2018 IL App (1st) 153334-U

SIXTH DIVISION
Order filed: February 2, 2018

No. 1-15-3334

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. 15 DV 10020
	)	
ALONZO WALDROUP,	)	Honorable
	)	Ursula Walowski,
Defendant-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

ORDER

¶ 1 *Held*: No error occurred when the trial court and defense counsel did not ask potential jurors if they had a favorable view of a witness who worked in law enforcement. The trial court did not abuse its discretion in allowing testimony about the defendant's actions outside a residence designated in an order of protection. Moreover, the defendant's conviction for violating the order of protection is affirmed where the complainant testified he entered the premises specified in the order.

¶ 2 Following a jury trial, the defendant, Alonzo Waldroup, was convicted of two counts of violating an order of protection and was sentenced to six years in prison. On appeal, the

defendant contends that his conviction should be reversed because the trial court did not ask potential jurors if they would have a more favorable view of a witness or complainant who worked in law enforcement. In the alternative, the defendant contends that his trial counsel provided ineffective assistance by failing to raise that question during the *voir dire* examination of jurors. The defendant also argues that the trial court erred in allowing testimony about his actions that occurred in an alley outside the complainant's residence. In addition, the defendant challenges the sufficiency of the evidence to establish his guilt. For the following reasons, we affirm.

¶ 3 The defendant was charged with violating an order of protection by knowingly or intentionally making contact with Lorez Rosell on July 5, 2015, after being served with notice of an order of protection and being previously convicted of domestic battery in case number 14 DV 429801. A second count charged the defendant with violating the order by knowingly or intentionally going to the address specified in the order on the same date.

¶ 4 In September 2015, the case proceeded to a jury trial where the following evidence was adduced.

¶ 5 Lorez Rosell-Hall testified she was 56 years old and had previously worked as a security attendant for the Illinois Supreme Court. She stated that she owned a two-flat building on South Dante Avenue in Chicago; she lived by herself on the second floor and rented the first-floor unit to a tenant, Ben Lee. Rosell-Hall identified the defendant in court as her boyfriend and said that they had been in a relationship since 2012. When asked how long she had known the defendant prior to dating him, she said it was fewer than five years.

¶ 6 Rosell-Hall further stated that, on March 13, 2015, she was granted an order of protection barring the defendant from any contact with her. According to Rosell-Hall, on that date, the

defendant was present in court and received a copy of the order. When asked about the contents of the order, Rosell-Hall testified as follows:

> "MS. REEDER [(ASSISTANT STATE'S ATTORNEY)]: [D]id that order of protection preclude the defendant from physical abuse, harassment, interference with personal liberty, intimidation of a dependant [*sic*] and stalking?
>
> A. Yes.
>
> Q. Were you granted exclusive possession of the residence and was the [defendant] *** ordered not to enter or remain in the household or premises located at [address] in Chicago, Illinois?
>
> A. Yes.
>
> Q. Was the defendant ordered to stay away from you?
>
> A. Yes.
>
> Q. Was the defendant*** prohibited from damaging in any way your 1997 Geo Prism [vehicle]?
>
> A. Yes."

A copy of the order was introduced into evidence and published to the jury; however, the order is not included in the record on appeal.

¶ 7 Rosell-Hall testified that, in 2015, the defendant had keys to her apartment. At about 7:30 a.m. on July 5, 2015, Rosell-Hall awoke to find that the defendant had let himself in "on the pretenses of talking." She asked the defendant to leave, and he did. Later that morning, Rosell-Hall went to her car, which was parked in the alley. The battery in her car was not working, and Lee and his girlfriend, Bonita Jones, were helping her. The defendant tapped on Rosell-Hall's car window, startling her. She did not know how much time had elapsed since he left her apartment.

¶ 8 Rosell-Hall testified that the defendant left the alley and then returned. The defendant, Lee, and Jones began fighting, and the defendant ran away. Rosell-Hall then saw the defendant in front of her building, where he was again arguing with Lee and Jones. The defendant fled, and Lee and Jones followed him. Rosell-Hall testified that she did not call the defendant that morning to ask him to come over. Police arrived on the scene shortly thereafter. Rosell-Hall said she did not call the police.

¶ 9 On cross-examination, Rosell-Hall was impeached with her statement to a prosecutor and a detective that she had known the defendant since she was in her twenties. She acknowledged an "off and on" relationship with the defendant from 2010 to 2014 and said that they had been trying to reconcile since the order of protection was filed several months before trial.

¶ 10 Rosell-Hall stated that she did not give the defendant a set of keys to her apartment. She admitted to drinking the night before, but said that she was not intoxicated on July 5, 2015. A neighbor phoned the police that morning. Rosell-Hall denied telling a police officer that the defendant was at her apartment because she had called him to fix her car. She stated, however, that from the day the order of protection was entered on March 13, 2015, until July 5, 2015, the defendant lived at her apartment "almost every day" and that she did not call police during that time.

¶ 11 On redirect examination, Rosell-Hall said that she knew the defendant when she was a teenager. She testified that the defendant lived with her even though the order of protection was in place because she "was scared."

¶ 12 Jones testified that she lived in the first-floor unit on South Dante with Lee and her four sons. She said the defendant "lives upstairs" with Rosell-Hall. At about 8 a.m. on July 5, 2015, Lee told her that Rosell-Hall needed help with her car, and they went to the alley. Jones and the

defendant started arguing, and the defendant pushed her. Lee started to fight with the defendant. Jones testified that the defendant kept trying to get into Rosell-Hall's car and Rosell-Hall shouted at the defendant, telling him to "just leave." The defendant tried to stab Lee with a fork and threw a brick at Jones, which "kind of like skinned me a little bit." Rosell-Hall continued to tell the defendant to leave, and the defendant walked away.

¶ 13 Jones stated that Rosell-Hall then drove her car to the front of the building. When Jones approached her, Rosell-Hall was "shaking like a leaf and crying." Jones's teenage son also was present. Jones suggested that they go inside, and Rosell-Hall said the defendant would "come back." The defendant returned and Jones told him to leave. The defendant approached Jones and pushed her. Jones's son pursued the defendant and detained him until police arrived.

¶ 14 Chicago police officer Geraldine Hutchinson testified that she responded to a call of a battery in progress at about 8:40 a.m. on July 5, 2015. A young man was holding the defendant on the ground and the defendant had blood on his face. Rosell-Hall told Officer Hutchinson that she had an order of protection against the defendant. The defendant was arrested after that order was confirmed via police records. Rosell-Hall told Officer Hutchinson that she called the defendant to come and fix her car. Officer Hutchinson testified that Rosell-Hall was intoxicated that morning. Jones described the altercation to Officer Hutchinson; however, Officer Hutchinson testified that, according to Jones, the defendant and Lee only argued and did not engage in a physical altercation. Jones did not say that the defendant stabbed anyone with a fork. Officer Hutchinson stated that Rosell-Hall refused to answer questions about the domestic nature of the case. Rosell-Hall did not tell Officer Hutchinson that the defendant had been inside the apartment that morning.

¶ 15 The parties stipulated to the testimony of Phyllis Stone, who worked as a court reporter on March 13, 2015, in the courtroom where an order of protection was entered against the defendant for two years. If called to testify, Stone would state that "the judge advised the defendant that he could not have contact with Ms. Rosell, and that no contact meant no contact at all." In addition, Stone would testify that the judge asked the defendant if he understood, and the defendant responded in the affirmative.

¶ 16 The State rested, and the defense presented no evidence. The jury found the defendant guilty of violating the order of protection. A certified copy of the defendant's prior conviction for domestic battery was admitted into evidence, and the court found that element of the charged counts was met. Following a sentencing hearing, the trial court sentenced the defendant to six years in prison.

¶ 17 On appeal, the defendant first contends that his conviction should be reversed because, during jury selection, the trial court did not ask members of the venire if they had a favorable opinion of a witness or complainant who worked in law enforcement. The defendant argues that, even though the venire members were asked if they had biases regarding domestic violence, they were not asked if they had a "bias in favor of witness testimony by a law enforcement officer or former officer." In the alternative, the defendant argues that his trial counsel provided ineffective assistance for failing to question potential jurors on that point.

¶ 18 The defendant acknowledges that his trial counsel did not raise his claim during the *voir dire* examination of jurors or in a posttrial motion; however, he argues that this court should nonetheless consider it under the plain-error doctrine, which provides a narrow exception to the rule against forfeiture. The plain-error doctrine allows consideration of unpreserved claims if a clear or obvious error occurred, and either: (1) the evidence was 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) the error was 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); see also *People v. Hood*, 2016 IL 118581, ¶ 18.

¶ 19 In arguing that the second prong of plain-error doctrine is applicable, the defendant asserts that the trial court's failure to ask the venire members if they held any biases in favor of individuals in law enforcement denied him the right to an impartial jury. The first consideration in a plain-error analysis is whether any error occurred at all. *Piatkowski*, 225 Ill. 2d at 565.

¶ 20 Jurors "must harbor no bias or prejudice which would prevent them from returning a verdict according to the law and evidence." *People v. Strain*, 194 Ill. 2d 467, 475 (citing *People v. Lobb*, 17 Ill. 2d 287, 300 (1959)). The purpose of the *voir dire* examination is to ascertain sufficient information about the beliefs and opinions of prospective jurors so as to allow the removal of those venire members whose minds are so closed by bias and prejudice that they cannot apply the law as instructed in accordance with their oath. *People v. Cloutier*, 156 Ill. 2d 483, 495-96 (1993). Because there is "no precise test for determining which questions" to be asked, the primary responsibility of conducting the *voir dire* examination belongs to the trial court, and the court's performance is reviewed for an abuse of discretion. *People v. Rinehart*, 2012 IL 111719, ¶ 16; *People v. Terrell*, 185 Ill. 2d 467, 484 (1998).

¶ 21 In this case, during *voir dire*, the trial court admonished the entire venire that the testimony of a law enforcement officer "is to be considered by you just like any other witness" and should not be given greater or lesser weight due to his or her occupation. According to the record, no potential juror expressed a lack of understanding with that admonition. We do not

believe that the trial court abused its discretion by failing to ask venire members about their opinions of individuals involved in law enforcement where Rosell-Hall's connection to law enforcement was limited and had terminated years before trial. Accordingly, no error occurred on this point.

¶ 22 We also do not find that defense counsel was ineffective in failing to question the venire members about possible bias in favor of law enforcement officers. To establish ineffective assistance of counsel, a defendant must prove that counsel's performance was objectively unreasonable and that counsel's deficient performance prejudiced him. *Strickland v. Washington*, 466 U.S. 668-687-88 (1984). Whether to question potential jurors on a particular subject is considered to be a matter of trial strategy, which "has no bearing on the competency of counsel." *People v. Furdge*, 332 Ill. App. 3d 1019, 1026 (2002). Furthermore, given the trial court's admonition set out above, it was reasonable for the defendant's counsel to forego asking venire members if they would attach more weight to the testimony of someone who worked in law enforcement, as that could have had the opposite effect and served to highlight the potential credibility of a State witness.

¶ 23 The defendant's next contention is that Rosell-Hall's and Jones's testimony regarding his altercation with Jones in the alley constituted inadmissible "other crimes" evidence that the trial court should have excluded. We disagree.

¶ 24 Before trial, the defendant filed a motion *in limine* requesting that the State be barred from presenting testimony about the incident involving Jones because an assault charge was "nolled by the State on July 13, 2015[,] and [was] no longer pending" against him. In denying the motion, the trial court explained:

> "I don't find that the State is seeking to bring out another prior bad act, but simply seeking to prove their charges.
>
> Obviously the State can't argue that [the defendant] is committing an assault. And I don't see really that [the] State would be doing that or any benefit to that as they have to prove violation of an order of protection so these are incidents that any witness is able to testify to as to what occurred. *** The State is allowed to bring out evidence as to the date and time charged and if during that time just because certain other things happened that may be a misdemeanor but the State dropped it does not have any bearing on the relevancy. It is relevant. It is admissible.
>
> And I don't find that it would be—I mean if you want to argue prejudicial, I don't find its probative value is in any way outweighed by any prejudicial effect.
>
> So you can make any objections during the testimony that you may find are objectionable based on the testimony but based on my understanding the testimony of this witness that would be allowed.
>
> So your motion to bar Ms. Jones from certain aspects of testimony at this point is respectfully declined."

¶ 25 The defendant argues that the trial court erred in denying the motion *in limine* because the alley "was outside of the protected address and away from the specific protected property and party" that was subject to the order of protection, *i.e.*, Rosell-Hall and her apartment. The State responds that Jones's testimony regarding those events was admissible as part of the "continuing narrative of events" surrounding the defendant's contact with Rosell-Hall.

¶ 26 Although the defendant contends that we should review this issue *de novo*, with no deference to the trial court's ruling, the authority that he relies on does not involve evidentiary rulings or motions *in limine*; rather, it discusses a motion to dismiss a criminal indictment. See *People v. Stapinski*, 2015 IL 118278, ¶¶ 33-34. A trial court's ruling on a motion *in limine* will not be disturbed on review absent an abuse of discretion. *People v. Mullins*, 242 Ill. 2d 1, 20 (2011). An abuse of discretion is found where the trial court's ruling is "arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court." *People v. Wheeler*, 226 Ill. 2d 92, 133 (2007) (quoting *People v. Caffey*, 205 Ill. 2d 52, 89 (2001)).

¶ 27 Evidence of a defendant's other crimes is admissible "if relevant for any purpose other than to show the defendant's propensity to commit crimes." *People v. Chapman*, 2012 IL 111896, ¶ 19. Such evidence may be admitted as part of a "continuing narrative" of the charged offense. *People v. Adkins*, 239 Ill. 2d 1, 33 (2010). The continuing-narrative exception does not apply when the crimes are distinct and are " 'undertaken for different reasons at a different place at a separate time.' " *Id*. (quoting *People v. Lindgren*, 79 Ill. 2d 129, 139-40 (1980)). Rather, the continuing-narrative exception encompasses the circumstances that surround the entire transaction of the underlying offense. *Id.* at 32 (citing *People v. Walls*, 33 Ill. 2d 394, 397 (1965)) (testimony that a defendant accused of sexual assault stole the car that the victim was driving home was properly admitted under the continuing-narrative exception).

¶ 28 In this case, Rosell-Hall testified that she saw the defendant three times on the morning of July 5, 2015. First, the defendant was in her apartment at 7:30 a.m. Next, she saw him in the alley arguing with Lee and Jones. Rosell-Hall then testified that the defendant was in front of her building. The altercation in the alley was part of the continuing timeline that the defendant was

in Rosell-Hall's apartment and in her presence, which was prohibited by the order of protection. We, therefore, find that the trial court did not abuse its discretion when it allowed Jones and Rosell-Hall to testify about the defendant's presence in the alley.

¶ 29 The defendant's remaining contention on appeal is that the evidence presented at trial was insufficient to establish that he violated the order of protection. He argues that he did not enter the residence or "breach the order of protection by touching or harming" Rosell-Hall.

¶ 30 When considering a challenge to the sufficiency of the evidence, the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *People v. Bradford*, 2016 IL 118674, ¶ 12. It is the responsibility of the trier of fact, which was the jury in this trial, to resolve conflicts in the testimony, weigh the evidence and draw reasonable inferences from the facts. *Id*. It is not the role of the reviewing court to retry the defendant when the sufficiency of the evidence is challenged. *People v. Lloyd*, 2013 IL 113510, ¶ 42. A conviction will not be overturned unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt as to the defendant's guilt. *Bradford*, 2016 IL 118674, ¶ 12. "Under this standard, a reviewing court must allow all reasonable inferences from the record in favor of the prosecution." *People v. Givens*, 237 Ill. 2d 311, 334 (2010).

¶ 31 To prove a defendant guilty of violating an order of protection, the State is required to prove that the defendant (1) committed an act prohibited by the order of protection and (2) was served notice or otherwise had actual knowledge of the contents of the order. 720 ILCS 5/12-3.4 (West 2012). In this case, the order of protection prevented the defendant from entering the specified residence on South Dante Avenue and required him to cease contact with Rosell-Hall.

¶ 32 The defendant does not contest those terms, nor does he dispute that the order of protection was in place on July 5, 2015, or that he had knowledge of the order. Rather, he argues that he was in the alley and did not enter the residence or threaten Rosell-Hall. The defendant further contends that, by Rosell-Hall's own account, they were working on their relationship and she had called him that day to help her with her car.

¶ 33 Although the defendant argues that he did not enter the residence, Rosell-Hall's testimony indicates otherwise—she stated that, at 7:30 a.m. on July 5, 2015, she awoke to find him inside of her apartment. The fact that the defendant may have been invited to or lived at the residence on July 5 does not negate that his presence violated the order of protection and that he was aware that his acts were prohibited. See *People v. Hoffman*, 2012 IL App (2d) 110462, ¶ 15 (when a defendant has knowledge of the contents of an order of protection and does an act in contravention of its terms, the defendant does so with knowledge that those acts are prohibited).

¶ 34 While the defendant relies on portions of Rosell-Hall's testimony, he contends that other parts of her account were not believable, pointing to her impeached testimony about the length of time they had known each other. The impeachment of a witness is not evidence; rather, impeaching challenges the witness's credibility and it "falls to the trier of fact to determine whether that challenge was successful." *People v. Tucker*, 2017 IL App (5th) 130576, ¶ 44. The defendant also emphasizes that Officer Hutchinson testified that Rosell-Hall appeared intoxicated on the morning in question. Evidence that a witness was drinking near the time of an event about which she testifies is probative of her sensory capacity and affects the weight to be given her testimony. *People v. Gray*, 2017 IL 120958, ¶ 40. "However, the fact that a witness had been drinking alcohol or was drunk does not necessarily preclude the trier of fact from finding the witness credible." *Id.*

¶ 35 The defendant further argues that Jones's account that he threatened her with a fork and threw a brick at her was weakened by Officer Hutchinson's testimony that Jones did not report those facts. As with Rosell-Hall's testimony, it was the task of the jury, as the trier of fact, to weigh that testimony. A reviewing court will not substitute its judgment for that of the trier of fact on questions that involve the weight of the evidence or the credibility of witnesses. *Bradford*, 2016 IL 118674, ¶ 12. In summary, the evidence, viewed in the light most favorable to the State, was sufficient to convict the defendant of violating the order of protection.

¶ 36 For the foregoing reasons, the judgment of the trial court is affirmed.

¶ 37 Affirmed.