2014 IL App (3d) 120964-U

Order filed July 14, 2014

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2014

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-12-0964 Circuit No. 11-CF-1130
ADRIAN BLALOCK,	)	Honorable Daniel J. Rozak,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Holdridge and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court erred in admitting prior consistent statements of a witness where there had been no charge of fabrication or motive to testify falsely. (2) The court's error was harmless where overwhelming evidence against defendant made clear beyond a reasonable doubt that any rational jury would have found defendant guilty absent the error. (3) The "Court Systems Fee" is properly characterized as a fee rather than a fine.

¶ 2 Following a jury trial, defendant, Adrian Blalock, was convicted of residential arson (720 ILCS 5/20-1.2(a) (West 2010)). Defendant was sentenced to 30 years' imprisonment and was ordered to pay costs and fees, including a $50 "Court Systems Fee." At trial, the State produced

numerous witnesses, including La'Daysia Blalock, defendant's daughter. After testifying as to her observations on the day of the alleged arson, La'Daysia read to the jury a letter she had written to her teacher the day after the arson. The letter was largely duplicative of her previous testimony. Defendant appeals, arguing that the court's decision to admit La'Daysia's prior consistent statement constitutes reversible error. Defendant also argues that the "Court Systems Fee" is actually a fine, and that he is therefore entitled to credit against it. We affirm.

¶ 3 FACTS

¶ 4 On May 18, 2011, defendant was charged by indictment with residential arson (720 ILCS 5/20-1.2(a) (West 2010)). The indictment alleged that on or about May 12, 2011, defendant, while committing arson, partially damaged a building that was the dwelling place of Theresa Mayfield. Defendant's jury trial commenced on June 12, 2012.

¶ 5 The State called La'Daysia Blalock as its second witness. La'Daysia, who was 13 years old at the time of trial, testified that she was with defendant on May 12, 2011, the day of the alleged arson. Defendant had picked her up from her house that day after school to drive her to her uncle's house. While in the car, La'Daysia saw defendant make a telephone call during which defendant was angry and yelling. When defendant received that telephone call, La'Daysia testified, "[defendant] turned around and turned on the highway. He went back on the highway and was driving really fast."

¶ 6 Defendant drove past the home of Mayfield and pulled into a nearby alley. La'Daysia testified that Mayfield had been defendant's girlfriend, that La'Daysia had met Mayfield through defendant, and that La'Daysia had been to Mayfield's residence before. Upon parking in the alley, defendant exited the car and went out of La'Daysia's sight. Later La'Daysia saw defendant "speed walking" back to the car. Once inside the car, defendant spoke on the cellular telephone

with La'Daysia's uncle. La'Daysia described what she heard in that phone conversation: "He said he did it, and he burned her house down. He burned her house down and he didn't say the name."

¶ 7 Defendant drove with La'Daysia to pick up Pamela Blalock, defendant's wife. When defendant and La'Daysia arrived at Pamela's office, defendant told La'Daysia "not to say anything." With Pamela in the car along with La'Daysia, defendant drove past Mayfield's house. La'Daysia testified that the house was on fire, with fire trucks and police officers on the scene.

¶ 8 La'Daysia testified that the day after witnessing Mayfield's home ablaze she wrote a letter to her teacher, Ms. Ford. Over defendant's objection, La'Daysia read the letter aloud in court:

> "Ms. Ford, I can't stop thinking about what had happened yesterday. I was getting home–It says I was getting home from school, and my grandma was there and he came to get us and he came and dropped off my grandma. And he was on the phone yelling at his girlfriend and we was on our way to my uncle's house. And he turned around and went to her house, not exactly to her house but it was behind someone else's house. And I was sitting in the car and he got out–he got out. I had his phone and I called his wife and I was scared, like, I didn't know what to do, and he got in the car and drove off and drove off fast and picked up his wife. And he drove past the house he burned down and he scared me. He was yelling saying he was going to burn it down and left. I didn't know what to do. I called his wife for help. I was so–I was worried.

La'Daysia confirmed that she was referring both to defendant and Mayfield's house in the letter.

¶ 9 Mayfield testified that she met defendant in January of 2011, and in April of that year found out that she was pregnant with defendant's child. Mayfield testified that on the evening of

May 11, 2011, she was at the home of Theresa Gant, her friend, when she received a telephone call from defendant. Defendant told Mayfield that he had gotten into a fight with his wife, and asked Mayfield to come pick him up. Mayfield described defendant as both drunk and angry when she picked him up. They both then went to Mayfield's residence where they began discussing their relationship and Mayfield's pregnancy. Mayfield testified that during this conversation "[defendant] got really angry and he was really upset and I was scared."

¶ 10 The argument continued outside, and defendant urged Mayfield to call Pamela so that Pamela could reassure Mayfield that the relationship between defendant and Pamela was over. Once on the telephone with Pamela, Mayfield requested that Pamela come to her house to pick up defendant because defendant was drunk. Defendant then took Mayfield's cellular telephone and threw it into the street. Mayfield testified that as she tried to walk away, defendant threatened her:

> "He told me if I don't go back in the house that he was going to tear my shit up, and then he said if he catches me back in the house he's going to put a bullet into my head. Then I kept walking, and he said if you don't come back to this house I'm gonna burn the bitch down."

¶ 11 Mayfield then drove to Family Dollar, where she worked with Gant, and the two then drove to Gant's house. That night, defendant showed up at Gant's house. Mayfield testified that defendant was in the front yard of Gant's house, along with Gant and Gant's husband, but that she did not hear what was said because she remained inside.

¶ 12 The next day, Mayfield called the police before returning home. A police officer met Mayfield outside of her home. Upon arriving, Mayfield noticed that three bricks were stacked outside of her front window and that the lock on that window had been broken. Mayfield went

into the residence, accompanied by the police officer, and noticed that numerous things inside had been destroyed, including mirrors and electronics. As Mayfield described it, "anything in my room and the living room that could be broken, was." Mayfield then went to the Will County courthouse, and was there when Gant called her to inform her that there had been a fire at her residence.

¶ 13 Gant testified that she became friends with Mayfield in February of 2011 and that she had known defendant for 20 years. Shortly after Gant arrived at her house with Mayfield on the night of May 11, 2011, defendant arrived at the house. Gant testified that while in the front yard of the house, defendant said "[t]hat he was going to blow her head off." Gant's husband told defendant to leave, and defendant complied. The next day, while working at Family Dollar, Gant received a telephone call from defendant. Gant described the conversation: "I asked him why he was doing the things he was doing, and he told me that I hadn't seen yet–I haven't seen anything yet. This is not a game. He's going to blow her car and her house up."

¶ 14 The State also called Shawn Carroll, a firefighter paramedic and fire investigator with the Joliet fire department. Carroll testified as an expert in the field of fire investigation and the determination of cause and origin of fires. Carroll stated that on May 12, 2011, at approximately 4:30 p.m.,[1] he was called out to Mayfield's address. Upon arriving at the scene, Carroll conducted an investigation into the origin and cause of the fire. Carroll concluded that the fire had originated in Mayfield's unit and that the fire had been set intentionally.

¶ 15 Prior to trial, the State filed a motion *in limine* seeking to introduce evidence of defendant's prior acts. Specifically, the State sought to introduce that defendant had committed

[1] State's witnesses David Remer of the Joliet police department and Ron Schroeder of the Joliet fire department also testified that they were first called to the scene at approximately 4:30 p.m.

arson in 1993 and aggravated arson in 1999. The court allowed the State to present evidence of the 1993 arson for the purposes of showing *modus operandi*, motive, intent, knowledge and absence of mistake on the part of defendant. The court allowed the State to present evidence of the 1999 aggravated arson for the same purposes with the exception of *modus operandi*.

¶ 16 Louis Silich testified that in 1993 he was a police officer for the City of Joliet. In February of that year, Silich investigated a fire at the residence of Cassandra Person. In his investigation Silich learned that Person had been defendant's girlfriend. After an argument between defendant and Person occurring at Person's residence, Person told defendant that they should not be going out anymore. Person then left the residence with a former boyfriend. According to Silich:

> "[Defendant] stated after they left he went down to the kitchen and found a black apron with pink flowers on it. He threw it on top of the stove burner and cut on the gas. It started fire. He walked up the stairs to the second floor, went to the front master bedroom, which was Ms. Person's bedroom, and he threw the burning apron on top of the bedspread and the furry pillows. He stated that it caught on fire and that he found a pair of sweatpants on the floor. He took those sweatpants, started those on fire, and walked to the back bedroom, which was the bedroom of the children, and he threw that on top of the bedspread."

¶ 17 Dwayne Weis testified that in 1999 he worked for the Joliet police department and that in September of that year his assignment was with the arson task force. Weis testified that in the course of his investigation of a fire he interviewed defendant. Defendant told Weis that he had been in a van in Chicago with three other individuals. After an argument inside the van, defendant was kicked out. Defendant received a ride back to Joliet from his cousin, and then

went to the home of the individual who kicked him out of the van. Another argument ensued on the front lawn of the home, at which point defendant left to retrieve a gas can from his own home. Weis testified that defendant "[s]tated he went back to [the individual's home] and found what appeared to be a piece of rubber or carpeting and put gasoline on the carpeting." Defendant lit the piece on fire and threw it on top of the porch in front of the building and also in the rear of the building.

¶ 18 The defense's only witness was Pamela Blalock. Pamela testified that she and defendant spent the night of May 11, 2011, at her home, and that defendant dropped her off at work the next morning. Pamela saw defendant around noon that day when he brought lunch to her office. Defendant and Pamela spoke on the telephone multiple times while Pamela was at work, including once around 3 p.m., when Pamela informed defendant of some possible job openings at warehouses. Pamela testified that "soon after" that conversation, defendant picked up Pamela so they could drive to those warehouses. On the way, Pamela and defendant drove past Mayfield's street. Pamela initially estimated that this occurred around 3:30 p.m., but she later stated—on both direct and cross-examination—that defendant picked her up from work at exactly 4:33 p.m. The pair drove past the street again on the way back from the warehouses, at which point Mayfield's street had been blocked off. Pamela stated on direct examination that La'Daysia was with defendant when he picked her up from work, but stated on cross-examination that defendant was alone.

¶ 19 In closing argument, the State discussed the testimony of six witnesses—including Mayfield, Gant, Carroll, and Pamela—before detailing the testimony of La'Daysia. The State emphasized how difficult it was for La'Daysia, given her age, to read the letter in court. On rebuttal, addressing defense counsel's argument that La'Daysia's memory was unreliable, the

State remarked that "[t]he letter was consistent with [La'Daysia's] testimony, and it shows you that her testimony was true."

¶ 20 The jury found defendant guilty of residential arson. Defendant was sentenced to 30 years' imprisonment and was ordered to pay costs and fees. The judgment order indicated that defendant was to be credited for 483 days' presentence incarceration. An order was subsequently entered against defendant for various assessments, including a $50 "Court Systems Fee." No credit was put toward the court systems fee. Defendant appeals.

¶ 21 ANALYSIS

¶ 22 On appeal, defendant argues that the court committed reversible error in admitting La'Daysia's reading of the letter because the letter was a prior consistent statement. Defendant also argues that the court systems fee is actually a fine, and that he is therefore entitled to credit against it.

¶ 23 I. Prior Consistent Statement

¶ 24 We review a trial court's admission of a prior consistent statement under an abuse of discretion standard. See *People v. Caffey*, 205 Ill. 2d 52 (2001). "An abuse of discretion will be found only where the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court." *Id*. at 89.

¶ 25 It is well-settled in Illinois that witnesses' prior consistent statements are generally inadmissible. *People v. Miller*, 302 Ill. App. 3d 487 (1998). This rule applies because the "[a]dmission of such testimony would 'unfairly enhance a witness' credibility because a jury is more apt to believe something that is repeated.' " *Id*. at 492 (quoting *People v. Montgomery*, 254 Ill. App. 3d 782, 792 (1993)). As an exception to this general rule, prior consistent statements may be admitted where there is a charge that testimony has been recently fabricated or that the

witness has a motive to testify falsely. *People v. Harris*, 123 Ill. 2d 113 (1988). "Evidence of a prior consistent statement is not admissible, though, to rebut a charge of mistake or inaccuracy." *Miller*, 302 Ill. App. 3d at 492.

¶ 26 In the case at bar, La'Daysia's testimony was plainly consistent with the substance of the letter she had written more than a year earlier. The reading of the letter also did not fall under any exception to the rule prohibiting admission of prior consistent statements, as there had been no charge of fabrication or motive to lie. Though the State does not concede that the admission of the letter was erroneous—as defendant posits in his reply—it proffers no argument to the contrary. We find that the court erred in admitting La'Daysia's letter to her teacher.

¶ 27 Where, as here, a defendant has preserved an issue for review, we conduct a harmless error analysis. *People v. Thompson*, 238 Ill. 2d 598 (2010). An error in the trial court will be deemed harmless if the State can show beyond a reasonable doubt that a rational jury would have found the defendant guilty had the error not occurred. *People v. Thurow*, 203 Ill. 2d 352 (2003). Our supreme court has prescribed three options for addressing the question of harmlessness:

> "When deciding whether error is harmless, a reviewing court may (1) focus on the error to determine whether it might have contributed to the conviction; (2) examine the other properly admitted evidence to determine whether it overwhelmingly supports the conviction; or (3) determine whether the improperly admitted evidence is merely cumulative or duplicates properly admitted evidence." *In re Rolandis G.*, 232 Ill. 2d 13, 43 (2008).

¶ 28 Within the context of improperly admitted prior consistent statements, a number of factors may be considered in assessing whether the error affected the outcome of the case. See *Miller*, 302 Ill. App. 3d 487. An error is more likely to affect the outcome if the statement is

admitted as substantive evidence or if the statement is mentioned in closing argument. An erroneously admitted prior consistent statement is more likely harmless if: (1) it is merely cumulative, and other evidence supports the jury's conclusions; (2) it is attested to by the party who made it, rather than a third party; or (3) the evidence is not closely balanced. *Id.*

¶ 29 We find that the other evidence introduced in the case *sub judice* is sufficiently overwhelming so as to render the error in admitting La'Daysia's letter harmless. Both Mayfield and Gant provided thorough, detailed, and consistent testimony as to the events on May 11 and 12, 2011. This testimony included specific threats that defendant made to kill Mayfield and to burn her house down. Less than 24 hours after defendant threatened to tear Mayfield's things up and burn her place down, her home was ransacked and subsequently burned. As Carroll testified, the fire was started intentionally from inside Mayfield's unit. The jury also heard evidence of previous arsons committed by defendant, both of which arose from defendant's altercations with others. While these prior acts are not taken as evidence that defendant committed this arson, they are compelling evidence of defendant's *modus operandi* and intent. Meanwhile, the defense's lone witness in the case did little, if anything, to refute any of the evidence offered by the State. The most telling revelation from Pamela's internally contradictory testimony was that she apparently did not see defendant from noon until 4:33 p.m. on the day in question, the timeframe in which the fire was started.

¶ 30 Though harmless error review requires us to speculate as to the result of the case absent the reading of La'Daysia's letter, La'Daysia's original testimony remains. La'Daysia testified that she saw defendant become angry, at which point he drove to Mayfield's house and left the car. After defendant returned to the car at a brisk pace, she heard him admit over the telephone that he had just burned a house down. In our analysis here, unlike at trial, La'Daysia's credibility is

not bolstered by her prior consistent statement. Yet nothing on the record gives us reason to doubt La'Daysia's credibility. Despite her age, La'Daysia's testimony was detailed and consistent, and she made no indication that she had any difficulties recalling the events from 13 months prior. The only piece of La'Daysia's testimony that was even partially contradicted by other evidence was her statement that she was with defendant when he picked up Pamela after work. While Pamela testified on cross-examination that defendant was alone when he picked her up, that was only after she had testified on direct examination that La'Daysia was with him. We find that even absent her reading of the letter, La'Daysia Blalock was a credible and compelling witness against defendant.

¶ 31 We do note that the error in admitting La'Daysia's letter was compounded when the State referenced the letter in its closing and rebuttal arguments. For the reasons set forth above, however, this alone does not support defendant's contention that the letter was therefore crucial to the jury's verdict. Indeed, while the *Miller* court listed a number of factors to be balanced in determining the prejudice flowing from the admission of a prior consistent statement—factors which point in both directions in the case at hand—the ultimate issue in harmless error review is whether the verdict would have remained the same absent the error. Given the overwhelming evidence against defendant in this case, we find that it is beyond a reasonable doubt that the jury would have found defendant guilty even without the reading of La'Daysia's letter. The error in admitting the letter is therefore harmless.

¶ 32 II. Court Systems Fee

¶ 33 Any defendant incarcerated on a bailable offense is entitled to a credit of $5 for each day he remains incarcerated prior to sentencing, with this credit being applied to any fines that may be imposed upon the defendant. 725 ILCS 5/110-14 (West 2010). The State does not dispute

that the residential arson charged in this case was a bailable offense. See 725 ILCS 5/110-4 (West 2010) (defining bailable offenses). Defendant contends that the "Court Systems Fee" is actually a fine, and that he is therefore entitled to credit against it. Though defendant did not raise this issue in his posttrial motion, the State has not made any forfeiture argument.

¶ 34 A fee is a charge designed to compensate the State for expenditures incurred in the prosecution of a defendant. *People v. Graves*, 235 Ill. 2d 244 (2009). A fine is punitive in nature, " ' "a pecuniary punishment imposed as part of a sentence on a person convicted of a criminal offense." ' " *Id*. at 250 (quoting *People v. Jones*, 223 Ill. 2d 569, 581 (2006), quoting *People v. White*, 333 Ill. App. 3d 777, 781 (2002)). A charge that is labeled as a fee may nevertheless be a fine. *Graves*, 235 Ill. 2d 244. We review a trial court's imposition of fines and fees *de novo*. *People v. Marshall*, 242 Ill. 2d 285 (2011).

¶ 35 The court systems fee is imposed under section 5-1101(c)(1) of the Counties Code. 55 ILCS 5/5-1101(c)(1) (West 2010). Entitled "Additional fees to finance court system," the relevant subsection provides that "[t]he proceeds of all fees enacted under this Section must *** be placed in the county general fund and used to finance the court system in the county[.]" 55 ILCS 5/5-1101(g) (West 2010).

¶ 36 In *Graves*, 235 Ill. 2d 244, a case relied on heavily by defendant, our supreme court held that certain "fees" under section 5-1101 were actually fines. Specifically, the court found that a mental health court fee and a youth diversion/peer court fee were fines when assessed against a defendant convicted of possession of a stolen motor vehicle, because there was no relevant connection between the offense and mental health or juvenile justice. *Id*. Similarly, in *People v. Jones*, 223 Ill. 2d 569 (2006), the court held that a $5 charge—paid by defendants convicted of driving under the influence and remitted to the Spinal Cord Injury Paralysis Cure Research Trust

Fund—was a fine because it was not intended to reimburse the State for costs incurred in the defendant's prosecution. Relying on these cases, defendant contends that the court system fee is a fine because it is imposed without regard for the specific offense committed.

¶ 37 The fines in *Graves* and *Jones* are easily distinguishable from the court systems fee. A defendant who pays money to a mental health court or a juvenile justice system is clearly not compensating the State for his prosecution where his prosecution involved neither of those systems. The same is true of a contribution to paralysis research. In the case at hand, however, the $50 court system fee was put toward funding the court system. Defendant—like all defendants—was prosecuted in the court system, which naturally consumed court resources. The court systems fee, therefore, can fairly be characterized as compensation for those court resources used in defendant's prosecution. We find that the court systems fee is, indeed, a fee.

¶ 38 CONCLUSION

¶ 39 The judgment of the circuit court of Will County is affirmed.

¶ 40 Affirmed.