2016 IL App (2d) 140989-U
No. 2-14-0989
Order filed December 22, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Kane County.
Plaintiff-Appellee,	)	
v.	)	No. 13-CM-3993
ASHLEY A. ABERNATHY,	)	Honorable John A. Noverini,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Burke and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Defendant showed no plain error in the trial court's admission of her written statement: the statement had a sufficient foundation, as it was authenticated by its content and by the testimony of the arresting officer, who could authenticate the statement even though he did not take it, and in any event the evidence was not close, despite minor inconsistencies in the complainant's testimony; (2) we vacated defendant's domestic-violence-shelter fee, as the record did not show that the victim used the shelter.

¶ 2 Defendant, Ashley A. Abernathy, appeals the judgment of the circuit court of Kane County finding her guilty of two counts of domestic battery (720 ILCS 5/12-3.2(a)(1), (a)(2) (West 2012)), contending that the trial court committed plain error in admitting a document

purported to be her written statement and erred in assessing a $100 domestic-violence-shelter fee. Because the court did not abuse its discretion in admitting the written statement, and if it did the error was not plain, we affirm defendant's convictions. However, we vacate that part of the judgment imposing the $100 fee.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged by complaint with one count of domestic battery causing bodily harm (720 ILCS 5/12-3.2(a)(1) (West 2012)) and one count of domestic battery involving contact of a provoking nature (720 ILCS 5/12-3.2(a)(2) (West 2012)). Defendant opted for a bench trial.

¶ 5 The following evidence was established at the trial. Defendant and Larry N. had been in a relationship in which they had a child. According to Larry, on September 22, 2013, at around 1 p.m., he went to the Fox View Apartments in Carpentersville to install a television in his truck. Larry, who had lived there before, had friends and family living there.

¶ 6 Defendant, who lived there, approached Larry in the parking lot and told him to leave. According to Larry, when he told her he did not have to leave, defendant "kick[ed] off the stick from the banister" on the outside stairs. Larry described the stick as "one of the posts that [went] up and down vertically." According to Larry, defendant struck him with the stick in his left rib area. He then grabbed the stick and threw it into the woods.

¶ 7 After tossing the stick into the woods, Larry moved his truck to a different area of the parking lot. Defendant stood at the driver's side window arguing with Larry. According to Larry, as he sat in the driver's seat, defendant "[began] to punch [him] in the face with her keys." Defendant struck Larry with the keys on the left side of his face, causing him to bleed.

¶ 8 Larry then called 911. While he was speaking to the dispatcher, defendant continued to strike him with the keys. She eventually stopped and walked away.

¶ 9 On the recording of the 911 call, which was admitted into evidence, Larry told the dispatcher that defendant still had a stick as he sat in his truck. He also told the dispatcher that she had hit him in the face with the keys. When the dispatcher asked if she had just done so, Larry said yes.

¶ 10 Larry admitted that he had three prior felonies. When asked on cross-examination if he did not tell the arresting officer that he was at the apartments to install a television in his truck, Larry answered, "He didn't ask." Larry admitted that he told the officer that he was there to see his child. Larry explained that he did not tell the officer that defendant kicked the stick out of the banister, because the officer never asked. Larry was not sure whether he told the officer that defendant hit his forearm as opposed to his ribs.

¶ 11 Officer Steven Whitcomb of the Carpentersville police department responded to the scene. Upon arriving, he saw Larry leaning against a car. Larry had a "small cut on his face with a little bit of blood." Officer Whitcomb described defendant as being upset because Larry had wanted to see their child. He never heard Larry tell him that Larry was there to install a television in his truck. According to Officer Whitcomb, Larry told him that defendant hit him on the forearm with a stick. Larry did not tell him that defendant kicked the stick off the banister.

¶ 12 After Larry told Officer Whitcomb that he would sign a complaint for domestic battery, Officer Whitcomb arrested defendant. According to Officer Whitcomb, after defendant was taken to the police station, she provided a signed, written statement to another officer. Officer Whitcomb identified the written statement and the signature thereon as those of defendant. However, he admitted that he never spoke to defendant regarding the statement and did not see

her write the statement. When the State moved to admit the statement, defendant objected based, in part, on a lack of foundation. However, defendant did not elaborate as to the foundational objection. The trial court overruled the objection and admitted defendant's written statement.

¶ 13 The statement was on a form entitled "Written Statement" and was dated September 22, 2013. The location identified on the statement was the Carpentersville police station. The printed name and signature at the bottom was "Ashley Abernathy." The statement indicated that defendant had asked Larry to move from in front of her home. When Larry got out of his vehicle, defendant went into her home, "grab[bed] a stick," and asked him again to move. When Larry refused, defendant "swung the stick at him *** [and] threw [her] keys at him."

¶ 14 During closing argument, the State acknowledged that Larry's "testimony was impeached." The State did not refer to the written statement until rebuttal. In rebuttal, the State argued that the "reason this case does not come down to credibility *** is that we *** have the written statement from the defendant." The State added that defendant admitted in her statement to swinging the stick, and throwing her keys, at Larry. The State, in characterizing Officer Whitcomb's and Larry's testimony as uncontradicted, described defendant's statement as telling the court what happened. The court, based on the evidence and the credibility of the witnesses, found defendant guilty of both counts.

¶ 15 Defendant filed a motion for a new trial. In that motion, defendant never raised any issue as to the admissibility of her written statement. Nor did she mention that issue at the hearing on the motion for a new trial. The State, however, in responding to defendant's argument that Larry had been impeached and was not credible, pointed out that defendant had provided "a written statement making certain admissions" that "contribute[d] to proving the State's case." The trial court denied the motion for a new trial, and defendant filed a timely notice of appeal.

¶ 16 II. ANALYSIS

¶ 17 On appeal, defendant contends the following: (1) the trial court abused its discretion in admitting, without an adequate foundation, the written statement purportedly made by defendant to the police; and (2) the trial court erred in ordering defendant to pay a $100 fee to a domestic-violence shelter, because there was no evidence that Larry used the shelter.

¶ 18 The State responds that: (1) defendant failed to preserve her claim regarding admission of the written statement, because, although she objected at trial, she did not raise the issue in her posttrial motion; (2) the trial court committed no error, plain or otherwise, in admitting the statement, because there was an adequate foundation for its admission; and (3) because the record did not show that Larry used the shelter, the trial court erred in imposing the $100 fee.

¶ 19 We begin with defendant's contention that the trial court abused its discretion in admitting the written statement. As the State notes, defendant forfeited that issue by not raising it in her motion for a new trial. See *People v. Naylor*, 229 Ill. 2d 584, 592 (2008). Plain error, however, is a limited and narrow exception to the general forfeiture rule. *People v. Hampton*, 149 Ill. 2d 71, 100 (1992). To obtain such relief, a defendant must show that a clear or obvious error occurred. *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). If a court determines that no error occurred, it need not apply any further plain-error analysis. *People v. Moreira*, 378 Ill. App. 3d 120, 131 (2007). Only if an error occurred must a court determine if: (1) the evidence was so closely balanced that the error alone threatened to tip the scales of justice against the defendant, irrespective of the seriousness of the error; or (2) the error was so serious that it affected the fairness of the trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence. *Naylor*, 229 Ill. 2d at 593. A defendant bears the burden of persuasion under either prong. *People v. Thompson*, 238 Ill. 2d 598, 613 (2010).

¶ 20 Here, the State contends that, because there was a proper foundation for the written statement, the trial court did not abuse its discretion in admitting it. Thus, we will examine initially whether there was a proper foundation for the statement.

¶ 21 A determination as to the admissibility of evidence is in the sound discretion of the trial court and will not be reversed on appeal absent an abuse of that discretion. *People v. Pikes*, 2013 IL 115171, ¶ 12. The threshold for finding an abuse of discretion is high and will not be overcome unless the trial court's ruling was arbitrary, fanciful, or unreasonable, or no reasonable person would have taken the view adopted by the trial court. *People v. Donoho*, 204 Ill. 2d 159, 186 (2003). Under the abuse-of-discretion standard, reasonable minds can disagree about whether certain evidence is admissible without requiring a reversal of a trial court's ruling. *Donoho*, 204 Ill. 2d at 186.

¶ 22 A proper foundation is laid for the admission of documentary evidence when the document has been identified and authenticated. *People v. Watkins*, 2015 IL App (3d) 120882, ¶ 36. To authenticate a document, the proponent must present evidence demonstrating that the document is what the proponent claims it to be. *Watkins*, 2015 IL App (3d) 120882, ¶ 36; see also Ill. R. Evid. 901(a) (eff. Jan. 1, 2011). The proponent need establish only a rational basis upon which the fact finder may conclude that the document did in fact belong to, or was authored by, the party alleged. *Watkins*, 2015 IL App (3d) 120882, ¶ 36. Documentary evidence may be authenticated by either direct or circumstantial evidence. *Watkins*, 2015 IL App (3d) 120882, ¶ 37. Documentary evidence also may be authenticated if it is shown to contain information that would be known only by the asserted author, or, at the very least, by a small group of people, including the asserted author. *Watkins*, 2015 IL App (3d) 120882, ¶ 37.

¶ 23 In this case, Officer Whitcomb identified the written statement as that of defendant. He did so by testifying that defendant provided a written statement at the police station. He added, after looking at the statement, that it appeared to be defendant's statement and that it contained her signature. Although he acknowledged that he did not speak to defendant regarding the statement and that another officer took the statement, that did not preclude him from identifying the statement and signature as defendant's. See Ill. R. Evid. 901(b)(1) (testimony of witness with knowledge that document is what it is claimed to be is sufficient authentication). Absent some indication that Officer Whitcomb did not have any basis to identify the statement as that of defendant, the trial court did not abuse its discretion in relying on Officer Whitcomb's testimony that the statement was that of defendant.

¶ 24 Not only did Officer Whitcomb identify the statement as that of defendant, the statement's content demonstrated that it was hers. It stated that defendant had asked Larry to move from in front of her residence. There is nothing in the record to show that anyone other than defendant, besides Larry himself, would have known of that fact. Further, the statement was on a form entitled "Written Statement," contained a case number, and indicated that it was given at the Carpentersville police station. All of those factors, when considered together with Officer Whitcomb's testimony, provided a rational basis for the trial court to find that the written statement was authored by defendant. See *Watkins*, 2015 IL App (3d) 120882, ¶ 36. Thus, the trial court did not commit error, let alone clear or obvious error, in admitting the written statement.

¶ 25 Even if there was clear or obvious error, the evidence was not so closely balanced as to render the error plain. It was undisputed that defendant struck Larry with a stick. Additionally, the evidence showed that defendant struck Larry in the face with her keys, causing him to bleed.

Indeed, Officer Whitcomb testified that Larry's face was bleeding. Thus, the evidence was not close on the issue of whether defendant committed domestic battery.

¶ 26 Defendant contends, however, that the evidence was closely balanced, because Larry was "not at all credible." However, in a bench trial it is for the judge to determine the credibility of the witnesses, to weigh the evidence and draw reasonable inferences therefrom, and to resolve any conflicts in the evidence. *People v. Siquenza-Brito*, 235 Ill. 2d 213, 233 (2009). We will not reverse a conviction simply because the evidence was contradictory or because a defendant claims that a witness was not credible. *Siquenza-Brito*, 235 Ill. 2d at 233.

¶ 27 Here, the trial court found Larry credible, and the record does not indicate otherwise. Although there were some inconsistencies with Larry's testimony, such as whether defendant struck him with the stick on the left side versus the forearm, the reason why he was at the apartments, whether defendant struck him in the face with the keys while he was speaking to the 911 dispatcher, and how defendant obtained the stick, those were minor and did not disturb Larry's credibility on the central issue.

¶ 28 We turn next to the issue of whether the trial court erred in imposing a $100 fee for the domestic-violence shelter. The State properly concedes error, as the record does not indicate that Larry used the shelter.

¶ 29 III. CONCLUSION

¶ 30 For the reasons stated, we affirm defendant's convictions but vacate that part of the judgment imposing the $100 domestic-violence-shelter fee. 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).

¶ 31 Affirmed in part and vacated in part.