2016 IL App (2d) 140138-U
No. 2-14-0138
Order filed March 29, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. JOSHUA BISHOP, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Kane County. No. 13-CF-1635 Honorable Thomas J. Stanfa, Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Presiding Justice Schostok and Justice Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant showed no error, and thus no plain error, in the State's *voir dire*: in asking whether the potential jurors could hold the State to its reasonable-doubt burden without insisting on a particular number of witnesses or type of evidence, the State properly explored whether they had improper preconceptions, without attempting to indoctrinate them as to its theory of the case at hand.

¶ 2 Following a jury trial, defendant, Joshua Bishop, was convicted of domestic battery (720 ILCS 5/12-3.2(a)(1), (a)(2) (West 2012)) and sentenced to 240 days in jail. Defendant timely appealed. Defendant argues that the trial court abused its discretion by allowing the State to ask impermissible questions to the jury during *voir dire* about the standard of reasonable doubt. He

asks that we reverse his conviction and remand for a new trial. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On October 2, 2013, defendant was indicted on two counts of aggravated domestic battery (720 ILCS 5/12-3.3(a-5) (West 2012)) and two counts of domestic battery (720 ILCS 5/12-3.2(a)(1), (a)(2) (West 2012)) arising out of an incident on August 31, 2013, where he choked and bit J.B.

¶ 5 The following relevant evidence was presented at defendant's jury trial. Aurora police officer Peter Briddell testified that, on August 31, 2013, he was dispatched to a two-unit home at 628 Lincoln Avenue in Aurora in response to a 911 phone call. When he arrived, he found J.B. and her mother, who lived together in the lower unit of the home, hiding behind the home's detached garage. J.B. appeared scared; her upper lip was swollen and there were red marks on her neck. Briddell identified photographs that he had taken of J.B.'s injuries.

¶ 6 According to Briddell, J.B. told him that, when she arrived home at about 3:30 a.m., she found defendant, who was her boyfriend and who lived in the upper unit of the home, waiting for her outside. He asked her to go for a walk. As they walked down the block, defendant asked her if she was cheating on him, and she told him no. Defendant then grabbed her throat with both hands, pushed her up against a wall, bit her lip, and told her that he would kill her if he found out that she was cheating on him. J.B. told Briddell that defendant had squeezed her neck hard enough so that she could not breathe easily. Defendant carried J.B. to a nearby park. J.B. was scared, so she was nice to defendant. Defendant apologized, and he agreed to let J.B. go home when she told him that she had to use the bathroom. They walked home and J.B. went inside her apartment, where she found her mother and told her what had happened. About a half-hour later,

defendant knocked on the door and asked to speak with J.B., but her mother would not allow it. Her mother then called the police.

¶ 7 Briddell further testified that J.B. wrote a statement about what had happened, and the handwritten statement was admitted into evidence. In the statement, J.B. said that defendant, her boyfriend, thought that she was cheating on him so "he started choking [her] and it was hard for [her] to breathe." J.B. also stated that defendant "tried taking her pants off to check if [she] was cheating on him." J.B. provided Briddell with a phone number at which she could be reached.

¶ 8 The parties stipulated that a call was placed to that number from the Kane County jail once on September 4, 2013, and twice on September 7, 2013. The September 4 call was made using a "PIN" number assigned to defendant. The September 7 calls were made using a "PIN" number assigned to Chris Evans, a jail inmate who was housed in the same cell block as defendant. Audio recordings of the calls were admitted into evidence.

¶ 9 Aurora police detective Jason Cudebeck testified that he was familiar with Evans, and he identified the male voice heard on the September 7 calls as Evans's voice. Sergeant Russell Norris, with the Kane County sheriff's office, testified that the male voice on the September 4 call "sounded familiar as being someone being [defendant]." He was not able to say for sure that it was defendant.

¶ 10 During the September 4 call, a male caller asked the female recipient if she was "gonna drop the charges," while offering "a couple hundred dollars to [her]." The male also mentioned that "they may try to hit you with a misdemeanor or something" for falsifying evidence. During the September 7 calls, a male caller said that he was "calling for *** Josh" and asked the female to "come up here and uh, let them know that what you said didn't happen or something like that." The female responded, "he wants me to change my story and say that I was lying and all

that and that I'm gonna get charged with a misdemeanor." The female also stated that she was going to "help him get through this." But "[h]e knows that he is guilty," and "[h]e knows what he did."

¶ 11 For the defense, defendant's brother, Anthony Johnson, testified that he lived with defendant. Johnson testified that he spoke with J.B. on the morning of the incident. J.B. told him that that she and defendant had had an argument. When Johnson asked her if there had been any physical contact, she told him no. They then went to the police department to have the charges dropped but were told that the matter would be going to trial.

¶ 12 The jury found defendant guilty of two counts of domestic battery (720 ILCS 5/12-3.2(a)(1), (a)(2) (West 2012)) and not guilty of two counts of aggravated domestic battery (720 ILCS 5/12-3.3(a-5) (West 2012)).

¶ 13 Following a sentencing hearing, the trial court merged the convictions of domestic battery and sentenced defendant to 240 days in jail.

¶ 14 Defendant timely appealed.

¶ 15 II. ANALYSIS

¶ 16 Defendant argues that the trial court abused its discretion when it allowed the State during *voir dire* to implicitly define reasonable doubt by invoking examples of factual scenarios that it knew would occur in the case. Defendant concedes that he forfeited the issue by failing to object during *voir dire* and raise the issue in a posttrial motion. Defendant asserts, however, that we should overlook forfeiture, holding that the error is plain error.

¶ 17 The plain-error doctrine offers criminal defendants a narrow path to appellate review of procedurally forfeited trial error. *People v. Walker*, 232 Ill. 2d 113, 124 (2009). We will apply the plain-error doctrine when:

> "(1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007).

The first step of plain-error review is determining whether any error occurred. *People v. Sargent*, 239 Ill. 2d 166, 189 (2010). If it did not, then plain error could not have occurred. *People v. Kitch*, 239 Ill. 2d 452, 465 (2011).

¶ 18 "The constitutional right to a jury trial encompasses the right to an impartial jury." *People v. Rinehart*, 2012 IL 111719, ¶ 16. The trial court is primarily responsible for conducting *voir dire*. *Id*. There is no precise test for determining which questions to allow and which will filter out partial jurors, so the manner and scope of the examination is within the discretion of the trial court. *Id*. "An abuse of discretion occurs when the conduct of the trial court thwarts the purpose of *voir dire* examination—namely, the selection of a jury free from bias or prejudice." *Id*. "The purpose of *voir dire* is to ascertain sufficient information about prospective jurors' beliefs and opinions so as to allow removal of those members of the venire whose minds are so closed by bias and prejudice that they cannot apply the law as instructed in accordance with their oath." *People v. Cloutier*, 156 Ill. 2d 483, 495-96 (1993).

¶ 19 Consequently, *voir dire* questions must not be " 'a means of indoctrinating a jury, or impaneling a jury with a particular predisposition.' " *Rinehart*, 2012 IL 111719, ¶ 17 (quoting *People v. Bowel*, 111 Ill. 2d 58, 64 (1986)). This is not a bright-line rule but rather a continuum.

Id. Broad questions are generally permissible, but specific questions tailored to the facts of the case and intended to serve as preliminary final argument are generally impermissible. *Id*.

¶ 20 Defendant argues that the State asked a variety of questions during *voir dire* in an attempt to impermissibly define reasonable doubt in relation to the anticipated evidence. According to defendant, at the time of *voir dire*, the State knew that J.B. was not going to testify, that her account of the incident would be introduced only through Briddell, and that there would be no medical or scientific evidence presented. Defendant argues that "neither the trial court nor counsel should define reasonable doubt for the jury" (*People v. Downs*, 2015 IL 117934, ¶ 19) and that the following questions establish the State's attempt to do so:

(1) "[THE STATE]: *** With that being said, the law only requires that the State prove the case beyond a reasonable doubt. It does not say that we have to do that with one witness or more than one witness.

Will everybody hold us to the standard of beyond a reasonable doubt but not think to themselves, oh, well, I need them to bring in more than one witness, or I need them to bring in some type of technology. Can everybody hold us to that standard?

THE JURORS: Yes.

[THE STATE]: All yes. If you hear from one witness on the stand, and that one witness is credible to you and proves the case to you beyond a reasonable doubt, will you sign a verdict of guilty?

THE JURORS: Yes.

[THE STATE]: All yes. Will any of you, though, be thinking in your mind, well, I would just like one more thing, I would like one more witness or one more piece of evidence?

THE JURORS: No."

(2) "[THE STATE]: As the judge mentioned earlier, do you agree to hold us to the standard of what the law actually is and not anything you learned on television?

A JUROR: Yes.

[THE STATE]: And I explained earlier that the law does not require that I bring in a certain amount of witnesses or who those witnesses are as long as I can prove the case to you beyond a reasonable doubt. If I were to do that using a witness, would you be sitting there thinking to yourself, well, I would like some type of technology, also?

A JUROR: No.

[THE STATE]: Would you be thinking to yourself, well, instead of that witness, I really wish it was another witness?

A JUROR: No.

[THE STATE]: Would you be thinking to yourself at all that there is one witness, I believe that witness beyond a reasonable doubt, but I really just would like a second witness?

A JUROR: No."

(3) "[THE STATE]: "Now, the law, the judge in this case says he is going to read to you instructions in the law at the end of the case. That's the law that you are going to follow. The law doesn't require us to prove the case in any particular way. It doesn't mandate any particular witnesses or any number of witnesses. Would anyone need more than one witness if the case had been proven beyond a reasonable doubt?

THE JURORS: No."

(4) "[THE STATE]: *** The law doesn't require us to prove our case any particular way. You have heard this question before probably. Would you be back thinking, I wish I had just seen that other piece of evidence, or why didn't they bring this science or this person to speak with us, and if you felt that we have proven the case beyond a reasonable doubt with the evidence we had presented, would you have any hang-ups in signing a guilty verdict?

A JUROR: No."

(5) "[THE STATE]: ***

The law doesn't tell us how we have to prove a case, just that we have to prove the case beyond a reasonable doubt. So let's say you hear testimony from witnesses, and from those witnesses you say to yourself, the case has been proven to me beyond a reasonable doubt. Would any of you think to yourself, well, I saw this technology on 'C.S.I.,' they should have that on this case?

THE JURORS: No.

[THE STATE]: Would any of you hold us to any type of scientific evidence, even though you felt like we have proven the case to you beyond a reasonable doubt?

THE JURORS: No.

[THE STATE]: All no. Would any of you be sitting there after listening to just one witness and one witness who proved the case to you beyond a reasonable doubt thinking to yourself, well, I just need one more person?

THE JURORS: No."

¶ 21 We find the *Rinehart* case instructive as to whether the particular questions asked here were proper. In *Rinehart*, the supreme court considered whether the trial court abused its

discretion in allowing the prosecutor to ask some of the potential jurors why a sexual-assault victim might delay in reporting an incident where the case involved an alleged victim who did not tell anyone of the assault for several weeks. *Rinehart*, 2012 IL 111719 ¶¶ 4-5, 15. The jurors answered that fear, shame, and embarrassment might prevent someone from coming forward. *Id*. at ¶ 5. The defendant argued that this question did not seek to uncover bias but rather sought to preeducate potential jurors on an aspect of the alleged victim's expected testimony, and thereby bolster her credibility. *Id*. ¶ 18.

¶ 22 In determining that this question was properly allowed, the court stated that the questions sought to uncover bias about delayed reporting by someone accusing another of a sexual assault. *Id*. ¶ 21. According to the court, such questions allowed the State to intelligently exercise its peremptory challenges to excuse those people who had preconceived ideas about the credibility of someone who did not immediately report a sexual assault. *Id*. These questions were permissible because they were "less fact-driven, and more focused on potential jurors' preconceptions about sexual assault cases, in an effort to uncover any bias regarding delayed reporting and the credibility of a victim who informed no one about the alleged attack when it happened." *Id*. The court noted that broad questions are generally permissible. *Id*. ¶ 17.

¶ 23 We find that the questions here were similarly broad as they focused on whether the potential jurors had any preconceptions about whether a certain number of witnesses or a certain type of evidence, such as scientific or technological, was required evidence in a domestic-battery case. The questions aided the State in determining whether a potential juror would be unable to apply the law to the evidence presented, based on these preconceptions.

¶ 24 Moreover, none of the State's questions contained facts specific to the case. For instance, in *People v. Bell*, 152 Ill. App. 3d 1007 (1987), the defendant was charged with the murders of

his parents. During *voir dire*, the State asked a majority of the potential jurors whether they believed that people have a natural impulse to confess their wrongdoings, and whether they believed that a person could carry out a plan to murder a family member as a solution to problems in that relationship. *Bell*, 152 Ill. App. 3d at 1017. The court held that these questions were improper "because they served primarily to indoctrinate the jurors as to the State's theory at trial and asked them to prejudge the facts of the case." *Id*. Here, the State's questions were not factually tied to the State's theory of the case.

¶ 25 Given that the questions here were not fact-specific but were instead broadly aimed at discovering whether the jurors had some preconceived ideas that would present them from listening to the evidence and applying the law to the evidence, the trial court did not abuse its discretion in permitting them. Because we find no error, there can be no plain error, and we hold defendant to his procedural default of the issue.

¶ 26 III. CONCLUSION

¶ 27 For the reasons stated, we affirm. As part of our judgment, per the State's request, we assess defendant $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2014); see also *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

¶ 28 Affirmed.