2017 IL App (2d) 150375-U
No. 2-15-0375
Order filed August 3, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. LUIS MORETA, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Du Page County. No. 12-CF-339 Honorable John J. Kinsella, Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Hutchinson and Jorgensen concurred in the judgment.

ORDER

Held: (1) There was no error in the trial court's denial of defendant's oral motion *in limine* because: (a) in making the motion orally, defendant failed to define the testimony that he wanted to bar and was unable to properly present his issue to either the trial court or this court; (b) the State did not present the testimony that defendant sought to prevent with his motion; (c) the evidence sought to be excluded was irrelevant to his defense; and (d) as the evidence sought to be excluded required no scientific, technical, or specialized training, the witness did not need to be qualified as an expert to testify as he did. (2) Defendant failed to properly preserve the issue of improper closing arguments, and the appellate court declined to review them as plain error. Judgment affirmed.

¶ 1 Following a jury trial, defendant, Luis Moreta, was convicted of one count of armed robbery with a firearm (720 ILCS 5/18-2(a)(2) (West 2010)), and sentenced to life in prison as a

habitual criminal. Defendant now appeals from his conviction, contending that: (1) the trial court improperly allowed a police officer to testify about cellular technology and interpret cellular phone records, where the officer was not qualified as an expert; and (2) the State argued improperly in its closing arguments by, *inter alia*, vouching for witnesses, arguing facts not in evidence, and inserting personal opinions. We affirm.

¶ 2 I. BACKGROUND

¶ 3 Defendant was charged with armed robbery with a firearm in relation to the December 2, 2011 armed robbery of Samuel Benito-Ortiz, Aldwin Caraballo, and Wesley Guarderas in Addison, Illinois.

¶ 4 On December 2, 2011, Samuel Benito-Ortiz drove to 600 Meadow Road in Addison to purchase a motorcycle that he had seen advertised on Craigslist. He brought two friends, Aldwin Caraballo and Wesley Guarderas, to help him transport the motorcycle. At about 9 p.m., Benito-Ortiz called the seller, later identified as Christian Ross-Emerson, to let him know that they arrived at the apartment complex. Ross-Emerson appeared on a walkway in the complex and, after confirming that Benito-Ortiz had the money, walked back into the complex to get the keys. When he returned, he walked the three men to a black Dodge Ram van at the far end of the parking lot. As they reached the rear of the van, two men with their faces covered and wearing hooded sweatshirts jumped out and held guns to the heads of Benito-Ortiz and Caraballo. Guarderas ran away but returned when the masked assailant threatened to kill Caraballo. The assailants took keys, cellphones, and $3700 in cash before driving away in the van.

¶ 5 Through the use of computer and cellular phone records, starting with the call that Benito-Ortiz made at 9:00 as he arrived at the apartment complex, police determined that Ross-Emerson (using the name “Jason Gay”) was the purported seller of the motorcycle.

Ross-Emerson made a call at 9:02 pm, using *67, to (847) 962-0724, which was subsequently determined to be defendant's cell phone. Police later found a black van matching the description of the van used in the robbery near defendant's home; however, the van was not registered to defendant. The victims identified Ross-Emerson as being one of the robbers; when he was arrested, Ross-Emerson told the police of the involvement of defendant and Arroyo.

¶ 6 At trial, two of the victim's Caraballo and Guarderas, testified about the events of the robbery. The victims never identified defendant as one of the robbers.

¶ 7 Both Ross-Emerson and Arroyo pleaded guilty to lesser charges and agreed to testify against defendant in exchange for reduced sentences. Ross-Emerson testified that he knew defendant because their girlfriends were sisters. In November 2016, defendant asked him if he wanted to commit a theft. They discussed advertising a motorcycle for sale on Craigslist and robbing potential buyers, a scheme that Ross-Emerson had attempted in the past. Ross-Emerson set up the Craigslist ad and purchased a pre-paid cell phone, under the name Jason Gay, for use related to the scheme. They attempted two prior robberies. One they abandoned because too many people showed up with the buyer; the other was thwarted when the buyer got nervous and left.

¶ 8 Ross-Emerson set up the "sale" with Benito-Ortiz at the parking lot of the apartment complex in Addison where the cousin of his girlfriend lived. Defendant and Arroyo picked up Ross-Emerson in the black van and drove to the apartment complex, where they parked in a dark area. Defendant and Arroyo, both of whom had guns, remained in the van. Ross-Emerson stayed outside, pretending to live at the apartments. Ross-Emerson phoned defendant when Benito-Ortiz arrived and after confirming that he had the money. Ross-Emerson wanted to

abort the robbery because there were too many people involved, but defendant wanted to proceed, and the robbery took place. Afterwards, they drove to defendant's home in Northlake, where they divided the money. Defendant gave his share to his girlfriend, Alison. Arroyo left in his own car, and defendant drove Ross-Emerson home to Hoffman Estates. At about 9:30 pm, Arroyo called defendant's cell phone to see if he was alright. Defendant said that he was fine and that he was "with his girl." The call lasted about 10 seconds.

¶ 9 Detective Anthony Reda of the Addison police department testified to the investigation into the robbery, especially the use of cellular phone records. Defendant brought an oral motion *in limine* to limit Reda's testimony regarding cell towers that were involved in the calls to defendant's phone at 9:02 and 9:30 pm on the night of the robbery; the motion was denied. A detailed recounting of the arguments and testimony is contained below in the analysis.

¶ 10 Theresa DuBonetti testified that she lived in Hoffman Estates with her daughter Jennifer and Jennifer's boyfriend, Ross-Emerson. Another of her daughters, Alison, lived with defendant and their children in Northlake. On December 2, defendant and Alison were going to bring over the children so that she could babysit them overnight for the first time. They arrived at about 7:30. She could not remember if Ross-Emerson was there, as she was not on good terms with him. Alison's manager, Ginell Gomez, picked up Alison and defendant at around 9:05 pm, "after the news started." On cross-examination, she denied telling Reda that she was not sure what date she babysat the children when Alison and defendant went out and that she watched the children often.

¶ 11 Defendant's girlfriend, Alison DuBonetti, testified that defendant was with her all day on December 2, 2011. They drove in a black van to Theresa's home in Hoffman Estates. Theresa was to babysit their children while Alison and defendant went out with Alison's boss,

Ginell Gomez. When they arrived at 7:30 pm, they saw Ross-Emerson standing outside. Ross-Emerson asked to borrow the van. Defendant left his work phone, with the number (847) 962-0724 in the van. Gomez and her husband picked them up at about 9:00; Alison remembered the time because the news had just started. Ross-Emerson was not in the lot when they left. They went to a restaurant in Woodfield Mall but left because the wait was too long and returned to Theresa's home by about 9:30. Alison admitted that she did not say in her written statement to police that defendant could not have been involved in the robbery because he was with her.

¶ 12 Ginell Gomez testified that she and her husband went out to celebrate her birthday with Alison and defendant on December 2, 2011. She arrived at Theresa's home at about 9:00 pm and they left shortly thereafter. Because of the long wait at TGIF, they went back to Theresa's, picked up Alison's sister, and went to Alison and defendant's house. Defendant and Alison drove separately, but she could not remember what type of vehicle they drove. Gomez admitted that she never went to the police after she learned of defendant's arrest to tell them that defendant was with her at the time of the robbery.

¶ 13 Taquila Young testified that she was a neighbor of Theresa Du Bonetti and had known Alison since high school. Their children sometimes played together. Alison once visited and discussed defendant's arrest; Taquila agreed to say that she saw defendant on the night of the robbery because she felt bad about the situation. Alison took Taquila to defendant's attorney's office, where she told counsel that she did see defendant on the night of December 2. However, she later told police that she did not see defendant on that night. She testified that she told the truth to the police.

¶ 14 Addison police officer Gary Garafalo testified that he spoke to Theresa in March 2014. At that time, Theresa could not remember if she was babysitting for defendant and Alison on December 2, 2011.

¶ 15 The jury returned a guilty verdict. The trial court denied defendant's post trial motions and sentenced defendant to natural life in prison as a habitual criminal. See 730 ILCS 5/5-4.5-95(a)(5). Defendant's motion to reconsider sentence was also denied, and this appeal followed.

¶ 16 II. ANALYSIS

¶ 17 Defendant first contends that the trial court erred in denying his motion *in limine* and allowing Officer Reda to testify, as a lay witness, to issues of cellular technology and interpretation of cellular records. According to defendant, Reda's testimony "oversimplified the process, allowing jurors to make inferences based on misleading and confusing evidence." Reda could testify to these issues only if he had been qualified as an expert.

¶ 18 Motions *in limine* are encouraged in criminal cases to exclude extraneous matters and are used to protect the moving party from the prejudicial impact of inadmissible evidence being asked and objected to in the presence of the jury. *People v. Holman*, 257 Ill. App. 3d 1031, 1033 (1994). If the rules of evidence do not require the exclusion of the disputed material, then the trial judge must deny the motion. *Id.* In general, evidentiary motions, including motions *in limine*, are directed to the trial court's discretion, and reviewing courts will not disturb a trial court's ruling on such a motion absent an abuse of discretion. *People v. Patrick*, 233 Ill. 2d 62, 68 (2009). A trial court abuses its discretion only where its ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court. *Id.*

¶ 19 The State and defendant stipulated to the foundation for several sets of cell phone records. Regarding those records, defendant argued:

> "However—and in these records they show duration of calls, numbers which called each other, and they indicate the cell tower that was used.
>
> As I say, I have no objection to those, the records themselves coming in, but the objection on our part we submit is I expect an officer to testify that based on those cell towers, he then mapped out through Google Maps where the phone could have been in relation to those cell towers.
>
> * * *
>
> We believe it's the subject of expert testimony and couldn't be rendered by a lay opinion."

When the trial court informed him that "an expert wouldn't be necessary if the proper foundation is laid from the phone company," defendant responded:

> "Right. And as I say, if the record shows that a particular cell tower was used, that's okay.
>
> The problem is there's a lot of factors that could affect which cell tower was used. It's not always the tower that's closest to the phone. In some of these cases there is strength of signal, there's topography."

The State explained the cellular records and their planned use to the trial court:

> "We have the phone records that, as he said, shows [*sic*] the occurrence, phone number that called, phone number that received it, time of call, length of call. And then part of those records then indicates what cell tower that phone call bounced off of.

> Then the third part of the records from Cricket [Communications] is a latitude, longitude, basically grid. And so if you look up the number of the cell tower. [*Sic*] In this case it was like cell tower 57. If you look up that on their listing of cell towers, and [*sic*] it gives latitude and longitude location.
>
> * * *
>
> And what we will have in this case is Officer Reda, with assistance from our investigations evidence unit, input those latitude, longitude locations. And Google Maps pinpoints its location where the tower is, and people testify that's the location.
>
> And then, obviously, we're going to also produce evidence, based on Google Maps, where other relevant locations are; such as, apartment complex, such as where Mr. Moreta resided. And those will be aerial views under Google Maps.
>
> And that's as far as we're going. We're not going to talk about how far it was or how a tower receives a signal and how close it must have been to where he was actually located.
>
> We're just going to let the jury know that that's where the cell tower is located. And the records show it bounced off of it at the time of the call."

The trial court reserved ruling on the motion until it had read cases that the parties had provided but stated that the location of the cell towers was "certainly circumstantial evidence that the phone caller had to have been somewhere in the proximity of that cell tower, but it is subject to some of the points you raised in terms of other factors." Both parties could pursue the other factors, but "the records of the phone company reflect that this call was made at this time at this date and it came off this cell tower. That's admissible." Defendant agreed with the trial court's statement.

¶ 20 The trial court later resumed argument on the motion. The State explained that, while Reda could be considered an expert, it was not going to call him as an expert and was not going to elicit an expert opinion. The State planned to ask him, "based on the phone records, please identify where this cell tower is located, and that basically would be it." The State further described its planned testimony from Reda as, "I've interpreted the records, and here's the location of the tower, and I physically went out there, and there's a tower there." Reda had written a report describing what he had done and the conclusions that he had drawn.

¶ 21 Defendant defined his position as "the interpretation of the records does require an expert." Defendant explained:

> "Well, I think that what most lay people don't know though is, for instance, when you go from one area to another, sometimes it requires a transfer to one tower. Sometimes, you know, based on the antenna direction or whatever it is, the tower is strong enough that the same tower is strong enough to go many miles.
>
> I think if the—the problem with the officer interpreting—and I agree, I think that's a subject where I think he would be an expert in, even if he's qualified, but now we haven't had a chance to engage an expert to refute possibly what would be deemed expert testimony."

Ultimately, defendant's position was "let the jury draw its own conclusions. The records are in of what cell tower it pinged off of."

¶ 22 The trial court denied defendant's motion, "[g]iven the limited nature of the evidence and the testimony." However, argument continued. The State noted that, while some cellular companies provide in their records an address of the cell towers, Cricket provided longitude and latitude of the towers; what Reda did (put the coordinates into Google Maps to determine the

location of the tower) could be done by any layman. The trial court stated that the court could take judicial notice of latitude and longitude and that such coordinates are actually more precise than a provided address. According to the trial court, such information was not subject to expert opinion— "That is a fact."

¶ 23 Defendant continued his argument:

> "And, your Honor, just a point of clarification, I understand the ruling. So if the officer said, this is what the phone records show, that's fine. I understand. But we don't want to happen is to say the phone records indicate that this phone used a particular cell tower. Let him say he's read these records. It lists cell tower [*sic*]. Okay. But I don't want him to say that these records show that it actually used this cell tower.
>
> * * *
>
> I don't know if Detective Reda has received sufficient training or experience to say, interpret these phone records to say it could have only pinged off that one cell tower."
>
> * * *

The following colloquy then took place:

> "[DEDFENSE COUNSEL]: I just don't want him to say that's the tower this phone used. Let him say the tower is located.
>
> [ASSISTANT STATE'S ATTORNEY]: The record will say that.
>
> THE COURT: That's what the record is. That's being allowed into evidence.
>
> [DEFENSE COUNSEL]: Right. The record doesn't use those exact words, it's a chart. If the jury draws that reasonable conclusion, so be it.

> THE COURT: All right. The ruling stands. Your objection is overruled."

¶ 24 Relevant to this issue, Reda testified that, on the night of the robbery, December 2, 2011, he had looked at the cell phone of Benito-Ortiz and had seen that Benito-Ortiz had called the number (847) 749-7690 at about 9:00 pm, approximately the time of the robbery. This led to Reda's obtaining the cellular records for that number and, subsequently, other numbers found in those records. Reda identified cellular telephone records for telephone numbers belonging to Ross-Emerson (T-Mobile (847) 749-7690), Arroyo (T-Mobile (773) 537-8224), and defendant (Cricket (847) 962-0724). Ross-Emerson's records showed a 34 second call from his phone to defendant's phone at 9:02:20 pm on December 2. Arroyo's records showed a 10 second call to defendant's phone at 9:32:43 that night.

¶ 25 Reda testified that, as a result of a search warrant, he received cellular records that provided him with:

> "cell phone towers in the area that all three—or all the cellular phone would connect to if there was a [p]hone call made. That way, it gives a radius or a distance of where they're at when either a telephone call is received or is placed."

The Cricket records identified which cellular tower was used, and the longitude and latitude of the tower, for each call sent or received. Reda described how he entered the longitudes and latitudes of the towers identified as being used in the two calls received by defendant's phone on the night of December 2 into Google Earth and created aerial views showing the locations of those towers. One exhibit showed the location of the tower involved in the call at 9:02 ("in the area of Pinehurst and Swift Road") as well as the scene of the robbery. Reda testified that,

within Google Earth, he was able to measure the straight-line distance between the two locations and determined that they were 0.81 miles apart. Another exhibit showed the location of defendant's home in Northlake and the tower involved with the 9:32 pm call from Arroyo's phone. Reda was not sure if he measured the distance between the tower and defendant's home. Finally, an exhibit showed "the relationship between" the scene of the robbery and defendant's home.

¶ 26 On cross-examination, Reda testified that he did not know the distance from a tower within which a call must be made, but he did not think that it exceeded three miles. He also did not know over what distance the tower that connected the call gave way to another if the user was moving. He had not been trained in connective technology.

¶ 27 We first note that defendant initially raised the issue of Reda's testimony in the trial court via an oral motion *in limine*. While such an oral motion is not prohibited, "oral *in limine* motions and orders provide fertile ground for confusion; consequently, motions and orders *in limine* should be clearly and specifically outlined in writing." *Stennis v. Rekkas*, 233 Ill. App. 3d 813, 825 (1992). Here, the oral motion has, indeed, resulted in confusion and in detriment to defendant.

¶ 28 Throughout the argument on defendant's motion, his ultimate aim constantly evolved. Defendant's initial objection was "I expect an officer to testify that based on those cell towers, he then mapped out through Google Maps *where the phone could have been in relation to those cell towers*." (Emphasis added.) He then argued that lay persons did not understand that calls may transfer from one tower to another when traveling or that antenna direction and strength affect how many miles a tower may carry a call. Then, while acknowledging that "[t]he records are in of what cell tower it pinged off of," he argued that "I don't want him to say that these records

show that it actually used this cell tower." Later, in his motion for a new trial, defendant described his motion *in limine* as one to bar Reda "from testifying to the distance between the cellular towers referenced in phone records and the alleged crime scene, as determined by 'Google Maps.' " Finally, in his brief before this court, defendant describes his first issue as the trial court erred "by permitting a lay witness to testify about cellular technology and interpret cellular phone records."

¶ 29 Defendant has presented a moving target; his oral motion, arguments in the trial court, and motion for a new trial all differently define the testimony that defendant wanted to bar. His appellate brief attempts to consolidate these and even throws in fragments of the State's closing arguments (none of which were objected to in the trial court) to show why the trial court erred. However, we cannot find an abuse of discretion when defendant was unable to properly present his issue to either the trial court or this court.

¶ 30 While the trial court denied defendant's initial oral motion, we note that the State did not do what defendant sought to prevent with his motion. Defendant moved to prevent the State from presenting testimony that, based on cell towers, Reda mapped out where defendant's phone could have been in relation to those cell towers. The State never introduced any testimony as to the specific location of phones in relation to cell towers. Reda did testify regarding a "radius or a distance of where [cell phones are] at when either a telephone call is received or placed," but the State never asked for that radius or distance. Defendant brought out on cross-examination Reda's testimony that he thought that a call had to be made within three miles of the tower that initially carried the call. Thus, even if the trial court had erred in denying the motion, defendant suffered no prejudice that he did not bring on himself.

¶ 31 In any event, we fail to see how Reda's testimony regarding the cell towers prejudiced defendant in this case. Defendant's theory of the case was that he had left his cellular phone in the van that he loaned to Ross-Emerson at about 7:30 p.m. on the night of the robbery. According to Alison DuBonetti, she and defendant were at Theresa DuBonetti's home in Hoffman Estates at about 9:00 p.m., about the same time as the call from Ross-Emerson to defendant's phone, and again at about 9:30, when Arroyo called defendant's phone. Ginell Gomez and Theresa DuBonetti corroborated these times. As defendant was supposedly not with his cell phone at the times that the calls were made to his phone, per the evidence presented by defendant, the location of the cell towers from which his phone received the calls would be, at worst, irrelevant to his defense.

¶ 32 Further, defendant had already stipulated to the admission of the cellular records that included the locations or coordinates of the relevant cell towers. Reda testified regarding the locations of the cell towers based on the latitude and longitude information provided in the cellular records and plotted the towers, along with two other locations, on satellite photographs. Reda did not testify about "cellular technology," as defendant claims, nor did he "interpret" cellular phone records. He merely plotted the information from cellular records onto several maps. No scientific, technical, or specialized training was required to read those documents or produce the maps; therefore, Reda did not need to be qualified as an expert to testify as he did. See Illinois Rule of Evidence 702 (eff. Jan. 1, 2011) ("If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.").

¶ 33 As defendant does not demonstrate that his defense was compromised by Reda's testimony regarding the towers, we can find no resulting prejudice to defendant. Thus, defendant's claimed error is not supported by the record, and we find no error here.

¶ 34 Defendant next contends that the State made various improper arguments, including vouching for witnesses, attempting to bolster credibility, arguing facts not in evidence, and inserting personal opinion, during its closing arguments. As defendant admits, counsel did not object to most of the complained-of comments and did not raise this issue in defendant's motion for a new trial. Such failure generally results in forfeiture of the issue on appeal. See *People v. Martin*, 408 Ill. App. 3d 891, 893 (2011). However, defendant argues that the plain error rule permits this court to consider this unpreserved error. The plain error doctrine applies when:

> "(1) a clear or obvious error occurs 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 occurs 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).

¶ 35 Our review of the complained-of arguments does not reveal clear and obvious errors of any sort, let alone of such seriousness that they affected the fairness of the defendant's trial and challenged the integrity of the judicial process. Neither do we find the evidence in this case to be so closely balanced that any of these alleged errors, whether singly or in combination, threatened to tip the scales against defendant. Therefore, we will not review this issue under the plain error rule.

¶ 36 III. CONCLUSION

¶ 37 For these reasons, the judgment of the circuit court of Du Page County is affirmed.

¶ 38 Affirmed.