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2016 IL App (3d) 140919-U

Order filed November 29, 2016

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2016

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 21st Judicial Circuit, Iroquois County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-14-0919
ALLEN J. SMITH,	)	Circuit No. 13-CF-26
Defendant-Appellant.	)	Honorable Gordon L. Lustfeldt, Judge, Presiding.

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JUSTICE LYTTON delivered the judgment of the court.  
Presiding Justice O'Brien and Justice Wright concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* The comments made by the State in closing arguments and the court in rendering its decision did not rise to the level of plain error.
- ¶ 2 Defendant, Allen J. Smith, appeals from a domestic battery conviction, arguing that he was denied his right to a fair trial where: (1) the State argued that the victim's behavior fit within "a common pattern in domestic violence cases," and (2) the court "relied on its private knowledge of domestic battery cases." We affirm.



[THE STATE:] Okay. Did you tell the truth in that statement?

[MS. BEEGLE:] For the most part.

[THE STATE:] For the most part.

[MS. BEEGLE:] The part I didn't tell is that when [defendant] was trying to walk out the door that I grabbed him."

¶ 6 Beegle then read her statement to the police:

"I had just brought my ten-year-old and six-month-old to my sister's house. I was inside maybe ten minutes. When I came out [defendant] was yelling at me for making him wait in the car. He told me that I was sleeping with my brother-in-law, that I was a (unintelligible.) Started calling me name after name, got home, continued to yell, told him that I was done being yelled at. In the kitchen I asked him to take—I asked to take him home because I did not want to be treated like that. He told me I was gonna do what he says and he ain't gonna no matter \*\*\*. He smacked me on the right side of the face by the cheek. In the kitchen wrestled to the ground, told him again to leave. He said no. Had swung, hit me in the left ear, moved away. Swung back. Hit his arm. I bit his arm while we were on the ground. Moved to the living room. He was still yelling. My mother had come up and asked him to leave. He began yelling at her. He spit at her and began swinging. Began to swing and yell at him. I put myself between them yelling. My mom left. I sat in the chair and waited for help."

Beegle stated that when she wrote that statement, she believed she was telling the truth. She said she really could not remember if she forgot to add anything or if any of it was untrue. Beegle said she called the State's attorney to ask them to drop the charges. Beegle said she did not want

the State to continue with the case because it was “a situation between [her] and [defendant] that should have been between [her] and him.” She did not think her mother should have involved the police.

¶ 7 Beegle did not remember the police taking photographs of her. The State showed Beegle the photographs that had been taken. The first two showed red marks on her face and neck. Beegle stated those two photos showed what she looked like when she cried and did not have any makeup on. The last picture showed Beegle had a black eye. She did not remember when she got the black eye. She stated, “That’s when I was working. I can’t tell you when, though.” She said it was possible that it was taken that night.

¶ 8 Barbara Fischer, Beegle’s mother, testified that she lived in a house that had been converted into two apartments, one upstairs and one on the main level. She and her husband lived on the main level and Beegle and her children lived in the upstairs apartment. On the day of the incident she heard crashing, banging, and someone screaming “get off of me, get out of here, don’t hit me” coming from upstairs. Fischer admitted that in her written statement she did not include the words she heard Beegle screaming. She went upstairs, looked in the window, and saw defendant “on top of [Beegle] holding her down and punching with his right hand.” She then went through the door and yelled at defendant to get off Beegle. Defendant then started yelling and spitting at Fischer. Beegle stood between defendant and Fischer. Fischer went downstairs and called 911.

¶ 9 Fischer was shown the photographs of Beegle. She said the photographs showed a black eye, swollen mouth, and marks on Beegle’s neck from being choked. Fischer stated that she saw Beegle hours before the incident and Beegle did not have these injuries.

¶ 10 Ryan Morefield testified that he was a deputy with the Iroquois County sheriff's department. On the date of the incident, he responded to a domestic battery call. He met Fischer outside the residence and then went up to Beegle's apartment with another deputy. As they went up the stairs, they could hear yelling and screaming coming from the apartment. Morefield knocked on the door and defendant let the deputies inside the apartment. Morefield observed Beegle sitting in a chair and visibly upset. Beegle and Morefield went into the back bedroom. Morefield noticed that Beegle's left ear and eye were red and swollen, her right cheek was swollen, and she had some redness around her neck. Morefield asked Beegle how she got the injuries, and Beegle told him that defendant "had laid his hands on her physically, had smacked her across the right cheek, and had hit her on the left side in the eye and ear portion. And she was unsure how she got the marks on her neck but believed they came from the scuffle." He then went into the living room and asked defendant for his side of the story. Defendant refused to provide any information, but "said it was a verbal altercation and [the deputies] had no business being there." Defendant was then placed under arrest for domestic battery. Beegle provided Morefield with a written statement, and he photographed her injuries.

¶ 11 Defendant testified that he and Beegle were in a dating relationship and that they argued a lot. Defendant said that Fischer often called the police when they argued, Fischer lied about what happened, and Fischer took "all these different kinds of pills" and drank. On the night in question, defendant stated that he and Beegle argued, but it never got physical. Defendant said that in his other domestic violence case he plead guilty because he knew that he was guilty, but here he was not. Defendant was shown the photographs of Beegle from the incident, and he said that they did not show her injuries, stating, "Any Caucasian when they get upset or cry, they turn

red everywhere.” He said that he hits hard and if he hit Beegle, she would “be more messed up than that.”

¶ 12 At closing arguments, the State said:

“Frankly, this is an—unfortunately, it starts off with the fact pattern we hear all too often, a domestic battery, police respond, police make an arrest based on the observations that they have on the scene, they receive a statement from the victim saying this had occurred, immediately thereafter, within a couple of days, we have a recantation by the victim, and—and suddenly we don’t want to proceed any further.”

¶ 13 In finding defendant guilty, the trial court stated:

“You argued that day for a long period of time. And even though this arguing and confrontation went on for a long period of time, it never escalated to any violence. And that’s just not the way these things usually go.

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\*\*\* And, of course, this is a common scenario as well, where an alleged victim comes in at trial and tries to distance herself from the earlier statement.”

The court proceeded to sentence defendant to four years’ imprisonment. Defendant filed a motion to reconsider, which was denied.

¶ 14 ANALYSIS

¶ 15 On appeal, defendant argues that he was denied his right to a fair trial where the State included in its closing arguments that the victim’s behavior fit within a common pattern seen in domestic battery cases. Further, defendant argues the court erred where it relied on private knowledge of domestic battery cases. Specifically, defendant points to the comments the court

made regarding defendant's version of the story where the court stated, "that's just not the way these things usually go" and the court's explanation of the statute allowing inconsistent statements where the court stated "this is a common scenario as well, where an alleged victim comes in at trial and tries to distance herself from the earlier statement."

¶ 16 Defendant acknowledges that he forfeited both claims by failing to object at trial or raise the claim in a posttrial motion. Nonetheless, defendant urges us to consider both claims under the plain error doctrine. The plain error doctrine allows a reviewing court to consider a waived error when: "(1) the evidence is close, regardless of the seriousness of the error, or (2) the error is serious, regardless or the closeness of the evidence." *People v. Herron*, 215 Ill. 2d 167, 187 (2005). Defendant requests us to consider the alleged errors under both prongs.

¶ 17 As a matter of convention, reviewing courts typically undertake plain error analysis by first determining whether error occurred at all. *People v. Sargent*, 239 Ill. 2d 166, 189 (2010). In this case, however, because we conclude that defendant has not met his burden under either prong of the plain error analysis, we reject his plain error claim without offering any opinion on the appropriateness of the individual comments made by both the prosecutor and the trial court.

¶ 18 Here, the evidence was not closely balanced. Fischer testified that she heard yelling and went upstairs where she saw defendant on top of Beegle, punching her. Deputy Morefield testified that he interviewed Beegle when he arrived on the scene. She told him that defendant had hit her. Morefield took pictures of Beegle's injuries, which showed that Beegle's ear, eye, and cheek were red and swollen and she had some redness around her neck. Beegle told Morefield that the injuries came from her fight with defendant. Beegle testified that she did not really remember the incident; however, her written statement was entered into evidence, and she stated that she believed she was telling the truth in the statement. The written statement indicated

that defendant had hit her. Beegle did not provide any testimony at trial that contradicted her written statement. Though defendant testified that the argument between him and Beegle did not become physical, the evidence was overwhelming that defendant had battered Beegle. Therefore, the errors did not amount to plain error under the first prong.

¶ 19 We further find that neither error amounted to second-prong plain error. Our supreme court has equated second-prong plain error with structural error or errors which serve to “ ‘erode the integrity of the judicial process and undermine the fairness of the defendant’s trial.’ ” *People v. Glasper*, 234 Ill. 2d 173, 197-198 (2009) (quoting *Herron*, 215 Ill. 2d 186). We cannot say that any error here was so serious as to fall within this category, and defendant has not pointed to any case law in which such comments have amounted to structural error.

¶ 20 CONCLUSION

¶ 21 The judgment of the circuit court of Iroquois County is affirmed.

¶ 22 Affirmed.