2018 IL App (1st) 152879-U

FIRST DIVISION
September 24, 2018

No. 1-15-2879

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 CR 6001
	)	
PAMELA BROWN,	)	Honorable
	)	Clayton J. Crane,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE MIKVA delivered the judgment of the court.
Justices Pierce and Griffin concurred in the judgment.

ORDER

¶ 1 *Held*: The defendant's convictions for official misconduct predicated on theft are affirmed where the evidence was sufficient to show that she took cash and property while working as a Chicago Police Department property custodian. The trial court did not abuse its discretion in allowing evidence of the defendant's other acts and crimes as relevant to the course of the investigation. The prosecution's statements in rebuttal argument were not improper because they were an appropriate response to defense counsel's argument.

¶ 2 Following a jury trial, defendant Pamela Brown was convicted of two counts of official misconduct (720 ILCS 5/33-3(b) (West 2010)) for taking cash and property from a Chicago Police Department (CPD) evidence room where she worked as a property custodian. Ms. Brown

was sentenced to two years in prison on each count, with those terms to be served concurrently. On appeal, Ms. Brown contends that (1) her conviction predicated on the theft of personal property should be reversed because the State did not prove the items she was seen pocketing in a video recording were the same items recovered from her later that day or that the items belonged to the CPD; (2) the trial court erred in allowing the prosecution to present evidence of uncharged crimes, and; (3) the prosecution made improper remarks in closing argument that denied her the right to a fair trial. We affirm Ms. Brown's convictions.

¶ 3 I. BACKGROUND

¶ 4 Ms. Brown was a civilian employee of the CPD who worked as a property custodian in its Evidence and Recovered Property Section (ERPS). Her job included searching unclaimed personal property and identifying items of value to turn over to a supervisor. Ms. Brown was charged and convicted based on events that took place on March 5, 2012.

¶ 5 A. Pre-Trial Proceedings

¶ 6 Before trial, the State filed a motion to admit evidence of other crimes committed by Ms. Brown. The State told the trial court that it intended to prove at trial that, on March 5, 2012, Ms. Brown removed prerecorded funds and personal items from the ERPS with the intent to permanently deprive the ERPS of their benefit and use. The motion stated that the CPD Internal Affairs Division began investigating Ms. Brown sometime before that, in early 2012, after it was suspected that she was not turning over valuable items to her supervisor. On February 20, 2012, a hidden camera in Ms. Brown's work area recorded her removing an iPad from a property envelope, where it had been planted by investigators. According to the motion, investigators found the iPad hidden under a table against a wall near Ms. Brown's work area, and Ms. Brown was seen on surveillance video looking at the iPad in its hidden location.

¶ 7 Investigators subsequently replaced the original iPad with a similar iPad that could be tracked with global positioning technology. As of March 5, Ms. Brown had not turned the iPad in to her supervisor. In support of its motion, the State asserted that the evidence of Ms. Brown's relocation of the iPad to her work area was relevant to prove her criminal intent in placing cash and personal property in her pockets on March 5. The State also asserted that the evidence regarding the iPad showed the absence of a mistake on Ms. Brown's part, *i.e.*, that she did not confuse the currency she found in the inventory bags with her own cash, which, according to the State's motion, Ms. Brown claimed when she was arrested. As Ms. Brown points out in her appellate brief, the State never presented any evidence of that alleged statement by Ms. Brown at trial. In addition, the State argued that the evidence concerning the iPad was necessary to explain why investigators placed prerecorded funds into inventory bags on March 5 and why a camera was in place that recorded Ms. Brown's actions on that day.

¶ 8 In granting the State's motion, the trial court found the probative value of the surveillance video of Ms. Brown removing the iPad from the inventory bag on February 20, 2012, and placing it in her work area outweighed the prejudicial effect of that evidence, although the court acknowledged that video footage regarding the iPad was "highly, highly prejudicial."

¶ 9 B. The Trial

¶ 10 The ERPS collects evidence and prisoners' personal property from various police districts. After 30 days, any unclaimed property is considered abandoned and scheduled for destruction. As a property custodian, it was Ms. Brown's job to remove items of value prior to destruction. In February 2012, the ERPS implemented a system under which property custodians spent holidays, when the department was closed to the public, sorting through inventories of prisoners' unclaimed property. February 13, February 20, and March 5, 2012, were three such

holidays.

¶ 11 At approximately noon on February 13, Sergeant Kappel, the ERPS administration operations sergeant, saw an "Invicta-style" man's dive watch in Ms. Brown's work area. Sergeant Kappel testified that he had never seen Ms. Brown wearing the watch. At the end of the day, Ms. Brown turned in various pieces of costume jewelry, but not the watch.

¶ 12 Sergeant Kappel then contacted Sergeant Michael Barz of the CPD Internal Affairs Division about Ms. Brown. The officers decided to perform an "integrity check" on the receiving room by placing a valuable item in an inventory bag scheduled for destruction to see if the item would be turned in to a supervisor. Sergeant Kappel placed a first-generation iPad into a pre-existing inventory bag. A HAWK pinhole camera was placed near Ms. Brown's work area.

¶ 13 On February 20, Ms. Brown handled the inventory bag that contained the iPad. She did not turn the iPad in at the end of that day but did turn in costume jewelry and a foreign coin. After Ms. Brown left work on February 20, the iPad was found under a table in her work area behind a box and a milk crate. Sergeant Kappel then replaced the iPad with one that was traceable. Photographs of the iPad in Ms. Brown's work area before it was removed were entered into evidence at trial.

¶ 14 Sergeant Kappel prepared inventory bags for Ms. Brown to search on March 5 that contained pre-recorded funds consisting of 26 bills in various denominations. These funds totaled $200 and were distributed among five wallets in different inventory bags. Sergeant Barz confirmed that the bags containing the prerecorded funds were handled by Ms. Brown.

¶ 15 During the workday on March 5, Ms. Brown turned in a $100 bill to Sergeant Kappel, and at the end of the day she turned in a $5 bill. Ms. Brown also turned in costume jewelry, a money order, and a bag of change. She did not turn in any of the prerecorded funds. Ms. Brown

was detained when she left the ERPS building by Sergeant Barz and Chicago police sergeant Christine Blaul, who searched Ms. Brown's clothing. Ms. Brown wore cargo pants with a pocket on each leg. Currency was recovered from Ms. Brown, and Sergeant Barz initially determined that five or six of the bills bore serial numbers matching the prerecorded funds.

¶ 16 Ms. Brown was transported to a police station, where an additional search recovered all 26 of the prerecorded bills and the following personal property: (1) two 100-peso Mexican notes; (2) earrings, a crucifix, and other jewelry; (3) a red bag containing coins with Israeli or Hebrew lettering; (4) a black coin purse containing $27; (5) $10.21 in change; and (6) a Casio digital camera in a carrying case. Photographs of all of those items, except the jewelry, were entered into evidence. Sergeant Barz identified the items pictured as those that were recovered from Ms. Brown.

¶ 17 Mike Carroll, a Chicago police technician, testified that he installed the HAWK camera in Ms. Brown's work area and downloaded and viewed the footage. The parties stipulated to the foundation necessary for the admission into evidence of video clips from the February 20 and March 5 footage from that camera.

¶ 18 Officer Carroll testified that he viewed the February 20 footage and saw that Ms. Brown looked at the iPad or put items in her pockets on eight occasions. The State published a video clip from February 20 that showed Ms. Brown opening the case that contained the iPad, looking at the iPad, and setting it to the side of her work area.

¶ 19 On March 5, Officer Carroll watched Ms. Brown remotely via the HAWK camera, viewing the video feed on a laptop while he sat in a car outside the ERPS building. The State published 13 video clips from the March 5 footage. Officer Carroll said he observed those events as they were happening and that "on numerous occasions, [Ms. Brown] would palm things and

stick her hands in her pockets." Officer Carroll saw Ms. Brown unfold pieces of paper that were pink or red and put them in her pocket. Ms. Brown also placed a small red bag in her pocket. The State published video clips showing Ms. Brown performing those two acts. In addition, Officer Carroll saw Ms. Brown pick up "what appear[ed] to be a little digital camera," unzip and look inside the case, then close the case and set it aside. Several video clips showed Ms. Brown opening wallets and pocketing currency.

¶ 20 On cross-examination, Officer Carroll acknowledged that the iPad was still in Ms. Brown's work area when she was arrested. Officer Carroll also admitted that he did not photograph or videotape Ms. Brown's arrest.

¶ 21 Ms. Brown did not testify or present any evidence.

¶ 22 The video clips entered into evidence were sent back with the jury. At one point, the jury sent a note stating "We only have the DVD for 20 Feb 12—we also need 5 Mar." During deliberations, the jury sent several other notes to the court. The jury asked why Sergeant Blaul was not called to testify. The jury also sent a note stating that it had "a decision on theft to personal property but not on currency" and that the jurors were "not unanimous and not likely to agree." The court instructed the jury to continue deliberating and the jury found Ms. Brown guilty of official misconduct based on both the theft of cash and the theft of personal property from the ERPS.

¶ 23 Ms. Brown filed a motion for a new trial, asserting that the trial court erred in allowing the State to present Sergeant Kappel's testimony about the watch in Ms. Brown's work area. The motion also argued that the court erred in granting the State's motion to admit proof of other crimes. Ms. Brown's motion for a new trial was denied and she was sentenced to two years in prison on each count, with those terms to be served concurrently.

¶ 24 II. JURISDICTION

¶ 25 Ms. Brown was sentenced on September 2, 2015, and timely filed her notice of appeal that same day. This court has jurisdiction pursuant to article VI, section 6, of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6) and Illinois Supreme Court Rules 603 and 606, governing appeals from a final judgment of conviction in a criminal case (Ill. S. Ct. Rs. 603, 606 (eff. Feb. 6, 2013)).

¶ 26 III. ANALYSIS

¶ 27 A. Sufficiency of the Evidence

¶ 28 Ms. Brown challenges the sufficiency of the evidence to sustain her conviction for official misconduct for taking personal property from the ERPS. She does not challenge the sufficiency of the evidence supporting her conviction for taking currency. Specifically, Ms. Brown argues that the State did not prove the items recovered from her when she left work on March 5 were items that belonged to ERPS. The State responds that Ms. Brown's guilt was established by the video footage in which she is shown placing items in her pockets, coupled with the testimony about the recovery of items from her outside the ERPS building.

¶ 29 When considering a challenge to the sufficiency of the evidence, a reviewing court must determine whether, viewing the evidence in the light most favorable to the State, a rational trier of fact could have found the required elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *People v. Bradford*, 2016 IL 118674, ¶ 12. As a reviewing court, we will not substitute our judgment for that of the trier of fact on questions involving the weight of the evidence or the credibility of the witnesses. *Bradford*, 2016 IL 118674, ¶ 12. We will not reverse the judgment of the trial court unless the evidence is so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of the defendant's guilt. *Id*.

¶ 30 As a threshold matter, Ms. Brown suggests that we should review the video evidence in this case *de novo*, with no deference to the jury's assessment of that evidence, because the video footage was not "live testimony." Ms. Brown discounts Officer Carroll's trial testimony, contending it was not "live" because Officer Carroll did not watch her actions in person but instead observed her on a remote video feed. We find *de novo* review is not warranted where, as here, the evidence that was presented to the jury included a mix of both Officer Carroll's live testimony and video evidence. It is the jury's determination, based on all of that evidence, to which we must defer.

¶ 31 Officer Carroll testified that on March 5 he watched Ms. Brown on the HAWK camera as he sat in a car outside the ERPS building. He observed Ms. Brown's actions via the HAWK camera in "real time," as they were happening. In this manner Officer Carroll saw her pick up a small digital camera bag and set it off to the side of her work table, and a small digital camera was found in Ms. Brown's pocket when she left work later that day. Moreover, there was ample evidence of both Ms. Brown's pocketing of items and of items recovered from her cargo pants. There was also evidence that Ms. Brown did not turn over items of value equivalent to that of her coworkers. This evidence was sufficient for the jury to conclude that Ms. Brown took personal property.

¶ 32 The evidence was also sufficient to show that the property recovered from Ms. Brown belonged to the ERPS. Ownership of the contents of inventory bags at the ERPS was established by Sergeant Kappel's testimony that items unclaimed by prisoners became property of the CPD after 30 days. Ms. Brown relies on *People v. Karraker*, 261 Ill. App. 3d 942 (1994), to argue the State did not prove any superior possessory interest in the items that were recovered from her. In *Karraker*, however, the defendant's conviction for the theft of camera equipment was reversed

because no evidence was presented of an actual and identified owner with a superior possessory interest. *Karraker*, 261 Ill. App. 3d at 957. Here, in contrast, Sergeant Kappel testified, without contradiction, that unclaimed items became the property of ERPS.

¶ 33 B. Other Crimes Evidence

¶ 34 Ms. Brown also argues that the trial court not only erred in granting the State's motion to admit proof of her other acts or crimes but further erred in allowing the State to present testimony about her taking a watch on February 13, 2012, an act not even listed in that motion. Ms. Brown made a contemporaneous objection to any testimony about the watch and that objection was overruled. Ms Brown also contends that the State misrepresented its reasons for needing to admit evidence of other crimes because, in its motion, it relied on a statement that Ms. Brown purportedly made when arrested that the money in her pocket was hers but then never put in evidence of that statement at trial. Ms. Brown also argues that her intent was not at issue.

¶ 35 As a general rule, evidence of a defendant's other crimes is not admissible to demonstrate that person's propensity to commit a crime, due to the risk that the jury might convict the defendant not based on the evidence but, rather, because she is a person who deserves punishment. *People v. Placek*, 184 Ill. 2d 370, 385 (1998); see Ill. R. Evid. 404(a) (eff. Jan. 1, 2011). Such evidence is disallowed not because of its lack of probative value but because it can interfere with the trier of fact's determination of the defendant's guilt based only on the evidence in the case before it. *People v. Clark*, 2015 IL App (1st) 131678, ¶ 27 (and cases cited therein).

¶ 36 Evidence of a defendant's other crimes can be admitted, however, for a purpose other than to show her propensity to commit crime, including to demonstrate "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Ill. R. Evid. 404(b) (eff. Jan. 1, 2011); *People v. Pikes*, 2013 IL 115171, ¶ 14. The admissibility of other-

crimes evidence is within the sound discretion of the trial court, and the trial court's decision will not be overturned on appeal absent a clear abuse of that discretion. *People v. Chapman*, 2012 IL 111896, ¶ 19. An abuse of discretion occurs where the trial court's decision is arbitrary, fanciful or unreasonable to the degree that no reasonable person would adopt the trial court's view. *People v. McDonald*, 2016 IL 118882, ¶ 32.

¶ 37 The State argues that the evidence regarding the watch and the iPad was properly admitted to explain the course of the police investigation—particularly to show why video cameras were installed in Ms. Brown's work area—and to demonstrate Ms. Brown's intent and the absence of any mistake. The strongest of these arguments is that the State needed to let the jury understand why Ms. Brown was being watched by a video recording and why prerecorded funds were given to her to inventory. Evidence regarding the course of a police investigation into a crime and the events leading up to a defendant's arrest is relevant when necessary and important to explain the State's case. *People v. Gonzalez*, 379 Ill. App. 3d 941, 950 (2008). We agree with the State that the trial court did not abuse its discretion in finding that the testimony regarding the watch and the iPad was relevant to explain why Ms. Brown's supervisors initiated this investigation of her activities at work. We also agree with the State that the trial court did not abuse its discretion in rejecting Ms. Brown's argument that the probative value of this evidence was outweighed by prejudice to her from its admission. *Clark*, 2015 IL App (1st) 131678, ¶ 28; Ill. R. Evid. 403 (eff. Jan. 1, 2011).

¶ 38 As in *Gonzalez*, absent this evidence, the jury would have been "left to wonder" why the police focused on Ms. Brown. *Gonzalez*, 379 Ill. App. 3d at 950. In addition, as the State points out, part of the defense theory was that Ms. Brown was unfairly targeted, because she was a civilian employee. While Ms. Brown contends that the jury could have just been told an

"integrity check" was a routine testing that ERPS performed, we agree with the State that this would have put the prosecution and the court in the position of lying to the jury, which would be untenable. Because we find the evidence was admitted for the proper purpose of explaining the police investigation in this case, we need not consider whether it was also properly admitted to show intent or an absence of mistake.

¶ 39 Ms. Brown also argues that the jury instruction about the other-crimes evidence did not correctly state the purposes for which that evidence could be considered and that, based on the instructions given, the jury could have inferred that she was guilty of the instant offenses based on the evidence of her earlier acts. But, as Ms. Brown acknowledges, she did not challenge the jury instructions at trial and she argues that she is not challenging them on appeal. She contends that she is only pointing out that the instructions did not mitigate the impact of the other crimes evidence. To the extent that Ms. Brown thought the jury could have been better instructed on how to consider this evidence, this argument has been forfeited because, to preserve the issue, Ms. Brown was required to object to the jury instruction or offer an alternative instruction at trial and also raise the error in her posttrial motion. See *People v. Downs*, 2015 IL 117934, ¶ 13.

¶ 40 C. Prosecutorial Misconduct in Closing Argument

¶ 41 Ms. Brown's remaining arguments on appeal involve remarks by the State in its rebuttal argument that she asserts were improper and denied her a fair trial. To preserve these arguments for appeal, Ms. Brown's counsel must have specifically objected to the comments when they were made and raised them again in her posttrial motion. See *Piatkowski*, 225 Ill. 2d at 564; *People v. McCoy,* 2016 IL App (1st) 130988, ¶ 56 (a posttrial motion must alert the trial court to an alleged error with enough specificity to allow a reasonable opportunity to correct it).

¶ 42 Unpreserved arguments are considered under the plain-error doctrine; preserved errors, in

contrast, are subject to a harmless-error analysis. *Thompson*, 238 Ill. 2d at 611. In either case, the first question is whether any error occurred at all. *People v. Mullins*, 242 Ill. 2d 1, 23-25 (2011). Ms. Brown challenges two sets of remarks made by the State in its closing. Although she preserved her objections to the first set of remarks but not to the latter, the distinction does not matter because it is clear from this record that the State's rebuttal comments were invited by defense counsel and not improper.

¶ 43 Ms. Brown's first objection is that in its rebuttal the prosecution mischaracterized her theory of the case as a police conspiracy against her. The State asserts that the comments at issue directly responded to defense counsel's characterization of the evidence in its closing argument.

¶ 44 In closing argument, defense counsel pointed out that the investigation and arrest of Ms. Brown came during a period in which the ERPS was being audited. Counsel asserted that it was "a lot easier for a civilian employee to be blamed *** than for somebody else's job to be on the line."

¶ 45 The State began its rebuttal argument by stating:

> "Wow, ladies and gentlemen, I guess this is one great big conspiracy to get poor, poor Pamela Brown. She didn't do anything.
>
> Sergeant Kappel, Mike Carroll, Sergeant Barz, Sergeant Christine Blaul, technician Michael Carroll, my partner Susan Fleming and I have nothing better to do with our time than to go after Miss Pamela Brown to use your tax dollars and spend all of this time and money --
>
> [ASSISTANT PUBLIC DEFENDER]: Objection.
>
> [ASSISTANT STATE'S ATTORNEY]: -- just to get --
>
> THE COURT: Sustained.

[ASSISTANT STATE'S ATTORNEY]: Just to get poor Pamela Brown."

¶ 46 It is well-settled that a prosecutor may respond to an argument from defense counsel that provokes a response. *People v. Cosmano*, 2011 IL App (1st) 101196, ¶ 63 (citing *People v. Hudson*, 157 Ill. 2d 401, 444 (1993)). A provoked response cannot form the basis of a claim that the defendant was denied a fair trial. *People v. Davis*, 2018 IL App (1st) 152413, ¶ 80 (citing *People v. Evans*, 209 Ill. 2d 194, 225 (2004)). It was fair for the State to respond to the suggestion that Ms. Brown was a scapegoat who was being unfairly targeted. Moreover, the fact that the trial court sustained a defense objection to comments made during closing arguments "is generally sufficient to cure any error which may have occurred." *People v. Luna*, 2013 IL App (1st) 072253, ¶ 139 (quoting *People v. Hope*, 168 Ill. 2d 1, 26 (1995)). An objection was sustained here and the State finished a sentence and did not renew this argument. This is not a case like *People v. Weinstein*, 35 Ill. 2d 467, 471 (1966), cited by Ms. Brown, where the prosecution persisted in repeatedly making an improper argument, after an objection was sustained.

¶ 47 Ms. Brown's second objection to the State's argument involves comments she contends were made in an attempt to cover a gap in the evidence "about how often arrests are videotaped."

¶ 48 In closing, defense counsel argued:

> "And lastly in regards to their arrest of Miss Brown, they waited until she left work and was outside. They didn't take her back inside where there are over 160 cameras. They didn't have technician Carroll who was outside watching, who had been outside all day monitoring a live feed, who clearly has access to all kinds of equipment, who took photographs later at a different police station of the items that they say they recovered [from] her. He did not document the arrest. He did not document their search

of her when they took these items from her pocket, according to their testimony. It doesn't make sense.

They went to the trouble of videotaping all of these things inside, but that one thing when they are taking it from her, the direct proof, that's not documented."

¶ 49 The State responded in rebuttal:

"Defense counsel argues that well, she is on video taking these items. Why isn't she videotaped being placed under arrest? So the inference there is that Sergeant Barz is not telling the truth? Have you heard a single reason for him to lie? Of course not.

Arrests are not videotaped most of the time because you don't know where and when they are going to take place. They didn't know that an arrest was going to take place that day until they realized that none of the [prerecorded funds] had been turned in. And they didn't know what else they were going to find on her at that time.

There is absolutely nothing nefarious, nothing underhanded about not videotaping her arrest. It is just reasonable."

¶ 50 Defense counsel made no objection to this argument, so it would only be reviewable under the plain error doctrine. But no error occurred here because the State's argument was proper. As noted above, it was appropriate for the State to respond to the defense argument. In addition, in its closing argument the State may "discuss subjects of general knowledge, common experience, or common sense[.]" *People v. Beard*, 356 Ill. App. 3d 236, 242 (2005). Here, the prosecutor's comments were within the scope of proper argument; they pointed out, as a matter of common sense, why arrests are not always captured on video.

¶ 51 IV. CONCLUSION

¶ 52 In conclusion, the evidence was sufficient to establish that Ms. Brown took personal

property that belonged to the ERPS. The trial court did not err in admitting evidence of other missing items taken by Ms. Brown to show the course of the police investigation. Finally, we reject Ms. Brown's claims about the State's remarks in its rebuttal argument; the remarks were invited by defense counsel's own closing argument and the second remark was a permissible statement calling on the jury to exercise its own common sense.

¶ 53 Accordingly, the judgment of the circuit court of Cook County is affirmed.

¶ 54 Affirmed.