

No. 1-11-0710

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 10 MC1 199371
)	
JEFFERSON MAUCK,)	Honorable
)	Jim Ryan,
Defendant-Appellant.)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Harris and Justice Quinn concurred in the judgment.

ORDER

- ¶ 1 *Held:* Judgment entered on defendant's conviction of battery affirmed where defendant forfeited his confrontation clause challenge by failing to make an offer of proof, and his post-trial statements deemed insufficient to trigger a *Krankel* inquiry.
- ¶ 2 Following a bench trial, defendant Jefferson Mauck was found guilty of battery, then sentenced to one year of supervision. On appeal, defendant contends that the trial court erred in denying his right to present a defense and confront his accuser with evidence of the complainant's bias and motive to falsely testify, and in failing to inquire into his *pro se* claim of ineffective assistance of trial counsel.

¶ 3 The battery charge filed against defendant in this case arose from an incident that occurred on February 11, 2010, at 4453 North Troy Street, in Chicago, Illinois. At that time and place, defendant shoved George Mochoruk, the landlord of the building, as he attempted to serve a "bar notice" on defendant.

¶ 4 At trial, Mochoruk testified that about 8:30 p.m. on February 11, 2010, he and Carline Lewis, a realtor, were looking at vacant apartments in a building he owned and which he was hiring her to rent out. He also was there to serve an eviction notice on Janet Miller, defendant's girlfriend, and an "additional notice" on defendant, and brought Lewis to serve as a witness. When he eventually served defendant with the notice, defendant looked at it, became angry, and said, "what's this," at which point Mochoruk told Lewis, "let's go." They turned around, walked down the stairs, and went outside, but defendant pursued them, approached Mochoruk, and said, "what the F is this[?]"¹ He then shoved Mochoruk to the ground with two hands to the chest, crumpled up the notice, and threw it at him, saying "you could stick this up your –." Police arrived shortly thereafter and arrested defendant on the premises.

¶ 5 On cross-examination, Mochoruk stated that he had been having problems with defendant because he kept coming onto the property after he was evicted by the Cook County Sheriff. On the day in question, Mochoruk "assumed" that defendant was visiting Miller's apartment, but was not "100 percent sure." When defense counsel subsequently asked, "When he would visit Ms. Miller, isn't it true the police wouldn't do anything because they said he had a legal right to visit Ms. Miller," the State objected and the court sustained it.

¶ 6 Janet Miller testified for the defense that on February 11, 2010, she lived alone in an apartment at 4453 North Troy Street, and Mochoruk was her landlord. That day, she received a phone call at work informing her that she was no longer allowed to have defendant in her

¹ Mochoruk abbreviated the profanity used by defendant.

apartment or on the premises. Defendant, nonetheless, came to her apartment that day, and when Mochoruk stopped by later, he handed her a 30-day notice to move out. Miller "just kind of smiled because [she] knew [she] was moving out anyway" and went back into her apartment.

¶ 7 Shortly thereafter, Mochoruk stopped by again and asked if defendant was inside. Miller responded that he was, and Mochoruk said he wanted to speak with him. At that point, defendant left the apartment and went downstairs with Mochoruk, and Miller went down to the next landing where she "saw" defendant and Mochoruk exchange angry words with raised voices. She did not hear the words, however, or see anyone get shoved. When defendant returned, he had a "puzzled" demeanor and showed her the "bar notice" barring him from the property. About five minutes later, Mochoruk and two police officers came to her door, and the officers pushed passed her into the apartment and arrested defendant. Miller testified that she is a friend of defendant, but that she would not lie in court to help him.

¶ 8 Defendant testified that on February 11, 2010, he was residing with his nephew on South State Street. He had previously resided in the apartment complex managed by Mochoruk until he was locked out of his apartment on November 10, 2009. When counsel asked, "And since that time, had you previously – or since between that time that you got locked out and between the time of February 11th, 2010, had you gone back to this building," the court sustained the State's objection to the following response by defendant: "Yes, I had. I had gone back to try to retrieve property which I was not allowed to do and –." The court explained, "That part of your answer, all that not [*sic*] relevant to what happened on February 11th, your lawyer knows that."

¶ 9 On February 11, 2010, defendant was at his old apartment complex "visiting and helping" Miller when Mochoruk served Miller with a 30-day notice. About two minutes later, Mochoruk returned and asked to speak with defendant. Defendant said, "yes, George, what is it and he said I would like to talk to you in private." Defendant then stepped into the hallway and asked

Mochoruk, "Is this about letting me get my stuff back," and Mochoruk told him, "call me tomorrow," and served a "bar notice" on him. When counsel asked defendant if his conversation with Mochoruk was "heated," the court sustained the State's objection to the following response by defendant: "I was a little bit incensed because George has repeatedly tried to get me removed from the property and this was yet another attempt. I mean, he called the cops on me twice to get me out of Janet's apartment. And both times the officers responded and said he's got –." At that point, counsel advised defendant, "Just try and stay between the confines of my question."

¶ 10 Defendant testified that Mochoruk never yelled at him during their conversation, noting that "[i]t was mostly coming from me." He also testified that he never made "a single speck of contact" with Mochoruk.

¶ 11 On cross-examination, the State asked defendant if he was mad because Mochoruk told him he could not visit his girlfriend, and the court sustained the State's objection after the following response was given by defendant:

"Well, she was my friend at the time. She wasn't really my girlfriend, but I was helping her. She has no cartilage in her knees and she needed help to move out of the apartment and she'd also been harassed quite a bit by George too. So yeah, I was very mad at George and he was also very restraining because I didn't want to jeopardize my situation. I knew very well that he was doing a number of things that were extremely illegal."

¶ 12 Following closing arguments, the trial court found defendant guilty of battery, noting that it found Miller to be biased in light of her relationship to defendant, and that it "took particular notice of the Defendant's demeanor and testimony with regards to while he was testifying." The

court then immediately proceeded to sentencing and provided defendant an opportunity to speak in allocution, at which time the following colloquy occurred:

"THE DEFENDANT: Yes, your Honor. I believe that if I were afforded the opportunity to present the Court with more evidence, that I would be able to establish the veracity of my testimony and the falseness of Mr. Mochoruk's testimony. I believe that there is a consistency of deceit that —"

THE COURT: Mr. Mauck, now is the time for you to take responsibility for your actions. I found you guilty.

THE DEFENDANT: I understand, your Honor.

THE COURT: Okay. So do you have anything else to say before I pronounce your sentence?

THE DEFENDANT: No, sir."

Thereafter, the court sentenced defendant to one year of supervision.

¶ 13 In this appeal from that judgment, defendant first contends that the trial court erred in denying his right to present a defense and confront his accuser with evidence of his bias and motive to testify falsely. He specifically claims that the court improperly excluded "evidence of prior, unsuccessful efforts of Mochoruk to improperly use the police to gain advantage in his long-standing feud with [him]," which was relevant to establishing Mochoruk's bias and motive to falsely implicate him.

¶ 14 Specifically, the question and responses that defendant alleges the trial court improperly excluded are: (1) counsel's question to Mochoruk on cross-examination, "When [defendant] would visit Ms. Miller, isn't it true the police wouldn't do anything because they said he had a legal right to visit Ms. Miller?"; (2) defendant's testimony on direct examination that he had previously "gone back [to the apartment building owned by Mochoruk] to try to retrieve property

which I was not allowed to do and –"; (3) defendant's testimony on direct examination that Mochoruk "called the cops on me twice to get me out of Janet's apartment. And both times the officers responded and said he's got –"; and (4) defendant's testimony on cross-examination that he "knew very well that [Mochoruk] was doing a number of things that were extremely illegal."

¶ 15 The State responds that defendant has waived any issue regarding the exclusion of the above question and responses by the trial court because he failed to make an adequate offer of proof in response to the court's rulings. For the reasons to follow, we agree.

¶ 16 Generally, in order to preserve an error in the exclusion of evidence, the proponent of that evidence must make an adequate offer of proof in the trial court. *In re Kamesha J.*, 364 Ill. App. 3d 785, 792 (2006). An adequate offer of proof must apprise the court of what the expected testimony will be, by whom it will be presented, and its purpose. *In re Kamesha J.*, 364 Ill. App. 3d at 792. The failure to make such an offer of proof constitutes a waiver of the issue on appeal. *In re Kamesha J.*, 364 Ill. App. 3d at 792.

¶ 17 Here, the record shows that defendant never made an offer of proof that the purpose of the excluded question and responses was to establish Mochoruk's bias and motive to falsely implicate him. We also find no such purpose evident from the nature of the excluded question and responses. See *People v. Lynch*, 104 Ill. 2d 194, 202 (1984) (noting that "if a question shows the purpose and materiality of the evidence *** the proponent need not make a formal offer of what the answer would be").

¶ 18 Rather, the excluded and contested material, when read in context, appears to address whether defendant was lawfully on the premises (*i.e.*, counsel's question whether police told Mochoruk that defendant had a legal right to visit Miller; defendant's testimony that he had previously attempted to retrieve property from Mochoruk's building which he was not allowed to do; and defendant's testimony that Mochoruk twice called police to have defendant removed

from Miller's apartment, but "both times the officers responded and said he's got –"), and whether defendant was angry with Mochoruk (*i.e.*, defendant testified that he "knew very well that [Mochoruk] was doing a number of things that were extremely illegal" in response to the State asking him whether he was mad). In addition, defendant's responses were narratives and mostly non-responsive to the questions asked. *People v. Del Vecchio*, 105 Ill. 2d 414, 433-34 (1985).

¶ 19 Defendant, however, compares the instant case to *People v. Averhart*, 311 Ill. App. 3d 492 (1999). In that case, defendant was arrested for possession of a controlled substance, and the State made a pre-trial motion *in limine* to bar him from cross-examining the arresting officer about his prior arrest of defendant, and from introducing the fact that defendant was found not guilty of charges from that arrest. *Averhart*, 311 Ill. App. 3d at 494. The arresting officer had also previously been the subject of a complaint filed by defendant with the office of professional standards of the Chicago police department (OPS) alleging physical abuse, verbal abuse, and false arrest in connection with the prior arrest, but the complaint was found to be "not sustained." *Averhart*, 311 Ill. App. 3d at 494. The trial court ultimately granted the State's motion *in limine* and barred the defense from cross-examining the arresting officer about the allegations of abuse during the prior arrest, presenting the jury with the factual basis for the OPS complaint, and introducing evidence that defendant was found not guilty of possession of a controlled substance following the earlier arrest. *Averhart*, 311 Ill. App. 3d at 494-95. On appeal, this court found that the trial court's ruling, which prohibited all substantive inquiry as to whether the arresting officer was biased as a result of defendant's OPS complaint, violated his rights under the confrontation clause. *Averhart*, 311 Ill. App. 3d at 499.

¶ 20 Unlike *Averhart*, this was a bench trial and the trial court did not render a pretrial ruling that outright barred the defense from presenting relevant evidence of Mochoruk's alleged bias, nor from introducing such evidence at any point during the trial. With respect to the question

and responses at issue, the trial court was never informed by defense counsel, or apprised by the nature of the question and responses, that the defense was seeking to establish Mochoruk's bias. To the contrary, as discussed above, the question and responses appeared to address whether defendant was lawfully on the premises and whether he was angry with Mochoruk, neither of which have any ostensible correlation to Mochoruk's credibility or alleged bias, or any relevance to the charge of battery for which he was being tried. We thus find that defendant waived the present issue by failing to make an adequate offer of proof in the trial court specifying the alleged purpose of the question and responses at issue. *In re Kamesha J.*, 364 Ill. App. 3d at 792; *People v. Parchman*, 302 Ill. App. 3d 627, 637 (1998).

¶ 21 As a consequence of defendant's waiver, we may review his claim of error only if he has established plain error. *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). This rule is a narrow exception to the waiver rule which allows a reviewing court to consider unpreserved claims of error where defendant shows that the evidence is closely balanced, or the error is so serious that it affected the fairness of his trial and challenged the integrity of the judicial process. *People v. Naylor*, 229 Ill. 2d 584, 593 (2008). Under both prongs, defendant bears the burden of persuasion, and he must first show that a clear or obvious error occurred. *Hillier*, 237 Ill. 2d at 545. If defendant fails to meet his burden, his procedural default will be honored. *Hillier*, 237 Ill. 2d at 545.

¶ 22 Here, defendant has not requested this court to review his claim for plain error or set forth the plain error standard. To the contrary, in his reply brief, he contends that "[t]he issue is not waived, and the State's plain error argument is misplaced." Since defendant has failed to argue for plain error review, he cannot meet his burden of persuasion, and we therefore honor his procedural default. *Hillier*, 237 Ill. 2d at 545-47.

¶ 23 Defendant next contends that the trial court erred by ignoring his *pro se* claim that trial counsel was ineffective for failing to present additional, existing evidence that would have changed the outcome of the case. He claims that because the court failed to conduct an inquiry into this *pro se* allegation pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984), we should remand the matter for a hearing at which the requisite inquiry can take place.

¶ 24 The State responds that the trial court conducted an adequate inquiry into defendant's claim, and based on its knowledge of defense counsel's performance at trial, found defendant's allegations did not warrant the appointment of new counsel.

¶ 25 We first address whether defendant actually made an ineffective assistance claim requiring a *Krankel* inquiry, and our review is *de novo*. *People v. Taylor*, 237 Ill. 2d 68, 75 (2010).

¶ 26 The record shows that defendant was provided with an opportunity to speak in allocution at his sentencing hearing, and told the court, "I believe that if I were afforded the opportunity to present the Court with more evidence, that I would be able to establish the veracity of my testimony and the falseness of Mr. Mochoruk's testimony. I believe that there is a consistency of deceit that –." However, the court injected, "Mr. Mauck, now is the time for you to take responsibility for your actions," then asked defendant whether he had anything further to say. Defendant replied, "No, sir."

¶ 27 The supreme court addressed a similar set of facts in *Taylor*. In that case, defendant was eligible for Class X sentencing, and stated during allocution that he had been unaware of the possible sentence he faced and would have taken the State's plea offer had he known. *Taylor*, 237 Ill. 2d at 73. Defendant then claimed on appeal that this statement was an "implicit" claim of ineffective assistance of counsel warranting a *Krankel* inquiry; however, the supreme court found that defendant never specifically complained about counsel's performance, or expressly stated

that he was claiming ineffective assistance of counsel, and that his characterization of his statement as an "implicit" claim was an acknowledgment of that point. *Taylor*, 237 Ill. 2d at 75-76. The supreme court then held that defendant's statement at sentencing was insufficient to trigger a *Krankel* inquiry. *Taylor*, 237 Ill. 2d at 77.

¶ 28 Here, as in *Taylor*, defendant never specifically complained about counsel's performance and never expressly stated that he was claiming ineffective assistance of counsel. In addition, his argument that the trial court was obligated "to inquire into [his] *pro se* factual allegations *that indicated* ineffective assistance of counsel" is, likewise, an acknowledgment that no such claim was ever made. We thus find that defendant's statement to the trial court at sentencing was insufficient to trigger a *Krankel* inquiry, and, therefore, we need not address the sufficiency of any such inquiry made by the trial court in the instant case. *Taylor*, 237 Ill. 2d at 76-77.

¶ 29 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 30 Affirmed.