2015 IL App (1st) 134013-U

SECOND DIVISION
March 17, 2015

No. 1-13-4013

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. 12 CR 5421
	)	
SEAN DAILEY,	)	Honorable
	)	William G. Lacy,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE LIU delivered the judgment of the court.
Presiding Justice Simon and Justice Pierce concurred in the judgment.

O R D E R

¶ 1 *Held*: The State proved beyond a reasonable doubt that defendant was the individual who made a call to a 911 communication center where a police officer observed defendant on a cell phone near the time of the call and phone records indicated the call came from defendant's phone number.

¶ 2 Following a bench trial, defendant Sean Dailey was found guilty of felony disorderly conduct and sentenced to 24 months' probation. On appeal, defendant contends that the State failed to prove beyond a reasonable doubt that he was the individual who made a false report of an emergency to a 911 call center. We affirm.

¶ 3 Defendant was charged with felony disorderly conduct. The charge arose out of a call to 911 through the emergency communication center serving the city of Niles on November 5, 2010. The caller indicated that a 50-person fight was occurring at a bar. When officers arrived at the bar, there was no indication that a fight had taken place. Phone records indicated the call came from a phone number registered to defendant.

¶ 4 At trial, Niles police officer Brian Zagorski testified that he was parked in a parking lot in Niles at 2 a.m. on November 5, 2010. A black Chevy Tahoe sped past Zagorski, driving 66 miles per hour in a posted 35 mile per hour zone. Zagorski pulled out of the lot and began to pursue the vehicle, activating his police lights. The Tahoe pulled into a parking lot and stopped. Stopping behind the vehicle, Zagorski exited his car and approached the other vehicle. He asked the driver of the vehicle, defendant, for his license and registration. Defendant informed Zagorski that he was a Chicago police officer. His speech was slurred and Zagorski smelled a strong odor of alcohol coming from the vehicle. He ran defendant's license and verified that he was a police officer. He then offered defendant a "professional courtesy," allowing him to park the vehicle and find an alternate ride home without receiving any citation. Defendant refused Zagorski's offer to drive him home and the officer's offer to call for a cab. Eventually, he stated he would call for a ride, and walked to a motel across the street. At 2:18 a.m., Zagorski moved to a gas station parking lot and continued to observe defendant. Defendant "hovered" around the motel's doorway for two to four minutes. Defendant returned to Zagorski and asked if he could leave. When Zagorski told defendant no, he replied that he would call officers from his own district to drive him home. Defendant walked back to the motel, and Zagorski observed him using a cell phone.

¶ 5 About five minutes after defendant approached him, Zagorski received a dispatch over his radio indicating that a 50-person fight was occurring at Here's Cheers bar located in Niles.[1] He left the gas station and drove towards the bar. Before Zagorski arrived, Officer Scipione radioed that there was "nothing showing" at the bar. Zagorski returned to the motel and found that defendant's car was no longer present.

¶ 6 Niles police officer Anthony Scipione testified that he was on patrol and received a dispatch for a 50-person fight in progress at Here's Cheers bar in Niles in the early morning of November 5th, 2010. When he arrived at the bar, he found two cars in the parking lot. He radioed other officers to slow down as there was "nothing showing." He entered the bar with another officer who had arrived. Inside the bar two individuals sat at the bar while another two played pool. Scipione radioed a "total disregard" to the other responding officers.

¶ 7 Courtney Sasiadek testified that she was working as call taker for the North Suburban Emergency Communication Center which served Niles on November 5, 2010. She received a 911 call at 2:28 a.m. Following the initial call, Sasiadek made several calls back to the same number. The State then entered an audio recording of the calls as well as radio traffic between officers and dispatchers into evidence without objection by defendant[2]. A transcript of the recording was also admitted without objection. As foundation, Sasiadek identified her own voice and the voice of a dispatcher. She testified that the recording accurately reflected her

---

[1] Appellant initially refers to the bar as "Three Cheers" but later refers to it as "Here's Cheers."

[2] Prior to trial, defendant had made a motion *in limine* to exclude the recordings of the calls between officers and dispatchers as hearsay, which the trial court denied. Those calls are not relevant to defendant's claim on appeal.

conversations and that the transcript accurately reflected the conversations heard on the transcript. The first call was comprised of the following:

"Computer: 2:28 a.m.; 41 seconds, November 5, 2010.

Dispatcher: 911, where is your emergency?

Caller: Cheers, it's on Park Ridge, it's ahh, it's a bunch, there is a big fight, it's ahh, a bunch of like young, underage kids who are drinking and —

Dispatcher: Where at?

Caller: — And everyone is doing coke, Cheers.

***

Dispatcher: How many people are involved?

Caller: Like 50.

Dispatcher: How many? 50? Five-zero?"

The first call then ended with a dial tone. Defense counsel objected based upon relevance to any further phone calls being played to the court. The trial court overruled the objection.

¶ 8 Sasiadek then called the number back and the same voice answered and stated, "They are calling me, they are drunk, they are calling me and telling me *** there is a big fight outside." Sasiadek told the person that she had more questions, but the line became disconnected. She again called the number. After a brief conversation, the phone disconnected again. Sasiadek then called the number twice more. No one answered the phone, and she heard a voice mail greeting stating, "Hi, you've reached Sean Dailey with Dailey Protection." The last call on the recording was a man calling into a non-emergency line for the emergency communication center. The individual identified himself as "Sean" and indicated he was returning calls made to that phone.

¶ 8 The parties then presented a stipulation which included that the phone number 773-407-0069 was registered to a T-mobile account in the name of "Sean Dailey"—presumably the same individual as defendant. The stipulation also stated that the number 847-391-5671 is registered to the North Suburban Emergency Communication Center. A call to 911 originated from the 773-407-0069 phone number registered to defendant at 2:28 a.m. on November 5, 2010. Calls from the emergency communication center were made to that number at 2:29 a.m. and 2:30 a.m. At 2:35 a.m. and 2:45 a.m., calls were made from the 773-407-0069 number to the emergency communication center.

¶ 9 The State then rested its case and defendant made a motion for acquittal, which the trial court denied. The defendant rested without presenting any evidence.

¶ 11 The trial court found defendant guilty of disorderly conduct. Defendant filed a motion for a new trial and a motion to reconsider the guilty finding. Neither motion claimed the State failed to identify defendant in court. Defendant then filed a supplement to the motion to reconsider the guilty finding, alleging for the first time that the State failed to provide proper foundation indicating that defendant made the calls in question. The trial court denied both of defendant's motions and sentenced him to 24 months' probation. Defendant appeals.

¶ 12 On appeal, defendant contends that the State failed to present an in-court identification of his voice, and, therefore, failed to prove him guilty beyond a reasonable doubt. He notes that the State presented no witness testimony identifying the voice on the recordings as defendant's. He asserts that the only presented evidence linking defendant to the phone calls was the hearsay statements of the calls themselves. Despite couching his appeal as a challenge to the sufficiency

of the evidence, he appears to argue, additionally, that the State failed to lay a proper foundation for the phone calls and that the calls contained hearsay statements.

¶ 13 The State responds that defendant's argument is not truly a challenge to the sufficiency of the evidence, but a disguised hearsay argument. As such, defendant forfeited the issue by failing to object to the calls as inadmissible hearsay during the trial. The State argues that defendant should be estopped from contesting his identity on appeal because defense counsel's arguments and questions during cross-examination at trial conceded that defendant was the caller recorded. Finally, the State argues that it presented sufficient evidence at trial to prove beyond a reasonable doubt that defendant made the phone call in question.

¶ 14 Initially, we note that the record on appeal is incomplete. An appellant bears the burden of providing a sufficiently complete record "so that the reviewing court is fully informed regarding the issues to be resolved." *People v. Odumuyiwa*, 188 Ill. App. 3d 40, 45, 544 (1989). Defendant has failed to include the transcript for the court's findings or for the separate sentencing hearing held in this case. While a copy of the trial court's finding of guilty was attached to defendant's brief, a document attached to a party's brief cannot be used to supplement the record. *People v. Garvin*, 2013 IL App (1st) 113095, ¶ 23. However, because the record of proceedings includes the transcripts of all evidence heard by the trial court, the record is sufficient to fully inform this court of the information necessary to decide defendant's claim on its merits.

¶ 15 Defendant describes his claim as a challenge to the sufficiency of the evidence presented against him; however, he also argues that the trial court impermissibly relied on hearsay statements and that the call recordings lacked a proper foundation. In order to preserve a claim

for review, a defendant must both object to the error at trial and include the issue in his or her posttrial motions. *People v. McLaurin*, 235 Ill. 2d 478, 485 (2009). Defendant did not object to the foundation laid for the recordings or to the statements recorded as hearsay at trial; therefore, defendant has forfeited the issues on appeal. Defendant does not argue that the plain error doctrine applies, and therefore, he has also forfeited plain error review of the issues. *People v. Hillier*, 237 Ill. 2d 539, 545-46 (2010).

¶ 16 In contrast to defendant's hearsay and foundation claims, a claim that the State failed to prove a defendant guilty beyond a reasonable doubt does not require a contemporaneous objection for preservation. See *People v. Enoch*, 122 Ill. 2d 176, 190 (1988). Due process requires the State to prove each element of a criminal offense beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004), citing *In re Winship*, 397 U.S. 358, 364 (1970). When reviewing the sufficiency of evidence, a reviewing court must decide "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (Emphasis in original.) *Jackson v. Virginia*, 443 U.S. 307, 313 (1979); *Cunningham*, 212 Ill. 2d at 278. A reviewing court will not overturn a guilty verdict unless the evidence is "so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt." *People v. Collins*, 214 Ill. 2d 206, 217 (2005).

¶ 17 Disorderly conduct, as charged in the present case, occurs when an offender "knowingly: *** [t]ransmits or causes to be transmitted in any manner to any peace officer, public officer or public employee a report to the effect that an offense will be committed, is being committed, or has been committed, knowing at the time of the transmission that there is no reasonable ground

for believing that the offense will be committed, is being committed, or has been committed." 720 ILCS 5/26-1(a)(4) (West 2010). In the current appeal, defendant argues only that the State failed to prove that he was the individual responsible for the call to 911.

¶ 18 Even without considering the statements recorded during the phone calls, the State presented sufficient evidence to prove that defendant made the calls in question. At trial, Officer Zagorski testified that he stopped defendant—whom he identified in open court—for speeding. He saw defendant on a cellular phone at some point after he turned off his dashboard camera at 2:18 a.m. and shortly before a radio dispatch alerted him to a 50-person fight at a bar. Sasiadek testified that at 2:28 a.m. she received a call reporting a 50-person fight at a bar. She then proceeded to make several calls back and forth to the calling telephone number. Telephone records were admitted into evidence without objection. These records indicated that a phone registered to defendant's name made a call to 911 at the same time as the call reported by Sasiadek. The records further indicated that calls were made between the phone registered to defendant and the phone belonging to the emergency response center corresponding to the several calls Sasiadek had described. Moments before the calls began, defendant was observed talking on a cellular phone. A trier of fact could reasonably infer that the 911 call at issue was made from the phone in defendant's possession, and thus defendant was the individual who made the call. Viewing the evidence in the light most favorable to the State, a rational fact finder could have found beyond a reasonable doubt that defendant made the initial 911 call.

¶ 19 Defendant argues that his case is "near[ly] identical" to *People v. Williams*, 244 Ill. App. 3d 669 (1993). In *Williams*, the appellate court ruled that the State had failed to prove beyond a reasonable doubt that the defendant had threatened the mayor of Chicago. *Id.* at 674. In that case,

a 911 dispatcher testified that she could identify the defendant's phone number on her computer screen and called back the number to confirm it. *Id.* at 673. An expert witness was called, but was unable to establish that the voice on a recording of the call was defendant's. *Id.*

¶ 19 *People v. Williams* is distinguishable from the instant case. In *Williams,* a telephone communications expert testified that defendant's particular cordless phone and network setup was susceptible to erroneously indicating that one number was placing a call, when in fact a different phone was responsible. *Id.* at 671. There was also evidence in *Williams* that the call from the defendant's number was made while the defendant was being held in custody. *Id.* at 673. In the more than two decades since *Williams*, the ability to determine a call's origin has improved, along with the court's reliance on such evidence. See, *e.g.*, *People v. Caffey*, 205 Ill. 2d 52, 95 (2001). Furthermore, in the present case, no expert evidence was presented indicating that defendant's phone was susceptible to erroneous identification by the 911 computers, nor was there evidence that calls had been made from the number when defendant could not have made them. Finally, unlike in *Williams*, a witness observed defendant talking on a phone around the time that the call was made. Given the factual distinctions, we find *Williams* to be inapposite to the current case.

¶ 20 For the foregoing reasons, we find the State proved beyond a reasonable doubt that defendant was the individual who placed the offending call to 911. There was also ample evidence that the caller knowingly made a false report of a fight. Accordingly, we affirm the judgment of the circuit court of Cook County.

¶ 21 Affirmed.