2015 IL App (4th) 130141-U

NO. 4-13-0141

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
January 22, 2015
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
BRYON K. CHAMP,	)	No. 11CF1103
Defendant-Appellant.	)	
	)	Honorable
	)	Rebecca Simmons Foley,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Presiding Justice Pope and Justice Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's sixth-amendment rights to self-representation and access to the court are not denied where he failed to seek a continuance or advise the trial court he needed assistance in making arrangements to view video evidence disclosed by the State pursuant to discovery.

¶ 2 Following an April 2012 bench trial, defendant, Bryon K. Champ, was found guilty of retail theft (subsequent offense) (720 ILCS 5/16A-3(a) (West 2010)). In June 2012, the trial court sentenced defendant to an extended term of 5 years' imprisonment with 180 days' credit for time served and 1 year of mandatory supervised release (MSR). Defendant appeals, arguing he was denied his constitutional right to prepare a defense because he was not allowed to view surveillance-video evidence prior to trial. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On December 12, 2011, the State charged defendant by information with retail theft (subsequent offense) (720 ILCS 5/16A-3(a) (West 2010)), a Class 4 felony, for the theft of clothing from Walmart.

¶ 5 On December 23, 2011, the trial court entered a pretrial discovery order, requiring the State "to tender, to Defendant's attorney of record, all discovery required by Supreme Court Rule 412" and ordering defendant "to tender to the [State], all discovery required by Supreme Court Rule 413." The trial court further ordered both parties to comply with Rules 411, 414 and 415. Ill. S. Ct. R. 411 (eff. Dec. 9, 2011); Ill. S. Ct. Rs. 414, 415 (eff. Oct. 1, 1971). The State filed its discovery compliance pursuant to Illinois Supreme Court Rule 412 (eff. July 1, 1982), stating it was tendering a list of persons who may be called as witnesses; police reports, which included statements made by defendant; and grand jury minutes. The State noted it had certain unspecified physical evidence "available for inspection and/or copying during reasonable business hours by contacting the undersigned attorney and scheduling a viewing/copying time." At a status hearing on January 24, 2012, defendant's assistant public defender confirmed she received a copy of the surveillance video and "will send an intern down to see [defendant] so that he can see the video" in jail.

¶ 6 In February 2012, defendant requested to proceed *pro se*. Following admonishments, the trial court granted defendant's motion to proceed *pro se* and discharged the assistant public defender.

¶ 7 In March 2012, defendant sent a five-page handwritten letter to Judge Foley raising numerous complaints about his previously-terminated public defender. He specifically complained about her failure to communicate, secure a reduction of his bond, call his parole officer, visit him in jail to show him the surveillance video, and adequately represent him. The

letter also stated: "The video I can't look at because I wrote to [*sic*] a request to Melinda [in] Inmate Services about the video ok. The respond [*sic*] I get back was on this request slip here." Defendant enclosed a copy of the "Inmate Request Form." The request form includes the jail staff's response, which states as follows: "You'll need to write the Sgt. to arrange a time for you to use an attorney room to view it—I'm not sure we have a [digital video disk (DVD)] player to provide—you may have to wait until your attorney arranges a viewing[.]"

¶ 8 On April 24, 2012, the trial court informed defendant and the State it received defendant's *pro se* letter and asked the State if it had a chance to review it. The court then gave defendant an opportunity to raise any issues or concerns he might have. Defendant first informed the trial court that witnesses committed perjury because he never entered Walmart with empty shopping bags. Defendant also raised issues about his prior convictions, lack of communication with his now-terminated public defender, the presumption of innocence, "motion in a non-jury trial," double jeopardy, the right against self-incrimination, and "the form of the oath." (We note defendant did not inform the trial court about his inability to view the surveillance video in jail.) The trial court addressed each of defendant's concerns and asked if there was anything else. Defendant indicated he was ready to proceed to trial.

¶ 9 The following evidence was adduced at defendant's bench trial. We set forth only those facts pertinent to our disposition of the specific issues on appeal. Stephen Norton testified he was working as an asset-protection associate at Walmart on December 10, 2011. Around 5 p.m., Norton was in the women's department when he noticed defendant taking Walmart shopping bags from an empty cash register. Norton followed defendant through the store. He observed defendant select multiple items in the men's department and place them in his cart. Norton then followed defendant to the domestics department, where he watched defendant put

the merchandise into the Walmart shopping bags. Following the concealment, defendant pushed his shopping cart with the concealed merchandise toward the front of the store. As soon as the door greeter left his station, defendant exited the store without paying for the merchandise. Norton, who was joined by Jonathan Kristensen and Emanuel Hernandez (also asset-protection associates), confronted defendant inside a vestibule and blocked him from exiting the vestibule. Norton identified himself as store security and asked defendant to return to the store. Defendant complied and followed Norton and Kristensen to the asset-protection office.

¶ 10 Norton further testified Walmart had a security-surveillance system and video footage of the theft was compiled onto a single DVD. The State moved to admit the DVD into evidence and the trial court asked defendant if he objected. Defendant replied, "If it's showing everything that it's supposed to show, no, I'm not objecting to it; but if it's not showing everything that it's supposed to show, yes, I object to it." The trial court indicated it did not understand the basis for defendant's objection and encouraged him to renew his objection once the video was played.

¶ 11 The first portion of video shows a black male pushing a shopping cart with merchandise into a side aisle. He is wearing a black beanie hat, an oversized gray and white winter jacket, black pants, and white shoes. The next portion of video shows the man emerging from the side aisle pulling the shopping cart containing the now bagged merchandise. Video from cameras near the front of the store shows defendant circle around the front of the cash registers while looking at the exit. The next portion of video shows the door greeter talking with a customer. Shortly after the door greeter leaves his post, defendant exits the store by pushing the shopping cart with the bagged merchandise through the security towers and into the vestibule. Approximately two seconds later, Norton, Kristensen, and Hernandez approach

defendant and block him from exiting the vestibule. Video from inside the vestibule shows the confrontation. After defendant is stopped, he walks away from the shopping cart and goes back into the store with Norton, Kristensen, and Hernandez. The surveillance video does not show defendant entering the store with empty shopping bags, nor does it show the actual concealment.

¶ 12 The State moved to admit the surveillance video into evidence and defendant renewed his objection. He argued:

> "[T]hey don't have me coming through the front door with the shopping cart. He lied and said that—well, what I'm reading, he said I entered with empty bags. But it's not showing me doing none of that. That's what I don't understand. And, third, he did not see me putting nothing in no bags on no video."

The trial court overruled defendant's objection because the witness testified the video fairly and accurately depicts the events that took place. The court further noted the fact the video does not show defendant enter the store or place merchandise in shopping bags is not a reason to exclude the evidence.

¶ 13 Jonathan Kristensen testified and corroborated Norton's testimony. Officer Mark Ashmore, a Bloomington police officer, testified he was dispatched to Walmart in response to a retail theft and arrested defendant.

¶ 14 After Officer Ashmore testified, the State rested. The trial court found defendant guilty of retail theft. In June 2012, the court sentenced defendant to an extended term of 5 years' imprisonment with 180 days' credit for time served and 1 year of MSR. In January 2013, the trial court denied defendant's posttrial motions.

¶ 15 This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 Defendant contends his constitutional rights to present and conduct his own defense were violated because he was not allowed to view the surveillance-video evidence prior to trial. Defendant asks this court to reverse his conviction and remand the case for a new trial. The State argues defendant forfeited the issue. We agree. However, we choose to address defendant's arguments on the merits. *People v. Raney*, 2014 IL App (4th) 130551, ¶ 33, 8 N.E.3d 633.

¶ 18 We utilize the *de novo* standard of review when determining whether an individual's constitutional rights have been violated. *People v. Burns*, 209 Ill. 2d 551, 560, 809 N.E.2d 107, 114 (2004). Under the *de novo* standard of review, the trial court's decision is afforded no deference. We first consider whether defendant has established a violation of his constitutional rights. *People v. Mitchell*, 353 Ill. App. 3d 838, 844, 819 N.E.2d 1252, 1258 (2004).

¶ 19 In *California v. Trombetta*, 467 U.S. 479, 485 (1984) cited by defendant, the Supreme Court notes: "Under the Due Process Clause of the Fourteenth Amendment, criminal prosecutions must comport with prevailing notions of fundamental fairness. We have long interpreted this standard of fairness to require that criminal defendants be afforded a meaningful opportunity to present a complete defense." Beyond the due-process guarantee of the fourteenth amendment, the sixth amendment entitles a criminal defendant to conduct his own defense. *Faretta v. California*, 422 U.S. 806, 818 (1975). In addition, evidence that is material to a defendant's guilt or relevant to the potential punishment must be disclosed. *Brady v. Maryland*, 373 U.S. 83, 87 (1963). Even in the absence of a request for such evidence, exculpatory evidence which raises a reasonable doubt concerning defendant's guilt must be turned over.

Thus, denying a self-represented defendant access to evidence or otherwise unreasonably hampering the preparation of his defense may infringe upon defendant's rights to due process, self-representation, and a fair trial. See *United States v. Trapnell*, 638 F.2d 1016, 1029 (7th Cir. 1980). We consider defendant's claims in light of these fundamental principles.

¶ 20 Defendant attempts to craft on appeal, from the facts in this matter, an argument that his constitutional rights have been violated. However, our assessment shows otherwise. In this case, defendant exercised his constitutional right to waive his right to counsel and proceed *pro se*. Thus, it became his responsibility to take the necessary steps or seek appropriate assistance, if needed, to view the video in question.

¶ 21 Although defendant submitted an inmate request form to jail officials, nothing in the record shows he followed the jail's directions "to write the [Sergeant] to arrange a time *** to use an attorney room to view [the surveillance video]." The record also shows defendant failed to ask the trial court to grant him access to the jail's facilities *(e.g.*, the attorney room) or equipment to play the surveillance video. We need not consider whether the jail would ultimately have been able to assist defendant in viewing the video because defendant's apparent failure to follow through deprived jail officials of that opportunity.

¶ 22 While defendant's *pro se* letter complained about his public defender's failure to visit him in jail and show him the video, his letter never asked for a continuance or requested leave to view the video. Immediately prior to trial, in the presence of both sides, the trial court acknowledged it received defendant's letter and asked if he wished to address any concerns. Defendant could have requested a continuance or an opportunity to view the video at that time, but he failed to do so, instead pushing forward to trial. Here, the court never had a chance to rectify defendant's alleged inability to view the surveillance video before the evidence was

presented at trial. The court could have granted such a request by ordering access to the State's video-playing equipment. See, *e.g.*, *People v. Partee*, 157 Ill. App. 3d 231, 249, 511 N.E.2d 1165, 1177 (1987) (pretrial detainee was allowed adequate access to law library facilities where the court ordered access through the prosecutor's law library on dates he was brought before the court). Defendant's sixth-amendment rights of self-representation and access to the courts are not violated because he did not complain about inadequate access to video-playing equipment or seek a continuance to allow him more time to prepare his defense. See *People v. Ellison*, 2013 IL App (1st) 101261, ¶ 56, 987 N.E.2d 837 (defendant's constitutional rights to self-representation and access to the courts are not violated where he did not complain about inadequate access to the law library or seek a continuance). In this matter, defendant has not cited a single instance where he claimed he did not have enough time for preparation or was forced to proceed.

¶ 23 Defendant's contention he was not allowed to view the entire video prior to trial is true to the extent that he failed, when given the opportunity to do so, to apprise the trial court of his needs. Beyond defendant's failure to act, the record is clear—video showing defendant entering Walmart with bags did not exist. Similarly, defendant's concealment of the items was not captured on video. During the trial, the State did not contest either of these issues. Instead, the State offered witness testimony to explain the absence of such video.

¶ 24 The absence of video showing defendant entering Walmart with bags or concealing merchandise was the bedrock of defendant's case. He rightfully challenged the credibility of the State's witnesses based on these facts. However, defendant incorrectly believed the State's inability to produce video of him entering Walmart with empty bags or of him concealing merchandise would defeat the charge against him. The trial court was aware of these

deficiencies and addressed them during the trial. The court noted the inconsistency between the grand jury witness who testified defendant entered Walmart with empty bags and the trial witness who testified defendant retrieved empty bags once in the store. In ruling on defendant's objection, the court determined the inconsistency went to the appropriate weight to be given to the evidence, not admissibility of the evidence. The court chose to believe the security officers, who testified that although the concealment occurred in an area of the store lacking a video camera, they personally observed defendant, once in the store, retrieve empty bags and eventually conceal items within those bags.

¶ 25 Finally, defendant appears to argue a discovery violation under *Brady—i.e.*, the remaining video footage is exculpatory evidence that was improperly withheld. However, defendant makes only a conclusory assertion and fails to develop any meaningful supporting argument. An appellant must present clearly defined issues to the reviewing court, supported by relevant authority: this court is "not simply a repository in which appellants may dump the burden of argument and research." *People v. Chatman*, 357 Ill. App. 3d 695, 703, 830 N.E.2d 21, 29 (2005). Lack of argument development aside, an analysis on the merits reveals defendant fails to establish a violation.

¶ 26 The record demonstrates the state complied with discovery requirements and at no time prior to this appeal was there any suggestion otherwise. Defendant's written inmate request form to the jail suggested the video had been provided to him by his former attorney and placed in his property at the jail. Defendant's inmate request consisted of asking for assistance in being able to watch the video, not to obtain the video. The focus of defendant's claim is the State's failure to produce video of him entering Walmart with bags or video of him placing merchandise in Walmart bags. At the same time, defendant maintains video of these events does not exist

because he neither entered Walmart with bags nor placed merchandise in Walmart bags. However, if such video evidence did exist it certainly would not be exculpatory.

¶ 27 Considering the State asserted defendant committed the retail theft by retrieving Walmart bags after entering the store, the lack of possession of bags when entering the store in no way exculpates defendant. If video of defendant's placement of the items in Walmart bags does exist, that too would fail to qualify as exculpatory evidence. In addition, as previously mentioned, the record establishes video of defendant placing merchandise in the Walmart bags was not captured. The State cannot produce what does not exist.

¶ 28 Given defendant's inability to show he was prevented from viewing the video or that the State failed to disclose the video, he has failed to establish a violation of his constitutional rights. Thus, further analysis is unnecessary.

¶ 29 III. CONCLUSION

¶ 30 For the reasons stated, we affirm defendant's conviction for retail theft. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2012).

¶ 31 Affirmed.