2012 IL App (4th) 110656-U

NO. 4-11-0656

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
December 6, 2012
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Livingston County
CAREY PETTIGREW,	)	No. 09CF46
Defendant-Appellant.	)	
	)	Honorable
	)	Mark A. Fellheimer,
	)	Judge Presiding.

JUSTICE Appleton delivered the judgment of the court.
Presiding Justice Steigmann and Justice Turner concurred in the judgment.

ORDER

¶ 1 *Held*: The State's question during *voir dire* did not constitute plain error, and defendant was not denied the effective assistance of counsel.

¶ 2 In February 2009, the State charged defendant, Carey Pettigrew, with aggravated battery of a correctional officer, a Class 3 felony (720 ILCS 5/12-4(a), (b)(18), (e)(1) (West 2008)). In January 2011, a jury convicted defendant of aggravated battery of a correctional officer. In April 2011, the trial court sentenced defendant to seven years in prison.

¶ 3 Defendant appeals, arguing he was denied his right to a fair trial when the State biased the jury by ensuring, during *voir dire*, that the jurors agreed everyone has "a right to be safe at work." We affirm.

¶ 4 I. BACKGROUND

¶ 5 In August 2008, defendant was an inmate at Pontiac Correctional Center (Pontiac).

Officer Joseph Lewis, a correctional officer at Pontiac, testified that in the late afternoon of August 25, 2008, he, Officer William Woods, Lieutenant Lance Evans, defendant, and a medical technician were all present in the north segregation room of Pontiac. Lewis testified defendant was being combative, so he and Woods attempted to control defendant and prevent him from kicking people by restraining his legs with shackles. While being shackled, defendant began to roll from his stomach to his side and kicked Lewis in "the legs and the knees, upper thigh area."

¶ 6 Woods, Evans, and the medical technician all testified they saw defendant kick Lewis. William Troyer, an investigator for internal affairs at Pontiac at the time of the incident, testified that defendant admitted kicking Lewis. Troyer testified defendant told him "he was trying to kick [Lewis] in the head" but that he had "actually kicked [him] in the right leg."

¶ 7 On February 13, 2009, the State charged defendant with aggravated battery of a correctional officer, and defendant proceeded to a jury trial. On January 19, 2011, the trial court empaneled a jury. During *voir dire*, the State asked the following questions of the potential jurors:

> "Now, does everybody here, this is—the allegation in this case is an aggravated battery that occurred out at the prison. Does everybody here agree that crime in the streets, excuse me, that a crime in the streets is the same as a crime in prison? In other words, a battery can happen in the street just like it can in a prison. If you don't disagree with that, would you raise your hand?
>
> No hands are raised.
>
> Does everybody agree that no matter what you do, whether you work at a prison or whether you work at a Dairy Queen, whether

you work at wherever, or whether you work for a judge or anything like that, that you have a right to be safe at work? If you don't agree [with] that proposition, can you raise your hands?

No hands are raised."

Defendant did not make an objection to the State's questioning of the jury. The final pool of jurors was selected from the panel of potential jurors that were asked the above question.

¶ 8 After empaneling the jury, the trial court brought 14 potential jurors back into the courtroom to select an alternate juror. Before selecting the alternate juror, defendant's counsel requested "that no question be allowed to be asked in *voir dire* that refers to the right to be safe at work." The following exchange then took place between defense counsel, the State, and the court:

"[THE DEFENSE]: First of all, there is no such, I mean, right, or codified, all people have a right to be safe. It's a crime to batter somebody, but to ask that, to refer to that, to ask it in such a way, I think unduly prejudices the defendant, potentially puts the jurors in a frame of mind that would be unfair, and I would ask that the State refrain from asking that and making reference to that.

THE COURT: Any position, [prosecutor]?

[THE STATE]: Yes, your Honor. I don't think that makes any sense. There's a reason why it's a crime, because you have an inherent right to be safe when your own body, you know, not assaulted by other people [*sic*]. The question could be rephrased if that's what the court and counsel think would be appropriate to do.

> You have a right not to be attacked or battered while at work. I mean, that's perfectly relevant.
>
> I don't know if it's a question of a right, I think, the phraseology that [defense counsel] has a problem with, the terminology of a right, or alternatively, that I'm not really sure exactly what the basis is.
>
> THE COURT: Im going to grant it in part and deny it in part. I think that there's two questions that were asked in *voir dire*. I think the question really is whether because it occurs in a correctional facility makes it any different than it would if it were some other place of employment. Really, does that make a difference in a prospective juror's mind? But I think as far as the question do you have the right to be safe at work, I'll grant the defense motion as it relates to that, but the [S]tate can still inquire as it relates to the difference, if there is, if any, in the jurors' minds whether it occurred in the Department of Corrections versus some other place of employment."

The court then selected an alternate juror.

¶ 9 The jury convicted defendant of aggravated battery of a correctional officer. The trial court sentenced defendant to seven years' imprisonment.

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 On appeal, defendant argues he was denied his right to a fair trial when the State biased the jury by ensuring, during *voir dire*, that the jurors agreed everyone has "a right to be safe at work."

¶ 13 Initially, the State argues defendant has forfeited this argument by failing to object during *voir dire* and failing to include the issue in a posttrial motion. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (requiring a defendant to raise any alleged error both at trial and in a posttrial motion to preserve the issue for appellate review). Defendant admits he failed to object to the State's questioning during *voir dire* and did not include the issue in a posttrial motion. Defendant, however, urges this court to review his otherwise forfeited claim under the plain error doctrine. See *People v. Bannister*, 232 Ill. 2d 52, 65-66 (2008) (invoking the plain error doctrine on appellate review where the defendant procedurally forfeited review of the alleged errors).

¶ 14 The plain error doctrine allows this court to review a forfeited issue affecting a defendant's substantial rights (1) where the evidence is so closely balanced or (2) the error is so serious that the defendant was deprived of a fair trial. *People v. Herron*, 215 Ill. 2d 167, 178-79 (2005). Under the first circumstance, defendant must prove prejudicial error by showing that plain error occurred and "the evidence was so closely balanced that the error alone severely threatened to tip the scales of justice against him." *Herron*, 215 Ill. 2d at 187. Under the second circumstance, prejudice to defendant is presumed. *Herron*, 215 Ill. 2d at 187.

¶ 15 Here, defendant argues the error was so serious that defendant was deprived of his right to a fair trial. Defendant alleges the trial court erred by failing to ensure the jury selection was conducted fairly when it allowed the State to ask the jury a question that biased them. Defendant

contends the State indoctrinated the jurors by leading them to believe every person has a fundamental right to be safe at work. This indoctrination, defendant claims, was highly prejudicial to him because it alluded to the jury that defendant deprived the victim of a nonexistent fundamental right, and thus, biased the jury.

¶ 16 The State argues the question directed to the jury was not an attempt to indoctrinate the jury but was rather an effort for the State to uncover potential prejudice: whether the jurors believed it was a correctional officer's job to be battered. The State argues the question did not have any affect on the impartiality of defendant's trial. We agree.

¶ 17 The State's question did not give the jury an inappropriate preview of the evidence. See *People v. Mapp*, 283 Ill. App. 3d 979, 989 (1996) (finding prosecutorial error where the State gave the jury an inappropriate preview of the evidence). The State was charging defendant with aggravated battery of a correctional officer, so the jury presumably already knew the alleged victim had been battered in his workplace. Nor did the State make statements about its personal opinion or make muddled, incomplete, or misleading statements of law. See *Mapp*, 283 Ill. App. 3d at 989 (finding prosecutorial error where the State gave its personal opinion and made muddled, misleading, and incomplete statements of law). Moreover, the State did not try to indoctrinate the jury as to the State's theory. See *People v. Bell*, 152 Ill. App. 3d 1007, 1017 (1987) (concluding the State improperly questioned the jurors where it served to indoctrinate the jurors as to its theory). The record shows the State's only theory was that defendant knowingly made physical contact of an insulting or provoking nature with Lewis, knowing he was engaged in the execution of his official duties. The record does not show the State's theory was that every person has a right to be safe in the workplace.

¶ 18 The State further argues that the evidence here was not so closely balanced. We agree. Four witnesses testified defendant kicked Lewis, and a fifth witness testified that defendant had admitted trying to kick Lewis in the head but instead "kicked [him] in the right leg." Defendant put on no evidence after the State rested. So even if any error had occurred, the evidence here was not so closely balanced that it tipped the scales of justice against defendant.

¶ 19 Additionally, because we have found no error, we need not address defendant's ineffective-assistance-of-counsel claim. See *People v. Towns*, 157 Ill. 2d 90, 106 (1993) (where a defendant has not shown prejudice based upon the claimed error, his ineffective-assistance claim can be disposed of without deciding whether counsel's representation fell below an objective standard of reasonableness).

¶ 20 III. CONCLUSION

¶ 21 For the reasons stated, 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.

¶ 22 Affirmed.