cigarette lighter, and once in the home, defendant—who never said anything—pulled out a gun and shot Warren. Afterward, when Wheeler and defendant were at the creek bed, Wheeler stated he wrestled the gun away from defendant. Wheeler also stated defendant dropped Wheeler off at the edge of town and told Wheeler to get out of the truck, and Wheeler complied. Wheeler then stated he ran to his home and got his car and proceeded to drive to the Sportsman's Inn, not to his brother's home. Special Agent Custer testified Lenington never stated Wheeler owed defendant money. Defendant only asked to borrow Lenington's guns, and he did not state that he wanted to hurt anyone.

¶ 28 The jury found defendant guilty on all remaining charges.

¶ 29 B. Posttrial

¶ 30 Defendant filed a motion for a new trial. The court denied defendant's motion. The trial court found defendant's prior criminal history and the need for deterrence as factors in aggravation. In mitigation, the court found defendant's conduct was the result of circumstances unlikely to recur. The court sentenced defendant to a term of prison in the Illinois Department of Corrections as follows: 5 years for unlawful possession of a motor vehicle; 4 years for possession of a stolen firearm; 3 years for unlawful possession of a weapon by a felon; 3 years and 6 months for aggravated unlawful restraint; 40 years for first degree murder plus an additional 26 years for the discharge of a firearm enhancement, for a total of 66 years.

¶ 31 This appeal followed.

¶ 32 II. ANALYSIS

¶ 33 On appeal, defendant argues (1) the evidence was insufficient to convict him on all charges, (2) his conviction for unlawful possession of a weapon by a felon should be vacated because it violates the one-act, one-crime doctrine, (3) trial counsel was ineffective for not moving to suppress defendant's statements to Custer and Koch, (4) the State's use of defendant's invocation of his right to counsel was reversible error, and (5) the State failed to establish a sufficient chain of custody to permit Doolin's testimony regarding firearms identification.

¶ 34 A. One-Act, One-Crime Claim

¶ 35 Defendant contends his convictions for unlawful possession of a weapon by a felon and possession of a stolen firearm violate the one-act, one-crime rule. Defendant concedes he forfeited this issue by not raising it posttrial, but he asks us to review it under the plain-error doctrine.