

NOTICE

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2018 IL App (4th) 160267-U

NO. 4-16-0267

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

May 16, 2018

Carla Bender

4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
TOBY SIROIS,)	No. 15CM642
Defendant-Appellant.)	
)	Honorable
)	Brian L. McPheters,
)	Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Presiding Justice Harris and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The evidence was sufficient for a reasonable jury to find defendant guilty of false personation of a public official.

(2) Defense counsel did not render ineffective assistance by failing to object to hearsay testimony when the testimony did not affect the fundamental fairness of the trial or undermine the outcome thereof.

¶ 2 Following a December 2015 trial, a jury convicted defendant, Toby Sirois, of two counts of false personation of a public official (720 ILCS 5/17-2(b)(2) (West 2014)). In March 2016, the trial court sentenced defendant to 12 months' probation.

¶ 3 Defendant appeals, raising two claims: (1) the State failed to prove him guilty beyond a reasonable doubt of count I, and (2) he received ineffective assistance of counsel when his trial counsel failed to object to hearsay testimony. For the reasons that follow, we disagree with defendant's claims and affirm.

¶ 4

I. BACKGROUND

¶ 5 In July 2015, the State charged defendant with two counts of false personation of a public official. In both counts, the State alleged defendant knowingly and falsely represented himself to be a public officer or a public employee, namely an employee or official of the City of Champaign Liquor Commission (720 ILCS 5/17-2(b)(2) (West 2014)). Count I alleged defendant did so on March 29, 2015; count II alleged he did so on April 2, 2015. Defendant does not challenge the sufficiency of the evidence related to count II pertaining to the events that occurred on April 2, 2015.

¶ 6 Defendant's jury trial began on December 16, 2015. Before opening statements, the trial court read to the jury two stipulations. First, the court read: "The parties stipulate that the mayor of Champaign is also the liquor commissioner for the City of Champaign." Second, the court read: "The parties stipulate that, at the time of this incident, the defendant was not an employee of the City of Champaign, nor was he affiliated with the Champaign Liquor Commission."

¶ 7 During her opening statement, the prosecutor explained to the jury that the underlying facts of the case were based on the following: defendant, a volunteer with the re-election campaign of Don Gerard, the mayor of Champaign, was placing political signs throughout the city for Gerard's reelection campaign.

¶ 8 The State first called Khushwant Rai, who testified he worked at Discount Gas Station. On March 29, 2015, at approximately 3 p.m., defendant came into the station asking if he could place a sign on the property. Rai, working alone at the time, asked defendant to return when Rai's manager was present, as Rai advised he had no authority to grant defendant permission. Defendant "said he has a case" with the manager and agreed to return later.

Defendant returned after 6 p.m. when Rai was working with Abchal Singh. The manager was still not present, but nevertheless Singh gave defendant permission to place the sign. Rai said defendant advised he was from “the liquor control” and said: “ ‘We are the guy[s] that give you the liquor license, you know.’ ” Defendant continued: “ ‘[H]e’s a good guy. He[’s] done *** a lot for Champaign city *** go and search on Google online, you know, [to see] what he[’s] done for city.’ ” Rai said defendant “indirectly” said he worked for the liquor commissioner and insinuated it would be beneficial for the business if they allowed the sign to be posted since “he’s the one taking care of the liquor license and everything.”

¶ 9 Rai said when the manager saw the sign, he questioned it. He asked Rai to take the sign down because, according to the manager, they were “not taking anybody’s side[.]” Rai removed the sign and placed it behind the building.

¶ 10 Rai said defendant returned to the store on April 2, 2015. A man with defendant entered the store and inquired about the sign. Rai said he told the man the manager did not want the sign displayed and he had placed the sign behind the building.

¶ 11 On cross-examination, Rai (defendant’s counsel referred to him as Singh) indicated his first language was Punjabi, a language in India. He had been in the United States for approximately five years. Counsel asked the following:

“Q. Now you testified a moment ago, Mr. Singh, that [defendant] never directly said that he worked for the liquor commission?

A. No. When he came second time and when the older guy told him to put the sign out there, okay, and he start explaining, you know, what the mayor did and he told us he’s the one—he’s the one and mayor the one, he taking care of the liquor commissioner, their liquor license we have over there—

Q. But isn't it—

A. —yeah.

Q. But isn't it true that you testified only a few minutes ago that he never directly said that he was employed by the liquor commission?

A. No. He never told me directly, but indirectly he was saying like that's good for you guys if you let us to put the sign out there.

Q. So you thought he was implying that it would be good for your business to put up the signs?

A. Yeah. He was saying like [']you have liquor license,['] he was pointing at liquor license, [']you have liquor—here's you liquor license,['] and he's the liquor commissioner. [']If you—the mayor is the liquor commissioner and we work together,['] something like that, he said, you know, I'm a (inaudible), [']I work for him,['] just like that.

* * *

A. Yeah. He's, he's, he's—I don't know if he's a (inaudible), but indirectly he was saying [']we are the power, we have—we are taking care of your liquor license you have.[']

* * *

Q. So, when he was referring to himself and Mayor Gerard, he would use the word [']we[']?

A. Yeah.

Q. And, because he used the word [']we,['] you thought he was saying that he was working for—

A. Yeah. Absolutely. He was like—even if he’s also liquor commissioner or something, you know.

Q. You thought that’s what he was saying when he said [‘]we[’]?

A. Yeah.

Q. Now he never threatened to take away your liquor license; correct?

A. He never threatened to me anything.”

¶ 12 The State next called Abchal Singh, the gas station employee who was working with Rai on the evening of March 29, 2015. Singh said defendant asked him if he was “the boss.” Singh said he was not, but he nevertheless gave defendant permission to “put [up] some sign,” though he did not “know what kind of sign.” Singh did not hear defendant say anything further.

¶ 13 Manish Puri, the manager of the gas station, testified that on March 30, 2015, he noticed Mayor Gerard campaign signs posted outside of the gas station. He asked his employees to remove the signs. The following exchange occurred:

“Q. What happened when you talked to the employees about the signs?

A. Well, I, I went in and I, you know, I asked them where the signs come from, and they said someone came from liquor commissioner’s office and they wanted to put the signs up, so we let them. And I said, [‘]no, we do not take anybody’s signs and we’re not going to have any signs in our yard, so go ahead and take them off, save them in the back room and, when they come back, return them to the people when they come back.[’]

* * *

Q. Now, Mr. Puri, directing your attention again to April 2[, 2015,] did you have any interaction with the defendant that day?

A. Yes.

* * *

Q. And what happened on April 2[, 2015,] when you interacted with the defendant?

A. Okay. *** He walked in pointing fingers and like, [‘]you the owner, you the owner,[’] like someone’s charging at you. *** And he—pointed towards me, [‘]are you the owner?['] I said [‘]no, I’m the manager for the owner, but I can definitely help you. What is this in regards to?[']

Q. And what did defendant say?

A. He said he was there for the sign—he said [‘]who took my signs off of there?['] I said [‘]I told them to take the signs off.[’] And you know they’re for the liquor commissioner. I said, I mean, [‘]they’re not for the liquor commissioner. They’re for the mayor’s campaign or something.[’] [‘]Yeah, but he’s the liquor commission and I work directly under him. I’m the liquor compliance officer. Do you even have your signs posted? Do you know there’s laws to post them?['] At that time, I pointed to—

* * *

Q. That’s okay. What happened when the defendant asked where your signs were posted?

A. I pointed at the wall where the signs were posted. I said [‘]they’re posted right there and you can definitely look at them if you’re like a compliance officer. They are posted in public view.[’]

* * *

Q. What happened after you pointed out your liquor license to [defendant]?

A. Well, he seemed upset with me not giving in for post—for letting him post his signs or the yard signs. He started to walk out on me, then he went down our liquor aisle, looked at it, and he said, [‘]oh, you got so much liquor. I’ll make sure I get your liquor license cancelled.[’] So, at this time, I got a little scared thinking that I might have done something really wrong, so I tried to stop him and say—tried talking to him. I said [‘]hang on for a second.[’] And then he just gave me the hand, you know, [‘]I don’t want to talk with you, I’m done talking with you,[’] walked out and slammed the door on me.”

The State presented Puri with a video recording from the station, without audio, showing defendant’s movements within the station on April 2, 2015. Puri said the surveillance video fairly and accurately depicted the interaction between Puri and defendant. The video was played for the jury and narrated by Puri.

¶ 14 On cross-examination, Puri said he was intimidated by defendant due to his aggressive and loud manner. On redirect, Puri said defendant “said he worked directly under the liquor commissioner. He was a liquor compliance officer and if [his] liquor licenses were even posted on the wall and if [he] knew that was the law and, at that time, [Puri] pointed at the wall where the licenses were posted and [Puri] told him they’re posted in full public view right on the wall.”

¶ 15 The State next called Harinder Singh, who testified he was employed at Hollywood Liquors in Champaign, said defendant entered his store at approximately 6:30 p.m. on April 2, 2015. Defendant “came like quite aggressively” toward Singh and Manish Puri, who

was also present. Defendant asked each about their manager status. Puri advised defendant he was the manager and he was the one who removed the signs. Singh said Puri explained to defendant they were not affiliated with any political party, did not support any particular campaign, and wished to remain neutral. Singh testified defendant said “ ‘[Y]ou guys have a lot of liquors, like may I see your liquor license? I come from like liquor compliance. I can see your license as well.’ ” Puri pointed toward the liquor licenses. Defendant indicated he would “make sure that [he would] get [their] license cancelled,” or something to that effect.

¶ 16 On cross-examination, Singh explained Puri’s father owned Hollywood Liquors. Puri managed the store. Singh said defendant did not display a business card or any other type of identification. Singh did not recall defendant identifying himself as the liquor commissioner but he did recall him using words like “liquor commissioner, liquor compliance.”

¶ 17 On redirect examination, Singh said defendant informed them he was from “liquor compliance” and he would “check [their] liquor licenses” and “make sure that [they] lose [their] license.”

¶ 18 James Tinsley testified he worked with defendant, a volunteer, on the mayoral campaign. Defendant “assisted in coordination and whatever was needed for him to do.” Tinsley said he and defendant traveled throughout Champaign on April 2, 2015. They drove by Discount Gas and noticed the signs that had been approved were not displayed, so they stopped and went inside. Tinsley questioned the cashier about the signs. The cashier explained that the owner of the station did not approve the signs, so they had taken them down and placed them behind the store. Tinsley retrieved the signs and put them in defendant’s truck. Defendant told Tinsley he knew the owner and they should go to Hollywood Liquors to speak with him. They drove to Hollywood Liquors. Tinsley stayed in the vehicle while defendant went inside to “discuss ***

how to proceed on the sign issue.” Tinsley said defendant was inside the store for a few minutes. When he came out, he got back in the vehicle and they left the premises with no indication of “anything happening within the liquor store.”

¶ 19 On cross-examination, Tinsley explained that defendant could be described as loud, boisterous, and intimidating. When defendant returned to the vehicle on April 2, 2015, he did not appear upset or otherwise indicate an altercation inside had occurred.

¶ 20 Finally, the State called Sergeant Jaceson Yandell of the Champaign police department, who testified he reported to Hollywood Liquors on April 3, 2015, at approximately 5:45 p.m. in response to a patrol officer’s call for assistance. When he arrived, he saw the mayor standing in the parking lot. They had a brief conversation and then proceeded inside and spoke with the owner. The owner handed Yandell a photocopy of a still image from the store’s surveillance video. Yandell handed the photocopy to the mayor and asked him if he recognized the person in the photograph. The mayor said he could not identify the individual due to the poor quality of the photo. The owner suggested they view the actual surveillance video. At that point, the mayor identified the individual as defendant, a volunteer with his campaign. Yandell spoke with defendant by telephone later that evening.

¶ 21 The State rested and defendant moved for a directed verdict as to both counts. The trial court denied defendant’s motion in full, finding sufficient evidence when considered in the light most favorable to the prosecution.

¶ 22 Defendant called Steve Guess, his investigator, who said he interviewed Harinder Singh on December 4, 2015. According to Guess, Singh said he was not exactly sure what defendant said while he was in the store, only that defendant had “made some references to the liquor commission.” Singh told Guess he could not “really hear what was going on in the

conversation because he was taking care of the customers and separate from that conversation.” Guess said Singh never used the word “compliance.” If he had, Guess said, he would have included it in his report since the word was “very relevant given the accusations.” Guess also said he interviewed Manish Puri on the same day. Puri told Guess that defendant said the mayor was the liquor commissioner. Puri had said he felt as if he was “being lectured like a school boy” by defendant.

¶ 23 On cross-examination, Guess said Singh had recalled defendant mentioning the liquor commission but he did not know defendant’s exact words. After refreshing his memory with his written report, Guess testified that Singh stated he heard defendant talking about being with the liquor commission.

¶ 24 Defendant rested and requested the trial court read the third stipulation to the jury. The court obliged and informed the jury of the following:

“If called to testify, Officer Jerad B. Gale, an officer of the Champaign police department, would testify to the following: (A) that on April 3, 2015, Officer Gale visited Hollywood Liquors located at 512 South Neil Street in Champaign, Illinois[,] to speak with Manish Puri about an incident that occurred at his business, businesses, plural; that [(B)] Manish Puri told Officer Gale that an individual later identified as [defendant] entered Hollywood Liquors on April 2, 2015, to speak with Manish; (C) that Manish Puri told Officer Gale that on April 2, 2015, [defendant] entered Hollywood Liquors and was walking around the store looking at liquor and commenting on how much business would suffer should their liquor license be revoked; (D) that on April 3, 2015, Officer Gale

wrote a police report narrating his interview with Manish Puri. His report included Manish’s statements as set forth in paragraph C.”

¶ 25 Defendant renewed his motion for a directed verdict on both counts but the trial court denied the same. After deliberations, the jury found defendant guilty of both counts—for false personation of a government official on March 29, 2015 (count I), and on April 2, 2015 (count II).

¶ 26 Defendant filed a timely motion for acquittal or, in the alternative, motion for a new trial. After a hearing, the trial court denied defendant’s motion, finding his allegations unsupported by “what actually occurred here.”

¶ 27 In March 2016, the trial court sentenced defendant to 12 months’ probation at a cost to defendant of \$15 per month and ordered him to pay a \$200 fine, court costs, a victim-impact fee, and a public-safety fee within 300 days. Defendant filed a timely motion to reconsider sentence, which the court denied.

¶ 28 This appeal followed.

¶ 29 II. ANALYSIS

¶ 30 Defendant poses two arguments on appeal. First, he claims the State failed to prove him guilty beyond a reasonable doubt on count I, the offense related to the incident on March 29, 2015, at Discount Gas. Second, he claims his trial counsel rendered ineffective assistance of counsel by failing to object to the admission of hearsay testimony. Alternatively, he claims plain error occurred when this hearsay evidence was allowed in an otherwise closely balanced case.

¶ 31 A. Sufficiency of the Evidence

¶ 32 Defendant contends the evidence related to the incident on March 29, 2015, about which primarily Khushwant Rai testified, was insufficient to establish the requisite elements of false personation. According to defendant, Rai's testimony established only that defendant *implied* he was in a position to affect the status of the gas station's liquor license. Rai did not testify that defendant actually represented himself as a public official.

¶ 33 When considering a challenge to the sufficiency of the evidence in a criminal case, it is not the function of a reviewing court to retry the defendant. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). Rather, the relevant question is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Collins*, 106 Ill. 2d at 261. The trier of fact has the responsibility to determine the credibility of the witnesses, to resolve conflicts or inconsistencies in their testimony, to assess the weight to be given to their testimony, and to draw reasonable inferences from all the evidence. See *People v. Heard*, 187 Ill. 2d 36, 84 (1999); *People v. Frieberg*, 147 Ill. 2d 326, 360 (1992). A reviewing court should not reverse a criminal conviction unless the evidence is so unreasonable, improbable, or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Campbell*, 146 Ill. 2d 363, 375 (1992).

¶ 34 Section 17-2(b)(2) of the Criminal Code of 2012 (720 ILCS 5/17-2(b)(2) (West 2014)) sets out the elements of the offense as follows:

“A person commits a false personation if he or she knowingly and falsely represents himself or herself to be any of the following:

(2) A public officer or a public employee or an official or employee of the federal government.” 720 ILCS 5/17-2(b)(2) (West 2014).

¶ 35 Despite a slight language barrier, Rai made it clear to the jury that on March 29, 2015, defendant (1) represented himself, whether explicitly stating so or not, that he was with “liquor control” or worked for the liquor commissioner, (2) seemed to imply he intended for Rai and Singh to perceive him as a person who had the authority to control the business’s liquor license, and (3) insinuated it would be in the business’s best interest to allow him to post the sign. Singh acknowledged he was present with Rai on that date and authorized defendant to display the sign, but he did not hear defendant say anything relating to a liquor license. Although defendant denied explicitly stating, or even insinuating, that he was an employee or official for the liquor commission, the jury could have reasonably believed Rai’s testimony to the contrary.

¶ 36 The jury determines the credibility of witnesses and we afford that decision great deference. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004) (“The reviewing court must carefully examine the record evidence while bearing in mind that it was the fact finder who saw and heard the witness.”). The exception to this generality is the reasonableness of the jury’s determination. “[W]here the finding of guilt depends on eyewitness testimony, a reviewing court must decide whether, in light of the record, a fact finder could reasonably accept the testimony as true beyond a reasonable doubt.” *Cunningham*, 212 Ill. 2d at 279.

¶ 37 Viewing the evidence in the light most favorable to the State, which we are obligated to do (see *Cunningham*, 212 Ill. 2d at 280), we conclude Rai’s testimony was sufficient to prove beyond a reasonable doubt that defendant committed the offense of false personation of a public official on March 29, 2015, as alleged in count I. Rai’s testimony supported the jury’s

verdict that defendant “knowingly and falsely represent[ed] himself” to be a public official or employee. As such, we affirm defendant’s conviction.

¶ 38 B. Ineffective Assistance of Counsel

¶ 39 Defendant next contends his counsel was ineffective for failing to object to certain hearsay testimony. Specifically, he challenges the admission of Puri’s testimony that on March 30, 2015, when he asked the employees about the display of the signs, “they said someone came from liquor commissioner’s office and they wanted to put signs up, so we let them.” He claims this was the “most damning piece of evidence that the jury heard against [defendant] in relation to count I.” He contends counsel’s failure to object to the admission of this evidence was unreasonable and undermines any confidence in the jury’s verdict.

¶ 40 A claim of ineffective assistance of counsel is reviewed under the familiar two-pronged standard set forth in *Strickland* (*Strickland v. Washington*, 466 U.S. 668 (1984)). That is, the defendant must show that counsel’s performance was deficient and the deficient performance prejudiced him. *Strickland*, 466 U.S. at 687. To satisfy the prejudice prong, the defendant must prove a reasonable probability exists that, but for counsel’s unprofessional errors, the proceeding’s result would have been different. *People v. Evans*, 186 Ill. 2d 83, 93 (1999). Additionally, the *Strickland* Court noted that, when a case is more easily decided on the ground of lack of sufficient prejudice rather than that counsel’s representation was constitutionally deficient, the court should do so. *Strickland*, 466 U.S. at 697.

¶ 41 Defendant claims he was prejudiced by counsel’s failure to object because the introduction of the hearsay evidence at issue undermined confidence in the jury’s verdict. We disagree. As we explained fully in our analysis above, it was not unreasonable for the jury to accept Rai’s testimony relaying the events of March 29, 2015. Rai explained defendant

represented himself as a public employee or public official by stating (or implying) he worked for the liquor commissioner or for “liquor control.” According to Rai, defendant intended for Rai to perceive defendant as an employee with the authority to control the validity of liquor licenses. Rai said it seemed to him that defendant insinuated it would be in the business’s best interest to allow him to post the sign. This testimony was reasonably accepted by the jury and was sufficient to support a guilty verdict on count I. Because Rai’s testimony, standing alone, was sufficient to convict him, defendant cannot reasonably claim that Puri’s hearsay testimony negatively impacted the verdict. That is, defendant cannot demonstrate prejudice when other independent evidence sufficiently supported the jury’s verdict. Thus, defendant cannot prove counsel’s failure to object to hearsay evidence had any effect on the outcome of the trial.

¶ 42 In so concluding, we need not address defendant’s alternative argument that the admission of the hearsay evidence was plain error because we have already concluded defendant cannot demonstrate prejudice. Defendant’s plain-error argument is premised on this court’s review of the issue under the closely-balanced prong of the plain-error rule. See *People v. Herron*, 215 Ill. 2d 167, 187 (2005) (Under the closely-balanced prong, “the defendant must prove ‘prejudicial error.’ That is, the defendant must show both that there was plain error and that the evidence was so closely balanced that the error alone severely threatened to tip the scales of justice against him.”) In performing our *Strickland* analysis, we concluded the hearsay evidence did not negatively affect the outcome of defendant’s trial, and therefore defendant’s plain-error claim is likewise without merit.

¶ 43

III. CONCLUSION

¶ 44 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.

¶ 45 Affirmed.