

2013 IL App (2d) 120175-U
No. 02-12-0175
Order filed July 30, 2013

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of Du Page County.
Plaintiff-Appellee,)	
)	
v.)	No. 08-CF-729
)	
ROBERT R. LYONS,)	Honorable
)	Kathryn E. Creswell,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Hutchinson and Schostok concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in allowing admission of photographs showing a kitchen knife that had not been used in a murder that defendant had taken to his bedroom and admission of notebooks containing writings by defendant that bore similarities to the murder with which defendant was charged as well as other indicia of motive.

¶ 2 I. INTRODUCTION

¶ 3 Defendant, Robert R. Lyons, was charged with five counts of first-degree murder (720 ILCS 5/9-1 (West 2010)) for the stabbing death of his mother, Linda Bolek. He was convicted after a jury

trial and sentenced to 40 years' imprisonment. Defendant filed a motion to reconsider sentence, which was denied. Defendant now appeals, arguing the trial court abused its discretion by admitting four items into evidence. He alleges that their prejudicial effect outweighed their probative value. We disagree, and, for the reasons that follow, we affirm.

¶ 4

II. BACKGROUND

¶ 5 On September 20, 2011, a jury found defendant guilty of first-degree murder. The jury also made a special finding that the commission of the offense was brutal and heinous. At trial, testimony was heard from multiple witnesses. Rob Matassa, a friend and former roommate of defendant, testified that defendant had called him at 6:19 p.m. on the day of the murder (March 14, 2008). During their conversation, defendant told Matassa that he and his mother had been arguing and, after calling her a name, she pulled out a knife and put it to his eye. While trying to disarm her, she stabbed defendant's hand three times. He then took a wine bottle and hit her on the back of the head before leaving the apartment. Matassa stated that defendant said, "Homie, if I'm lying to you, may they find the knife that O.J. used to kill Nicole Brown Simpson." Matassa told defendant to go home and check on his mother, to which defendant replied that he needed time to clear his head. Defendant said that the worst-case scenario was that he would "get a year" and then be declared mentally ill.

¶ 6 Salomon Diaz, manager of the Outback restaurant in Bloomingdale, testified that defendant came to the restaurant almost every day from January to March of 2008 and would stay from 4:30 p.m. until closing time. On March 13, defendant showed Diaz an inappropriate shirt that he had bought to irritate his mother, who defendant explained, was simple-minded and would not notice the shirt until someone pointed it out to her. Defendant called Diaz on the day of the murder at about

3 p.m. to thank him for being nice to him and to say that he would not be coming back to the restaurant. Defendant continued that Diaz should not believe everything he was going to see in the news because defendant was innocent. Defendant explained to Diaz that he had argued with his mother about bringing flowers to the women employees at Outback. After defendant called his mother “the ‘c’ word,” she tried to stab him and he had to defend himself. Diaz asked if defendant was hurt, and he said that he was fine, but that his mother had cut his fingers. Diaz asked if defendant’s mother was all right, and defendant said she was not. Diaz had his assistant manager contact 911 and then asked defendant if someone could go to the house to check on his mother. Defendant agreed and gave Diaz his address. Diaz further testified that throughout the conversation, defendant was calm, though he seemed “a little upset.”

¶ 7 Carol Stream police officer Kenneth George testified that at 3:20 p.m. on the day of the murder he went to defendant’s apartment at 222 Klein Creek in response to a 911 call. The television was on at a high volume, scented candles were lit, and a chair was wedged under the knob of the back door. Defendant’s mother was deceased on the kitchen floor.

¶ 8 Detective Matthew Harrison was the lead investigator in Bolek’s death. After arriving at the Klein Creek address, Harrison and his partner, Detective Nickles, concluded that Bolek’s death was a homicide due to the condition of her body. After apprehending defendant, Harrison interviewed him. The interview, which lasted approximately five and one half hours, was videotaped. A partial transcription of that conversation was appended to a defense motion to suppress. In that first interview, defendant told Harrison and Assistant State’s Attorney Joseph Ruggiero that he suffered from bipolar disease.

¶ 9 Harrison and Ruggiero conducted a second videotaped interview the following day. In this interview, defendant said that he had not taken his medication for several days and had been smoking a lot of marijuana due to being stressed out about his mother. Defendant stated that he did not sleep on the night prior to the murder. His mother, who was feeling sick, did not go to work that day. On the morning of the murder, according to defendant, the first thing he did was go out for newspapers. When he returned home, he and his mother talked about defendant needing new shoes for work. They then argued about whether Bolek should purchase concert tickets for a show defendant wanted to see. After the argument, defendant's mother threatened to call the police and accuse him of raping her so he would go to prison. She called Stan Matusiak, her live-in boyfriend, to tell him about the argument. Defendant stated that his mother was "lying," "vindictive," and "insane," and that she made "bullshit accusations" against him.

¶ 10 Defendant and his mother went to buy him shoes and then went to the grocery store where he bought flowers for the female employees at Outback. Another "heated" argument ensued, wherein Bolek threatened to have defendant "put away" because of his outstanding warrants. They arrived home just after noon. Defendant admitted to still being angry. His mother continued to "nag" him, so he went to a convenience store nearby. While there, he purchased candy and a pair of rubber gloves that he claimed he needed for work. When defendant returned from the store, he and his mother continued to argue. She continued to threaten him, and defendant claimed that he wanted to get away from her.

¶ 11 According to defendant, his mother picked up a long serrated knife while he stood looking out the kitchen window. She threatened to put his eye out. He backed up, calling her a name as he did so. She then attempted to stab him, but, in one continuous move, defendant disarmed her and

stabbed her in the back. During the interview, Ruggiero expressed his disbelief of defendant's version of the events. Defendant declined to admit to intentionally stabbing his mother, telling Ruggiero that he would have to prove it.

¶ 12 Defendant acknowledged that while his mother was on the ground pleading for her life, defendant poured cleaning agents, alcohol, and hot sauce on her body. Defendant held her down with his foot as he did this. Defendant further admitted to hitting his mother over the head with a bottle of cognac and said she continued trying to stab him after she had fallen. He admitted to "poking" her but could not recall how many times. He had not planned to stab his mother. According to defendant, if she had not picked up the knife, "she would be fine today." He went on to say that he stabbed her in self-defense because he feared her. His clothes were bloodstained and soaked in sweat, so he changed his clothes because he had intended to go out that night. Defendant stated that, as an act of defiance, he smeared his own blood on several surfaces throughout the house.

¶ 13 Stan Matusiak testified that he was dating Bolek and lived with her and defendant. Matusiak was a construction worker, and defendant worked with him as a laborer for about seven months. Defendant was expected back at the construction job on March 15, 2008. Matusiak further testified that any work materials defendant needed were always provided to him and that the nature of the jobs he did never required rubber gloves. Matusiak then described Bolek's phone call to him on the day of her murder in which she told him about her argument with defendant. During the conversation, she gave the phone to defendant. Matusiak told him that if he did not stop bothering Bolek, he would call the police, and defendant agreed to leave her alone. After the murder, defendant called Matusiak and told him that his mother had attacked him with a knife and he blocked

her. Matusiak did not believe this story. According to Matusiak, defendant and his mother had loud fights about once a month and less serious arguments on a much more frequent basis.

¶ 14 During Matusiak's testimony, two notebooks were admitted into evidence that had been recovered from defendant's bedroom. Matusiak identified the writing in the books as defendant's. Defendant objected to the admission of the notebooks on the grounds of lack of foundation only. When he was given the chance to renew his objection, defendant again limited it to foundation.

¶ 15 Although most of the pages in the notebooks are blank, on several pages, defendant mentions the attempted murder of a fictional character with knives and a bottle. One entry appears to be a ledger for keeping score between defendant and his mother. Another page mentions a person who is questioned for a murder and then released, subsequently becoming famous. One particular entry refers to defendant as the star murderer. There appears to be a list of potential excuses for murder as well, including lack of sleep.

¶ 16 David Martinez, a co-worker of defendant at the construction job, testified that he never saw defendant bring supplies to a site. The type of gloves they commonly used were heavy-duty construction gloves, and they were always provided to them by their employer. Martinez stated that defendant complained about his mother often. Defendant sometimes said things suggesting he wished he could kill her, and in a later phone call he expressed a similar attitude. However, Martinez stated he did not believe that defendant was serious.

¶ 17 Dr. Adrienne Segovia, a forensic pathologist, testified that she performed an autopsy on Bolek's body. Her body had blood and chemicals on it. She had one laceration on her forehead and one on the back of her head. They were consistent with the victim having been hit with a bottle. Bruises and scrapes on Bolek's elbows were also consistent with her having fallen to the floor.

Segovia further testified that the cut on Bolek's forehead would have required significant force to effectuate the kind of bleeding found on her scalp.

¶ 18 The cause of Bolek's death was multiple stab and incised wounds. She had been stabbed six times in her back. Segovia described the first wound as entering the right side of Bolek's back. It cut underlying tissue, fractured the ribs underneath, and punctured her right upper lung. The second stab wound cut underlying tissue, fractured ribs, and pierced the lower lung. The tip of a broken knife blade was recovered from this wound. The third stab wound entered the left side of Bolek's back and cut underlying tissues, fractured ribs, and punctured the lower left lung. The fourth stab wound cut underlying tissues, fractured ribs, and punctured the lower left lung. The fifth stab wound penetrated the left side of her back. This wound entered her abdomen and punctured her left kidney. The sixth stab wound entered the lower left back, cutting tissue and muscle. The knife wounds involved "significant force." Additionally, there were three superficial incise wounds in Bolek's back. Segovia testified that she found no defensive wounds during the autopsy.

¶ 19 Forensic biologist Tamara Camp testified that she examined various exhibits for DNA. Blood taken from the middle index finger of the inside of a rubber glove found at the scene was consistent with defendant's. Additional blood found on the other rubber glove was also consistent with defendant's DNA profile. Swabs taken from blood marks on the apartment walls, refrigerator, and Bolek's bathroom mirror, were consistent with defendant's DNA. Blood found on a pair of jeans recovered from a pile of items in the dining room area was consistent with defendant's. Blood on the long, serrated kitchen knife with the bent blade was consistent with victim's DNA.

¶ 20 The parties stipulated that two broken knife pieces were from the same blade. An evidence technician testified that the knife in defendant's bedroom came from the same knife set as the one

used to kill his mother. Prior to trial, the court denied defendant's motion *in limine* to bar the State from introducing pictures of the kitchen knife found in defendant's bedroom. Specifically, the court found the pictures were relevant to defendant's state of mind or intent to kill his mother. A crime scene video showing the kitchen knife in defendant's bedroom was admitted into evidence without objection by defendant.

¶ 21 Forensic scientist Jennifer Cones testified for the defense that, although she was not able to find latent fingerprints suitable for comparison, she was able to say that the person who touched the bottle was not wearing rubber gloves. Fingerprints found on the bent knife were not consistent with defendant or Matusiak. Cones was unable to determine whether the fingerprints were the victim's.

¶ 22 Prior to submitting the case to the jury, the parties argued about whether the notebooks that had earlier been admitted into evidence should be published to the jury. Defendant objected on the grounds of foundation. The State explained that a sufficient foundation had been laid because they were defendant's journals, they were found in his room, and handwriting on the relevant pages was identified as defendant's. The State went on to say that although a few pages may not directly relate to evidence heard, pages containing references to knives and a bottle, as well as several pages of a script describing a murder and excuses one could use as a defense, were relevant to show motive, defendant's anger toward his mother, and his intent to kill her. The court concluded that the journals had already been admitted into evidence and, because of their short length, would be published over the defendant's objection.

¶ 23 The jury was given instructions on first-degree murder and second-degree murder based on self-defense and sudden intense passion. On September 20, 2011, the jury returned a verdict of guilty of first-degree murder and made a special finding that the commission of the offense was

brutal and heinous. Defendant's motion for a new trial, in which he argued, *inter alia*, that the court erred in admitting the two notebooks and the pictures of the knife in defendant's bedroom for lack of relevance, was heard and denied on November 10, 2011. On January 20, 2012, defendant was sentenced to a 40-year prison term.

¶ 24 This appeal followed.

¶ 25 III. ANALYSIS

¶ 26 On appeal, defendant argues the trial court abused its discretion by admitting four items into evidence over the objection of the defense. Defendant contends the two notebooks found in his bedroom and two photographs of a kitchen knife also found in his bedroom were not relevant and had an unfairly prejudicial effect on the jury. We disagree.

¶ 27 As a preliminary matter, the State asserts that defendant has forfeited his argument that the notebooks were not relevant. Defendant's basis for his objection at trial was lack of foundation, which waives consideration of his objection of relevance. *People v. Canaday*, 46 Ill. 2d 416, 424 (1971) (an objection to evidence based upon a specified ground waives all grounds not specified). This issue is, indeed, forfeited. *People v. Heider*, 231 Ill. 2d 1, 18 (2008) (objection must first be made at trial to prevent a litigant from asserting on appeal an objection different from the one first advanced). The State also contends that defendant forfeited any objection to the photographs of the knife because he did not object to a crime scene video, which, like the two pictures, showed the kitchen knife in defendant's bedroom. The State contends that the knife pictures were merely cumulative of this evidence. Citing *People v. Enoch*, 122 Ill. 2d 176, 186 (1988), it claims that this issue is waived. However, *Enoch* does not address cumulative evidence. We are unaware of any rule that holds that the failure to object to cumulative evidence results in a forfeiture of an issue

(though it may make establishing prejudice difficult (See *People v. Davis*, 285 Ill. App. 3d 1039, 1045 (1996))).

¶ 28 Moreover, defendant failed to address the issue of plain-error. The burden is on defendant to establish the existence of plain-error when he has forfeited review of an issue. *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). In the instant case, defendant has not addressed plain-error at all. Having not addressed plain-error, he “obviously can’t meet his burden of persuasion” that one of the two prongs of the plain-error rule is satisfied. *People v. Ramsey*, 239 Ill. 2d 342, 412 (2010).

¶ 29 In any event, even if we were to deem that there was no forfeiture by defendant, we cannot agree with his argument. Evidence with a tendency to make any fact material to the determination of an action either more or less probable is relevant. *People v. Morgan*, 197 Ill. 2d 404, 455 (2001). Evidence is also relevant where it tends to prove a material fact at issue. *People v. Lewis*, 165 Ill. 2d 305, 329 (1995). Relevant evidence may be excluded at the trial court’s discretion if its prejudicial effect substantially outweighs its probative value. *People v. Eyler*, 133 Ill. 2d 173, 218 (1989). Physical evidence that connects a defendant to a crime, such as an object that would be useful in the commission of an offense, is relevant regardless of whether the object was actually used during the offense. *People v. Ursery*, 364 Ill. App. 3d 680, 686 (2006). Relevance and the admissibility of evidence are matters primarily reserved to the discretion of the trial court, and we will not disturb exercises of that discretion unless it is abused. *People v. Lucas*, 151 Ill. 2d 461, 489 (1992). A trial court abuses its discretion only when no reasonable person could agree with the trial court’s view. *People v. Illgen*, 145 Ill. 2d 353, 364 (1991).

¶ 30 We will first address the notebooks. Entries therein make reference to the victim’s accusations against defendant and mention the victim’s name. The notebook entries also mention

murdering someone with a bottle and knives and using lack of sleep as a defense to a murder charge. During his interrogation by the police, defendant mentioned his lack of sleep prior to the murder and admitted hitting his mother with a bottle and stabbing her. Defendant further admitted that he was angered greatly by his mother's "accusations." Thus, by allowing the jury to infer that his lack-of-sleep defense was contrived before the murder, the notebooks confirmed the State's theory that the murder was premeditated.

¶ 31 As for the pictures showing the kitchen knife in defendant's bedroom, though it was not used in the stabbing, it was part of a set that included other knives defendant used to kill his mother. The presence of this knife in such an unusual place provided additional evidence of intent and premeditation because it showed planning. Sound guidance on this issue is provided by *People v. Wilburn*, 263 Ill. App. 3d 170 (1994). The defendant in *Wilburn* objected to the introduction of testimony that he was seen carrying two knives about an hour before a fatal stabbing. *Id.* at 180. Neither of the two knives he was seen carrying were used in the stabbing. *Id.* The appellate court affirmed the trial court's admission of this evidence. *Id.* In so holding, the appellate court reasoned that the evidence showed defendant had access to knives that were similar to the knife used to stab the victim. *Id.* The evidence was found to be particularly relevant to show the defendant's mental state because he had argued self-defense, just as defendant did in the instant case. *Id.* at 180-181. Specifically, the *Wilburn* court noted that the evidence was relevant to rebut the defendant's claim of self-defense (presumably because the defendant had armed herself before the need for self-defense had arisen) and support the State's theory that the stabbing was premeditated because defendant was angry with the victim and was carrying a knife. *Id.* at 181. *Wilburn's* reasoning applies here. As in *Wilburn*, the knife found in defendant's bedroom was not used in the murder. However, the

photographs of the knife found in defendant's bedroom show that he had access to knives similar to ones used during the murder, and in fact all of them were part of the same kitchen set. Moreover, that he took this knife out of the kitchen and to his room showed preparation for the murder.

¶ 32 Defendant cites several cases that he argues militate for a different result; however, they do not support his position. For instance, defendant cites *People v. Maounis*, 309 Ill. App. 3d 155 (1999), to support his position. *Maounis*, however, is factually distinguishable. In *Maounis*, the admission of testimony that the defendant was using drugs, drinking, and patronizing a prostitute around the time he committed a robbery was found to be erroneous. *Id.* at 159. However, the State failed to show that the defendant suffered from addiction or needed money, so there was no nexus between the defendant's behavior and the defendant's alleged commission of a robbery. *Id.* at 160-161. Conversely here, as explained above, the challenged evidence in the case at bar was relevant. The knife and notebooks-particularly the pages referencing the victim by name, using lack of sleep as an excuse for murder, and a murder that was committed with a bottle and knives-were relevant in that they showed motive, planning, intent, and premeditation of the murder.

¶ 33 Also, *People v. Decaluwe*, 405 Ill. App. 3d 256 (2010), bears little factual similarity to the instant case. In *Decaluwe*, nude photographs of the defendant were held to be inadmissible in a prosecution for armed violence, criminal sexual assault, and kidnaping because the photographs invited speculation regarding the defendant's character and affected the jury's judgment about the defendant. 405 Ill. App. 3d at 268. The court found that the State had not advanced a reasonable explanation regarding how the photographs were relevant and thus any probative value they may have had was greatly outweighed by their prejudicial effect. *Id.* In the case at hand, the relevance of the challenged evidence was plain. That the knife found in defendant's bedroom was from the

same set of kitchen knives as the murder weapon allowed the jury to infer both that defendant had access to those knives and had been planning to murder his mother. Furthermore, the notebooks describe murdering someone using the same weapons defendant used to kill his mother, which allowed an inference that defendant was contemplating the sort of murder that occurred in this case. The notebooks additionally describe using lack of sleep as a defense, and defendant did, in fact, attempt to use this excuse during his interrogation by the police. In short, the trial court was entitled to draw such conclusions and find the photographs and notebooks admissible.

¶ 34 Before closing, we note that even if we were to determine that the trial court erred in allowing the challenged evidence to be admitted, any error in doing so was harmless. When deciding whether an error is harmless, a reviewing court must examine the other properly admitted evidence to determine whether it overwhelmingly supports the conviction. *Becker*, 239 Ill. 2d at 240. Alternately, a reviewing court may determine whether the erroneously admitted evidence is merely cumulative of or duplicates properly admitted evidence. *Id.* Absent the challenged evidence, the record reflects that the properly admitted evidence overwhelmingly supports defendant's conviction. Defendant admitted to hitting his mother with a bottle, stabbing her, and pouring household chemicals and other substances on her as she begged for her life. Additionally, forensic evidence showed that the victim died as a result of six stab wounds in her back. Moreover, with regard to the pictures of the knife in defendant's bedroom, that evidence was cumulative of the crime scene video, as discussed above.

¶ 35

IV. CONCLUSION

¶ 36 For the aforementioned reasons, we affirm the judgment of the circuit court of Du Page County.

¶ 37 Affirmed.