2011 IL App (2d) 100515-U
No. 2-10-0515
Order filed December 9, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of De Kalb County.
Plaintiff-Appellee,	)	
v.	)	No. 09-CF-95
RODNEY PARKER, JR.,	)	Honorable Robbin J. Stuckert,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices McLaren and Burke concurred in the judgment.

ORDER

Held: (1) Defendant did not show error in the State's closing and rebuttal arguments: in context, the remarks at issue did not instruct the jury that it could find defendant guilty of the charged robbery merely because he had set up the drug deal that led to the robbery; rather, the State argued that defendant had set up the drug deal so that he and two others could commit the robbery; therefore, because there was no error, there was no plain error; (2) defense counsel was not ineffective for introducing other-crime evidence: because defendant did not establish prejudice resulting from defense counsel's allegedly deficient performance.

¶ 1 After a jury trial, defendant, Rodney Parker, Jr., was convicted of robbery (720 ILCS 5/19-1(a) (West 2008)) and sentenced to three years' probation. On appeal, he contends that (1) the

prosecution's closing argument misstated the law; and (2) his counsel was ineffective for eliciting that, six months after the alleged robbery, he was arrested on a different charge. We affirm.

¶ 2 The record reflects that, at trial, the State first called Natasha Mohler. Mohler testified that, on August 19, 2008, at about 7 p.m., she was at her friend Jennifer Kott's house. Mohler and Corey Sneyd, her boyfriend, were planning to go to De Kalb so that Sneyd could drop off a video at his brother's home. Kott asked Mohler whether she could get her some Ecstasy in De Kalb. Mohler called Sneyd, and he agreed to help Kott. He drove to Kott's house, where he received $100 in cash from Kott.

¶ 3 Mohler testified that, on the way to De Kalb, Sneyd received six or seven calls on his cell phone. Mohler testified that Sneyd's phone number was "751-7398." Sneyd and Mohler arrived in De Kalb and stopped outside the College Square Apartments. They exited the car and saw a man in a blue shirt; he had told Sneyd that he would be waiting there. The man asked who had the money; Sneyd said that he did. The man told Mohler to wait outside. Sneyd entered the building, and Mohler lost sight of him. About two minutes later, Sneyd came out. He did not have the Ecstasy. He said that he had been jumped. Later, Mohler saw that he had "a little black eye" and "some marks on his ribs." Sneyd and Mohler returned to Sneyd's car and drove off. Sneyd called his mother. At some point, Sneyd told her that defendant had been inside the building. Mohler was familiar with defendant because he had gone to her high school. She had not seen him while she was outside the apartment building.

¶ 4 Mohler did not talk to the police on August 19, 2008. Days later, officers talked to her at school and asked about the incident. Mohler repeated the story that she and Sneyd had agreed on, but then she told them the truth.

¶ 5 Sneyd testified that, on August 19, 2008, at about 7 p.m., he left his workplace, Radio Shack in Rochelle, and went to his home in Rochelle. He was planning to go to De Kalb to drop off a video to his brother. Mohler called him from Kott's home and asked him to pick up some Ecstasy in De Kalb for Kott. Sneyd agreed. He drove to Kott's home, took $100 from Kott, and drove with Mohler to De Kalb. On the way, he received six or seven calls giving him directions to the site of the purchase. Arriving at the College Square Apartments, Sneyd saw the man in the blue shirt, who motioned Sneyd toward him. After Sneyd told the man that he had the money, the man told Mohler to wait outside.

¶ 6 Sneyd testified that he followed the man inside the building, down a hallway, and into an opening. As the man was about to walk through a door, another man approached, then backed off. Sneyd walked through the door and was tackled to the ground. There were two black men and one white man around him; they began striking Sneyd in the face and around the chest. The men started going for his pockets, and one man said something about Sneyd's cell phone. To make sure that he kept his cell phone and keys, Sneyd handed his wallet to the men. They stopped hitting him and left down another hallway. Sneyd turned around and left the building the way that he had come in. Shortly afterward, he noticed bruising under one of his eyes and "redness on one of [his] ribs."

¶ 7 During his testimony, Sneyd identified defendant, who is white, as one of the three men who beat him. Sneyd testified that defendant was the one who had tackled him to the ground. Also, defendant had struck Sneyd in the face and did not stop until Sneyd handed him the wallet.

¶ 8 Sneyd testified that, after he drove away from the scene, he called his mother, went to his brother's house, then drove with Mohler and his brother to the De Kalb police station. Sneyd's father also went there. At the station, Sneyd told the police that he had been robbed of his wallet at the 7-Eleven. He lied because he was scared and drugs had been involved. Later, Sneyd told a

police detective that he had made up the robbery story and that he had actually lost his wallet. Sneyd spoke to the police a third time and told them the truth.

¶ 9 Sneyd testified on cross-examination that, on the way to his brother's house, he told his mother that he had been robbed at the 7-Eleven. He told the same story to his brother and told Mohler that he would repeat the story to the police, which he did. Sneyd next spoke to the police on August 22, 2008, at the station. Detective Michael Stewart explained to Sneyd that the 7-Eleven security tapes did not bear out his story, so Sneyd told Stewart that he had lost his wallet. Sneyd signed a statement to that effect.

¶ 10 Sneyd testified that, within two weeks, Stewart and another officer visited him at his workplace. They told Sneyd what Mohler had told them. Sneyd now told the officers the truth. He said, in part, that Kott had said that the Ecstasy would come from "Rodney Parker," whom Sneyd had not personally known then. On August 19, 2008, he had told the police that he had been struck "a few" times at the 7-Eleven. Now, he said that he had been hit "probably a total of 15" times.

¶ 11 Sneyd testified that his next contact with the De Kalb police was in February 2009, when he came to the station to view a photographic lineup. After he arrived, but before he could view the lineup, Sneyd saw defendant. Defendant was "behind the glass *** back actually in the department," and Stewart was "motioning him somewhere," apparently trying to hide him. Shown the lineup, Sneyd picked out defendant as one of his attackers. Sneyd testified that, after telling the police two false stories, he decided to tell the truth because he "didn't have anything left to hide."

¶ 12 Samuel Martinez, a legal analyst for Verizon Wireless, testified that his duties included authenticating call records. He identified People's group exhibit No. 3 as three documents containing information that had been faxed from Verizon Wireless to a police detective. People's exhibit No. 3C referred to the number 815-751-7398 and provided the time and duration of incoming

and outgoing calls made on August 19, 2008. It listed no outgoing calls, but seven incoming calls from number 815-762-4598. There was some sort of conversation each time. The first was made at 7:40 p.m., and the last was made at 8:37 p.m.

¶ 13 Detective Stewart testified that, on August 19, 2008, at about 9:15 p.m., Sneyd came to the De Kalb police station. He reported that he had been robbed at the 7-Eleven about a half-hour earlier after driving there with Mohler and parking on the north side of the building. Sneyd's face had "some slight redness, maybe some slight swelling underneath his eye." After talking to Sneyd, Stewart obtained the 7-Eleven's security video. The next day, he reviewed the video but did not see Sneyd's car. On August 22, he contacted Sneyd, who came to the police station and repeated his story. Stewart drove Sneyd to the 7-Eleven. On the way there, Sneyd recanted his story and said that he had lost his wallet. Back at the police station, Sneyd signed a statement to that effect. Next, Stewart and Detective Redel spoke to Mohler at her high school. Stewart testified that later he and another detective went to Radio Shack and spoke to Sneyd again. Sneyd said that, after Kott gave him money to purchase Ecstasy, he and Mohler drove to the College Square Apartments; on the way, he received directions from the seller.

¶ 14 In March 2009, the police obtained the documents in People's group exhibit No. 3 and learned that there had been seven incoming calls on the evening of August 19, 2008. Stewart learned later that 815-762-4598 was defendant's number.

¶ 15 Stewart testified that, on February 18, 2009, defendant was at the police station "on an unrelated incident." Stewart wanted to talk to him about the robbery of Sneyd. Defendant was brought to the "detectives' interview section," where he waived his *Miranda* rights. Defendant admitted that he had been present during the incident, but he denied having struck the victim or having called the victim that night. He said that he saw two black men, whom he knew, strike the

victim and reach into his pockets. Defendant would not identify the men, explaining that he was "not a snitch like other kids." He refused to make a taped or written statement.

¶ 16 Stewart testified that, after the interview, he called Sneyd and asked him to come to the station to view a photographic lineup. The lineup was to include a photograph of defendant, but, because Stewart did not have one, he took defendant to the booking area. There, Officer McNett photographed defendant. Stewart then started to walk defendant back to the interview room. He had to go through the main lobby area, where people on the other side could see through the glass. As Stewart rounded a corner, he was surprised to see that Sneyd was already at the front desk. Stewart took defendant, turned him around, and had McNett take defendant back to the booking area.

¶ 17 Stewart testified that he then met Sneyd and spoke to him in the interview room. Stewart asked Sneyd, "Did you see the guy that I was just with?" Sneyd responded,"Yeah. I think that was one the guys that did it." Stewart asked Sneyd how sure he was; Sneyd said, "pretty positive." He added that defendant was the one who had tackled him and punched him. Stewart showed Sneyd a six-man photographic lineup with defendant's picture included. Sneyd immediately pointed to defendant's picture and said, "That's him."

¶ 18 On cross-examination, Stewart testified that, on August 19, 2008, Sneyd told him that he had been struck about five times. Sneyd did not mention defendant's name, and he said that he had not seen any of his attackers previously. During the interview at Radio Shack, Sneyd said that he had been struck more than 15 times "all over." He believed that defendant may have been involved. Sneyd explained that Kott "would go through Rodney Parker who acted as a middleman for the transaction." Sneyd did not say that defendant had been at the robbery scene.

¶ 19 On redirect examination, Stewart testified that, on August 19, 2008, he saw slight swelling under Sneyd's eye. However, Stewart related, it is not unusual for someone to suffer such a slight injury from the type of attack that Sneyd had described; "it depends on where the punches land."

¶ 20 The State rested. Defendant testified on his behalf. Defendant testified that he was 18 years old at the time of trial and had gone to Rochelle High School for his junior year. He had known of Mohler "through a friend's girlfriend" but had not known Sneyd. Defendant had played football at Rochelle, so his name was known to some strangers.

¶ 21 Defendant testified that, early on the evening of August 19, 2008, he was at a gathering with five or six other people, including two men whom he had met four to six months earlier. He knew them as "Mike" and "Ross" but did not know their last names. At 6 or 6:30 p.m., defendant, Mike, and Ross visited a woman at her apartment in the College Square complex. The four of them smoked marijuana. At about 8 p.m., the three men left and walked into the hallway. Mike and Ross had defendant's cell phone; they had borrowed it after Kott called him and asked where she could get Ecstasy. Mike and Ross had used his cell phone five or six times, although defendant did not listen to what they were saying. As defendant left the apartment complex, he got his phone back.

¶ 22 Defendant testified that, after leaving the woman's apartment, he turned left down the hall and Mike and Ross turned right. Defendant did not see Sneyd. As defendant walked away, he heard someone say,"I am not the police" or something similar; defendant did not recognize the voice. As defendant was almost all the way down the hall, he heard a tap. Asked whether he could tell what it was, defendant testified, "Someone getting pushed against a wall of some sort like type of thing [*sic*]. I don't know. Kind of like someone hitting a wall or a door." He did not hear the sound of anybody hitting another person. Asked whether he saw Sneyd at any time that evening, defendant testified, "Well, I left. We passed paths, like we walked past each other. He seen [*sic*] my face and

I seen [*sic*] him." Defendant was sure that Sneyd saw him. Defendant testified that he had known that Sneyd would be buying drugs from Mike and Ross, but he denied having set up the deal.

¶ 23 The direct examination continued:

"Q. Now, did you hear any more about this incident afterwards?

A. Excuse me?

Q. Well, were you contacted by the police, for instance?

A. No ma'am—well, six months, seven months later when I was arrested for a different, totally different thing."

¶ 24 Defendant testified that, about two days after the incident, Mike and Ross told him that he would keep his mouth shut. Defendant had no more contact with Mike and Ross.

¶ 25 Defendant testified that he went to the police station in February 2009. He had had no prior contact with the police about the Sneyd incident. The examination continued:

"Q. Then what happened on that occasion?

A. I got arrested for a totally non different [*sic*] thing. They brought me down into a little interview interrogation room. That's when [Stewart] notified me of my rights ***."

¶ 31 Defendant testified that he told Stewart that he had known that "that Corey kid was coming to purchase some drugs and it went bad ***." Defendant recounted that, as Stewart was bringing him to the booking area, "the Corey kid walked into the doors [*sic*] and Detective Stewart said under his breath *** 'Oh shit.' " At that point, Stewart pushed defendant, and another officer grabbed defendant and took him to the interview room. There, defendant experienced bruising from his handcuffs and the room became increasingly hot. Defendant got angry, started kicking on the door, and yelled. After an hour, he was taken to another room. Just before he entered the room, Stewart offered to let defendant "walk free right then" if he identified the other men involved in the incident.

Defendant refused. He testified that, on August 19, 2008, he never took anything from Sneyd, punched Sneyd, or helped Mike and Ross, other than giving them his cell phone.

¶ 32 On cross-examination, defendant admitted that he told Stewart that he witnessed two men going through Sneyd's pockets and beating up Sneyd. Also, he acknowledged that knew beforehand that Sneyd would be coming to De Kalb to buy Ecstasy for Kott. When defendant spoke to Stewart, he never mentioned that he gave his phone to another person that evening.

¶ 33 Defendant conceded that, after he saw Mike and Ross rob Sneyd, he "did nothing." He did not call the police, because it was "none of [his] business." Asked whether he saw any of "this beating," defendant responded that he saw "[n]o punches" but did see Ross and Sneyd fall to the ground. By then, defendant was out the door, "moving on with [his] life."

¶ 34 In rebuttal, Stewart testified that he spent half an hour interviewing defendant. The room was always kept at a comfortable temperature. As best Stewart could recall, defendant was not handcuffed before McNett took custody of him. Defendant told Stewart that he had been present when Sneyd was robbed and that the two other men battered Sneyd and reached into his pockets.

¶ 35 In closing argument, the State contended that the evidence showed that defendant was guilty of robbery both as a principal and as an accomplice. The prosecutor noted that, in his testimony, defendant had placed himself at the scene of the robbery, although he claimed that he had done no more than receive Kott's call, toss his phone to Mike or Ross, and get out. However, according to the prosecutor, defendant could not have merely stood by during the attack yet somehow have received his phone back. The prosecutor continued that, even if the jury could not find that defendant actually participated in the robbery, it could still find him guilty under an accountability theory. After reading the agreed-on instructions on robbery and accountability (Illinois Pattern Jury Instructions, Criminal, Nos. 14.01, 14.02, 5.03 (4th ed. 2000)), the prosecutor continued:

> "[Defendant] provides, if you believe his story, one of the guys who is going to provide the drugs who is going to be the dealer in this drug deal, he provides that individual with a phone, provides the person that wants to buy the drugs and provides him with a phone that allows him to facilitate a drug deal. That's what it means to assist, aid, to abet.
>
> Without the defendant no drug deal could have occurred."

¶ 36 Defendant did not object to these remarks. The prosecutor told the jury that, even though Sneyd had been trying to buy drugs, nobody had the right "to kick, to punch, to knock down, to steal [his] property." Further, Sneyd had been the "perfect victim" because defendant, Mike, and Ross knew that he would be carrying $100 in cash when he showed up.

¶ 37 On the accountability issue, defendant's attorney conceded that defendant had known that Kott would be sending someone over to buy Ecstasy; that he let Mike and Ross use his phone; and that he was present when Mike and Ross attacked Sneyd. However, defendant's attorney maintained that there was no evidence that defendant had known that Mike and Ross would do anything other than sell Sneyd drugs, much less that he helped to plan the attack. Referring to the instruction on accountability, defendant's attorney reminded the jury that the offense to which the instruction referred was the one charged—here, robbery—and not selling drugs.

¶ 38 In rebuttal argument, the prosecutor began as follows:

> "[T]he evidence shows [that] this defendant Rodney Parker is attached to the other two men who beat and robbed Corey Sneyd and not only is he attached to those two men by plenty of proof; he is directly involved in this robbery. He used his phone, and he allowed use of his phone[,] to lure the victim to the scene. He allowed his phone to be used as, what, the guarantee, the method of how they're going to get that victim down there. *** [W]ithout his phone, without his knowledge, without his actions, this robbery never takes place."

¶ 39 Defendant did not object to the foregoing remarks. The prosecutor continued that there was no dispute that Sneyd had been robbed; the only question was "whether or not this defendant participated and whether or not he's to be held accountable." The evidence that defendant had participated directly in the robbery included Sneyd's identification of him as one of the robbers and Sneyd's testimony that defendant had tackled him and hit him. Defendant had called Sneyd before the robbery and then participated in it.

¶ 40 The jury found defendant guilty. Defendant moved for a new trial. His motion did not assert that the prosecutor's closing argument or rebuttal closing argument had misstated the law. The trial court denied the motion. At sentencing, testimony revealed that, on February 18, 2009, defendant had been arrested for possessing a glass pipe that had recently been used to smoke cannabis. The trial court sentenced defendant to three years' probation, and he timely appealed.

¶ 41 On appeal, defendant argues first that, in both its closing argument and its rebuttal closing argument, the prosecution misstated the law of accountability, implying that the jury could convict defendant of robbery even if it found only that he induced Sneyd to purchase Ecstasy. Defendant notes that any such implication was improper, because a person may not be guilty, as an accomplice, of a given offense unless, either before or during the commission of that offense, and with the intent to promote or facilitate the commission of that offense, he knowingly solicits, aids, abets, agrees to aid, or attempts to aid another person in the planning or commission of the offense. See 720 ILCS 5/5-2(c) (West 2008)); Illinois Pattern Jury Instructions, Criminal, No. 5.03 (4th ed. 2000). Therefore, defendant concludes, the prosecutor misstated the law, to his prejudice.

¶ 42 As defendant concedes, he forfeited this issue by failing to object contemporaneously to the allegedly improper comments and failed to raise the issue in his posttrial motion. See *People v. Enoch*, 122 Ill. 2d 176, 186-88 (1988) (both contemporaneous objection and posttrial motion are

needed to preserve alleged error for appellate review). Defendant asks that we review his claim under the plain-error doctrine. The plain-error doctrine allows a reviewing court to reach a forfeited error affecting substantial rights in two circumstances: (1) where the evidence in a case is so closely balanced that the jury's guilty verdict may have resulted from the error and not the evidence, the reviewing court may consider the forfeited error in order to preclude an argument that an innocent person was wrongly convicted; and (2) where the error is so serious that the defendant was denied a substantial right and thus a fair trial, the reviewing court may consider the forfeited error in order to preserve the integrity of the judicial process. *People v. Cosby*, 231 Ill. 2d 262, 272 (2008) (citing *People v. Herron*, 215 Ill. 2d 167, 178-79 (2005)). However, the first step in plain-error review is to determine whether an error occurred because "[a]bsent reversible error, there can be no plain error." *Cosby*, 231 Ill. 2d at 273.

¶ 43 In the current matter, we find no reversible error in the prosecutor's statements, and therefore, there is no plain error. Although the prosecution may not misstate the law, it is afforded wide latitude in closing arguments. *People v. Armstrong*, 183 Ill. 2d 130, 148 (1998). Allegedly improper comments must be read in the context of closing arguments as a whole. *People v. Hayes*, 409 Ill. App. 3d 612, 624-25 (2011). Moreover, improper comments are not reversible error unless they substantially prejudiced the defendant. *Id.* at 625.

¶ 44 Here, viewed in context, the prosecutor's comments were proper; as a result, the plain-error doctrine is inapplicable because no error occurred. The quoted remarks in the initial closing argument, read in isolation, might suggest that defendant was accountable for the robbery merely because he had arranged for the drug sale that had been the set-up for the robbery. However, immediately before making these comments, the prosecutor read the instructions for both robbery and accountability, thus reminding the jury that, to convict defendant of robbery, it had to find that

he had intentionally aided in the commission of that offense. Immediately after making the quoted remarks, the prosecutor reminded the jury that the robbery, and not any purported drug deal, was the crime for which defendant was being tried—and that defendant had been aware beforehand that, because Sneyd would be carrying $100 cash, he would be the "perfect victim." Thus, read in context, the challenged argument did not misstate the law.

¶ 45 We also see no infirmity in the prosecutor's rebuttal closing argument. The remarks that defendant cites did not imply that he was guilty of robbery merely because he set up the phony drug deal. Rather, they were closely tied to the robbery itself. Immediately after telling the jury that defendant had been "directly involved" in the robbery, the prosecutor discussed accountability, contending that defendant used the promise of a drug deal to "lure the victim to the scene"—*i.e.*, the scene of the planned robbery. The prosecutor then said, "without his phone, without his knowledge, without his actions, this robbery never takes place." With their emphasis on the drug deal as a ruse, and on defendant's knowledge, the challenged remarks did not assert that defendant could be accountable for the robbery merely because he set up the supposed drug deal; instead, they asserted that defendant intentionally talked Sneyd into the deal so that he, Mike, and Ross could rob Sneyd of the money that they now knew he was carrying. Thus, the comments do not support defendant's claim of reversible error.

¶ 46 We turn to defendant's second claim of error. Defendant asserts that his trial counsel rendered ineffective assistance when she elicited from defendant testimony that he was at the police station in February 2009 because he had been arrested for a different offense. Defendant notes that, until that point, the jury had been told only that he had been at the police station on a matter unrelated to the Sneyd incident. Defendant contends that counsel's introduction of what he calls other-crime evidence was needless and prejudicial. He also contends that counsel erred in failing

to ameliorate the prejudice by eliciting that the arrest was for a relatively minor offense, the possession of the cannabis pipe.

¶ 47 To succeed on a claim of ineffective assistance of counsel, a defendant must demonstrate that (1) counsel's performance was objectively unreasonable; and (2) prejudice, which is demonstrated by showing that it is reasonably probable that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984); *People v. Evans*, 369 Ill. App. 3d 366, 383 (2006). A defendant must satisfy both prongs of the *Strickland* test; however, if the ineffective assistance of counsel claim can be disposed on the ground that the defendant did not suffer prejudice, a court need not determine whether counsel's performance was constitutionally deficient. *People v. Haynes*, 192 Ill. 2d 437, 474 (2000).

¶ 48 Here, based on the record before us, we conclude that defendant has failed to make a substantial showing that, had his counsel not elicited testimony from him that he was at the police station in February 2009 because he was arrested for a different offense, there is a reasonable probability the result of his trial would have been different. Although defendant notes that witness credibility was important, defendant's arrest, which the State did not mention in its closing argument, was only one of many considerations relevant to defendant's credibility. For example, defendant's explanation of his failure to call the police after witnessing a crime received much more emphasis, both during his testimony and in closing arguments, and could have resulted in the jury questioning his credibility. Moreover, Sneyd identified defendant in court and testified that defendant struck him in the face and did not stop until Sneyd handed him his wallet. The jury could have found this testimony credible compared to defendant's testimony. See *People v. Washington*, 375 Ill. App. 3d 1012, 1025 (2007) (noting that it is the jury's function to assess witness credibility). In addition, there was no dispute that Sneyd had been robbed by defendant's associates; that

defendant had been at the scene of the crime; and that he had witnessed it occur. The mere fact that defendant was arrested months later on an unspecified charge—with an unspecified disposition—appears to us as a peripheral matter. Thus, because defendant has not satisfied the prejudice prong of the *Strickland* test, we reject his ineffective-assistance-of-counsel claim on that basis and it is not necessary for us to consider the first prong. See *Haynes*, 192 Ill. 2d at 474.

¶ 49 For the foregoing reasons, we affirm the judgment of the circuit court of De Kalb County.

¶ 50 Affirmed.