2014 IL App (4th) 130978-U

NO. 4-13-0978

FILED
June 30, 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.	)	Schuyler County
BRANDI ENGLES,	)	No. 13TR303
Defendant-Appellant	)	
	)	Honorable
	)	Alesia A. McMillen,
	)	Judge Presiding.

PRESIDING JUSTICE APPLETON delivered the judgment of the court.
Justices Turner and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: J(1) At the same time she filed her notice of appeal, defendant filed a notice that she was abandoning and withdrawing her pending motion for a new trial; as a result, her notice of appeal was effective under Illinois Supreme Court Rule 606(b) (eff. Feb. 6, 2013).

(2) Because defendant withdrew and abandoned her motion for a new trial, she has forfeited her arguments that the trial court erred by (a) overruling defense counsel's hearsay objection and (b) taking judicial notice of a certified driving abstract.

(3) Because defense counsel's proposed modification of a pattern jury instruction failed to accurately and completely state the law, the trial court did not abuse its discretion by rejecting the modification.

(4) Defendant's claim that, for various reasons, her trial was unfair is either unsupported by reasoned argument and the citation of authorities, or it is unsupported by the record.

¶ 2 A jury found defendant, Brandi Engles, guilty of driving a motor vehicle while her driver's license was suspended (625 ILCS 5/6-303(a) (West 2012)), and the trial court sentenced her to 10 days in jail.

¶ 3 Defendant appeals, but we find some of her arguments to be forfeited, considering that she withdrew her pending motion for a new trial at the same time she filed her notice of appeal. Her remaining arguments are that the trial court erred by declining to modify an issues instruction; by violating the confrontation clause (U.S. Const., amend. VI); by interrupting, supposedly *sua sponte*, her attorney's opening statement; and by requiring a police officer to give "scripted" testimony. The modified instruction that defendant proposed, however, did not accurately and completely state the law. The confrontation argument is undeveloped and devoid of citations to relevant authority. The representations defendant makes to us regarding the opening statement are either unsupported by the record or factually incorrect. For example, it is false that the court repeatedly interrupted defense counsel's opening statement on its own initiative, without any objection by the prosecutor. Finally, we find no evidence in the record that the court communicated with the police officer directly or indirectly, let alone required him to give any particular answers in his testimony. Therefore, we affirm the trial court's judgment.

¶ 4 I. BACKGROUND

¶ 5 A. The Charge

¶ 6 The charging instrument was a traffic ticket, an "Illinois Citation and Complaint." According to the traffic ticket, defendant violated section 6-303(a) of the Illinois Vehicle Code (Vehicle Code) (625 ILCS 5/6-303(a) (West 2012)) by driving a motor vehicle on February 21, 2013, while her driver's license was suspended.

¶ 7 B. A Pretrial Discussion of Two Versions of Defendant's Driving Abstract and of

How To Present the Suspension to the Jury

¶ 8 On October 17, 2013, after *voir dire* and before calling the jury into the courtroom, the trial court asked the attorneys if any preliminary disputes needed to be resolved. Defense counsel, Luke A. Thomas, said he anticipated an evidentiary dispute: he anticipated that the prosecutor, Ramon M. Escapa, would offer in evidence a certified abstract of defendant's driving record. Thomas believed the abstract was inadmissible. He contended that under section 6-303(f) (625 ILCS 5/6-303(f) (West 2012)), a driving abstract was admissible only as "proof of any prior conviction" and that any prior conviction of defendant was irrelevant to the issues in this case.

¶ 9 The trial court asked Thomas how it would be possible for the State to prove someone's driver's license was suspended if, as he contended, the driving abstract were inadmissible. He replied that "the order of suspension from the Secretary of State's office would be one [way]," but he suggested the State also had to prove, as an element of its case, that 45 days' advance written notice of the suspension had been given to the person pursuant to section 11-501.1(g) of the Vehicle Code (625 ILCS 5/11-501.1(g) (West 2012) ("The statutory summary suspension *** shall take effect on the 46th day following the date the notice of the statutory summary suspension *** was given to the person."). The court disagreed. It was of the opinion that a failure to give written notice of the impending suspension should have been raised earlier, in a rescission hearing pursuant to section 2-118.1(b) (625 ILCS 5/2-118.1(b) (West 2012)). Therefore, the court declined to exclude the driving abstract on the ground of lack of notice or to allow Thomas to raise the lack of notice as a defense in the present case. The court ruled: "[U]nless you have some other, there's another process by which that could be introduced, the State is permitted to introduce the Secretary of State's record, but only to the extent *** that on

the date in question, she was suspended." The court ruled, however, that the abstract would not go into the deliberation room (unless the defense so requested) because if the jury saw the abstract, it would learn of defendant's "prior traffic record." But see 625 ILCS 5/2-123(g)(6) (West 2012) ("[S]uch abstract *** shall be admissible for any prosecution under this Code ***.").

¶ 10 The abstract that Escapa intended to offer, People's exhibit No. 1, indicated that defendant's driver's license was suspended from February 14, 2013, onward, for a period of 12 months, and that the suspension was in effect on February 21, 2013. But this exhibit also revealed the reason for the suspension: "fail or refuse alcohol/drug test." See 625 ILCS 5/6-208.1(a)(1) (West 2012). The trial court thought it would be unfairly prejudicial to defendant if the jury became aware of her alleged prior bad act of refusing to submit to an alcohol or drug test. See Ill. R. Evid. 404(b) (eff. Jan. 1, 2011) (inadmissibility of propensity evidence).

¶ 11 By the same token, the trial court did not want the jury to see the certified driving abstract that Thomas intended to present, defendant's exhibit No. 1. According to this exhibit, the suspension was rescinded on April 25, 2013, on the basis of a finding that defendant never actually refused a blood or alcohol test. The court deemed this exhibit to be irrelevant because the court understood a rescission to be prospective, not retroactive (as, indeed, the supreme court subsequently held in *People v. Elliott*, 2014 IL 115308, ¶ 21), and the court was concerned that the after-the-fact rescission would only confuse the jury with a question of law, the question of retroactivity, which was outside the jury's province.

¶ 12 So, the trial court ruled ahead of time that defendant's exhibit No. 1 was totally inadmissible and also that the jury would not *see* People's exhibit No. 1, with its reference to

refusing an alcohol or drug test. Unless the defense opened the door, the State was to scrupulously avoid any mention of the previous bad act of driving under the influence (DUI).

¶ 13 Given the trial court's exclusion of the DUI, Escapa raised a practical question. William Thompson was the police officer who arrested defendant on February 21, 2013, for driving while her driver's license was suspended. She was committing no moving violation at that time. He just saw her driving in Rushville. During his testimony, the jury probably would wonder what led him, just out of the blue, to check the status of defendant's driver's license—or how he even recognized her when he saw her driving by—unless he divulged that he also was the police officer who previously arrested her for DUI and reported to the Secretary of State that she refused an alcohol or drug test. The court suggested:

> "THE COURT: I mean, he could testify he recognized her in the community, but not that he recognized her from arresting her on a DUI.
>
> You would not want that introduced, Mr. Thomas?
>
> MR. THOMAS: I wouldn't want that introduced—
>
> THE COURT: Right.
>
> MR. THOMAS: But I'm having a hard time seeing how he's going to—
>
> THE COURT: He's just going to say he knew her from the community. He'd seen her before. I mean, the State can make their argument on that, but it's pretty clear to me that would be introducing evidence of another crime not for the purpose of

impeachment, and it's a misdemeanor, and it's not a crime affecting her as a truth teller.

MR. ESCAPA: Your Honor—

THE COURT: So I don't know of any way that the State could introduce that evidence.

MR. ESCAPA: And the State's not intending to introduce that evidence."

¶ 14 To avoid divulging the DUI, the trial court proposed an alternative to sending People's exhibit No. 1 to the deliberation room: the court would simply tell the jury that according to the records of the Secretary of State, defendant's driver's license was suspended on February 21, 2013. In other words, the court would take judicial notice to that effect. Escapa approved of that idea. Thomas said he might approve of that idea; he said he would let the court know sometime later. He told the court:

"MR. THOMAS: I'd ask, we probably would go with that option, see how things go, whether or not we want that abstract [(People's exhibit No. 1)] to go back. I'm not sure how the testimony's going to come out to make that decision at this point.

THE COURT: Sure. So when we get to that, to the introduction of that, you can ask for a, or if you don't object to it being introduced, it will be introduced, and then we can argue that out of the presence of the jury what should go back to the jury. Okay. Or either way you want to do it.

MR. THOMAS: I would prefer to do that once we're done, and we decide what's going back.

THE COURT: Okay. Okay. I'll do that at the close of the case, and that way you still gain, depending on what happens, you can resubmit whatever evidence you want on that."

¶ 15 C. The Jury Trial

¶ 16 The jury was brought into the courtroom, and the attorneys made their opening statements. Thomas told the jury:

"The State says the case is simple. It's not simple. In fact, the entire case started on a lie. You see, the State is going to intend [*sic*] my client was suspended on a specific date. Officer Thompson sent a report to the Secretary of State under oath, much like he's going to testify today. Under that statement he reported something false. Officer Thompson swore that he warned my client about certain consequences of taking a test or not taking a test—

MR. ESCAPA: Your Honor—

THE COURT: Mr. Thomas.

MR. ESCAPA: —I'd object, and I'd ask to approach.

(A discussion was held at the bench outside the hearing of the Jury and the Reporter.)

MR. THOMAS: You see, ladies and gentlemen, the officer's going to testify. He's testified in prior proceedings as

well. I want you to pay attention to what he says. *** The question, how did he identify the driver, if he was behind her? How does he recognize her, know who she is? Why did he pull her over? Those are all going to be questions, I think before we even get to whether or not her license was suspended, and I think the evidence is going to show he had no good reason to pull her over. She was not violating any law on the roads that day.

The records will show, the evidence will show he didn't care; he pulled her over anyway; that he placed her under arrest; and that he took my client and her 11-year-old daughter to the police station, put them in the back and made them go through the process here at the courthouse, all the while my client not violating any law—

MR. ESCAPA: Your Honor, I'm, I'm going to object again, and I'd ask to approach.

THE COURT: You may.

(A discussion was held at the bench outside the hearing of the Jury and the Reporter.)

MR. THOMAS: You're going to hear evidence that the Court finds admissible. We still believe that the admissible evidence that you hear is going to be exactly as I've told you thus far, that my client was violating no law that day ***."

¶ 17 The State called only one witness: William Thompson, the police officer who arrested defendant on February 21, 2013, for driving while her driver's license was suspended. Over Thomas's hearsay objection, the trial court allowed Thompson to testify that after he pulled up behind defendant in a parking lot, he called the dispatcher, who confirmed that defendant's driver's license was suspended.

¶ 18 After Thompson's testimony, the State offered in evidence People's exhibit No. 1, the certified abstract showing that on February 21, 2013, the suspension of defendant's driver's license was in effect. The trial court admitted People's exhibit No. 1, and the State rested.

¶ 19 Although the trial court admitted Peoples exhibit No. 1, it adhered to its ruling that the jury was not to see that exhibit. During a recess outside the jury's presence, the court reiterated that People's exhibit No. 1, with its reference to refusing an alcohol or drug test, was not "going to be ultimately presented to the jury." The court also reiterated that defendant's exhibit No. 1, with its reference to rescission, was irrelevant and inadmissible.

¶ 20 When the jury returned to the courtroom, the trial court told the jury: "Ladies and gentlemen, I would advise you that the People have rested their case. The Secretary of State's records would show that the defendant's driver's license was suspended on February the 21st of 2013." It does not appear the court followed up with Thomas to ascertain whether he agreed to the court's making this statement in lieu of sending People's exhibit No. 1 to the deliberation room. But see Ill. R. Evid. 201(c) (eff. Jan. 1, 2011) ("A court may take judicial notice, whether requested or not.").

¶ 21 Also, it does not appear that the trial court instructed the jury that it might, but was not required to, accept as conclusive this judicially noticed fact. See Ill. R. Evid. 201(g) (eff. Jan. 1, 2011) ("In a criminal case, the court shall inform the jury that it may, but is not

required to, accept as conclusive any fact judicially noticed."); *State v. Vejvoda*, 438 N.W.2d 461, 469 (Neb. 1989) ("If the *conclusive* effect of judicial notice in a civil action were transposed to the trial of a criminal case, judicial notice might supply proof of an element in the charge against an accused and thereby have the practical effect of a directed verdict on the issue of the defendant's guilt." (Emphasis added.)). The omission of this additional instruction, however, is not raised as an issue in this appeal.

¶ 22 After the trial court took judicial notice that the record certified by the Secretary of State showed a suspension, the defense called defendant, who testified that before her arrest on February 21, 2013, she was unaware her driver's license had been suspended. On cross-examination, Escapa asked her: "Were you in fact suspended on February 21st, 2013?" Thomas objected on the ground that the question called for a "legal conclusion" and the court had "already ruled on that issue." The court sustained the objection. The defense rested.

¶ 23 The trial court then held a jury instruction conference, in which Escapa offered an instruction conforming to Illinois Pattern Jury Instructions, Criminal, No. 23.40 (4th ed. 2000) (hereinafter IPI Criminal 4th No. 23.40). The proposed instruction read:

> "To sustain the charge of driving while driver's license is suspended, the State must prove the following propositions:
>
> *First Proposition*: That the defendant drove or was in actual physical control of a motor vehicle on a highway of this State; and
>
> *Second Proposition*: That at the time the defendant drove a motor vehicle, his driver's license was suspended as provided by the Illinois Vehicle Code or the law of another state.

> If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.
>
> If you find from your consideration of all the evidence that each one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty." (Emphases in original.)

¶ 24 Thomas proposed modifying IPI Criminal 4th No. 23.40 by replacing the second proposition with language regarding the 45-day notice (625 ILCS 5/11-501.1(g) (West 2012)). He said:

> "MR. THOMAS: The only issue, and it's just for a matter of law, we ask that it be modified to include an additional paragraph, replacing the second proposition with the language being that the defendant was not notified in writing of the impending suspension of her license at least 45 days prior to her arrest, making that an element of the offense."

After hearing arguments, the court refused Thomas's suggested modification and ruled that IPI Criminal 4th No. 23.40 would be given unmodified.

¶ 25 The jury returned to the courtroom, and the attorneys made their closing arguments. Escapa argued to the jury:

> "[Thompson] testified [defendant] was on US 67 and West Clinton, or Route 24 as we commonly know it, here in Rushville, and she was driving the vehicle, and that at the time that she drove

> that motor vehicle her driving privileges were suspended as provided by the Illinois Vehicle Code or the law of another state. The Judge told you that. That evidence came in, and the Judge instructed that she was suspended on that date. She was suspended on February 21st, 2013."

¶ 26 It was a one-day trial, and on October 17, 2013, the jury found defendant guilty of driving while her driver's license was suspended. The trial court entered judgment on the guilty verdict.

¶ 27 D. The Sentence, the Motion for a New Trial, and the Withdrawal and Abandonment of the Motion

¶ 28 On October 29, 2013, the trial court sentenced defendant to 10 days in jail.

¶ 29 On October 31, 2013, defendant filed a motion for a new trial. The motion was timely. See 725 ILCS 5/116-1(b) (West 2012) ("A written motion for a new trial shall be filed by the defendant within 30 days following the entry of a finding or the return of a verdict. ").

¶ 30 On November 5, 2013, we granted an emergency motion to stay the sentence pending appeal.

¶ 31 On November 6, 2013, we vacated our stay of the sentence. We explained:

> "The Court entered the November 5 order without knowledge that the Appellant had not first filed a Notice of Appeal in the trial court. Appellant's Emergency Motion states that Appellant's Motion for New Trial is pending before the trial court. Therefore, absent a properly filed Notice of Appeal and without a final judgment, the Appellate Court is without jurisdiction."

¶ 32 On November 7, 2013, defendant filed two notices with the trial court: (1) a notice that she was withdrawing and abandoning her motion for a new trial and (2) a notice of appeal. That same day, interpreting the first notice as a motion, the court entered an order granting the motion to withdraw and abandon the motion for a new trial.

¶ 33 On November 7, 2013, we granted defendant's emergency motion to stay the sentence until the conclusion of the appeal.

¶ 34 II. ANALYSIS

¶ 35 A. Our Subject-Matter Jurisdiction

¶ 36 Because defendant filed a timely motion for a new trial—that is, because she filed the motion within 30 days after the finding of guilt (see 725 ILCS 5/116-1(b) (West 2012))—and because the trial court had not yet disposed of the motion when she filed her notice of appeal, we must consider whether the notice of appeal had any effect.

¶ 37 Rule 606(b) provides in part:

> "When a timely posttrial or postsentencing motion directed against the judgment has been filed by counsel or by defendant, if not represented by counsel, any notice of appeal filed before the entry of the order disposing of all pending postjudgment motions shall have no effect and shall be stricken by the trial court. *** A new notice of appeal must be filed within 30 days following the entry of the order disposing of all timely postjudgment motions." Ill. S. Ct. R. 606(b) (eff. Feb. 6, 2013).

¶ 38 At the same time defendant filed her notice of appeal, she filed a notice that she was withdrawing and abandoning her motion for a new trial. This simultaneous notice of

abandonment saved her notice of appeal from inefficacy. The supreme court has said: "[A] party can abandon a post-judgment motion, for instance by filing a motion to dismiss." *Chand v. Schlimme*, 138 Ill. 2d 469, 478 (1990). The use of the phrase "for instance" signifies that a motion to dismiss is not the exclusive method of abandoning a postjudgment motion. All the supreme court requires is "a more affirmative indication of abandonment than the mere filing of a notice of appeal before the disposition of the post-trial motion." *Id.* at 480. See also *People* v. *Willoughby*, 362 Ill. App. 3d 480, 483-84 (2005) (failing to procure a hearing on a posttrial motion is passivity, not an affirmative indication of abandonment). Defendant's notice of the withdrawal and abandonment of her motion for a new trial was an "affirmative indication of abandonment." *Chand*, 138 Ill. 2d at 480. We conclude, therefore, that her notice of appeal was effective and that we have subject-matter jurisdiction over this appeal.

¶ 39 B. Hearsay

¶ 40 Defendant contends the trial court erred by overruling her hearsay objection when Thompson testified to what the dispatcher had told him regarding the status of defendant's driver's license.

¶ 41 The State concedes the trial court erred by overruling the hearsay objection. The State points out, however, that a contemporaneous objection in the trial is not enough to preserve an issue for review: the defendant also must raise the issue in a written posttrial motion so as to give the court an opportunity to grant a new trial, if such relief would be warranted. See *People v. Lewis*, 223 Ill. 2d 393, 400 (2006); *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) ("*Both* a trial objection *and* a written post-trial motion raising the issue are required for alleged errors that could have been raised during trial." (Emphases in original.)). Defendant withdrew and

abandoned her posttrial motion. According to the State, the lack of a posttrial motion results in a forfeiture. We agree. See *Lewis*, 223 Ill. 2d at 400; *Enoch*, 122 Ill. 2d at 186.

¶ 42 C. Judicial Notice of the Certified Abstract (People's Exhibit No. 1)

¶ 43 Defendant argues the trial court erred by "removing from the jury the factual determination as to whether [her] driving privileges were suspended on the date charged," "[taking] upon [itself] to tell the jury Defendant's license was suspended." To be precise, however, the court did not tell the jury that defendant's driver's license actually was suspended. Rather, the court told the jury "the Secretary of State's record would show the defendant's driver's license was suspended on February 21st of 2013." In any event, defendant argues "[i]t is not the function of the court to weigh the evidence or interpret it for the jury."

¶ 44 The State responds that defendant is judicially estopped from arguing that the trial court removed a factual issue from the jury, considering that when Escapa asked defendant, on cross-examination, whether her driver's license was suspended on February 21, 2013, Thomas successfully objected that the question called for a legal conclusion and that the court had already answered the question.

¶ 45 We are unconvinced by the State's invocation of judicial estoppel. Thomas himself was not under oath, and in his objection, he merely expressed a legal position. Judicial estoppel arises from a party's sworn statement of fact (*People v. Caballero*, 206 Ill. 2d 65, 80 (2002); *People v. Hood*, 265 Ill. App. 3d 232, 240 (1994)), not from counsel's expression of opinion (*Caballero*, 206 Ill. 2d at 81). "[J]udicial estoppel does not apply to opinions or legal positions." *Holzer v. Motorola Lighting, Inc.*, 295 Ill. App. 3d 963, 977 (1998).

¶ 46 Alternatively, the State claims that by failing to making a contemporaneous objection and by withdrawing her motion for a new trial, defendant has forfeited her argument

that the trial court erred by telling the jury: "The Secretary of State's records would show that the defendant's driver's license was suspended on February the 21st of 2013." See *Lewis*, 223 Ill. 2d at 400 ("To preserve an issue for review, a defendant must both object at trial and raise the issue in a written posttrial motion."); *People v. Caballero*, 102 Ill. 2d 23, 31 (1984) ("Failure to raise issues in the trial court denies that court the opportunity to grant a new trial, if warranted."). Defendant does not respond to the claim of forfeiture. Therefore, we hold she has forfeited this issue.

¶ 47 D. The Refusal of Defendant's Proposed Modified Jury Instruction

¶ 48 In the trial, defense counsel asked defendant: "Did you have any knowledge that your license was suspended no [*sic*]?" She answered: "No, I did not." Defendant makes the following argument. Given her testimony that, on February 21, 2013, when Thompson pulled her over, she had no knowledge that her driver's license was suspended, she was entitled to an instruction that a suspension did not take effect until 46 days after she received written notice of the impending suspension.

¶ 49 For authority, defendant cites sections 2-118.1(a) and 11-501.1(g) of the Vehicle Code (625 ILCS 5/2-118.1(a), 11-501.1(g) (West 2012)). Section 2-118.1(a) provides:

> "(a) A statutory summary suspension or revocation *** under Section 11-501.1 [(625 ILCS 5/11-501.1 (West 2012))] shall not become effective until the person is notified in writing of the impending suspension or revocation and informed that he may request a hearing in the circuit court of venue under paragraph (b) of this Section [(625 ILCS 5/2-118.1(b) (West 2012))] and the statutory summary suspension or revocation shall become effective

> as provided in Section 11-501.1." 625 ILCS 5/2-118.1(a) (West 2012).

Section 11-501.1(g) in turn provides:

> "(g) The statutory summary suspension or revocation and disqualification referred to in this Section shall take effect on the 46th day following the date the notice of the statutory summary suspension or revocation was given to the person." 625 ILCS 5/11-501.1(g) (West 2012).

By defendant's reasoning, it was disputed whether she received written notice of the impending suspension, and hence it was disputed whether the suspension ever took effect. She believes she was entitled to an instruction enabling the jury to resolve that dispute.

¶ 50 Granted, *notice* of a suspension and *knowledge* of a suspension are not the same thing. The driver might have ignored the notice, for example, or might have failed to comprehend it. Nevertheless, defendant's purported lack of *knowledge* of the suspension was some evidence—not conclusive evidence, but some evidence—that she had received no *notice* of the impending suspension. To justify the giving of an instruction, all one needs is very slight evidence. See *People v. Hari*, 218 Ill. 2d 275, 296 (2006) ("Very slight evidence upon a given theory of a case will justify the giving of an instruction," and "fundamental fairness includes, among other things, seeing to it that certain basic instructions, essential to a fair determination of the case by the jury, are given.").

¶ 51 "Generally," though, "a defendant forfeits review of any putative jury instruction error if the defendant does not object to the instruction or offer an alternative instruction at trial *and does not raise the instruction issue in a posttrial motion*." (Emphasis added.) *People v.*

Herron, 215 Ill. 2d 167, 175 (2005), see also *Enoch*, 122 Ill. 2d at 186. The only exception is if the error in the jury instructions amounts to a "substantial defect[]" within the meaning of Illinois Supreme Court Rule 451(c) (eff. Apr. 8, 2013). *Herron*, 215 Ill. 2d at 175. Defendant does not contend that the putative error in the jury instructions amounts to a "substantial defect[]" within the meaning of Rule 451(c).

¶ 52 Nevertheless, the State does not argue forfeiture in this particular context. The State does not claim defendant has forfeited her contention that the trial court erred by refusing her modified jury instruction. Instead, the State addresses the issue on its merits. "[B]ecause forfeiture is in the nature of an affirmative defense that the State may either raise, waive, or forfeit [citation] the forfeiture argument is itself forfeited." (Internal quotation marks omitted.) *People v. Beachem*, 229 Ill. 2d 237, 241 n.2 (2008).

¶ 53 Therefore, we will consider the merits of this instruction issue. The pattern instruction that Escapa tendered, IPI Criminal 4th No. 23.40, informed the jury that the State had to prove two propositions beyond a reasonable doubt:

> "*First Proposition*: That the defendant drove or was in actual physical control of a motor vehicle on a highway of this State; and
>
> *Second Proposition*: That at the time the defendant drove a motor vehicle, his [*sic*] driver's license was suspended as provided by the Illinois Vehicle Code or the law of another state." (Emphases in original.)

Thomas proposed modifying this pattern instruction by "replacing the second proposition" with language to the effect that "the defendant was notified in writing of the impending suspension of

her license at least 45 days prior to her arrest, making that an element of the offense." Thus, rather than supplement the second proposition or qualify it, Thomas wanted to completely replace it with a procedural requirement. The second proposition, however, is an essential element of the offense. The fact of the suspension is an essential element (*People v. Jackson*, 2013 IL 113986, ¶ 16), which Thomas proposed eliminating in his modified instruction. Although a defendant is entitled to an instruction that has "very slight" support in the evidence (*Hari*, 218 Ill. 2d at 296), the defendant is obligated to tender an instruction that accurately and completely states the law (*Hall v. Northwestern University Medical Clinics*, 152 Ill. App. 3d 716, 724 (1987)). Not only did defendant fail to tender an instruction, but her proposed oral modification of the State's instruction did not accurately and completely state the law. Therefore, we find no abuse of discretion in the acceptance of IPI Criminal, 4th 23.40. See *People v. Dunlap*, 315 Ill. App. 3d 1017, 1024-25 (2000).

¶ 54 E. Alleged Denial of a Fair and Impartial Trial

¶ 55 Defendant claims that, in three ways, the trial court denied her a fair and impartial trial. First, she argues the trial court, without any good reason, repeatedly interrupted defense counsel's opening statement. Second, defendant argues that, by admitting the hearsay testimony of Thompson, the court violated defendant's right to confront the witnesses against her. Third, defendant argues the court required Thompson to give scripted testimony. We will consider each of those arguments in turn.

¶ 56 1. *Interrupting Defense Counsel's Opening Statement*

¶ 57 According to defendant, Thomas told the jury, in his opening statement, that he intended to present evidence that defendant never received notice of the impending suspension of her driver's license, but the trial court repeatedly interrupted his opening statement, telling him

he was forbidden to present any evidence that Thompson failed to provide notice of the impending suspension. Defendant says: "Rather than require the State to object or state a basis for any objection made, the trial judge interrupted Defendant's opening twice, severely limiting what Defendant could argue at closing ***."

¶ 58 The record either fails to substantiate these representations by defendant or flatly contradicts them. See Ill. S. Ct. R. 341(h)(6) (eff. Feb. 6, 2013) ("the facts necessary to an understanding of the case, stated accurately and fairly"). Defendant represents to us that "in her opening, [she] started to state her intent to present evidence that she did not receive written notice of her suspension." Actually, it appears that Thomas began stating his intent to present evidence that Thompson failed to *warn* defendant of the consequences of refusing a test. The *warning* and the *notice of the statutory summary suspension* are two different things. 625 ILCS 5/11-501.1(c), (f) (West 2012).

¶ 59 Also, defendant represents to us that "the *trial judge* interrupted Defendant's opening twice" and did not "require the State to object." (Emphasis added.) It appears, however, that, on both occasions, *the prosecutor* interrupted defendant's opening statement by objecting and requesting a sidebar.

¶ 60 Defendant says the court did not "require the State to *** state a basis for any objection made." In all likelihood, however, the prosecutor said *something* during the sidebars he requested, and it would be reasonable to suppose he explained the reasons for his objections. We really do not know what was said during the sidebars, because they were "outside the hearing of the *** Reporter." (If, during the sidebars, the prosecutor somehow managed not to state the reasons for his objections, that is, if his objections remained general objections, they would be construed as relevance objections. See *People v. Buie*, 238 Ill. App. 3d 260, 275 (1992).) The

transcript does not even reveal the court's rulings on the two objections the prosecutor made during defendant's opening statement. An appellant must present a sufficient record to support a claim of error, and doubts arising from an incomplete record will be resolved against the appellant. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984).

¶ 61 2. *Hearsay Testimony by Thompson*

¶ 62 Defendant argues her trial was unfair because, by admitting the hearsay testimony of Thompson, the trial court violated defendant's right to confront the witnesses against her. Defendant's claim that the hearsay made her trial unfair could be understood as an invocation of the plain-error doctrine, a doctrine that averts a procedural forfeiture. See *Herron*, 215 Ill. 2d at 187 (one of the ways of proving plain error is proving "the error was so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process.").

¶ 63 Under the confrontation clause (U.S. Const., amend. VI), the *testimonial* hearsay statements of a witness who is unavailable at trial may not be admitted against a criminal defendant unless the defendant had a prior opportunity for cross-examination. *People v. Patterson*, 217 Ill. 2d 407, 423 (2005). Defendant does not explain why we should regard the dispatcher's out-of-court statement to Thompson as "testimonial." Therefore, she has failed to make a sufficient argument that the admission of the hearsay made her trial unfair by violating the confrontation clause. Undeveloped arguments, unaccompanied by citation to relevant authorities, are forfeited. *People v. Young*, 365 Ill. App. 3d 753, 773 (2006).

¶ 64 3. *Requiring Thompson To Give "Scripted" Testimony*

¶ 65 Defendant argues:

> "Perhaps the most egregious violation of Defendant's rights occurred in the trial judge's chambers when she told the State's

> attorney and Defendant's counsel that Officer Thompson was 'just going to say he knew her from the community' [citation to record]. The trial judge, addressing the State's Attorney, told him I hope your officer knows. [Citation to record].
>
> The foregoing rulings and admonishments were made before the jury and trial court heard any testimony and evidence. A review of Officer Thompson's testimony reveals that he was not free to veer from the script tendered to him by the Court's admonishments and therefore, rendered any confrontation through cross-examination meaningless because the officer was not at liberty to truthfully answer Defendant's questions. These errors are reversible errors."

¶ 66 This argument is difficult to follow. We find no indication in the record that Thompson was present "in the trial judge's chambers when [the trial judge] told the State's attorney and Defendant's counsel that Officer Thompson was 'just going to say he knew [defendant] from the community.' " Unless Thompson were present when the trial judge said that, it is unclear how he would have had any occasion to think a "script" were being "tendered to him" by the trial judge. The prosecutor asked Thompson how he recognized defendant when he saw her driving on February 21, 2013. Thompson answered: "I'm familiar with her from normal day-to-day routines around town." We are aware of no evidence that anyone ordered or coerced Thompson to give that answer. It was an answer somewhat different from the one the court anticipated. There is a difference between simply knowing someone from the community and

knowing someone because one's "normal day-to-day routines" as a police officer caused one to become acquainted with that person.

¶ 67 III. CONCLUSION

¶ 68 For the foregoing reasons, we affirm the trial court's judgment. We award the State $75 in costs against defendant.

¶ 69 Affirmed.