2016 IL App (2d) 140568-U
No. 2-14-0568
Order filed June 28, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. CHRISTOPHER GARCIA, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Kane County. No. 13-CM-1214 Honorable Robert J. Morrow, Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Presiding Justice Schostok and Justice Spence concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The State's closing argument did not constitute reversible error, as the remarks at issue were too brief and isolated to have materially affected the jury's decision; (2) we could not hold that defense counsel was ineffective for not objecting to a State witness's appearance in jail attire, as the record did not indicate any of the circumstances that the trial court would have had to consider in evaluating that objection (and thus it did not indicate whether there was a reasonable probability that the court would have sustained the objection), and defense counsel was not ineffective for failing to object to certain testimony, as that testimony did not violate the court's order *in limine*.

¶ 2 Following a jury trial in the circuit court of Kane County, defendant, Christopher Garcia, was found guilty of aggravated assault (720 ILCS 5/12-2(b)(4) (West 2012)) and was sentenced

to a 352-day jail term. Defendant argues on appeal that he is entitled to a new trial on the basis of improper remarks during the State's closing argument. Defendant further argues that he did not receive the effective assistance of counsel at trial. We affirm.

¶ 3 Aurora police officers David Brian and Peter Bancroft testified for the State, as did Brandon Hardy, a cadet working with the Aurora police department. Brian testified that on March 24, 2013, he was on patrol on the west side of Aurora. He was in uniform and was driving a marked car. Hardy, who was wearing a cadet uniform, was riding with Brian. At around 11 a.m., Bancroft contacted Brian by radio. Bancroft indicated that he had observed a traffic violation. In response, Brian pulled over a vehicle driven by defendant. Brian testified that he approached the vehicle and ordered defendant to put his hands on the steering wheel. Defendant started screaming at Brian. According to Brian, defendant said, " 'Man, what the fuck, you guys just harassed me last night.' " Brian testified that he said to defendant, " 'Chris, step out of your car.' " Defendant complied. Brian asked defendant for his driver's license. Defendant responded " 'Right here, motherfucker. I'm valid.' " Defendant had "this ball of tickets and all kinds of stuff," which he "shoved" toward Brian while getting out of his vehicle. Brian testified that he grabbed defendant and "had him go up against his car." Brian held defendant's waistband with his right hand and attempted to pat him down. According to Brian, defendant "just went crazy." Defendant started tensing up all of his muscles. He also started beating on the trunk of his car. Defendant said, " 'I'm an adult, motherfucker. I'll fucking kill you.' " He was growling and had foam coming out of his mouth. Defendant had his fists clenched, and Brian felt defendant's body twisting. Brian placed defendant under arrest. Brian testified that defendant "wouldn't settle down" and was "getting more and more angry." Brian added, "If I backed away from him, we were going to be in a fight."

¶ 4 Bancroft testified that he radioed Brian after observing a vehicle turn without signaling. Brian pulled the vehicle over and Bancroft joined him at the scene of the traffic stop. Bancroft observed Brian talking with defendant. Defendant was yelling and seemed upset. Bancroft could not hear exactly what defendant was saying. Foamy saliva was coming out of defendant's mouth and he was pounding his fists on the vehicle. Brian had defendant place his hands on the vehicle. Bancroft heard defendant say, " 'I'm a fucking adult, motherfucker. I'll fucking kill you.' " Defendant tried to turn to face Brian. Defendant's fists were clenched. Bancroft assisted Brian in placing defendant under arrest.

¶ 5 Hardy remained in Brian's squad car during the incident. He heard defendant yelling, " 'Why are you fucking stopping me? Why are you guys harassing me? I just dealt with you guys last night, what the fuck?' " After Brian advised defendant that he was going to pat him down for weapons, Hardy heard defendant say " 'I'm a fucking adult, motherfucker. I will fucking kill you.' " Defendant pounded his fists and stiffened up while Brian was patting him down.

¶ 6 Nicole Pearson testified for defendant. The record reveals that she was brought to court from the Kendall County jail, where she was an inmate, and that she was wearing an orange jumpsuit when she testified. Pearson was dating defendant in March 2013 and was riding with him when he was stopped. Pearson testified that they were pulled over for no reason. Pearson heard defendant and Brian "bickering back and forth." Asked what Brian said, Person responded, "I can't really remember exact words, but it was along the lines of, I don't know, I guess he can harass him if he wants to. He can do whatever he wants." Defendant told Brian that he was "going to get him" for harassment. According to Pearson, Brian responded, " 'Well,

I'm going to get you for assault.' " Defendant did not hit his vehicle and he never said anything threatening to Brian.

¶ 7 Defendant contends that he is entitled to new trial because of improper remarks by the prosecution during closing argument. Assistant State's Attorney Joshua Lloyd began the closing argument with the following remark:

> "Ladies and Gentlemen, the police have a very tough job keeping all of us safe, protecting us; and in this case, police officers should be able to go home safely to their family [*sic*] at night when they are done with their shift."

The trial court sustained defendant's objection to the remark, but did so outside the presence of the jury, which was not made aware of the court's ruling.

¶ 8 Assistant State's Attorney Danielle Curtiss presented the State's rebuttal argument, during which she remarked as follows:

> "Officer Brian doesn't have to go to work every day and worry about being battered. This is not something we require our police officers in Kane County to do. We don't ask them to go to work, show up to work and just cross their fingers that they don't leave work that day with a bloody nose or with injury to their body [*sic*] or with a stranger on the street making physical contact with them.
>
> It's not something that we require, and the reason that you, the jury, knows [*sic*] we don't require that is because there is a law that says that in this particular situation—"

At that point defense counsel objected, but the trial court overruled the objection. Curtiss later remarked, without objection, that Brian went to work on the day of the incident "not thinking about how he was going to be potentially battered that day."

¶ 9 Defendant argues that these remarks were designed to inflame the jury's passions by emphasizing the dangers of police work. "Generally, where an improper comment is brief, isolated, and occurs in the context of proper arguments, it will not be deemed prejudicial." *People v. Deramus*, 2014 IL App (1st) 130995, ¶ 61. The remarks to which defendant objected, considered individually or cumulatively, fit this description. Even if improper, they could not have been a material factor in the jury's decision.

¶ 10 Defendant next argues that he was deprived of the effective assistance of counsel at trial. The argument is predicated on trial counsel's failure to object when Pearson testified while wearing jail clothing and counsel's failure to move to strike testimony of a State's witness that violated a pretrial order.

¶ 11 It has long been recognized that compelling a criminal defendant to stand trial before a jury while wearing the distinctive attire of a jail or prison inmate undermines the presumption of innocence and might thus violate the defendant's right to a fair trial.[1] *Estelle v. Williams*, 425 U.S. 501, 502-03 (1976). However, "the failure to make an objection to the court as to being tried in such clothes, for whatever reason, is sufficient to negate the presence of compulsion necessary to establish a constitutional violation." *Id.* at 512-13. In *People v. Bowman*, 2012 IL App (1st) 102010, the First District concluded that it is also improper to compel a defense witness to testify while wearing jail clothing. The *Bowman* court relied heavily on *Hightower v. State*, 154 P.3d 639, 641 (Nev. 2007), in which it was observed that courts have almost uniformly "recognized that requiring an incarcerated defense witness to appear in prison clothing may prejudice the accused by undermining the witness's credibility in an impermissible

[1] For purposes of our analysis, we will assume that Pearson's orange jumpsuit was jail attire.

manner." The *Hightower* court further noted that "jurors may believe a defense witness associated with the accused is putatively guilty and view the defendant as 'guilt[y] by association.' " *Id.* (quoting *State v. Artwell*, 832 A.2d 295, 303 (N.J. 2003)). The *Hightower* court added, " '[d]efense witnesses are not cloaked in the accused's presumption of innocence,' [but] the practice of requiring an incarcerated witness to appear at trial in jail garb may nonetheless prejudice a defendant affecting his constitutional right to a fair trial." *Id.* at 641-42 (quoting *White v. State*, 771 P.2d 152, 153 (Nev. 1989)).

¶ 12 The *Bowman* court held that, when a defendant timely requests that an incarcerated witness not be forced to testify in jail attire, the trial court should balance "the prejudicial effect against any security or other State interests, if any." *Bowman*, 2012 IL App (1st) 102010, ¶ 62. On the other hand, if, as occurred here, the defendant makes no such request, he or she forfeits the right to have the witness testify in other attire. *Id.*, ¶ 61 At issue here is whether defense counsel's failure to invoke that right amounts to ineffective assistance of counsel. Claims of ineffective assistance of counsel are evaluated under the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), which requires a showing that counsel's performance "fell below an objective standard of reasonableness" and that the deficient performance was prejudicial in that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 688, 964.

¶ 13 Defendant argues that trial counsel's failure to request that Pearson not testify in jail attire was both unreasonable and prejudicial. With respect to the *Strickland* test's prejudice prong, defendant contends that, if the trial court had been called upon to apply the balancing test described in *Bowman*, it likely would have found, as the New Jersey Supreme Court did in *Artwell*, that requiring a defense witness to testify in jail clothing "further[s] no vital State

interest." *Artwell*, 832 A.2d at 303 (quoting *State v. Maisonet*, 763 A.2d 1254, 1258 (N.J. 2001)). However, *Bowman* holds that the State's interest must outweigh prejudice to the defendant, not that the State's interest must be "vital." In addition, *Artwell* is inapposite because, unlike in *Bowman*, the *Artwell* court dispensed with any requirement that the defendant affirmatively request that a witness be permitted to testify in civilian clothing. The *Artwell* court's categorical holding—that requiring a defense witness to testify in jail clothing serves no vital state interest—is antithetical to the case-by-case balancing test contemplated by *Bowman*.

¶ 14 It is true that the *Bowman* court observed that requiring an incarcerated witness to testify in prison clothing furthers no state interest " 'absent unusual circumstances' " (*Bowman*, 2012 IL App (1st) 102010, ¶ 59 (quoting *Hightower*, 154 P.3d at 641). However, that broad generalization is not a sound basis for gauging the probability that the trial court would have ruled in defendant's favor had he requested that Pearson be permitted to testify in civilian attire. The record here is largely silent with respect to the circumstances bearing on the *Bowman* balancing test, and we decline to speculate about whether this case was or was not "unusual." Thus, the record as it stands does not permit us to determine whether there was a reasonable probability that the outcome of the proceeding would have been different if counsel had requested that Pearson testify in civilian clothing. Accordingly, defendant has failed to establish prejudice and we need not decide whether counsel's performance was deficient. See *People v. Simmons*, 342 Ill. App. 3d 185, 190-91 (2003) ("[W]e may resolve a claim of the ineffective assistance of counsel by reaching only the prejudice component, for the lack of prejudice renders irrelevant the issue of counsel's performance.").

¶ 15 Defendant also faults trial counsel for failing to object to testimony indicating that the police were familiar with defendant prior to the incident. Defendant points to evidence presented

by the State that Brian recognized defendant and addressed him by his first name during the traffic stop and that defendant complained to Brian that "you guys just harassed me last night." According to defendant, the evidence violated the trial court's ruling on a motion *in limine* filed by defendant. Paragraph 8 of the motion *in limine* stated, "Defendant believes that the State intends to introduce evidence from Aurora police officers that these officers had prior knowledge of Defendant and that they would testify that Defendant is a known criminal in Aurora, has threatened to kill the police in the past, has battered and assaulted officers, has been known to carry guns, and is very violent." As pertinent here, the motion's prayer for relief sought an order barring "testimony in relation to officers [*sic*] opinions of Defendant *** based on prior contacts." The trial court entered a written order granting the motion *in limine* "with regard to paragraph 8." Contrary to defendant's argument, the State's witnesses did not violate this order. As *grounds* for relief, paragraph 8 recites defendant's belief that the State intended to proffer testimony that police officers had prior knowledge of defendant. However, the relief actually sought was an order prohibiting testimony as to opinions formed based on that prior knowledge. The order granting the motion "with regard to paragraph 8" must be interpreted in light of the relief requested. The State's witnesses did not offer any opinion testimony that violated the order.

¶ 16 Finally, defendant seeks reversal based on the cumulative prejudice from these trial errors. As discussed, however, error, if any, in closing argument was harmless and defendant's other claims of error are meritless. Accordingly, defendant's argument fails.

¶ 17 For the foregoing reasons, the judgment of the circuit court of Kane County is affirmed. As part of our judgment, we grant the State's request that defendant be assessed $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).

¶ 18 Affirmed.