2017 IL App (1st) 151832

SIXTH DIVISION
DECEMBER 8, 2017

No. 1-15-1832

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 MC 118635801
	)	
CHRISTOPHER MANSOORI,	)	Honorable
	)	Clarence Burch,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Connors and Delort concurred in the judgment.

ORDER

¶ 1 *Held*: The defendant's conviction for harassment through electronic communications is affirmed.

¶ 2 The *pro se* defendant-appellant[1], Christopher Mansoori, was convicted of harassment through electronic communications and was sentenced to two years of probation and 400 hours of community service. On appeal, the defendant argues: (1) that his trial counsel was ineffective;

[1]The trial court appointed the Office of the State Appellate Defender (OSAD) to represent defendant on appeal, even though he had been represented by private counsel at trial. This court subsequently granted the OSAD's motion to withdraw, as upon review, the OSAD was not authorized to represent defendant under the State Appellate Defender Act.

(2) that the trial court was prejudiced against him; (3) that the trial court erred in admitting evidence against him; and (4) that the trial court erred in allowing him to testify about his prior conviction for aggravated unlawful use of a weapon (AUUW). For the reasons stated below, we affirm the judgment of the circuit court of Cook County.

BACKGROUND

¶ 3 On May 21, 2014, the defendant was charged with harassment through electronic communications under 720 ILCS 5/26.5-3(a)(5) (West 2016) for sending threatening text messages to the victim, Gina Silvi. A bench trial commenced on April 24, 2015.

¶ 4 At trial, the victim testified that in August 2012 she enrolled in DePaul University and moved into a student apartment complex located at 1237 West Fullerton Avenue, Chicago, Illinois. She met the defendant, whom she identified in court, shortly afterwards. She testified that she was standing in front of her apartment complex with three male friends, who were students from Bahrain and also lived in the apartment complex. The defendant was also standing outside the apartment complex with his friend, Affaan Khalid. Neither the defendant nor Khalid were students, but Khalid's girlfriend was a student and lived in the same apartment complex as the victim. The defendant approached the victim and her three Bahraini friends, and he spoke with the victim for about five to ten minutes before she re-entered the apartment complex. During their conversation, they exchanged first names and the victim gave her cell phone number to the defendant. Later that same day, the defendant texted the victim: "Hey this is Chris." The victim stored the defendant's phone number into her cell phone as "Chris (outside)" as she did not know his last name.

¶ 5 The victim further testified that over the next few months, the defendant texted her about twice a day, several days a week. She stated that the text messages initially "were harmless, but annoying; just very persistent." She answered the first few messages, but eventually she stopped

responding as "[her] way of saying 'please don't contact me.'"

¶ 6 On December 8, 2012, the victim received a text message from the defendant that said: "Got a bottle of Jack in the car. Want to chill?" She responded: "I have a boyfriend, no. Don't talk to me anymore." The defendant then texted her "upwards of six, seven *** maybe more [times]." The text messages from the defendant became "threatening" after she told him to stop contacting her. He texted that "I know who you are. You don't know about me. Stupid b*tch."

¶ 7 On May 18, 2013, the victim received a text message from an unknown Chicago-area phone number that she did not have stored in her phone. The text message stated: "Hi Gina. I got good bud. Good sh*t. Call me when you need it, yeah. I'll bring it to you. I stay up the street." The victim testified that she wanted to know who was texting her, stating: "I don't smoke weed and anybody that knows me would know this." She texted the unknown number back, asking who was texting her, but received no response. She called the unknown number from her cell phone, but no one answered. She then called the unknown number from a friend's phone, and a male voice answered. The victim did not recognize the male voice right away, but eventually, during the course of the conversation, recognized the voice as the defendant's. Later, the defendant identified himself on the phone as "Chris, the guy that you met outside with the three guys from Bahrain."

¶ 8 The victim continued to testify that on the following day, she received additional text messages from the defendant at the same unknown number. She testified that the defendant texted her: "Why are you calling me from five different numbers asking 'who, who, who' like a whore and then don't like when I text? Tell me if you want to get it later, and you can close your door and I'll show you what I can give you." She responded by asking him to not contact her again or else she would go to the police. She testified that the defendant then texted her "You do

that, stupid b*tch. I'll show you what Chicago is all about. Cops can't do sh*t. Your dad's probably a fa*got lawyer. I'm not afraid of the law. I'm also dangerous as f*ck. Don't get outside. I'll pop you in your --." The defendant further texted her: "You don't know me or my name, but I know where you live, stupid b*tch. 1237 West Fullerton. Don't get caught outside. What's a college degree if you're dead. This phone's not in my name. You won't be able to contact me. You don't know me." The victim then went to the police and reported the text messages from the defendant. She testified that she was able to provide the police with the defendant's last name because she learned it from her three Bahraini friends, who had "hung out" with the defendant several times since they all initially met in front of the apartment complex in August 2012.

¶ 9 During the victim's testimony, the State asked to show her Exhibit 2, which was a series of images of the text conversation with the unknown number. The defendant's counsel objected, arguing there was no adequate foundation to connect the exhibit to the defendant. The State responded that the victim had already laid proper foundation by testifying that she recognized the defendant's voice when she called the phone number pictured in the exhibit. The court overruled the objection and later admitted Exhibit 2 into evidence without objection.

¶ 10 After the State rested, the trial continued with the defendant's testimony. He testified that he went to the apartment complex at 1237 West Fullerton only once, with Khalid, in the spring of 2013, to visit Khalid's girlfriend. After the visit, he and Khalid went outside in front of the building to have a cigarette. He said he noticed "about 20 people outside, a group of college kids. That's about it. I was in prison when I was supposed to be in college. I finished three years of school, but I didn't -- so it was a social setting that I should have been in one year prior probably at the time." He further testified that he spoke for "less than one minute" with "these Bahraini

guys that they kept talking about as [if] they know me, but I only met them one time. They never knew my name. I don't even give people my name. I said my name was Jason." He stated that although he saw the victim also standing outside and talking to other people, he did not have a conversation with her. He denied asking for her phone number or giving her his phone number. He further denied ever sending any text messages to the victim or speaking with her on the phone. He testified that the phone number that sent the text messages in Exhibit 2 was not in his name and he was "unaware of how [he] got connected to that number." He claimed it must have been another "Chris" who identified himself to the victim on the phone.

¶ 11 On cross-examination, the State asked the defendant about his testimony that he had been in prison. The defendant responded: "I was in prison for having a loaded handgun and getting sent out of boot camp to prison with like two weeks left."

¶ 12 At the end of the trial, the trial court found the defendant guilty. The court stated: "In this case, the question has arisen whether the defendant is the person responsible for sending certain harassing and threatening text messages. This court has been asked to disregard the text messages as evidence in which there have been inadequate foundations laid and they have not been authenticated, and thereby those text messages are inadmissible." The court then discussed *People v. Watkins*, 2015 IL App (3d) 120882 and *People v. Chromich*, 408 Ill. App. 3d 1028 (2011), as both cases addressed the issue. The court ultimately concluded that nothing in *Chromich* or *Watkins* precluded admission of the text message evidence. The court stated: "This message occurred within a short time of the defendant's [*sic*] having already made similar threats and the content of the message echoes the similar language the defendant allegedly used on the telephone and in the prior threats. Common sense says this is not a coincidence. *** I find the testimony of the [victim] to be very credible. *** While the conceptual possibility exists that someone else sent the texts, the People are not required to eradicate such possibility to meet the reasonable doubt standard. And the court is solidly convinced

that the defendant sent the text messages; therefore I find the defendant guilty."

¶ 13 The trial court then proceeded to sentencing. The State informed the court that the defendant have been convicted of AUUW and a misdemeanor domestic battery, and had one prior failure to appear. The State asked for a "severe sentence" given the threats against the victim's life, and noted that "jail time is a possibility" but that it was seeking probation with a no-contact order.

¶ 14 The court listened to the defendant's arguments for mitigation, but expressed concerned over the content of the text messages, telling the defendant "You have talked about being a productive member of society, being a very enterprising person, having changed your life. Then I see this other side. It's like Dr. Jekyll and Mr. Hyde -- two different persons, split personality ***. I'm looking at one person, then I see a very intelligent young man testify, but then I see what could have triggered this. What's the dichotomy? *** I see two different people here, and I don't know who I'm dealing with today. *** Dr. Jekyll or Mr. Hyde? *** So I'm going to take a chance on you. I'm going to give you two years probation."

¶ 15 The court sentenced the defendant to two years probation, 400 hours of community service, and ordered no contact with the victim during the probationary period. The defendant subsequently filed this notice of appeal.

¶ 16 ANALYSIS

¶ 17 We note that we have jurisdiction to review the trial court's order, as the defendant filed a timely notice of appeal. Ill. S. Ct. R. 603 (eff. Feb. 6, 2013); Ill. S. Ct. R. 606 (eff. Dec. 11, 2014).

¶ 18 The defendant now makes four separate arguments before this court: (1) that his trial counsel was ineffective; (2) that the trial court was prejudiced against him; (3) that the trial court

erred in admitting evidence against him; and (4) that the trial court erred in allowing him to testify about his prior conviction for AUUW. We take each argument in turn.

¶ 19 The defendant first argues that his trial counsel was ineffective for two reasons. First, he claims that he received ineffective assistance of counsel because his counsel failed to argue that his arrest violated his rights under the fourth amendment of the U.S. Constitution. Second, the defendant claims that he received ineffective assistance of counsel because his counsel failed to object when the court asked "Is there any objection to the State entering Exhibit 2?"

¶ 20 Claims of ineffective assistance of counsel are reviewed through a two-part test that was announced by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984), and was adopted by our supreme court. *People v. Burrows*, 148 Ill. 2d 196, 232 (1992). To prevail on a claim of ineffective assistance of counsel, a defendant must show that (1) counsel's representation fell below an objective standard of reasonableness, and (2) counsel's substandard representation so prejudiced the defense as to deny the defendant a fair trial. *Id*. When a reviewing court addresses an ineffective assistance of counsel claim, it need not apply the two-part test in numerical order. *Id*. A defendant must overcome the strong presumption that the challenged action or inaction of counsel was the product of sound trial strategy and not incompetence. *People v. King*, 316 Ill. App. 3d 901, 913 (2000). We review claims of ineffective assistance of counsel *de novo*. *People v. Demus*, 2016 IL App (1st) 140420, ¶ 21.

¶ 21 We find the record before us to be insufficient to properly assess the defendant's claim that his counsel was ineffective for failing to argue that his fourth amendment rights were violated. The record is devoid of anything for us to review on this matter. Accordingly, the only thing we are left with is the bare allegations made by the defendant. See *People v. Evans*, 2015 IL App (1st) 130991, ¶ 33 (noting that where a defendant's claim of ineffective assistance of

counsel requires consideration of matters outside the record, such a claim is more appropriately addressed on collateral review). Therefore, we cannot find ineffective assistance of counsel on fourth amendment grounds based on the record.

¶ 22 On his second claim for ineffective assistance of counsel, the defendant argues his counsel rendered ineffective assistance of counsel by failing to object to the admission of Exhibit 2 into evidence. However, we agree with the State that the defendant cannot overcome the presumption of trial strategy where his counsel was plainly aware that such an objection would be futile. His counsel objected to the State showing Exhibit 2 to the victim during her testimony, which the trial court overruled after discussing the admissibility of the exhibit. Given the trial court's prior comments, any further objection would have been fruitless. We cannot see how the defendant was prejudiced considering that his counsel, in essence, had already objected to Exhibit 2. There is no likelihood that the outcome of the trial would have been affected if counsel had made another objection. Accordingly, the defendant's claim of ineffective assistance, on this basis, also fails.

¶ 23 The defendant next argues that the trial court was prejudiced against him. He claims that the court's bias against him was demonstrated in two ways: (1) by coaching the State's direct examination of the victim, and (2) by insulting him during sentencing. First, he claims the trial court assisted the State in questioning the victim on direct examination about the time of night that she received the text messages from the defendant. The victim was struggling to answer the question, and the court said to the State "The witness does not understand the arc of the question, just ask would anything refresh your memory." The defendant points to another part of the victim's testimony when the State elicited her testimony that the male voice on the phone identified himself as "Chris, the guy that you met outside with the three guys from Bahrain." The

defendant's counsel objected, arguing it was hearsay. When the State argued some hearsay exceptions applied, the court stated: "It can go to all those things, but you have to lay a further foundation as to how she -- without telling you how to do it, you must lay a further foundation." The defendant argues that these two, separate comments from the court show that the court was prejudiced against him because it "coached" and "guided" the State in its direct examination of the victim. Second, the defendant claims the trial court showed bias against him in its "Dr. Jekyll and Mr. Hyde" comments made during sentencing. The defendant argues that these comments were "derogatory" and "demeaning" because he is half-German and half-Persian, with pale skin and dark hair all over his body. The defendant notes how Dr. Jekyll becomes hairy when he turns into Mr. Hyde, and suggests that the court was insulting his appearance in its sentencing comments.

¶ 24 The defendant acknowledges that he did not preserve the issue, but he contends that it is reviewable under the plain error doctrine. See *People v. Thompson*, 238 Ill. 2d 598, 611 (2010) ("To preserve a claim for review, a defendant must both object at trial and include the alleged error in a written posttrial motion. [Citation.]"). The plain error doctrine "bypasses normal forfeiture principles and allows a reviewing court to consider unpreserved claims of error in specific circumstances." *Id.* at 613. "We will apply the plain-error doctrine 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." (Internal quotation marks omitted.) *Id.* "The first step of plain-error review is

determining whether any error occurred. [Citation.]" *Id.* Thus, we first consider whether the trial court demonstrated prejudice against the defendant.

¶ 25 Trial courts have wide discretion in presiding over trials. *People v. Minter*, 2015 IL App (1st) 120958, ¶ 115. And it is proper for a trial court to clarify and expedite a trial. *Id* at ¶ 123. However, the trial court must not depart from its function as a judge and may not assume the role of an advocate for either party. *In re Tamesha T.*, 2014 IL App (1st) 132986, ¶ 26. Decisions made by a trial court in overseeing the courtroom or in maintaining the progress of the trial are subject to an abuse-of-discretion standard of review. *People v. Coleman*, 183 Ill. 2d 366, 387 (1998). An abuse of discretion occurs when no reasonable person would take the view adopted by the court. *In re Dionte J.*, 2013 IL App (1st) 110700, ¶ 64.

¶ 26 We are not persuaded by the defendant's claims that the trial court showed bias against him in its two comments made during the direct examination of the victim. Trial courts often clarify issues for a witness; it is part of the court's function. Here, the trial court was not acting as an advocate for the State, but was clearly maintaining a proper procedural process during the trial. Moreover, this was a bench trial, where the risk of prejudice is less than a jury trial. Further, there was no jury that could have viewed the court's comments as indicating a bias in favor of the State. See *In re Tamesha T.*, 2014 IL App (1st) 132986, ¶ 26 (noting that the trial court's inquiries are compatible with its role as fact-finder). No reasonable person would view the trial court's comments made during the direct examination of the victim in this case as advocating for the State. Hence, the comments did not demonstrate bias against the defendant.

¶ 27 We are also not persuaded by the defendant's argument that the trial court showed bias against him in its "Dr. Jekyll and Mr. Hyde" comment during sentencing. "Dr. Jekyll and Mr. Hyde" is a common phrase used to describe someone who acts like two different people.

Viewing these comments in context of the evidence, the comments reflect the trial court's assessment of the dichotomy of the defendant's personality, as he portrayed himself, specifically noting that defendant is an "intelligent" and "enterprising" young man. Nevertheless, as the court noted, defendant was the same person who also sent the threatening text messages to the victim. There is no basis to infer that the court's assessment of the evidence had any relevance to the defendant's appearance or ethnicity. Further, we agree with the State that if the trial court was truly biased against the defendant, it would have sentenced him to incarceration instead of "tak[ing] a chance" on him as the court specifically noted in sentencing him to probation. The comments made by the trial court during sentencing did not demonstrate bias against the defendant. Thus, we find there was no error and there is no need to proceed further with a plain error analysis.

¶ 28 The defendant next argues that the trial court erred in admitting Exhibit 2, the series of images of text messages, because it was not properly authenticated. The defendant claims that the trial court misinterpreted *People v. Chromik*, 408 Ill. App. 3d 1028 (2011) and *State v. Thompson*, 2010 ND 10, and then erred in admitting Exhibit 2 into evidence. Specifically, the defendant claims that in both *Chromik* and *Thompson*, phone records were proffered to prove the transmission actually occurred, but that no phone records were presented here. The defendant argues that because he denied that the phone number ever belonged to him, and that because there was no eyewitness testimony to prove that it had belonged to him or that he had even used it to text the victim, the court should not have admitted Exhibit 2 into evidence. He further claims that there was no proper foundation to admit Exhibit 2. He claims the victim could not properly identify his voice on the phone, as she had only met him once before, approximately 9 months earlier.

¶ 29 Again, the defendant did not preserve this issue below and we must review it through the plain-error analysis by first determining whether an error occurred.

¶ 30 A party must lay a proper foundation before a document may be authenticated and entered into evidence. *People v. Kent*, 2017 IL App (2d) 140917, ¶ 86 (citing to *Piser v. State Farm Mutual Automobile Insurance Co.*, 405 Ill. App. 3d 341, 348 (2010)). Documentary evidence, such as a text message, may be authenticated by either direct or circumstantial evidence. *People v. Watkins*, 2015 IL App (3d) 120882, ¶ 37. "Authentication of a document may be made by direct or circumstantial evidence, which is routinely the testimony of a witness who has sufficient personal knowledge to satisfy the trial court that the item is, in fact, what its proponent claims it to be." *Kent*, 2017 IL App (2d) 140917, ¶ 86. Illinois Rule of Evidence 901 (eff. Jan. 1, 2011) provides that "[t]he requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." A trial court's decision to admit a document into evidence is reviewed under an abuse of discretion standard. *People v. Decaluwe*, 405 Ill. App. 3d 256, 266 (2010).

¶ 31 The defendant's argument that there was insufficient authentication relies on *Chromik* and *Thompson*. In *Chromik*, this court held that the trial court did not err in admitting a transcription of text messages between the defendant and the victim. *People v. Chromik*, 408 Ill. App. 3d 1028, 1048 (2011). The victim, a high school student, read the content of the text messages out loud to her principal, who typed the messages into his computer. *Id* at 1032. She included the date and time of the messages in the transcription. *Id*. The victim later deleted the text messages from her phone. *Id*. The principal's transcription of the text messages was admitted into evidence, even though "[a]ll acknowledged that the transcription may not have

evinced, with 100% accuracy, the text messages sent from defendant to [the victim] as some words were changed via the word processor's spell-check feature." *Id* at 1047. Phone records were also introduced, and the times and dates mirrored those on the transcription. *Id*. In finding that the trial court had properly ensured that the document was exactly what it purported to be, this court relied on *People v. Thompson*, 2010 ND 10 *Id*. In *Thompson*, the Supreme Court of North Dakota found there was sufficient evidence from the victim, including the circumstances surrounding the incident and his knowledge of the defendant's cell phone number, to authenticate text messages the victim received. *Id*. at ¶ 26.

¶ 32 We agree with the State that the trial court's ruling on the admissibility of Exhibit 2 was consistent with *Chromik* and *Thompson*. The defendant argues *Thompson* is distinguishable because in that case the victim was the husband of the defendant, and that he was familiar with her phone number. However, even though the victim here was not initially familiar with the unknown number, she did identify defendant's voice. The trial court could and did credit her testimony. The circumstantial evidence supports the findings that the defendant was the voice on the phone and the author of the text messages. This circumstantial evidence includes the defendant's identification of himself on the phone and the similar nature of the text message threats from his first phone number which defendant had voluntarily given to the victim. Most importantly, the trial court found the victim to be a very credible witness. All of this was sufficient to establish that the defendant authored the text messages.

¶ 33 The defendant stresses that in both *Chromik* and *Thompson*, the prosecution had phone records to verify that the text messages were actually sent, but that there were no phone records produced here. However, the phone records in *Chromik* were circumstantial evidence where the original text messages had been deleted. And in *Thompson*, even though there were phone

records, the court relied on the victim's testimony of the transcribed text messages, an image of the text message, and circumstances surrounding the incident to authenticate the text messages. Here, the evidence was the victim's testimony of the transcribed text messages, the victim's testimony of the surrounding circumstances, and images of the text messages purporting to be what the victim described. Phone records were not needed as additional circumstantial evidence in order to authenticate the text messages, especially because the trial court found the victim to be a credible witness. We find that the trial court was well-within its discretion to admit Exhibit 2. Thus, we find there was no error on that basis.

¶ 34 Finally, the defendant argues that the trial court erred in allowing him to testify about his prior conviction for AUUW. Again, the defendant did not preserve this issue below. In any event, we easily conclude there was no error on this ground.

¶ 35 The general rule is that it is improper to cross-examine a defendant about a prior conviction even where the conviction has been properly introduced into evidence. *People v. Coleman*, 158 Ill. 2d 319, 337 (1994). However, this rule does not apply where the defendant opens the door to such cross-examination. *Id*.

¶ 36 On direct examination, the defendant was testifying about his visit to the victim's apartment complex when he stated: "I was in prison when I was supposed to be in college." This testimony opened the door for the State to ask logical follow-up questions on cross-examination. The State then asked the defendant, "What were you in prison for?" In answer, the defendant described his AUUW conviction, which was not improper considering that he opened the door to the topic. Thus, we find there was no error and there is no need to proceed further with a plain error analysis.

¶ 37 CONCLUSION

¶ 38 For the foregoing reasons, we affirm the judgment of the Circuit Court of Cook County.

¶ 39 Affirmed.