2016 IL App (4th) 140808-U

NO. 4-14-0808

FILED
November 3, 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.	)	Champaign County
JERMAINE K. WILSON,	)	No. 14CF398
Defendant-Appellant.	)	
	)	Honorable
	)	Harry E. Clem,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Presiding Justice Knecht and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant forfeited review of his claim he was denied a fair trial based on the admission of certain evidence. The police officer's testimony regarding damage he had observed upon his return to the premises during his investigation of the crime was relevant circumstantial evidence of the offense of home invasion for which defendant was charged. Plain-error review did not apply to excuse defendant's forfeiture because the appellate court found no error.

¶ 2 Following a May 2014 jury trial, defendant, Jermaine K. Wilson, was convicted of home invasion (720 ILCS 5/19-6(a)(2) (West 2014)). The trial court sentenced him to 12 years in prison. Defendant appeals his conviction, arguing he was denied a fair trial when the jury was allowed to consider irrelevant and highly prejudicial evidence of damage to the property discovered after the incident at issue. Finding the evidence was relevant circumstantial evidence, this court found no error and therefore declined to consider defendant's claim under plain-error review. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant and the victim, Tatiana Leviston, had been involved in an approximately two-year dating relationship, which ended sometime in 2013. The couple had an 11-month-old son together, so they remained in contact. Although they never lived together, defendant had, on occasion, spent the night at Tatiana's apartment during their dating relationship but not since the relationship ended. According to Tatiana, defendant never lived there, his name was never on the lease, and she never gave him a key or permission to make a copy. Defendant visited with their son two to three times per week at Tatiana's apartment.

¶ 5 On March 9, 2014, Tatiana told defendant she did not want him coming to her apartment anymore for any reason. Thereafter, between March 9, 2014, and March 23, 2014, defendant called Tatiana over 200 times.

¶ 6 On March 23, 2014, defendant warned Tatiana he was coming over. She told him not to do so or she would call the police. She said the doors and windows to her apartment were locked. However, she later awoke on the couch to defendant standing over her saying, "Bitch, you thought I wasn't going to be able to get in here." He hit her multiple times and would not let her move. She had a swollen eye, a bruised face, hair pulled from her head, and a ripped shirt from defendant's abuse. Tatiana's sister, Sidnetra, arrived. Defendant was still there. Sidnetra called the police at Tatiana's request because defendant "broke into [her] home." However, when the police arrived, defendant was gone. Tatiana secured her apartment with "wooden poles up [on her] windows and *** locked [her] doors," and she went to stay with a friend. She returned to her apartment at approximately 3:30 a.m. to retrieve a bottle for her son. Her apartment door was locked, but she found defendant in her bedroom. She ran out and called the police.

¶ 7 Officer David Butler was first dispatched to Tatiana's apartment at approximately 1:30 a.m. on March 23, 2014. When he arrived, he inspected the apartment and found no one inside. The windows and doors were not broken, but the back door was open. He left the residence but subsequently returned at approximately 3:30 a.m., after Tatiana called to say defendant was inside. Another search revealed no one inside. He said the back door was again open. He noticed the plastic wrap had been removed from the bedroom window and the blinds had fallen to the floor. The following day, Officer Butler returned to the apartment during his search for defendant. He noticed the kitchen and bedroom windows were broken; a rock was lying next to the kitchen window.

¶ 8 Detective Keith Johnston interviewed defendant on March 26, 2014. Defendant told him, on the night in question, he had called Tatiana, asking to visit their son. Tatiana told him no because she had company. Defendant went over at midnight anyway. He and Tatiana began arguing over money while defendant was holding his son. Tatiana began physically fighting him. He fell as he tried to get away from her. He said he put his son down in his crib and walked out of the apartment because he knew the police were coming. Detective Johnston asked defendant about Tatiana's injuries. He said she must have been injured when they fell to the floor. Defendant advised he had a key to the apartment, but he did not say how he got it.

¶ 9 Defendant testified he lived at Tatiana's apartment, even though he used his sister's house as his address. He said Tatiana lost her keys in 2013 and had the locks changed. At that time, she gave him a key. He said on March 23, 2014, he called Tatiana and asked if he could come over to bring her money he owed her. She agreed but asked that he come later, after her company had gone. He said he used the key given to him to enter at approximately 12:15

a.m. He said they sat on the couch with their son and talked. He told her he did not have all of the money he owed. She became angry and asked him to leave. He refused.

¶ 10 Defendant said he was walking toward the kitchen holding his son when Tatiana grabbed him and pulled him back. He said they all fell backward. Sidnetra knocked on the door and entered the apartment. Tatiana and Sidnetra told him to leave. He said he placed his son in his crib and left.

¶ 11 Based on this evidence, the jury found defendant guilty of home invasion. The trial court sentenced him to 12 years in prison.

¶ 12 This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 Defendant claims he was denied a fair trial when the State introduced evidence, through Officer Butler's testimony, that signs of a forced entry were discovered when the officer made subsequent visits to the premises as part of his investigation. Defendant claims this evidence was irrelevant, prejudicial, and raised an inference he caused the damage when it is possible the damage could have been unrelated to the crime with which defendant was charged. Defendant concedes he forfeited this issue by not raising it prior to this appeal; however, he urges this court to consider the issue under the plain-error doctrine.

¶ 15 "Under the plain-error doctrine, this court will review forfeited challenges when: 1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant; or (2) a clear or obvious error occurred, and the error is so serious that it affected the fairness of the defendant's trial and the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Taylor*, 2011 IL 110067, ¶ 30. Reviewing courts typically undertake plain-error analysis by first

determining whether error occurred at all. *People v. Sargent*, 239 Ill. 2d 166, 189 (2010). "If error is found, the court then proceeds to consider whether either of the [aforementioned] two prongs of the plain-error doctrine have been satisfied." *Sargent*, 239 Ill. 2d at 189-90. However, when a record clearly shows that plain error did not occur, we can reject that contention without further analysis. *People v. Bowens*, 407 Ill. App. 3d 1094, 1108 (2011). Thus, we first address whether any error occurred at all.

¶ 16 The ordinary principles of relevance tell us that evidence is generally admissible if it is relevant. Ill. R. Evid. 402 (eff. Jan.1, 2011). Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Ill. R. Evid. 401 (eff. Jan.1, 2011). However, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. Ill. R. Evid. 403 (eff. Jan.1, 2011).

¶ 17 Physical evidence is generally admissible as relevant if it is somehow tied to the defendant and the crime. *People v. Dall*, 207 Ill. App. 3d 508, 525, 527 (1991). "Evidence concerning the facts and circumstances of the crime the defendant is accused of committing is not other-crimes evidence." *People v. Stevenson*, 2014 IL App (4th) 130313, ¶ 44. To prove defendant guilty of home invasion, the State was required to demonstrate defendant entered the home without authority. 720 ILCS 5/19-6(a)(2) (West 2014).

¶ 18 The damage to the apartment, as testified to by Officer Butler, was relevant in that from the State's perspective, it made the proposition defendant entered the home without authority more probable. In fact, this evidence contradicted defendant's claim he had a key to the apartment and had permission from the victim to enter. Officer Butler testified he observed signs

of forced entry when he returned to the apartment in search of defendant after the victim notified police defendant had returned to the apartment without authority.

¶ 19 Generally, it is the trial judge's function to exercise his discretion to weigh the probative value against the potential prejudicial effect of the evidence. *People v. Ader*, 176 Ill. App. 3d 613, 617 (1988). However, the trial judge in this case did not get the chance to perform this function. Nevertheless, had defendant objected to Officer Butler's testimony as unduly prejudicial, it is likely the trial judge would have overruled the objection, finding the evidence relevant to prove the elements of the crime. The facts presented to the jury through the testimonial evidence indicated defendant appeared at the victim's apartment more than once during the early morning hours of the date of the incident. Officer Butler returned to the premises more than once with the hope of finding defendant. It was during these return visits that Officer Butler noticed damage to the apartment—relevant evidence tending to prove the circumstances of this particular crime. The officer simply testified regarding his observations. Accordingly, the jury was entitled to consider this circumstantial evidence, determine the weight to be given his testimony, and ultimately determine whether the State sufficiently proved defendant guilty of home invasion.

¶ 20 We find Officer Butler's testimony regarding the damage to the windows he observed upon his return to the premises when searching for defendant was relevant and probative to defendant's guilt, as it shed light on the circumstances of the crime committed. See *People v. Nieves*, 193 Ill. 2d 513, 532 (2000). Ultimately, we conclude no error occurred. We find the admission of this evidence did not deprive defendant of his right to a fair trial or unduly prejudice him. Accordingly, we decline to apply plain-error review and honor defendant's procedural default.

¶ 21 Likewise, having found no error sufficient to justify review under the plain-error doctrine, we reject defendant's ineffective-assistance-of-counsel claim based on counsel's failure to object to the officer's testimony. See *People v. Veach*, 2016 IL App (4th) 130888, ¶ 82 (an appellate court may address a defendant's argument on direct appeal if it appears the claim is groundless). See also *People v. White*, 2011 IL 109689, ¶ 133 (an analysis under the closely-balanced-evidence prong of plain error is similar to an analysis for ineffective assistance of counsel in that both need to show the defendant suffered prejudice). Because we find no error regarding the admission of the challenged evidence, defendant cannot demonstrate he was prejudiced by counsel's failure to object.

¶ 22 III. CONCLUSION

¶ 23 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.

¶ 24 Affirmed.