2014 IL App (4th) 121065-U

NO. 4-12-1065

FILED
May 29, 2014
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macon County
BRYAIN J. YOUNG,	)	No. 10CF1164
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas E. Griffith, Jr.,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Appleton and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant used evidence about his involvement with attempts to sell a stolen television as part of his trial strategy, and introduction of this evidence was not plain error.

¶ 2 In August 2010, the State charged defendant, Bryain J. Young, with first degree murder (720 ILCS 5/9-1(a)(1) (West 2010)) and armed robbery (720 ILCS 5/18-2(a) (West 2010)). In July 2012, a Macon County jury found defendant guilty of first degree murder and armed robbery. In September 2012, the trial court sentenced defendant to a total of 60 years' imprisonment.

¶ 3 On appeal, defendant argues it was plain error for the trial court to permit evidence he was in possession of a stolen television (TV). We affirm.

¶ 4 I. BACKGROUND

¶ 5 In August 2010, the State charged defendant with multiple counts of first degree murder (720 ILCS 5/9-1(a)(1) (West 2010)) for the death of Ishmael Adams and alleged the 15-year sentencing enhancement for committing the offense while armed with a firearm applied (730 ILCS 5/5-8-1(a)(1)(d)(i) (West 2010)). The State also charged defendant with two counts of armed robbery (720 ILCS 5/18-2(a) (West 2010)).

¶ 6 A. Defendant's Jury Trial

¶ 7 In July 2012, the trial court conducted defendant's jury trial. In its opening argument, the State argued defendant "set in motion" the plan to rob Adams, which resulted in his murder. The State argued defendant "was in need of money" and when his attempts to sell a television were unsuccessful, he decided to rob Adams.

¶ 8 The State presented the following evidence. On July 29, 2010, defendant recruited Ryan Walker, Michael Guise, and Jonathan Maclin to assist him in robbing someone known as "Ish." Defendant described the robbery as being a "sweet lick," which meant the robbery would be "easy," with "no problems." Walker and defendant obtained two guns and defendant gave the guns to Guise and Maclin. The four men drove around Decatur and eventually headed toward Adams's house. On July 30, 2010, at approximately 1 a.m., Walker parked the vehicle near Torrence Park. Defendant told Guise and Maclin that Adams kept drugs in the backyard or on himself. Guise and Maclin exited the vehicle and approached Adams's house from the rear. Kieshawn McGee and Adams were sitting in a Mercury Grand Marquis parked in the driveway of Adams's home. The Mercury was backed in and facing North Woodford Street in Decatur. Guise and Maclin, both carrying guns, approached Adams's house

from the rear. They searched the backyard for drugs and money, and finding none, they approached the vehicle from the rear. Guise approached the driver's side, where McGee was sitting. Maclin approached the passenger's side, where Adams was sitting. The gunmen had bandanas covering their faces. They demanded money and drugs and McGee and Adams handed over approximately $50 cash. Adams was shot in the chest. The gunmen fled. Walker and defendant picked Guise and Maclin up and they returned to Walker's house. There, defendant poured bleach into a sink and told Guise and Maclin to wash their hands to remove gunpowder residue. Defendant told Guise to act like he "don't know nothing."

¶ 9 The State granted Maclin use immunity, but he refused to testify. Guise testified he pleaded guilty to first degree murder and agreed to a 35-year prison sentence in exchange for his testimony. He testified he was 15 years old on July 29, 2010. At approximately 4 p.m., he was at a house on Leafland Street in Decatur. Defendant was there and they had a discussion. Guise testified, in relevant part, as follows:

"Q. What did you discuss with [defendant]?

A. I discussed about selling a TV with him.

Q. Where had you gotten the TV from?

A. From a friend.

Q. As far as you know, was the TV stolen?

A. Yes, it was.

Q. And what, if anything, did the defendant agree to do with that TV?

A. Help me sell it."

Guise and defendant attempted to sell the television but were unsuccessful. Guise recounted the evening's events, including the fact that when Guise began expressing hesitation about robbing Adams, defendant threatened to shoot him.

¶ 10 On cross-examination, defense counsel questioned Guise about the television he and defendant were attempting to sell. Counsel asked Guise to identify the person from whom he obtained the television. Guise invoked his right to refuse to answer. Defense counsel argued, in relevant part, as follows:

> "Judge, these are issues about credibility, and when [Guise] indicates that he got a TV from someone that he wanted someone else to sell for him that he says is stolen, I believe that when you're dealing with a case like this where there is no physical evidence, where we're talking specifically about the credibility of this witness, when he says that [defendant] was somehow involved with this offense, I think these sort of issues—which it's not like an unrelated separate day that it has nothing to do with the [defendant] issue. This is an issue that directly affects *** this witness's credibility."

The trial court found the identity of the person from whom Guise obtained the television was not relevant and allowed him to refuse to answer. Counsel proceeded to ask other questions about the television and the following occurred:

> "Q. Mr. Guise, you testified that you knew this TV was stolen?
>
> A. Yes, I did.

Q. How did you know it was stolen?

A. Because me and my friends, we do other activities.

Q. I'm sorry. What?

A. Me and my friends, we do activities.

Q. What do you mean by activities?

A. Break into other people's houses.

Q. So then you asked [Big] Juan and then [defendant] to sell this stolen TV, to help you sell a stolen TV; is that right?

A. Yes, sir."

Defense counsel asked additional questions about the television, including what Guise told police investigators and what happened to it after defendant and Guise were unable to sell it.

¶ 11 Walker testified, in exchange for his testimony, he agreed to plead guilty to armed robbery, with the State recommending a sentence of 20 years in prison. Walker lived with two of defendant's nephews. On July 29, 2010, defendant approached him about helping sell a television. Defendant was unable to sell the television and it was damaged when it was loaded into the vehicle Walker was driving. Walker recounted the sequence of the night's events.

¶ 12 During closing arguments, both the State and defendant mentioned defendant's attempts to sell the television. The State argued defendant was in need of money, unable to sell the television, and he recruited Guise, Walker, and Maclin to help him rob people. Defense counsel asserted Guise was attempting to "deflect the blame" and "there were all kinds of reasons to give up" defendant—one reason being he was upset the television he had given defendant to sell ended up damaged. An accountability instruction was submitted to the jury. See Illinois

Pattern Jury Instructions, Criminal, No. 5.03 (4th ed. 2000); 720 ILCS 5/5-2 (West 2010)). The jury found defendant guilty of first degree murder and armed robbery.

¶ 13 B. Posttrial Motions and Sentencing

¶ 14 In July 2012, defendant filed a motion for a new trial. The motion presented multiple arguments but did not argue evidence about defendant's involvement with the television was improper other-crimes evidence. In September 2012, the trial court held a hearing on defendant's motion for a new trial. Defendant presented arguments consistent with his written motion. The court denied the motion. Immediately thereafter the court held a sentencing hearing. The court sentenced defendant to a total of 60 years' imprisonment: 39 years' imprisonment for first degree murder, an additional 15 years' imprisonment pursuant to the firearm enhancement of section 5-8-1(a)(1)(d)(i) of the Unified Code of Corrections, and six years' imprisonment for the two armed-robbery counts, with each count to run concurrently to one another and consecutively to the first degree murder count.

¶ 15 In October 2012, defendant filed a motion to reconsider his sentence. In November 2012, the trial court held a hearing on the motion to reconsider and denied the motion.

¶ 16 This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 Defendant failed to object to the evidence about his involvement with a stolen television but argues it was plain error for the trial court to permit this evidence. He asserts this evidence was other-crimes evidence, not admissible for any permissible purpose, and unduly prejudicial. The State argues defendant used the complained-of evidence as part of his trial strategy and he should not be permitted to contend error on appeal.

¶ 19 "The rule of invited error or acquiescence is a procedural default sometimes described as estoppel." *In re Detention of Swope*, 213 Ill. 2d 210, 217, 821 N.E.2d 283, 287 (2004). Under the doctrine of invited error, a criminal defendant " 'may not request to proceed in one manner and then later contend on appeal that the course of action was in error.' " *People v. Harvey*, 211 Ill. 2d 368, 385, 813 N.E.2d 181, 192 (2004) (quoting *People v. Carter*, 208 Ill. 2d 309, 319, 802 N.E.2d 1185, 1190 (2003)); see also *People v. Trefonas*, 9 Ill. 2d 92, 98, 136 N.E.2d 817, 820 (1956) ("A party cannot sit by and permit evidence to be introduced without objection and upon appeal urge an objection which might have been obviated if made at the trial."); *People v. Woods*, 214 Ill. 2d 455, 475, 828 N.E.2d 247, 259 (2005) ("A defendant forfeits any issue as to the impropriety of the evidence if he procures, invites, or acquiesces in the admission of that evidence.").

¶ 20 The record reflects the State questioned Guise about the television and described it as "stolen." Defendant did not object. During cross-examination, defense counsel returned to this topic and asked Guise for the identity of the person from whom Guise obtained the television. When Guise refused to answer, counsel argued this evidence went to Guise's credibility. Counsel continued his questioning and specifically asked how Guise knew the television was stolen. Guise knew because he and his "friends" engaged in other "activities," such as breaking into people's houses. During closing argument, defense counsel again mentioned the television and asserted Guise was upset the television was damaged while defendant was assisting him and had "all kinds of reasons" to blame defendant. We disagree with defendant's conclusory assertion defense counsel's use of this evidence was merely "an attempt to respond to the State's introduction of this evidence." As defendant admits, the record

reflects this evidence was part of the defense's trial strategy and used in an attempt to discredit the State's witnesses. Defendant has forfeited his argument this evidence was improper.

¶ 21 Nevertheless, this court may review an argument not properly preserved under the plain-error doctrine. *Harvey*, 211 Ill. 2d at 386, 813 N.E.2d at 193. "The plain-error doctrine allows errors not previously challenged to be considered on appeal if either: (1) the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant; or (2) the error was so fundamental and of such magnitude that it affected the fairness of the trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Wilmington*, 2013 IL 112938, ¶ 31, 983 N.E.2d 1015. The first step is to consider whether error occurred. *Id.*

¶ 22 The trial court did not err by permitting this evidence. "It is well settled under the common law that evidence of other crimes is admissible if relevant for any purpose other than to show a defendant's propensity to commit crimes." *People v. Chapman*, 2012 IL 111896, ¶ 19, 965 N.E.2d 1119; Ill. R. Evid. 404(b) (eff. Jan. 1, 2011). The State asserted defendant's attempts to sell the television reflected his need of money and were relevant to his motive for the charged offenses. The evidence supports this argument as it shows defendant's actions escalated from attempts at selling the television to a plan to rob Adams in order to obtain money and drugs. Further, this evidence shows how the day's events progressed from petty crime to murder and how defendant came into contact with and recruited others to assist him in robbing Adams. See *People v. Patterson*, 2013 IL App (4th) 120287, ¶ 58, 2 N.E.3d 642 ("Other-crimes evidence is admissible if it is part of a continuing narrative of the event giving rise to the offense, intertwined with the charged offense, or explains an aspect of the charge which would otherwise be

implausible or inexplicable.").

¶ 23 Assuming *arguendo* the evidence was improper other-crimes evidence, we have examined the record and find the evidence is not closely balanced. Defendant asserts the evidence is closely balanced because *this court* should view Guise and Walker's testimony "with suspicion and great cause" as they "received significant leniency from the State in exchange for their testimony" and their testimony was inconsistent. Defendant's argument is not well taken. "[D]eterminations of the credibility of witnesses, the weight to be given their testimony, and the reasonable inferences to be drawn from the evidence are responsibilities of the trier of fact." *People v. McLaurin*, 184 Ill. 2d 58, 79, 703 N.E.2d 11, 21 (1998). It is not the function of a reviewing court "to retry the defendant." *Id.* We decline defendant's invitation to reweigh the evidence and assess the witnesses' credibility. The evidence presented in this case cannot reasonably be regarded as being "so closely balanced that the error alone threatened to tip the scales of justice against the defendant." *Wilmington*, 2013 IL 112938, ¶ 31, 983 N.E.2d 1015. The evidence presented showed defendant devised the plan to rob Adams, recruited others to assist him, informed Guise and Maclin of where Adams stored his drugs, and instructed others of how to conceal evidence of the crime.

¶ 24 III. CONCLUSION

¶ 25 We affirm the judgment of the trial court. As part of our judgment, we award the State its $50 statutory assessment as costs of this appeal. 55 ILCS 5/4-2002(a) (West 2012).

¶ 26 Affirmed.