2016 IL App (4th) 150053-U

NO. 4-15-0053

FILED
May 18, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
DEREK CAETANO-ANOLLES,	)	No. 14CM117
Defendant-Appellant.	)	
	)	Honorable
	)	Richard P. Klaus,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justice Pope concurred in the judgment.
Justice Harris specially concurred.

ORDER

¶ 1 *Held*: The circuit court properly found the stalking no contact order was unambiguous and defendant could not present evidence he interpreted that order differently from its unambiguous language.

¶ 2 In May 2014, the State charged defendant, Derek Caetano-Anolles, by information with one count of a violation of a stalking no contact order (740 ILCS 21/125 (West 2014)) in case No. 13-OP-566 (Frimel v. Caetano-Anolles, No. 13-OP-566 (Champaign Co. Cir. Ct.)). Before defendant's August 2014 jury trial, the Champaign County circuit court (1) found the stalking no contact order was unambiguous; (2) barred defendant from presenting the testimony of his parents, Gloria and Gustavo Caetano-Anolles, and his former attorney, Harvey Welch; and (3) prohibited defense counsel from arguing defendant interpreted the stalking no contact order differently from its unambiguous language. During defense counsel's opening

statements, the court called a sidebar conference and again discussed what defense counsel could not do. Thereafter, defendant agreed to a stipulated bench trial. The court found defendant guilty and ordered him to pay a $220 fine. Defendant filed a posttrial motion, which the court denied.

¶ 3 Defendant appeals, asserting (1) the stalking no contact order was ambiguous; (2) the circuit court erred by finding defendant's understanding of the stalking no contact order was irrelevant; (3) the court erred by *sua sponte* interrupting defendant's opening statement to the jury, which caused defendant's jury waiver to be involuntary; (4) the court erred by barring the testimony of Welch and defendant's parents; (5) the court erred by denying defendant's motions for a directed verdict; and (6) the court erred by denying defendant's motions to reconsider the evidentiary rulings and his posttrial motion. We affirm.

¶ 4 I. BACKGROUND

¶ 5 A. No. 13-OP-566

¶ 6 In November 2013, Aaron Frimel filed a verified petition for a stalking no contact order against defendant. For his alternative address for service, Frimel listed "600 South Mathews 405RAL Urbana IL 61801." In the remedies section of his petition, Frimel stated the address for his place of employment was "600 South Mathews Urbana, IL 61801." On December 17, 2013, Judge Holly Clemons held a hearing, at which defendant defaulted by failing to appear. Judge Clemons entered a plenary stalking no contact order, which ordered, *inter alia*, defendant "to stay at least 100 feet away from petitioner's workplace at 600 S. Mathews, Urbana, IL 61801." On January 13, 2014, defendant filed a motion to vacate the December 2013 plenary stalking no contact order. On January 28, 2014, Judge Clemons held a hearing on defendant's motion to vacate. At the hearing, defendant was represented by Baku

Patel. The court granted the motion to vacate and entered an emergency stalking no contact order, which was valid from January 28, 2014, through February 11, 2014. The order also ordered defendant "to stay at least 100 feet away from Petitioner's workplace at 600 S. Mathews, Urbana, IL 61801." The aforementioned order is the one defendant is accused of violating. On February 11, 2014, Judge Clemons modified the January 2014 emergency order by extending it to April 16, 2014, and adding the following language: "paragraph 5 of the order is modified to exempt the north wing of the Chemical Life Sciences Building located at 601 S. Goodwin, Urbana, IL." In July 2014, Judge Clemons entered a plenary stalking no contact order, ordering defendant "to stay at least 100 fee[t] away from 600 South Mathews, Urbana, Illinois."

¶ 7 B. This Case

¶ 8 The State had originally charged defendant in February 2014 with violating an order of protection but later obtained dismissal of that charge. The May 2014 charge asserted defendant, having been served with a stalking no contact order in case No. 13-OP-566, did knowingly commit an act that was prohibited by the stalking no contact order, in that he "entered a space within 100 feet of Aaron Frimel's place of employment located at Roger Adams Lab, 600 S. Mathews, Urbana, Illinois." Before trial, the State filed a motion *in limine* to bar the testimony of Welch, whom defendant had originally hired to represent him on Frimel's petition, as to what Welch told defendant the order prohibited.

¶ 9 On August 27, 2014, Judge Richard P. Klaus addressed the State's motion *in limine* before beginning defendant's jury trial. Defense counsel asserted Welch would testify he had a lengthy conversation with defendant in the presence of defendant's parents about the December 2013 hearing on Frimel's petition for a stalking no contact order. Defendant pointed out to Welch an order preventing him from being within 500 feet of 600 South Mathews Avenue

would prevent defendant from going to work. During the conversation, it was decided Welch would ask for a continuance at the hearing because defendant was to be out of the country. If the continuance was denied, Welch was to agree to an order for defendant to stay 100 feet away from petitioner's office within the building at 600 South Mathews Avenue. Welch's office sent defendant a copy of the December 17, 2013, order, but Welch never discussed the order with defendant. Defense counsel argued that testimony went to defendant's mental state of whether he knowingly violated the order. Defense counsel also asserted the stalking no contact order was unclear. Judge Klaus found the January 2014 emergency stalking no contact order was unambiguous and granted the State's motion *in limine*. Judge Klaus also noted defendant could present neither his testimony nor the testimony of his parents about what Welch stated.

¶ 10 After jury selection, Judge Klaus noted he let defense counsel question the potential jurors about the potential of the ambiguity in interpreting documents because the State did not object. However, Judge Klaus wanted defense counsel to know the court's ruling was the order was not ambiguous as a matter of law, which was a matter for the court and not the jury, and it would not allow evidence as to defendant's interpretation of the order. Defense counsel again strongly asserted the court's ruling was incorrect. After a recess, defense counsel again argued the court's ruling was erroneous. The court again stated defense counsel could not argue to the jury that defendant interpreted the order to be something different than what it was. The court confirmed with defense counsel that all defense counsel could argue was the act itself did not violate the order and then it was the jury's interpretation "of what that means."

¶ 11 During opening statements, defense counsel began to describe where petitioner's office was located within the building at 600 South Mathews Avenue, and Judge Klaus *sua sponte* asked the attorneys to approach. A sidebar conference with the jury still in the courtroom

ensued. After awhile, Judge Klaus asked the jury to go back to the jury room, noting "it is clear to me that perhaps things that I thought were clear are not clear." The conference with the attorneys continued, and Judge Klaus again explained the interpretation of the stalking no contact order was an issue of law for the court, not the jury. After the conference ended, defendant decided to waive his right to a jury. The court admonished defendant before accepting his jury waiver.

¶ 12 On August 29, 2014, the circuit court held a stipulated bench trial. The parties stipulated to two pages of facts and the admission of the University of Illinois police report and the surveillance video. Defendant did not stipulate to the sufficiency of the evidence and submitted offers of proof as to his testimony and the testimony of Welch and defendant's parents. At the parties' request, the court took judicial notice of the entire court file for case No. 13-OP-566. After the presentation of the aforementioned evidence, defendant made a motion to reconsider the court's evidentiary rulings, which the court denied. He also moved for a directed finding. The court found the State proved defendant guilty beyond a reasonable doubt. Defendant waived his right to a presentence investigation report, and the court ordered him to pay a $220 fine.

¶ 13 On September 29, 2014, defendant filed a motion to reconsider and for the entry of an acquittal or reinstatement of the right to a jury trial. In December 2014, defendant filed a supplement to his motion to reconsider. After a January 8, 2015, hearing, the circuit court denied defendant's motion and supplemental motion to reconsider. On January 20, 2015, defendant filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 606 (eff. Feb. 6, 2013), and thus we have jurisdiction under Illinois Supreme Court Rule 603 (eff. Feb. 6, 2013).

¶ 14 II. ANALYSIS

¶ 15 In this case, the State charged defendant with violating a stalking no contact order. When a person is found to be a victim of stalking, a no contact order is issued against the offending party. 740 ILCS 21/80(a) (West 2014). A no contact order prohibits the party against whom it is ordered from threatening to commit or committing stalking or having any contact with the petitioner, with additional injunctive relief to be ordered by the court. 740 ILCS 21/80(b) (West 2014). "An initial knowing violation of a stalking no contact order is a Class A misdemeanor." 740 ILCS 21/125 (West 2014).

¶ 16 A. Ambiguity

¶ 17 Defendant contends the circuit court erred when it held as a matter of law that the location of the prohibited zone in the emergency stalking no contact order was unambiguous. The State disagrees.

¶ 18 "Whether an ambiguity exists is a question of law for the court to decide." *State Security Insurance Co. v. Burgos*, 145 Ill. 2d 423, 439, 583 N.E.2d 547, 554 (1991) (analyzing the language of an insurance contract); see also *Lake County Board of Review v. Property Tax Appeal Board*, 192 Ill. App. 3d 605, 618, 548 N.E.2d 1129, 1138 (1989) (analyzing the language of a statute). Defendant fails to cite any authority stating the existence of an ambiguity is a question for the jury to decide. The only authority he does cite is the second proposition of Illinois Pattern Jury Instructions, Criminal, No. 11.78 (4th ed. 2000), which states: "That an order of protection prohibited the defendant from performing that act." Defendant contends it naturally follows from the aforementioned proposition the jury must decide exactly what the order means. While juries weigh the evidence to determine questions of fact, the interpretation of rules, statutes, and documents are questions of law (see *People v. Blair*, 2011 IL

App (2d) 070862, ¶ 33, 952 N.E.2d 62 (supreme court rule); *People v. Oliver*, 387 Ill. App. 3d 1162, 1167, 902 N.E.2d 182, 186 (2009) (administrative rule); *People v. Allen*, 322 Ill. App. 3d 724, 725, 750 N.E.2d 257, 259 (2001) (statute); *People v. Perez-Gonzalez*, 2014 IL App (2d) 120946, ¶ 15, 13 N.E.3d 360 (plea agreement)). Accordingly, we disagree with defendant that the jury should have been allowed to determine if an ambiguity in the order existed.

¶ 19 We now turn to whether the circuit court's finding the stalking no contact order was unambiguous was erroneous, which we review *de novo* since it is a question of law. See *People v. Caballero*, 206 Ill. 2d 65, 87-88, 794 N.E.2d 251, 266 (2002). Courts construe an order of protection by giving effect to its plain language and enforcing the order as written. *People v. Davit*, 366 Ill. App. 3d 522, 527, 851 N.E.2d 924, 929 (2006). However, if the order's language can reasonably be interpreted in two different ways, it is ambiguous. *Davit*, 366 Ill. App. 3d at 527, 851 N.E.2d at 929. In criminal cases, when an ambiguity exists, courts apply the principle of lenity. *Davit*, 366 Ill. App. 3d at 527, 851 N.E.2d at 929. "Under this principle, the language in the order of protection must be strictly construed in favor of the accused." *Davit*, 366 Ill. App. 3d at 527, 851 N.E.2d at 929.

¶ 20 The relevant stalking no contact order in case No. 13-OP-566 is the circuit court's January 28, 2014, emergency stalking no contact order. It states the following: "Respondent is ordered to stay at least 100 feet away from Petitioner's workplace at 600 S. Mathews, Urbana, IL 61801." At issue is what constitutes petitioner's workplace. Defendant contends "workplace" referred to petitioner's actual office within the building located at 600 South Mathews Avenue. The State argues the stalking no contact order prohibits defendant from being within 100 feet of the entire building located at 600 South Mathews Avenue.

¶ 21 Black's Law Dictionary defines "workplace" as "[a] person's place of employment

or work setting in general." Black's Law Dictionary (10th ed. 2014). Merriam-Webster's Collegiate Dictionary defines "workplace" as a "place (as a shop or a factory) where work is done." Merriam-Webster's Collegiate Dictionary 1444 (11th ed. 2003). The aforementioned definitions do not limit workplace to the specific location where a person actually does his or her work. Defendant cites another definition of workplace, which states "the office, factory, etc., where people work." See Merriam-Webster Online Dictionary, http://www.merriam-webster.com/dictionary/workplace (last visited May 17, 2016). That definition is also broad as it refers to where "people work" and not the specific location where a person actually does his or her work. Moreover, the stalking no contact order only lists the address of the building and does not include petitioner's office number, which defendant points out was included in Frimel's petition for the stalking no contact order. On the facts of this case, we find defendant's interpretation of the order is unreasonable and the language of the stalking no contact order was unambiguous.

¶ 22 We note this case is distinguishable from *Davit*, 366 Ill. App. 3d 522, 851 N.E.2d 924, cited by defendant. There, the order of protection was ambiguous because both parties presented reasonable interpretations of its language. *Davit*, 366 Ill. App. 3d at 528, 851 N.E.2d at 929. Under the doctrine of lenity, the reviewing court then interpreted the order of protection in favor of the defendant and reversed his conviction. *Davit*, 366 Ill. App. 3d at 529-30, 851 N.E.2d at 931. Since we have found the stalking no contact order was unambiguous, the doctrine of lenity does not apply to this case. Additionally, we note the ambiguity question in *Davit* arose from a sufficiency-of-the-evidence challenge on appeal. See *Davit*, 366 Ill. App. 3d at 525-26, 851 N.E.2d at 927-28. Thus, to the extent some of the language in *Davit* suggests the interpretation of a stalking no contact order is a question for the jury, we disagree with that

assertion.

¶ 23 Accordingly, we find the circuit court's finding the order was unambiguous was proper.

¶ 24 B. Knowledge

¶ 25 Defendant further argues his understanding of the stalking no contact order was relevant to whether he knowingly violated the stalking no contact order. We disagree.

¶ 26 "Knowledge generally refers to an awareness of the existence of the facts which make an individual's conduct unlawful." *People v. Sevilla*, 132 Ill. 2d 113, 125, 547 N.E.2d 117, 122 (1989). Section 4-5 of the Criminal Code of 2012 (Criminal Code) (720 ILCS 5/4-5 (West 2014)) defines knowledge, in pertinent part, as follows:

> "A person knows, or acts knowingly or with knowledge of:
>
> (a) The nature or attendant circumstances of his or her conduct, described by the statute defining the offense, when he or she is consciously aware that his or her conduct is of that nature or that those circumstances exist. Knowledge of a material fact includes awareness of the substantial probability that the fact exists.
>
> (b) The result of his or her conduct, described by the statute defining the offense, when he or she is consciously aware that that result is practically certain to be caused by his conduct.
>
> Conduct performed knowingly or with knowledge is performed willfully, within the meaning of a statute using the term 'willfully', unless the statute clearly requires another meaning."

¶ 27 As stated, defendant argues he should have been allowed to present evidence of

his understanding of the stalking no contact order because it would have negated the existence of the mental state element of the offense. While the parties and the circuit court did not use the term "mistake of law defense," defendant is raising such a defense since the interpretation of the order is a question of law. Section 4-8 of the Criminal Code (720 ILCS 5/4-8 (West 2014)) codifies the mistake of law defense. It provides, in pertinent part, the following: "A person's ignorance or mistake as to a matter of either fact or law, except as provided in Section 4-3(c) above, is a defense if it negatives the existence of the mental state which the statute prescribes with respect to an element of the offense." 720 ILCS 5/4-8(a) (West 2014). Section 4-3(c) of the Criminal Code (720 ILCS 5/4-3(c) (West 2014)) provides: "Knowledge that certain conduct constitutes an offense, or knowledge of the existence, meaning, or application of the statute defining an offense, is not an element of the offense unless the statute clearly defines it as such." "Therefore, a mistake as to a matter of law which negates the existence of the mental state element of the offense is a defense; however, a mistake as to whether certain conduct constitutes an offense is not a defense." *Sevilla*, 132 Ill. 2d at 126, 547 N.E.2d at 123.

¶ 28 In this case, defendant's alleged defense falls squarely under section 4-3(c) of the Criminal Code. Defendant concedes he was served with the emergency stalking no contact order and the record shows he knew he was within 100 feet of the building at 600 South Mathews Avenue when he walked to class on February 3, 2014. However, defendant contends he did not know his conduct constituted a criminal offense because he thought the stalking no contact order prohibited him from being 100 feet from petitioner's office within the building located at 600 South Mathews Avenue, not the entire building. Thus, even if defendant did not know his conduct violated the stalking no contact order, the path he chose near the building at 600 South Mathews Avenue resulted in a violation of the order, and the fact he intended to abide by the law

does not relieve him of criminal liability. See *Sevilla*, 132 Ill. 2d at 127, 547 N.E.2d at 123. "A principle embedded deeply in our system of jurisprudence is that one's ignorance of the law does not excuse unlawful conduct." *Sevilla*, 132 Ill. 2d at 127, 547 N.E.2d at 123. Additionally, none of the exceptions to the general rule that one's ignorance of the law does not excuse unlawful conduct, which are listed in section 4-8(b) of the Criminal Code (720 ILCS 5/4-8(b) (West 2014)), apply to defendant's belief in this case. Accordingly, the circuit court did not err in denying the defendant the opportunity to present evidence in support of his argument he thought the language of the stalking no contact order meant something else.

¶ 29 C. Opening Statements

¶ 30 Defendant also argues his jury waiver was involuntary because he had no viable choice after the circuit court *sua sponte* interrupted defendant's opening statements, had the attorneys approach for a sidebar conference, and made improper statements to defense counsel while the jury was still in the courtroom. However, defendant fails to cite any authority on involuntary jury waivers. The failure to cite relevant authority results in the forfeiture of the argument. See *People v. Emerson*, 189 Ill. 2d 436, 478, 727 N.E.2d 302, 326 (2000). Accordingly, we find defendant has forfeited this issue.

¶ 31 D. Other Arguments

¶ 32 Additionally, defendant asserts the circuit court erred by (1) barring the testimony of Welch and defendant's parents, (2) denying defendant's motions for a directed verdict, and (3) denying defendant's motions to reconsider. Those arguments rely on defendant's assertion the stalking no contact order was ambiguous and he could present evidence regarding what he thought the language of the order prohibited. Since we have disagreed with the aforementioned arguments, these arguments of defendant are also meritless.

¶ 33 III. CONCLUSION

¶ 34 For the reasons stated, we affirm the judgment of the Champaign County circuit court. As part of our judgment, we award the State its $75 statutory assessment against defendant as costs of this appeal.

¶ 35 Affirmed.

¶ 36 JUSTICE HARRIS, specially concurring.

¶ 37 I agree defendant's conviction should be affirmed. I also agree with the majority's analysis of defendant's individual claims of error. My lone disagreement with the majority is its assertion a jury may not interpret a court's order in cases such as this. The trial court made a similar statement during the trial, saying, "[i]t's not the jury's job to construe the court's order. That is an issue of law[.]" The trial court then precluded defendant from arguing that the stalking no contact order only prohibited him from being within 100 feet of the petitioner's office located at 600 S. Mathews and not 100 feet of the building itself. Because I agree with the majority that the language in the order defining the zone of exclusion was unambiguous, the defendant's conviction should be affirmed. However, I disagree in a broader sense with the trial court's statement above and the majority's similar assertion. In my view, it is incorrect to state in a blanket fashion that a jury may not interpret an order.

¶ 38 Cases such as this one, which involve a criminal prosecution for a violation of a civil order, are somewhat unique compared to other criminal prosecutions. Where a defendant is charged with violating an order of protection or a stalking no contact order, the order itself becomes an element of the offense. See *People v. Leezer*, 387 Ill. App. 3d 446, 451, 903 N.E.2d 726, 731 (2008); *People v. Davit*, 366 Ill. App. 3d 522, 527, 851 N.E.2d 924, 928 (2006). The order is also part of the evidence received by the jury. Consequently, it is for the jury, not the judge, to ascertain the conduct prohibited by the order. Only after the jury has made this determination can it gauge whether the defendant's charged conduct was a violation of the order.

¶ 39 Consider, for example, the facts in *Davit*, a case cited by the majority. In *Davit*, the order of protection stated the defendant "shall not enter or remain in the household of premises located at: 1923 Hillside Lane, Lisle." *Davit*, 366 Ill. App. 3d at 523-24, 851 N.E.2d at

926. The defendant was arrested for violating the order of protection when his former spouse complained he had been in the yard and driveway at the referenced address. *Davit*, 366 Ill. App. 3d at 524-25, 851 N.E.2d at 926-27. A jury convicted defendant. On appeal, the defendant argued the order only prohibited him from entering the house and his entry onto the yard and driveway did not amount to prohibited conduct. *Davit*, 366 Ill. App. 3d at 525, 851 N.E.2d at 927. It appears the defendant made a similar argument to the jury. *Davit*, 366 Ill. App. 3d at 525, 851 N.E.2d at 927. The Second District agreed and reversed the defendant's conviction, finding the order's language was ambiguous since it reasonably could be interpreted in two different ways; as prohibiting the defendant from entering either the house *or* the house and premises at the listed address. *Davit*, 366 Ill. App. 3d at 528, 851 N.E.2d at 929-30. Although it did not happen in *Davit*, it seems obvious it would have been improper for the trial court to prevent the defendant from arguing that the order of protection did not prohibit him from being in the yard or driveway, or to prevent the jury from interpreting the order in that manner. In other words, it was for the jury, not the judge, to determine the proscriptions of the order of protection.

¶ 40 That a jury should be allowed to interpret a trial court's order is further demonstrated in *People ex rel. City of Chicago v. LeMirage, Inc.*, 2013 IL 113482, 986 N.E.2d 648. In that case, the respondents were charged with indirect criminal contempt of court for operating a nightclub in violation of several building court orders. The orders prohibited occupancy of the "2nd floor" at "2347 S. Michigan Ave." in the City of Chicago. *City of Chicago*, 2013 IL 113482, ¶ 67, 986 N.E.2d 648. At trial, the respondents argued the orders meant they were only prohibited from occupying the mezzanine level of the nightclub and not the nightclub itself. *City of Chicago*, 2013 IL 113482, ¶¶ 44, 50, 986 N.E.2d 648. The jury

found the respondents guilty and the supreme court affirmed their convictions. In addressing the jury's interpretation of the court's orders, the supreme court noted "[the jury] needed only to decide if the orders clearly expressed a prohibition on second-floor occupancy that respondents willfully violated." *City of Chicago*, 2013 IL 113482, ¶ 72, 986 N.E.2d 648. The court went on to state "a rational jury could have concluded that respondents willfully violated even the version of the orders that they claimed to believe the court entered—prohibiting occupancy of the mezzanine." *City of Chicago*, 2013 IL 113482, ¶ 74, 986 N.E.2d 648. It is apparent from the supreme court's analysis in *City of Chicago* that in cases where a defendant is charged with violating a court's order, it is the jury's function to interpret or ascertain the order's requirements or prohibitions.

¶ 41 Here, I agree with the majority that we should not find error in the trial court's *in limine* order preventing defendant from arguing an alternative interpretation of the order's zone of exclusion, given that the order's language in this regard was unambiguous. Otherwise, we would be saying defendant should have been allowed to argue an alternative interpretation of an unambiguous order, which would make no sense. However, I disagree with the majority's general assertion that it is not the jury's function to interpret a court's order in a case such as this.