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2012 IL App (4th) 110024-U

Filed 3/19/12

NO. 4-11-0024

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Petitioner-Appellee,)	Circuit Court of
v.)	McLean County
MELVIN ARMSTRONG,)	No. 10CF152
Defendant-Appellant.)	
)	Honorable
)	Charles G. Reynard,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Presiding Justice Turner concurs in the judgment.
Justice Cook specially concurs in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court rejected the defendant's constitutional claims, concluding that the trial court did not bar defendant from testifying about the circumstances of his alleged confession.
- ¶ 2 Following a July 2010 trial, a jury convicted defendant, Melvin Armstrong, of (1) possession of a controlled substance with the intent to deliver (less than a gram of a substance containing cocaine) (720 ILCS 570/401(d)(i) (West 2010)) (count III), (2) possession of a controlled substance (less than 15 grams of a substance containing cocaine) (720 ILCS 570/402(c) (West 2010)) (count IV), (3) delivery of a controlled substance within 1,000 feet of a church (less than a gram of a substance containing cocaine) (720 ILCS 570/401(d) (West 2010)) (count V), and (4) delivery of a controlled substance (less than a gram of a substance containing cocaine) (720 ILCS 570/401(d)(i) (West 2010)) (count VI). The trial court later imposed

consecutive prison sentences of five years on count III and 10 years on count V. (The court did not sentence defendant on counts IV or VI, finding that those counts had merged into his convictions on counts III and V, respectively.)

¶ 3 Defendant appeals, arguing that he was denied his rights to due process and confrontation when the trial court barred him from testifying about the circumstances of his alleged confession. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 A. The State's Charges

¶ 6 In February 2010, the State charged defendant, in pertinent part, with (1) possession of a controlled substance with the intent to deliver (less than a gram of a substance containing cocaine) (720 ILCS 570/401(d)(i) (West 2010)) (count III), (2) possession of a controlled substance (less than 15 grams of a substance containing cocaine) (720 ILCS 570/402(c) (West 2010)) (count IV), (3) delivery of a controlled substance within 1,000 feet of a church (less than a gram of a substance containing cocaine) (720 ILCS 570/401(d) (West 2010)) (count V), and (4) delivery of a controlled substance (less than a gram of a substance containing cocaine) (720 ILCS 570/401(d)(i) (West 2010)) (count VI). (Immediately prior to defendant's July 2010 trial, the State dismissed counts I and II.)

¶ 7 B. Defendant's Trial

¶ 8 Because defendant is not challenging the sufficiency of the evidence to sustain his convictions, the facts relevant to this appeal are as follows.

¶ 9 1. *The State's Evidence*

¶ 10 The State presented evidence regarding the details of a February 16, 2010, drug

purchase made by a police confidential source, Bobbi Jo Stout, while being observed by a police surveillance team. The evidence showed that on that date, Stout (1) met with police and was given \$100 to purchase drugs; (2) called defendant's cellular telephone and informed him she wanted to buy \$100 worth of crack cocaine; (3) was driven by a police detective to a residence on Roosevelt Street where she had purchased drugs previously; (4) bought \$100 worth of crack cocaine from defendant, whom she later identified; and (5) returned to the detective and gave him the purported cocaine she had purchased.

¶ 11 After the controlled purchase, Stout called defendant and complained that the value of the cocaine defendant sold her was less than \$100. When defendant left the Roosevelt Street residence, police arrested him and recovered the drugs defendant planned to deliver to Stout. After defendant's arrest, a police detective informed him of his *Miranda* rights (see *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602 (1966)), and defendant agreed to speak to police but did not want the interrogation recorded. During his interrogation, defendant admitted, in pertinent part, that on February 16, 2010, he sold crack cocaine to Stout. The officer conducting the interrogation noted that defendant would preface his answers by stating either, "unofficially" or "allegedly." A subsequent investigation showed that the residence—where defendant sold the drugs to Stout—was approximately 400 feet from a church.

¶ 12 *2. Defendant's Evidence*

¶ 13 Defendant described his relationship with Stout as a casual one in which he would provide drugs to Stout in exchange for money or sex. Defendant denied seeing Stout or selling her drugs on February 16, 2010. As defendant testified about the events that occurred during that day, the trial court sustained four objections made by the State on the basis of narrative—that is,

on those four occasions, defendant answered the specific questions posed to him by his counsel by relating a string of events as a story, instead of providing specific answers. Thereafter, the following exchange occurred:

"[DEFENSE COUNSEL:] Okay. In that phone call from [Stout] asking you to come back, did she ever discuss being shorted?

[DEFENDANT:] No, no. There's no such thing as a shortage. That's not a Kroger's [*sic*]. There's no receipts in there. You buy what you pay for.

[THE STATE:] Objection.

THE COURT: Hang on. You need to stick with an answer as opposed to going on and on, [defendant].

If your attorney wants more information from you, he can ask you another question, but the going-on part is what [the court is] sustaining the objection to ***—

[DEFENDANT:] Make a long story short?

THE COURT: One answer at a time. Short is better than long. That objection is sustained. ***."

¶ 14 Thereafter, the trial court again sustained the State's objection to narrative. After defendant answered several more questions, the following exchange occurred:

"[DEFENSE COUNSEL:] You did not have any drugs on you?

[DEFENDANT:] Those drugs came from the lab—from the evidence room. All of that was a set-up [*sic*]. [The police] set me up. They sprung the trap over on Roosevelt, and I didn't get there in time, so they tried to spring it again.

They sprung it over [at Stout's residence]. When they got there, they had to have me there. What did you do? Because I didn't go in the house, I stayed on the porch, they came too quick before I found the dope. They set the dope up over there for me to find.

That's why I was called there. There was no shortage. Wasn't any shortage. You see it, you buy it, you take it and there ain't [*sic*] no coming back. Sometimes you buy stuff that ain't [*sic*] real. There's no taking it back.

THE COURT: [Defendant], you can tell your attorney is trying to shorten you down. Pay attention to him, answer his question, don't volunteer anything so we can get through this."

¶ 15 After defense counsel posed three more questions, he asked the following question regarding defendant's police interrogation:

"[DEFENSE COUNSEL:] Did the police put you into a room?

[DEFENDANT:] Yes. No, it wasn't a room. It was a chamber. It was a room inside of a room where they controlled the

heat, controlled the air, and controlled everything. They get in there and put the heat on you and make you sweat or being in February in the wintertime—

THE COURT: Sustained. Next question."

¶ 16 Defendant answered defense counsel's next question by stating that police informed him that if he cooperated, "they would let this case be forgotten." Defendant's counsel then continued his inquiry into the circumstances surrounding defendant's interrogation by asking defendant the following question:

"[DEFENSE COUNSEL:] And did you talk to [the police] for some time?

[DEFENDANT:] Well, I told them I want to talk to a lawyer. They said this is off the record. This is not about you. This is unofficial, right?

I said, okay, if I talk, then I don't want to be rebroadcast. I don't want to be audio or video. I don't want you to have your radio on, unplug your phone. I don't want to be rebroadcast, no likeness of me anywhere, no mechanic, no electronic, no none of that, just you and me in this room. Somebody was outside the room peeking in the hole.

THE COURT: Next question please."

¶ 17 *3. The Jury's Verdict and the Trial Court's Sentence*

¶ 18 Following the presentation of evidence and argument, the jury convicted

defendant of all four counts charged by the State. Following an October 2010 hearing, the court sentenced defendant as previously stated.

¶ 19 This appeal followed.

¶ 20 **II. DEFENDANT'S CLAIM THAT THE COURT
LIMITED HIS TRIAL TESTIMONY**

¶ 21 Defendant argues only that he was denied his rights to due process and confrontation when the trial court barred him from testifying about the circumstances of his alleged confession. Specifically, defendant contends that his testimony regarding the circumstances surrounding his interrogation was his only means of persuading the jury that his alleged confession was "unworthy of belief and should not be given great probative weight." We disagree.

¶ 22 Initially, the State argues that because defendant did not object at trial to the issue he now complains of—that is, that the trial court limited his trial testimony—he has forfeited this issue for our review. See *People v. Kitch*, 239 Ill. 2d 452, 460-61, 942 N.E.2d 1235, 1240 (2011) (to preserve a claim of error for review, a defendant must assert a timely objection at trial and raise the error in a written posttrial motion). In response, defendant contends, in pertinent part, that this court should consider his claim under the plain-error doctrine. See Illinois Supreme Court Rule 615(a) (eff. Aug. 27, 1999) (plain-error doctrine creates a narrow and limited exception to the general rule of forfeiture). However, because we conclude that defendant's contention lacks merit, we dispose of it without engaging in a plain-error analysis. See *People v. Alvarez-Garcia*, 395 Ill. App. 3d 719, 729, 936 N.E.2d 588, 597 (2009) (the forfeiture of issues is a limitation on the parties and not the reviewing court).

¶ 23 In this case, the record clearly shows that the trial court limited defendant's trial testimony by sustaining objections raised by the State because large portions of the defendant's answers to specific questions—which we note were on a variety of different topics—were wholly irrelevant to the specific questions posed. After four such instances, the court explained to defendant on at least two occasions that he should carefully listen to the questions asked and limit his answers accordingly without volunteering additional information. The court also informed defendant that if his counsel required further elaboration, he would pose a question to elicit that specific testimony.

¶ 24 Contrary to defendant's contentions, the trial court did not prohibit or limit defendant from answering specific questions regarding the circumstances of his interrogation. Indeed, we note that aside from asking defendant a few preliminary questions regarding his interrogation, defendant's counsel did not inquire further into the circumstances surrounding that encounter with police despite defendant's claims that the circumstances surrounding his interrogation was his only means of persuading the jury that the alleged confession was "unworthy of belief and should not be given great probative weight." Instead, the record shows that the court took control of the situation by *sua sponte* limiting defendant's testimony to the question asked when it became clear that defendant was not complying with the court's instructions regarding his narrative testimony. See *People v. Allen*, 222 Ill. 2d 340, 349, 856 N.E.2d 349, 354 (2006) (quoting *People v. Martinez*, 347 Ill. App. 3d 1001, 1004, 808 N.E.2d 1089, 1092 (2004)) (" 'The court must rigorously control its own courtroom procedures and, consistent with the mandates of due process, protect the rights of the parties and the public.' ").

¶ 25 Accordingly, we reject defendant's claim.

¶ 26

III. CONCLUSION

¶ 27 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 28 Affirmed.

¶ 29 JUSTICE COOK, specially concurring:

¶ 30 I concur because I believe defendant got in all the testimony he wanted to. The trial court basically allowed defendant to answer, but warned him to keep future answers short and to the point. The trial court did not strike defendant's answers. Generally, the objection that an answer is not responsive is available only to the questioner. "If the answer is otherwise admissible, sustaining an objection by opposing counsel would be both fruitless and time-wasting, for examining counsel could simply ask a question designed to elicit the exact same information." Michael H. Graham, Handbook of Illinois Evidence § 611.19, at 566-67 (10th ed. 2011). However, opposing counsel may object that the witness is providing a narrative, that in the absence of a pending question, it is impossible to predict and therefore to object in advance to inadmissible evidence.

¶ 31 Some witnesses are not good at answering questions, but that does not mean their testimony should be ignored. "Generally speaking, when hearsay or other inadmissible evidence is unlikely to be included in a response, judges will usually permit narrative questions." Michael H. Graham, Handbook of Illinois Evidence § 611.20, at 567 (10th ed. 2011). The majority states that defendant's answers "were wholly irrelevant to the specific questions posed," but the answers were relevant to the overall issues in the case. Slip order at ¶ 23. "Witnesses are frequently examined in the narrative form, being interrupted at appropriate junctures with specific inquiries to establish additional material or to more fully develop facts included in the witness's answer." Michael H. Graham, Handbook of Illinois Evidence § 611.20, at 568 (10th ed. 2011).