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2016 IL App (3d) 140427-U

Order filed July 6, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2016

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
	)	Will County, Illinois.
Plaintiff-Appellee,	)	
	)	Appeal No. 3-14-0427
v.	)	Circuit No. 13-CF-2413
	)	
AARON L. WILLIAMS,	)	The Honorable
	)	Robert P. Livas,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE McDADE delivered the judgment of the court.
Presiding Justice O'Brien and Justice Lytton concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court erred when it failed to hold a hearing on whether the defendant should remain shackled for trial, which entitled the defendant to a new trial.

¶ 2 The defendant, Aaron L. Williams, was convicted of aggravated battery (720 ILCS 5/12-3.05(f)(1) (West 2012)) and was sentenced to two years of imprisonment. On appeal, the defendant argues that: (1) the State failed to prove beyond a reasonable doubt that the defendant

did not act in self-defense; and (2) the circuit court erred when it ordered the defendant to remain shackled for trial. We reverse and remand for a new trial.

¶ 3 FACTS

¶ 4 On November 21, 2013, the State charged the defendant by indictment with aggravated battery (720 ILCS 5/12-3.05(f)(1) (West 2012)). The indictment alleged that the defendant stabbed Seth Lipscomb in the arm with a knife.

¶ 5 The circuit court held a bench trial in March 2014. At the outset, defense counsel requested the removal of the defendant's handcuffs and shackles, to which the court simply responded, "[h]andcuffs will be removed. The shackles will remain on."

¶ 6 Lipscomb testified that on November 5, 2013, he had been drinking at a bar with Juarez Rogers. At around 5 a.m. on November 6, Lipscomb and Juarez had been dropped off at a gas station by a friend. Rogers saw an acquaintance, the defendant, at the gas station. Lipscomb did not know the defendant, but he asked the defendant for a ride home. He offered money, and the defendant agreed. Rogers got into the front passenger seat, and Lipscomb got into the back passenger seat.

¶ 7 The three men first drove to Lipscomb's house where he got some money to pay the defendant. Then, Lipscomb asked the defendant to drive him to a store to buy alcohol, and the defendant agreed. Next, the defendant drove to a house where he bought some crack cocaine, which he and Rogers smoked in the car. Lipscomb stated that after the defendant smoked crack, his "whole personality changed." Lipscomb described the defendant as acting paranoid, "thinking that somebody was going to do something to him[.]" Due to this behavior, Lipscomb asked the defendant to drop him off.

¶ 8 Lipscomb stated that the defendant had two or three knives in the car; one was in a storage slot on the front door and another was somewhere on his person. At one point during the drive, Lipscomb saw the defendant reach for a knife. The defendant drove down a street and Lipscomb told him that he missed a turn. The defendant continued to drive down the street, saying that he knew where Lipscomb lived. Lipscomb continued to tell the defendant about the missed turn, but the defendant kept driving. Lipscomb stated that the defendant reclined his seat, and Lipscomb asked the defendant what he was doing. The defendant had a knife in his hand at the time, and Lipscomb asked to be let out right there—he said he would walk home. However, the defendant sped up and drove around a bend. Lipscomb also testified that the defendant mumbled something and grabbed a knife as he drove around the bend.

¶ 9 Lipscomb told the defendant to slow down, and when the defendant did, he raised the back seat, "turned completely around[,]" and stabbed Lipscomb in the forearm with a long, thin knife, which went all the way through his forearm. Lipscomb then grabbed the defendant, who was trying to pull the knife out, which led Lipscomb to think the defendant was going to stab him again. Then, the defendant jumped out of the car while it was still moving.

¶ 10 During this time, Rogers sat still in the front passenger seat. Lipscomb described Rogers and the defendant as being in a trance.

¶ 11 Lipscomb jumped into the front seat and stopped the car. He got out and saw the defendant running into a wooded area. Lipscomb then pulled the knife out of his arm, threw it down, and got back into the car. He drove the car to Rogers' house, as Rogers had asked to be taken home. Lipscomb called his girlfriend and told her to pick him up at Rogers' house to go to the hospital. She did not pick him up, as the police arrived first. The police arranged for Lipscomb to be taken to the hospital.

¶ 12 On cross-examination, Lipscomb stated that he had been with the defendant for approximately two hours. He said that they had sat outside for a while when they first went to Lipscomb's house and that the stabbing occurred around 7 or 8 a.m. He said the police arrived at Rogers' house around 8 or 9 a.m. He then said that approximately an hour or an hour-and-a-half had passed between the stabbing and his arrival at Rogers' house, even though Rogers' house was only 20 minutes from the place where he took control of the car. He did not call the police or attempt to get medical attention. He met the police in front of Rogers' house when he saw them looking at the car.

¶ 13 Lipscomb also said that he had told the defendant that he was not going to try to do anything to the defendant and that he just wanted to be taken home. Lipscomb also stated that the defendant only had knives in the storage slot on the front door, that he was trying to block the defendant from hitting his face when the stabbing occurred, and that it occurred while they were driving down a residential street.

¶ 14 Deputy David O'Leary of the Will County Sheriff's Department testified that around 8:47 a.m., he responded to the scene where the defendant was located after the stabbing incident. The dispatch he received was of "a suspicious subject knocking on the complainant's door and stating that he was stabbed somewhere[.]" He stated that he arrived after the local fire department had arrived, who told O'Leary that they had "got a knife away from" the defendant and were treating him in the ambulance. O'Leary obtained the knife, which he described as "like a fileting knife."

¶ 15 O'Leary spoke with the defendant in the ambulance. He described the defendant as showing signs of having been out in the elements for a while (it was raining and cold outside) and "very highly excited." O'Leary suspected that the defendant was under the influence of

narcotics. The defendant also had a cut on his hand, which he said he got when he climbed over a fence. The defendant had no other visible injuries.

¶ 16 O'Leary stated that the defendant told him the following:

> "He described going down Richton Road in Crete Township with three other men. One he knew as Red, his nickname only, and two other male subjects. And he then advised – started talking about where he heard: I got it, and he felt his knife that he had on him being pulled away from him. It was like on his side over here. (Indicating.)
>
> And at which point he started to argue with the men. He then stopped the vehicle, rolled out of it, and ran away. He then advised me the men took his vehicle, a green Subaru, and left the scene."

¶ 17 Further, the defendant told O'Leary that the passenger sitting behind him was holding a knife and that they began fighting. The defendant was concerned that he was going to be robbed. He told O'Leary that he had stabbed the passenger sitting behind him twice in the chest and then rolled out of the car.

¶ 18 After talking to the defendant, O'Leary called the local hospitals and learned that no one had been admitted with stab wounds. Based on the defendant telling him that one of the passengers lived in Park Forest at the end of a street near Tomahawk and Tampa Streets (and that the house had an old Chevy sitting on the property), he went in search of the defendant's green Subaru. He located the car at a residence where Lipscomb was sitting on the front porch. Lipscomb's arm was limp and blood was dripping from the sleeve of his jacket. There was

blood on Lipscomb's pants and on the concrete. O'Leary called the paramedics, who arrived and transported Lipscomb to the hospital.

¶ 19 On cross-examination, O'Leary stated that when the defendant told him that one of the passengers said "I got it," he understood that to mean that the passenger had a knife. O'Leary also stated that Lipscomb appeared to be under the influence of alcohol and possibly narcotics. Lipscomb was also very cooperative and forthcoming with information, even though he was excited and even though he was difficult to interview because "you would ask him a specific question and then he would turn around he would start talking about something else or give brief answers[.]"

¶ 20 Matthew Griebel, a detective with the Will County Sheriff's Department, testified that he interviewed the defendant on November 6, 2013, at the police station after he had been released from the hospital for what Griebel recalled were lacerations to his buttocks. He described the defendant as friendly, forthcoming, and coherent during the interview.

¶ 21 Griebel said that the defendant's version of events was that he and Rogers were driving in Chicago Heights when they saw Lipscomb. They waved Lipscomb over and he got into the car. The three men then drove to a parking lot to smoke crack cocaine. After they finished, Rogers mentioned something about meeting a woman in Willowbrook, so the three men drove there. Rogers met with the woman, "got whatever he got," and got back into the car. Next, the three men intended to drive to Rogers' house in Crete. The defendant stated that he did not know Lipscomb and that he was nervous, so he opened up a Swiss Army knife and placed it on his thigh.

¶ 22 The defendant overheard a conversation in which Lipscomb said "I have got it[.]" The defendant believed that his knife had been taken from him; he had looked in his lap and saw that

the knife was gone. The defendant never saw Lipscomb with a knife, but he grabbed a knife with his left hand from the storage slot on the front door, "turned completely around when the vehicle was in motion[,]" and stabbed Lipscomb in the right arm. Then, the defendant jumped out of the moving vehicle and ran into a wooded area. He also jumped a few fences and lacerated his buttocks.

¶ 23 Griebel testified that a red Swiss Army knife was recovered from the front passenger seat of the car. Also, there was what he believed to be blood on a car seat. A photo exhibit showed what appears to be blood on the right side of the driver's seat and on the center console.

¶ 24 On cross-examination, Griebel stated that the defendant told him all three of them smoked crack cocaine in the car. Griebel also stated that the interview of the defendant was not recorded because, to his recollection, the defendant refused "to put it on audio." In addition, the defendant completed a written statement after the oral interview. Also, Griebel stated that they never obtained a statement from Rogers as "[i]t was impossible for us to find him." Griebel said that they tried calling Rogers, but they never went to his house to try to talk to him.

¶ 25 Griebel also clarified on cross-examination that the defendant told him that he had the knife in his left hand and that Lipscomb was in the back passenger seat.

¶ 26 The defendant testified that on November 6, 2013, he was driving through Chicago Heights on his way home at approximately 3:30 a.m. when he saw an acquaintance, Rogers, standing with another male on a corner. He pulled up and asked Rogers "what's up." It was raining, and Rogers and the other male got into the car. The three men then drove to get narcotics. Lipscomb had the money and he bought the narcotics, which all three of them used.

¶ 27 Next, the defendant pulled into a gas station and said he wanted to go home, but Rogers and Lipscomb refused to get out of the car. The defendant said they argued for about an hour

and that Rogers and Lipscomb said they did not want to be out in the rain. Eventually, Lipscomb said he wanted to go to his girlfriend's house (where he had been staying), as she could give him some money, which Lipscomb promised to give to the defendant. Lipscomb said she lived in Crete, so the defendant headed toward Crete, which was where the defendant lived.

¶ 28 The three men arrived at the house of Lipscomb's girlfriend, and he went into the house and returned with some money. Lipscomb paid for the defendant's gas and gave him some extra money as well. Next, they went to buy more narcotics. It was now around 7 a.m., and they were headed back toward Crete to take Lipscomb home.

¶ 29 The defendant stated that the knives in the car were part of his father's fishing equipment. At some point during the time the three men were driving around, the defendant had gone into the trunk of the car to retrieve the knives. He said that he was uncomfortable with someone he did not know sitting behind him. He placed one of the knives—a pocket knife—on his lap.

¶ 30 While driving toward Crete, the defendant looked down and noticed that the knife in his lap was gone. It had been there for three or four hours. He turned on the overhead light, unbuckled his seatbelt, and looked for the knife. He said he started to panic. He heard Lipscomb moving in the back seat, and the defendant asked him why he was moving. As the defendant was driving around a bend, he heard Lipscomb say "I got one." The defendant testified, "I say you got one, and instantly I knew what that meant. They seen me looking for it. They seen me looking for it. They knew I had it." Then, the defendant turned and looked at Lipscomb, and he thought he heard Rogers say something about the steering wheel. At that time, Lipscomb moved toward the defendant: "I hear the leather cracking, and I seen him reaching, reaching from the back over me. So as I am -- as I am seeing all this playing out, I'm reaching for the door. I am reaching for my knife. He grabbed my steering wheel, so I stabbed him."

¶ 31 The defendant stated that he jumped out of the car because he was afraid that he was going to be robbed. He ran into a wooded area and stayed there for approximately 30 minutes. He then knocked on someone's door and asked that individual to call an ambulance and the police. The defendant testified that he was requesting the ambulance for Lipscomb: "[y]ou know, I ain't trying to hurt him. I was protecting myself."

¶ 32 The defendant also denied telling Griebel that he turned around to stab Lispcomb. The defendant's written statement to the police was also introduced into evidence, and the defendant confirmed on the stand that he never said in that statement that he turned around to stab Lipscomb.

¶ 33 On cross-examination, the defendant said that he never passed Lipscomb's stop. He knew where Lipscomb's girlfriend lived, as he was familiar with Crete because he lived there and they had also just been there earlier that morning.

¶ 34 After arguments, the circuit court addressed the defendant's claim of self-defense. The court highlighted that "the only thing that's coming at [the defendant] was an arm." The court also stated that "[i]f I am in the backseat technically what do you say, I got it. I am reaching for the steering wheel. In that instance was the defendant entitled to think something else? Because the stab wound that's inflicted is in contrast to the defendant's testimony." The court then noted that it was unbelievable for the defendant to think that someone who just gave him money twice was now robbing him. The court also found that the location of the blood stains on the side of the driver's seat was consistent with Lipscomb's testimony that he reached for the steering wheel after the defendant jumped out of the car. In conclusion, the court stated that the defendant lacked a reasonable belief that something bad was going to happen to him. Accordingly, the court found the defendant guilty.

¶ 35 After a motion for a new trial was denied, the court sentenced the defendant to two years of imprisonment.

¶ 36 The defendant appealed.

¶ 37 ANALYSIS

¶ 38 The defendant's first argument on appeal is that the circuit court erred when it ordered the defendant to remain shackled for trial. The defendant points out that the court did not conduct a hearing on the matter, pursuant to *People v. Boose*, 66 Ill. 2d 261 (1977) and its progeny (now codified in Illinois Supreme Court Rule 430 (eff. July 1, 2010)), to consider the appropriate factors on whether shackling was necessary. The defendant contends that he is entitled to a new trial due to the court's error.

¶ 39 Supreme Court Rule 430 provides:

> "An accused shall not be placed in restraint of any form unless there is a manifest need for restraint to protect the security of the court, the proceedings, or to prevent escape. Persons charged with a criminal offense are presumed innocent until otherwise proven guilty and are entitled to participate in their defense as free persons before the jury or bench. Any deviation from this right shall be based on evidence specifically considered by the trial court on a case-by-case basis. The determination of whether to impose a physical restraint shall be limited to trial proceedings in which the defendant's innocence or guilt is to be determined, and does not apply to bond hearings or other instances where the defendant may be required to appear before the court prior to a trial being

commenced. Once the trial judge becomes aware of restraints, prior to allowing the defendant to appear before the jury, he or she shall conduct a separate hearing on the record to investigate the need for such restraints. At such hearing, the trial court shall consider and shall make specific findings as to:

(1) the seriousness of the present charge against the defendant;

(2) defendant's temperament and character known to the trial court either by observation or by the testimony of witnesses;

(3) defendant's age and physical attributes;

(4) defendant's past criminal record and, more particularly, whether such record contains crimes of violence;

(5) defendant's past escapes, attempted escapes, or evidence of any present plan to escape;

(6) evidence of any threats made by defendant to harm others, cause a disturbance, or to be self-destructive;

(7) evidence of any risk of mob violence or of attempted revenge by others;

(8) evidence of any possibility of any attempt to rescue the defendant by others;

(9) size and mood of the audience;

(10) physical security of the courtroom, including the number of entrances and exits, the number of guards necessary to

> provide security, and the adequacy and availability of alternative security arrangements.
>
> After allowing the defendant to be heard and after making specific findings, the trial judge shall balance these findings and impose the use of a restraint only where the need for restraint outweighs the defendant's right to be free from restraint." Ill. S. Ct. R. 430 (eff. July 1, 2010).

¶ 40 It is noteworthy that our supreme court has held that "even when there is no jury, any unnecessary restraint is impermissible because it hinders the defendant's ability to assist his counsel, runs afoul of the presumption of innocence, and demeans both the defendant and the proceedings." *People v. Allen*, 222 Ill. 2d 340, 346 (2006). *Allen* cited to *In re Staley*, 67 Ill. 2d 33, 37 (1977), in which our supreme court stated:

> "The possibility of prejudicing a jury, however, is not the only reason why courts should not allow the shackling of an accused in the absence of a strong necessity for doing so. The presumption of innocence is central to our administration of criminal justice. In the absence of exceptional circumstances, an accused has the right to stand trial "with the appearance, dignity, and self-respect of a free and innocent man." [Citation.] It jeopardizes the presumption's value and protection and demeans our justice for an accused without clear cause to be required to stand in a courtroom in manacles or other restraints while he is being judged."

Thus, even though this case involved a bench trial, the defendant's rights were no less important than if he had a jury trial.

¶ 41 We do note, however, that it is problematic for the defendant in this case that his counsel did not properly preserve the issue for appeal. While defense counsel did request that the defendant's handcuffs and shackles be removed, defense counsel did not object when the court issued its conclusory order that the shackles would remain on. Further, defense counsel did not raise the issue in a posttrial motion. Accordingly, the defendant has forfeited the issue for appellate review. *Allen*, 222 Ill. 2d at 350.

¶ 42 The defendant contends that we should review the matter under the plain-error doctrine, which allows a reviewing court to reach a forfeited issue when it involves "[p]lain errors or defects affecting substantial rights[.]" (Ill. S. Ct. R. 615(a); *People v. Eppinger*, 2013 IL 114121, ¶ 18). "[T]he plain-error doctrine allows a reviewing court to consider unpreserved error when (1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007).

¶ 43 The first step in the plain-error analysis is determining whether error occurred. Clearly, the circuit court did not conduct the hearing required by Rule 430. The court simply concluded that the defendant's handcuffs would be removed, but his shackles would remain on. The circuit court's treatment of defendant's request to have his shackles removed was dismissive, instantaneous, arbitrary and in clear violation of Rule 430's requirement that the court must base the decision to require the defendant to be restrained at trial 'on evidence specifically considered

by the trial court on a case-by-case basis.' " *Cf. Allen*, 222 Ill. 2d at 346; *Staley*, 67 Ill. 2d at 37. This was a violation of the defendant's due process rights and constituted error. *Allen*, 222 Ill. 2d at 349.

¶ 44 Because error in fact occurred in this case, we will review the matter under the plain-error doctrine. The defendant asks us to review the matter under the doctrine's first prong—namely, that "the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant[.]" *Piatkowski*, 225 Ill. 2d at 565. When determining whether the evidence was closely balanced, we "must undertake a commonsense analysis of all the evidence in context[.]"

¶ 45 Our review of the evidence in context reveals that the evidence was in fact closely balanced. This case hinged on witness credibility. Lipscomb and the defendant presented competing versions of events at trial. Lipscomb testified that the defendant became paranoid after smoking crack cocaine and that the defendant stabbed him without provocation. Lipscomb stated that after the defendant stabbed him, he reached forward and grabbed the defendant in an attempt to prevent the defendant from removing the knife and stabbing him again. The defendant then jumped out of the moving car, and Lipscomb moved into the driver's seat to take control of the car.

¶ 46 The testimony introduced at trial indicated that the defendant gave several versions of the incident; one to O'Leary, one to Griebel, and the one he gave on the stand at trial. The version the defendant relayed in the ambulance to O'Leary was that he was driving with three other men in the car when he felt his knife being pulled away from him. The passenger behind him said "I got it" and the defendant saw that passenger holding a knife. They began to fight, as the

defendant was concerned that he was going to be robbed. After stabbing the passenger twice in the chest, the defendant jumped out of the car.

¶ 47 The version the defendant relayed to Griebel after being released from the hospital was that he and Rogers were driving when they picked up Lipscomb, and the three men smoked crack cocaine. During the drive, the defendant noticed that the knife he had in his lap was gone. He heard Lipscomb say "I have got it" and, while he did not see Lipscomb holding a knife, he grabbed a knife, stabbed Lipscomb in the arm, and jumped out of the car.

¶ 48 The version the defendant relayed while on the stand at trial was that he was driving when he saw Rogers and another man (Lipscomb) standing outside in the rain. He stopped and let the two men into the car, and they began driving around. The three men had smoked crack cocaine and continued to drive around; at one point, the two men refused to get out of the car. They argued for about an hour about it, and Lipscomb ended up paying the defendant twice. The defendant did not know Lipscomb and was uncomfortable with a man he did not know being in the car and sitting behind him, so he opened up a pocket knife and put it in his lap. At one point, he looked down and noticed that the knife was gone. He started to panic while he looked for the knife, and he heard Lipscomb say "I got one." The defendant believed Lipscomb had the knife, so he reached for a knife from the storage slot on the front door. Lipscomb reached forward and grabbed the steering wheel, and the defendant stabbed him in the arm. The defendant then jumped out of the car.

¶ 49 We acknowledge that witness credibility is a matter within the province of the trier of fact and those determinations are entitled to great weight. *People v. Smith*, 185 Ill. 2d 532, 542 (1999). Nevertheless, those determinations are not conclusive. *Id.* Here, while the circuit court found that the defendant was not credible, Lipscomb's version of events was not inherently

plausible either, and there was no additional evidence to corroborate his version. The blood stains that were on the side of driver's seat, which the court found were consistent with Lipscomb's version, could just as easily have been construed as corroborating the defendant's general version that the stabbing occurred *after* Lipscomb had reached forward in the defendant's direction. It should also be noted that while Lipscomb's version of events indicated that the stabbing occurred in the back seat, there was no evidence of any blood being found anywhere except on the side of the driver's seat. Under these circumstances, we agree with the defendant that the evidence was closely balanced. See *People v. Naylor*, 229 Ill. 2d 584, 607-08 (2008) (holding that the evidence was closely balanced when there were competing versions of an incident and no extrinsic evidence to corroborate or contradict either version). Accordingly, we reverse and remand this case for the defendant to receive a new trial. See *People v. Herron*, 215 Ill. 2d 167, 193 (2005) (stating that "[w]hen there is error in a close case, we choose to err on the side of fairness, so as not to convict an innocent person").

¶ 50 Lastly, we note that because the defendant had forfeited review of this issue, harmless-error analysis does not apply. *People v. Thompson*, 238 Ill. 2d 598, 611 (2010).

¶ 51 CONCLUSION

¶ 52 The judgment of the circuit court of Will County is reversed and the case is remanded for a new trial.

¶ 53 Reversed and remanded.