

No. 1-08-3200

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	APPEAL FROM THE
Plaintiff-Appellee,)	CIRCUIT COURT OF
)	COOK COUNTY
)	
v.)	No. 07 CR 16450
)	
MICHAEL WELLS,)	HONORABLE
Defendant-Appellant.)	CLAYTON J. CRANE,
)	JUDGE PRESIDING.

PRESIDING JUSTICE STEELE delivered the judgment of the court.
Justices Neville and Salone concurred in the judgment.

ORDER

¶ 1 *HELD:* The trial court did not abuse its discretion in failing to grant a mistrial after the ex-wife testified Michael Wells physically abused her during their marriage, in violation of an order *in limine*. Wells failed to show the trial court committed plain error in questioning whether the members of the jury venire understood and accepted certain fundamental principles of law, pursuant to Supreme Court Rule 431(b) (eff. May 1, 2007). The judgment of the circuit court of Cook County is affirmed.

¶ 2 Following a jury trial in the circuit court of Cook County, defendant Michael Wells was found guilty of aggravated stalking by contacting and threatening his ex-wife, Lakita Strawder,

in violation of an order of protection Strawder previously obtained against Wells. On appeal, Wells argues the trial court erred in failing to grant a mistrial after Strawder testified he physically abused her in violation of an order *in limine*. Wells also argues the trial court denied him a fair trial by failing to properly ascertain whether the members of the jury venire understood and accepted certain fundamental principles of law. For the following reasons, we reject Wells's arguments and affirm the judgment of the circuit court.

¶ 3 BACKGROUND

¶ 4 The record on appeal discloses the following facts. Prior to trial, the State filed a motion *in limine* to admit proof of other crimes and Wells's prior conviction for aggravated stalking. The trial court ruled the State could introduce the fact of the prior conviction, but not the details of the underlying incident involving Wells and Strawder.

¶ 5 At trial, Strawder testified she and Wells were married in June 2000, and separated in June 2002. The State asked why Strawder separated from Wells. Over a defense objection, Strawder stated, "The abuse, physical --." Defense counsel renewed the objection, which the trial court sustained.

¶ 6 In a sidebar discussion, defense counsel insisted the State must have known how Strawder would answer the question about the reason for their separation. The prosecutor responded that he had prepared Strawder to testify that Wells would not leave her alone and that Strawder said the abuse was mental and physical. The trial court admonished the prosecutor to avoid the details of the incident and said the jury would be told to disregard Strawder's answer. Defense counsel moved for a mistrial on the ground that the jury heard testimony about the

abuse. The trial court denied the motion, reasoning that it would be nonsensical to believe that there would not be an inference drawn from the existence of an order of protection.

¶ 7 After the sidebar, the trial court instructed the jury to disregard the reason for the separation.

¶ 8 Strawder then testified she obtained an order of protection against Wells on March 11, 2004, which was in effect through July 2007. According to Strawder, Wells appeared in court when the order was entered and its contents were read to him.

¶ 9 Strawder further testified that on January 7, 2006, she arrived home from work at approximately 6:35 p.m. While she was parked in front of her building, Wells pulled up along the driver's side of her car. Strawder exited her car from the passenger side. According to Strawder, as she ran up to the front door of her building, Wells yelled that he wanted to talk to her, adding, "If you drop the charges, I'll let you keep Marshfield" (which, in the context of the entire record, appears to refer to her residence at 57th Street and Marshfield). Strawder stated she had charges pending against Wells at the time, but gave no specifics. Strawder went into her apartment and reported the incident to the police.

¶ 10 Assistant State's Attorney (ASA) Krista Peterson testified she was present in court when the order of protection was entered against Wells. ASA Peterson stated that Wells, who was also present in court, was admonished to have no contact with Strawder, there would be no form of physical abuse or harassment of Strawder, and Wells was barred from going to Strawder's residence at 57th Street and Marshfield.

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¶ 11 Sheryl Bolden, the general manager of the Clerk of the Circuit Court of Cook County's office assigned to the Domestic Violence Division, testified the order of protection against Wells was in effect from March 11, 2004, until July 17, 2007.

¶ 12 Moreover, Strawder testified that on April 3, 2007, at approximately 10:35 p.m., she was in the alley behind her building at 5733 South Marshfield when Wells pulled up alongside the gate. Strawder stated that Wells pointed a gun at her and said, "Bitch, if you don't drop the charges, next time I will kill you." Strawder got into her car, drove to the police station, and reported the incident.

¶ 13 Chicago police officer Pamela Williams testified she took a report for a violation of an order of protection from Strawder shortly after 7 p.m. on January 7, 2006. Chicago Police officer Mia Outten testified she took a report for aggravated assault at approximately 10:25 p.m. on April 3, 2007. Officer Outten testified Strawder was crying and complained that Wells had a weapon.

¶ 14 The State entered certified copies of Wells's prior conviction for the aggravated stalking of Strawder and the order of protection into evidence. The State rested. Wells moved for a directed finding, which the trial court denied.

¶ 15 Veronica Coleman, who was living with Wells in January 2006, and Lillie Edwards, Wells's mother, testified as alibi witnesses for Wells. Coleman testified that on January 7, 2006, Wells picked her up from work at approximately 4:35 p.m., and they went to Coleman's mother's house in Glenwood at approximately 6 p.m. They then went to the Wal-Mart at 187th and Halsted at approximately 6:15 p.m. A Wal-Mart receipt was introduced into evidence.

According to Coleman, she and Wells then went to get gas in Indiana at 6:50 p.m. and the trip took 40 minutes. Thereafter, the two went to the River Oaks Mall at 8:39 p.m. Coleman stated that Wells was in her presence until midnight and they never went to 57th and Marshfield.

¶ 16 Edwards testified that on April 3, 2007, Wells picked her up at 1945 West Garfield at approximately 4:30 p.m. Edwards stated they went to a grocery store at 47th and Damen.

Edwards testified she paid for the groceries by check; a check, time-stamped 6:56 p.m., was introduced into evidence. According to Edwards, she and Wells then went home and watched television. Wells fell asleep at approximately 11 p.m.

¶ 17 Following closing arguments and jury instructions, the jury deliberated and found Wells guilty of aggravated stalking. Wells filed a motion for new trial. The circuit court denied the motion for a new trial. After hearing evidence in aggravation and mitigation, the trial court sentenced Wells to four years in prison. Wells then filed a timely notice of appeal to this court.

¶ 18 DISCUSSION

¶ 19 I. The Motion for Mistrial

¶ 20 On appeal, Wells first argues the trial court erred in failing to grant a mistrial after Strawder testified he physically abused her in violation of an order *in limine*. Evidence that a defendant has committed crimes other than the one for which he is on trial may not be admitted for the purpose of demonstrating his propensity to commit crimes, but may be admitted for any proper purpose, including proving *modus operandi*, intent, identity, motive, or absence of mistake. *People v. Adkins*, 239 Ill. 2d 1, 22-23 (2010). However, even if relevant to a purpose other than showing propensity, evidence of other crimes may be excluded if its probative value is

outweighed by its prejudicial effect. *Id.* at 23. The admissibility of evidence at trial is a matter within the sound discretion of the trial court and that court's decision will not be overturned absent a clear abuse of that discretion. *Id.*

¶ 21 A mistrial should be granted only where an error of such gravity has occurred that the defendant has been denied fundamental fairness such that continuation of the proceedings would defeat the ends of justice. *People v. Nelson*, 235 Ill. 2d 386, 435 (2009). The trial court's denial of a mistrial will not be disturbed on review absent a clear abuse of discretion. *Id.* An abuse of discretion occurs where the trial court's ruling is arbitrary, fanciful or unreasonable, or where no reasonable person would take the view adopted by the trial court. *People v. Donoho*, 204 Ill. 2d 159, 182 (2003).

¶ 22 In this case, Wells was charged with aggravated stalking, which required the State to prove that the defendant threatened the victim with the intent to place the victim in reasonable apprehension of death, bodily harm, sexual assault, confinement, or restraint. *People v. Bailey*, 167 Ill. 2d 210, 243 (1995). In aggravated stalking cases, evidence of the defendant's prior acts of violence toward a victim may be admitted as proof of the defendant's intent at the time of the commission of the offense charged. *Id.* Thus, Strawder's testimony was admissible in the first instance. Therefore, the remaining questions are whether a mistrial was warranted simply from the violation of the trial court's order *in limine* or the prejudicial nature of the testimony.¹

¹ Such evidence is not barred by 725 ILCS 5/115-20 (West 2004), which addresses the admissibility of evidence of a prior conviction of a defendant for domestic battery, aggravated

¶ 23 Although the trial court found the prosecutor was not at fault for Strawder's comment, Wells argues it is ultimately a prosecutor's responsibility to uphold a court's evidentiary rulings and orders *in limine*. See *People v. Rice*, 234 Ill. App. 3d 12, 19 (1992). However, even when a question or answer violates an order *in limine*, if a timely objection is made at trial to improper interrogation, the trial court can, by sustaining the objection or instructing the jury to disregard the question and answer, usually correct the error. *People v. Hall*, 194 Ill. 2d 305, 341 (2000). The trial court here sustained the objection and instructed the jury to disregard the answer.

¶ 24 Wells notes there are some situations where the improper testimony is so damaging that a trial court cannot cure the prejudicial effect (see *Id.* (citing *People v. Carlson*, 79 Ill. 2d 564, 577 (1980))) and argues this is such a case. In this case, the jury heard that Wells physically abused Strawder during their marriage. Wells claims this is a bell which cannot be unrung. See, *e.g.*, *People v. Lewis*, 269 Ill. App. 3d 523, 527 (1995).

battery committed against a family or household member, stalking, aggravated stalking, or violation of an order of protection in a later criminal prosecution for any of these types of offenses when the victim is the same as the victim of the previous offense. Even assuming the statute applied, the evidence may be in the form of witness testimony. 725 ILCS 5/115-20(d) (West 2004). Moreover, the fact that the evidence "may" be introduced by "proof of conviction, testimony as to reputation, or testimony in the form of an expert opinion," does not expressly limit the proof to those methods. See 725 ILCS 5/115-20(e) (West 2004).

¶ 25 Here, Wells was charged in part with violating an order of protection. Thus, the jury necessarily heard testimony that Wells was subject to an order of protection. An order of protection may be issued "[i]f the court finds that petitioner has been *abused* by a family or household member." (Emphasis added.) 750 ILCS 60/214(a) (West 2004). Under the Domestic Violence Act of 1986 (750 ILCS 60/101 *et seq.* (West 2004)), "[a]buse" means physical abuse, harassment, intimidation of a dependent, interference with personal liberty or willful deprivation." 750 ILCS 60/103(1) (West 2004). Furthermore, "physical abuse" includes "knowing or reckless use of physical force, confinement, or restraint," and "knowing or reckless conduct that creates an immediate risk of physical harm." 750 ILCS 60/103(14)(I)(i), (iii) (West 2004).

¶ 26 As the jury necessarily learned Strawder held an order of protection against Wells, they were free to draw the reasonable inference that Wells had been accused of previously abusing Strawder and the evidence was sufficient to warrant issuing the order. See *People v. Purcell*, 364 Ill. App. 3d 283, 299 (2006). Accordingly, Strawder's testimony that she separated from Wells due to physical abuse was not significantly prejudicial beyond what the jury was likely to have inferred from the existence of the order of protection. Thus, the trial judge's conclusion that Strawder's isolated, general answer was not sufficiently prejudicial to warrant a mistrial is not unreasonable, arbitrary or fanciful.

¶ 27

II. Jury Selection

¶ 28 Wells also claims the trial court failed to ensure that jurors understood certain principles as required by Illinois Supreme Court Rule 431(b) (eff. May 1, 2007). The State notes Wells

forfeited this issue by failing to object and include this issue in a posttrial motion. *People v. Thompson*, 238 Ill. 2d 598, 611–13 (2010). Wells concedes he forfeited this issue by failing to make a contemporaneous objection at trial and raising it in his posttrial motion. *E.g., People v. Johnson*, 238 Ill. 2d 478, 484 (2010) (citing *People v. Enoch*, 122 Ill. 2d 176, 186 (1988)). However, Wells asks us to review this issue pursuant to Illinois Supreme Court Rule 615(a) (eff. Jan. 1, 1967). Rule 615(a) creates an exception to the forfeiture rule by allowing courts of review to note "[p]lain errors or defects affecting substantial rights." Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967). Under Illinois' plain error doctrine, a reviewing court may consider a forfeited claim when:

" '(1) a clear or obvious error occurred 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 occurred 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 strength of the evidence.' " *Johnson*, 238 Ill. 2d at 484 (quoting *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007)).

The plain-error doctrine is intended to ensure that a defendant receives a fair trial, but it does not guarantee every defendant a perfect trial. *Johnson*, 238 Ill. 2d at 484. Rather than operating as a general savings clause, it is construed as a narrow and limited exception to the typical forfeiture rule applicable to unpreserved claims. *Id.* The burden of persuasion rests with the defendant under both prongs of the plain-error analysis. *People v. Sargent*, 239 Ill. 2d 166, 190 (2010).

The ultimate question of whether a forfeited claim is reviewable as plain error is a question of law that is reviewed *de novo*. *Johnson*, 238 Ill. 2d at 485.

¶ 29 Plain error analysis requires that we first determine whether any error occurred at all. *Thompson*, 238 Ill. 2d at 613. Rule 431(b) codified our supreme court's decision in *People v. Zehr*, 103 Ill. 2d 472 (1984), which held that the trial court erred by refusing the defendant's request to ask the venire about four fundamental principles of law. *Zehr*, 103 Ill. 2d at 477–78. The four *Zehr* principles are as follows: (1) the defendant is presumed innocent; (2) the defendant must be proved guilty beyond a reasonable doubt; (3) the defendant is not required to produce any evidence; and (4) the defendant's failure to testify cannot be held against him. *Id.* at 477. According to Rule 431(b), the trial court must address the *Zehr* principles and "shall ask each potential juror, individually or in a group, whether that juror understands and accepts" those principles. Ill. S. Ct. R. 431(b) (eff. May 1, 2007). In addition, "[t]he court's method of inquiry shall provide each juror an opportunity to respond to specific questions concerning the principles set out in this section." *Id.*

¶ 30 In this case, Wells argues the trial court described the presumption of innocence to the entire jury venire, but did not provide the first panel of prospective jurors drawn from the venire an opportunity to respond to specific questions concerning that principle. The State disputes this characterization of the record, noting the trial court did mention the presumption of innocence to the first panel. Wells responds that the trial court mentioned the presumption of innocence only in questioning one venirewoman on the first panel who indicated that she thought she could not be fair to Wells. Although the supplemental transcript of proceedings containing this exchange

is not entirely clear, it appears Wells is correct. Accordingly, we conclude that the trial court erred in its questioning of the prospective jurors.

¶ 31 Wells argues the error is reversible under the first prong of the plain-error doctrine because the evidence was closely balanced. In *Thompson*, the Illinois Supreme Court did not reach this issue because the defendant in that case asserted only a second-prong error occurred. Therefore, the first prong remains available for finding Rule 431(b) errors. See *Thompson*, 238 Ill. 2d at 613. Even so, Wells still bears the burden of persuading this court the evidence was so closely balanced that the error alone threatened to tip the scales of justice against him. *Sargent*, 239 Ill. 2d at 190.

¶ 32 In this case, Strawder positively identified Wells as having approached and threatened her on January 7, 2006, and April 3, 2007, and having pointed a gun on her on the later occasion. Chicago police officers testified that Strawder reported the incidents shortly after each occurred. Officer Outten testified Strawder was crying during the second complaint when she reported that Wells had a weapon. Certified copies of Wells's prior conviction for the aggravated stalking of Strawder and the order of protection were also admitted as evidence. Wells produced two alibi witnesses, but both witnesses shared a close relationship with Wells. The trier of fact is responsible for determining the credibility of the witnesses, the weight to be given their testimony, and reasonable inferences to be drawn from the evidence presented. *People v. Mullen*, 313 Ill. App. 3d 718, 724 (2000). The trier of fact is not required to accept alibi testimony over positive identification of an accused, particularly where the alibi testimony is provided by biased witnesses. *Id.* at 729. Based on the facts presented at trial, we do not find

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that the evidence was so closely balanced that the trial court's error in questioning prospective jurors about their understanding and acceptance of Rule 431(b) constituted plain error. See *People v. McCovins*, 2011 IL App (1st) 081805 ¶ 39.

¶ 33

CONCLUSION

¶ 34 In sum, the circuit court did not abuse its discretion in denying a mistrial where the judge sustained the objection to Strawder's testimony that Wells physically abused her during their marriage and instructed the jury to disregard it. In addition, Wells failed to show plain error resulting from the circuit court's questioning of the jury venire regarding the *Zehr* principles. Accordingly, the judgment of the circuit court of Cook County is affirmed.

¶ 35 Affirmed.