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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of Du Page County.
)	
Plaintiff-Appellee,)	
v.)	No. 12-CF-1729
)	
RONALD GANGLER,)	Honorable
)	John J. Kinsella,
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Jorgensen and Spence concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion by admitting into evidence a transcript of an order-of-protection hearing.

¶ 2 On September 18, 2012, the defendant, Ronald Gangler, was indicted on one count of aggravated battery (720 ILCS 5/12-4(b)(18) (West 2010)). On November 18, 2012, the defendant pled guilty to that charge and was sentenced to two years' probation. On December 12, 2013, the State filed a petition to revoke the defendant's probation alleging, in part, that the defendant committed the offense of domestic battery. On June 19, 2014, the trial court revoked the defendant's probation and sentenced the defendant to five years' imprisonment. The

defendant appeals, arguing that a transcript of an order-of-protection hearing related to the alleged domestic battery should not have been admitted into evidence. We affirm.

¶ 3

BACKGROUND

¶ 4 On September 18, 2012, the defendant was charged by indictment with aggravated battery. 720 ILCS 5/12-4(b)(18) (West 2010). On November 18, 2013, the defendant pled guilty and was sentenced to two years' probation. On December 12, 2013, the State filed a petition to revoke the defendant's probation. The petition alleged that the defendant committed the offenses of domestic battery, criminal trespass to property, and criminal damage to property. The State requested that the defendant's probation be revoked and the case be set for re-sentencing. The record indicates that the offenses alleged in the petition occurred on November 22, 2013, and involved the defendant's ex-girlfriend, Tammie Egeland.

¶ 5 On February 3, 2014, a hearing commenced on the State's petition to revoke. Egeland testified that she had dated the defendant for three years, but the relationship ended in August 2013. Egeland then began living at 6½ Main Street in Lombard with her 19-year-old daughter, Alexandria Roeser. On November 22, 2013, Egeland attended a funeral for her ex-husband, Roeser's father. At that funeral, Egeland drank excessive amounts of alcohol. Egeland's brother-in-law gave her a ride home. They arrived at 6½ Main Street around 10 p.m. Egeland went into the apartment alone. Egeland testified that she then threw herself around the apartment and smashed a heavy stone table. Later that evening, the defendant came to her back door. Egeland testified that the defendant did not kick in the door or damage the door frame. Roeser had broken the back door twice before. Egeland was so intoxicated that she initially assumed the defendant had broken the door.

¶ 6 Egeland testified that the next day, November 23, her landlady/employer threatened to fire and evict her if she did not call the police. Egeland then began drinking heavily. Later that

night, she called the police. Egeland testified that on November 24, she and Roeser went to the police station and gave a video-recorded statement which was admitted into evidence. Egeland denied telling the police that the defendant kicked in her door, trashed her apartment, or assaulted her.

¶ 7 Egeland further testified that on November 27, 2013, she filed an emergency petition for an order of protection against the defendant. She was intoxicated when she filed that petition. The petition alleged that after Egeland came home from the funeral on November 22, the defendant kicked in her door, threw her to the ground, choked her, digitally penetrated her, broke a table, and threw things around the apartment. The petition also stated that the defendant sent text messages to Egeland the next morning accusing her of sleeping with her brother-in-law. Roeser texted back, using Egeland's phone, asking him to stay away. The defendant came to the door but left when Roeser threatened him with a baseball bat. Egeland testified that the written allegations in the petition contained untrue statements, but she could not recall which of them were untrue.

¶ 8 Egeland acknowledged that after signing the emergency petition for order of protection, she appeared in court and swore that the statements made in the petition were true. She testified at the defendant's revocation hearing that, despite saying that those statements were true at the order-of-protection hearing, they were not. She testified that the defendant did not break in the door, trash her apartment, or throw her around. She insisted that the statement was written by someone else, and she pointed out that the claim that the defendant "digitally penetrated" her could not have been something she said as she did not even know what that meant.

¶ 9 The State moved to admit a transcript of the November 27, 2013 order-of-protection hearing as substantive evidence under section 115-10.1 of the Code of Criminal Procedure of 1963 (the Code) (725 ILCS 115-10.1 (West 2012)). Defense counsel objected, claiming that the

State had not confronted Egeland with any of the alleged statements she had made in court at that hearing. The trial court admitted the transcript over the defendant's objection. Pursuant to that transcript, Egeland testified under oath at the order of protection hearing that the defendant watched her come home on November 22, 2013. He then kicked in the locked back door, choked her, did something of a sexual nature, and then flipped over a table.

¶ 10 On cross-examination, Egeland acknowledged that on January 24, 2014, she gave a typed statement to defense counsel's investigator. In that statement, Egeland indicated that after the funeral on November 22, 2013, she looked into her kitchen and saw the defendant who then accused her of sleeping with her brother-in-law. Because Egeland was intoxicated, she started screaming at the defendant and kicking things. In that statement she also said that she did not remember anything else that happened until she woke up the next day.

¶ 11 Officer Manuel Camuy of the Lombard police department testified that he responded to a call at 6½ Main Street on November 23, 2013 at 9:51 p.m. Egeland appeared frightened and was incoherent. The back door was damaged. The coffee table in the living room was broken. There was some redness and swelling on Egeland's face.

¶ 12 Roeser testified that she was Egeland's daughter. She returned home after her father's memorial service on November 22, 2013 between 1:30 and 2 a.m. She was living with her mother at that time. She went to the back door, but it would not open so she entered through the front door. When she arrived, Egeland was passed out in the living room, the marble coffee table was broken and the apartment was in disarray. Everything on the refrigerator was now on the kitchen floor and the back door was broken. The next day the defendant sent text messages to her mother and Roeser responded using her mother's phone. The defendant then arrived at the apartment uninvited. Roeser threatened him with a baseball bat and he left. Roeser testified that

two weeks prior she had forced the back door open because she could not locate her keys. Roeser also testified that Egeland had injured herself while intoxicated on prior occasions.

¶ 13 On April 18, 2014, at the close of the hearing, the trial court granted the State's petition to revoke. The trial court found that, based on Egeland's statements to the police and at the order-of-protection hearing, the State had proven by a preponderance of the evidence that the defendant had violated the terms of his probation by committing battery and criminal damage to property. Following the denial of his post-trial motion, the trial court sentenced the defendant to five years' imprisonment. The defendant filed a timely notice of appeal.

¶ 14 ANALYSIS

¶ 15 On appeal, the defendant argues that the trial court erred in admitting the transcript of the November 27, 2013, order-of-protection hearing because the State failed to lay a proper foundation for its admission. The defendant asserts that the State did not confront Egeland with the substance of her prior inconsistent statements because they did not read or show her the statements she made during the order-of-protection hearing.

¶ 16 A reviewing court will not disturb a trial court's evidentiary ruling absent an abuse of discretion. *People v. Patrick*, 233 Ill. 2d 62, 68 (2009). Section 115-10.1 of the Code states, in pertinent part, as follows:

“In all criminal cases, evidence of a statement made by a witness is not made inadmissible by the hearsay rule if

- (a) the statement is inconsistent with his testimony at the hearing or trial, and
- (b) the witness is subject to cross-examination concerning the statement, and
- (c) the statement--

(1) was made under oath at a trial, hearing, or other proceeding ***.” 725

ILCS 5/115-10.1 (West 2012).

¶ 17 A proper foundation must be laid before prior inconsistent statements are allowed into evidence. *People v. Hallbeck*, 227 Ill. App. 3d 59, 62 (1992). Part of the necessary foundation is asking the witness whether he made the inconsistent statement. *People v. Bradford*, 106 Ill. 2d 492, 500–01 (1985). The witness must be directed to the time, place, and circumstances of the statement and its substance, so that the witness can have an opportunity to explain the inconsistency. *Id.* Before extrinsic evidence of impeaching statements may be introduced, the minimum foundation requires either (1) the witness be confronted with the contents of the statement, or (2) the witness must deny the statements were ever made. *People v. McIntosh*, 70 Ill. App. 3d 188, 194 (1979). Professed memory loss by a witness regarding previous testimony is sufficient to establish inconsistency of statements. *People v. Flores*, 128 Ill. 2d 66, 88 (1989).

¶ 18 Based on the foregoing principles, the trial court did not abuse its discretion in admitting the transcript of the order-of-protection hearing. Egeland’s testimony at the revocation hearing was inconsistent with her testimony during the order-of-protection hearing. She was subject to cross-examination regarding the inconsistent testimony. Additionally, her testimony at the order-of-protection hearing was made under oath. This satisfies (a), (b), and (c)(1) of section 115-10.1 of the Code (725 ILCS 5/115-10.1 (West 2012)).

¶ 19 Further, the State laid a proper foundation for the admission of the prior inconsistent testimony. Egeland was confronted with the time, place, and circumstance of the testimony when the State asked, and she acknowledged, that she went to the Du Page County courthouse on November 27, 2013, completed a signed statement that was included in the petition for order of protection, and swore under oath at the order-of-protection hearing that those statements were true.

¶ 20 The State also confronted Egeland with the substance of the testimony she gave at the order-of-protection hearing. The record indicates that at the order-of-protection hearing, Egeland

testified that the written statement in the petition for order of protection was true, the defendant kicked in her door, threw her around, choked her, did something of a sexual nature, and flipped over a table. At the revocation hearing, the signed, written statement was read aloud in its entirety and Egeland was then questioned about her discussion with the trial court during the order-of-protection hearing. Egeland testified that she was sure the trial judge asked about the written statement, but also that she could not remember. Thereafter, Egeland was specifically asked by the State:

“Q: Now, in terms of the statement that I read, what part of that statement is not true?”

A: I never said that he located my daughter to the police. I can’t even remember five minutes ago what you just said or read.

Q: Was a statement that Ronald kicked in the door true?

A: Probably in my mind, I don’t know.

Q: Did Ronald throw you around?

A: No. Threw myself around.

Q: Did he put his fingers inside you?

A: No, he never said that. They said that he never even know what that word meant.

Q: Did he break the coffee table in question?

A: No.”

¶ 21 The foregoing demonstrates that the questions asked at the revocation hearing were exactly the statements that Egeland was questioned about at the order-of-protection hearing. The testimony at each hearing was clearly inconsistent. Egeland was given ample opportunity to deny or explain the inconsistencies. Accordingly, we hold that the State laid a proper foundation for the admission of the transcript at issue. *Bradford*, 106 Ill. 2d at 500–01.

¶ 22 We find the defendant's reliance on *Hallbeck*, and *People v. Brothers*, 2015 IL App (4th) 130644, to be misplaced. In *Hallbeck*, when questioned by the prosecutor, the witness testified that he committed the charged acts and that he acted alone. *Hallbeck*, 227 Ill. App. 3d at 61. No prior inconsistent statement was referenced and the witness was not cross examined. Later, after all the witnesses were excused, the State introduced the witness's signed confession that, contrary to his testimony at trial, indicated that he and the defendant together committed the charged acts. *Id.* On appeal, this court found that the State failed to lay the proper foundation because the witness was not confronted with the circumstances or substance of the prior inconsistent statement. *Id.* at 63. In this case, unlike *Hallbeck*, the witness was confronted with the prior inconsistent statement, and she was given the opportunity to explain the inconsistencies. She was also subject to cross-examination regarding the inconsistencies.

¶ 23 In *Brothers*, the witness's in-court testimony was inconsistent with an oral statement she had given to the police at the scene of the crime, and the trial court allowed the prior inconsistent statement to be admitted into evidence. *Brothers*, 2015 IL App (4th) 130644 ¶ 17. The reviewing court then reversed because, although the witness acknowledged that she spoke to the police, she was not confronted with what she actually said to the police. *Id.* ¶ 90. In this case, unlike *Brothers*, Egeland was confronted at the revocation hearing with the substance of the statements she made to the trial court at the order-of-protection hearing.

¶ 24

CONCLUSION

¶ 25 For the foregoing reasons, the judgment of the circuit court of Du Page County is affirmed.

¶ 26 Affirmed.