SIXTH DIVISION
DATE: March 27, 2015

No. 1-13-1571

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 C4 41198
	)	
JOHN TRUJILLO,	)	Honorable
	)	Noreen Valeria-Love,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Lampkin and Rochford concurred in the judgment.

O R D E R

¶ 1 ***Held:*** Defendant's conviction is affirmed, where he acquiesced in the trial court's decision to reopen his case to accommodate his request to testify and failed to demonstrate that such procedure resulted in an impermissible shifting of the burden of proof, and failed to prove that his counsel was ineffective for not objecting to this procedure.

¶ 2 Following a bench trial, defendant John Trujillo was found guilty of two counts of aggravated battery of a police officer and sentenced to six years in prison. On appeal, defendant

contends that (1) his fundamental right to testify at trial was compromised because the court, in order to enable the testimony, reopened the case after the initial finding of guilt rather than granting defendant a new trial; (2) the decision to reopen the case for his testimony resulted in an impermissible shifting of the burden of proof to defendant; and (3) his counsel was ineffective for failing to object to such procedure.

¶ 3 Defendant was charged with two counts of aggravated battery of a police officer following a traffic stop on November 6, 2010. Officer Wojciech Porebski testified that about 7:30 p.m. that evening, he was patrolling the area near King Arthur Court in Northlake, Illinois, in an unmarked police car, when he saw defendant driving an Infinity. Officer Porebski contacted the dispatcher, and learned that the license plate on the car matched another vehicle, and that the license of the registered owner, defendant, was suspended, and he had a parole violation warrant.

¶ 4 Officer Porebski effectuated a traffic stop, and as he approached the vehicle, he advised defendant of the reason for the stop and asked him for his license and registration. Defendant was unable to provide him with his driver's license, and Officer Porebski asked him for his name and birth date. Defendant stated that his name was "Joey A. Trujillo." Officer Porebski observed a credit card on the middle console inside the vehicle, and asked to see it; however, defendant refused and attempted to hide the card with his arm. Defendant eventually gave the card to him, and the officer observed the name "John Trujillo" on the card.

¶ 5 Officer Porebski contacted the dispatcher again and asked for the name and date of birth of the registered owner of the car. The dispatcher confirmed that it was John Trujillo, who had a

March birth date. He then returned to the car, and again asked defendant his name and birth date. Defendant said his name was "Joey Trujillo" and started to say that his birthday was in March, but then stated that it was in December.

¶ 6 At that point, Officer Jay Del Rosario arrived on the scene and stood near the front of defendant's vehicle on the passenger side. Defendant stepped out of the vehicle at Officer Porebski's request, but then failed to respond to his request to provide his name and date of birth. Instead, defendant turned around, pushed Officer Porebski in his chest, and started running towards the front of the vehicle, where he ran straight into Officer Del Rosario, and pushed him in his chest. Officer Del Rosario grabbed defendant's shirt, and as Officer Porebski assisted in trying to hold defendant's arms, defendant swung one arm backwards towards him, striking him in the stomach. As the officers continued their attempt to restrain defendant, he struck Officer Del Rosario with his left elbow, and he was finally brought to the ground by a chokehold. Once defendant was restrained, the officers recovered his driver's license, which showed his name, a March birth date, and the suspension.

¶ 7 Officer Del Rosario's testimony regarding this encounter was substantially consistent with that provided by Officer Porebski. The State rested, defendant made a motion for a directed finding, and after the trial court denied that motion, defendant rested. Both parties then presented closing arguments, and the trial court found defendant guilty of both counts of aggravated battery of a police officer.

¶ 8 The court then observed that it had failed to admonish defendant of his right to testify, and the following colloquy ensued:

"[THE COURT]: * * * [Y]ou have a right to testify. * * * I'm going to ask you, at this time, and I'll allow the defense to reopen its case for me to consider any additional evidence it may have. I'm going to ask, at this time, do you wish to testify on your own behalf.

THE DEFENDANT: What does that mean?

THE COURT: It means that you have the opportunity to come up here, swear that you are going to tell the truth; have your lawyer ask you questions and also have the State's attorney ask you questions on cross examination as to your version of the facts.

THE DEFENDANT: Yes, I do.

THE COURT: You do wish to testify?

THE DEFENDANT: Yes.

THE COURT: Okay. Step forward. I'm going to allow Counsel to reopen the case so I could take into consideration his testimony.

[DEFENSE COUNSEL]: Okay."

The court took a short recess to allow defendant to talk to his counsel, and confirmed that he wished to testify on his own behalf. When the case was recalled, the court noted that it had admonished defendant, allowed him to reopen his case, and allowed the State leave to reinstate the charges.

¶ 9 Defendant testified that on the evening of the incident, he was pulled over while driving

his car near Wolf Road and Fullerton Avenue in Northlake, Illinois. Officer Porebski approached him and asked him for identification, and defendant replied that his name was Joey Trujillo. When the officer told him to get out of the car, defendant complied and stepped outside. At that point, Officer Del Rosario was standing at the front right side of the car. Officer Porebski, who was standing closer to defendant, asked him for his birth date, and if his name was John Trujillo. Defendant testified that he lied at first, but then admitted that he was, in fact, John Trujillo, and told him his birth date.

¶ 10 Defendant further testified that he attempted to escape and took two steps to the left of Officer Porebski, who immediately put him in a chokehold and brought him to the ground, while Officer Del Rosario handcuffed him. He denied pushing either officer, but stated that his shoulder could have hit Officer Porebski as he tried to escape. Defendant denied knowing that his driver's license was suspended, but he was aware that the license plates on his car were for a different vehicle.

¶ 11 The State introduced certified copies of defendant's prior felony convictions as impeachment, and following closing arguments, the trial court found defendant guilty of two counts of aggravated battery of a police officer. In doing so, the court noted that the testimony of the police officers was credible, and sentenced defendant to six years in prison.

¶ 12 In this appeal from that judgment, defendant does not challenge the sufficiency of the evidence to convict him, or the length of his sentence. First, he contends that his right to testify at trial was compromised because, when he expressed his desire to do so after the finding of guilt, the trial court reopened the proofs to allow the testimony rather than granting him a new trial.

The State responds that, where defendant acquiesced to the reopening of his case in order for him to testify, he should be precluded from raising this course of conduct as error on appeal.

¶ 13 We initially observe that a trial court has no duty to advise a defendant who is represented by counsel of his right to testify, to inquire whether he knowingly and intelligently waived that right, or to ensure that an on-the-record waiver had occurred. *People v. Smith,* 176 Ill. 2d 217, 234-35 (1997). The record in this case shows that defendant was represented by counsel at trial and had expressed no desire to testify before resting his case, from which it may be inferred that he did not wish to testify on his own behalf at that time. *People v. Collier*, 329 Ill. App. 3d 744, 749 (2002). After the court admonished defendant of his right to testify, however, and questioned him regarding his desire to exercise that right, defendant responded, "yes," and the court offered to reopen the case to allow his testimony (*Collier*, 329 Ill. App. 3d at 749-50). Defendant then took the stand on his own behalf. It is thus clear that defendant was not denied his constitutional right to testify at trial (see *Smith*, 176 Ill. 2d at 234-35), and that he acquiesced in the procedure utilized by the court which allowed him to do so.

¶ 15 Under the doctrine of invited error, an accused may not request to proceed in one manner and then contend on appeal that the course of action was in error. *People v. Carter*, 208 Ill. 2d 309, 319 (2003). Active participation in the direction of proceedings goes beyond mere waiver and becomes an issue of estoppel. *People v. Villarreal,* 198 Ill. 2d 209, 227 (2001).

¶ 16 As stated above, it is undisputed that when the court admonished defendant of his right to testify, defendant expressed his desire to exercise that right. The court then ordered a recess so that defense counsel could discuss the matter with his client, and when the case was recalled,

defendant reaffirmed his wish to testify. The court then reopened the case and vacated its original finding, the State reinstated all charges, defendant testified, and following arguments of counsel, the court found defendant guilty. Under these circumstances, we find that defendant's acquiescence in the trial court's procedure precludes him from raising that course of conduct as error on appeal. *People v. Harvey*, 211 Ill. 2d 368, 385 (2004). Given our determination that defendant invited the alleged error into the proceedings, we decline defendant's invitation to review this issue as plain error. *People v. Hill*, 345 Ill. App. 3d 620, 633 (2003).

¶ 17 Defendant further contends that this court should order a new trial because the trial court's action of reopening the case improperly shifted the burden of proof to him. He argues that "a fact-finder cannot presume that a defendant is innocent if it has already found him guilty." The State contends that defendant has forfeited this issue by failing to object when the trial court reopened his case. We agree.

¶ 18 To preserve an issue for review, defendant must both object at trial and include the alleged error in a written post-trial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Here, defendant not only failed to object when the trial court reopened his case, but acquiesced in the procedure that followed. Accordingly, he has forfeited review of this claim. Defendant, however, asks this court to review this issue under the plain error doctrine. *People v. Naylor*, 229 Ill. 2d 584, 602 (2008).

¶ 19 We find no error in the trial court's actions in this case, and hence no basis for plain error. See *People v. Bannister*, 232 Ill. 2d 52, 79 (2008). Contrary to defendant's assertion, there is no *per se* rule prohibiting a trial court from reopening a case following a guilty verdict. Rather, it is

within the sound discretion of the trial court to reopen the case for further evidence, and, unless that discretion is clearly abused, reversal will not result. *Collier*, 329 Ill. App. 3d at 749. This court has often affirmed convictions where, following a finding of guilty, the trial court vacated its ruling and reopened the case to allow defendant to submit new evidence or to testify on his own behalf (see, *e.g.*, *People v. Greene*, 27 Ill. App. 3d 1080, 1082-1095 (1975); *People v. Gorga*, 396 Ill. App. 3d 761, 767 (1978)). In fact, under certain circumstances, we have found that the trial court errs by *not* reopening the case to permit such testimony (see, *e.g.*, *People v. Johnson*, 151 Ill. App. 3d 1049, 1054 (1987) (finding that denying defendant the opportunity to reopen her case to testify was reversible error)). Here, we find no error by the trial court in reopening the case to allow defendant to testify.

¶ 20 Similarly, defendant has failed to demonstrate how, merely by accommodating his request to testify, the court impermissibly shifted the burden of proof to him. A trial court is presumed to know the law and to apply it properly. See, e.g., *People v. Howery*, 178 Ill. 2d 1, 32 (1997); *People v. Hernandez*, 2012 IL App (1st) 092841, ¶ 41. This presumption is rebutted only where the record shows strong affirmative evidence to the contrary. *Howery*, 178 Ill. 2d at 32. There is no evidence in the record that the court misapprehended the burden of proof when it considered the defendant's testimony in this case. Accordingly, there is no basis for a finding of plain error.

¶ 21 Defendant finally argues, in cursory fashion, that his counsel was ineffective for failing to assert that reopening the case after a guilty verdict would unconstitutionally shift the burden of proof to him. We disagree.

¶ 22 A defendant claiming ineffective assistance of counsel must demonstrate that counsel's performance fell below an objective standard of reasonableness and that the performance prejudiced the defense of his case. *People v. Moore*, 356 Ill. App. 3d 117, 121 (2005), citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984). The record here shows that counsel consulted with defendant during the court-ordered recess regarding his decision to testify, and that, following their discussion, defendant reaffirmed this decision before the court. As stated above, the court was presumed to know that the burden of proof remained with the State throughout defendant's testimony. There is no basis to conclude that defense counsel's determination to advance the wishes of his client in this case amounted to incompetence rather than sound trial strategy. Further, defendant has not alleged how the outcome of his case would have been different had counsel instead objected to reopening the case and insisted upon a new trial. Accordingly, his ineffective assistance claim fails. *People v. Perry*, 224 Ill. 2d 312, 345 (2007).

¶ 23 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 24 Affirmed.