2015 IL App (3d) 140674-U

Order filed December 14, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-14-0674 Circuit No. 13-CF-1757
KENNETH A. GRNACEK,	)	
Defendant-Appellant.	)	Honorable Edward Burmila, Jr., Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Carter and Lytton concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant was not denied due process of law. Nothing alleged by defendant is sufficient to support his claims of vindictive prosecution, judicial impropriety, or a violation of his sixth amendment rights. We affirm the trial court's ruling.

¶ 2 In April 2014, a Will County trial court convicted defendant, Kenneth Grnacek, of aggravated battery (720 ILCS 5/12-3.05 (West 2014)) and sentenced him to 12 months' probation, 75 hours of community service, and costs. Defendant appeals, arguing he was denied due process of law by way of: (1) prosecutorial vindictiveness; (2) judicial impropriety; and (3) a

denial of his sixth amendment rights during the examination of a witness. We affirm the trial court's ruling.

¶ 3 BACKGROUND

¶ 4 In February 2013, the State charged defendant with battery (720 ILCS 5/11-6(a) (West 2012)), a misdemeanor offense. The charges derived from a physical altercation between defendant and a fellow bar patron, Caryn Miller, on Christmas Eve, 2012. Defendant punched Miller in the mouth after Miller approached him from behind while defendant was engaged in a heated conversation with a bar employee.

¶ 5 After a series of continuances and plea negotiations, the State filed a felony charge of aggravated battery against defendant in August 2013. This was explicitly a direct result of defendant's refusal to accept a plea deal from the State in which he was offered supervision as his punishment. In April 2014, defendant waived his right to a jury trial and the parties proceeded with a bench trial. Miller was under subpoena to appear for the State at trial, but not yet present.

¶ 6 Kiley Murphy testified as the State's first witness. She said she was a bartender at the Korner Keg, a bar in Braidwood, Illinois, on the night in question. Murphy stated that she took a food order from defendant after he had been there for approximately an hour and a half. Murphy testified that defendant eventually began to act rude toward her, and the two engaged in a brief exchange of insults before she ordered him to leave the bar. Murphy said defendant then stood up and grabbed his food to leave. As he did this, she saw Miller walk behind defendant and tell him he needed to leave. Then she saw defendant punch Miller in the mouth. Murphy stated that defendant's punch was unprovoked and that Miller did not make any physical contact with

defendant prior to being struck. She said that by the time the police arrived, defendant had left the bar.

¶ 7 On cross-examination, defense counsel questioned Murphy's recollection about the owners of the bar being present earlier in the night and whether she later told one of the owners that defendant looked surprised, as if he had been grabbed, shortly before punching Miller. Murphy denied saying that to the owners or having any recollection of seeing them earlier in the evening. Defense counsel also asked Murphy about her then-current status as an inmate at the Will County jail. The State objected. Defense counsel argued that Murphy's incarceration for sale and possession of heroin spoke to her credibility since she was a heroin addict. The court agreed that heroin addiction does speak to a witness's credibility but asserted that the heroin use must be active, not in the past, in order to be admissible. The parties were given time to research the issue after stipulating to the admission of a certified copy of Murphy's conviction for theft into evidence.

¶ 8 After court resumed the next day, defense counsel conceded that Murphy had been in jail for approximately six weeks and was, therefore, not currently using heroin. As an offer of proof, defense counsel stated that he had talked to the witness and she conveyed to him that she was ineligible for a particular type of drug treatment (TASC) but would participate if allowed. Defense counsel thought this was sufficient evidence to conclude the witness was a heroin addict and therefore her heroin use was admissible for impeachment purposes. The trial court did not allow defendant's attempted impeachment of Murphy based upon her heroin use.

¶ 9 On redirect, the State inquired how many alcoholic drinks Murphy saw defendant consume at the bar that night; defense counsel objected. The trial court overruled defendant's objection and Murphy testified that defendant had several drinks at the bar before the incident.

The State further solicited from Murphy her opinion as to whether defendant was under the influence of alcohol. Defense counsel again objected, arguing that the line of questioning was beyond the scope of cross-examination. The trial court conceded the question was beyond the scope of cross-examination, but overruled the objection, noting that defense counsel had questioned the witness's ability to recollect events and the State was therefore entitled to rehabilitate the witness. Murphy testified that her observations led her to conclude that defendant was under the influence of alcohol. Defense counsel attempted to discredit Murphy's recollection on this issue on recross-examination.

¶ 10 Officer Schumacher of the Braidwood police department was the next witness for the State. He testified that he was dispatched to the bar to address the dispute. On scene, he observed Miller with a bloody lip and took statements from the relevant parties. On cross-examination, Schumacher testified that it was apparent to him there was "plenty of alcohol involved."

¶ 11 The State then advised that its next witness, Miller, although under subpoena, was not present in court. The prosecutor explained that Miller indicated that her child had an oral surgery scheduled during the trial. Miller said she would talk with the doctor about having it rescheduled, but had since ceased communicating with the prosecutor for multiple days. The prosecutor also stated that the Braidwood police department had been unable to locate Miller.

¶ 12 The trial court requested to see the return on the State's subpoena. The prosecutor explained that he did not have the original, but a copy, which the court reviewed. Defense counsel objected, arguing the best evidence rule applied and that the copy was not notarized or sworn to. The trial court stated that a no-bond warrant would be issued for Miller's arrest after taking notice that the witness had been served with the subpoena, had not appeared in court, and

ended further communication with the prosecutor. Defense counsel objected to the arrest warrant before the trial was continued to a date later in the week for further proceedings.

¶ 13 When the trial reconvened, Miller was present, in the custody of the Will County sheriff, and called to testify by the State. Miller testified that she was at the Korner Keg on the night in question. She stated that when she entered the bar, she immediately noticed defendant arguing with a bartender. Miller said that she was employed as a bartender at another establishment and she heard the defendant repeatedly calling the Korner Keg's bartender names before he was told to leave. Defendant testified that she walked by defendant on her way to the bathroom, told him he "should probably go[,]" and was promptly hit in the mouth by defendant. Miller denied touching or shoving defendant before she was struck. After Miller's examination, the trial court ordered her release from custody and the arrest warrant quashed.

¶ 14 Thereafter, the State rested and the defendant moved for a directed finding of acquittal, which was denied by the trial court. Defense counsel called the defendant to testify on his own behalf. Defendant admitted to being at the Korner Keg on the night of the incident and consuming alcohol. Defendant corroborated the exchange of insults and heated discussion between himself and Murphy, which Murphy had testified about earlier in the trial. He further stated that after he felt his left arm being grabbed, he reacted by deliberately hurling his right arm in a punching motion toward an unidentified person behind him. Defendant said he did not hear Miller say anything to him before she grabbed him. He also simultaneously claimed he began to lose his balance on the slippery floor as a result of being grabbed.

¶ 15 On cross-examination, defendant admitted that he was a licensed attorney, admitted to the Illinois bar, mainly practicing in the areas of criminal and traffic law. Defendant also offered the following explanation for the battery:

"I was swinging at whoever was pulling me back so I wouldn't fall so I could – –so I could get them to release my arm, but I didn't know who it was.

I intentionally reacted by throwing a punch in an instant at whoever was pulling me, yes, sir I was trying to defend myself."

Defendant then called the owner of the bar, who testified that while the defendant had a drink with his wife before the incident, he did not appear to be under the influence of alcohol. He also testified that he left the bar and was contacted by Murphy approximately one hour later regarding the incident. The owner stated that Murphy told him that the defendant looked surprised, as if he was being grabbed, just prior to hitting Miller.

¶ 16 After hearing closing arguments, the trial court took the case under advisement. In April 2014, the trial court found the defendant guilty of aggravated battery and continued the matter for sentencing. In August 2014, the court denied defendant's motion for a new trial and sentenced him to 12 months' probation, 75 hours of community service, and costs.

¶ 17 This appeal follows.

¶ 18 ANALYSIS

¶ 19 It is undisputed that defendant battered the victim in a bar, a public place of accommodation. On appeal, defendant argues he was denied a fair trial and was therefore denied due process. Defendant specifically asserts that he was denied due process because: (1) he is the victim of vindictive prosecution; (2) his conviction is the result of judicial impropriety; and (3) his sixth amendment rights were further violated when: (a) he was denied the right to cross-examine Murphy regarding her potential for bias; (b) he was denied the right to cross-examine Murphy regarding her drug addiction; and (c) the prosecution was allowed to reexamine Murphy

beyond the scope of his cross-examination. The State argues that defendant was not denied due process and his sixth amendment rights were not violated during the examination of Murphy. The State further submits that any error the trial court may have committed in limiting defendant's cross-examination of Murphy or expanding the prosecution's examination of her on redirect examination was harmless. We affirm.

¶ 20 I. Defendant's Prosecutorial Vindictiveness Claim

¶ 21 "Claims of vindictive prosecution present questions of both law and fact, and therefore this court reviews the trial court's legal conclusions *de novo*, but will not upset the trial court's findings of fact unless they are clearly erroneous." *People v. Rendak*, 2011 IL App (1st) 082093, ¶ 15 (citing *People v. Hall*, 311 Ill. App. 3d 905, 910 (2000)); see also *United States v. Spears*, 159 F.3d 1081, 1086 (7th Cir. 1998). The burden is on the defendant to produce evidence and persuade the court when seeking to prove a claim of prosecutorial vindictiveness. *People v. Peterson*, 397 Ill. App. 3d 1048, 1055-56 (2010); *People v. Hall*, 311 Ill. App. 3d at 913 (citing *United States v. Benson*, 941 F.2d 598, 612 (7th Cir. 1991), and *United States v. Cyprian*, 23 F.3d 1189, 1196 (7th Cir. 1994)).

¶ 22 Defendant argues he is a victim of vindictive prosecution. Specifically, he cites the United States Supreme Court's *Bordenkircher* decision while alleging that the State is barred from filing more serious charges in response to defendant's refusal to plead guilty to a lesser charge. *Bordenkircher*, however, stands for the exact opposite proposition, explicitly allowing the State to do exactly that. *Bordenkircher v. Hayes*, 434 U.S. 357, 363-65 (1978); *People v. Wilkey*, 202 Ill. App. 3d 756, 759 (1990).

¶ 23 In this case, the State amended a misdemeanor battery charge to an aggravated battery, a felony. The Supreme Court clarified their stance on this issue in *Goodwin* a few years after

Bordenkircher, noting that "just as a prosecutor may forgo legitimate charges already brought in an effort to save the time and expense of trial, a prosecutor may file additional charges if an initial expectation that a defendant would plead guilty to lesser charges proves unfounded." *United States v. Goodwin*, 457 U.S. 368, 380 (1982); *People v. Hall*, 311 App. 3d at 915. This " ' give-and-take' " in the plea bargaining process is not deemed retaliation or punishment by the prosecutor unless the defendant is not free to accept or reject the State's offer. *Bordenkircher v. Hayes*, 434 U.S. at 363; *People v. Moore*, 345 Ill. App. 3d 1043, 1049 (2003). The State does not deny bringing the felony charge against the defendant in response to defendant's refusal to accept the plea bargain containing a lesser charge.

¶ 24 Defendant cites *People v. Walker* (84 Ill. 2d 512 (1981)) in support of his argument that the prosecutor's act violated his right to due process. Specifically, defendant asserts that the prosecutor must point to objective facts before changing his mind. *Id.* at 524. The case at bar is distinguishable from *Walker*. *Walker* is a death penalty case where the defendant entered an unnegotiated guilty plea and was caught off guard when the State suddenly sought the death penalty. *Id.* at 518. Defendant in this case denies guilt and participated in fully informed plea negotiations prior to the change in charges.

¶ 25 In the wake of *Walker*, however, there have also been cases that provide further guidance. See, *e.g.*, *People v. Brexton*, 405 Ill. App. 3d 989 (2010); *People v. Peterson*, 397 Ill. App. 3d 1048 (2010); *People v. Rendak*, 2011 IL App (1st) 082093; *People v. Kun Lee*, 2011 IL App (2d) 100205. We find the case *sub judice* most analogous to *Rendak*. Like the defendant in *Rendak*, defendant in this case makes an accusation of prosecutorial vindictiveness that occurred during pretrial. *People v. Rendak*, 2011 IL App (1st) 082093, ¶ 17. In a pretrial setting, there is no presumption of prosecutorial vindictiveness and the prosecutor retains broad discretion to charge

defendants. *People v. Peterson*, 397 Ill. App. 3d at 1055; *People v. Rendak*, 2011 IL App (1st) 082093, ¶ 16; *United States v. Goodwin*, 457 U.S. at 382-84.

¶ 26 Moreover, much like the defendant in *Rendak*, defendant in this case offers insufficient evidence to support a claim of prosecutorial vindictiveness. *People v. Rendak*, 2011 IL App (1st) 082093, ¶ 17. Defendant's claim is simply unsupported by the record before the court.

¶ 27 Defendant's appellate brief admits he has not met the applicable standard for vindictive prosecution. Appellate counsel states in their brief that "the State's offer plainly shows the *appearance* of prosecutorial vindictiveness." The mere appearance of prosecutorial vindictiveness is insufficient to establish a presumption of vindictiveness. See *Id.* ¶ 18. As discussed previously, defendant bears the burden of both persuasion and production of evidence under the law. *People v. Peterson*, 397 Ill. App. 3d at 1055-56. This means defendant must produce objective evidence that the prosecutor had some animus or retaliatory motive for his or her actions, *and* the objective evidence to show the prosecution would not have occurred without such motives. *People v. Hall*, 311 App. 3d at 913 (citing *United States v. Benson*, 941 F.2d at 612, and *United States v. Cyprian*, 23 F.3d at 1196). Defendant has done neither of these on appeal. Thus, we find the defendant was not denied substantive due process on these grounds during his trial.

¶ 28 Appellate counsel makes much of the fact that defendant's trial counsel referred to the prosecution's plea offer as "extortion" on the record. This does not make it so. "In finding vindictiveness on the part of the prosecution, the court should not consider the obnoxious behavior of one or both of the attorneys who represent the real parties in interest***." *People v. Hall*, 311 Ill. App. 3d at 914.

¶ 29 II. Defendant's Judicial Impropriety Claim

¶ 30 Defendant further claims the trial judge exceeded the bounds of judicial propriety and assumed the role of advocate during the trial. Defense counsel offers several points in making this argument, all of which have a tenuous connection to these accusations—at best. Most notably, defendant claims that the trial judge's issuance of a no-bond warrant for the victim, Caryn Miller, was erroneous because: (1) the proof of service from Miller's subpoena—on which the trial court relied to issue her arrest warrant—was a copy of the document, in violation of the best evidence rule; (2) the return of service reviewed by the court was not notarized; and (3) the trial court's subsequent finding that she was served with the subpoena was therefore erroneous. Defendant ultimately argues the trial court did not actually have personal jurisdiction over Miller. Defense counsel also claims that the trial court assumed the role of prosecutor when it continued the trial and ordered the arrest warrant for Miller.

¶ 31 We review a defendant's denial of due process claims *de novo*. *People ex rel. Birkett v. Konetski*, 233 Ill. 2d 185, 201 (2009). We also review the determination of defendant's standing to bring an issue before this court *de novo*. *Glisson v. City of Marion*, 188 Ill. 2d 211, 220 (1999). Personal jurisdiction is not the focus before issuing an arrest warrant, rather, the trial court's emphasis is on finding probable cause. 725 ILCS 5/107-9 *et seq.* (West 2014); see *People v. Ross*, 132 Ill. App. 3d 553, 556 (1985). In making his arguments related to Miller's subpoena and subsequent arrest warrant, defendant admits that the issuance of the arrest warrant for Miller does not directly violate his due process rights. Defendant maintains, however, that the judge's actions in this regard denied *him* a fair trial. No.

¶ 32 Defendant in this case does not deny that Miller received the subpoena to appear in court, only the sufficiency of the proof offered to prove that fact in court and issue a warrant for her arrest. It is hard to conceive how this process—compelling the victim to come to court and

testify as to the basis for the criminal charges brought against defendant—denied the defendant a fair trial.

¶ 33 Regardless, we need not give the argument further consideration. Defendant, as a third party, does not have standing to object to the sufficiency of service to another person. *People v. DeLaire*, 240 Ill. App. 3d 1012, 1028-29 (1993). Accordingly, we need not address any of defendant's claims stemming from the alleged violation of Miller's due process rights.

¶ 34 Having disposed of the arguments related to the arrest warrant for Miller, we address defendant's claims related to the continuance of the trial in order to await her appearance in court. First, we note that defendant characterized the trial court as "in essence" continuing the trial, but we proceed as if the trial court had, in fact, continued the case.

¶ 35 Judges may continue a cause for trial at a later date by way of their own motion in accordance with Illinois Supreme Court Rule 231(e) (eff. Jan. 1, 1970). The burden of overcoming the presumption that a judge is impartial rests with the defendant. *Eychaner v. Gross*, 202 Ill. 2d 228, 280 (2002). Defendant's accusation ignores the relevant Supreme Court Rule and highlights no facts on appeal to overcome the presumption the trial judge was impartial. Defendant furthermore assumes the trial judge was working on behalf of the prosecution when continuing the case. Trial judges have a vested objective interest in enforcing subpoenas issued to witnesses compelling them to appear in their courtroom. Defendant presumes the trial judge knew the content of Miller's testimony would implicate defendant, and that if he knew it would have adversely impacted the State's case, he would not have issued an arrest warrant for her. We find these presumptions a substantial obstacle in defendant's argument. Defendant's mere accusations are insufficient to overcome the presumption that the trial judge was impartial.

Accordingly, we find that defendant was not denied due process when the trial judge enforced the subpoena against the victim in this case and issued a warrant for her arrest.

¶ 36 III. Defendant's Remaining Sixth Amendment Claims

¶ 37 Lastly, defendant claims his sixth amendment rights were violated when the trial court limited defense counsel's cross-examination of Murphy. Defendant asserts he should have been allowed to ask Murphy about her pending charges and alleged heroin addiction. Defendant further claims his sixth amendment rights were violated when the trial court allowed the State to solicit testimony from Murphy regarding the defendant's alcohol consumption and possible level of intoxication on the night of the incident during redirect examination. The State counters that none of this amounted to a denial of defendant's sixth amendment rights and, assuming it did, any alleged error was harmless, in part, because defendant testified that he committed the crime.

¶ 38 Again, we apply a *de novo* standard of review in determining whether defendant's sixth amendment confrontation rights were violated. *People v. Lovejoy*, 235 Ill. 2d 97, 141-42 (2009). Absent a clear abuse of discretion resulting in manifest prejudice to the defendant, any ruling by a trial judge to limit cross-examination will not be overruled. *People v. Price*, 404 Ill. App. 3d 324, 330 (2010). The same is true for a trial court's ruling on the scope of a redirect examination. *People v. Harris*, 123 Ill. 2d 113, 143 (1988).

¶ 39 Convictions may be used to impeach a witness's character, not arrests. *People v. Moser*, 356 Ill. App. 3d 900, 912-13 (2005). Evidence of an arrest may be admissible if it would reasonably tend to show a witness had an interest, bias, or other motivation to testify falsely. *People v. Foster*, 322 Ill. App. 3d 780, 785 (2000). If the underlying facts of the arrest were irrelevant to the witness's potential for bias or motive to testify falsely, however, trial courts do

not err in prohibiting counsel's examination of the subject. See *People v. Collins*, 366 Ill. App. 3d 885, 892-93 (2006).

¶ 40 As such, the limitations placed on the scope of the cross-examination and redirect examination of Murphy were within the sound discretion of the trial court. Further, given the testimony from the victim and the defendant himself, Murphy's testimony was clearly not the lynchpin of the State's case against defendant. We find any argument that these matters influenced the judge's finding of defendant's guilt unpersuasive. Defendant suffered no prejudice even if the limitations on Murphy's examination were erroneous.

¶ 41 A. Denial of Cross-Examination (Bias and Heroin Use)

¶ 42 Criminal defendants have a right to cross-examine witnesses who testify against them in order to demonstrate the witness's potential interest, bias, or motive to testify falsely. See U.S. Const., amends. VI, XIV; Ill. Const.1970, art. I, § 8; *People v. Harris*, 123 Ill. 2d at 144. This right is limited by the trial court's broad discretion to determine the extent of the scope of the cross-examination. *People v. Price*, 404 Ill. App. 3d at 330.

¶ 43 Defendant asserts that he should have been allowed to ask Murphy whether she had been offered leniency by the State in exchange for her testimony. As the State highlights on appeal, however, defendant forfeited this issue by failing to make an offer of proof at trial. *People v. Shenault*, 2014 IL App (2d) 130211, ¶¶ 12-13 (noting that without an offer of proof regarding the witness's excluded testimony, "it is impossible to determine whether its exclusion could have resulted in any prejudice to defendant."). Furthermore, defendant does not argue plain error, so we need not address this issue further.

¶ 44 Defendant's argument that he should have been allowed to question Murphy regarding her drug addiction in an attempt to discredit her suffers from an identical flaw. Defendant also

failed to make an adequate offer of proof regarding what Murphy would say about her alleged drug addiction. Offers of proof that merely summarize witness testimony in a conclusory manner are inadequate. *People v. Andrews*, 146 Ill. 2d 413, 421 (1992) (citing *Mulhern v. Talk of the Town, Inc.*, 138 Ill. App. 3 829, 834 (1985)). Therefore, Murphy's status as an addict is not apparent from the record. We decline to decide issues based on speculation.

¶ 45 B. Reexamination Beyond the Scope of Cross-Examination

¶ 46 Defendant also claims the State's examination of Murphy on redirect was beyond the scope of his cross-examination and therefore a further violation of his constitutional rights. The State asserts that this was within the scope of defendant's cross-examination because defendant attempted to challenge her ability to recall the events of the night. As with the previous argument relating to Murphy's examination, the State asserts that even if there was error, it was harmless.

¶ 47 Generally, the scope of cross and redirect examinations are limited by the scope of the preceding examination. *People v. Sanchez*, 73 Ill. App. 3d 607, 610 (1979). By and large, there is no error in allowing even inadmissible evidence where the opposing party opens the door to its admission. *People v. Mandarino*, 2013 IL App (1st) 111772, ¶ 28. Upon defendant's objection to the State's line of questioning at trial, the judge admitted the line of questioning was beyond the scope of cross-examination, but allowed the questioning on the grounds that the State was entitled to rehabilitate the witness after an attempted impeachment.

¶ 48 Without additional supporting evidence of intoxication, evidence of alcohol consumption is inadmissible in civil cases. *Sullivan-Coughlin v. Palos Country Club, Inc.*, 349 Ill. App. 3d 553, 561 (2004). In criminal cases, it is erroneous to offer evidence of consumption without further evidence of intoxication. See *People v. Gosse*, 119 Ill. App. 3d 733, 736-37 (1983). It

may constitute reversible error because evidence of even nominal alcohol consumption is considered inflammatory. See *Id.* at 736-37.

¶ 49 Defendant's attempted impeachment of Murphy via her alleged drug addiction may have a tenuous connection to allowing the State to solicit testimony regarding the defendant's alcohol consumption. It was not, however, a clear abuse of discretion by the trial court resulting in manifest prejudice to the defendant, which is required for us to overrule in this instance. *People v. Price*, 404 Ill. App. 3d at 330; *People v. Harris*, 123 Ill. 2d at 143. This testimony was further coupled with her testimony that defendant was also intoxicated, avoiding reversible error.

¶ 50 C. Harmless Error

¶ 51 Criminal defendants are guaranteed a fair trial, not a perfect one. *People v. Bull*, 185 Ill. 2d 179, 214-215 (1998). Even assuming the trial court's limitations on Murphy's testimony during cross-examination and the expansion of the scope of the State's examination of Murphy on redirect examination both violated defendant's rights, these alleged errors were harmless. Witness examination errors are subject to harmless error review. *People v. Patterson*, 217 Ill. 2d 407, 427 (2005); *People v. Kliner*, 185 Ill. 2d. 81, 134-35 (1998). The question before this court in determining whether the alleged constitutional error is harmless is whether it appears beyond a reasonable doubt that the errors did not contribute to the defendant's guilty verdict. *People v. Patterson*, 217 Ill. 2d at 428. Any issues that may arise from the examination of Murphy at trial are, beyond a doubt, not grounds for reversal.

¶ 52 In such cases, we have three possible approaches to measure whether the error was harmless: (1) focusing on the error itself to determine whether it contributed to the defendant's conviction; (2) examining the other evidence in the case to see if it was overwhelmingly in support of defendant's conviction; and (3) determining whether any improperly admitted

evidence is merely cumulative or duplicative of the properly admitted evidence. *People v. Stechly*, 225 Ill. 2d 246, 304-05 (2007) (citing *People v. Patterson*, 217 Ill. 2d at 428, citing *People v. Wilkerson*, 87 Ill. 2d 151, 157 (1981)).

¶ 53 Under all three of these tests, the alleged errors in Murphy's examination were harmless. The alleged errors complained of by the defendant did not contribute to defendant's conviction. True, highlighting Murphy's prior addiction to heroin may have dampened her credibility, but this potential weakening of the State's case is obliterated by the testimony of Miller and the defendant. They both indisputably establish the elements of the crime. Murphy's testimony merely corroborates what defendant and victim testified to and is therefore cumulative.

¶ 54 The State's use of Murphy's testimony regarding defendant's alcohol consumption passes all three tests as well. Whether defendant was intoxicated or not contributes little to his guilt or innocence in this matter and it is cumulative. Defendant himself and his own witness testified that defendant consumed alcohol that night, but denied he was under the influence. The testimony was not pivotal to the State's case and repetitive.

¶ 55 Most importantly, the evidence was overwhelmingly against the defendant in this case. There is no reasonable argument that the evidence was closely balanced. At trial, the judge heard testimony from the defendant himself that he punched the victim in response to being grabbed by the arm from behind. This unreasonable course of action was pursued by defendant in spite of the fact that he is a practicing attorney specializing in criminal law. Accordingly, no reasonable trier of fact could acquit defendant at a retrial, even if the scope of the witness's testimony were adjusted in accordance with defendant's complaints. The result of a retrial would be predetermined unless the second jury was unreasonable. Another trial under such circumstances would violate the harmless-error rule of *Chapman*, which prohibits small errors or

defects that have little to no likelihood to change the outcome of a trial from overturning otherwise valid convictions. *Chapman v. California*, 386 U.S. 18, 22 (1967). It is beyond a reasonable doubt that defendant was found guilty by a trier of fact. Thus, the trial court's conviction stands.

¶ 56 CONCLUSION

¶ 57 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 58 Affirmed.