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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Lake County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 09—CM—1567
)	
DEAN STAR,)	Honorable
)	Helen S. Rozenberg,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices McLaren and Hutchinson concurred in the judgment.

ORDER

Held: (1) Defense counsel was not ineffective for failing to object to hearsay, as counsel made a strategic decision reflecting a concern that an objection would have prompted the State to call the declarant, whose testimony might have been more damaging; (2) the admission of hearsay was not plain error, as defense counsel made a strategic choice not to object; in any event, any plain error was not reversible, as the evidence was not closely balanced and the error did not challenge the integrity of the judicial process.

Following a bench trial, defendant, Dean Star, was convicted of resisting a peace officer (720 ILCS 5/31—1(a) (West 2008)). Defendant appeals, contending that he was denied his constitutional right to confront witnesses where the only evidence that he was willfully refusing to comply with

officers' demands to exit his home was the hearsay statement that he was found "hiding in some kind of cubbyhole" in the basement. We affirm.

At trial, Lake County Sheriff's Deputy Timothy Fitch testified that he and investigator Hector Jiminez were attempting to serve defendant with a warrant for delinquent child support. Fitch had never seen defendant but had a booking photograph of him. He had learned from "multiple sources" that defendant's last-known address was 10309 Talmadge Avenue in Beach Park.

Fitch testified that he and Jiminez went to that address. As they pulled into the driveway, they saw defendant—whom Fitch recognized from the photograph—walking toward the house. Defendant, who had his back to the officers, then entered the house. After Jiminez knocked on the front door, defendant's sister, Joanne Star, came out. Joanne said that defendant did not live there and that the officers had seen her 14-year-old son enter the house. Joanne began yelling at the officers, demanding that they leave the property. Seeing that Joanne would not cooperate, Fitch went around to the rear of the house. He saw that the "slider door" was open but that the screen door was closed. He heard someone inside and heard the television on. Joanne was still yelling at the front of the house.

Fitch testified that he yelled into the house three times for defendant to come out. He called defendant by name, identified himself as an officer, and stated that they were there to serve a warrant. Joanne heard Fitch and came running to the back, screaming that Fitch should get off the property. As she did so, she slammed the door on Fitch's fingers. Joanne picked up a telephone, but Fitch grabbed her from behind. They eventually fell onto the deck and Fitch sprayed her with pepper spray, getting some in his own eyes in the process. Fitch called for an ambulance to deal with the pepper spray.

As the ambulance arrived, Fitch told another officer, Kenneth Bain, that defendant was hiding inside. According to Fitch, Bain went into the house to look for defendant. Bain came out about five minutes later with defendant in handcuffs. Bain told Fitch that he found defendant “hiding in some kind of cubbyhole” in the basement.

After Fitch was through testifying, the prosecutor stated that his “other witness” was on duty and that he needed to contact him. The trial court took a short recess. When the case was recalled, the prosecutor said that his witness was en route. He noted that the defense had a pending motion to dismiss a second count of the information and asked if the parties could argue the motion while waiting for the witness to arrive. Defense counsel objected to waiting for the witness, but eventually agreed to argue the motion. After the trial court granted the motion to dismiss the second count, the prosecutor stated:

“Judge, I’m preparing to rest my case. May I have just one quick moment just to step outside and release one of the officers?”

The prosecution then rested. Defendant moved for a directed finding, arguing that there was no evidence that defendant knowingly resisted the officers’ efforts to summon him from the house. The trial court denied the motion and the defense rested without presenting evidence. The trial court found defendant guilty. In its finding of guilt, and later in denying defendant’s motion to reconsider, the trial court repeatedly emphasized the hearsay evidence that defendant was found hiding in the basement. Defendant timely appeals.

Defendant contends that he was denied his right to confront witnesses where a key portion of the State’s case consisted of hearsay. He argues that Bain’s statement about defendant hiding in a cubbyhole was the only evidence of an affirmative act by defendant. He contends that, absent this evidence, it was reasonable to infer that defendant simply did not hear the officers over the din of the

television and Joanne's screaming. He further argues that without the hearsay evidence the State proved at most a failure to act, which may not be the basis of a conviction of resisting.

Defendant concedes that he did not object to the hearsay when it was offered, but argues that admission of the evidence was plain error. Alternatively, he contends that defense counsel was ineffective for failing to object to the evidence.

The State responds that hearsay admitted without objection may be given its natural probative effect. It further contends that any plain error is not reversible because, despite the trial court's reliance on the hearsay statement, the circumstantial evidence overwhelmingly established that defendant was willfully ignoring the officers' commands. Finally, the State maintains that defense counsel made a strategic decision not to object to the hearsay statement. The State posits that, had counsel objected, the prosecutor would have called Bain to testify in greater detail about arresting defendant. Instead, defense counsel allowed the evidence to come in but argued that it was too weak to prove defendant's guilt beyond a reasonable doubt.

The constitution guarantees criminal defendants the right to confront the witnesses against them. U.S. Const., amend. VI. Nevertheless, it is "firmly established" that hearsay admitted without objection is to be considered and given its natural probative effect. *People v. Collins*, 106 Ill. 2d 237, 263 (1985); see also *People v. Williams*, 139 Ill. 2d 1, 15 (1990). Thus, the trial court did not err in relying on the hearsay statement that defendant was found hiding in a cubbyhole in the basement. The statement certainly supports an inference that he was willfully avoiding the police and dispels defendant's suggestion that he simply did not hear the officers calling for him.

Moreover, even without considering the hearsay statement, the circumstantial evidence supported the conclusion that defendant was willfully avoiding the police. According to Fitch's uncontradicted testimony, defendant, who was outside on a summer day, decided, at the precise

moment the officers arrived with a warrant, to go indoors to watch television. Fitch stated that, after defendant entered the house, Fitch called to him three times to come out, identified himself as a police officer, and said that they had a warrant for him. Defendant speculates that, given the noise created by the television and by Joanne's altercation with the officers, he simply might not have heard the police. This argument, however, begs the question. Defendant apparently concedes that he could not have been oblivious to the altercation between Joanne and the police. The fact that defendant did not respond upon hearing his sister involved in first a verbal, then later a physical, altercation reinforces the conclusion that defendant was willfully avoiding contact with the police.

Defendant nevertheless contends that admitting the statement was error. Acknowledging that he did not object to the hearsay statement, defendant asks us to review the issue for plain error. Alternatively, he contends that his attorney was ineffective for failing to object. We discuss the second point first.

A claim of ineffective assistance of counsel requires a defendant to establish that (1) his attorney's performance fell below an objective standard of reasonableness and (2) there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984). Courts indulge a strong presumption that counsel's conduct is the result of strategic choices rather than incompetence. *People v. Clendenin*, 238 Ill. 2d 302, 317 (2010); *People v. Evans*, 186 Ill. 2d 83, 93 (1999). Decisions about what matters to object to and when to object are generally matters of trial strategy. *People v. Graham*, 206 Ill.2d 465, 478-79 (2003); *People v. Pecoraro*, 175 Ill.2d 294, 327 (1997). Reviewing courts will be highly deferential to trial counsel on matters of trial strategy,

making every effort to evaluate counsel's performance from his perspective at the time, rather than through the lens of hindsight. *People v. Madej*, 177 Ill. 2d 116, 157 (1997).

We agree with the State that counsel's failure to object to the hearsay statement was a strategic decision. Had defendant objected to the relatively vague hearsay statement, it is likely that the State would have called Bain, who presumably could have painted a much clearer picture. As does the State, we infer that the prosecutor's "other witness" was Bain and that he would have expounded on his statement to Fitch. In *People v. Perry*, 224 Ill. 2d 312 (2007), the supreme court refused to second-guess trial counsel's decision not to object to hearsay testimony, finding it:

"entirely likely [that] counsel chose to let these statements pass rather than object and run the risk of the declarants themselves being called to testify. If these individuals had been put on the stand, they may have offered even more damaging evidence." *Id.* at 345.

Here, too, counsel's failure to object to the hearsay evidence was likely a strategic decision, reflecting a concern that an objection would have prompted the prosecutor to call Bain, whose testimony might have been far more damaging.

Defendant also contends that the admission of the hearsay evidence was plain error. 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." *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007).

In light of our conclusion that defense counsel had a valid reason for not objecting to the evidence, we would be hard-pressed to find plain error. As one court noted, “If it was “part of the trial strategy of defendant’s counsel to use this testimony to attempt to weaken the State’s case rather than object to its admission,” the admission of the evidence is not plain error. *People v. Robinson*, 20 Ill. App. 3d 777, 783 (1974). In any event, given our conclusion that the circumstantial evidence strongly supported a finding that defendant was wilfully ignoring the police, we cannot say that the evidence was closely balanced. See *People v. Cervantes*, No. 2—09—0900, slip op. at ___ (Ill. App. March 16, 2011) (a person is guilty of resisting or obstructing a peace officer when he or she “knowingly resists or obstructs the performance by one known to the person to be a peace officer * * * of any authorized act within his official capacity.”) Further, as counsel’s decision not to object was strategic, we cannot say that the error was so fundamental that it “challenged the integrity of the judicial process” *Piatkowski*, 225 Ill. 2d at 565.

The judgment of the circuit court of Lake County is affirmed.

Affirmed.