2016 IL App (4th) 140966-U

NO. 4-14-0966

FILED
March 30, 2016
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
CALVIN J. CARSON, JR.,	)	No. 13CF1097
Defendant-Appellant.	)	
	)	Honorable
	)	Robert C. Bollinger,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Presiding Justice Knecht and Justice Turner concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court (1) concluded that the trial court committed harmless error by limiting defendant's impeachment of a State's witness about the witness's pending criminal charge and (2) modified defendant's sentencing assessments and sentencing credit.

¶ 2 In August 2013, the State charged defendant, Calvin J. Carson, Jr., with aggravated battery (720 ILCS 5/12-3.05(c) (West 2012)), alleging that he struck, grabbed, and kicked Andrea Warnsley in the parking lot of Fairview Plaza in Decatur, Illinois. The State filed a motion *in limine* seeking to limit impeachment evidence against its witness, Warnsley, who was facing pending charges of burglary and sexual exploitation of a child in an unrelated matter. Specifically, the State argued that Warnsley's pending charge of sexual exploitation of a child should not be referred to by name but, instead, as a "pending Macon County criminal case." The trial court granted the motion.

¶ 3 At the January 2014 jury trial, Warnsley admitted during cross-examination that

she had "two pending felony cases in Macon County, including a burglary case." The jury subsequently found defendant guilty of aggravated battery. The trial court sentenced defendant to three years in prison. The circuit clerk later imposed various monetary assessments.

¶ 4 Defendant appeals, arguing that (1) the trial court abused its discretion by limiting the impeachment testimony against Warnsley, (2) the circuit clerk erred by imposing a $10 local-anti-crime-fund assessment, and (3) he is entitled to an additional eight days of presentence custody credit toward his fines. We affirm defendant's conviction and modify his sentence.

¶ 5 I. BACKGROUND

¶ 6 A. The State's Motion *in Limine*

¶ 7 In January 2014, the State filed a motion *in limine*, seeking to limit the impeachment testimony against its witness, Warnsley. The State explained that Warnsley was facing two pending charges in Macon County—burglary and sexual exploitation of a child. The State acknowledged that evidence that Warnsley was facing two pending charges was admissible to establish her potential interest or bias. However, the State argued that the specific nature of the sexual exploitation of a minor charge was inadmissible because it was substantially more prejudicial than probative. The State requested that the sexual exploitation of a minor charge be referred to at trial as a "pending Macon County criminal case." The trial court granted the State's motion, finding that evidence of the specific nature of the sexual exploitation of a minor charge would inflame the jury while providing minimal probative value, in light of Warnsley's additional criminal history.

¶ 8 B. The Evidence at Trial

¶ 9 At the January 2014 jury trial, Warnsley testified that she had prior convictions for deceptive practices, aggravated battery, and retail theft, along with two prior convictions for

aggravated driving under the influence of alcohol. Warnsley testified further that she currently had "two pending felony cases in Macon County, including a burglary case." Warnsley asserted that she had not received any promises in exchange for her testimony.

¶ 10 Warnsley testified further that in August 2013, she was dating defendant. On August 8, 2013, Warnsley was shopping with her two daughters at Citi Trends, located in Fairview Plaza in Decatur. Warnsley received a phone call from defendant, asking her to come outside and return defendant's "Link card" to him. Warnsley and her daughters exited the store and got in defendant's car. Warnsley and defendant started arguing, and defendant asked Warnsley to get out of the car. When Warnsley refused, defendant got out of the car, opened the front passenger door, and pulled Warnsley out of the car by her hair. Defendant then threw her to the ground and kicked and slapped her. Warnsley's daughters exited the car and begged defendant to stop. Defendant then got back in the car and drove off. A Citi Trends employee called the police.

¶ 11 Tiffany Denton testified that she was working as an assistant manager at Citi Trends on August 8, 2013. She looked through the store's glass front doors and saw a car parked in the no-parking zone in front of the store. A man was seated in the front seat, a woman in the passenger seat, and two children in the backseat. The man exited the car, walked to the passenger side, opened the door, and hit the woman. The man then grabbed the woman by her hair and dragged her out of the car and onto the ground, where he hit her and kicked her. The man then got back in the car and drove off. The woman entered Citi Trends, and Denton noticed that she had scratches and marks to her face and neck. Denton identified a photograph of Warnsley as the woman she saw on August 8, 2013.

¶ 12 Decatur police officer Matt Daniels testified that he responded to a domestic battery call at Citi Trends on August 8, 2013. Daniels made contact with Warnsley, who was

"shaken" and appeared to have been crying. Warnsley had swelling and bruising under her eyes and scratches on her neck. One of her thumbnails had been ripped off. She had abrasions on her shoulder, wrist, and knee.

¶ 13 Defendant testified that on August 8, 2013, he went to Citi Trends to get his Link card from Warnsley. Defendant asserted that he pulled up outside Citi Trends and rolled down his car's passenger window so that Warnsley could hand him the Link card. Defendant told Warnsley to hand him the Link card and not to enter his car.

¶ 14 Defendant testified further that Warnsley reached through the window, unlocked the passenger door, and entered the car. Warnsley then started "trying to drill" defendant with questions, while her children waited outside the car. Warnsley was "throwing a fit" and acting like she had a knife and was going to stab the car seat. Defendant testified further that he pretended to call the police in an effort to get Warnsley to leave his car. Warnsley then scratched her own neck, leaving red marks. After Warnsley scratched her neck, her children got in the backseat. Warnsley and defendant continued arguing. Warnsley began putting her hands on defendant. Defendant thought she had a weapon and grabbed her hands. He then realized that she did not have a weapon and let her go.

¶ 15 Defendant asserted further that he exited the vehicle and walked to the passenger side. He opened the back door and let the kids out of the car. Defendant then opened Warnsley's door and asked her to exit his car. Warnsley refused. He told her again to exit, and Warnsley again refused. Defendant grabbed her shoulders and shoved her out of the car. Warnsley refused to use her legs and fell as defendant pushed her out of the car. When she stood up, she banged her head on the passenger door. Defendant got back in the car and drove off.

¶ 16 C. The Jury's Verdict and the Trial Court's Sentence

¶ 17 The jury found defendant guilty. At the May 2014 sentencing hearing, the trial court sentenced defendant to three years in prison. The court awarded defendant credit for 105 days spent in presentence custody and imposed a $200 domestic-violence fine. The circuit clerk later imposed various assessments against defendant.

¶ 18 This appeal followed.

¶ 19 II. ANALYSIS

¶ 20 Defendant argues that (1) the trial court abused its discretion by limiting the impeachment testimony against Warnsley, (2) the circuit clerk erred by imposing a $10 local-anti-crime-fund assessment against defendant, and (3) defendant is entitled to an additional eight days of presentence custody credit toward his fines. As to defendant's first argument, we conclude that the court abused its discretion by limiting the impeachment testimony but that the error was harmless. As to defendant's second and third arguments, we accept the State's concessions that defendant's sentence must be modified. We address defendant's arguments in turn.

¶ 21 A. The Trial Court Improperly Limited the Impeachment Evidence Against Warnsley

¶ 22 Defendant argues that the trial court abused its discretion by limiting the impeachment evidence against Warnsley. In particular, defendant argues that he should have been allowed to impeach Warnsley with the specific nature of her pending charge of sexual exploitation of a minor, instead of referring to it as a "pending felony case[]." We agree but conclude that the error was harmless.

¶ 23 1. *Applicable Law and Standard of Review*

¶ 24 A defendant may impeach a witness by showing that the witness has been charged

with a crime if the charge " 'would reasonably tend to show that [the witness's] testimony might be influenced by interest, bias or a motive to testify falsely.' " *People v. Triplett*, 108 Ill. 2d 463, 481, 485 N.E.2d 9, 18 (1985) (quoting *People v. Mason*, 28 Ill. 2d 396, 401, 192 N.E.2d 835, 837 (1963)). "[T]he defendant need not prove the existence of any promise between the witness and the State before inquiring into the witness's expectations of leniency in exchange for her testimony." *People v. Dopson*, 2011 IL App (4th) 100014, ¶ 29, 958 N.E.2d 367, *abrogated on other grounds, People v. Murphy*, 2013 IL App (4th) 111128, ¶¶ 43-47, 990 N.E.2d 815. The trier of fact is entitled to know the nature of the pending charge so that it has complete information to resolve the question of bias. *Id.* "[A] criminal defendant is virtually unrestricted in his ability to cross-examine witnesses regarding their expectation of leniency in exchange for their testimony." *Id.* "The widest latitude should be given the defense on cross-examination when trying to establish a witness' bias or motive." *People v. Ramey*, 152 Ill. 2d 41, 67, 604 N.E.2d 275, 287 (1992).

¶ 25 "The latitude allowed on cross-examination is within the sound discretion of the circuit court, and a reviewing court will not interfere unless there has been a clear abuse of discretion ***." *People v. Kirchner*, 194 Ill. 2d 502, 536, 743 N.E.2d 94, 112 (2000).

¶ 26 2. *The Trial Court's Ruling in This Case*

¶ 27 In this case, the trial court ruled that defendant was prohibited from addressing the specific nature of Warnsley's pending charge of sexual exploitation of a minor. Instead, the court determined that defendant could refer to the charge as a "pending Macon County criminal case." The court abused its discretion in so ruling.

¶ 28 Defendant was entitled to impeach Warnsley with the specific nature of her pending charges. *Dopson*, 2011 IL App (4th) 100014, ¶ 29, 958 N.E.2d 367. The trier of fact was

entitled to that specific information in order to reach an informed decision about Warnsley's potential for bias. *Id.* The trial court's conclusion that the nature of Warnsley's pending charge would inflame the jury and that, therefore, the prejudicial nature of the pending charge outweighed its probative value was an abuse of discretion. As we have stated before, "[A] criminal defendant is virtually unrestricted in his ability to cross-examine witnesses regarding their expectation of leniency in exchange for their testimony." *Id.*

¶ 29 3. *Harmless Error*

¶ 30 The State argues that any potential error was harmless. We agree.

¶ 31 The parties disagree about the applicable harmless-error standard. Defendant argues that the court's decision infringed on his constitutional right to confront witnesses against him. Therefore, he urges us to apply the constitutional harmless-error standard, which provides that an error is harmless when "it appears beyond a reasonable doubt that the error at issue did not contribute to the verdict obtained." *People v. Patterson*, 217 Ill. 2d 407, 428, 841 N.E.2d 889, 901 (2005). The State, on the other hand, argues for the more deferential harmless-error standard applicable to nonconstitutional evidentiary errors. Under that standard, an error is harmless when no reasonable probability exists that the jury would have acquitted defendant absent the error. *People v. Stull*, 2014 IL App (4th) 120704, ¶ 104, 5 N.E.3d 328.

¶ 32 We need not decide whether the trial court's error in this case breached defendant's constitutional rights because even under the more exacting constitutional harmless-error standard, the error here was harmless. To prove defendant guilty of aggravated battery in this case, the State was required to prove beyond a reasonable doubt that defendant knowingly and without legal justification caused bodily harm to Warnsley in a public place of accommodation. 720 ILCS 5/12-3.05 (West 2012). We conclude beyond a reasonable doubt that the court's error

in limiting the impeachment of Warnsley did not contribute to the jury's guilty verdict. We reach that conclusion for two reasons: (1) defendant produced substantial other evidence to impeach Warnsley and (2) Denton's eyewitness testimony strongly corroborated Warnsley's testimony.

¶ 33 When impeaching Warnsley's testimony, defendant offered Warnsley's five prior criminal convictions, which were introduced without objection. In addition, defendant offered testimony that Warnsley was currently facing a pending burglary charge and another unnamed felony charge. That impeachment evidence was substantial and mitigated the effect of excluding the specific nature of Warnsley's pending charge for sexual exploitation of a child. The inclusion of the specific nature of that charge was unlikely to sway the jury's credibility determination, based on the other impeachment evidence, which fully revealed Warnsley's questionable character. Even if the additional impeachment evidence would have significantly affected the credibility of Warnsley in the jury's eyes, Denton's unbiased eyewitness testimony compellingly supported Warnsley's account and the jury's verdict. For those reasons, we conclude that the trial court's error was harmless beyond a reasonable doubt.

¶ 34 Although we conclude that this error was harmless, we note that we are surprised that the State would jeopardize its conviction by filing this motion *in limine*, given the overwhelming case law clearly establishing the right of a defendant to impeach a witness with the specific nature of any pending criminal charges.

¶ 35 B. Fines and Sentencing Credit

¶ 36 Defendant argues that (1) the circuit clerk erred by imposing a $10 local-anti-crime-fund assessment and (2) he is entitled to an additional eight days of presentence custody credit toward his fines. The State concedes both of these issues. We accept the State's concessions.

¶ 37 First, the circuit clerk improperly imposed a $10 local-anti-crime-fund assessment. 730 ILCS 5/5-6-3 (West 2012). The local-anti-crime-fund assessment is only applicable when a defendant has been sentenced to probation. *People v. O'Laughlin*, 2012 IL App (4th) 110018, ¶ 16, 979 N.E.2d 1023. We therefore vacate the $10 local-anti-crime-fund assessment.

¶ 38 Second, the trial court awarded defendant credit for 105 days spent in presentence custody. The record reveals that defendant actually spent 113 days in presentence custody. He is therefore entitled to an additional eight days of $5-per-day credit toward his creditable fines, for a total of $565 in credit. 725 ILCS 5/110-14 (2012). We modify the trial court's order to reflect that defendant is entitled to $565 in credit toward his creditable fines for 113 days spent in presentence custody. (Notably, defendant does not argue that any outstanding fines exist to which his additional credit may be applied.)

¶ 39 III. CONCLUSION

¶ 40 For the foregoing reasons we affirm defendant's conviction and modify defendant's sentence. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2014).

¶ 41 Affirmed as modified.