2019 IL App (2d) 190233-U
No. 2-19-0233
Order filed September 19, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. KEVIN N. LOBDELL, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Kendall County. No. 18-CM-448 Honorable Joseph R. Voiland, Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Birkett and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant forfeited his arguments by either citing only inapplicable authority or failing to make an offer of proof.

¶ 2 Following a bench trial, defendant, Kevin N. Lobdell, was convicted of unlawful visitation or parenting-time interference (720 ILCS 5/10-5.5(b) (West 2018)). The court imposed a $100 fine and placed him on conditional discharge. He appeals, contending that (1) the court deprived him of his statutory right to counsel; (2) he was entitled to counsel under the Sixth Amendment to the United States Constitution (U.S. Const., amend. VI); and (3) improperly prevented him from presenting an affirmative defense. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The record on appeal does not contain transcripts of any pretrial hearings. However, on November 20, 2018, the court issued an order stating, "court admonishes the defender [*sic*] is not eligible for public defender due to the charge being a petty offense."

¶ 5 Following a trial on January 2, 2019, the court found defendant guilty. It sentenced him to six months' conditional discharge and ordered him to pay a $100 fine plus court costs. Defendant appeals.

¶ 6 II. ANALYSIS

¶ 7 The State initially argues that we lack jurisdiction. Noting that the court entered a final judgment on January 2, 2019, the State observes that the docket entries show a notice of motion (which the State incorrectly identifies as a notice of *appeal*) on February 4, 2019. The State observes that this was more than 30 days after the final judgment and that the untimely posttrial motion did not extend the time to appeal.

¶ 8 Illinois Supreme Court Rule 606(b) (eff. July 1, 2017) provides that a notice of appeal must be filed "within 30 days after the entry of the final judgment appealed from or if a motion directed against the judgment is timely filed, within 30 days after the entry of the order disposing of the motion."

¶ 9 Rule 606(b) makes clear that the filing of the postjudgment motion is the triggering date. The filing of a notice of motion is simply irrelevant. Defendant did file a postjudgment motion, a motion to vacate, on January 29, 2019, which was within 30 days of the judgment.[1] The motion was clearly directed against the judgment. The court denied the motion on March 7,

[1] Defendant's jurisdictional statement inexplicably states that the motion was filed on February 13, 2019.

2019, and defendant filed his notice of appeal within 30 days, on March 26, 2019. Thus, defendant's appeal was timely and we have jurisdiction.

¶ 10 Defendant first contends that he was deprived of his right to counsel under the Criminal Justice Act of 1964 (18 U.S.C. § 3006A (2015). That statute governs procedures in the federal courts. Defendant cites no authority and develops no argument that the statute has any application in Illinois courts. Thus, his argument is forfeited. See Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018).

¶ 11 Defendant further argues that he had a right to counsel under the sixth amendment (U.S. Const., amend. VI). Defendant merely cites the amendment. He does not develop a cogent argument that it provided him with a right to appointed counsel in this case. As the State points out, the sixth amendment right to appointed counsel extends only to cases in which a defendant is actually imprisoned, and defendant here received no prison time. See *Scott v. Illinois*, 440 U.S. 367, 373 (1979). Thus, defendant cites no authority holding that he had a right to appointed counsel under the facts here. Again, his argument is forfeited.

¶ 12 Defendant's final contention is that the trial court improperly prevented him from presenting an affirmative defense. The statute creating the offense of visitation interference provides an affirmative defense if a defendant acts "to protect the child from imminent physical harm," provided that the belief in imminent physical harm is reasonable. 720 ILCS 5/10-5.5(g)(1) (West 2018).

¶ 13 Defendant appears to refer to the court's pretrial ruling barring evidence of a Department of Children and Family Services investigation of the minor's mother. However, the record does not contain transcripts of the pretrial hearing and thus we must assume that the court's ruling was supported by the law and had an adequate factual basis. See *Foutch v. O'Bryant*, 99 Ill. 2d 389,

391-92 (1984). Moreover, to the extent defendant's argument encompasses rulings made during trial, he did not make an offer of proof to demonstrate specifically what the proffered evidence was. An offer of proof is required when it is not clear what the evidence will be. *People v. Keen*, 206 Ill. App. 3d 940, 951 (1990). Even on appeal, defendant does not explain precisely what evidence he wanted to introduce or how it was relevant to his affirmative defense. Thus, once more, he has forfeited review of this issue.

¶ 14 III. CONCLUSION

¶ 15 The judgment of the circuit court of Kendall County is affirmed.

¶ 16 Affirmed.