2012 IL App (1st) 102019-U

SIXTH DIVISION
April 13, 2012

Nos. 1-10-2019, 1-10-2020, 1-10-2021 & 1-10-2022
(Consolidated)

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. STEVEN SINGLETON, Defendant-Appellant.	) Appeal from the Circuit Court) of Cook County,)) Nos. 08 CR 22640, 08 CR 22641,) 08 CR 22642 & 08 CR 22643))) Honorable) Lawrence P. Fox,) Judge Presiding.

JUSTICE PALMER delivered the judgment of the court.
Presiding Justice R.E. Gordon and Justice Garcia concurred in the judgment.

O R D E R

¶ 1 *Held*: Judgment entered on defendant's convictions of violation of an order of protection affirmed over his claims that the trial court abused its discretion in admitting evidence of other crimes and in imposing consecutive sentences; mittimus modified.

¶ 2 Following a bench trial, defendant Steven Singleton was found guilty of three counts of telephone harassment and four counts of violation of an order of protection (VOOP), then sentenced to an aggregate term of seven years' imprisonment on his VOOP convictions. On appeal, defendant contends that the trial court abused its discretion in admitting a substantial

amount of other crimes evidence and in imposing consecutive sentences despite the existence of certain mitigating evidence. He also requests that his mittimus be modified to correctly reflect the offenses of which he was convicted.

¶ 3 The record shows that defendant was charged with VOOP and telephone harassment of Rosalyn Kennedy in three separate cases, and solely VOOP in another, for incidents that allegedly occurred on January 24, February 29, May 23–24, and July 15, 2008 (Case Nos. 08 CR 22640-22643). Those cases were joined for prosecution by agreement of the parties and then consolidated on appeal.

¶ 4 Prior to trial, the State filed a motion to admit proof of other crimes, specifying six incidents, other than those charged, in which defendant phoned Kennedy and threatened her with bodily harm. The State also sought to admit proof of defendant's prior domestic battery conviction for beating Kennedy with a baseball bat, as well as his prior VOOP conviction for calling Kennedy at her house and leaving messages in which he threatened to cut her throat and rape her daughter. The State asserted that this evidence established defendant's "hostility and animosity toward [Kennedy], and therefore his motive, state of mind and intent on the dates of the charged offenses."

¶ 5 On January 25, 2010, the court heard argument on the State's motion and denied it with respect to the domestic battery conviction. As to the incidents that involved phone calls to Kennedy, however, the court ruled:

> "So I basically think that all of these are admissible, but I don't see any reason why the State has to offer all of these. So, what I would do is certainly admit the evidence with respect to the [incident] that occurred on March 6th, I would deny the State's motion again with respect to the incident on August 19th of 2007 and then basically we have six more incidents that occur in July of 2008, I will allow half of those or three out of those six to be offered into evidence and I will allow

the State to choose which ones they wish to offer."

¶ 6 A bench trial then ensued where Kennedy testified that she met defendant in the summer of 2006. She moved in with him later that year, and their relationship ended the next summer. On October 11, 2007, she obtained an order of protection that expired on April 9, 2009.

¶ 7 While the order of protection was in effect, defendant communicated threats to Kennedy on multiple occasions. On January 24, 2008, he called Kennedy's cell phone and told her that "he was going to get [her]," then called her cell phone again on February 29, 2008, and told her that "he was going to kill [her]." Additionally, on March 6, 2008, defendant told Kennedy that "he was going to slice [her] throat, and that he was going to rape [her] daughter," and on May 23, 2008, he told her "that he had been released from jail and that he was going to get [her]."

¶ 8 In July 2008, defendant left numerous messages for Kennedy that were recorded onto a compact disc, including six messages on July 14, four messages on July 15, two messages on July 16, and three messages on July 17. The recording containing those messages was published without objection from counsel. In the last message played, defendant stated, "I'm going to rape that b*** Shanice," Kennedy's 14-year-old daughter.

¶ 9 The parties stipulated that Dina Navarro of US Cellular would testify that defendant's cell phone records show that he made 27 phone calls to Kennedy on January 24, 2008, two calls on February 29, three calls on May 23, 24 calls on July 14, 67 calls on July 15, and 73 calls on July 16. The State also admitted into evidence an order of protection from October 11, 2007, which prohibited defendant from making contact with Kennedy "by any means" until the order expired on April 9, 2009, as well as a certified copy of defendant's VOOP conviction entered on July 6, 2009, which was predicated on the threats made by defendant on March 6, 2008.

¶ 10 Defendant testified that he and Kennedy dated from March 2006 until about June 2007, and that she introduced him to a cousin named Jackie Williams whom he eventually began dating. He called Williams nearly every day and testified that the phone number that Kennedy

identified as hers was actually Williams' cell phone number.

¶ 11 From January to July 2008, defendant called the phone used by Kennedy several times in order to reach Williams, and he acknowledged making 27 phone calls to that number on January 24, 2008. However, he testified that he was calling Williams, not Kennedy, stating, "it's not her phone." He also acknowledged making the phone calls on February 29, May 23, July 14, July 15, and July 16, but testified that he was calling Williams. He explained that the messages that had been recorded on the compact disc were all directed at Williams with whom he had "an on again off again relationship," stating:

> "I said some things I shouldn't have said to her, but same token once I send the message the same night or next day she was – she would leave voice messages on my cell phone also. We would end up still getting up having relations whatever, so it was on and off then. I said stuff. She said stuff. But no harm was really meant by it."

Defendant last had contact with Williams in September 2008, and she had not responded to the letters he wrote her requesting that she testify on his behalf. He testified that he never knowingly and intentionally called Kennedy from January 1, 2008, to the end of July 2008, and never contacted her after the order of protection was entered against him.

¶ 12 On cross-examination, defendant stated, *inter alia*, that he was actually calling Williams on March 6, 2008, and that he pled guilty to the VOOP charge because "[u]sually I pled guilty because I have several case." He also stated that the message on July 17, 2008, stating " 'where is that b*** Chanice so I can rape that m*** f*** b***' " was left for "Chana" because "[s]he said she wouldn't have sex with me." Defendant then maintained that his message on July 14, 2008, that he was "going to stick [an] 8-foot crowbar up her a*** until it hits her brain" was directed at Williams, who never filed a police report against him. When subsequently confronted with the message on that date in which he stated "all the police reports filed ain't going to help your a***,"

he acknowledged that Williams never filed a police report but stated that "another female" did.

¶ 13 On redirect, defendant testified that he and Kennedy broke up because he "just got tired of her lies," and on re-cross, he denied breaking up with her because he hit her, stating, "I never hit Rosalyn." At that point, the State impeached defendant with his plea of guilty to domestic battery in a 2007 case, and defendant responded that he only pled guilty because it was his first arrest and his ineffective counsel told him to do so.

¶ 14 In announcing its findings, the court stated, *inter alia*, that "[t]his case boils down to a very, very simple issue, and that is the credibility of these two people that testified here today." On that matter, the court found defendant's testimony "ridiculous" and "utterly absurd," noting that he was "one of the least credible witnesses and defendants I have ever heard in my entire life." The court then found defendant guilty of all charges.

¶ 15 On the date of sentencing, the court confirmed that both sides had received a copy of the presentence investigation report. The State then highlighted in aggravation the violent nature of defendant's messages, arguing that he should receive a sentence "much greater than the minimum," and that consecutive sentences would be justified. The State also read the victim impact statement of Kennedy in which she noted, *inter alia*, that "[t]he physical injuries that resulted from this crime still continue to cause me pain." Counsel subsequently objected to "any reference in this victim impact regarding the prior incident," and the court responded, "Okay. Fine."

¶ 16 Then, before counsel presented evidence in mitigation, the following exchange occurred:

> "MR. FULTON [defense counsel]: Judge, I would state on behalf of [defendant], he was sentenced on the prior incident, and I'm not going to minimize what that crime was about.
>
> THE COURT: Before you go any further, I'm not sure I understand what you are talking about.

MR. FULTON: Well, I'm talking about physical beating.

THE COURT: Oh, the physical injuries that resulted from this crime?

MR. FULTON: Right.

THE COURT: Okay. Fine.

MR. FULTON: And there was a reference to 'I was almost beat to death.' That's what I'm talking about.

In any case, my client served a jail sentence for that crime."

Counsel then proceeded to note, *inter alia*, that defendant had previously worked for Metra for eight years, had no prior felony convictions and never acted on any of the threats he made.

¶ 17 Defendant made the following comments in allocution:

"Yes, I would like to say that I'm pretty much sorry for wasting the Court time. I was raised better than to say stupid stuff out of my mouth, and I never had intention nor will act on doing bodily harm or at this point ever even threatening anybody again in my life, and I can assure you, your Honor, it will never happen again.

I'm pretty much regret the thing that I did said, and I am sorry for it."

¶ 18 In imposing sentence, the court found, *inter alia*, that "anybody who would say the things that the Defendant did in *** these phone calls could not possibly be kidding," and that defendant was "likely to act on those threats." The court also found that "Defendant is absolutely a danger to the public and anyone who he happens to have contact with, to be honest with you, because he has shown it in his personal life, and in his work life.[1]"

[1]On the date of sentencing in this matter, defendant pled guilty to burglary in two separate cases, both involving his former employer Metra. In one, he entered a Metra facility and used a blunt object to damage signal equipment, forcing a train to make an emergency stop because of a missed signal. In the other, he entered another Metra facility and removed equipment without permission. Defendant gave a statement to the Chicago and Metra police that he took the equipment and damaged the property because he was angry at Metra for losing his job.

¶ 19 Ultimately, in case No. 08 CR 22640 (appeal No. 1-10-2019), the court sentenced defendant to two years' imprisonment for VOOP. In case No. 08 CR 22641 (appeal No. 1-10-2020), the court merged defendant's telephone harassment conviction and sentenced him to a consecutive term of one year imprisonment for VOOP. In case No. 08 CR 22642 (appeal No. 1-10-2021), the court merged defendant's telephone harassment conviction and sentenced him to a consecutive term of 18 months' imprisonment for VOOP. Lastly, in case No. 08 CR 22643 (appeal No. 1-10-2022), the court merged defendant's telephone harassment conviction and sentenced him to a consecutive term of 30 months' imprisonment for VOOP.

¶ 20 On appeal from that judgment, defendant first contends that the trial court abused its discretion in admitting a "substantial amount" of other crimes evidence. Although defendant acknowledges that he has forfeited this issue by failing to raise it in a posttrial motion, as required (*People v. Enoch*, 122 Ill. 2d 176, 186 (1988)), he claims that it should be reviewed under the fundamental fairness prong of the plain error rule.

¶ 21 The plain error rule is a narrow exception to the waiver rule (*People v. Hillier*, 237 Ill. 2d 539, 545 (2010)) which allows a reviewing court to consider unpreserved claims of error where a defendant shows that the evidence is closely balanced, or the error is so serious that it affected the fairness of the trial and challenged the integrity of the judicial process (*People v. Naylor*, 229 Ill. 2d 584, 593 (2008)). Under both prongs, the defendant bears the burden of persuasion and must first show that a clear or obvious error occurred. *Hillier*, 237 Ill. 2d at 545.

¶ 22 In this case, defendant claims that the court failed to properly weigh the probative value of the other crimes evidence against its potential for prejudice, "admitted too much other crimes evidence, amounting to a mini-trial on the non-charged offenses," and relied heavily on the other crimes evidence in finding him guilty. The State responds that defendant has failed to establish a clear or obvious error where the trial court weighed the probative value of the other crimes evidence against the potential for undue prejudice when ruling on its motion *in limine*.

¶ 23 Under section 115-7.4 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-7.4 (West 2010)), specific instances of a defendant's prior acts of domestic violence are admissible and may be considered for their bearing on *any matter* to which they are relevant. 725 ILCS 5/115-7.4(a), (d) (West 2010). However, the trial court must determine that the probative value of such other crimes evidence is not substantially outweighed by the risk of undue prejudice. *People v. Dabbs*, 239 Ill. 2d 277, 291 (2010). To that end, section 115-7.4 sets forth the proper factors to be considered, namely, the temporal proximity and degree of similarity to the charged offenses, along with any other relevant facts and circumstances. 725 ILCS 5/115-7.4(b) (West 2010). We will not disturb the trial court's ruling on the admissibility of other crimes evidence absent a clear abuse of discretion (*Dabbs*, 239 Ill. 2d at 284). As discussed below, we find no such abuse here.

¶ 24 The record shows that the trial court barred the State from introducing defendant's prior domestic battery conviction. That incident did not involve telephone harassment, and so it lacked similarity to the charged offenses. 725 ILCS 5/115-7.4(b)(2) (West 2010). The record also shows that the court found the incidents involving defendant's telephone harassment of Kennedy admissible and relevant but did not "see any reason why the State ha[d] to offer all of the[m]," limiting the State to introducing only defendant's prior VOOP conviction for telephone harassment and three of the phone harassment incidents in July 2008. These other incidents of phone harassment were very similar and close in time to the charged offenses, making them probative (725 ILCS 5/115-7.4(b)(1)-(2) (West 2010)); however, the limitation placed on the number that could be introduced reflects the court's recognition of the unfair prejudice that could accrue to defendant by the cumulative evidence of these other incidents. In these respects, the record discloses that the court considered the appropriate factors in ruling on the State's motion to admit proof of other crimes, and we cannot say, as a matter of law, that the court abused its discretion in ruling as it did. *People v. Illgen*, 145 Ill. 2d 353, 375-76 (1991).

¶ 25 Defendant claims that the proceedings became a "mini-trial" on the non-charged offenses, citing *People v. Bedoya*, 325 Ill. App. 3d 926 (2001). We disagree. In *Bedoya*, 325 Ill. App. 3d at 940-41, evidence of other crimes was presented in "excruciating detail," and "[t]he detail and repetition presented to the jury had nothing to do with the purported purpose of the evidence." Here, by contrast, defendant was tried before the bench, and the record shows that the proceedings moved along briskly without extensive presentation of, or undue focus on, the other crimes evidence introduced by the State. In addition, the other crimes evidence established defendant's motive and intent with respect to the charges of telephone harassment, which was the purpose for its admission. We find defendant's reliance on *Bedoya* to be misplaced and conclude that he has failed to meet his burden of establishing a clear or obvious error warranting plain error review. *Hillier*, 237 Ill. 2d at 545.

¶ 26 We further note that defendant's argument that the court heavily relied on the other crimes evidence in finding him guilty need not be addressed. Defendant presented this argument solely for the purpose of showing that "the error" in allowing admission of the other crimes evidence "was prejudicial" and requires reversal. There is no error here, however, undermining the entire premise upon which defendant's argument is based. We therefore honor the procedural default of his claim. *Hillier*, 237 Ill. 2d at 545.

¶ 27 Defendant next contends that the trial court abused its discretion in imposing consecutive sentences. He claims that the court did not properly consider the relevant mitigating evidence before doing so, and that the court may have considered improper evidence in the victim impact statement which referred to physical harm that had not occurred in this case. The State responds that the court properly determined that consecutive sentences were necessary to protect the public.

¶ 28 Section 5-8-4(c)(1) of the Unified Code of Corrections (730 ILCS 5/5-8-4(c)(1) (West 2010)) allows the trial court to impose consecutive sentences where, considering the nature and

circumstances of the offense and the history and character of the defendant, it finds consecutive sentences necessary to protect the public from further criminal conduct by the defendant. The trial court has wide discretion to impose a consecutive sentence, and we will not interfere with its decision absent an abuse of discretion. *People v. Carroll*, 260 Ill. App. 3d 319, 350 (1992).

¶ 29 Here, the trial court expressly found defendant to be a danger to the public based on his prior conduct in his work and personal life. This finding is supported by the record which shows that he has previously been convicted of domestic battery and VOOP, and that his convictions in this case involved repeated unlawful contact with Kennedy in which he directed numerous threats of violence at her and her family. Under these circumstances, we find no abuse of sentencing discretion. *Carroll*, 260 Ill. App. 3d at 350-51.

¶ 30 Defendant still claims that the court did not properly consider all the relevant mitigating evidence before finding consecutive sentences appropriate. He claims that "[h]ad the judge properly taken into account the strong mitigating evidence *** then the judge would not have expressed such strong concern that Singleton would, in fact, act on it and would have determined that consecutive sentences to protect the public were not warranted." We find this claim unpersuasive. Defendant is essentially arguing that because consecutive sentences were imposed, then, *ipso facto*, the trial court did not consider all the mitigating evidence. This flawed reasoning and baseless speculation does not overcome the presumption that the trial court considered the mitigating evidence placed before it. *Carroll*, 260 Ill. App. 3d at 350.

¶ 31 Defendant further claims that the court "may have also considered improper evidence in the form of the complainant's victim impact statement," namely, Kennedy's reference to defendant's domestic battery of her. Although defendant acknowledges that the court responded to counsel's objection to that part of the statement by stating, "Okay. Fine," he claims that the court did not clarify what it meant by "Okay. Fine." This claim is also unpersuasive. The trial court is entitled to a strong presumption that it based its sentencing determination on proper legal

reasoning (*People v. Lavelle*, 396 Ill. App. 3d 372, 386 (2009)), and, here, defendant has merely claimed that the court "may have" considered improper evidence. By phrasing his claim in this manner, defendant betrays the lack of support for it (*People v. Taylor*, 237 Ill. 2d 68, 76 (2010)), and we reiterate that speculation will not overcome the presumption that the court's sentencing determination was proper (*Lavelle*, 396 Ill. App. 3d at 386).

¶ 32 Finally, defendant requests that the mittimus entered in three of his cases be modified to reflect that judgment was entered on his VOOP convictions, rather than on his telephone harassment convictions. The State concedes that the corrections are warranted. Therefore, pursuant to our authority under Illinois Supreme Court Rule 615(b) (eff. Aug. 27, 1999)), we direct the clerk to modify the mittimus in case Nos. 08 CR 22641 (appeal No. 1-10-2020), 08 CR 22642 (appeal No. 1-10-2021), and 08 CR 22643 (appeal No. 1-10-2022) to only reflect the judgment entered on his VOOP convictions (720 ILCS 5/12-30(a) (West 2008)).

¶ 33 For the reasons stated, we order the clerk to modify the mittimus entered in each of the cited cases as indicated and affirm the judgments in all other respects.

¶ 34 Appeal No. 1-10-2019; affirmed.

¶ 35 Appeal No. 1-10-2020; affirmed; mittimus modified.

¶ 36 Appeal No. 1-10-2021; affirmed; mittimus modified.

¶ 37 Appeal No. 1-10-2022; affirmed; mittimus modified.