

NOTICE

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2015 IL App (4th) 130544-U

NO. 4-13-0544

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
June 12, 2015
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Adams County
JOSEPH E. TEEL, JR.,)	No. 12CF274
Defendant-Appellant.)	
)	Honorable
)	Mark A. Drummond,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Knecht and Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding defendant's claim of error is precluded under the invited-error doctrine.

¶ 2 In July 2012, the State charged defendant, Joseph R. Teel, Jr., by indictment with armed robbery (720 ILCS 5/18-2(a)(2) (West 2010)), aggravated robbery (720 ILCS 5/18-5(a) (West 2010)), and robbery (720 ILCS 5/18-1 (West 2010)). Prior to the start of defendant's March 2013 trial, the State filed a motion *in limine* seeking to introduce certain portions of the statement defendant made to police but preclude others. The trial court ultimately ruled defendant's entire statement, which included a discussion of his probation status, would be admitted under the completeness doctrine. Following the trial, the jury found defendant guilty on all counts and, in May 2013, the court sentenced defendant to a total of 25 years in the Illinois Department of Corrections (DOC).

¶ 3 Defendant appeals, asserting the trial court erred by allowing the State to introduce his entire statement to police without redacting the discussion related to his probation status. Because we conclude defendant invited any error with regard to this issue, we affirm.

¶ 4 I. BACKGROUND

¶ 5 A. Indictment

¶ 6 In July 2012, the State filed a four-count bill of indictment against defendant and three codefendants: Timothy Jackson, Zane Liggett, and Gerald Utterback. The charges all stemmed from a single incident occurring in May 2012. Count I alleged defendant committed an armed robbery in that he, or one for whose conduct he was legally responsible, while carrying a firearm on his person, knowingly took Tunnel Rats motorcycle club vests from Joseph Cowman and Michael Baehr, Jr., by threatening the imminent use of force. Count II charged defendant with aggravated robbery, alleging he indicated verbally to Cowman and Baehr that he had a gun. Count III alleged defendant committed a robbery by taking Baehr's and Cowman's vests by threatening the imminent use of force. The State did not proceed to trial on count IV, which charged defendant with unlawful use of a weapon (720 ILCS 5/24-1(a)(7)(ii) (West 2010)).

¶ 7 B. Motion *in Limine*

¶ 8 In March 2013, prior to the start of trial, the State filed a motion *in limine*, explaining it intended to introduce inculpatory statements defendant made to Officer Craig Hufford. However, the State sought to preclude defendant from introducing certain exculpatory statements he made during the same interview. Specifically, the State sought to exclude defendant's statements that (1) he did not possess a firearm; (2) Cowman and Baehr gave defendants and other members of the Midwest Percenters "the finger"; and (3) by the time defendant arrived at the scene, other individuals had already taken Cowman's and Baehr's vests.

The State asserted defendant could testify regarding that information but defendant's exculpatory statements to police should not be utilized to introduce otherwise inadmissible hearsay statements. The State further noted it had no intention of asking Officer Hufford about any exculpatory statements made by defendant.

¶ 9 During the hearing, defendant argued he based his "whole defense" and "whether or not [he] testifies" around the statements he made to police. He further asserted the trial court should allow his entire statement to police under the completeness doctrine; however, his probation status should be redacted. The court subsequently granted the State's motion *in limine*.

¶ 10 The next morning, the trial court *sua sponte* reconsidered its decision prior to opening arguments. The court subsequently reversed its decision granting the State's motion *in limine*. The court found if the State intended to introduce part of defendant's statement to police, the completeness doctrine required the entire statement to be introduced. Specifically, the court emphasized the portion of the report in which Officer Hufford stated, "I asked [defendant] if he had a firearm in his possession at the time they took the subjects' vests, and he stated he did not have a firearm and that he was on probation and doesn't even carry a pocket knife." The court then concluded, "if it's the same interview, it's all coming in." Defense counsel responded, "[I]f I understand Your Honor's ruling today, you are denying the State's motion *in limine* and [defendant's] full statement to Officer Hufford will be allowed into evidence on cross-examination. If so, then I have no argument." The court stated it would not edit defendant's statement that he did not possess a firearm because he was on probation, as the statement had benefits and detriments to both sides. When the court asked if either side had any questions, defense counsel responded, "[N]o, Your Honor."

¶ 11

C. Jury Trial

¶ 12 Following the trial court's ruling on the motion *in limine*, the parties gave opening arguments. During his opening argument, defense counsel explained the jury would hear defendant's explanation as to why he did not possess a firearm.

¶ 13 The parties then presented the following evidence at trial. On May 20, 2012, Cowman, his wife, and Baehr, were all attending a barbecue at a friend's home. The friend's home served as the "clubhouse" for the motorcycle group known as the Tunnel Rats. Baehr and the Cowmans subsequently left the barbecue on their motorcycles. En route to their next location, they drove by Kelly's, a local restaurant, where numerous members of the Midwest Percenter motorcycle group had gathered for an event. The Midwest Perceners and the Tunnel Rats had a history of altercations. Cowman stated he waved at the group but denied making any lewd gestures. Baehr denied making any signals or waving as he rode by.

¶ 14 Baehr and the Cowmans rode away, but while stopped at a red light at the corner of 12th Street and Hampshire Street, a group of Midwest Perceners surrounded them. Codefendant Jackson pulled in front of Cowman to block him, while Utterback pulled in back. Liggett blocked Baehr from the front. Cowman and Baehr then identified defendant as the person who pulled in behind Baehr. Baehr, a former Midwest Percenter, identified defendant from prior interactions. Numerous other motorcyclists pulled in behind the group.

¶ 15 After blocking their paths, Jackson demanded Baehr's and Cowman's Tunnel Rats motorcycle vests. According to the Cowmans and Baehr, defendant then demanded they remove their vests or he would "fucking blow [their] brains out." Cowman observed defendant raise a snub-nose, grayish revolver to Baehr's head. Cowman's wife testified defendant was pointing a cylindrical object at Baehr's head that appeared to be a gun. Baehr, however, could not see

defendant's hands from his position. Cowman and Baehr removed their motorcycle vests and gave them to Jackson. The Midwest Percenters then rode away.

¶ 16 After the Cowmans and Baehr met with police and identified several suspects, Officer Hufford interviewed defendant. This interview was the subject of the earlier motion *in limine*. Defendant told Officer Hufford the Midwest Percenters had gathered at Kelly's when the Cowmans and Baehr rode by. According to defendant, Cowman "flipped off" several Midwest Percenters. Several Midwest Percenters then rode in pursuit of Cowman, but defendant, the president of the Midwest Percenters, said he lagged behind due to his motorcycle being slower. Defendant said, when he arrived at 12th and Hampshire, he observed several Midwest Percenters demanding Cowman's and Baehr's motorcycle vests. Once the Midwest Percenters collected the vests, the group left on their motorcycles. Defendant denied participating in the robbery but told Officer Hufford the vests were "long gone." According to Hufford, defendant then said, he could make the vests come back if the charges were dropped. Defendant also explained to Officer Hufford why he would not have been in possession of a firearm. The following exchange occurred in court.

"Q. [assistant state's attorney:] What did you ask [defendant] as to whether or not he had a firearm in his possession at the time they took the [victims'] vests ?

A. [Officer Hufford:] I asked him if he had a firearm when the incident at 12th and Hampshire occurred.

Q. And what was his specific response?

A. No.

Q. What was his explanation?

[DEFENSE COUNSEL]: Objection, Judge.

THE COURT: Overruled.

[DEFENSE COUNSEL]: An explanation for a 'no'?

[ASSISTANT STATE'S ATTORNEY]: That statement is beyond.

THE COURT: Overruled.

Q. [assistant state's attorney:] What was his explanation for why he claimed he did not have a firearm?

A. He stated he was on probation.

Q. In fact, did he give you an example of something else that he would not carry?

A. He stated he's on probation and he doesn't even carry a pocketknife."

¶ 17 Defendant did not object to the introduction of his probation status. On cross-examination, defense counsel asked, "[defendant] gave you an explanation about why he wouldn't even carry a pocketknife. Correct?"

¶ 18 Following its presentation of evidence, the State rested. Defendant did not testify or offer any evidence. Following deliberations, the jury returned guilty verdicts on all counts.

¶ 19 D. Posttrial Proceedings

¶ 20 In May 2013, defendant filed a motion for a new trial. Notably, defendant's motion did not challenge the trial court's order regarding the motion *in limine*. Following a sentencing hearing later that month, the court sentenced defendant to 10 years in DOC with a mandatory 15-year sentencing enhancement due to defendant possessing a firearm.

¶ 21 This appeal followed.

¶ 22 II. ANALYSIS

¶ 23 On appeal, defendant argues the trial court erred by allowing the State to introduce the portion of his statement to Officer Hufford discussing the fact that he was on probation. Defendant asserts his probation status was irrelevant to the crime charged and, therefore, the court erred by allowing the State to introduce evidence that defendant was on probation.

¶ 24 Defendant concedes his failure to raise this claim in his motion for a new trial amounts to forfeiture of the issue. See *People v. Enoch*, 122 Ill. 2d 176, 186, 522 N.E.2d 1124, 1129 (1988) (failure to raise an issue before the trial court results in forfeiture of appellate review). However, defendant asserts we may consider an otherwise forfeited issue where the defendant demonstrates a plain error or defect affected substantial rights. See Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967).

¶ 25 The State, on the other hand, argues defendant invited this error and, therefore, has forfeited the argument on appeal. We agree with the State and decline to review defendant's contentions because, if there was error, it was invited by defendant.

¶ 26 A defendant forfeits his right to complain of the trial court's error when, on appeal, he takes a position inconsistent with his position at an earlier court proceeding. *People v. Johnson*, 334 Ill. App. 3d 666, 680, 778 N.E.2d 772, 784 (2002). "Under the doctrine of invited error, an accused may not request to proceed in one manner and then later contend on appeal that the course of action was in error." *People v. Carter*, 208 Ill. 2d 309, 319, 802 N.E.2d 1185, 1190 (2003). Furthermore, a defendant is estopped from raising an argument on appeal that is

inconsistent with the defendant's strategy pursued at trial. *Johnson*, 334 Ill. App. 3d at 680, 778 N.E.2d at 784.

¶ 27 In this case, defendant sought to introduce his complete statement to Officer Hufford, but now, on appeal, argues the trial court erred by admitting the statement. In the initial motion *in limine* hearing, defendant argued his entire statement should be submitted with only his probation status redacted. However, defendant abandoned this argument the next morning when the court reconsidered the motion. In this second motion *in limine* hearing, the court stated it would allow the jury to hear defendant's entire statement, as required under the completeness doctrine, including defendant's statement that he did not possess a gun because his probation prohibited him from doing so. The court asked defendant if he disagreed with the court's ruling, at which time defense counsel stated, "[w]ell, I guess, if I understand Your Honor's ruling today, you are denying the State's motion *in limine*, and [defendant's] full statement to Officer Hufford will be allowed into evidence on cross-examination. If so, then I have no argument." The court later admonished that it would not be editing any of defendant's statements, and defense counsel indicated he had no questions regarding the ruling.

¶ 28 Thus, defendant's position before the trial court is clearly opposed to the position he now asserts on appeal. Moreover, defendant's argument on appeal is adverse to his trial strategy.

¶ 29 During opening argument, defense counsel asserted the jury would learn why defendant had not been carrying a gun on the day of the robbery, thus foreshadowing defendant's statement to police that he was not carrying a gun due to his probation status. Defense counsel then did not object during direct examination when Officer Hufford testified as to defendant's probation status. In fact, during cross-examination, defense counsel emphasized this portion of

Officer Hufford's testimony by reiterating, "[defendant] gave you an explanation about why he wouldn't even carry a pocketknife. Correct?" As one of the central issues regarding the trial was whether defendant possessed a firearm on the date of the robbery, the introduction of defendant's probation status became part of his trial strategy. Defense counsel also used defendant's statement to enhance defendant's credibility in closing arguments by arguing he "talked with the officer, was honest enough to say to him, man, I'm not about to carry a gun or have a gun. *** It's very believable that he wouldn't have a gun because he was on probation and didn't want to have a problem with having that probation violated."

¶ 30 As the State notes, by acquiescing to the trial court's order allowing the introduction of his unedited statement, defendant was able to introduce his statement denying full participation in the incident and the existence of a firearm without being exposed to cross-examination or impeachment. Thus, defendant's attempt to assert an argument adverse to his trial strategy is precluded under the invited-error doctrine.

¶ 31 Defendant cites *People v. Pitts*, 257 Ill. App. 3d 949, 953, 629 N.E.2d 770, 772 (1994), in which this court held the introduction of the defendant's probation status was improper because it did not establish any material facts relevant to the defendant's prosecution. However, *Pitts* is distinguishable for many reasons. First, the issue of invited error was not present in *Pitts*. Second, in *Pitts*, the court improperly allowed the State to admit evidence of other crimes for the purpose of identifying the defendant, as the defendant's identity was not in question. *Id.* at 953, 629 N.E.2d at 773. Third, in *Pitts*, the State presented evidence of the defendant's prior convictions whereas here, the State only presented evidence that defendant was on probation without introducing any criminal convictions. *Id.* at 953-54, 629 N.E.2d at 773. Thus, we find defendant's reliance on *Pitts* unpersuasive.

¶ 32 Defendant also argues the trial court's alleged error was exacerbated by the court's failure to offer a limiting jury instruction, relying on *People v. Denny*, 241 Ill. App. 3d 345, 360, 608 N.E.2d 1313, 1323 (1993). In *Denny*, this court stated, "[a]lthough we do not hold that the trial court's failure to give [a limiting jury instruction] *sua sponte* is plain error, we point out that had this limiting instruction been given, it would have lessened the impact of the improperly admitted evidence." *Id.* However, because we have determined defendant invited the alleged error, we conclude *Denny* is inapplicable.

¶ 33 Accordingly, we conclude this issue is forfeited under the invited-error doctrine.

¶ 34 III. CONCLUSION

¶ 35 For the foregoing reasons, we affirm the trial court's judgment. As part of our judgment, we grant the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2012).

¶ 36 Affirmed.