2017 IL App (1st) 150073-U

No. 1-15-0073

Order filed July 7, 2017

Sixth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 17060
	)	
MIGUEL RUIZ,	)	Honorable
	)	Maura Slattery Boyle,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

ORDER

¶ 1 ***Held:*** The trial court did not err in denying defendant's motion to suppress his inculpatory statements because the warnings given to defendant reasonably conveyed his rights under *Miranda v Arizona*, 384 U.S. 436 (1966). The trial court did not abuse its discretion in admitting certain testimony.

¶ 2 Following a jury trial, defendant Miguel Ruiz was found guilty, under an accountability theory, of first degree murder and aggravated discharge of a firearm in the direction of a police

officer. He was sentenced to a 45-year prison term on the murder conviction and to a concurrent 15-year term on the aggravated discharge of a firearm conviction. On appeal, defendant contends that the trial court erred when it denied his motion to suppress statements made after he was admonished with "facial[ly] inadequate" warnings pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966). He further contends that the trial court erred when it permitted two police officers to provide the jury with "overviews" of the police investigation. We affirm.

¶ 3 The evidence at defendant's trial established that defendant and Alfredo "Colors" Carranza belonged to the same gang. On September 25, 2011, defendant drove Carranza to a location where Carranza fatally shot Andre Ephrame. Later, after the vehicle defendant was driving was curbed, Carranza exited the vehicle, fired a gun at officers Alejandro Acevedo and Charlotte Gonzalez and was then fatally shot by Acevedo.

¶ 4 On June 26, 2013, the trial court held a hearing on defendant's motion to suppress statements. The motion alleged, in pertinent part, that defendant received insufficient *Miranda* warnings and that he was never told why he was arrested. At the hearing, Detective Anthony Green testified that he spoke with defendant at Area 5 police headquarters on September 15, 2011 at 11:30 p.m. Before their conversation, he gave defendant *Miranda* warnings from "memory." Defendant acknowledged that he understood each of these rights. Defendant did not appear to be intoxicated or "high on any drugs." Green's conversation with defendant, which was recorded, was then published.[1] During the conversation, the following exchange occurred:

> "Q: You have the right to remain silent. Do you understand that?

[1] The report of proceedings states: "DVD published but not reported."

A: Uh-huh.[2]

Q: Do you understand that you have the right to an attorney?

A: Yeah.

Q: Do you understand that you have the right to an attorney and have an attorney present during questioning?

A: Yeah.

Q: Do you understand that anything you say can be used against you in court? You understand that?

A: Yes.

Q: You understand that if you can't afford an attorney that state will provide you one. You understand that?

A: Yes."

¶ 5 During cross-examination, Green acknowledged that when he went to speak with defendant, he did not tell defendant that defendant was a suspect in a homicide. His "[p]ersonal preference" is to recite the *Miranda* warnings from memory. When defense counsel asked if Green ever read the "version" of the *Miranda* warnings contained in the Chicago Fraternal Order of Police (FOP) book, the State objected and the trial court sustained the objection.

¶ 6 Detective John Folino testified that he interviewed defendant at approximately 6:51 a.m. on September 16, 2011, and advised defendant of the *Miranda* warnings from memory. After

[2] The video shows that, although defendant does not speak a discernible word, he makes a sound and nods his head up and down slightly.

each question, defendant indicated that he understood. A recording of their conversation was played for the court.[3] During the conversation, this exchange took place:

"Q: Do you understand that you have the right to remain silent?

A: Yes, I do.

Q: You do understand that?

A: (INDICATING)[4]

Q: Do you understand that anything you say can and will be used against you in a court of law?

A: Yes.

Q: Okay. Do you understand that you have the right to an attorney? You have a right to a lawyer?

A: Yes.

Q: Do you understand if you cannot afford, [or] you cannot pay for an attorney, one will be provided to you free of charge, [at] no cost to you?

A: Yes.

Q: Do you understand that?

A: Yes, I do."

[3] The report of proceedings indicates: "Video played but not reported."

[4] The video shows that defendant nods his head up and down slightly.

¶ 7 During cross-examination, Folino testified that he did not tell defendant that he was a suspect in a double murder or that he was under arrest for homicide. Although Folino had a FOP book containing the *Miranda* warnings, he chose not to use it.

¶ 8 The parties stipulated that defendant was not informed of the nature of the offense for which he was placed under arrest.

¶ 9 In denying the motion to suppress statements, the trial court noted that "these officers recited *Miranda* from their memory, which is proper," and that use of the FOP book was not required. The court concluded that the *Miranda* warnings given to defendant were sufficient when "[t]hey indicated his rights to remain silent, *** that anything he said can be used against him, his right to an attorney, [and that] if he cannot afford one, one will be appointed."

¶ 10 The case proceeded to a jury trial. Detective Anthony Green testified that on September 15, 2011, defendant operated a vehicle in which Carranza was a passenger. Defendant was 20 years old and belonged to the Spanish Gangster Disciples. Carranza also belonged to the gang and was nicknamed "Colors." After Carranza fatally shot Ephrame, defendant and Carranza were stopped by officers Acevedo and Gonzalez. Carranza exited the vehicle and fired a gun at the officers. The officers fatally shot Carranza and defendant was taken into custody. The defense objected to this entire line of questioning. The trial court overruled the objections.

¶ 11 The State then questioned Green regarding the events following defendant's arrest. Green testified consistently with his testimony at the hearing on motion to suppress. He reviewed a transcript of his interview of defendant and testified that it truly and accurately recounted the interview. Over the defense's objection, a video of the conversation was published to the jury.

¶ 12 In the video, defendant stated that he was driving a Suburban and that "Colors" was a passenger. Defendant only knew Carranza as Colors. While they were "hanging out," they "felt

like doing something." Colors had a gun. Defendant stated that they were going to "[g]o see who we find," and shoot "them." Defendant explained that he and Colors were Spanish Gangster Disciples and hated rival gangs. The men first encountered "Kings," but they did nothing because "there were cops." They then saw a "black guy." Defendant stated that he did not know that Colors "was gonna go to him" but that "before you know it I turn around and he just started shooting at him." Defendant "guess[ed] that this person represented the Kings." Colors got back in the vehicle and drove off. Defendant thought that they had gotten away, but pulled over at the sound of sirens. Colors exited the vehicle and "started shooting at the cops." Defendant stayed in the vehicle the "whole time." He did not know that Colors was going to shoot at the police, he thought Colors was going to run away.

¶ 13 During cross-examination, Green testified that his knowledge of the shooting was based on police reports, interviews with witnesses and his conversation with defendant.

¶ 14 Sergeant John Folino testified that in September 2011, he was a detective assigned to Area 5. He further testified that defendant was arrested on September 15, 2011, and that defendant was 20 years old at that time. When the State asked Folino who Alfredo Carranza was, the defense objected. The trial court overruled the objection. Folino then explained that Carranza, who was nicknamed Colors, was the person who fired a gun at Ephrame, and who later exited a vehicle and fired a gun at police officers. The State next asked whether the investigation revealed the identity of the driver of the vehicle, and the defense objected. The trial court overruled the objection, and Folino testified that defendant was the driver. The State then asked whether the investigation revealed whether defendant and Carranza were members of a gang. The defense objected, and the trial court overruled the objection. Folino testified that the men were members of the Spanish Gangster Disciples.

¶ 15 Folino spoke with defendant at Area 5 on September 16, 2011. His testimony regarding the conversation was consistent with his testimony at the suppression hearing. Over the defense's objection, a recording of defendant's statement was admitted and published to the jury.

¶ 16 In his statement, defendant stated that he and Colors were "hanging out" and decided to "take a cruise" to a "King's hood." Defendant did not know Colors' real name. Defendant stated that he and Colors were affiliated with the Spanish Gangster Disciples. Colors took a gun. Defendant stated that the intent was "to shoot somebody." At one point, Colors told defendant to stop. Colors exited the vehicle and walked toward "a black guy." Later, Colors stated that he "false flagged" this person by saying "hey what's up King?" When the person responded, Colors shot him. Defendant never got out of the vehicle. Colors got back in and they drove away. They then heard sirens. Colors said he was "gonna run it," and "take the blame." Defendant stopped the vehicle and Colors got out holding the gun. Colors began to walk away, but then "started shooting at the cops." Defendant did not expect Colors to "shoot at the cops." Defendant further stated that Colors was angry because Colors's brother was shot by "some rivals" in California and Colors wanted to "[g]et his anger out."

¶ 17 Officer Acevedo testified that after he and his partner Officer Gonzalez curbed a dark SUV, a person exited from the passenger side and began firing a gun. Acevedo "returned fire," followed the shooter into an alley, and fired his weapon until the shooter was on the ground. He later learned that the shooter's name was Alfredo Carranza. Officer Gonzalez testified consistently with Acevedo that the passenger of the SUV "fired multiple shots." She took defendant, the SUV's driver, into custody.

¶ 18 The jury found defendant guilty, under an accountability theory, of the first degree murder of Ephrame and the aggravated discharge of a firearm in the direction of Acevedo.

¶ 19 The defense then filed a motion for a new trial alleging, *inter alia*, that the trial court erred when it denied the motion to suppress statements because defendant was given "an incomplete and insufficient recitation" of the *Miranda* warnings, and when it overruled the defense's objections to Detective Green's testimony regarding parts of the investigation to which he had no first-hand knowledge. The trial court denied the motion. The court then sentenced defendant to 45 years in prison for the first degree murder conviction and to a concurrent 15-year sentence for aggravated discharge of a firearm at a police officer conviction.

¶ 20 On appeal, defendant first contends that the trial court erred when it denied the motion to suppress statements because Green and Folino advised defendant of the *Miranda* warnings from memory, and, therefore, "did not convey to [defendant] the full scope of his rights under *Miranda.*" Specifically, defendant contends that he was not told that he had the right to consult with an attorney before and during questioning.

¶ 21 This court reviews the trial court's judgment on a motion to suppress under a bifurcated standard. The trial court's findings of fact are accorded deference and will be disturbed only if they are against the manifest weight of the evidence. *People v. Miller*, 393 Ill. App. 3d 1060, 1063 (2009). This court reviews *de novo* the ultimate question posed by the legal challenge to the trial court's ruling. *Id.* at 1064.

¶ 22 In *Miranda v. Arizona*, 384 U.S. 436, 444 (1966), the Supreme Court held that before conducting a custodial interrogation, law enforcement officers must administer warnings to the defendant sufficient to inform him of his privilege against self-incrimination. "The four essential elements of the warning that is required to be given to a defendant in custody before questioning are: (1) the defendant must be told of his right to remain silent; (2) that anything he says may be used against him; (3) that he has the right to have counsel present before and during questioning;

and (4) that he is entitled to have counsel appointed if he cannot afford one." *People v. Martinez*, 372 Ill. App. 3d 750, 754 (2007).

¶ 23 The Supreme Court, however, has "never insisted that *Miranda* warnings be given in the exact form described in that decision." *Duckworth v. Eagan*, 492 U.S. 195, 202 (1989). Rather, the Court has "stated that 'the "rigidity" of *Miranda* [does not] exten[d] to the precise formulation of the warnings given a criminal defendant,' and that 'no talismanic incantation [is] required to satisfy its strictures.' " *Id.* at 202-03 (quoting *California v. Prysock*, 453 U.S. 355, 359 (1981)). A reviewing court does not need to "examine *Miranda* warnings as if construing a will or defining the terms of an easement." *Id.* at 203. "The inquiry is simply whether the warnings reasonably 'conve[y] to [a suspect] his rights as required by *Miranda*.' " *Id.* at 203 (quoting *Prysock*, 453 U.S. at 361).

¶ 24 This court has already considered, and rejected, the claim that a defendant's *Miranda* warnings were defective when a defendant was not specifically advised that he had the right to have an attorney present before and during questioning. In *People v. Walton*, 199 Ill. App. 3d 341 (1990), for example, the defendant argued that the State failed to prove that a police officer advised him of his right to have an attorney present before and during interrogation and that this rendered the defendant's confession inadmissible.

¶ 25 At the suppression hearing, a police officer testified that he gave the defendant the *Miranda* warnings " 'conversationally.' " *Walton*, 199 Ill. App. 3d at 342. The State then asked the officer whether he gave each of the individual warnings, and the officer answered that he had. The exception was whether the officer advised the defendant that he could have a lawyer present during questioning, the officer responded, " 'I don't know if I said that.' " *Id.* at 343. The trial court denied the defendant's motion to suppress.

¶ 26 On appeal, the court determined that the *Miranda* warnings given to the defendant "in their totality, were sufficient in that they 'reasonably conveyed' to defendant his rights as required by *Miranda*." *Id.* at 344. The court also noted that the defendant:

> "was specifically informed that he 'had the right to consult with a lawyer.' While the better practice would be for the police to make explicit that [a] defendant's right to consult with a lawyer may be both before and during any police interrogation, we hold that the language used in this case was sufficient to *imply* the right to counsel's presence during questioning. (Emphasis in original.) *Id.*

¶ 27 The court further noted that "no restrictions were stated by the police in the present case as to *how, when, or where* [the] defendant might exercise his right 'to consult with a lawyer.' " (Emphasis in original.) *Id.* at 344-45. The court finally noted that an opposite conclusion, *i.e.*, a finding that the warnings were insufficient because the defendant was not specifically told that he had the right to consult with a lawyer before and during questioning, "would be to import a rigidity to the *Miranda* warnings and to require a 'talismanic incantation,' both of which actions have been explicitly disapproved by the [Supreme] Court." *Id*. at 345.

¶ 28 Similarly, in *People v. Martinez*, 372 Ill. App. 3d 750, 754 (2007), the defendant asserted that his *Miranda* warnings were fatally defective because he was not advised of his right to have an attorney present during questioning and to consult with one prior to questioning. On appeal, the court noted that Supreme Court has never insisted that *Miranda* warnings must be given "in the exact form described in *Miranda*;" rather, "*Miranda* warnings must reasonably convey to a suspect his rights." *Id*. (citing *Duckworth*, 492 U.S. at 202-03). The court also relied on *Walto*n

to find that the "defendant has failed to show that the trial court erred in denying his motion to suppress under *Miranda*." *Id*. at 755.

¶ 29 Defendant acknowledges that the holdings of *Walton* and *Martinez* are contrary to his position on appeal, but asks this court not to follow those decisions because they "contradict" *Miranda*, *Prysock*, and *Duckworth*. We decline this invitation, as *Walton* and *Martinez* adhere to this court's holdings that *Miranda* warnings do not have to be precisely recited, but must reasonably convey a defendant's rights. These holdings, in turn, are consistent with the Supreme Court's statement that *Miranda* warnings need not be " 'talismanic incantation[s].' " *Duckworth*, 492 U.S. at 202-03 (quoting *Prysock*, 453 U.S. at 359).

¶ 30 Here, defendant was advised that he had the right to remain silent; that he had the right to an attorney and the right to have that attorney present during questioning; that anything he said could be used against him in court; and that if he could not afford an attorney, one would be appointed for him. As the courts in *Walton* and *Martinez* determined, the failure to include that the defendant could have an attorney present before and during questioning does not itself render the *Miranda* warnings that defendant received fatally defective. Accordingly, the trial court did not err when it denied defendant's motion to suppress statements. See *Miller*, 393 Ill. App. 3d at 1064.

¶ 31 To the extent that defendant argues that neither the arresting officers nor the detectives informed him of the basis for his arrest or the nature of the charges that he faced, we note that defendant was arrested immediately after Carranza opened fire on the police and shortly after he drove Carranza away from the scene of another shooting. While defendant may not have known that Carranza had been fatally shot, we are unpersuaded by defendant's argument that he did not know why he was arrested.

¶ 32 Defendant next contends that trial court erred when it permitted Detective Green and Sergeant Folino to provide "overview" testimony of the police investigation to the jury. He argues that this testimony, which indicated that defendant and Carranza were members of the same gang; that the men were in the same vehicle on September 15, 2011; that Carranza exited the vehicle, fatally shot Ephrame, was driven away by defendant and then later exited the vehicle firing at police officers; that Carranza was fatally shot by police; and that defendant was arrested at the scene of Carranza's shooting improperly bolstered and corroborated the State's case.

¶ 33 Defendant notes that he preserved his objections to Detective Green's testimony by including this issue in his posttrial motion. However, he acknowledges that he failed to include his objections to Sergeant Folino's testimony in his posttrial motion and asks this court to review that argument pursuant to the plain error doctrine. See *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007) (citing *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005)) (the plain error doctrine permits "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"). He further contends that he was denied the effective assistance of counsel by counsel's failure to include the objection to Folino's testimony in the posttrial motion.

¶ 34 "All relevant evidence is admissible, except as otherwise provided by law." Ill. R. Evid. 402 (eff. Jan. 1, 2011). "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading

the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Ill. R. Evid. 403 (eff. Jan. 1, 2011).

¶ 35 A trial court's evidentiary rulings are discretionary and, therefore, they will not be overturned absent an abuse of discretion. *People v. Caffey*, 205 Ill. 2d 52, 89 (2001). An evidentiary ruling constitutes an abuse of discretion when it is arbitrary, fanciful, or unreasonable. *People v. Hanson*, 238 Ill. 2d 74, 101 (2010).

¶ 36 Initially, we note that although defendant relies on *United States v. Casas*, 356 F. 3d 104, 119-20 (1st Cir. 2000), for the proposition that the admission of "overview" testimony is improper, he cites no Illinois authority in support of his position. Additionally, defendant has not convinced this court that the complained-of testimony is the same as the "overview" testimony found to be problematic in *Casas*.

¶ 37 In *Casas*, a Drug Enforcement Agency agent testified about his "personal knowledge of observed events" and then gave "a general description of his investigation" regarding a drug trafficking group. *Id.* at 117-18. When the agent was asked to name individuals that he had determined were members of the organization, a defense attorney objected because the agent was no longer "testifying about his own investigation but rather about what he was told in post-arrest statements from individuals who, because they had been arrested, were no longer part of the conspiracy." *Id.* at 118. The trial court overruled the objection. *Id.*

¶ 38 On appeal, the court noted that the agent's "conclusory" testimony about the conspiracy and its members was at least partially based on information provided by a person who cooperated after he was arrested, but who did not testify at trial. *Id*. The court determined that the agent's testimony was "fatally flawed" because there was no indication that the agent's conclusions that the defendants were members of a drug organization "were even based on

testimony that was eventually presented at trial and could be evaluated by the jury." *Id.* at 119. Although the agent stated that his conclusions were based on the investigation, the court concluded that the agent's testimony was likely partially based on the statements of a witness that the government chose not to call at trial. *Id.* The court further explained that the defendants did not have the chance to cross-examine that person, did not know what he had said to the government, and had no basis to challenge any conclusions drawn from what he had said. *Id.* The court concluded that "[i]f evidence does not exist in the record, the [agent's] testimony can hardly be a summation of it." *Id.* The court then examined whether this improperly admitted evidence was harmless as to each defendant.

¶ 39 In this case, however, Green and Folino testified regarding details that were also contained in defendant's inculpatory statements, and those statements were later played for the jury. Therefore, their conclusions were based on evidence that was subsequently presented at trial and evaluated by the jury. *Cf. id.* at 119. Thus, we cannot agree with defendant's conclusion that the complained-of testimony was improper "overview" testimony. Absent error, there is no plain error (see *Piatkowski*, 225 Ill. 2d at 565), and defendant's argument must fail. Consequently, we find no ineffective assistance of counsel based upon trial counsel's failure to preserve the objection to Folino's testimony in a posttrial motion. See *People v. Ivory*, 217 Ill. App. 3d 619, 625 (1991).

¶ 40 We affirm the judgment of the circuit court of Cook County.

¶ 41 Affirmed.