2019 IL App (2d) 160830-U
No. 2-16-0830
Order filed February 8, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ANGELO BROWN, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Kane County. No. 16-CF-380 Honorable James C. Hallock, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices McLaren and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion during *voir dire*: the court was entitled to rule that defense counsel's questions were improper attempts to indoctrinate the jury, and it was entitled to so rule by stating that counsel "crossed the line."

¶ 2 Following a jury trial, defendant, Angelo Brown, was convicted of felony criminal trespass to a residence (720 ILCS 5/19-4(a)(2) (West 2016)) and resisting a peace officer (720 ILCS 5/31-1(a) (West 2016)). He appeals, contending that he was deprived of a fair trial by (1) the trial court's limitations on *voir dire* and (2) the court's comments that defense counsel was "crossing the line" with his *voir dire* questions. We affirm.

¶ 3 On August 8, 2016, the case was called for jury trial. The court began by questioning prospective jurors pursuant to Illinois Supreme Court Rule 431(b) (eff. July 1, 2012). After the first panel was called, the court asked whether any of the prospective jurors or any family members had ever been charged with a crime, whether a family member had ever been a victim of a crime, and whether anyone had religious or philosophical beliefs that would prevent them from rendering a fair verdict. The court asked whether anyone would attach inordinate weight to a police officer's testimony, whether the jurors would be able to put aside their sympathies and prejudices, and whether anyone would hesitate to sign a not-guilty verdict if the State failed to prove its case beyond a reasonable doubt.

¶ 4 Defense counsel began to question the first panel of prospective jurors by saying, "[W]hen you first walked in and saw Angelo—." The court interjected, "You crossed the line. You can't indoctrinate the jury. We're picking a fair and impartial jury."

¶ 5 Defense counsel continued, "Did you have any first impressions of Angelo?" The court responded, "You've crossed the line again. You cannot ask that question."

¶ 6 The court made similar rulings regarding four more questions, including "[D]id you wonder what Angelo might have done to get himself into this situation?," "Does anyone have any experience with trespass to property or resisting arrest?," "Did any adjectives pop into your head to describe Angelo this morning?," and "Has anyone experienced someone trespassing on their property?" Counsel never directly responded to the court's *sua sponte* objections or explained why the questions were necessary.

¶ 7 Defense counsel asked prospective jurors whether they understood the presumption of innocence, whether they were comfortable with a criminal defendant asking for a jury trial, whether they would hold it against a defendant if he did not testify, and whether anyone had

previously served on a jury. Counsel also asked followup questions to venire members who had been crime victims and was allowed to ask one panel whether anyone had ever experienced trespassing.

¶ 8 The first witness, Anginette Washington, testified that on March 9, 2016, she was in her home at 9 Oxford. The unit had a kitchen and front room on the first floor and three bedrooms upstairs. The door was usually unlocked, as Washington's six children entered and left frequently throughout the day.

¶ 9 Around 4:30 p.m., Washington was doing a customer's hair in the kitchen when the police entered the house. Her roommate, Lucy, who lived there with her two children, had opened the door for the officers, who were already upstairs by the time Washington arrived from the kitchen. Washington's brother was in the house with her permission, but the police were looking for someone else.

¶ 10 The officers eventually brought defendant down from upstairs. At the scene, Washington denied knowing defendant. In court, she testified that she knew him from around the neighborhood. He also dated her friend.

¶ 11 Carpentersville police officer Joe DeFranco testified that on March 9, 2016, he saw defendant, whom he recognized. He learned that defendant had a warrant for his arrest. When DeFranco and his partner approached defendant, he fled. With the officers in pursuit, defendant ran into the building at 9 Oxford. The officers began banging on doors. The door to Washington's apartment was opened by a woman who, when asked if anyone had run into the apartment, said "no" while nodding her head "yes." When asked if the person ran upstairs, the woman said she did not know but nodded "yes." DeFranco spoke to Washington, who told him

that no one should be inside the home. Police found defendant, clad only in boxers, in an upstairs bedroom.

¶ 12 Defendant moved for a directed verdict, arguing that there was no evidence that he reasonably should have known that people were in the apartment. The court denied the motion and the jury found defendant guilty on all counts. The court sentenced him to two years' imprisonment. Defendant timely appeals.

¶ 13 Defendant first contends that the trial court erred by *sua sponte* restricting his questioning of prospective jurors. The purpose of *voir dire* is to ensure the selection of an impartial jury free from either bias or prejudice. *People v. Williams*, 164 Ill. 2d 1, 16 (1994). The primary responsibility for conducting *voir dire* is the trial court's, and the scope of that examination rests within the court's discretion. *Id.* " 'An abuse of discretion occurs when the conduct of the trial court thwarts the purpose of *voir dire* examination—namely, the selection of a jury free from bias or prejudice.' " *People v. Encalado*, 2018 IL 122059, ¶ 25 (quoting *People v. Rinehart*, 2012 IL 111719, ¶ 16).

¶ 14 The only proper purpose of *voir dire* is to ensure the selection of an impartial jury; "it is not to be used as a means of indoctrinating a jury, or impaneling a jury with a particular predisposition." *People v. Bowel*, 111 Ill. 2d 58, 64 (1986); see also *People v. Byer*, 75 Ill. App. 3d 658, 670 (1979). The supreme court recently explained that there is no bright-line test for deciding which questions are proper and which are improper. Rather, questions fall on a continuum in which broad questions are generally permissible. *People v. Rinehart*, 2012 IL 111719, ¶ 17. For example, the State may ask potential jurors whether they would be disinclined to convict a defendant based on circumstantial evidence. *Id.* (citing *People v. Freeman*, 60 Ill. App. 3d 794, 799-800 (1978)). Conversely, specific questions tailored to the facts of the case

and intended to serve as " 'preliminary final argument' " (*id.* (quoting *People v. Mapp*, 283 Ill. App. 3d 979, 989-90 (1996)) are generally impermissible. " 'To be constitutionally compelled, it is not enough that a *voir dire* question be helpful[;] rather, the trial court's failure to [allow] the question must render the defendant's proceedings fundamentally unfair.' " *Encalado*, 2018 IL 122059, ¶ 5 (quoting *People v. Terrell*, 185 Ill. 2d 467, 485 (1998)).

¶ 15 Defendant here simply cannot establish that the trial court's actions defeated the purpose of selecting an unbiased jury. As noted, defense counsel never explained to the trial court the purpose of the questions, thus forfeiting the issue. In any event, the court questioned the prospective jurors about subjects that might reasonably be expected to be the source of bias, including whether panel members had been crime victims or had had previous experience with the court system. In addition, the defense was allowed to ask about the presumption of innocence, whether they were comfortable with a criminal defendant asking for a jury trial, whether they would hold it against a defendant if he did not testify, and whether anyone had previously served on a jury.

¶ 16 The questions that the court prohibited were more specific, such as whether anyone had been the victim of trespassing, or related to defendant's personal characteristics. See *Rinehart*, 2012 IL 111719, ¶ 17. While in some cases a defendant may be allowed to probe for bias in specific areas that are highly controversial, such as gang membership (see *People v. Strain*, 194 Ill. 2d 467, 476-77 (2000)), defendant does not suggest that any such issues were present here. Indeed, defendant does not reveal the purpose of such questions as "Did you have any first impressions of Angelo?" Defendant does not argue that anything about his demeanor or personal appearance was noteworthy to the point of requiring further inquiry.

¶ 17 Defendant next contends that the trial court's repeated references to his attorney "crossing the line" improperly insinuated that defense counsel was attempting to present the case improperly. While a trial judge has wide discretion in the conduct of a trial, he or she must not imply an opinion on the witnesses' credibility or the correctness of counsel's arguments. *People v. Heidorn*, 114 Ill. App. 3d 933, 937 (1983). For comments by a trial judge to constitute reversible error, the defendant must show that the remarks were prejudicial. *Id.* A hostile attitude toward defense counsel or a suggestion that he or she is attempting to present a case improperly can be prejudicial. *Id.* However, not all such comments require reversal. *Id.* The verdict will not be disturbed unless the court's remarks were a material factor in the conviction or unless prejudice to the defendant appears to be their probable result. *Id.* There is no error where the court merely makes a ruling that is unfavorable to a party or where the court properly admonishes counsel. *Id.*

¶ 18 *Heidorn*, and the other cases defendant cites, involved conduct during the trial itself, not during *voir dire*. In any event, the complained-of remarks were nothing more than adverse rulings. As noted, the trial court is responsible for conducting *voir dire* and, in doing so, must ensure that counsel does not improperly attempt to indoctrinate the jury. *Rinehart*, 2012 IL 111719, ¶ 17; *Bowel*, 111 Ill. 2d at 64. The court's rulings here were evidently designed to do just that. Even if, *arguendo*, some of those rulings were erroneous, the court never went beyond its duty of policing *voir dire*.

¶ 19 The judgment of the circuit court of Kane County is affirmed. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2016); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 20 Affirmed.