

NOTICE
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2013 IL App (4th) 120303-U
NO. 4-12-0303
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
August 13, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
LORENZO DORRIS,)	No. 10CF1864
Defendant-Appellant.)	
)	Honorable
)	Thomas J. Difanis,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Appleton and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding (1) the trial court's finding that defendant violated the terms of his probation was not against the manifest weight of the evidence, as the evidence established defendant committed harassment by telephone, and (2) the appellate court lacked jurisdiction to consider the \$300 public-defender reimbursement fee, which was imposed in March 2011 after the State's initial petition to revoke defendant's probation was dismissed.

¶ 2 In November 2010, defendant, Lorenzo Dorris, entered a fully negotiated guilty plea to domestic battery with a prior violation of an order of protection (720 ILCS 5/12-3.2(a)(1) (West 2010)), in exchange for a sentence of 24 months' probation. In January 2011, the State filed a first petition to revoke defendant's probation. At a March 2011 hearing, the State withdrew the petition and the trial court dismissed it, ordering defendant to pay a \$300 court-appointed counsel fee.

¶ 3 In April 2011, the State filed a second petition to revoke defendant's probation,

alleging defendant violated the terms of his probation by committing the offenses of telephone harassment (720 ILCS 135/1-1(2) (West 2010)) and harassment by electronic communication (720 ILCS 135/1-2(4) (West 2010)). Following an April 2011 hearing, during which the trial court allowed the State to present the content of text messages and telephone calls defendant's ex-girlfriend received, the court found defendant violated his probation. In June 2011, the court revoked defendant's probation and resentedenced him to 72 months in prison.

¶ 4 Defendant appeals, arguing (1) the trial court erred by allowing the State to present the content of the text messages defendant's ex-girlfriend received and (2) the \$300 court-appointed counsel fee must be vacated because the court failed to hold a hearing on defendant's ability to pay the fee. We affirm.

¶ 5 I. BACKGROUND

¶ 6 In November 2010, the trial court sentenced defendant to 24 months of probation after defendant entered a fully negotiated guilty plea to domestic battery with a prior violation of an order of protection. 720 ILCS 5/12-3.2(a)(1) (West 2010). In January 2011, the State filed a first petition to revoke defendant's probation, alleging defendant violated his probation by striking his nephew on the head. At a March 2, 2011 hearing, the State withdrew its petition based on the subject of the petition's failure to appear at the hearing. The court dismissed the petition and advised it was "going to assess court-appointed counsel fees." The court asked defendant's attorney whether defendant was employed, and defendant's attorney indicated defendant held part-time employment. Thereafter, the court assessed a \$300 fee to be taken out of defendant's cash bond. Defendant did not appeal.

¶ 7 On April 18, 2011, the State filed a second petition to revoke probation,

contending defendant violated his probation by committing the offenses of telephone harassment (720 ILCS 135/1-1(2) (West 2010)) and harassment by electronic communication (720 ILCS 135/1-2(4) (West 2010)). Specifically, the petition alleged defendant made a series of telephone calls and sent text messages to Bonnie Duckworth, his ex-girlfriend, threatening to physically harm her. Earlier that month, the circuit court granted Duckworth an emergency order of protection against defendant.

¶ 8 A hearing on the State's petition to revoke commenced on April 28, 2011. Duckworth testified she and defendant started dating around December 2010 and she broke up with defendant in the first week of April. Shortly thereafter, around April 9, 2011, Duckworth received a telephone call from defendant in which he told her, "you're going to see, I'm going to mess with that face. I'm going to throw hot oil on your face and burn your face up and you ain't going to be pretty no more." Duckworth testified she recognized defendant's voice as the caller. Over the next eight days, Duckworth also received a series of text messages and phone calls from three different numbers she knew to be defendant's. The prosecutor recited the text messages Duckworth received, asking Duckworth to confirm the content of the messages. Defendant entered a continuing objection to the messages based on foundation, which the court overruled.

¶ 9 According to Duckworth, on April 11, 2011, defendant called and threatened to burn her house and her face. Duckworth recognized defendant's voice as the caller and recognized the number as belonging to defendant. Defendant also indicated he was going to send someone to Duckworth's workplace. Duckworth made multiple reports to the police regarding defendant's calls and text messages.

¶ 10 Brian Ahsell, an officer with the Champaign police department, testified on April

16, 2011, he went to Duckworth's place of employment, the County Market in Champaign, Illinois, to respond to Duckworth's report of telephone harassment. As Ahsell was speaking with Duckworth, the County Market phone line rang. Duckworth answered the phone, and, when Ahsell whispered, "is it him[?]" Duckworth nodded. Duckworth gave the phone to Ahsell, who identified himself to the person on the other end of the phone line. In response, the voice on the other end of the line said "why the fuck is that Bitch calling the police?" When Ahsell explained Duckworth had shown him the text messages, the person Ahsell was speaking to replied, "you can't prove anything. I know my texts are off." The person also stated, "tonight I'll give that Bitch something to call the police about." On cross-examination, Ahsell acknowledged he did not ascertain from the phone companies to whom the three numbers from which Duckworth received messages were registered.

¶ 11 Steven Sharf, an Urbana police officer, testified on April 16, 2011, he took Duckworth's report for telephone harassment. Sharf described Duckworth as "worried." Duckworth provided Sharf a phone number from which calls were originating, and Sharf called the number and left a voicemail message. A couple minutes later, Sharf received a message reporting that defendant had called the Department for Sharf. Sharf again called the phone number Duckworth had provided him, and defendant answered and identified himself. During the call, defendant became upset and started using obscenities.

¶ 12 Defendant testified Duckworth wanted defendant to leave his wife, Katina Moore, and Duckworth became upset when defendant told her he wanted to try to work things out with Moore. According to defendant, Moore sent the text messages to Duckworth. Defendant denied sending any threatening text messages.

¶ 13 On this evidence, the trial court found defendant violated his probation in that "he committed the offenses of telephone harassment, or harassment by electronic communications." In June 2011, the court revoked defendant's probation and resented him to 72 months in prison. In December 2011, defendant filed a motion for a new hearing or to reconsider sentence, which the court denied following a March 2012 hearing.

¶ 14 This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 On appeal, defendant argues (1) the trial court erred by allowing the State to present the content of the text messages Duckworth received, and (2) the \$300 court-appointed counsel fee must be vacated because the court failed to hold a hearing on defendant's ability to pay the fee. We address defendant's arguments in turn.

¶ 17 A. Whether the Trial Court Erred by Allowing the State To Present the Text Messages

¶ 18 Defendant first asserts the trial court erred by allowing the State to present the content of the text messages Duckworth received. Specifically, defendant claims those messages were not properly authenticated through telephone records to prove the numbers from which the messages were sent belonged to defendant. Further, defendant contends the State did not prove defendant authored the text messages.

¶ 19 Probation revocation proceedings are considered noncriminal, and the defendant is entitled to fewer procedural rights than a defendant in a criminal trial. *People v. Goleash*, 311 Ill. App. 3d 949, 955, 726 N.E.2d 194, 198 (2000). Accordingly, the State need only prove its allegations that a defendant violated a condition of probation by a preponderance of the evidence. *Id.*; 730 ILCS 5/5-6-4(c) (West 2010). This court will not disturb a trial court's decision in a

probation revocation proceeding unless it is against the manifest weight of the evidence. *People v. Williams*, 303 Ill. App. 3d 264, 267, 707 N.E.2d 729, 731 (1999).

¶ 20 Initially, the State posits because defendant failed to include his contentions about the text messages in his posthearing motion, defendant has forfeited review of those contentions on appeal. We agree. See *People v. Turner*, 233 Ill. App. 3d 449, 452, 599 N.E.2d 104, 107 (1992) (concluding the rule that a defendant must raise an objection both at trial and in a written posttrial motion "must logically be applied to probation revocation proceedings."). Pursuant to the plain-error doctrine, we may consider unpreserved claims of error only where a clear or obvious error occurred and (1) the evidence is so closely balanced that the error alone threatened to tip the scales of justice, or (2) the error is so serious that it affected the fundamental fairness of defendant's trial. *People v. Piatkowski*, 225 Ill. 2d 551, 565, 870 N.E.2d 403, 410-11 (2007).

¶ 21 In this case, the evidence was not closely balanced, nor did the allegedly erroneous evidence regarding the text messages affect the fundamental fairness of defendant's hearing because, regardless of the text messages, the State presented sufficient evidence that defendant committed harassment by telephone (720 ILCS 135/1-1(2) (West 2010)), the other offense alleged in the State's petition to revoke.

¶ 22 A person commits the offense of harassment by telephone when he makes a telephone call "with intent to abuse, threaten or harass any person at the called number[.]" 720 ILCS 135/1-1(2) (West 2010). Proper foundation as to how a witness knew a caller's identity must be laid for testimony regarding a telephone conversation. *Cundiff v. Patel*, 2012 IL App (4th) 120031, ¶ 27, 982 N.E.2d 175. The identity of a voice may be authenticated "by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged

speaker." Ill. R. Evid. 901(b)(5) (eff. Jan. 1, 2011).

¶ 23 Here, Duckworth testified she dated defendant from approximately December 2010 until April 2011. On April 9, 2011, and April 11, 2011, a person called Duckworth and threatened to burn her face. Duckworth testified she recognized the voice in both calls as defendant's. In addition, Duckworth testified the phone calls came from phone numbers she attributed to defendant. Thus, the evidence established defendant made two phone calls to Duckworth in which he threatened to burn her. Accordingly, the State proved by a preponderance of the evidence that defendant committed harassment by telephone, which was sufficient to support the trial court's finding that defendant violated the terms of his probation.

¶ 24 Defendant claims defense counsel was ineffective for failing to challenge the text-message evidence in a posthearing motion. However, because we conclude that, irrespective of the text messages, the trial court's finding that defendant violated the terms of his probation is supported by the State's evidence on the harassment-by-telephone charge, defendant cannot establish prejudice sufficient to support his ineffective-assistance-of-counsel claim. See *Strickland v. Washington*, 466 U.S. 668, 687 (1984) (to prevail on allegations of ineffective assistance of counsel, a defendant must show (1) counsel's representation fell below an objective standard of reasonableness, and (2) defendant was prejudiced by counsel's substandard performance).

¶ 25 B. Whether the Court-Appointed Attorney Fee Must be Vacated

¶ 26 Defendant next contends this court should vacate the trial court's imposition of the \$300 public-defender reimbursement fee and remand for a hearing on defendant's ability to pay that fee pursuant to *People v. Love*, 177 Ill. 2d 550, 687 N.E.2d 32 (1997), and section 113-3.1(a)

of the Code of Criminal Procedure of 1963 (725 ILCS 5/113-3.1) (West 2010)). The State responds this court lacks jurisdiction to consider the fee because the court imposed the fee at the March 2, 2011, hearing on the State's first petition to revoke defendant's probation, and defendant did not appeal. We agree.

¶ 27 Illinois Supreme Court Rule 606 (eff. Mar. 20, 2009), provides a notice of appeal is jurisdictional and must be filed within 30 days after the entry of the final judgment appealed. Issues raised on appeal from the revocation of probation "must concern the propriety of the revocation and the sentence imposed." *People v. Bell*, 296 Ill. App. 3d 146, 154-55, 694 N.E.2d 673, 680 (1998).

¶ 28 Here, the record shows the trial court assessed the \$300 public defender fee at the March 2011 hearing in which the State withdrew its first petition to revoke defendant's probation. Defendant did not appeal the imposition of the fee following those proceedings. Although the court's June 2011 judgment order states "Defendant is ordered to pay costs of prosecution herein," the order does not establish the court reimposed the \$300 attorney fee. Accordingly, defendant's failure to appeal the \$300 fee within 30 days after it was imposed leaves us without jurisdiction to address the fee.

¶ 29 III. CONCLUSION

¶ 30 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.

¶ 31 Affirmed.