2015 IL App (4th) 130325-U

NO. 4-13-0325

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
May 6, 2015
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Livingston County
JEREMY COOPER,	)	No. 11CF307
Defendant-Appellant.	)	
	)	Honorable
	)	Jennifer H. Bauknecht,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Presiding Justice Pope and Justice Turner concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court violated defendant's constitutional right to self-representation by conducting the questioning of the witnesses during the hearing on the State's motion *in limine* without input from defendant.

(2) The trial court violated defendant's constitutional right to due process by making *sua sponte* objections during defendant's *pro se* questioning of witnesses during the jury trial and otherwise not allowing defendant the opportunity to present a defense while demonstrating what could be perceived as impatience and frustration with defendant in the jury's presence.

¶ 2 Defendant, Jeremy Cooper, was convicted after a jury trial in the circuit court of Livingston County of two counts of aggravated battery upon a correctional officer. Defendant appealed, claiming the trial court had violated his constitutional right to self-representation when the court prohibited him from questioning witnesses at the hearing on the State's motion *in limine*, which sought to bar the testimony of numerous witnesses as irrelevant. Defendant also claimed on appeal the court made improper *sua sponte* objections during his cross-examination

of witnesses, thereby effectively abandoning "its role as a neutral arbiter of fact." We agree with defendant's claims and reverse the trial court's judgment.

¶ 3 I. BACKGROUND

¶ 4 In October 2011, the State charged defendant, an inmate at Pontiac Correctional Center (Pontiac), with two counts of aggravated battery (720 ILCS 5/12-4(b)(18) (West 2010)), alleging he threw an unknown liquid substance on correctional officer Todd Punke, striking him in the head and body, while Punke was performing his official duties. Initially, the trial court appointed the public defender to represent defendant but, at an April 2012 pretrial hearing, defendant informed the court he wished to proceed *pro se*. The court opined defendant's decision to proceed *pro se* made "no sense."

¶ 5 On the day scheduled for jury trial, the State orally presented a motion *in limine*, requesting the trial court bar 10 witnesses subpoenaed by defendant, whose testimony, according to the State, would be irrelevant to the issues presented at trial. The State suggested none of the witnesses were present when the alleged incident occurred and "had absolutely nothing to do with the assault. They all arrived well afterwards." According to the State, the witnesses were involved with the "extraction of the defendant [from his cell] after the assault." Defendant, on the other hand, argued the witnesses were indeed relevant to prove his defense that the assault never happened. Defendant claimed the assault "was made up in order for them to come to [his] cell and beat [him] up because [he] got into it with the officer." Without the witnesses, defendant claimed, he could not effectively establish his defense. The court allowed defendant the opportunity to summarize the anticipated testimony of the requested witnesses. After discussing the relevance of the anticipated testimony, the court advised it would "see as the

defense develops" before ruling on the State's motion *in limine*. The parties proceeded to select a jury.

¶ 6 The trial began with the State's first witness, correctional officer Todd Punke, who described the incident as follows. On June 8, 2011, at approximately 8:40 a.m., he escorted a nurse, Tracy Kjellesvik, down the gallery as she dispensed medication to the inmates. When they arrived at defendant's cell, Punke announced their arrival and advised defendant it was time for his medication. Punke could see defendant in the observation window and saw him approaching his cell door. Punke opened the cuff hatch and saw a juice or milk carton come out of the hatch. Defendant threw the contents of the carton on Punke. Punke got hit on his face (in his eye), chest, arm, and leg with a substance that smelled like feces and urine. Punke shut the hatch and escorted Kjellesvik off the gallery. He tried to flush his eye with water and rinse the rest off his body. He went to the health care unit for medical attention, complaining the substance burned his eye.

¶ 7 On cross-examination, defendant extensively questioned Punke on the circumstances leading to the assault. Defendant attempted to pin Punke down on every detail.

¶ 8 After the lunch break, outside the presence of the jury, the trial court again questioned defendant about the anticipated testimony of the 10 witnesses he had subpoenaed. The court warned defendant the trial would not serve as "a fishing expedition," advising defendant he should be aware of the substance of the anticipated testimony. When defendant explained what he intended to prove with the witnesses' testimony, the court questioned the relevance of that anticipated testimony. Eventually, the court requested the presence of one of the witnesses and conducted its own examination. Dale Scrogum testified he was on duty as a lieutenant at the time of the assault. Officer Punke notified him of the assault, so Scrogum, along

with correctional officers Scoles and Tangman went to defendant's cell and asked him to "cuff up." Defendant complied with the officers' instructions to kneel as leg irons were placed around his legs. As defendant was being lifted from a kneeling position, he spit on Scoles. As Scrogum was trying to control defendant in the cell, he "put him against the wall." In the process, defendant split his lip. Defendant received medical care. The court asked Scrogum whether he "observe[d] any evidence pertaining to the allegations" of an assault on Punke. Scrogum said he smelled fecal matter, but did not recall seeing a milk carton. Defendant interrupted the court's questioning, pointing out that Scrogum, in fact, had not observed a liquid on the floor. The court stated:

> "Don't interrupt again or you can spend the rest of the trial in the holding cell, and then you are going to be giving up your right to confront and cross-examine the State's witness. I will give you an opportunity when I'm ready."

¶ 9 The trial court asked Scrogum if he had observed any liquid substance on the floor. He said he had. The court excused Scrogum without giving defendant an opportunity to question him and asked for Officer Anthony Scoles. Defendant questioned the process, saying "I've never heard of like this process. Can I ask what are we doing?" The court responded that it was trying to ascertain the nature of the witnesses' anticipated testimony. The court questioned Scoles in the same manner. Scoles said he saw the liquid on the floor, but no carton. The court asked for Officer Gregory Tangman. After a similar procedure, Tangman said he did not recall seeing a liquid on the floor.

¶ 10 After questioning, the trial court granted the State's motion *in limine* with respect to Officers Scrogum, Scoles, and Tangman, stating "[t]hey have nothing relevant to testify to." The following exchange occurred:

> "THE COURT: This is not your chance to argue. This is my ruling. My ruling is that their testimony would be duplicative. The State's not offering to call them, and they would have nothing that would assist in the defense so those three are not coming in.
>
> In terms of—
>
> THE DEFENDANT: Don't make any sense.
>
> THE COURT: In terms of Brown, Officer Brown, what do you believe he's going to testify to?
>
> THE DEFENDANT: It really don't matter. He can't, if you're not going to let Scoles and Tangman in, we just bring him in here and ask him a million questions and just tell him the answers to it too.
>
> THE COURT: I didn't tell any of them answers.
>
> THE DEFENDANT: Every last one of them, you just asked me if I brought them on the stand and asked them about a milk carton, I told you they was going to say they didn't see it. You brought all three of them in here. All three of them said they did not find a milk carton.
>
> THE COURT: Correct. But they also all three testified that they found a liquid substance.

* * *

THE DEFENDANT: You're not giving me a fair trial.

THE COURT: That's not true. I'm bending over backward trying to give you a fair trial.

THE DEFENDANT: So why couldn't I just call—

THE COURT: Because I'm not going to waste the jury's time on evidence that's not admissible. You are missing the point."

¶ 11 After further discussion and argument with defendant, the trial court allowed Officer Snyder and Stephanie Schertz to testify, but otherwise, granted the State's motion *in limine*. The court explained its ruling as follows:

"Yeah. I want to be clear for the record. Thank you. The issue I think is relevance. [Defendant] is trying to argue that there was this fight; and even if I assume for argument's sake for purposes of the record that this fight took place as [defendant] is saying that it did, to my understanding based upon my questioning of the witnesses as well as the argument from [defendant], there is not one witness that can come in to testify that the defendant was framed. He may certainly argue that he was framed; but if he's going to bring witnesses in, those witnesses need to be testifying that he was framed.

The fact that there was a fight that took place afterwards, beforehand or whatever, this fight has nothing to do with the alleged staff assault that is the basis for the instant charges.

So just to be clear, we're not having a mini trial on whether you were beat up or not beat up or what injuries you sustained as a result of being beat up. The issue in this case is whether there was a staff assault; and if you want to argue that you are being framed, I will allow you to argue that; but the witnesses that you bring in to testify are going to have to support and be able to say that you were framed. If they cannot, their testimony is not relevant to the underlying charge of the aggravated battery staff assault on Officer Punke.

So I am finding that the following witnesses do not have relevant testimony to offer: Angus, Scrogum, Brown, DeLong, Scoles, Tangman, Tilden, Ojelade.

Insofar as Officer Snyder can testify concerning the missing badge, I will allow him to testify as that's been brought up in the case and there's an evidence discrepancy; and I will allow Stephanie Schertz to testify as to the discrepancy between the times that Officer Punke testified he had his shirt on or off or whatever it is.

The rest of those witnesses that I am finding their testimony is not relevant are excused. You can excuse them and have Officer Punke resume the stand."

¶ 12 Defendant resumed cross-examination of Punke, further inquiring about the particular details of the staff assault. At times, the trial court (1) advised defendant to "move

along" when defendant seemed to question a point, (2) informed defendant of the proper way to ask questions on cross-examination, and (3) advised the jury to disregard defendant's arguments during questioning. Toward the end of Punke's cross-examination, the record reflects a series of exchanges only between defendant and the court. Defendant would ask a question, the court would state why the question should not stand, and then it would advise defendant to "move on." For the most part, the prosecutor did not state any objections, as the court was making all the objections. Finally, defendant tendered the witness back to the State.

¶ 13 Nurse Tracy Kjellesvik testified as to her version of the assault. She said Punke was escorting her as she distributed the morning medication to inmates. At defendant's cell, she called his last name and Punke said "meds." Punke unlocked the hatch and defendant reached his hand out of the hatch with a carton and threw an unknown substance in Punke's face. She said the odor was very foul and smelled like feces. Punke shut the hatch and escorted her off the gallery.

¶ 14 Defendant conducted cross-examination, with both the prosecutor and the trial court stating objections throughout. The court and defendant argued back and forth on whether certain questions were relevant, hearsay, or asked and answered. Finally, the court stopped defendant, telling him he was done with questioning because the court was "not playing these games" with him. Outside the presence of the jury, defendant continued arguing with the court about whether a particular document was hearsay and whether he was getting a fair trial. The court ordered defendant to be shackled (as he had previously been unrestrained but warned not to move around) after observing him becoming increasingly agitated with the court's rulings.

¶ 15 In the presence of the jury, the State called correctional officer Robert Snyder. Snyder said he worked in the internal affairs unit at Pontiac and was asked to collect evidence

from the staff assault involving defendant. He placed Punke's uniform into an evidence bag. As he did so, he noticed a rubber glove sitting on top of a pile which consisted of Punke's uniform shirt, a t-shirt, and a pair of pants. Snyder did not realize Punke's name tag was inside the rubber glove when Snyder threw the glove in the trash. Defendant cross-examined Snyder about throwing the glove in the trash, questioning whether Snyder intentionally did so or not. Toward the end of defendant's cross-examination, he and the trial court began arguing about the relevance of the majority of defendant's questions. The court afforded defendant some leeway while questioning Snyder. After the presentation of Snyder's testimony, the State rested.

¶ 16 Defendant called Stephanie Schertz, a registered nurse at Pontiac who flushed Punke's eye after the assault. Defendant questioned Schertz regarding the precise time she performed the flush.

¶ 17 Finally, defendant testified in narrative form after a warning from the trial court to "stick to relevant stuff." Defendant suggested the correctional officers were "going to punish him" by not allowing him to have his food tray due to a disciplinary ticket he received a few days before the alleged assault. On the morning of the assault, Tangman passed out the breakfast trays but passed defendant's cell, telling him he was not going to get a tray. Defendant said he wanted to get the lieutenant's attention, so he covered his window with paper and tape. Tangman told him to take the paper down. Defendant requested a lieutenant. He said Tangman told him if he got a lieutenant, he was not "going to like it." When Punke and Kjellesvik came to deliver defendant's medication, defendant and Punke began arguing about defendant's window that was covered and the fact defendant had not eaten. Defendant said he "call[ed] [Punke] all type of profanities, call[ed] him all type of foul names." Eventually, defendant said, Punke got upset and left. Lieutenant Scrogum came to defendant's cell and said: " 'Cuff up so we can come in there

and talk to you.' " After Scrogum and other officers cuffed defendant and put on leg shackles, they started beating him up. After the beating, the officers took defendant to the medical technician and put him in the suicide cell "because they didn't want anybody to see [he] was beat up." The officers informed defendant he had assaulted Punke but, according to defendant, he did not even know who Punke was. Defendant said the officers had fabricated the assault story to cover up the beating.

¶ 18 After considering the evidence, closing arguments, and jury instructions, the jury retired to deliberate. While the jury deliberated, the trial court addressed the prosecutor and defendant for purposes of creating a record while responding to defendant's many references throughout the trial that he was not receiving a fair trial. The court explained how it "ha[d] done everything" it could to ensure defendant received a fair trial. The court noted it (1) allowed defendant to remain unshackled throughout the trial, (2) ordered the prosecutor to subpoena the 10 witnesses defendant requested, (3) conducted an offer of proof to probe the relevance of the requested witnesses despite the court's knowledge that the witnesses were not likely relevant, and (4) allowed defendant "leeway" during questioning of the witnesses. The jury found defendant guilty of both counts of aggravated battery. The court merged defendant's convictions and sentenced him to 12 years in prison.

¶ 19 This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 Defendant contends the trial court committed reversible error by acting as an advocate rather than a neutral arbiter during the offer of proof and the trial. Defendant claims the court denied his constitutional right to self-representation by not allowing him to question witnesses during the offer of proof and by making *sua sponte* objections during defendant's

questioning during trial, limiting the presentation of his defense that he did not commit the assault.

¶ 22 A. Offer of Proof

¶ 23 Because defendant failed to properly preserve this issue for appellate review by raising the claim in a posttrial motion, he has effectively forfeited it for the purpose of this appeal. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). This court may excuse the forfeiture if the error affects substantial rights. *People v. Herron*, 215 Ill. 2d 167, 179 (2005). The first step in determining whether the plain-error rule applies is ascertaining whether any error occurred at all. *People v. Thompson*, 238 Ill. 2d 598, 613 (2010).

¶ 24 The error of which defendant complains occurred during the hearing on the State's motion *in limine*. The State's motion sought to bar the 10 witnesses defendant indicated he intended to call at trial. The State and the trial court suspected these witnesses would not provide relevant testimony based on the facts of the incident and the reports prepared thereafter. Nevertheless, in order to give defendant every benefit of the doubt, rather than granting the motion outright, the court asked the State to ensure the witnesses' presence at trial. Once the witnesses appeared, the court called four of them to appear and be questioned outside the presence of the jury. Only the court questioned each, with no input from the State or defendant. Ultimately, the court found none of the witnesses' testimony would be relevant to the issues at trial except the nurse (Schertz) who treated Punke after the assault and the internal affairs officer (Snyder) who gathered Punke's uniform as evidence. Defendant insists the court violated his constitutional rights by not allowing him to participate in the offer of proof.

¶ 25 "Motions *in limine* are commonly used to obtain a pretrial order excluding inadmissible evidence and barring any questioning of witnesses regarding such evidence." *People v. Owen*, 299 Ill. App. 3d 818, 822 (1998). As this court has explained:

> "One difficulty common to all motions *in limine* is that they occur—by definition—out of the normal trial context, and resolving such a motion requires the trial court to determine what that context will be. Thus, the court must receive offers of proof consisting either of live testimony or counsel's representations that the court finds sufficiently credible and reliable. Because a motion *in limine* typically asks the court to bar certain evidence, the supreme court has deemed such motions 'powerful weapons' and has urged caution in their use. [Citation] ('Before granting a motion *in limine*, courts must be certain that such action will not unduly restrict the opposing party's presentation of its case'); [Citation] (motions *in limine* precluding evidence 'should be employed with caution').
>
> 'A trial judge has discretion in granting a motion *in limine* and a reviewing court will not reverse a trial court's order allowing or excluding evidence unless that discretion was clearly abused.' [Citation.] Similarly, depending upon the nature of the evidentiary issue before it, the court has vast discretion as to how it will conduct the hearing on a motion *in limine*—that is, requiring live witnesses or representations, affidavits, or whatever—and the court

has vast discretion as to how detailed such a hearing will be, as well." *Owen,* 299 Ill. App. 3d at 823.

¶ 26 The trial courts often resolve the evidentiary issues presented in a motion *in limine* by conducting an offer of proof outside the presence of the jury, as the court did in this case. "An offer of proof may be formal or informal, but an informal offer of proof must identity the complained-of evidence with 'particularity.' " *People v. Stevenson,* 2014 IL App (4th) 130313, ¶ 28 (quoting *People v. Pelo,* 404 Ill. App. 3d 839, 875 (2010). Our supreme court as noted " '[a] trial judge has the right to question witnesses in order to elicit the truth or to bring enlightenment on material issues which seem obscure.' " *People v. Falaster,* 173 Ill. 2d 220, 231 (1996) (quoting *People v. Wesley,* 18 Ill. 2d 138, 154-55 (1959)). There, the supreme court was speaking within the context of a trial. Here, the questioning occurred at the hearing on a motion *in limine,* where the court has a vast amount of discretion regarding the presentation of the evidence to be considered. See *Owen,* 299 Ill. App. 3d at 823.

¶ 27 The purpose of the State's motion *in limine* was to limit the jury's exposure to irrelevant witness testimony in the interest of streamlining the presentation of evidence at trial. The trial court is vested with broad discretion to grant or deny such motions as part of its inherent power to admit or exclude evidence. *Hawkes v. Casino Queen, Inc.,* 336 Ill. App. 3d 994, 1005 (2003). See also *Hallowell v. University of Chicago Hospital,* 334 Ill. App. 3d 206, 210 (2002) (motion *in limine* is addressed to the trial court's inherent power to admit or exclude evidence, and the court in this case did not err by granting the motion *in limine* to exclude testimony that clearly would have been hearsay).

¶ 28 Applying these principles to this case, we conclude the trial court abused its discretion in asking questions of the witnesses to the exclusion of defendant's involvement.

Defendant had every right to proceed *pro se* and thus, every right to attempt to present a defense. Defendant asked the court repeatedly if he would be allowed to pose questions during the offer of proof. The court refused after defendant could not satisfy the court's inquiry about the specific questions he intended to ask. Rather, the court could have allowed defendant the opportunity to call the witnesses and thereafter evaluate defendant's examination for objectionable or otherwise inadmissible content.

¶ 29 "The right to make an offer of proof in order to show the relevancy of certain evidence affords the trial court the opportunity to make an informed decision, thereby guaranteeing defendant a fair trial." *People v. Pressley*, 160 Ill. App. 3d 858, 864-65 (1987) (the appellate court found the trial judge erred by abruptly granting the State's objection without giving the defendant the opportunity to present an adequate offer of proof). "Illinois courts of review have not hesitated to remand cases for new trials where circuit judges have mishandled attempts by defendants to make offers of proof on excluded evidence." *People v. Thompkins*, 181 Ill. 2d 1, 10 (1998).

¶ 30 Similar to the factual circumstance in *Thompkins*, the trial court here refused to allow defendant to ask questions of the four witnesses called by the court during defendant's offer of proof. As a result of the trial court's refusal to accept the defendant's offer of proof, the *Thompkins* court found the court had abused its discretion. *Thompkins*, 181 Ill. 2d at 12. The court held: "Because of the important functions that an offer of proof fulfills, it is generally considered error for a trial court to refuse an offer. [Citation.] Here, clear and serious error resulted when the circuit court refused to hear and consider defendant's offers of proof because the circuit court ' "denied itself the data which it required in order to exercise an informed discretion." ' [Citations.]" *Thompkins*, 181 Ill. 2d at 12.

¶ 31 Accordingly, we conclude the trial court abused its discretion in refusing to allow defendant to present an offer of proof and to present the court with the substance of his witnesses' testimony. Defendant repeatedly sought the opportunity to ask questions, but the court flatly refused. The court's refusal effectively defeated the primary purpose of the offer of proof. See *People v. Sanchez*, 131 Ill. 2d 417, 425 (1989) (the primary purpose of an offer of proof is to allow the court and the opposing party to hear the substance of the evidence sought to be introduced). Without this opportunity, defendant was denied a chance to present a viable defense. Because this error affects defendant's substantive due-process rights, the plain-error doctrine applies to excuse his forfeiture. We find the court abused its discretion in its conduct during defendant's offer of proof.

¶ 32 B. Trial Court's *Sua Sponte* Objections

¶ 33 Defendant also insists the trial court deprived him of his due-process rights by repeatedly interjecting *sua sponte* objections during defendant's cross-examination of the State's witnesses. He claims the court's over-three-dozen interruptions justifies the granting of a new trial. We agree. We find, based on the record before us, the overall tenor of the trial demonstrated to the jury the court's frustration and impatience with defendant and with his decision to proceed *pro se*. We find the court's actions deprived defendant of a fair trial.

¶ 34 Like his previous claim, defendant has forfeited review of this particular claim by not raising it in a posttrial motion. See *Enoch*, 122 Ill. 2d at 186. And, like the previous claim, we will determine if the plain-error doctrine applies by first determining whether any error actually occurred. See *Thompson*, 238 Ill. 2d at 613.

¶ 35 Throughout the trial, the trial court frequently interrupted defendant's cross-examination of the State's witnesses. According to defendant, the court interrupted his cross-

examination 37 times, whereas the State interrupted him 10 times. According to defendant, this disparate treatment by the court, in the presence of the jury, "clearly demonstrated the trial court's bias against [defendant] in favor of the State." We cannot disagree.

¶ 36 An example of the trial court's *sua sponte* objections is as follows:

> "THE COURT: That's been gone over.
>
> THE DEFENDANT: No, we didn't.
>
> THE COURT: Asked and answered. The evidence is sitting right here. Move on to something else.
>
> THE DEFENDANT: I'm asking him did he write it in his report.
>
> THE COURT: It doesn't matter if it's in his report.
>
> THE DEFENDANT: He didn't write it in his report, but it's right here. That's what I'm asking him. Did he write it in his report. The question is did you—
>
> THE COURT: What's the relevance of that question?
>
> THE DEFENDANT: Because that's not, I'm trying to prove that that's not his uniform. That uniform is not damaged. He's framing me. In his report, he never says he put any uniform in no bag or nothing.
>
> THE COURT: The question is stricken. The jury should disregard everything the defendant just said because it's all argument and it's not before the court and there's no evidence to that effect. Ask another question, [defendant]. "

¶ 37 The trial court commented on the state of the evidence and, in effect, advised the jury defendant had failed to present any evidence to support his defense. The court's (1) *sua sponte* objections, (2) comments on the evidence, (3) repeated interruptions, (4) refusal to allow defendant to probe a witness's inconsistent statements, and (5) demonstrated frustration with defendant, all in the presence of the jury throughout the trial, could have been perceived by the jury as prejudicial against defendant. The cumulative effect of the court's efforts to control the presentation of evidence, while trying to streamline the conduct of the trial, may have made it appear to the jury that the court was biased against defendant and his ability to present a defense.

¶ 38 In all criminal prosecutions, the defendant is always entitled to a fair and impartial trial by jury. *People v. Eckert*, 194 Ill. App. 3d 667, 673 (1990). The defendant has a fundamental right to an unbiased, open-minded trier of fact. *Eckert*, 194 Ill. App. 3d at 673.

> "Jurors are ever conscious of the trial judge's attitude. The judge's influence upon them is of great weight; thus, [her] slightest remark or intimation is received with deference and may prove controlling. In a criminal trial, a hostile attitude toward an accused, or his witnesses is very apt to influence the jury in arriving at its verdict. [Citation.] The trial judge must exercise a high degree of care to avoid influencing the jurors in any way, to remain impartial, and to not display prejudice or favor toward any party [Citation.]." *Eckert*, 194 Ill. App. 3d at 673-74.

¶ 39 Despite the trial court's explanation for the record that it exercised patience and made an effort to afford defendant a fair trial, we conclude the jury could have deduced from the court's actions and comments that the court was biased against, and frustrated with, defendant's

pro se appearance at trial. The impression that the court was biased is sufficient to justify a new trial before a different judge.

¶ 40 We recognize trying a case with an inmate defendant who is self-represented is challenging. However, we find the court's comments, restrictions, *sua sponte* objections, and arguments with defendant may have, in the eyes of the jury, limited defendant's presentation of a defense to the charges against him. See *People v. Brown*, 172 Ill. 2d 1, 38-39 (1996) (in order for a trial judge's comments to constitute reversible error, the defendant must demonstrate that the comments constituted a material factor in the conviction). We conclude the court's conduct deprived defendant of a fair and impartial jury trial, and we remand for a new trial before a different judge.

¶ 41 III. CONCLUSION

¶ 42 For the reasons stated, we reverse the trial court's judgment and remand for a new trial.

¶ 43 Reversed and remanded with directions.