2012 IL App (4th) 110418-U

NO. 4-11-0418

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
November 1, 2012
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
STEVEN D. STUMP,	)	No. 10CF1210
Defendant-Appellant.	)	
	)	Honorable
	)	Holly F. Clemons,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Cook and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court held (1) evidence of police officer's prior contact with defendant did not require plain-error review, and (2) defendant was not denied the effective assistance of counsel.

¶ 2 On July 16, 2010, the State charged defendant, Steven D. Stump, by information with the offense of driving while license revoked (DWR) (subsequent offense), a Class 4 felony (625 ILCS 5/6-303(d-3) (West 2010)). The information alleged defendant had three prior convictions of section 6-303(a) of the Illinois Vehicle Code (Vehicle Code) (625 ILCS 5/6-303(a) (West 2010)). In February 2011, after a trial, a jury found defendant guilty of DWR. In March 2011, the trial court sentenced defendant to 18 months' imprisonment.

¶ 3 On appeal, defendant argues (1) testimony by the arresting officer she had prior knowledge defendant's license was revoked constituted plain error; and (2) defendant's trial

counsel was ineffective for failing to object to the officer's testimony and eliciting testimony from defendant confirming prior contacts with the arresting officer. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 The State charged defendant with the offense of DWR (subsequent offense), a Class 4 felony (625 ILCS 5/6-303(d-3) (West 2010)). The information alleged defendant had three prior convictions of section 6-303(a) of the Vehicle Code (625 ILCS 5/6-303(a) (West 2010)).

¶ 6 In February 2011, a jury trial was held. Officer Kristina Trock testified she had been with the Champaign police department for nine years, and on the morning of June 23, 2010, she was in a marked patrol car sitting at the corner of an intersection in Champaign. She observed a full-size white conversion van drive by and recognized the vehicle. Specifically, as pertinent to this appeal, Trock testified,

> "I recognized that van and I recognized the driver. The driver I recognized as Steven Stump. He is a black male. There was a black male driving. I recognized that subject on sight."

Trock then identified defendant, in open court, as the driver of the van. Trock testified she did not see anyone in the passenger seat of the van. The assistant State's Attorney then asked, "So, you recognized [defendant] from prior interactions; is that correct?" Trock then answered,

> "I had prior knowledge that he did not have a driver's license in the past, that his privileges had been either suspended or revoked. At this time I pulled out from my location, tried to get behind his car, and I checked his driver's license through LEADS,

SOS, to insure that it was indeed revoked prior to stopping him."

As Trock followed defendant, she inputted his name and birth date into the computer to search his license status. The search showed defendant's license as revoked, and Officer Trock effected a traffic stop and defendant pulled into a driveway. As Trock approached the van, defendant was attempting to get out of the driver's seat. They got into an argument because defendant complained Trock had no reason to stop him and Trock explained she stopped him because his license was revoked. Trock testified, "I told him I just checked his driver's license prior to stopping him, I said, but, you know, I said 'Since I know you—' and he had another argument that I did not know him, and I told him I knew him on sight." Additionally, defendant told Trock he was driving and had to drive to a funeral.

¶ 7 On redirect, Trock testified during her discussion with defendant as to whether she recognized him, she "explained to him in the past that we have had contacts and this, X, Y, and Z, this is how I know you." At no point did defendant talk about having gone to Dunkin Donuts or leaving coffee in the van.

¶ 8 After Trock's testimony, the State introduced defendant's driver's abstract from the Illinois Secretary of State. Only the portion reflecting that on June 23, 2010, a revocation was in effect was published to the jury.

¶ 9 Patrice Rozelle testified she drove defendant to Dunkin Donuts to get coffee. Rozelle drove "[b]ecause [defendant] doesn't have his license." After getting coffee, she drove to a friend’s house and immediately went into the house. She did not notice a police car when she pulled into the driveway, and defendant stayed outside with a friend. After approximately 5 to 15 minutes, Rozelle saw defendant and three police officers talking. Rozelle did not ask defendant

why the officers were talking to him because "it wasn't my business." On cross-examination, Rozelle testified she never left the house to see what the commotion was about. She testified she never went outside to tell the officers she was driving or ask why they were towing her car. On cross-examination, she testified she responded to defendant's explanation of the events, as "I'm kind of mystified because I don't understand how come I wasn't asked outside."

¶ 10 Defendant testified Rozelle drove him to Dunkin Donuts to get coffee. On the way back, defendant noticed a police car sitting on the street. Rozelle pulled into the friend's driveway and they both exited the vehicle. Defendant traveled around the front end of the van and then opened the driver's door to reach in and retrieve his coffee from the middle-console cup holder. When defendant stepped on the van's running board, a police car pulled into the driveway. On direct examination, defendant testified, as pertinent to this appeal,

> "Q. [By defense counsel:] Okay. Have you had interactions with this police officer before?
>
> A. Yes, sir, I have.
>
> ***
>
> Q. Has she issued you some traffic violations before?
>
> A. Yes, she have [*sic*].
>
> Q. Okay. Did you recognize her from previous contacts then, traffic contacts?
>
> A. Well, I recognize her from the previous ticket that she wrote me.
>
> Q. Okay.

A. Because we had an argument then."

¶ 11 The jury found defendant guilty of DWR. At the March 2011 sentencing hearing, the State presented evidence of defendants' three prior DWR convictions. The trial court sentenced defendant to 18 months' imprisonment.

¶ 12 This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 On appeal, defendant argues (1) testimony by the arresting officer she knew, from prior contacts, defendant's license was revoked constituted plain error, and (2) defendant's trial counsel was ineffective for failing to object to the officer's testimony and eliciting testimony from defendant confirming prior contacts with the arresting officer. The State responds (1) error did not occur because Trock's testimony did not imply defendant had a prior criminal record and was admissible to prove defendant's identity, and (2) defendant's trial counsel was not ineffective for failing to object to the prior contact testimony. We agree with the State.

¶ 15 A. Defendant’s Claim Trock's Testimony Is Other-Crimes Evidence

¶ 16 Defendant contends Trock's testimony informed the jury he had previously driven while his license was revoked. Specifically, defendant argues Trock "would only have had occasion to learn the status of [defendant's] driving privileges if she had stopped him while [defendant] was driving," and her testimony was not relevant. At trial, defendant did not object to Trock's testimony she had prior contact with defendant, and he has forfeited this argument (*People v. Outlaw*, 388 Ill. App. 3d 1072, 1089, 904 N.E.2d 1208, 1223 (2009)). Defendant argues we should review this testimony under the first prong of the plain-error doctrine because "[t]he evidence was close in this case because the outcome depended entirely on whom the jury

believed." We disagree.

¶ 17 Plain error allows a reviewing court to reach a forfeited error affecting substantial rights in two circumstances: (1) "where the evidence in a case is so closely balanced that the jury's guilty verdict may have resulted from the error and not the evidence," or (2) "where the error is so serious that the defendant was denied a substantial right, and thus a fair trial." *People v. Herron*, 215 Ill. 2d 167, 178-79, 830 N.E.2d 467, 475 (2005).

¶ 18 "[E]vidence of other crimes is admissible if relevant for any purpose other than to show a defendant's propensity to commit crimes." *People v. Dabbs*, 239 Ill. 2d 277, 283, 940 N.E.2d 1088, 1093 (2010). Permissible purposes include showing defendant's identity. *Id.* "Although the erroneous admission of other-crimes evidence ordinarily calls for reversal, the evidence must have been a material factor in the defendant's conviction such that, without the evidence, the verdict likely would have been different." *People v. Hall*, 194 Ill. 2d 305, 339, 743 N.E.2d 521, 541 (2000).

¶ 19 "[A] police officer's testimony of his or her prior acquaintance with a defendant should be avoided unless somehow relevant." *People v. Anderson*, 325 Ill. App. 3d 624, 635, 759 N.E.2d 83, 93 (2001). However, "evidence that the arresting officer was previously acquainted with defendant does not necessarily imply a criminal record." *People v. Stover*, 89 Ill. 2d 189, 196, 432 N.E.2d 262, 266 (1982).

¶ 20 Defendant argues Trock's testimony is other-crimes evidence as it "served only to inform the jury [defendant] had a propensity to drive while his license was revoked." The record does not support defendant's argument her testimony is other-crimes evidence. First, Trock testified she "had prior knowledge that [defendant] did not have a driver's license in the past, that

his privileges had been either suspended or revoked," and she knew him from past contacts. Defendant's other-crimes-evidence argument rests on the premise: Trock's testimony of prior contact with defendant concerned defendant's license being revoked. In other words, defendant contends as Trock's prior contacts with defendant concerned him driving with his license revoked, then her testimony about prior contacts is tantamount to testimony about prior criminal conduct. This argument is built on a flawed premise as Trock never testified as to the nature of her prior contact with defendant.

¶ 21 We do not agree Trock's testimony concerned other-crimes evidence. First, Trock's testimony did not directly reference defendant's prior criminal or driving history. Trock testified she had prior knowledge defendant "did not have a driver's license in the past." This testimony does not explicitly state defendant did not have a driver's license in the past because his license was revoked or suspended. While Trock did testify defendant's driving "privileges had been either suspended or revoked," it is not clear whether Trock's testimony was referencing knowledge of a prior revocation or prior knowledge of the current revocation, why defendant's license was revoked or suspended, or how she knew this fact. Further, her testimony did not state the nature of her prior contact with defendant, which could have arisen from noncriminal activities. Taken in context, Trock's testimony only concerned her prior knowledge of defendant's license status and ability to identify defendant, it did not imply a prior criminal history. Second, defendant testified he recognized Trock "from the previous ticket that she wrote me." Again, defendant's statements do not state the nature of his prior contact with Trock or whether the "ticket" concerned DWR, a traffic violation, or another infraction. In sum, neither Trock's nor defendant's testimony implicates a history of DWR or served as other-crimes

evidence.

¶ 22 Assuming *arguendo* Trock and defendant's testimony concerned other-crimes evidence, it was relevant for a permissible purpose. Trock's testimony was relevant to show how she identified defendant, and why she followed him. Simply, Trock saw defendant driving—knew he had previously had his license revoked or suspended—and she checked the computer database to determine his current license status. After finding defendant's license was revoked, she facilitated a traffic stop. Her testimony she knew defendant "on sight" supported her identification of him driving and contradicted defendant's evidence he was not driving. As such, her testimony was relevant to show how she identified defendant and to her reasonable suspicion to believe defendant was engaged in criminal activity.

¶ 23 Further, we do not find the evidence of defendant's guilt so closely balanced the jury's verdict may have resulted from the purported error and not the evidence. The jury was informed only defendant's license was revoked on the date of the offense and was not provided with his full driver's abstract showing prior DWR convictions. Neither Trock nor defendant testified as to the nature of their prior contact and defendant's reference to a prior "ticket" was cryptic. The evidence showed defendant drove past Trock as she sat in her police vehicle and she proceeded to check his license status and facilitate a traffic stop. As the State points out, defendant and Rozelle's testimony were inconsistent and "simply too incredible." The jury could reasonably find their credibility lacking not because of oblique references to prior police contact and "tickets" but because their testimony was unbelievable. Because the evidence is not closely balanced, plain-error review does not apply in this case. We conclude the effect of Trock's testimony—if the jury even drew the inference of prior criminal conduct—was not a material

factor in defendant's conviction, such that the verdict likely would have been different without the evidence. See *Hall*, 194 Ill. 2d at 339, 743 N.E.2d at 541 ("If it is unlikely that the error influenced the jury, reversal is not warranted.").

¶ 24 B. Defendant's Ineffective-Assistance-of-Counsel Claim

¶ 25 Defendant argues his trial counsel's (1) failure to object to Trock's testimony in the State's case in chief and (2) permitting him to testify about a previous ticket issued by Trock deprived him of effective assistance of trial counsel. Specifically, defendant contends "[p]ermitting the jury to learn that [defendant] had previously driven while his license was revoked" resulted in a reasonable probability the outcome of the trial would have been different. The State responds defendant did not suffer prejudice by the alleged errors. We agree with the State.

¶ 26 Ineffective-assistance-of-counsel claims are judged under the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). To establish ineffective assistance of counsel, a defendant must demonstrate (1) counsel's performance was deficient, and (2) the deficient performance prejudiced the defense. *Strickland*, 466 U.S. at 687. A strong presumption exists that defense counsel's performance was not deficient (*Strickland*, 466 U.S. at 689), and the second prong requires a reasonable probability "the result of the proceeding would have been different" (*People v. Klepper*, 234 Ill. 2d 337, 350, 917 N.E.2d 381, 387 (2009)).

¶ 27 While we agree with defendant "prejudice resulting from propensity evidence is particularly great where that evidence shows the defendant has previously committed the same offense for which he is being tried," this is not such a case. As previously discussed, defendant's argument Trock's testimony concerned other-crimes evidence is premised upon a fact not

testified to—her previous contact concerned defendant's history of driving while his license was revoked. Trock's testimony does not reveal any detail about her previous contact with defendant and as such there is no clear implication the prior contact concerned defendant's criminal or driving history. Additionally, defendant's obscure reference to knowing Trock from a previous "ticket" did not indicate the nature of the "ticket." An element of the charge itself, the fact defendant's license was revoked, implies previous driving misconduct more clearly than either Trock's or defendant's testimony. Other than the State's exhibit showing defendant's license was revoked on June 23, 2010, no evidence showed defendant had previously driven while his license was revoked or suspended. We do not find defendant's trial counsel deficient for failing to object to Trock's testimony or permitting defendant to testify he knew Trock from a previous "ticket." Further, as previously discussed, the prior contact testimony did not prejudice defendant as the entirety of the evidence affirmatively established defendant's guilt. We reject defendant's ineffective-assistance-of-counsel claim.

¶ 28 III. CONCLUSION

¶ 29 For the foregoing reasons, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 30 Affirmed.