

No. 1-09-1148

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 08 CR 4086
	)	
JAMES FREEMAN,	)	Honorable
	)	Michael Brown,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE LAMPKIN delivered the judgment of the court.  
Justices Cahill and Garcia concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant's claims that the trial court violated his right to self-representation and erroneously admitted evidence of collateral crimes were forfeited or otherwise amounted to harmless error; judgment entered on his conviction for first degree murder affirmed.

¶ 2 Following a jury trial, defendant James Freeman was found guilty of first degree murder and aggravated kidnapping. At sentencing, the court merged those convictions and sentenced defendant to 60 years' imprisonment for first degree murder. On appeal, he contends that the trial court violated his right to self-representation when it denied his motion to proceed *pro se*

based on his lack of education and legal experience, and that it erroneously admitted evidence of collateral crimes.

¶ 3 The record shows, in relevant part, that defendant was charged with first degree murder, home invasion, aggravated kidnapping, armed robbery, and aggravated unlawful restraint after he gave a videotaped statement to law enforcement personnel in which he described his involvement in the killing of Robert Green on December 26, 2002. The public defender's office was subsequently appointed to represent him.

¶ 4 On April 25, 2005, counsel filed a motion to suppress statements. While the motion was pending, the court granted defendant's request to proceed *pro se* and permitted counsel to withdraw from the case.<sup>1</sup> However, on November 3, 2006, the court revisited defendant's request to represent himself in light of the State's filing of a notice of intent to seek the death penalty, stressed to him the complexity of capital cases and the potential penalties, and urged him to obtain representation. Although defendant initially stood firm on his desire to represent himself, he ultimately took up the court's offer of counsel when the court set a pretrial conference date a few months away.

¶ 5 The court then appointed the public defender and informed defendant, " I will give you an opportunity to hire this lawyer but I will not let you discharge this lawyer. I will not agree to having this lawyer kicked off the case just so you can get a continuance." When defendant expressed concern that his previous counsel would be re-appointed, the court stated, "I'm not saying that it's going to be the same lawyer or not \*\*\* I'm just telling you in advance I'm not going to let you bar your lawyer." Defendant responded, "What I'm saying I waived this counsel for a reason, sir."

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<sup>1</sup> The record does not contain documents or hearing transcripts regarding this particular event, but it may be inferred from subsequent proceedings.

¶ 6 Thereafter, defendant's previous counsel was re-appointed to represent him, and on August 10, 2007, after a hearing, the court denied defendant's motion to suppress statements. On September 20, 2007, defendant filed a motion to proceed *pro se* and for appointment of standby counsel, alleging, *inter alia*, that he and counsel had a "conflict of interest," and that he "would not receive the full effective assistance of counsel from this attorne[y]." At a hearing on October 19, 2007, the court noted that defendant's motion only contained a conclusion, and asked defendant to provide facts to support that conclusion. Defendant responded that he and counsel were "always arguing," and that he did not believe counsel would "put his full effort into seeing that I receive a fair trial."

¶ 7 In ruling on defendant's motion, the court noted, *inter alia*, that during the hearing on defendant's motion to suppress statements, it heard testimony from defendant that he had an eighth grade education, and also found that he did not effectively exercise his constitutional rights after he was arrested. The court then stated,

"Now you are asking, after I have ruled on the motion to suppress statements, that you be allowed to go pro se again and that you have standby counsel. You don't have an absolute right to represent yourself. Your right to represent yourself is constrained by certain things.

I have already advised you about the possible penalties. I look at what it is you say for your reasons in representing yourself, and I don't find that you have the necessary experience or abilities, based on what I have learned since I reappointed Mr. Foster, for you to represent yourself."

The court further noted that "[n]o one guarantees that you will have a lawyer that you get along with," and found that defendant's "motion to proceed pro se is not warranted under this situation." In conclusion, the court stated, "You have not given me an additional reason why you should proceed pro se. Based on what you told me, based on this motion, I am going to deny this motion."

¶ 8 After the court announced its ruling, defendant interjected, "I am not going to trial with this attorney." Although the court ignored this comment, defendant interrupted again, "Your Honor, I am not going to trial with this attorney. I don't know what we are going to do, but I am not going to trial with this attorney." The court then informed defendant that he could be tried *in absentia*, and defendant responded, "You can do what you want to do. I am gone, sir," and left the courtroom. Afterwards, on November 20, 2007, a different public defender entered his appearance on behalf of defendant without objection by defendant, and represented him thereafter.

¶ 9 Prior to trial, counsel filed a motion *in limine* seeking to preclude the State from introducing into evidence, *inter alia*, the offenses which led to defendant's arrest, *i.e.*, possession of a firearm and public indecency. The State, on the other hand, filed a motion *in limine* seeking to introduce the circumstances of defendant's arrest. At the motion hearing, the State initially informed the court, "Judge, I can probably make this very easy. We have no intention whatsoever of introducing the fact that when the defendant was arrested, a firearm was recovered. So if that makes it easy, we will not be introducing that in our case." However, the State argued that the public indecency charge led to defendant's arrest, and that the car he was found with was the same one left at the crime scene in this case. The court ultimately ruled to exclude evidence of defendant's gun possession and public indecency, finding that the State

agreed not to elicit the gun possession, and that the prejudicial effect of the public indecency would outweigh its probative value.

¶ 10 The case then proceeded to trial, and during opening statements, defense counsel made the following remarks:

"On January 13, of 2004, [defendant] came to the attention of some guys who were on patrol and when he came to their attention, there was an alert out because the Chicago Police Department wanted to talk to James. And so they sent him over to the Chicago Police Department, and the Chicago Police Department turned him over to the area detectives. And he sat in Area 2.

Sometime between January 13th and January 15th, James saw a familiar coat going by and he realized something striking. Sonia [Sonia Montgomery, defendant's ex-girlfriend,] was in the police station. What was Sonia doing in the police station? Pretty soon they came to tell him. Pretty soon the police came to tell him what he was doing there. They had gone to get her. And they knew that he knew she was there.

Well, they said, Sonia has been harboring a fugitive. That's you. She knew we wanted to talk to you and here we find you living with her and here we find you driving her car. Mr. Freeman, that's aiding a fugitive. You know what, we're going to charge here [*sic*] with that and she's going to jail.

And then they said something truly frightening, if she also to jail [*sic*] Mr. Freeman, what is going to happen to your daughter. He knew. He knew what would happen to his daughter in that situation is she goes into the system.

They also told him, Mr. Freeman, you're never going to see the streets again. Sonia is going to be in jail. You're never going to see the streets again. There was a way. There was a way out. There was a way out of Area 2 for Sonia, a way home for their daughter for Sonia and they offered it to him. All you have to do, Mr. Freeman is agree with what we already know. Agree with our story."

¶ 11 During its case-in-chief, the State introduced, *inter alia*, defendant's videotaped statement which established that on December 26, 2002, defendant drove Sonia to work in her white 1997 Mercury LeSabre,<sup>2</sup> then called around to purchase some drugs that he could resell. He eventually met up with "JR" at 71st Street and Princeton Avenue, in Chicago, and the two decided to kidnap and rob a drug dealer named "Big Rob," aka Robert Green. After inviting "Chachi" to join them, the three gathered in Sonia's car, and JR set out the plan, which involved Chachi and some others kidnapping Green as defendant pretended to buy drugs from him.

¶ 12 As the plan was carried out, Green was shot in the legs, forced in the trunk of a "black Chevy Caprice bubble," and taken to a "two flat garage" at 6736 Union Avenue. Defendant drove Chachi to that location in Green's car, a blue Grand Prix, and left Sonia's car at 71st Street and Princeton Avenue. Upon his arrival, a group of individuals took Green out of the trunk and brought him upstairs where Chachi questioned him "[a]bout the money and where he live."

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<sup>2</sup> Sonia testified that this car was a Mercury Sable.

After Green told him the money was in his "baby mom's house" at 76th Street and Yates Avenue, Chachi took his door keys, then he, defendant, and two others drove to that location in a blue Buick and entered the three flat building with Green's keys. As defendant stood lookout downstairs, the others proceeded upstairs and returned about three minutes later, with Chachi carrying a pink "[b]ack pack purse."

¶ 13 When they returned to the garage, Chachi told the others that they had to "get rid of this nigger" because he had seen their faces, and ordered them to place Green into the trunk of his blue Grand Prix. With Chachi in the passenger's seat, defendant drove Green's car to 51st Street and Talman Avenue while followed by others in the blue Buick, and on the way, made a brief stop so that Chachi could move from the passenger seat into the back seat. Thereafter, while defendant was driving, Chachi fired four to five shots through an opening in the back seat leading to the trunk where Green was being held. Defendant then parked the car and got into the blue Buick, and everyone went to a hotel where they opened the pink purse which contained \$60,000 in cash. About two days later, defendant heard from Sonia that police wanted him for questioning, and he and Chachi took their \$30,000 of the money and went to Tennessee. Defendant returned to Chicago about seven months later when the money ran out.

¶ 14 Sonia testified for the State that defendant borrowed her white 1997 Mercury Sable on December 26, 2002, and later that night, she received a phone call from him telling her to pick up the car at 71st Street and Princeton Avenue. When he called again two days later, Sonia told him that police had come looking for him, then did not hear from him again until July 4, 2003. Defendant eventually moved back in with Sonia, and in January 2004, he borrowed her Mercury Sable and did not return for a few days. Sonia received a phone call from police informing her that they had defendant in custody and that she could get her car. A few police officers picked her up and brought her to the station to get it. On cross-examination, Sonia stated that she

arrived at the police station about 6 p.m. and was brought into a room where she remained until close to midnight, and never got her car back because it was impounded.

¶ 15 The State subsequently renewed its request that it be allowed to introduce the circumstances of defendant's arrest, arguing that defense counsel's cross-examination of Sonia left the impression that the police arbitrarily would not return her car even though it was subject to seizure because defendant was found inside of it with a gun and engaging in sexual acts. The State further claimed that if it was not allowed to introduce the reason for defendant's arrest, the theory advanced by defense counsel in opening statement that defendant was taken advantage of by police and gave an involuntary statement would find support in the fact that he was taken into custody for no apparent reason.

¶ 16 The court found it proper to revisit its ruling on the motion *in limine* in light of the opening statements and evidence that had been adduced at trial, and noted that the circumstances of defendant's arrest were probative of the credibility of his statement and the circumstances under which the statement was made. With respect to prejudice, the court noted that the fact that defendant had a gun in the car and was engaging in sex with a woman other than Sonia was "probably the least prejudicial thing that we'll hear in this courtroom." The court then reconsidered its ruling on the motion *in limine* and allowed the State to introduce the circumstances of defendant's arrest.

¶ 17 The State subsequently called Steven DeJoie, a private security guard, who testified that about 9:30 p.m. on January 13, 2004, he and his partner were patrolling the parking lot of the Pullman Wheelworks building at 901 East 104th Street when he observed two people, one of whom was defendant, in the back seat of a white four-door vehicle engaging in a sex act. The guards instructed them to step out of the vehicle, and called 911 after finding a bag of marijuana

on the front seat of the passenger's side, and a fully loaded 9-millimeter handgun on the driver's side floorboard.

¶ 18 At that point, the State introduced the gun as an exhibit, and the court requested that the Sheriff check to make sure it was unloaded. Because the Sheriff was unfamiliar with the weapon, the court sent the jury into the jury room until it could be determined that the gun was safe, and, in the interim, agreed to defense counsel's request for a limiting instruction at the end of the witness' testimony. The jury was then brought back into the courtroom, and the Sheriff demonstrated that the weapon was unloaded and safe.

¶ 19 At the end of DeJoie's testimony, the court instructed the jury as follows:

"Ladies and Gentlemen of the Jury, the testimony from this witness and the testimony of this next witness is going to be received for a limited purpose and I'm going to instruct you about that limited purpose now.

Evidence has been received that the defendant has been involved in conduct other than that charged in the indictment. This evidence has been received on the issue of the defendant's facts and circumstances of his detention and his arrest and may be considered by you only for that limited purpose. It is for you to determine whether the defendant was involved in that conduct and if so, what weight should be given to this evidence on the issue of the facts and circumstances of the defendant's detention and arrest."

¶ 20 The State then called Chicago police officer Lolita Starling, who testified that about 9:45 p.m. on January 13, 2004, she and her partner encountered defendant when responding to a call

of an offender being held at 901 East 104th Street. The security guards who were holding defendant turned over a loaded gun to her, which she identified in court, and also some marijuana. Officer Starling then arrested defendant, and when the State inquired as to what offense defendant was arrested for, the court stated:

"Ladies and Gentlemen, I'll allow it for a limited purpose for the use of that information to explain how the investigation proceeded, the facts and circumstances of the detention and the arrest. You are not to consider it for any other purpose and I'll instruct you later about the use of limited purpose evidence."

Officer Starling then responded that defendant was arrested for unlawful use of a weapon. She also testified that police took possession of defendant's white Mercury Sable which was at the scene, and impounded the car because an illegal firearm had been recovered from inside of it. At the end of her testimony, the State read the following stipulation to the jury, "[T]he weapon that you just heard information about that was recovered during the arrest of James Freeman did not, I repeat, did not have any involvement in the actual homicide of Robert Green, it was excluded as a weapon involved in the Robert Green homicide."

¶ 21 After the State rested, defendant testified that on December 26, 2002, he drove Sonia to work in her white Mercury Sable, then contacted Charley Webb, aka "Junior," to purchase some drugs. The two hung out and drove around for about three hours while Junior tried unsuccessfully to get drugs from Green. Defendant then dropped Junior off at his home at 71st Street and Princeton Avenue, and met another individual named "Dre" at 71st Street and the Dan Ryan Expressway to purchase the drugs. From there, he had Dre follow him back to 71st Street and Princeton Avenue so that he could drop off the Mercury Sable, then got into Dre's car and spent five to six hours with him. He called Sonia about 10:00 that night and gave her the

location of the car. A few days later, when defendant called Sonia again, she told him that "Feds and detectives" had been to her house looking for him, and he decided to stay away until he could "get things straight."

¶ 22 In July 2003, defendant received Sonia's permission to move back in, and on January 13, 2004, he was arrested in Sonia's car and taken to the police station. At 6:24 a.m. on January 15, 2004, he gave a videotaped statement because the assistant State's Attorney and other agents threatened to place his daughter in the custody of the Department of Children and Family Services (DCFS). They also threatened to charge Sonia with supporting a fugitive, and the assistant State's Attorney brought in a "law book" and pointed out the crime she would be charged with. Defendant further claimed that he was "under pressure" when he gave his statement because the assistant State's Attorney, agents, and detectives were threatening to charge him with other crimes that he had "no knowledge about," that he "didn't have any sleep or food," that he was told he could become a witness against Chachi and Junior which led him to expect that his family would be left alone and that no charges would be pursued against him, and that he was told that he would "never see the streets again" if he did not give a statement. In rebuttal, the State called multiple witnesses who testified that defendant was not threatened or otherwise improperly induced into giving a statement.

¶ 23 The jury was instructed before deliberating that "[a]ny evidence that was received for a limited purpose should not be considered by you for any other purpose," then subsequently returned verdicts finding defendant guilty of aggravated kidnapping and first degree murder while armed with a firearm. At sentencing, the court merged defendant's convictions and sentenced him to a 60-year term of imprisonment for first degree murder which included a 15-year enhancement for being armed with a firearm during the commission of the offense.

¶ 24 In this appeal from that judgment, defendant first contends that he was deprived of his sixth amendment right to self-representation. He claims that in denying his motion to proceed *pro se*, the trial court improperly relied on his lack of necessary experience or ability, and his failure to provide "an additional reason" for being allowed to represent himself a second time. The State initially responds that defendant has forfeited this claim by failing to object after he was appointed new trial counsel or in a post-trial motion, and that his failure to address the issue of waiver in his brief or argue for plain error review results in the waiver of this appeal.

¶ 25 In reply, defendant claims that he was not required to preserve this issue because the denial of his right to self-representation constitutes a structural error warranting automatic reversal. Although the authority cited by defendant recognizes the denial of the right to self-representation as structural error (*United States v. Gonzalez-Lopez*, 548 U.S. 140, 148-49 (2006); *People v. Averett*, 237 Ill. 2d 1, 13 (2010); *People v. Fisher*, 407 Ill. App. 3d 585, 591 (2011); *People v. Gorga*, 396 Ill. App. 3d 406, 410 (2009)), none of these citations address the requirement for preserving an issue for appellate review, or state that defendant is excused from preserving such error.

¶ 26 Forfeiture aside, we find that defendant has not established that structural error occurred. Citing *People v. Woodson*, No. 4-10-0223 (Ill. App. Jun. 30, 2011) and *People v. Fisher*, 407 Ill. App. 3d 585 (2011), defendant claims that the court thwarted his unequivocal request for self-representation for reasons which have been found improper, *i.e.*, education, ability, and legal knowledge. In these cases, however, defendants did not equivocate in their desire to represent themselves, and the court clearly denied their motion to proceed *pro se* solely on the basis of their limited abilities.

¶ 27 In determining whether defendant's waiver of counsel was clear and unequivocal, we consider the overall context of the proceedings and defendant's conduct following the request to

represent himself. *People v. Phillips*, 392 Ill. App. 3d 243, 260 (2009), and cases cited therein. The record in this case shows that the public defender was initially appointed to represent defendant, then defendant made a request to proceed *pro se* which the court granted. Thereafter, on November 3, 2006, defendant requested that counsel be appointed to represent him again, but after the court granted his request and reappointed the public defender's office, defendant informed the court that he did not want to be represented by his previous counsel. Nonetheless, the same counsel was reassigned to his case, and defendant filed a motion to proceed *pro se* and for appointment of standby counsel. When the court inquired as to the basis for the motion, defendant stated that he and counsel argued, and that he did not believe counsel would put his full effort into his case. The court observed that it had already decided defendant's motion to suppress statements, that defendant had limited education and experience, that "[n]o one guarantees that you will have a lawyer that you get along with," and ultimately stated, "Based on what you told me, based on this motion, I am going to deny this motion." Defendant then left the courtroom, and after his reindictment and arraignment, another public defender was appointed to represent defendant throughout the trial proceedings without objection by defendant.

¶ 28 The record thus reflects defendant's vacillating positions and courtroom behavior regarding representation, leading us to conclude that he did not unequivocally invoke his right to self-representation, and we thus find no abuse of discretion by the court in denying his motion to proceed *pro se*. *People v. Rohlf*s, 368 Ill. App. 3d 540, 545 (2006). The record reflects that defendant's request to proceed *pro se* was primarily based on his objection to representation by certain counsel, rather than a decision to self-represent, and that he also requested standby counsel. We thus conclude, as in *People v. Shelton*, 401 Ill. App. 3d 564, 574 (2010), that defendant's request for self-representation did not constitute an unequivocal invocation of his right to proceed *pro se*.

¶ 29 Defendant next contends that the trial court erred in allowing the State to introduce evidence of his collateral crimes, specifically, his unrelated sex acts, drug possession, and gun possession. He claims that this evidence was "irrelevant, more prejudicial than probative, and not limited to address the narrow purpose for which it was admitted," warranting reversal of his conviction.

¶ 30 The State responds that defendant's claim is without merit where the evidence was introduced to establish the circumstances of his arrest, not as "other crimes evidence." The State further claims that even if the court did erroneously allow admission of the evidence, defendant cannot show prejudice where the court repeatedly instructed the jury as to the limited purpose for which the evidence was to be considered.

¶ 31 Under Illinois law, all relevant evidence is admissible unless otherwise provided by law. *People v. Dabbs*, 239 Ill. 2d 277, 289 (2010), citing Ill. R. Evid. 402 (eff. Jan. 1, 2011). Relevant evidence is that which has any tendency to make the existence of any fact of consequence to the determination more or less probable than it would be without such evidence. *People v. Illgen*, 145 Ill. 2d 353, 365-66 (1991).

¶ 32 Although the supreme court has long recognized that evidence of other crimes is inadmissible to show defendant's disposition or propensity to commit crime (*Illgen*, 145 Ill. 2d at 364), it is equally well settled that such evidence is admissible if relevant for any other purpose, so long as its prejudicial effect does not substantially outweigh its probative value (*Dabbs*, 239 Ill. 2d at 283-84). It is within the sound discretion of the trial court whether evidence of other crimes is admissible, and we will not disturb its determination absent a clear abuse of discretion. *Dabbs*, 239 Ill. 2d at 284.

¶ 33 Here, the record shows that the court granted defendant's motion *in limine* to preclude the introduction of these acts and the recovery of the gun. However, in opening statements, counsel

suggested that defendant was arrested and held for no specific reason by making vague references to the fact that police had "wanted to talk" to defendant when he "came to the attention" of some patrol officers. Counsel further asserted that police obtained a statement from defendant by threatening to charge his girlfriend with aiding a fugitive and having his daughter placed in DCFS custody, then giving him "a way out" if he would "agree with what we already know." This theory of improper police behavior was pursued by counsel during the cross-examination of Sonia when he adduced that she was held at the police station for almost six hours for no apparent reason, and was never able to get her car back. Defendant then testified that police and the assistant State's Attorney obtained his statement through threats and the deprivation of food and sleep. It is thus evident that the defense proceeded on the theory that police arrested and held defendant for no specific reason, then engaged in a variety of improper tactics, including holding Sonia's car for no reason, to pressure defendant into making an inculpatory statement. Following these statements and testimony, the court reconsidered its earlier finding on the motion *in limine* and allowed the State to proceed with limiting instructions.

¶ 34 We observe that the consequential steps in a criminal investigation, such as the circumstances regarding defendant's arrest, are relevant when necessary and important to a full explanation of the State's case to the jury. *People v. Johnson*, 114 Ill. 2d 170, 194 (1986). Here, the circumstances of defendant's arrest indicate that he was arrested for gun and drug possession and public indecency while using Sonia's car, and thus clearly tended to make the defense theory less probable. *Illgen*, 145 Ill. 2d at 365-66. As such, we find that it was necessary and important for the jury to hear the basis for defendant's otherwise unexplained arrest which led to his inculpatory statement (*Johnson*, 114 Ill. 2d at 194), and cannot say that the trial court abused its discretion in finding that the probative value of that testimony outweighed its prejudicial effect

(*Dabbs*, 239 Ill. 2d at 284). Moreover, any prejudicial effect created by the admission of that testimony was minimized by the court's limiting instructions to the jury. *Illgen*, 145 Ill. 2d at 376.

¶ 35 Defendant nonetheless claims that the court erred in allowing the State to admit the gun that was recovered from him into evidence because it was not connected to the charged offense. We observe that a weapon is generally inadmissible unless it is connected to both defendant and the crime, or it was in defendant's possession when he was arrested for the crime and bears a connection with the charged offense. *People v. Maldonado*, 240 Ill. App. 3d 470, 478 (1992). However, neither of these exceptions apply here where it was undisputed that the gun introduced by the State at trial was not used to murder Green, and, further, the gun was not recovered when defendant was arrested for Green's murder but, rather, when he was caught engaging in sex acts in a car and arrested for unlawful use of a weapon. *People v. Howard*, 209 Ill. App. 3d 159, 178 (1991).

¶ 36 That said, the evidence against defendant in this case, including defendant's videotaped statement, was overwhelming. In addition, the jury was informed that the gun was not connected to Green's murder, and specifically admonished as to the limited purpose for which the gun could be considered. Under these circumstances, we find that any error in admitting the gun into evidence was harmless. *Maldonado*, 240 Ill. App. 3d at 479. We also find the case at bar distinguishable from *People v. Suerth*, 97 Ill. App. 3d 1005, 1010 (1981), cited by defendant, where the court noted that defendant's conviction of involuntary manslaughter was a "close case."

¶ 37 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 38 Affirmed.