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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-CF-2809
)	
EUGENE I. OBIAZI,)	Honorable
)	Theodore S. Potkonjak,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Hudson and Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in requesting the jury to continue deliberations rather than declaring a mistrial: the jury twice told the court that it was deadlocked, but the deliberations did not go unduly long, the trial was not particularly long or complex, the court gave proper *Prim* instructions and did not, by sending dinner menus, threaten sequestration, and the jury's subsequent request for testimony showed that it was not exhausted but continued to deliberate in earnest.

¶ 2 Defendant, Eugene I. Obiazi, appeals his conviction of unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2008)), asserting that the court coerced the jury to reach a verdict when it twice received communications that the jury was deadlocked and twice told the jury

to resume deliberations. We do not agree; we hold that the court's interactions with the jury were well within the range of an appropriate exercise of discretion. We therefore affirm defendant's conviction.

¶ 3

I. BACKGROUND

¶ 4 Defendant was charged with unlawful possession of a weapon by a felon and aggravated unlawful use of a weapon (720 ILCS 5/24-1.6(a)(1), (a)(3)(A) (West 2008)). He had a jury trial.

¶ 5 Most of the testimony related to a brief late-night foot chase involving three police officers. The appellate record is limited as a guide to the details of the chase, as the parties used projected diagrams to aid the officers in explaining their actions during the chase. The diagrams are not a part of the appellate record, and the officers' interactions with the projections are merely suggested by the record.

¶ 6 The broad outline of the evidence is clear. Three officers, Officer Joshua Tran, Officer Angela Biegay, and Sergeant Edgar Navarro, all of the Waukegan police, drove to a residential neighborhood to investigate a noise complaint that might not have had any relation to the offense at issue. Defendant, who was speaking with a woman, ran when he saw the officers, who were in tactical uniform. When defendant ran, Tran chased after him. The other two followed, but took different courses. Tran briefly saw a gun in defendant's hand and shouted to tell the other officers. This was the only time any witness saw defendant in direct possession of the gun. Defendant jumped a fence into a back yard. His path then curved back toward his starting point, which also caused him to run toward Biegay. Biegay tased him, then Tran caught up and tased him twice, bringing him under full control. When the officers did not find a gun on defendant's person, they and other officers searched the area in which the chase occurred. Officer Phil Mazur of the Gurnee police

found a loaded 45-caliber semiautomatic handgun a short distance from the path the Waukegan officers observed defendant to follow. The location suggested that defendant had thrown it after he jumped the fence.

¶ 7 As we noted, the evidence is consistent in broad outline. To the extent that inconsistencies existed, they were in the details of who was where when. A fuller summary partially illustrates the differences in detail.

¶ 8 Tran was the State's first witness. He testified that, on July 16, 2009, he was part of a tactical drug and gang suppression unit. At about 12:45 a.m., he got a cell phone call from a friend saying that there was a loud argument at 2735-2739 Wall Avenue in Waukegan. He, Navarro, and Biegay drove to the address in a black Impala with interior red and blue lights. When they got there, no one was arguing, but defendant and another person, Nikita Colburn, were in the driveway of 2739. Defendant was standing behind the open door of a dark gray vehicle parked "at an angle." He looked in the direction of the Impala and started to walk backward until he had his back to a van. When Tran got out of the Impala, defendant started running. He ran in front of the next house, and Tran chased him.

¶ 9 As defendant got to the corner and started to run into the back yard of a house, Tran saw that he had a "black, semi-automatic pistol in his right hand." Tran shouted "gun." Defendant started to turn south, which placed a chain-link fence about four feet high in his path. He went over the fence and fell on his side, but then kept running. Tran ran up to the fence and pointed his flashlight at defendant, who still had the pistol. Navarro joined him. Tran turned around to return to the front area. This placed Biegay in front of him, with defendant running toward Biegay. Biegay told defendant to stop. When he did not, she used her "ECD" (Electronic Control Device or Taser) on

him; he fell to the ground but was not incapacitated. When Tran saw defendant after Biegay stopped him, he had nothing in his hands. Because defendant was still moving after the first Taser shot, Tran fired his own Taser at him. The officers took defendant into custody.

¶ 10 Tran and others then started searching yards for the gun. An officer found a black semiautomatic pistol behind one of the houses in the area of the chase. The State introduced photographs showing the area in which the gun was found.

¶ 11 On cross-examination, Tran agreed that he never saw defendant throw anything and never heard any sounds that would suggest that anyone had thrown a gun. He further agreed that, when he started chasing defendant, the van was between him and defendant. Moreover, when he first had a clear view of defendant, he did not see a gun. He admitted that, when he saw defendant approach the chain-link fence, he slowed to see what would happen.

¶ 12 Biegay testified that she saw only the one female subject on the scene until Tran started chasing a male in a white T-shirt. She saw that person jump the chain-link fence. She then doubled back to her starting point to try to intercept the person. Initially, she heard Tran yell “stop, police” and shortly after heard “gun.” When she returned to about where she had left the patrol car, she saw somebody in a white T-shirt running through a back yard toward a section of chain-link fence. “They jumped over the gate” and ran toward her. This person did not have anything in his hands. She could identify the person as defendant. She tased him, and then Tran tased him. She never saw a gun in defendant’s hands. On cross-examination, she estimated that the entire foot chase took 10 to 15 seconds.

¶ 13 Navarro testified that, as the squad car arrived at the address given in the cell phone call to Tran, he saw two people, defendant and a female, alongside a car. Tran started running, and Navarro

realized that he was chasing defendant. Navarro followed Tran, heard him order defendant to stop, and heard him yell “gun.” Navarro lost sight of both as they turned a corner, then he saw Tran “backing out of that area.” He saw defendant in the back yard behind the fence and then crossed the fence in pursuit. He had to empty his hands to cross the fence. Defendant turned around in the yard and started running toward the front of the house. Navarro lost sight of defendant as he ran and did not see him again until he was in the control of Tran and Biegay. Navarro never saw defendant make a throwing motion and never saw him with a gun.

¶ 14 Mazur testified that he came to assist with the search for the gun. He found a gun in the fourth yard he searched.

¶ 15 Barry Adams of the Northeastern Illinois Regional Crime Laboratory testified that he examined the gun for latent fingerprints. He checked the gun, the magazine, and all of the rounds, but found no prints suitable for comparison. The parties stipulated that Gary Lind, a forensic scientist at the Northeastern Illinois Regional Crime Laboratory, test fired the gun and found that it was operational.

¶ 16 The defense rested after moving for admission of its exhibits.

¶ 17 The State, in closing, argued that the case was simple: that defendant was seen running into the yard with a gun, but did not have it when he came out, and the gun was found near where the officers saw him. It argued that defendant knew better than to think that he could run away; instead, he was trying to run far enough to hide the gun.

¶ 18 Defense counsel pointed to what it deemed to be serious flaws in the officers’ testimony. For instance, he asserted that the officers had given implausible reasons for being unable to see how defendant had crossed the fence with a gun in one hand. He claimed that they knew that defendant

could not have gotten over the fence with a gun in his hand, and they therefore had to avoid giving any details of how he had done it. Counsel argued that most of what the officers described had never happened: it was a later fabrication to justify the repeated use of the Tasers. He repeatedly stated, “It never happened.”

¶ 19 The State answered that, had the case against defendant been pure fabrication, more than one officer would have seen the gun. The reality was that the lighting was poor, so that only Tran saw the gun, and only briefly. However, Mazur’s finding of the gun vindicated Tran’s observation.

¶ 20 The jury received two diagrams that are not a part of the record on appeal. (The court later asked the parties what time deliberations had started, and defense counsel said that it had been “[a]bout 12:30, 12:35 [p.m.]”)

¶ 21 At some point, the jury sent a note asking whether the police reports were available. With both parties’ agreement, the court responded with a note saying that the reports were not in evidence.

¶ 22 Some time later—the State noted that only three hours had passed since the jury began its deliberations—the court received the two notes that are relevant here. The first was from a juror and stated that he or she could not come in on Friday morning because of “a family commitment.” (Deliberations occurred on Wednesday, November 10, 2010. Thursday was Veterans’ Day.) The second said:

“At least one juror is not going to side with the others no matter what is said. This is very clear. What do we need to do? It’s either eleven to one or ten to two. It’s not going to move.”

This note was from the foreperson. In response to the note, the defense asked the court to declare a mistrial. The court refused and said that, if “it” went on much longer, it would give a “[P]rim

instruction” (see *People v. Prim*, 53 Ill. 2d 62, 74-76 (1972)), but would not do so until late in the evening. The court sent the jury a note saying “please continue to deliberate.” The court and parties agreed that the one juror’s inability to come on Friday morning did not need to be addressed until it was clear that that juror would actually face a conflict.

¶ 23 At what the court noted as 4:50 p.m., not quite 1½ hours after the jury first sent the deadlock note, the jury sent the court the same two notes that it had sent earlier. The court noted that deliberations had then been going on for “less than four and a half hours.” The court announced that it would send another note saying “please continue to deliberate,” and the defense asked it to take note that this was done over its objection.

¶ 24 At the same time, court also noted that one juror was asking to make a phone call to make childcare arraignments; the court permitted this call. Further, it permitted other jurors to make childcare-related calls.

¶ 25 After another break, the “court officer” reported that “[e]ight jurors used their phone[s] to call daycare or let their wives know they were going to be late.” The defense again sought a mistrial on the basis that most of the calls were not what the court had permitted. The court denied the motion. The next note requested a highlighter, to which the parties agreed.

¶ 26 Later again, the court said that it had sent the jury dinner menus, and they had requested chocolate chip cookies and a transcript of Tran’s testimony. The court, accepting the recommendation of both parties, told them to “use your collective memories” of the testimony.

¶ 27 That request was followed by a question: “Did Officer Tran see the gun in defendant’s hand after defendant went over the fence?” The court, with the concurrence of both parties, gave the response, “you have heard all the testimony in this matter. Please continue to deliberate.”

¶ 28 The next communication from the jury was that it had reached its verdicts: guilty on both charges. The court polled the jury on defendant's motion, and all agreed that those were their verdicts.

¶ 29 Defendant filed a posttrial motion that asserted, among other things, that the court had erred when it denied defendant's motions for a mistrial both when the jury said that it was deadlocked and when the jurors made calls that were beyond what the court authorized. At the hearing, defense counsel represented that the verdict came about 15 minutes after the court allowed jurors to make phone calls. Neither the court nor the State challenged that estimate. The court stated that the deliberations were not particularly long and that nothing suggested that the jurors had said anything improper in the phone calls. It commented that many trials would end in hung juries if courts declared mistrials every time juries said that they were deadlocked.

¶ 30 The court found that the two convictions merged and that count I (unlawful possession of a weapon by a felon) was the more serious; it vacated the other conviction. After hearing mitigation witnesses of defendant's, the court sentenced him to 12 years' imprisonment. Defendant filed a postsentencing motion that the court denied, and defendant filed a timely notice of appeal.

¶ 31

II. ANALYSIS

¶ 32 On appeal, defendant argues that the court erred when it refused to declare a mistrial and that it coerced the jury into reaching a verdict. He asserts that the question of whether the court's actions coerced the jury "solely involves the application of the law to undisputed facts" and so is subject to *de novo* review. He argues that "[t]he only question that the jurors had to decide was whether they believed Officer Tran's testimony that he saw the defendant with a gun during the chase." Further, he asserts that the court's choice to twice override the jurors' own impression of their ability to reach

a verdict was coercive in that it gave the impression that the court was ignoring their view. He suggests that, in this context, the court's sending of the dinner menus was also coercive, as it sent the message that the court expected to hold the jurors until late in the day.

¶ 33 Contrary to what defendant argues, our review is for an abuse of discretion. *People v. Daily*, 41 Ill. 2d 116, 121 (1968); *People v. Morales*, 281 Ill. App. 3d 695, 705 (1996).

“A trial court's comments to the jury are improper where, under the totality of the circumstances, the language used actually interfered with the jury's deliberations and coerced a guilty verdict. [Citation.] Coercion is a highly subjective concept that does not lend itself to precise definition or testing and, as a result, a reviewing court's decision often turns on the difficult task of ascertaining whether the challenged comments imposed such pressure on the minority jurors as to cause them to defer to the conclusions of the majority for the purpose of reaching a verdict.” *People v. Wilcox*, 407 Ill. App. 3d 151, 163 (2010).

A “trial court has broad discretion when responding to a jury that claims to be deadlocked, although any response should be clear, simple, and not coercive.” *People v. McLaurin*, 235 Ill. 2d 478, 491 (2009). Further, “the formulation of a response to a claim of deadlock [is] within the court's discretion, as is the determination of when a supplemental instruction to the jury is appropriate.” *McLaurin*, 235 Ill. 2d at 493.

¶ 34 Illinois decisions have identified six factors that determine whether an apparent deadlock is real and necessitates a mistrial:

“(1) [T]he jury's collective opinion that it cannot agree, (2) the length of deliberations, (3) the length of the trial, (4) the complexity of the issues presented to the jury, (5) any proper communications that the judge has had with the jury, and (6) the effects of possible

exhaustion and the impact that coercion of further deliberations might have had on the verdict.” *People v. Andrews*, 364 Ill. App. 3d 253, 266-67 (2006).

Courts use these factors to address a claim of error that is essentially the mirror image of that here: whether the trial court has prematurely declared a mistrial over the defendant’s objection. However, the core question in claims that the court was either too fast or too slow to declare a mistrial is the same: is the jury still deliberating effectively? Therefore, the same factors are valuable in addressing either claim of error. Here, applying the six factors, we hold that the court did not abuse its discretion in requesting the jury to continue deliberations under the facts and circumstances of this case.

¶ 35 Factor one is “the jury’s collective opinion that it cannot agree.” *Andrews*, 364 Ill. App. 3d at 266. Only this factor tends to favor defendant’s position. The jury twice sent a note saying that it could not agree. However, after the second response from the court, it sent notes that showed that it was deliberating on the facts of the case: in particular, it sought assistance in recalling the substance of Tran’s testimony.

¶ 36 Factor two is the length of deliberations. The deliberations were not long in absolute terms. The record suggests that the jury began deliberating at about 12:30 p.m. on the last day of trial. The defense represented that the jury rendered its verdict approximately 15 minutes after the court allowed calls (at 4:50 p.m.). This assertion does not fit well with the fact that the jury sent out two further notes on substantive matters after the court allowed the calls. Be that as it may, given that the defense, despite its assertive seeking of a mistrial, did not suggest that the lateness of the hour was a coercive factor, we can assume that the deliberations ended before such a claim would become plausible. Perhaps even more important than the total time of deliberations is that, by the court’s

reckoning, its second instruction to continue deliberations came less than 4½ hours after deliberations started.

¶ 37 Factors three and four are “(3) the length of the trial, [and] (4) the complexity of the issues presented to the jury.” *Andrews*, 364 Ill. App. 3d at 266. These factors are mixed. Although the trial was not long, with only four occurrence witnesses, the evidence had aspects that could have caused some confusion. Specifically, any attempt by the jury to follow the varying accounts of the chase could easily bog down in details. Thus, although the broad outline of the State’s case was simple, the court could not assume that any jury that was not deadlocked would complete deliberations in a few hours. Moreover, if the jury took seriously defendant’s theory that the officers’ testimony was largely a fabrication, the jury would have been pulled into considerations of how easily the officers could have planted the gun and similar matters. That kind of discussion would have likely entailed extended deliberations. The jury’s early claim of deadlock hints that one or two jurors may have given this theory credence.

¶ 38 Factor five is “any proper communications that the judge has had with the jury.” *Andrews*, 364 Ill. App. 3d at 266-67. Here, the court’s notes were in a form endorsed by the *Prim* standards. In *Prim*, the supreme court endorsed the Standards Relating to Trial by Jury of the American Bar Association Project on Minimum Standards for Criminal Justice. *Prim*, 53 Ill. 2d at 74-76. Those standards state, among other things, that “[i]f it appears to the court that the jury has been unable to agree, the court may require the jury to continue their deliberations and may give or repeat an instruction [that the standards endorse the court giving at the start of deliberations].” *Prim*, 53 Ill. 2d at 75 (quoting ABA Standards Relating to Trial by Jury § 5.4, at 145-56 (Tentative Draft May 1968)). Consistent with those standards, the court told the jury to continue deliberations.

¶ 39 Moreover, given that the court's responses came at times of day and after periods of deliberation such that the court could reasonably determine that the jury would not be too fatigued to deliberate, we do not take the communications to suggest that the court would hold the jury until it reached a verdict regardless of the circumstances. The sending of dinner menus was not coercive under the circumstances. The jury might have taken it to signal that the court was willing to let deliberations go on into the evening, but on that point, the legal education that a person can receive from television and movies is *not* misleading: the jurors should have known that evening deliberations are ordinary unless the court expects deliberations of many days.

¶ 40 Defendant attempts to analogize the sending of the menus to a sequestration warning. Although "merely informing a jury that it might be sequestered is not *per se* coercive," "[e]xtremely brief deliberations after a reference to sequestration *** [can] lead to an inference that the reference to sequestration coerced the jury into rendering a verdict." *People v. Hanks*, 210 Ill. App. 3d 817, 822 (1991). The dinner menus were not analogous. Although the offer of a dinner at the court's expense—and, to be sure, the suggestion of evening deliberations—may have seemed a threat to some jurors, it cannot be compared with a warning of an involuntary night away from home.

¶ 41 Factor six is composed of "the effects of possible exhaustion and the impact that coercion of further deliberations might have had on the verdict." *Andrews*, 364 Ill. App. 3d at 267. Nothing in the record suggests that jurors were becoming tired or feeling time pressure. On this point, the court's decision to allow the jurors access to their phones likely lessened the pressure. The jurors could deliberate without concern that family members were wondering when they would get home.

¶ 42 Further, under *McLaurin*, this court can properly consider the jury's later communications as an indication of whether it felt pressured. (That case is also of note for being remarkably similar

factually, although the issue was one of the bailiff's improper "intrusion" into the deliberations (*McLaurin*, 235 Ill. 2d at 498) and review was for plain error only.) In *McLaurin*, the "defendant was convicted of aggravated unlawful use of weapon and unlawful use of weapon by a felon." *McLaurin*, 235 Ill. 2d at 481.

"At defendant's trial, the State presented the testimony of Officer O'Carroll, as well as that of Officers Langle and Daily. Although only Officer O'Carroll saw defendant holding or throwing away the handgun, Officers Langle and Daily testified that they saw Officer O'Carroll chasing defendant, and Officer Daily heard Officer O'Carroll yell 'gun' as he retrieved the weapon from under the parked van. In addition to the testimony of the three officers, the State provided the handgun itself as evidence at trial. Defendant also stipulated, outside the presence of the jury, that he had been previously convicted of a felony." *McLaurin*, 235 Ill. 2d at 482.

Further:

"[T]he jury sent two notes within approximately 45 minutes claiming that it was deadlocked and could not reach a decision; these were the second and third such notes sent by the jury. Rather than give a written response, the court sent the bailiff to tell the jury to 'keep on deliberating'; a message consistent with the court's written response to the jury's first 'deadlock' note." *McLaurin*, 235 Ill. 2d at 49.

A later note requested a transcript of O'Carroll's testimony, which the court gave them. *McLaurin*, 235 Ill. 2d at 483-84. The defendant argued that the "temporal proximity between the bailiff's 'intrusion' and the jury's ultimate verdict of guilty" showed that the court's responses were the cause of the guilty verdict, but the *McLaurin* court noted that the argument "ignore[d] the jury's subsequent

request for the transcript of the State's key witness." *McLaurin*, 235 Ill. 2d at 498. Here, as in *McLaurin*, after the allegedly improper act, the jury responded by requesting (as it happens) a transcript of the State's key witness's testimony. The request clearly showed that the jury continued to deliberate in earnest on the facts and were not looking for the fastest possible verdict.

¶ 43

III. CONCLUSION

¶ 44 For the reasons stated, the trial court did not abuse its discretion in requesting the jury to continue deliberations under the facts and circumstances of this case, and we therefore affirm defendant's conviction.

¶ 45 Affirmed.