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2011 IL App (3d) 090631-U

Order filed July 22, 2011

IN THE APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 14th Judicial Circuit, Rock Island County, Illinois
Plaintiff-Appellee,)	
v.)	Appeal No. 3-09-0631
)	Circuit Nos. 09-CF-186
)	09-TR-4325
TIMMY W. LOVELADY,)	Honorable
Defendant-Appellant.)	F. Michael Meersman, Judge, Presiding.

PRESIDING JUSTICE CARTER delivered the judgment of the court.
Justices McDade and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* Viewed in the light most favorable to the State, the evidence presented at defendant's trial was sufficient to prove defendant guilty beyond a reasonable doubt of threatening a public official. In addition, the appellate court would not reach, as a matter of first prong plain error, the trial court's alleged failure to comply with Illinois Supreme Court Rule 431(b) (eff. May 1, 2007) because defendant failed to establish that an error occurred in the jury selection process. The appellate court, therefore, affirmed the judgment of the trial court.

¶ 2 After a jury trial, defendant, Timmy W. Lovelady, was convicted of threatening a public official (720 ILCS 5/12-9 (West 2008)) and driving with a revoked driver's license (625 ILCS 5/6-

303 (West 2008)) and was sentenced to twenty-four months' conditional discharge and 180 days jail. Defendant appeals his convictions, arguing that: (1) he was not proven guilty beyond a reasonable doubt of threatening a public official; and (2) he was denied a fair trial because the trial court failed to comply with Supreme Court Rule 431(b). We affirm the judgment of the trial court.

¶ 3

FACTS

¶ 4 Defendant's case proceeded to a one-day jury trial in June of 2009. During a portion of the jury selection process, the trial court stated the following to the entire venire:

"[The defendant] is presumed innocent of the charges. That presumption remains with him throughout the entirety of the trial. You are not to consider the charges as any evidence of guilt against [the defendant]. It's the formal method of how people are brought into court and charged with offenses.

The presumption of innocence remains with him throughout the entirety of the trial and is not overcome unless you feel at the conclusion of all the evidence that the State has proven [the defendant] guilty of one or both counts beyond a reasonable doubt.

In relation to that, the State always has that burden. [The defendant] has no requirement to present any evidence. He has no requirement to present anything relating to his innocence. The burden is entirely on the State to prove his guilt beyond a reasonable doubt.

[The defendant] also has the right not to testify. Everybody charged with a crime has that absolute right, and you cannot consider his failure to testify, if he so desires not to testify, as evidence against him. Again, because of the fact the burden

is always on the State."

¶ 5 Shortly thereafter, the trial court called the first panel of eight prospective jurors for voir dire. During the questioning of the panel members, the trial court again informed the jury of defendant's rights. The following conversation ensued:

"THE COURT: Does anybody have any problems with the principles that I expounded on earlier as far as [the defendant's] rights? It's actually the most important question I get to ask is that you understand he's presumed innocent of the charges and that before he can be convicted, the State must prove his guilt beyond a reasonable doubt; that he's not required to testify or even present any evidence on his own behalf; and that if he decides not to testify, you cannot use that failure to testify against him in relation to that? Do any of you have any problems with those four basic right[s] all of us have?

PROSPECTIVE JUROR: I have a question.

THE COURT: Yes, sir, Mr. Keller.

PROSPECTIVE JUROR: (Keller) What is the legal definition of beyond a reasonable doubt?

THE COURT: Well, there – there really is none. It's – It's – It's something that the jury discusses when you go back into the jury room. You know, it's – it's not a 51 percent test. It's beyond a reasonable doubt. I mean, you basically – That's what juries argue about. I mean, they argue over the evidence, and they argue whether or not the State has proven their case. You know, it's not all doubt, but it is all reasonable doubt, and that's about the only definition I can give you because that's

what you're asked to find.

You know, it's one of those situations where you leave your – you bring your common sense into the courtroom. We ask you to leave your minds open and hear all the evidence, but all of you walk in here with life experiences that are different than everybody else's. You know, you bring your common sense in here, and you listen to the evidence, and you make – you each of the 12 jurors end up making their own determination as to whether or not the State has proven their guilt – proven the defendant's guilt beyond a reasonable doubt.

If you're not convinced, then basically, you find the defendant not guilty. If you're convinced, then he's found guilty. That's – That's totally your decision.

Anybody have any problems with that?

(No audible response.)"

Eventually, after the panel members were questioned by the attorneys, seven of the first eight panel members were selected to be on defendant's jury.

¶ 6 A second panel of eight was called to fill the remaining spots on defendant's jury. During the interview process, the trial court informed the panel as follows:

"In relation to the issue is as far as – again, I have to repeat these because of the – it's true for any person charged with a criminal offense. Do all of you understand that [the defendant] is presumed innocent of the charges and that before he can be convicted, the State through [the prosecutor] must prove his guilt beyond a reasonable doubt as to both the charges that are pending against him? Do all eight of you understand that?

(No audible response.)

Do you understand that he is not required, as [defense counsel] asked and probably will ask again, that he's not required to offer any evidence or even testify in the case, and if he does not testify, you cannot hold that against him? Did all eight of you understand that?

(No audible response.)

Basically, the burden in this country is that the State must prove your guilt beyond a reasonable doubt. The defendant is required to do nothing if he so desires, and obviously, it's a situation that's depending upon what [defense counsel] and [the defendant] decide, but all eight of you understand that if he does not testify or present any defense, then basically you cannot hold that against him or [defense counsel]? You understand that?

(No audible response.)"

After the panel members were questioned by the attorneys, five members of the second panel were selected to be on defendant's jury.

¶ 7 Prior to the opening statements, the trial court informed the jury, in part, as follows:

"Obviously, as we've explained, [the prosecutor] has the burden of proving the guilt of [the defendant] beyond a reasonable doubt. So obviously, the prosecution goes first.

Once [the prosecutor] rests, [defense counsel] will be given the opportunity to present evidence, but again, as I said, he doesn't have to, nor does he have to have [the defendant] testify."

¶ 8 The evidence presented at the trial established that on March 7, 2009, shortly after 3 a.m., officer Jack LaGrange, a sworn law enforcement officer for the Rock Island City Police Department, made a traffic stop on a vehicle driven by defendant. LaGrange was working without a partner that shift, was in uniform, and was driving a squad car. Defendant was the only one in the stopped vehicle and appeared to be somewhat intoxicated. His driver's license was revoked. Defendant was arrested, put in handcuffs, and placed in the back of LaGrange's patrol car.

¶ 9 While LaGrange was filling out the paperwork for the tow of defendant's vehicle, defendant tapped on the window with his head to get LaGrange's attention. Defendant then began to threaten LaGrange in a rambling fashion. According to LaGrange, defendant stated that he was going to put one into LaGrange's head and kill LaGrange. Not wanting to hear defendant's death threats, LaGrange told defendant to stop and warned defendant that he was committing a felony—threatening a public official. Defendant responded, "F--k you." Defendant stated further: "I'm going to put one in your head. When I get out of jail, I'm going to come and get you, and I'm going to put one in your head." Defendant was highly agitated and was screaming threats at LaGrange. According to LaGrange, defendant stated that he was going to "cut [LaGrange's] head off and f--k [LaGrange's] dead body." Defendant stated further that if LaGrange ever got him on a traffic stop again, that he was going to put one into LaGrange's head and that when he got out of jail, he was going to find LaGrange and kill him. The threats continued throughout the time it took for LaGrange to transport defendant to the jail. Defendant told LaGrange that as soon as LaGrange opened up the back door of the squad car, that he was going to get LaGrange. LaGrange tried not to show any outward signs that he was afraid or intimidated by defendant's threats because he figured that was what defendant wanted.

¶ 10 LaGrange testified that he took the threats seriously because he did not know who defendant was or of what defendant was capable. LaGrange testified further that the threats caused him apprehension about the future because he did not know if he would ever have to deal with defendant again, or if defendant was going to go to his house, or if he would run into defendant when he was at the store with his kids. LaGrange stated that he kept defendant's threats in his head all of the time and that they caused him to pay more attention than he did previously. LaGrange had been threatened before while working as a police officer but had never received death threats. LaGrange felt that defendant meant what he had said.

¶ 11 LaGrange acknowledged on cross-examination, however, that he never called for backup during the traffic stop, that he never attempted to find out defendant's background, that he never tried to determine if defendant could legally own a weapon, that he never tried to find out from any of his friends whether defendant was a dangerous character, that he never tried to find out whether defendant had a gang affiliation, and that he never asked to be notified when defendant was released from jail. In addition, LaGrange admitted that he told defendant his name but stated that it was policy, that he had to give out his name and badge number if someone asked for it.

¶ 12 After the evidence portion of the trial had concluded and the attorneys made their closing arguments, the trial court instructed the jury on the law. Relevant to the issues raised on appeal, the jury was provided with the following instructions:

"The defendant is presumed to be innocent of the charges against him. This presumption remains with him throughout every stage of the trial and during your deliberations on the verdict and is not overcome from all the evidence in this case unless you are convinced beyond a reasonable doubt that he is guilty.

The State has the burden of proving the guilt of the defendant beyond a reasonable doubt, and this burden remains on the State throughout the case. The defendant is not required to prove his innocence.

The fact that the defendant did not testify must not be considered by you in any way in arriving at your verdict."

¶ 13 After deliberations, the jury found defendant guilty of threatening a public official and of driving with a revoked license. Defendant's posttrial motion was later denied, and defendant was sentenced to twenty-four months' conditional discharge and 180 days jail. This appeal followed.

¶ 14 ANALYSIS

¶ 15 On appeal, defendant argues first that he was not proven guilty beyond a reasonable doubt of threatening a public official.¹ Defendant asserts that the threats he made, under the circumstances, were not sufficient to cause reasonable apprehension to a public official. Defendant asserts further that despite LaGrange's trial testimony to the contrary, it was clear from LaGrange's lack of action after the threats, that the threats could not be taken seriously and that LaGrange, in fact, did not take the threats seriously. The People disagree with those assertions and argue that the evidence was sufficient for a reasonable trier of fact to conclude beyond a reasonable doubt that defendant's threatening statements caused a reasonable apprehension of harm and that defendant was guilty of threatening a public official.

¹Defendant initially argued that the trial court erred in failing to instruct the jury relative to LaGrange's status as a public official and defendant's knowledge of that status. Defendant asked that we reach the merits of that issue as a matter of plain error. However, defendant later withdrew that entire issue in his reply brief.

¶ 16 Pursuant to the *Collins* standard, a reviewing court faced with a challenge to the sufficiency of the evidence must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found the elements of the crime proven beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985); *People v. Jackson*, 232 Ill. 2d 246, 280 (2009). The reviewing court will not retry the defendant. *People v. Jimerson*, 127 Ill. 2d 12, 43 (1989). Determinations of witness credibility, the weight to be given testimony, and the reasonable inferences to be drawn from the evidence are responsibilities of the trier of fact, not the reviewing court. See *Jimerson*, 127 Ill. 2d at 43. This same standard of review is applied by the reviewing court regardless of whether the evidence is direct or circumstantial or whether defendant received a bench or a jury trial, and circumstantial evidence meeting this standard is sufficient to sustain a criminal conviction. *Jackson*, 232 Ill. 2d at 281; *People v. Kotlarz*, 193 Ill. 2d 272, 298 (2000). In applying the *Collins* standard of review, a reviewing court will not reverse a conviction unless the evidence is so improbable or unsatisfactory that it leaves a reasonable doubt of the defendant's guilt. *Jackson*, 232 Ill. 2d at 281.

¶ 17 To sustain a conviction for threatening a public official, the State must prove three elements beyond a reasonable doubt: (1) that defendant knowingly and willfully communicated, directly or indirectly, a threat to a public official; (2) that the threat would place the public official in reasonable apprehension of immediate or future bodily harm; and (3) that the threat was related to the official's public status. 720 ILCS 5/12-9(a)(1)(i), (a)(2) (West 2008); *People v. Kirkpatrick*, 365 Ill. App. 3d 927, 930 (2006). In the instant case, defendant challenges the sufficiency of the evidence only as to the second element—reasonable apprehension. In determining whether reasonable apprehension exists, a court applies an objective test, which considers the totality of the circumstances, including

the context in which the threat was made and the subjective reaction of the recipient. See *People v. Peterson*, 306 Ill. App. 3d 1091, 1103-04 (1999) (discussing element of reasonable apprehension under intimidation statute); *Kirkpatrick*, 365 Ill. App. 3d at 930.

¶ 18 In the present case, the evidence viewed in the light most favorable to the prosecution, was sufficient to prove reasonable apprehension. The jury was informed of the circumstances in which the threats arose and of the partially intoxicated condition of defendant. The jury was able to view LaGrange's testimony firsthand and to observe his demeanor when he testified that he took the threats seriously and that he was apprehensive about the threats. The jury also heard the evidence and arguments relative to LaGrange's lack of further inquiry into defendant after the threats were made. The question of whether reasonable apprehension existed under the circumstances presented in this case is one that was better left for the jury to determine as trier of fact, and we will not substitute our judgment for that of the jury on this issue. See *Jimerson*, 127 Ill. 2d at 43. The evidence on the element of reasonable apprehension was not so improbable or unsatisfactory as to leave a reasonable doubt of defendant's guilt. Defendant's conviction for threatening a public official, therefore, must be affirmed. See *Jackson*, 232 Ill. 2d at 281.

¶ 19 As his final issue on appeal, defendant argues that he is entitled to a new trial because the trial court failed to comply with Supreme Court Rule 341(b) in the selection of defendant's jury. Defendant asserts that although during the voir dire, the trial court expressed the correct legal principles to the first panel of eight, it never gave that panel an opportunity to indicate whether it understood and agreed with those principles. Defendant acknowledges that he failed to properly preserve this issue for appellate review because he did not object to the matter during jury selection or raise the issue in his posttrial motion. Defendant asks that we review the merits of this issue,

nevertheless, because the forfeiture rules do not apply as rigidly to errors committed by the trial court itself. However, we rejected a similar argument in *People v. Amerman*, 396 Ill. App. 3d 586, 592 (2009), and continue to do so here. Alternatively, defendant asks that we reach the merits of this issue as a matter of first-prong plain-error because the evidence in this case regarding reasonable apprehension is closely balanced.² The State argues that plain-error review does not apply because: (1) no error occurred; and, alternatively (2) the evidence was not closely balanced.

¶ 20 The plain-error doctrine is a limited and narrow exception to the forfeiture or procedural-default rule and allows a reviewing court to consider unpreserved error when one of two conditions is met:

"(1) a clear and 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." *People v. Walker*, 232 Ill. 2d 113, 124 (2009) (quoting *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007)); see also *People v. Herron*, 215 Ill. 2d 167, 177-187 (2005); Ill. S. Ct. R. 615(a) (eff. Aug. 27, 1999).

²Defendant initially argued that the merits of this issue should be reached under both the first and second prongs of the plain-error doctrine. In his supplemental reply brief, however, defendant conceded that based upon our Supreme Court's ruling in *People v. Thompson*, 238 Ill. 2d 598, 613-15 (2010), he could no longer maintain his argument that the issue could be reviewed under the second prong of the plain-error doctrine.

Under either prong of the plain-error doctrine, the burden of persuasion is on the defendant. *Walker*, 232 Ill. 2d at 124. If the defendant fails to satisfy that burden, the procedural default of the issue must be honored. *Walker*, 232 Ill. 2d at 124. The first step in any plain-error analysis is to determine whether an error occurred. *Walker*, 232 Ill. 2d at 124-25. To do so, a reviewing court must conduct a substantive review of the issue. *Walker*, 232 Ill. 2d at 125.

¶ 21 “The supreme court rules are not merely suggestions to be complied with if convenient but rather obligations which the parties and the courts are required to follow.” *People v. Reed*, 376 Ill. App. 3d 121, 125 (2007). Supreme Court Rule 431(b) provides that:

"The court shall ask each potential juror, individually or in a group, whether that juror understands and accepts the following principles: (1) that the defendant is presumed innocent of the charge(s) against him or her; (2) that before a defendant can be convicted the State must prove the defendant guilty beyond a reasonable doubt; (3) that the defendant is not required to offer any evidence on his or her own behalf; and (4) that the defendant's failure to testify cannot be held against him or her; however, no inquiry of a prospective juror shall be made into the defendant's failure to testify when the defendant objects.

The court's method of inquiry shall provide each juror an opportunity to respond to specific questions concerning the principles set out in this section." Ill. S. Ct. R. 431(b) (eff. May 1, 2007).

Under Rule 431(b), a specific question and response process is mandated. *Thompson*, 238 Ill. 2d at 607. The trial court is required to ask each potential juror whether he or she understands and accepts each of the principles set forth in Rule 431(b). *Thompson*, 238 Ill. 2d at 607. “The questioning may

be performed either individually or in a group, but the rule requires an opportunity for a response from each prospective juror on their understanding and acceptance of those principles.” *Thompson*, 238 Ill. 2d at 607.

¶ 22 In the instant case, the trial court initially admonished the entire venire of the four principles contained in Rule 431(b). As to the first panel of eight prospective jurors, the trial court admonished them as a group consistent with Rule 431(b) and asked if anyone had a problem with the four principles. One juror asked a question about reasonable doubt, which the trial court answered and then asked the group whether, “[a]nybody [had] any problems with that?” Defendant would have us read this record very narrowly and find that the trial court failed to give the first panel an opportunity to respond to the 431(b) questioning. However, the record does not clearly establish that such is this case and we do not believe the record can be read so narrowly. In short, defendant has failed to convince us that any error occurred in the jury selection process relative to Rule 431(b). The plain-error doctrine, therefore, does not apply, and defendant's argument on this issue must be rejected.

¶ 23 For the foregoing reasons, we affirm the judgment of the circuit court of Rock Island County.

¶ 24 Affirmed.