2019 IL App (1st) 180281-U

SIXTH DIVISION
September 20, 2019

No. 1-18-0281

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. 16 DV 78752
	)	
MARVELL VALENTINE,	)	Honorable
	)	Yolande M. Bourgeois,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE MIKVA delivered the judgment of the court.
Justices Cunningham and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for domestic battery is affirmed. Although his testimony may have been mischaracterized by the State during closing argument and by the trial court in delivering its judgment, neither of these mischaracterizations were objected to and they do not rise to the level of plain error.

¶ 2 Following a bench trial, defendant Marvell Valentine was convicted of domestic battery and sentenced to 18 months' probation. On appeal, Mr. Valentine argues that he was denied a fair trial because the State mischaracterized his testimony in closing argument and the trial court echoed that same mischaracterization in delivering its judgment. But because Mr. Valentine never objected to or attempted to correct either the argument or the court's recollection of the

evidence below and because neither amounts to plain error, we affirm his conviction.

¶ 3 I. BACKGROUND

¶ 4 Mr. Valentine was charged by misdemeanor complaint with one count of domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2016)), arising from an incident in Chicago on September 18, 2016, involving his ex-girlfriend, Elanje Flowers. Ms. Flowers's description of what happened that morning varied considerably from Mr. Valentine's.

¶ 5 Ms. Flowers testified that Mr. Valentine spent the night at her apartment on September 17, 2016. They woke around 10 a.m. and went to the living room, where Ms. Flowers asked Mr. Valentine about "the nature of [their] relationship." Mr. Valentine answered, and Ms. Flowers returned to her bedroom. Then, Mr. Valentine entered the bedroom and grabbed Ms. Flowers's cell phone. When Ms. Flowers tried to take it back, Mr. Valentine threw it on the bed. Ms. Flowers called Mr. Valentine a "[b]****" and turned away from him. Mr. Valentine then kicked or punched her lower right thigh. Ms. Flowers turned around, saw Mr. Valentine "positioning his fist," and called him a "b****" again. Mr. Valentine threw her on the bed, and sat on her lower abdomen. He positioned her left arm around her neck, grabbed her hands, and struck her on the left side of her face with his right hand six or seven times. Ms. Flowers struggled, and at some point, Mr. Valentine got up. Ms. Flowers felt "woozy," looked in the mirror, and saw her head "swelling." She "stumbled" to her phone and "told [Mr. Valentine] that [she] was going to call the police." Ms. Flowers was quite clear in her testimony that, when she called the police, Mr. Valentine was still there and that he "said some foul language," grabbed his possessions, and ran out of the apartment. The police officer who responded to Ms. Flowers's call escorted her to the hospital. Two weeks later, she returned to the hospital, was checked for vertigo, and underwent a CT and MRI of her brain.

¶ 6 Ms. Flowers identified several photographs taken of her injuries within two hours of the incident. The photographs, which are included in the record on appeal, show a lump on the left side of her head, a cut on the left side of her collarbone, and bruises along the left side of her neck and jawbone. She further identified a series of photographs of the same injuries taken the next day at the courthouse, which are also in the record. Finally, Ms. Flowers identified and read into the record an email she received from Mr. Valentine on September 20, 2016, in which he apologized "for all of the pain and confusion" he had caused her.

¶ 7 On cross-examination, Ms. Flowers denied "lay[ing] a hand on [Mr. Valentine]" or tearing his shirt. She acknowledged that she was suing Mr. Valentine for more than $2000, and that she had tendered medical records to the State from her two hospital visits. On redirect examination, Ms. Flowers stated that she received payment from Mr. Valentine on the date of the trial, which would resolve the civil suit "if the check clears."

¶ 8 Mr. Valentine agreed with Ms. Flowers that he spent the night at her apartment on September 17, 2016. He testified that on the morning of September 18th, he told her he did not want to be in a relationship with her any more. Ms. Flowers asked him to leave, and as he was gathering his laptop from the kitchen, Ms. Flowers called him a "b****" and hit his forehead with an aerosol can. Mr. Valentine identified a photograph taken about an hour after the incident of the mark left by the can on his forehead. According to Mr. Valentine, the "tussle moved from the kitchen to the bedroom," where he claimed that Ms. Flowers tore off his shirt. He testified that, in response, he threw her on the bed. He said that she then grabbed his testicles and he hit her on her body and then her forehead to make her let go. When she did, he "got up off of her" and took his things. Then Ms. Flowers grabbed her cell phone and Mr. Valentine left. He acknowledged sending Ms. Flowers an email apologizing for hurting her, but stated he had not

been referring to physical pain.

¶ 9 On cross-examination, Mr. Valentine agreed that he considered himself to be "the victim" in the incident. The following colloquy occurred:

"Q. If you were the victim, why did you leave when Ms. Flowers called the police?

A. Because when she—when she called the police I end up—first of all, let me back up. I ended up getting my things and I ended up leaving.

So then when she finally sent me a text message letting me know that she had called the police, I responded to the text message asking her, where do I have to go to turn myself in. And she replied in a text message letting me know.

[ASSISTANT STATE'S ATTORNEY]: Judge, I'm going to object. This is nonresponsive.

THE COURT: Sustained.

* * *

Q. If you were the victim in this situation, why didn't you wait for the police? Why did you leave?

A. I have no answer."

¶ 10 On redirect examination, Mr. Valentine denied holding Ms. Flowers's arms down during the incident. Defense counsel asked whether, "when you left, did you know [Ms. Flowers] had called the police at that point," and Mr. Valentine answered, "No."

¶ 11 During closing argument, defense counsel noted that the State failed to produce medical records that Ms. Flowers claimed to have tendered. Counsel also argued that the incident involved "mutual combat or self defense" on Mr. Valentine's part, and that Ms. Flowers was not

credible because her civil suit motivated her to "make it seem like she was the victim."

¶ 12 In closing arguments, the State submitted:

> "[I]f [Mr. Valentine] was the victim in this situation, we really have to ask ourselves the biggest question. One that he didn't even have an answer to.
>
> If he was the victim, I asked him point blank why did you leave when the police were called. He knew the police were called. Because he knew I was asking him the question that he didn't have an answer for.
>
> Well, my answer is because it's a made up story. He wasn't the victim. He was the aggressor in this situation."

¶ 13 The trial court found Mr. Valentine guilty of domestic battery. The court began by noting that the issue in the case was one of "credibility." The court said that it found Ms. Flowers's testimony was "clear," "consistent," and "credible." On the other hand, the court determined that Mr. Valentine was "not so credible." The court stated:

> "When you were asked on [cross-]examination why you left before the police came since you claim you were the victim, you said I don't have an answer for that. But on [re-direct examination], you claim you didn't know that [Ms. Flowers] had called the police. That's a lie. One of those is a lie. You know which one.
>
> Where's this ripped shirt? What was this about you giving her a check today in settlement for the civil suit that arose out of this incident?"

¶ 14 The trial court denied Mr. Valentine's motion for new trial. Following a hearing, the court sentenced Mr. Valentine to 18 months' probation, domestic violence counseling, and assessed fines, fees, and costs totaling $470.

¶ 15 II. JURISDICTION

¶ 16 Mr. Valentine was sentenced on August 25, 2017, and timely filed his notice of appeal on September 8, 2017. 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 (eff. Feb. 6, 2013) and 606 (eff. Dec. 11, 2014), governing appeals from final judgments of conviction in criminal cases.

¶ 17 III. ANALYSIS

¶ 18 On appeal, Mr. Valentine argues that he was denied a fair trial because the State's closing argument mischaracterized his testimony and the court accepted this mischaracterization, which Mr. Valentine argues deprived him of his right to due process.

¶ 19 Mr. Valentine points out that the State argued, in the portion of the State's argument quoted above, that Mr. Valentine's story was made up because he could not answer the question of why he left when the police were called. The State appears to have relied on its cross-examination of Mr. Valentine in which Mr. Valentine replied that he had "no answer" as a concession by Mr. Valentine that, before he left, he knew that Ms. Flowers had called the police. Mr. Valentine argues that the trial court then adopted this mischaracterization of Mr. Valentine's testimony when it found him guilty. Mr. Valentine concedes that he forfeited review of this issue by failing to timely object during the cross-examination, the State's closing argument, or the court's ruling, and by failing to include anything about this in his motion for a new trial. See *People v. Enoch*, 122 Ill. 2d 176, 186-87 (1988) ("Both a trial objection and a written post-trial motion raising the issue are required for alleged errors that could have been raised during trial."). However, he claims this court may still reach the issue under the plain error exception to the forfeiture rule.

¶ 20 The plain error doctrine is a "narrow and limited exception" to the general forfeiture rule. *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). Pursuant to the doctrine, a reviewing court may address forfeited claims in two circumstances: "(1) where 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) where 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." (Internal quotation marks omitted.) *People v. Harvey*, 2018 IL 122325, ¶ 15. The second prong of plain error is known as "structural" error. *People v. Thompson*, 238 Ill. 2d 598, 608 (2010). "[T]he initial step under either prong of the plain error doctrine is to determine whether the claim presented on review actually amounts to a clear or obvious error at all." (Internal quotation marks omitted.) *People v. Staake*, 2017 IL 121755, ¶ 33.

¶ 21 This represents a classic example of a case in which a defendant's timely objection would have provided clarification and helped avoid any improper inference in closing argument by the State or in ruling by the court. It may be, as Mr. Valentine now argues, that when the State objected to his answer as to why he left Ms. Flowers's apartment when she called the police, he was trying to explain, consistent with his other testimony, that he did not know she called the police at that time and did not learn this until she sent him a text message after he left. Mr. Valentine suggests that, once the objection was sustained, his only choice was to respond that he had "no answer" to the question. If this was so, it would have been inaccurate for the State to then rely on this "no answer" in closing argument to support its theory that Mr. Valentine had a "made up story." The court then picked up on this point and relied on what it viewed as inconsistent testimony by Mr. Valentine to support its guilty verdict. However, all of this could

have been clarified and avoided if the defense had raised this at the trial court level.

¶ 22 Defense counsel could have easily responded to the State's objection to Mr. Valentine's answer and explained why it was responsive to the question by the State of why he left when Ms. Flowers called the police. Defense counsel could have objected during the State's argument that the prosecution was drawing an improper inference from Mr. Valentine's response of "no answer." Defense counsel could have easily explained either during the court's ruling or in a posttrial motion why no inference should have been drawn from Mr. Valentine's response that he had "no answer." But because defense counsel did not object to the State's objection, to the State's conduct, or to the trial court's conclusion, these objections have been forfeited. We can only consider Mr. Flowers's arguments if the complained-of errors rise to the level of plain error. For the reasons that follow, however, we find that neither the State's closing argument nor the court's remarks in finding Mr. Valentine guilty rise to the level of plain error.

¶ 23 Turning to the first prong of plain error, the evidence simply was not closely balanced. Ms. Flowers described the incident in a way that the trial court found quite credible. Her testimony was supported by photographs which this court has reviewed. Regardless of whether Mr. Valentine knew she was doing so, it is undisputed that she called the police immediately after the incident. Mr. Flowers left immediately following the incident and it is undisputed that he did not contact the police. We also reviewed the photograph introduced by Mr. Valentine, which shows a mark on his forehead. Even with this photograph, however, the evidence was still not so closely balanced that we could find plain error under the first prong of the doctrine.

¶ 24 Nor did the court's reference to the State's argument in support of its determination that Mr. Valentine was not credible deprive Mr. Valentine of his right to due process. The court completely understood that it had to make a credibility determination and it gave reasons why it

found Mr. Valentine's version of events less credible than Ms. Flowers's version. These included that he found Ms. Flowers to be "consistent" and "credible." It was not disputed that Ms. Flowers called the police and Mr. Valentine did not. Ms. Flowers also had photographs that confirmed the extent of her injuries, and although Mr. Valentine also introduced a photograph showing his forehead injury, he had no torn shirt to more fully confirm his version of the events. As this court has recognized, a misstatement by the court as to the evidence does not result in a denial of due process or rise to the level of plain error where the court's misstatement "did not go to the crux of the defense." *People v. Roman*, 2013 IL App (1st) 102853, ¶¶ 24-25.

¶ 25 Mr. Valentine's argument on second prong plain error is that "where a defendant is convicted based on a trial court's misrecollection of the evidence, the fairness of the trial has been affected," citing *People v. Bowie*, 36 Ill App. 3d 177, 180 (1976). But *Bowie* nowhere suggests that a misstatement by the trial court is within the limited scope of "structural" plain error. Indeed, the court did not discuss plain error in *Bowie*. Rather, as we made clear in *Roman*, 2013 IL App (1st) 102853, ¶ 25, where we specifically distinguished *Bowie*, if an alleged error does not go to the "crux" of the defense, it is not plain error. There was no structural error here.

¶ 26 IV. CONCLUSION

¶ 27 In sum, while we agree that Mr. Valentine's testimony may have been mischaracterized by the State during closing argument and by the trial court in delivering its judgment, no objection was made at trial, and these mischaracterizations did not amount to plain error. Therefore, the judgment of the trial court is affirmed.

¶ 28 Affirmed.