2019 IL App (1st) 162759-U

FIRST DIVISION
July 8, 2019

No. 1-16-2759, 16-3412 and 17-1236 (cons.)

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. DERRICK WILLIAMS, Defendant-Appellee.	)))))))))	Appeal from the Circuit Court of Cook County, Criminal Division. No. 15 CR 10792 Honorable Timothy Joyce Judge presiding. .

JUSTICE GRIFFIN delivered the judgment of the court.
Presiding Justice Mikva and Justice Pierce concurred in the judgment.

ORDER

¶ 1 *Held*: The judgment of the trial court is affirmed. Defendant's statutory right to a speedy trial was not violated, the trial court did not err when it excluded defendant's post-arrest statements as inadmissible hearsay, the evidence was sufficient to convict and the prosecutor's statements made during closing arguments did not deprive defendant of a fair trial.

¶ 2 A Chicago police officer found defendant Derrick Williams asleep in a stolen car on June 26, 2015. He was arrested and later charged with the possession of a stolen motor vehicle (625 ILCS 5/4-103(a)(1) (West 2014)). A jury found defendant guilty of the offense. The trial court

sentenced him to 14 years in prison and later reduced his sentence by two years upon reconsideration. Defendant appeals his conviction and we affirm.

¶ 3 BACKGROUND

¶ 4 On June 26, 2015, Chicago police officer Peter Delgado found defendant asleep in the driver's seat of a parked car. The keys were in the ignition, the passenger's side window was broken and a number of personal items were strewn about the car's interior. Officer Delgado learned the car was stolen, called for backup and placed defendant under arrest.

¶ 5 Defendant was charged with one count of the possession of a stolen motor vehicle (625 ILCS 5/4-103(a)(1) (West 2014)). A finding of probable cause was entered on July 2, 2015 and defendant was arraigned on July 17, 2015. The trial court appointed the public defender and a plea of not guilty to the charge was entered on defendant's behalf.

¶ 6 The case was continued by agreement of the parties to July 30, 2015 and thereafter, continued two times by agreement to October 1, 2015. On that day, the assistant public defender filed an answer to the State's motion for discovery and a trial date was set, by agreement, for December 2, 2015. The trial date was continued by agreement to February 3, 2016 and then continued to February 8, 2016.

¶ 7 Defendant appeared for trial on February 8, 2016. The assistant public defender requested a continuance to secure and disclose information to the State about a potential witness. Before another date was set, defendant spoke out and personally addressed the trial court claiming that "discovery was closed" on October 1, 2015 and the "the State has failed to bring [him] to trial within 120 days." Defendant asked the trial court for a "dismissal." The trial court treated defendant's statements as a motion and denied it, finding no speedy trial violation. The trial court

continued the case to April 19, 2016, "[b]y agreement, [sic] for Jury, Civilian Clothes on the mitt." Everyone remained silent, including defendant.

¶ 8 On April 19, 2016, the parties appeared for trial. Defendant hired a new attorney and the public defender was granted leave to withdraw. A private attorney filed his appearance and made an oral and written demand for trial. The case was set for a jury trial on June 6, 2016 and defendant's case proceeded to trial on that day.

¶ 9 Before trial, the court addressed the State's motion *in limine*, which included a request to exclude as inadmissible hearsay the following statements made by defendant after his arrest: "he did not know that the vehicle was stolen" and "he thought the vehicle belonged to someone and does not remember her name." The trial court granted the State's request over defendant's objection.

¶ 10 At trial, the State called two witnesses: Officer Delgado and Laura Miller, the owner of the stolen car. Miller testified that on June 19, 2015 at 6:00 p.m., she parked her "1996 Buick Century" on the street outside of her apartment on "North Sheridan and North East Lake Terrace." She removed some personal items from her car, placed a pair of shorts in the trunk and used a separate key to lock the doors. She left the ignition key in the car. When Miller returned two days later, her car was gone.

¶ 11 She searched the neighborhood and returned home to report the car stolen. She called the police, informed them of the car's last location and described its make, model and condition. Miller returned to where her car was parked and saw glass on the ground, which confirmed in her mind that the "car was stolen and that it's not misplaced in some tow yard somewhere." On June 26, 2015, the police informed Miller they had recovered her car.

¶ 12 Miller testified that the passenger side window of her car was "busted in," a garbage bag full of food was under the passenger seat and the radio was broken. She found a Black Hawks hat and upon closer inspection, noticed that the pair of shorts she locked in the trunk was on the front seat. When she opened the ashtray, Miller found "a glass thing of some kind" that she "assumed was used for drugs." Miller used the car to commute between Sandwich, Illinois and Chicago to see family, go to work and attend school. She had not given anyone permission or authority to enter or drive the car.

¶ 13 Officer Delgado testified that on June 26, 2015 he was on patrol in the area of 4031 South Dr. Martin Luther King Drive when he noticed defendant sleeping in a maroon Buick. The car's passenger side window was broken and a shard of glass was still sitting in the window frame. The key was in the car's ignition. Officer Delgado checked the car's registration, learned it had been reported stolen and called for backup. Defendant was placed under arrest.

¶ 14 The state rested its case and defendant's motion for a directed verdict was denied. Defendant called no witnesses and the parties gave their closing arguments. The prosecutor referred to Miller's car as a "sacred object" and called the "glass thing" she found in her car's ashtray a "crack pipe" and "drug paraphernalia." The prosecutor also commented on defendant's clothing and glasses, and told the jury that defendant "probably" stole the car.

¶ 15 The jury deliberated and found defendant guilty of the possession of a stolen motor vehicle (625 ILCS 5/4-103(a)(1) (West 2014)). Defendant hired another attorney to file a motion for a new trial. The motion was denied. The trial court sentenced defendant to 14 years in prison, which it reduced to 12 years upon reconsideration.

¶ 16 Defendant appeals his conviction and argues: (1) he was denied his statutory right to a speedy trial (725 ILCS 5/103-5(a) (West 2014)); (2) the trial court erred when it excluded as

hearsay his post-arrest statements made to police; (3) the evidence was insufficient to support the jury's finding of guilt beyond a reasonable doubt; and (4) the prosecutor's comments during closing argument deprived him of a fair trial.

¶ 17 ANALYSIS

¶ 18 Every person in custody for an alleged offense must be tried within 120 days from the date he or she was taken into custody, unless delay was occasioned by the defendant. 725 ILCS 5/103-5(a) (West 2014). A delay suspends the 120-day period and is "considered to be agreed to by the defendant unless he or she objects to the delay by making a written demand for trial or an oral demand for trial on the record." *Id.*, §103-5(a), (f). Pertinent here, an *agreed continuance* suspends the speedy trial period, whether or not the case has been set for trial. See *People v. Wade*, 2013 IL App (1st) 112547, ¶ 26.

¶ 19 It is the State's duty to bring the defendant to trial within the 120-day period, but defendant bears the burden of affirmatively establishing a speedy trial violation by showing that the delay was not attributable to him or her. *People v. Wade*, 2013 IL App (1st) 112547, ¶ 16. According to our supreme court, a defendant is free to "employ 5/103-5(a) as a shield against any attempt to place his trial date outside the 120-day period," but cannot use "103-5(a) as a sword after the fact, to defeat a conviction." *People v. Cordell*, 223 Ill. 2d 380, 390 (2006).

¶ 20 The common law record and transcript of the proceedings reveal that defendant was not deprived of his right to a speedy trial. *People v. Mayo*, 198 Ill. 2d 530, 536 (2002) (an examination of the transcript of proceedings and the common law record is necessary to do justice to both the State and the defendant when reviewing a speedy-trial claim). Defendant was taken into custody on June 26, 2015 and the clock started ticking at that moment. *People v. Murray*, 379 Ill. App. 3d 153, 158 (2008) ("the 120–day statutory period begins to run

automatically from the day the defendant is taken into custody"). Defendant appeared in court on July 16, 2015, his case was transferred and continued to July 17, 2015 for arraignment, and he was arraigned that day. The trial court appointed the public defender and a plea of not guilty was entered by on defendant's behalf. The state concedes in its brief that the time between defendant's arrest and his arraignment is not a delay attributable to him.

¶ 21 From July 17, 2015 to February 8, 2016, defendant appeared in court four times. No written demand was filed, no oral demand was made and defendant either remained silent while the case was continued or his attorney affirmatively continued the case by agreement. Accordingly, the statutory period was tolled during this time. 725 ILCS 5/103-5(a), (f) (West 2014); *Wade*, 2013 IL 112547, ¶ 26.

¶ 22 Defendant claims he made an oral demand for trial on February 8, 2016. His argument is belied by the record. The hearing on that date began with the assistant public defender's request to "reset" the case for trial because he "put the State on notice that [he] would *** like to add one person to our answer" and needed to disclose the potential witness' date of birth. See Ill. S. Ct. R. 413(d)(i) (eff. July 1, 1982). A trial date of April 19, 2016 was proposed.

¶ 23 Noticing that defendant wanted to address the court directly, the trial court admonished defendant as to the consequences of making a statement and then allowed him to speak. Defendant alleged that "the State had failed to bring [him] to trial within 120 days" and sought a "dismissal" of his case. The trial court treated defendant's contentions as a motion and denied it, finding no speedy-trial violation. The trial court then continued the case, "by agreement," to April 19, 2016, as requested by the assistant public defender. Everyone remained silent, including defendant.

¶ 24 No affirmative demand for a speedy trial was made (orally or in writing) on February 8, 2016. See *People v. Murray*, 379 Ill. App. 3d 153, 160 (2008) (while no magic words are required to constitute a demand for a speedy trial there must be some affirmative statement requesting a speedy trial and the demand should not be disguised in ambiguous language). Surely, defendant's silence was not a demand for trial. Accordingly, defendant agreed to the delay. 725 ILCS 5/103-5(a) (West 2014).

¶ 25 Defendant makes much of the following statement he made to the trial court: "I disagree with this April 19th, because that's another 60 days continuance." However, "[s]tating a readiness for trial and adamantly objecting to a delay are not sufficient to affirmatively invoke the speedy-trial right." *Murray*, 379 Ill. 3d at 161. Here, defendant merely expressly disagreement with the continuance, which is not enough.

¶ 26 The State concedes that the time between April 19, 2016 and June 6, 2016, when the matter proceeded to a jury trial, is not a delay attributable to defendant. The record indicates that defendant hired a private attorney who filed a written demand for a speedy trial on April 19, 2016 and the case was tried June 6, 2016.

¶ 27 We hold that defendant was tried within the 120-day period and his statutory right to a speedy trial was not violated. Absent any error, defendant's ineffective assistance of counsel claim fails outright. See *Wade*, 2013 IL App 112547, ¶ 30 ("[d]efendant cannot base a claim of ineffective assistance of counsel on his attorney's failure to claim a speedy trial violation where no violation of defendant's rights occurred"). We do not consider whether defendant's constitutional right to a speedy trial (U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § 8) was violated because he did not raise the argument.

¶ 28 Defendant next challenges the trial court's decision to grant the portion of the State's motion *in limine* that sought to exclude as inadmissible hearsay the following statements he made to officers after his arrest: "he did not know that the vehicle was stolen" and "he thought the vehicle belonged to someone and does not remember her name." Defendant claims these statements showed his "state of mind" and fell into an exception to the hearsay rule. The State counters, arguing that defendant's "self-serving, post-arrest statements" were properly excluded from evidence.

¶ 29 Self-serving statements by an accused are inadmissible hearsay and considered as such because their relevance depends upon the truth of the matter asserted or the declarant's belief in the truth or falsity of the matter asserted. *People v. Patterson*, 154 Ill. 2d 414, 452 (1992). We review the trial court's decision to exclude defendant's statements from evidence for an abuse of discretion. *People v. Chambers*, 2016 IL 117911, ¶ 75; *People v. Williams*, 188 Ill. 2d 365, 369 (1999) ("[a] court of review will not reverse a trial court's grant or denial of a motion *in limine* absent a clear abuse of discretion").

¶ 30 It is clear that the relevance of defendant's statements depended on his belief in the truth of the matter asserted. Therefore, they were inadmissible. Accordingly, the trial court's decision to grant the relevant portion of the State's motion *in limine* was not an abuse of discretion.

¶ 31 Defendant claims his trial counsel was ineffective for failing to object to the State's request to exclude his post-arrest statements from evidence. However, the record shows that counsel did object. In any event, no error occurred and defendant's counsel was not ineffective. *People v. Peters*, 2018 IL App (2d) 150650, ¶ 81 (counsel is not ineffective where underlying error never occurred).

¶ 32 Defendant argues that the evidence was insufficient to support the jury's finding of guilt. When reviewing a sufficiency of the evidence claim, the relevant question is whether, after viewing the evidence in a light most favorable to the State, any rational trier of fact could have found the defendant guilty of the essential elements of the crime beyond a reasonable doubt. *People v. Davison*, 233 Ill. 2d 30, 43, 329 (2009); *Jackson v. Virginia*, 443 U.S. 307, 318–19 (1979).

¶ 33 A reviewing court will not retry the defendant. *People v. Cox*, 195 Ill.2d 378, 387 (2001). It is the trier of fact that assesses witness credibility, weighs the evidence and draws reasonable inferences therefrom, and resolves any conflicts in the testimony. *People v. Sutherland*, 223 Ill.2d 187, 242 (2006). We will not reverse a conviction on appeal unless the evidence is so improbable or unsatisfactory that there remains a reasonable doubt of the defendant's guilt. *People v. Evans*, 209 Ill.2d 194, 209 (2004).

¶ 34 To sustain a conviction for the possession of a stolen motor vehicle (625 ILCS 5/4-103(a)(1) (West 2014)), the State must prove beyond a reasonable doubt that: (1) the defendant was in possession of a motor vehicle, (2) the vehicle was stolen, and (3) the defendant knew it was stolen. *People v. Frazier*, 2016 IL App (1st) 140911, ¶ 12.

¶ 35 Defendant contends that the State failed to prove his knowledge beyond a reasonable doubt. Knowledge is a question of fact for the jury (*People v. Jacobs*, 2016 IL App (1st) 133881, ¶ 53) and direct proof of that element of the offense is not necessary. A defendant's knowledge may be proven by "circumstances that would induce a belief in a reasonable mind that the property was stolen." *Id*. Furthermore, a defendant's exclusive, unexplained possession of a stolen car gives rise to an inference that the defendant knew that the vehicle was stolen. 625 ILCS 5/4-103(a)(1) (West 2014). A defendant may attempt to rebut the inference, but must offer

a reasonable story or be judged by its improbabilities. *People v. Abdullah*, 220 Ill. App. 3d 687, 691 (1991).

¶ 36 Based on the evidence presented at trial, a rational trier of fact could have found defendant guilty of the offense beyond a reasonable doubt. Miller testified that she parked her 1996 Buick Century on the street on June 26, 2015, locked the doors with a separate key and left the ignition key in the car. When she returned, it was gone. She returned to where her car was parked a second time and saw glass on the ground. Upon retrieving her car, she noticed that one of her windows was "busted in," her shoes had been removed from the trunk and placed on the front seat, and other items were in the car that did not belong to her: a bag of "Ramen noodles," a Black Hawks hat and a "glass" object in the ashtray. Miller did not give anyone permission or authority to enter or drive her car.

¶ 37 Officer Delgado found defendant asleep in the stolen car on June 26, 2015. Its passenger-side window was broken, a shard of glass was sitting in the window frame and the key was in the ignition. Officer Delgado checked the car's registration, learned it was stolen and promptly arrested defendant.

¶ 38 A rational jury could have reasonably inferred from the testimony of the witnesses that defendant knew the car was stolen beyond a reasonable doubt. But in addition to the testimony, the jury was allowed to infer from defendant's exclusive and unexplained possession of the car that he knew it was stolen and instructed accordingly: "[u]nder the law you may infer that a person exercising exclusive unexplained possession over a stolen *** vehicle has knowledge that such vehicle is stolen ***." See 625 ILCS 5/4-103(a), (a)(1)(B) (West 2014). The jury's verdict stands on the sufficiency of the evidence. *Evans*, 209 Ill. 2d at 209.

¶ 39 We are unpersuaded by defendant's argument that the inference instruction should have never been given to the jury because his possession of the car was "explained: he was using the car to sleep in." To infer a lack of knowledge from the fact alone that defendant was sleeping in a stolen car is not reasonable and we will not hold that a defendant need only close his eyes to prevent the statutory inference instruction from going to the jury.

¶ 40 Defendant's final argument is that the prosecutor's comments made during closing argument deprived him of a fair trial. The following comments are at issue: (1) the car was a "sacred object"; (2) the "glass thing" in the ashtray was a "crack pipe"; (3) defendant's glasses and collared shirt worn on the day of trial were "court prop[s]"; and (4) defendant "probably" stole the car.

¶ 41 Because defendant failed to object to the prosecutor's comments at trial, he seeks review under the plain-error doctrine, which allows a reviewing court to proceed on the merits of an unpreserved clear or obvious error when: (1) the evidence is closely balanced and the error threatened to tip the scales of justice against the defendant; or (2) the error is so egregious that it challenges the fairness of the trial and the integrity of the judicial process. *People v. Camacho*, 2018 IL App (2d) 160350, ¶ 38. We first determine whether there was an error in the first place. *Id*. citing *People v. Cosby*, 231 Ill. 2d 262, 273 (2008) ("[a]bsent reversible error, there can be no plain error").

¶ 42 Prosecutors are granted wide latitude in delivering closing arguments. *People v. Perry*, 224 Ill. 2d 312, 347 (2007). The prosecutor may "comment during closing argument on the evidence and on any fair and reasonable inference the evidence may yield, even if the suggested inference reflects negatively on the defendant." *Id*. On review, we consider the argument as a whole, rather than focusing on selected phrases or remarks and will only find reversible error

when defendant clearly demonstrates that the improper remarks were "so prejudicial that real justice was denied or that the verdict resulted from the error." *Id*.

¶ 43 Viewed as a whole, the prosecutor's closing argument did not deprive defendant of a fair trial. It is arguable that a person's car, used to make long commutes to work, attend school and to see family, is a "sacred" object. This comment was anything but improper. Also not improper was the prosecutor's comment that the "glass thing" found in the car's ashtray was a "crack pipe" or "drug paraphernalia. The comment was based upon Miller's testimony (she "assumed it was used for drugs"). Indeed, the inference suggested by the prosecutor reflected negatively upon the defendant (*Perry*, 224 Ill. 2d 312, 347 (2007), but that does not make the comment reversible.

¶ 44 The prosecutor's comment that defendant "probably" stole the car was unnecessary in light of the fact that the prosecutor told the jury "[w]e don't have to prove that he stole it." However, the statement was qualified as probable and given the wide latitude afforded prosecutors during closing argument, we find the comment was not improper.

¶ 45 Finally, the prosecutor's remark about defendant's attire and glasses worn at trial was unnecessary and improper. A defendant is allowed to wear nice clothing at his or her trial and absent any relevance to the case, a prosecutor should withhold comment. Though improper, the comment was not reversible because the verdict did not result from it. *Perry*, 224 Ill. 2d at 347 (reversible error found only where when defendant clearly demonstrates that the improper remarks were "so prejudicial that real justice was denied or that the verdict resulted from the error").

¶ 46 Accordingly, the prosecutor's comments do not warrant the reversal of defendant's conviction. We find no error here. Defendant's ineffective assistance of counsel claim fails

because any objection to the prosecutor's statements would have been futile. *Wade*, 2013 IL App 112547, ¶ 30.

¶ 47 CONCLUSION

¶ 48 Accordingly, we affirm.

¶ 49 Affirmed.