2017 IL App (1st) 143410-U

No. 1-14-3410

Order filed November 30, 2017

Fourth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 CR 19975
	)	
MARCO VASQUEZ,	)	Honorable
	)	Evelyn B. Clay,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE ELLIS delivered the judgment of the court.
Justices McBride and Gordon concurred in the judgment.

ORDER

¶ 1 *Held*: Conviction affirmed. Trial court did not deny defendant right to confront witnesses by limiting cross-examination of police officers.

¶ 2 Following a bench trial, the trial court found defendant Marco Vasquez guilty of unlawful use of a weapon by a felon (UUWF) for possessing a firearm. The trial court sentenced defendant to six years' imprisonment as a Class X offender based on his criminal history. See 730 ILCS 5/5-4.5-95(b) (West 2012). On appeal, defendant contends that the trial court denied

him his right to confrontation when it prevented him from cross-examining two police officers about their potential bias and motive to testify falsely. We affirm, because defendant cannot show that the officers would have given answers favorable to his case.

¶ 3 The State charged defendant with two counts of UUWF and two counts of aggravated unlawful use of a weapon (AUUW). During opening statements, defense counsel asserted that the credibility of the two police officers would be the paramount issue in the case. Counsel asked the court to be critical of the officers' testimony, particularly the testimony he planned to elicit on cross-examination.

¶ 4 Chicago police officer Arnoldo Rendon testified that, about 9:45 p.m. on October 5, 2013, he was driving an unmarked police vehicle with his partner, Officer Louis Loaiza, and turned onto the 2800 block of West 21st Street, when he saw several men standing on the south side of the street. As the officers continued driving, someone on the south side of the street shouted, "5-0." Rendon testified that "5-0" is a street term used to warn people that police are present.

¶ 5 Rendon testified that, as he drove down the street, he noticed defendant standing alone on the north side of the street. As the officers approached, defendant looked in their direction, and with his right hand, tossed an object over a nearby fence. When defendant tossed the object into the air, Rendon saw that it was a gun. Rendon testified that he was approximately 60 to 70 feet from defendant at this time, nothing was covering defendant's face, the windows of the police vehicle were open, and his view was unobstructed. Rendon also explained that the streetlights were double lights with one light hanging over the street and a second smaller light hanging towards the sidewalk. After the gun went over the fence, Rendon heard the sound of metal hitting stone as the weapon hit some type of concrete, either the ground or the brick building.

¶ 6 Rendon testified that defendant walked east. Rendon drove a little past defendant, stopped, and called defendant to the car. Defendant complied, and Rendon and Loaiza got out of the car. Rendon ordered defendant to place his hands on the vehicle and patted him down. Meanwhile, Loaiza walked to the yard where Rendon saw defendant toss the gun. When Loaiza returned to where Rendon had detained defendant, he made a motion to signal the presence of a gun by pointing his finger and bending his thumb up and down.

¶ 7 Rendon and Loaiza put defendant into handcuffs and read him his *Miranda* rights. While defendant was being placed in the back of their car, defendant told them that the gun was not his and that it belonged to "the Kings off of 21st." Defendant also said that he had just been released from Cook County jail and that he was in the area visiting his mother. Rendon testified that neither he nor Loaiza had asked defendant any questions or shown defendant the gun before he made his statements.

¶ 8 On cross-examination, defense counsel asked Rendon if he ever had any contact with defendant prior to the date in question. The prosecutor objected and asserted that the question was irrelevant, and the trial court agreed and sustained the objection. Rendon then testified that he had been assigned to the 10th District for his entire career and that he was familiar with that block of 21st Street. Rendon acknowledged that, on the night in question, he and Loaiza were patrolling the neighborhood for drug and gang activity.

¶ 9 Defense counsel then asked Rendon if there was "a quota of arrests that the tactical team is required to meet in a particular time period." The prosecutor again objected on the basis of relevance, and the trial court sustained the objection.

¶ 10 Rendon acknowledged that it was dark outside at the time of the incident and that there were cars parked on both sides of the street. He also acknowledged that Loaiza did not show him

the gun at the scene and that he did not see the recovered weapon until they returned to the police station. Rendon also acknowledged that defendant did not provide a written statement at the police station and that he and Officer Loaiza were the only officers present when the verbal statement was made.

¶ 11 Officer Loaiza's version of the incident mirrored Rendon's testimony. Loaiza said that, as he and Rendon turned onto 21st Street, he saw several men standing on the south side of the street. He heard someone say "5-0, 5-0," then saw defendant standing alone on the north side of the street. Defendant looked toward the officers and tossed a blue steel handgun over the wrought iron fence in front of 2834 West 21st Street.

¶ 12 Loaiza said that he was 50 to 75 feet away from defendant when he tossed the gun over the fence. The windows of the car were down, and Loaiza testified that he heard the sound of metal hitting concrete as the gun hit the side of the building and dropped into an opening that was below sidewalk level in front of the building.

¶ 13 Loaiza also testified that, after tossing the gun, defendant walked east on 21st Street. The officers drove alongside defendant as he walked past a few buildings, and Rendon then called defendant to their vehicle. Loaiza explained that the gates in front of some of the buildings were open, so they waited to call out to defendant until he was in an area where there were no gates open so they would not have to chase him if he ran.

¶ 14 Loaiza said that, as defendant approached the car, they got out. Rendon grabbed defendant, patted him down, and held him. Loaiza then walked back to 2834 West 21st Street, opened the gate, and walked down the steps. He saw a nine-millimeter blue steel handgun lying on the cement in front of the building. There were no other metal objects in the area. Officer

Loaiza recovered the gun, cleared it of bullets, and removed the magazine which contained six live rounds.

¶ 15 Officer Loaiza testified that he went back to where Officer Rendon had detained defendant. When Rendon looked towards him, Loaiza signaled that he had recovered a gun. Rendon handcuffed defendant, and Loaiza read him his *Miranda* rights, which defendant acknowledged that he understood. The officers did not ask defendant any questions.

¶ 16 Loaiza said that, as he and Rendon put defendant in the back of their car, defendant said that the gun was not his and that it belonged to the boys on the block. Defendant also said that was just released from jail and that he was only in the area to visit his mother.

¶ 17 Loaiza testified that there was good artificial lighting on the street. Loaiza denied that anything blocked his view when he saw defendant toss the gun.

¶ 18 On cross-examination, Loaiza acknowledged that he was familiar with that particular block of 21st Street where they arrested defendant. He said that he watched defendant for several seconds before he saw defendant toss the gun. Loaiza said that, when he first noticed defendant, he did not see anything in defendant's hands, nor did he see defendant reach into his pocket. Loaiza acknowledged that there were cars parked on the north side of the street and that defendant was standing on the sidewalk on the other side of the parked cars. Loaiza also acknowledged that he never showed the gun to defendant at the scene or at the police station, and that the gun was not tested for fingerprints.

¶ 19 Defense counsel then asked Officer Loaiza if the lighting was good on the street that night, and the officer replied, "Yes." Counsel then asked, "Ha[ve] you ever in your career described artificial lighting as poor?" The prosecutor objected, and the trial court sustained the

objection. Officer Loaiza could not recall how close defendant was to a streetlight at the time he made the motion with his arm.

¶ 20 The parties stipulated that Officer Shawn Alonso would testify that Officer Loaiza gave him a model P11 nine-millimeter handgun with a blue steel finish and a three-inch barrel, a magazine, and six nine-millimeter live rounds at the police station. Alonso inventoried all of the items in accordance with police procedures.

¶ 21 The State also presented a certification letter from the Illinois State Police indicating that defendant had never been issued a firearm owner's identification card. In addition, the State presented a certified copy of defendant's 2010 conviction for robbery, and a stipulation that defendant was on parole for that robbery on the date of this offense.

¶ 22 In closing argument, defense counsel asserted that the testimony from Officers Rendon and Loaiza did not make sense. Counsel asserted that Rendon and Loaiza testified "remarkably consistently" and that their testimony "lined up too perfectly," showing that they had discussed their "stories." He argued that the officers' testimony that defendant looked in their direction, tossed a gun into private property, then casually walked in the same direction that the police vehicle was traveling was "ridiculous." Counsel also noted that both officers testified that they did not see defendant holding anything in his hands and did not see him reach into his pockets. Counsel then questioned where the gun came from.

¶ 23 Counsel further argued that the officers' testimony that they did not question defendant and that defendant spontaneously made a statement after being advised of his *Miranda* rights was "convenient" because "it cover[ed] all of their bases." Counsel noted that the officers testified that the lighting was good and argued, "[T]here is not a single officer in this city that has ever observed poor artificial lighting on any street in the city limits, at any time." Counsel further

argued that just because they testified that the lighting was good did not mean that it was actually good. Counsel asked the court to think critically about the officers' testimony, specifically their ability to make their observations.

¶ 24 The trial court found that Officers Rendon and Loaiza were "very credible," that there were no inconsistencies in their testimony, and that they were not impeached. The court further found that defendant voluntarily made a statement that the gun was not his. The court concluded that the State proved its case by the direct testimony of the officers, the stipulations, and defendant's statement, which was corroborated by the inventory of the blue steel handgun. The court found defendant guilty of all counts.

¶ 25 At the hearing on defendant's motion for a new trial, defense counsel again argued that the testimony from the police officers was not credible and he challenged their ability to observe defendant. Defendant's motion did not allege that the trial court denied him his right to cross-examine the police officers about their potential bias and motive to testify falsely.

¶ 26 The trial court denied defendant's motion and sentenced defendant to six years' imprisonment.

¶ 27 On appeal, defendant contends that the trial court denied him his right to confront the witnesses against him when it prevented him from cross-examining Officers Rendon and Loaiza about their potential bias and motive to testify falsely. Defendant argues that his theory of defense at trial was that the officers were lying. He asserts that the questions he attempted to ask the officers to show their bias were proper and relevant, and that the trial court erred when it sustained the State's objections on the basis of relevance. Defendant acknowledges that he forfeited this issue for appeal because he failed to raise it in his posttrial motion. He argues, however, that it is reviewable under both prongs of the plain error doctrine.

¶ 28 The State responds that defendant forfeited review of this issue because he did not object to the court's rulings during trial and did not raise the issue in his posttrial motion. The State also notes that defendant made no offer of proof during trial to establish the substance of the expected testimony from the officers. The State further argues that the plain error doctrine does not apply in this case because no error occurred and the evidence was not closely balanced. Alternatively, the State argues that the trial court properly sustained the objections, because the challenged questions were irrelevant or speculative.

¶ 29 Initially, the parties agree that defendant forfeited this issue for appeal because he failed to raise it in his posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Consequently, we consider defendant's contention that his claim should be reviewed as plain error. Ill. S. Ct. R. 615(a) (eff. Aug. 27, 1999).

¶ 30 The plain-error doctrine is an exception to the forfeiture rule that exists to protect defendant's rights and the reputation and integrity of the judicial process. *People v. Herron*, 215 Ill. 2d 167, 177 (2005). That doctrine provides that a clear or obvious error may be addressed on appeal, despite defendant's forfeiture, if (1) the evidence at trial was so closely balanced that the guilty verdict may have resulted from the error, or (2) the error was so substantial that it deprived defendant of a fair trial. *People v. McLaurin*, 235 Ill. 2d 478, 489 (2009). When invoking the plain error doctrine, it is appropriate to first determine whether any error occurred at all, "because 'without error, there can be no plain error.' " *People v. Hood*, 2016 IL 118581, ¶ 18 (quoting *People v. Smith*, 372 Ill. App. 3d 179, 181 (2007)). The burden of persuasion is on defendant. *Hillier*, 237 Ill. 2d at 545.

¶ 31 A criminal defendant has a constitutional right to cross-examine the witnesses against him. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § 8; *People v. Klepper*, 234 Ill. 2d

337, 355 (2009). In general, a witness may be cross-examined regarding any permissible matter that shows his bias, interest, or motive to testify falsely, since one of the purposes of cross-examination is to test the witness' credibility. *People v. Kitchen*, 159 Ill. 2d 1, 37 (1994). But evidence of interest, bias or motive must be positive and direct, not remote and uncertain, because it must potentially give rise to the inference that the witness has something to gain or lose by his testimony. *People v. Sims*, 192 Ill. 2d 592, 625 (2000).

¶ 32 Moreover, the trial court may limit cross-examination concerning the potential bias of a prosecution witness without violating defendant's sixth amendment right. *Klepper*, 234 Ill. 2d at 355. The trial court has discretion to impose reasonable limits on cross-examination based on concerns regarding prejudice, confusion of the issues, harassment, the witness' safety, or questions that are repetitive or of little relevance. *Id.* Thus, we review the trial court's limits on cross-examination for an abuse of discretion. *Kitchen*, 159 Ill. 2d at 37.

¶ 33 On review, this court is not required to isolate a specific limitation on cross-examination to determine whether reversible error occurred. *Klepper*, 234 Ill. 2d at 355-56. Instead, the ultimate question is " 'whether defendant's inability to make the inquiry created a substantial danger of prejudice by depriving him of the ability to test the truth of the witness's direct testimony.' " *Id.* at 356 (quoting *United States v. Rogers*, 475 F.2d 821, 827 (7th Cir. 1973)). In making that determination, we consider the record in its entirety and the alternative methods available to defendant to impeach the witness. *Klepper*, 234 Ill. 2d at 356. If the record as a whole shows that the fact-finder was aware of sufficient factors regarding relevant areas of impeachment of the witness, there is no constitutional violation merely because defendant was precluded from pursuing other areas. *Id.*

¶ 34 In this case, defendant specifically challenges the trial court's rulings as to three questions posed to the officers by defense counsel during cross-examination. In each instance, the trial court sustained objections from the prosecutor based on relevance, thereby barring the officers' from answering those questions. See *People v. Harvey*, 211 Ill. 2d 368, 392 (2004) (trial court may preclude offered evidence on basis of irrelevancy where it has little probative value due to its remoteness or uncertainty).

¶ 35 First, defendant argues that the court erred when it sustained the State's objection when defense counsel asked Officer Rendon, "[H]ave you ever had prior contact with my client before October 5, 2013?" Defendant says that this question could have shown that Rendon or Loaiza had "a grudge" against him or knew that he was on probation.

¶ 36 Second, defendant claims the court erred when it precluded Officer Rendon from answering the question, "Is there a quota of arrests that the tactical team is required to meet in a particular time period?" Defendant says that, if the officers acknowledged the existence of a quota system, this would help show their motive to lie, as they would have an incentive to meet their quotas "with false or illegal arrests."

¶ 37 Third, defendant argues that the court erred when it barred Officer Loaiza from answering the question, "Ha[ve] you ever in your career described artificial lighting as poor?" Defendant claims that this question would directly challenge Loaiza's credibility and undermine the notion that he saw defendant throw a gun from 50 to 75 feet away at night.

¶ 38 The first problem with defendant's argument is that we do not know how the officers would have answered those questions. Defendant made no offer of proof regarding the officers' expected testimony below, so we have no way to know what the officers might have said.

¶ 39 The failure to make an adequate offer of proof results in forfeiture of the issue on appeal. *People v. Andrews*, 146 Ill. 2d 413, 422 (1992). An offer of proof is important both because it discloses to the trial judge and opposing counsel the nature of the offered evidence, enabling them to take appropriate action, and because it provides the reviewing court with a record to determine whether exclusion of the evidence was erroneous and harmful. *People v. Thompkins*, 181 Ill.2d 1, 10 (1998).

¶ 40 In the specific context of excluded evidence relating to bias, the offer of proof creates a record for appellate review as to whether the proposed evidence was directly and positively related to the witness' bias or motive to testify falsely. *People v. Tabb*, 374 Ill. App. 3d 680, 689 (2007). Thus, "[w]hen a line of questioning is objected to, the defendant must make an offer of proof to convince the trial court to allow the testimony or establish that the proposed evidence goes to bias or motive to testify falsely." *People v. Moore*, 2016 IL App (1st) 133814, ¶ 50. "A formal offer of proof is typically required; however, an informal offer of proof, involving counsel's summary of what the proposed evidence might prove, may be sufficient if specific and not based on speculation or conjecture." *Tabb*, 374 Ill. App. 3d at 689. See also *People v. Roberson*, 401 Ill. App. 3d 758, 768 (2010) (party forfeits review of trial court's restriction on testimony "when he fails to make an offer of proof," either formally or at least through informal summary of what proposed evidence might prove); *People v. Evans*, 373 Ill. App. 3d 948, 966 (2007) ("Failing to make an adequate offer of proof results in a waiver of the issue on appeal.").

¶ 41 As we explained above, to find that the trial court erred in precluding the officers from answering these questions, we must determine "whether defendant's inability to make the inquiry created a *substantial danger of prejudice* by depriving him of the ability to test the truth of the witness's direct testimony." (Emphasis added.) *Klepper*, 234 Ill. 2d at 355-56. But we

cannot determine the amount of prejudice that defendant faced without knowing how the officers would have answered—or at a bare minimum, how defense counsel would summarize the anticipated answers.

¶ 42 Having noted that general problem as to each of the three questions under review, we now turn to each one more specifically.

¶ 43 We will begin first with the last of these questions, the question whether Officer Loaiza had ever, in previous testimony, described artificial lighting as poor. Though we certainly agree with defendant that a witness's bias or motive to testify falsely is among the most sacred of cross-examination topics (see, *e.g.*, *Davis v. Alaska*, 415 U.S. 308, 315-16 (1974); *People v. Blue*, 205 Ill. 2d 1, 18 (2001)), we do not find this question relevant to bias or motive. The clear import of the question was to suggest that the officer always claimed, in courtroom testimony, that lighting was sufficient—that it was a matter of routine for a police officer (or at least this officer) to so testify, whether true or not. Even defendant characterizes the relevance of this inquiry as relating to "Loaiza's propensity to view artificial lighting through rose-colored glasses," which "directly relates to the believability of the dubious scenario the officers described."

¶ 44 Propensity to lie is not bias. The question certainly challenged the officer's credibility, but it did not suggest that the officer had a particular motive to testify falsely in this case, or that he harbored some bias against this particular defendant. It did not show that the officer "ha[d] something to gain or lose by his testimony." *People v. Triplett*, 108 Ill. 2d 463, 475–76 (1985); *People v. Rivera*, 307 Ill. App. 3d 821, 833 (1999).

¶ 45 And in any event, the trial court's sustaining of the objection on relevance grounds was proper. Though the trial court did not elaborate on this ruling, it would be virtually impossible to

compare the adequacy of lighting in one case to another, given the myriad unique circumstance of a given case. Had the court allowed inquiry into that matter, it would have opened the door to intricate discussions of other cases in which Loaiza testified, and the specific circumstances concerning lighting in those cases. The trial court could have reasonably determined that allowing a series of mini-trials on the lighting conditions in other cases would significantly delay the proceedings without any corresponding probative benefit.

¶ 46 This is where an offer of proof would have been helpful. If defendant had more than a rhetorical complaint, if defendant possessed information that this officer had testified that lighting was adequate in a specific instance sufficiently comparable to the facts in this case, we could at least gauge the importance of this testimony and the possible benefit it would have had to defendant. Absent that offer of proof, we cannot find that the trial court abused its discretion in sustaining the State's objection to this question.

¶ 47 Likewise, we do not find the question put to Officer Rendon, "[H]ave you ever had prior contact with [defendant] before October 5, 2013?", to be relevant as to motive or bias. Defendant cites the presentence investigation report to show that Rendon had recently arrested defendant, but the mere fact of a prior arrest does not show bias or motive. See, *e.g.*, *Rivera*, 307 Ill. App. 3d at 833 (1999) (trial court did not err in excluding, as irrelevant, evidence that arresting officer had searched defendant's parents' house in the past because "presumptively legal police action [does not] demonstrate[ ] bias or motive on the part of" police). By itself, this question does not strike us as particularly relevant to any matter in this case.

¶ 48 We say "by itself," because this, of course, is where an offer of proof would have been critical. Had defense counsel informed the court of some particular bad blood between Rendon and defendant—an altercation during the arrest, a brutality complaint filed, even harsh words

exchanged—we might have a different view. For example, in the case cited by defendant, *People v. Chavez*, 338 Ill. App. 3d 835, 841-42 (2003), defendant was improperly prevented from eliciting testimony that the defendant had previously sued the police department, and that the arresting officer had made negative comments about the defendant's lawsuit. That evidence was surely relevant to demonstrate a preexisting bias on the part of that police officer, a possible motive to fabricate testimony against that specific defendant. But here, there was no similar evidence of a preexisting bias; the lone fact that Rendon had arrested defendant previously would not establish, by itself, that the officer would fabricate testimony to frame defendant on a later occasion. *Rivera*, 307 Ill. App. 3d at 833. Without more via an offer of proof, we cannot say that the trial court abused its discretion in sustaining the objection to this question.

¶ 49 The question relating to whether the officers had a quota system for arrests would be an example, in our opinion, of a question probing the witness's bias—the point being that the officers arrested defendant not because he did anything wrong, but because they needed to keep their arrest numbers up. But here again, the lack of an offer of proof makes it impossible to assess the significance of this testimony. Had the officer been questioned in an offer of proof, and had he answered that no such quota system existed, obviously this line of inquiry would have fallen flat. Had he answered in the affirmative, perhaps defendant could have developed that testimony. But defendant did not make even an informal showing of a good-faith belief that such a quota system existed.

¶ 50 True, on appeal, defendant cites some internet sources that he says show the Chicago police may operate on a quota system. But these articles were not presented to the trial court, and defendant cites no persuasive authority for the notion that we should take judicial notice of these articles on appeal, much less that we should consider something that was not presented to the

trial court. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016); *People v. Oglesby*, 2016 IL App (1st) 141477 ¶ 205 ("The failure to cite any authority or to articulate an argument will result in forfeiture of that argument on appeal.").

¶ 51 Defendant cites *People v. Furby*, 228 Ill. App. 3d 1, 6 (1992), for the proposition that we should not require an offer of proof in this context. We find that case distinguishable. The questions there, to which the trial court sustained the State's objections, were: "Is it fair to say the police departments do not like unsolved crimes?" and "Is it fair to say as part of your duties as a police investigator you have a duty to obtain confessions from defendants?" *Id*. at 4. The answers to those questions were obvious; of course, the police do not like crimes that go unsolved, and of course, police officers try to obtain confessions as part of their duties. An offer of proof would have been of little enlightenment, and thus the appellate court did not hold the lack of one against the defendant. *Id*. at 6. Here, in contrast, whether a quota system existed for arrests was not obvious at all. The failure to at least try to establish a factual predicate, via a formal offer of proof or even an informal suggestion of a good-faith basis for suspecting the existence of a quota system, was necessary to establish prejudice. Absent some attempt to offer proof on this subject, we are unable to gauge the significance of any harm to defendant.

¶ 52 Based on the record before us, we cannot conclude that the court erred in sustaining the State's objections to defendant's questions on cross-examination. As defendant cannot establish prejudice, he cannot establish error, let alone plain error.

¶ 53 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 54 Affirmed.