2019 IL App (4th) 170252-U

NO. 4-17-0252

FILED
September 25, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	DeWitt County
THOMAS J. ATCHISON,	)	No. 16CF101
Defendant-Appellant.	)	
	)	Honorable
	)	Karle E. Koritz,
	)	Judge Presiding.

PRESIDING JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Steigmann and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held*: (1) A reasonable trier of fact could have found defendant committed the essential elements of possession of a converted motor vehicle.

(2) The trial court did not commit plain error by allowing the State to publish irrelevant photographs to the jury.

¶ 2 On December 6, 2016, the State charged defendant, Thomas J. Atchison, with unlawful possession of a converted vehicle (625 ILCS 5/4-103(a)(1) (West 2014)). After a jury trial where defendant represented himself, the jury found defendant guilty, and the court sentenced him to three years in the Department of Corrections. On appeal, defendant contends (1) the State failed to prove two essential elements of unlawful possession of a converted vehicle beyond a reasonable doubt and (2) the trial court committed plain error by allowing the State to publish to the jury irrelevant photographs of drug paraphernalia and alcohol. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On December 2, 2016, Barbara McPeek of Hallsville, Illinois, rented a 2016 Ford Focus from Enterprise Rent-A-Car in order to attend a doctor's appointment the following day in Springfield, Illinois. McPeek woke the next morning and discovered the car missing. She thought it likely her son, Timothy Hannah, and his friend, defendant, had the vehicle and attempted to call them, but received no answer. McPeek contacted the police and reported the car stolen.

¶ 5 That afternoon, police officers located the vehicle parked in front of a house in Clinton, Illinois. Defendant was standing on the front porch of the house. Detective Scott Pippin recognized defendant and approached him, asking about the keys to the vehicle. Defendant reportedly told Detective Pippin the keys were inside the house. However, when Pippin informed defendant Pippin would need to accompany him inside, defendant retrieved the keys from his back pocket. When asked about how he obtained the vehicle, defendant told Detective Pippin he was borrowing it from a friend's mother. Defendant explained the car had been in Decatur. After speaking with multiple police officers, defendant was arrested for possession of the converted motor vehicle.

¶ 6 At his arraignment, defendant elected to proceed *pro se*. Accordingly, the court admonished defendant as required by Illinois Supreme Court Rule 401 (eff. July 1, 1984). On the morning of defendant's jury trial, defendant made an oral motion objecting to a potential exhibit, photographs of the vehicle at the time of its recovery by police. Defendant objected, arguing the photographs showed drug paraphernalia and alcohol he did not have a chance to physically examine. The State responded, stating the items in the photographs helped establish the identity of the occupants of the vehicle "to some degree." The court denied defendant's motion, but informed him he had the right to object during the presentation of testimony.

¶ 7 The evidence at defendant's February 15, 2017, jury trial showed the following.

¶ 8 A. Testimony of Detective Scott Pippin

¶ 9 Detective Scott Pippin reported that he responded to the call from Barbara McPeek that her rental car had been stolen. Pippin testified McPeek believed the car was taken by her son, Timothy, and defendant. Detective Pippin was the first officer on the scene of the recovered vehicle and waited for backup from Sergeant James McClure. After retrieving the keys to the vehicle from defendant, he asked defendant about his possession of the vehicle. Pippin testified "[defendant] told me he was borrowing the vehicle from a friend's mom and kind of talked in circles for a little bit and eventually told me that the car belonged to Barb and he was borrowing it."

¶ 10 During Detective Pippin's testimony, the State moved to publish the photographs to the jury. Defendant objected and, when questioned regarding the basis for his objection he stated, "[a]t this point there is no, there is no evidence that I, that I am the only one that possessed this vehicle. There is nothing in this vehicle except for one thing of mine, and that is my legal satchel." The court overruled defendant's objection, and the photographs were published to the jury.

¶ 11 B. Testimony of Barbara McPeek

¶ 12 Barbara McPeek testified she contacted the police about her missing vehicle after attempting to contact defendant and her son on the morning of December 3. McPeek testified that when her son, Timothy, finally came home, she asked him where the rental vehicle was and Timothy told her he and defendant had awoken her in the night and asked permission to borrow the vehicle to go to a store. McPeek testified she had no independent recollection of anyone

asking permission to use the vehicle and was certain she did not grant anyone permission to take the vehicle to Decatur.

¶ 13 During her testimony, McPeek admitted that she was on a number of medications. She testified these medications could affect her memory if she is awakened in the middle of the night. When questioned whether it was possible her son and defendant had woken her in the middle of the night to ask permission to take the car but she could not remember the interaction because of her medications, McPeek stated it was "possible."

¶ 14 After McPeek's testimony, the trial court took a brief recess. On the record, but before the jury returned, the court asked the State to explain the relevance of the photographs showing drug paraphernalia and alcohol. The State stated the items were not being attributed to defendant but were simply part of the inventory of items found in the recovered vehicle. The court found the items to be prejudicial and excluded those photographs from evidence. Further, the court stated its intention to admonish the jury that the photographs were not to be considered.

¶ 15 C. Testimony of Deputy Charles Luke Werts

¶ 16 Deputy Charles Luke Werts testified he was dispatched to act as backup for Detective Pippin. Deputy Werts wore a body camera at the time of the incident, and the State moved to publish to the jury, video from December 3, 2016. The trial court overruled defendant's objection, allowing the publication of the video to the jury.

¶ 17 The video showed Deputy Werts arriving at the scene where defendant was already speaking with Detective Pippin and Sergeant McClure. Detective Pippin questioned defendant regarding his possession of the vehicle and defendant stated, "from my friend's, uh, it's his mother, like his step-mother, or she adopted him or something, but, um, she said she rented it." Defendant told the officers that the vehicle had arrived about an hour earlier.

Defendant asked Detective Pippin if the car was "stolen or something?" and Detective Pippin answered in the affirmative. Defendant stated he did not take the car and was with two friends—Timothy and a girl whose name he did not know. At this point in the video, Megan Ray, the individual who lived at the house where the car was located, came out of the house and began yelling at defendant. Detective Pippin accompanied her inside and Deputy Werts pulled defendant aside to further question him.

¶ 18 Defendant told Deputy Werts he did not know Timothy's last name or Barbara's last name. When Deputy Werts asked defendant if Timothy also had a father named Tim, defendant stated he did not know and he "didn't know him that well." When Deputy Werts asked defendant how the vehicle arrived at the house in Clinton, defendant was defensive, repeatedly denying driving the car. Defendant claimed an unknown female he met through Timothy the night before, drove the vehicle. Deputy Werts then inquired as to Timothy's whereabouts. In response, defendant tried to explain how he knew Timothy and again denied driving the vehicle.

¶ 19 When pressed on the identity of the girl, defendant eventually recalled her name—Nicole. With some prompting from Deputy Werts, defendant provided a physical description of Nicole. Defendant indicated Nicole did not come into the house but instead left after dropping off the vehicle approximately an hour earlier. He said that during the night before, the vehicle sat in the parking lot of a Ford dealership in Decatur, Illinois. Defendant fell asleep in the vehicle while Timothy and Nicole waited for an unknown person to bring them money.

¶ 20 At this point, defendant's cell phone rang, and defendant identified the caller as Barbara. Defendant put the call on speaker phone. Barbara asked where defendant and Timothy were and defendant replied, "I have no idea where Timothy is, I told you what happened this morning." Defendant told Barbara the police were now in possession of the vehicle. Defendant

asked Barbara if she was the one who called the police, to which Barbara responded, "Yeah, I had no other choice. You were supposed to be with Timothy." At this point, Detective Pippin ended the phone call and placed defendant under arrest.

¶ 21 Defendant informed the officers he had belongings inside the vehicle, specifically his legal satchel containing all of his legal documents. Throughout the video, defendant's phone rang. Defendant informed the officers the calls were from Barbara and asked that they answer the phone. Defendant stated Barbara "knew nothing what was going on." Defendant agreed to an interview at the police station. The video concluded with defendant stating he "didn't do anything wrong."

¶ 22 D. Testimony of Megan Ray

¶ 23 Megan Ray testified she lived in the home where police officers located the vehicle and was a friend of defendant. Ray testified defendant arrived at her house and remained there for approximately 15 minutes before police officers arrived. Defendant told Ray the vehicle belonged to his friend's mom. According to defendant, he had fallen asleep in the vehicle while parked in a parking lot in Decatur. A police officer woke him and after a brief conversation, let defendant go. Defendant did not have a driver's license. Ray testified that defendant's story wasn't "adding up." Ray stated she "didn't feel right" with defendant and the vehicle at her house. On cross-examination, defendant asked Ray if he told her he was borrowing the car. Ray responded affirmatively and agreed defendant always maintained he had permission to have the vehicle.

¶ 24 E. Close of the State's Case and Verdict

¶ 25 The State moved to admit People's Exhibits 1 and 2. The court admitted Exhibit 2—the video of the body camera footage—without objection. The court admitted Exhibit 1—

photographs of the vehicle—excluding the photographs containing drug paraphernalia and alcohol. Next, the court admonished the jury as follows:

> "Ladies and gentlemen, during the presentation of evidence you viewed photographs of a glass pipe and cans of beer that were found in the recovered vehicle. The evidence presented does not establish the owner or possessor of these particular items or the relevance of these items to any issue to be decided by you. The photographs depicting these items are stricken and should not be considered by you in evaluating the evidence in this case."

¶ 26 Defendant called no witnesses and did not testify. The jury found defendant guilty of unlawful possession of a converted vehicle. The trial court sentenced defendant to three years in the Department of Corrections.

¶ 27 This appeal followed.

¶ 28 II. ANALYSIS

¶ 29 On appeal, defendant contends (1) the State failed to prove two essential elements of unlawful possession of a converted vehicle beyond a reasonable doubt and (2) the trial court committed plain error by allowing the State to publish irrelevant photographs of drug paraphernalia and alcohol found in the vehicle.

¶ 30 A. Proof Beyond a Reasonable Doubt

¶ 31 Defendant argues the State failed to prove two essential elements of unlawful possession of a converted vehicle beyond a reasonable doubt.

¶ 32 In order for a person to be convicted of possession of a converted motor vehicle, the State must prove beyond a reasonable doubt that the defendant (1) possessed the vehicle, (2) was not entitled to possession of the vehicle, and (3) knew that the vehicle was stolen. *People*

v. Anderson, 188 Ill. 2d 384, 389, 721 N.E.2d 1121, 1124 (1999). Defendant argues the State did not prove beyond a reasonable doubt that (1) defendant did not have authorization to use the vehicle and (2) defendant knew he did not have permission to use the vehicle.

¶ 33 1. *Standard of Review*

¶ 34 When considering a challenge to the sufficiency of the evidence, we must determine whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the required elements of the crime beyond a reasonable doubt. *People v. Bradford*, 2016 IL 118674, ¶ 12, 50 N.E.3d 1112. "It is the responsibility of the trier of fact to resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from the facts." *Id.* In contrast, it is not our function to retry the defendant. *People v. Givens*, 237 Ill. 2d 311, 334, 934 N.E.2d 470, 484 (2010). A conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that it raises a reasonable doubt of the defendant's guilt. *People v. Belknap*, 2014 IL 117094, ¶ 67, 23 N.E.3d 325.

¶ 35 Defendant contends this court should review his claims *de novo* because his challenge to the sufficiency of the evidence questions whether the uncontested facts were sufficient to prove the elements of the offense. *In re Ryan B.*, 212 Ill. 2d 226, 231, 817 N.E.2d 495, 497-98 (2004). However, defendant further contends we must determine, after viewing the evidence in the light most favorable to the State, whether any rational trier of fact could have found the essential elements of the offense. *People v. Cunningham*, 212 Ill. 2d 274, 278-79, 818 N.E.2d 304, 307 (2004) (citing *Jackson v. Virginia*, 443 U.S. 307, 326 (1979)).

¶ 36 Here, whether it could be reasonably inferred from evidence presented that defendant (1) was not entitled to possession of the vehicle and (2) knew the vehicle was stolen were questions for the trier of fact. See *People v. Funches*, 212 Ill. 2d 334, 340, 818 N.E.2d 342,

346 (2004) ("An inference is a factual conclusion that can rationally be drawn by considering other facts."). The jury had to weigh the evidence and then determine whether defendant was authorized to possess the vehicle and knew the vehicle was converted. Therefore, the relevant inquiry before this court is whether the evidence, viewed in the light most favorable to the State, would allow any rational trier of fact to find all the elements of the offense of possession of a converted motor vehicle. *Cunningham*, 212 Ill. 2d at 278-79.

¶ 37 2. *Possession*

¶ 38 Although defendant advised police officers that an hour before officers questioned him, an acquaintance named Nicole drove the car to Ray's home, defendant fails to challenge, before this court, that he possessed the vehicle.

¶ 39 3. *Authorization to Use*

¶ 40 Defendant argues, because McPeek stated it was "possible" she gave her son and defendant permission to use the vehicle but did not remember, the State failed to prove defendant was not entitled to possession of the vehicle.

¶ 41 McPeek had no independent recollection of giving defendant and her son permission to use the vehicle. She only had the story her son told her when he arrived home—that after she had taken medication and gone to sleep, defendant and her son woke her and asked to use the car. Although that version of events is, as McPeek herself stated, "possible," so is a version of events where McPeek never gave authorization to anyone to use the vehicle, as she never had recollection, even after being told, that she gave defendant permission to use the car. The testimony, therefore, creates a competing version of events—defendant's version, where McPeek gave defendant permission to use the vehicle, but forgot, and one where she never gave defendant permission to use the vehicle. "The trier of fact need not accept the defendant's

explanation, but may consider its probability or impossibility in light of the surrounding circumstances." *People v. Kaye*, 264 Ill. App. 3d 369, 383, 636 N.E.2d 882, 892 (1994).

¶ 42 A reasonable trier of fact could have inferred from the testimony that, because McPeek never independently remembered giving defendant permission to use the vehicle, she did not in fact give permission to defendant and her son to take the car. Further, McPeek contacted the police to report the car stolen even though she thought it was likely defendant and her son had the car. Even though McPeek testified her son told her after the incident he and defendant had awakened her to get permission to use the car, the jury was not required to believe that the events actually occurred. "[T]he trier of fact is not required to disregard inferences which flow normally from the evidence and to search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt." *People v. Hall*, 194 Ill. 2d 305, 332, 743 N.E.2d 521, 538 (2000).

¶ 43 The evidence in this case demonstrates McPeek awoke to find her rental car missing on December 3, 2016, contacted the police after she could not locate the vehicle, and reported the vehicle stolen. McPeek failed to recall giving anyone permission to use the vehicle. In considering the surrounding facts and circumstances, we conclude sufficient evidence supported the jury's finding that defendant lacked authorization to possess the vehicle.

¶ 44 4. *Knowledge*

¶ 45 Defendant further argues that because he gave a reasonable explanation for his possession of the vehicle, the State failed to prove defendant possessed knowledge the vehicle was converted.

¶ 46 It may be inferred that a person exercising "exclusive unexplained possession over the stolen or converted vehicle" has knowledge that the vehicle is stolen or converted. 625

ILCS 5/4-103(a)(1) (West 2016). Defendant " 'may attempt to rebut the inference of guilty knowledge which arises from the possession of a stolen vehicle, but the defendant must offer a reasonable story or be judged by its improbabilities.' " *People v. Jacobs*, 2016 IL App (1st) 133881, ¶ 53, 65 N.E.3d 402 (quoting *People v. Abdullah*, 220 Ill. App. 3d 687, 691, 581 N.E.2d 67, 70 (1991)). The jury is not required to accept defendant's explanation of possession. *Jacobs*, 2016 IL App (1st) 133881, ¶ 53.

¶ 47 Defendant relies on *People v. Gordon*, 204 Ill. App. 3d 123, 561 N.E.2d 1164 (1990), where the court determined the State failed to prove knowledge. In *Gordon*, the court found the defendant gave a reasonable explanation for possession of a vehicle reported stolen. The evidence showed the defendant's friend gave the defendant permission to drive the vehicle and asked the defendant to fix the radio. The defendant had ridden in the vehicle with the friend and the owner of the vehicle, and the owner of the vehicle often gave the friend permission to drive the vehicle. Further, the owner testified he would not have reported the vehicle stolen if he had known the friend had the vehicle. *Gordon*, 204 Ill. App. 3d at 127-28.

¶ 48 However, a defendant's explanation for possession is not automatically reasonable. In *Jacobs*, the defendant testified he rented the car from an acquaintance in order to drive to Chicago. *Jacobs*, 2016 IL App (1st) 133881, ¶ 55. The arresting officer testified the defendant originally told him the car was borrowed from a friend, but the defendant could not recall his friend's name. *Id.* The officer testified defendant then revised his explanation to say he'd rented the car from an unnamed drug addict. *Id.* Thus, the court determined there was "sufficient evidence on which the jury could rely to reject defendant's explanation for his possession of the stolen car." *Id.* ¶ 56.

¶ 49 Similarly, in this case there existed sufficient evidence on which the jury could rely to find defendant's explanation for his possession of the car unreasonable. Unlike *Gordon*, where evidence corroborating the defendant's explanation of possession existed, the evidence presented to the jury in this case failed to support defendant's explanation claiming permission to borrow the vehicle. As discussed, a reasonable jury could have found defendant lacked permission to borrow the vehicle. Further, although defendant told the arresting officers he had borrowed the car, when speaking with the officers, defendant gave incomplete or evasive answers that a reasonable jury could have found made his account unreliable.

¶ 50 When questioned by the officers, defendant could not remember Barbara McPeek's last name, could not remember Timothy's last name, and repeatedly told officers he could not recall the name of the woman he claimed drove the vehicle. When Deputy Werts inquired as to Timothy's whereabouts, defendant responded by telling Deputy Werts how he knew Timothy and again denied driving the car. After defendant answered the call from McPeek, he asked McPeek if she was the one who called the police. McPeek responded, "Yeah, I had no other choice." Further, when defendant received another call from McPeek, he told the officers that "[McPeek] knew nothing what was going on."

¶ 51 A reasonable jury could have found defendant's explanation to the police officers incredible and, thereby, the jury could reasonably reject his explanation. It is the right and duty of the jury to assess the credibility of witnesses and weigh the evidence. We decline to second-guess its assessment. See *Jacobs*, 2016 IL App (1st) 133881, ¶ 56. Since the jury could have reasonably rejected defendant's version of the facts, defendant failed to rebut the inference of guilty knowledge. See *Id.* ¶ 53. Therefore, the State presented sufficient evidence to prove defendant's knowledge of the vehicle's conversion.

¶ 52 B. Introduction of Photographs

¶ 53 Defendant also argues on appeal the trial court abused its discretion by allowing the State to publish photographs depicting drug paraphernalia and alcohol that were not relevant to the unlawful possession of a converted vehicle charge for which he was on trial.

¶ 54 To be admissible, evidence must first be relevant. See *People v. Dabbs*, 239 Ill. 2d 277, 289, 940 N.E.2d 1088, 1096 (2010) ("Relevance is a threshold requirement that must be met by every item of evidence."). Even where evidence is relevant, it may be excluded where the probative value is substantially outweighed by its prejudicial effect. *Id.* at 289-90. We review the trial court's admission of evidence for an abuse of discretion. *People v. Cookson*, 215 Ill. 2d 194, 204, 830 N.E.2d 484, 490 (2005).

¶ 55 Generally, to preserve a question for review, "[b]oth a trial objection *and* a written post-trial motion raising the issue are required for alleged errors that could have been raised during trial." (Emphasis in original.) *People v. Enoch*, 122 Ill. 2d 176, 186, 522 N.E.2d 1124, 1130 (1988). We note defendant concedes he failed to preserve his claim in a posttrial motion. Further, defendant never objected to the introduction of the photographs based on relevancy grounds. A defendant who elects to proceed *pro se* is held to the same standards as an attorney. *People v. Richardson*, 2011 IL App (4th) 100358, ¶ 12, 961 N.E.2d 923.

¶ 56 Defendant contends that, despite failing to preserve the issue for appeal, we should review his claim for plain error. Plain-error review is a narrow and limited exception to the forfeiture rule, intended to protect a defendant's rights and the integrity of the judicial process; it is not a general saving clause allowing for review of all forfeited issues. *People v. Allen*, 222 Ill. 2d 340, 353, 856 N.E.2d 349, 356 (2006). To allow plain-error review on every

forfeited issue would cause the exception to consume the general rule of forfeiture. *People v. Rathbone*, 345 Ill. App. 3d 305, 311, 802 N.E.2d 333, 338 (2003).

> "[T]he plain-error doctrine allows a reviewing court to consider unpreserved error 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." *People v. Piatkowski*, 225 Ill. 2d 551, 565, 870 N.E.2d 403, 410-11 (2007).

To obtain relief under the plain-error doctrine, the burden of persuasion is on the defendant to show one of the two prongs set forth above applies. *People v. Hillier*, 237 Ill. 2d 539, 545, 931 N.E.2d 1184, 1187 (2010).

¶ 57 Here, defendant argues the trial court found the evidence was closely balanced. At the sentencing hearing, the trial court stated the following: "[T]he evidence was closely balanced at trial. Frankly, the Court didn't know what the verdict might be when the verdict came back, and the verdict was guilty." However, before we can determine whether the evidence was closely balanced, a defendant must first demonstrate a clear or obvious error occurred. *Piatkowski*, 225 Ill. 2d at 565.

¶ 58 In this case, defendant never objected to the admission of the photographs on relevancy grounds. The court *sua sponte* refused to admit the photographs and instructed the jury to disregard the photographs after determining they were irrelevant. "The general rule is that the striking of evidence erroneously admitted during a trial cures the error except in extreme cases,

where it is manifest the prejudicial effect of the evidence remained with the jury despite its exclusion and influenced its verdict." *People v. McKinney*, 193 Ill. App. 3d 1012, 1017, 550 N.E.2d 604, 607 (1990). "This is based upon the premise that juries follow instructions." *People v. Helton*, 195 Ill. App. 3d 410, 417, 552 N.E.2d 398, 403 (1990). We do not find the photographs here to constitute an extreme case that deviates from the general rule. Since we have found no error, defendant cannot establish plain error, and his contention is deemed forfeited.

¶ 59 III. CONCLUSION

¶ 60 For the reasons stated, we affirm the trial court's judgment.

¶ 61 Affirmed.