2017 IL App (1st) 143886-U

No. 1-14-3886

Order filed June 12, 2017

First Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 2802
	)	
CHRISTOPHER PATTERSON,	)	Honorable
	)	Thomas J. Hennelly,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Connors and Justice Simon concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for possession of a controlled substance with intent to deliver is affirmed where the trial court's comments did not indicate that it prejudged his guilt before he presented evidence.

¶ 2 Following a bench trial, defendant Christopher Patterson was convicted of one count of possession of a controlled substance with intent to deliver and sentenced to eight years'

imprisonment. Defendant appeals his conviction, arguing that he was denied the right to a trial by a fair, unbiased, and open-minded trier of fact because the trial court's comments addressing a motion for a directed verdict indicate that it had made up its mind about his guilt before hearing any defense evidence. For the reasons set forth herein, we affirm the judgment of the trial court.

¶ 3 Defendant was charged with one count of possession with intent to deliver more than 15 grams but less that 100 grams of heroin (720 ILCS 570/401(a)(1)(A) (West 2014)). Defendant filed a motion to quash arrest and suppress evidence and, after he waived his right to a jury trial, the case proceeded to a simultaneous bench trial and hearing on the motion.

¶ 4 Sergeant Jeff Truhlar testified that, in the afternoon of January 12, 2014, he was engaged in a foot pursuit of a suspect which began near the intersection of West Lexington Street and St. Louis Avenue. Truhlar lost sight of the suspect in an alley near 3527 West Flournoy Street. Officer Furlet had arrived on the scene to assist Truhlar with the apprehension of the suspect. Furlet observed "fresh" footprints leading from the alley to the basement of the building at 3527 West Flournoy.

¶ 5 When Truhlar and Furlet knocked on the basement door, a woman answered. Truhlar told her that he had been chasing a suspect, saw footprints leading to her door, and wanted to rule out the possibility that the suspect was in the basement. The woman gave the officers consent to enter and search the apartment. Truhlar did not obtain written consent, as he was focused on looking for the suspect. Truhlar observed that a second woman, a man, and four children were in the apartment. While they were searching the apartment, the officers found suspect heroin, a blender, a scale, and other paraphernalia for packaging narcotics in an unoccupied bedroom. Truhlar asked the adults to whom the narcotics belonged. The man, who Truhlar identified in

court as defendant, told the officers "that he would take the case and that the drugs were his." The officers then arrested defendant and read him his *Miranda* rights. After being advised of his rights, defendant told the officers that nobody else in the apartment knew about the drugs or what he was doing with them. Outside the room containing the suspect heroin, Truhlar found a piece of mail from an electricity supplier addressed to defendant. The correspondence was dated January 8, 2014, and listed the basement unit as defendant's address.

¶ 6 Officer Furlet testified that, on January 12, 2014, he was called to the vicinity of 3527 West Flournoy Avenue to assist Sergeant Truhlar in apprehending a suspect he had been chasing. Furlet and his partner, Officer Kurth, were trying to secure a perimeter around the area where Truhlar lost sight of the suspect. While walking through an alley, Furlet noticed a set of footprints leading from the alley to the basement unit of 3527 West Flournoy Avenue.

¶ 7 Officer Furlet was present when Truhlar knocked on the door to the basement unit and the woman answered the door. He heard Truhlar explain why they were in the area and request consent to search the apartment. After the woman gave the officers permission to search the apartment, the officers discovered "a large amount of narcotics and narcotics paraphernalia" in a bedroom. When the officers asked the three adults about the drugs, defendant answered that he would "take the case." Furlet placed defendant in custody and read him his *Miranda* rights from a preprinted card. Defendant then told the officers that the drugs were his and that his sister and mother did not know anything about them.

¶ 8 Officer James Kurth testified that, on January 12, 2014, he was called to assist Sergeant Truhlar, who was engaged in a foot pursuit of a suspect. When Kurth arrived at the basement apartment of 3527 West Flournoy Avenue, Truhlar and Officer Furlet had already handcuffed

defendant. Kurth searched defendant's person, and recovered four small zip-lock bags containing a white, powdery substance. The bags were yellow in color with a black Batman logo. From a table in the bedroom, Kurth recovered loose suspect heroin that was piled on a plate as well as suspect heroin that was "in bulk, in a plastic bag." From a chair at the table, he recovered 11 small plastic bags containing suspect narcotics. The bags were yellow and displayed a black Batman symbol. From the bedroom floor, he recovered a number of small bags with dollar signs on them, each of which contained suspect narcotics. Kurth inventoried all of the recovered items.

¶ 9 The State then proceeded by way of stipulation. The parties stipulated that, if called to testify, Dorie Binkowski, a chemist at the Illinois State Police crime lab, would testify that the four plastic bags recovered from defendant contained 1.8 grams of heroin. She would also testify that all of the items that she tested, including the suspect heroin from the bedroom, contained a total of 99.5 grams of heroin.

¶ 10 Defendant made a motion for a directed verdict. The trial court denied the motion, stating, "[i]t's uncontroverted that he made the admission and there was heroin all over the place. I don't know where we are going on that case. That's denied. Go ahead."

¶ 11 Shamikis Patterson testified that she lived in the basement apartment of 3527 West Flournoy Avenue. On January 12, 2014, she was in the apartment with her mother, defendant, who is her brother, and four children. She observed someone run through the alley next to the building. She then saw the same person run in the opposite direction. Five minutes later, she saw a different person walk through the alley and then heard banging on the back door of the apartment. When Shamikis answered the door, a police officer told her to "open the damn door." When she opened the door, three or four officers ran into the apartment without asking for

permission to enter and asked "where is he? He ran[] in here." One of the officers pointed to defendant and asked another officer if he was the suspect they were looking for. When the other officer said that defendant was not the suspect, the original officer said that he was going to look through the apartment anyway.

¶ 12 On cross examination, Shamikis stated that no one in the apartment asked the police to leave and that she never filed a complaint against the officers. She did not know about the heroin, and had no reason to believe that anything illegal was occurring in the apartment. She stated that defendant did not live in the apartment but identified a utility bill addressed to defendant at the basement apartment.

¶ 13 After hearing argument on both the motion to quash and the evidence at trial, the court found defendant guilty of possession of heroin with intent to deliver. It denied the motion to quash arrest and suppress evidence, stating that it believed the officers' testimony that they were given consent to search the apartment over Shamikis's testimony that the officers ran into the apartment without permission. The trial court sentenced defendant to a term of 8 years' imprisonment. On November 5, 2014, the trial court denied defendant's motion to reconsider sentence and defendant filed a timely notice of appeal. On August 18, 2015, we granted defendant leave to file a corrected notice of appeal, which listed the correct date of final judgment.

¶ 14 Defendant appeals, arguing that he was denied the right to a fair trial because the trial court had decided his case before he presented any evidence. Specifically, he argues that the trial court's statement in ruling on defendant's motion for a directed finding that "[i]t's uncontroverted that [defendant] made the admission and there was heroin all over the place. I

don't know where we are going on that case" indicates that it prejudged the case before hearing any defense evidence.

¶ 15 Defendant concedes that he did not raise this issue in the trial court. Generally, an issue is forfeited if the defendant does not raise it in a trial objection and a written posttrial motion. *People v. Abrams*, 2015 IL App (1st) 133746, ¶ 49. Defendant contends that we may nevertheless review the issue because the forfeiture rule may be relaxed where the basis for the objection is the trial judge's conduct. This concept is known as the *Sprinkle* doctrine, as it arises from the case of *People v. Sprinkle*, 27 Ill. 2d 398, 401 (1963), in which our supreme court held that less rigid application of the forfeiture rule "should apply where the basis for the objection is the conduct of the trial judge." In the context of a bench trial, the less rigid forfeiture rule should be "applied when counsel has been 'effectively prevented from objecting because it would have "fallen on deaf ears." ' " *People v. Thompson*, 238 Ill. 2d 598, 612 (2010) (quoting *People v. Hanson*, 238 Ill. 2d 74, 118 (2010) (quoting *People v. McLaurin*, 235 Ill. 2d 478, 488 (2009))). However, our supreme court has explained that this exception should only be applied in "extraordinary circumstances" such as when a trial court makes inappropriate comments to a jury or relies on social commentary, rather than evidence, in sentencing a defendant to death. *McLaurin*, 235 Ill. 2d at 488. It further observed "[t]hat we have seldom applied *Sprinkle* to noncapital cases further underscores the importance of uniform application of the forfeiture rule except in the most compelling of situations." *Id.*

¶ 16 We find that the circumstances here do not warrant a less rigid application of the forfeiture rule. The record does not indicate that this case presents a compelling situation such as those contemplated by our supreme court. Further, we find unavailing defendant's speculative

argument that his objection would have fallen on deaf ears because the trial court's impartiality had already been compromised.

¶ 17 Defendant also contends that we may review the issue as second prong plain error, as the trial court's error denied him his substantial right to receive a fair and impartial trial. The plain error doctrine allows a reviewing court to consider unpreserved error when a clear or obvious error occurred and (1) the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant or (2) that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence. *People v. Nowells*, 2013 IL App (1st) 113209, ¶ 18. Under the second prong of the plain error doctrine, "[p]rejudice to the defendant is presumed because of the importance of the right involved, '*regardless* of the strength of the evidence.' " (Emphasis in original.) *People v. Thompson*, 238 Ill. 2d 598, 613 (2010) (quoting *People v. Herron*, 215 Ill. 2d 167, 187 (2005)). Under either prong of the plain error doctrine, the burden of persuasion remains on the defendant. *People v. Lewis*, 2014 IL App (1st) 122126, ¶ 27. A reviewing court conducting plain error analysis must first determine whether an error occurred, as "[w]ithout reversible error, there can be no plain error." *People v. McGee*, 398 Ill. App. 3d 789, 794 (2010).

¶ 18 The constitutional guaranty of due process " 'entitles a defendant to a fair and impartial trial before a court which proceeds not arbitrarily or capriciously, but upon inquiry, and renders judgment only after trial.' " *People v. Jones*, 2017 IL App (1st) 143403, ¶32 (quoting *People v. Eckert*, 194 Ill. App. 3d 667, 673 (1990). This court has remarked that " '[t]he right of a defendant to an unbiased, open-minded trier of fact is so fundamental to our system of jurisprudence that it should not require either citation or explanation." *People v. Taylor*, 357 Ill.

App. 3d 642, 647 (2005) (quoting *Eckert*, 194 Ill. App. 3d at 673). This right is violated where the trier of fact prejudges the evidence and renders its judgment prior to the conclusion of the trial. *People v. Hardin*, 2012 IL App (1st) 100682, ¶ 14. A trial judge is presumed to be impartial, and the burden of overcoming this presumption rests on the party making the charge of prejudice. *People v. Faria*, 402 Ill. App. 3d 475, 482 (2010). Allegations of judicial bias must be viewed in context and evaluated in terms of the specific events that took place. *Hardin*, 2012 IL App (1st) 100682, ¶ 18.

¶ 19 We find that, in the context of ruling on the motion for a directed finding, the trial court's comments do not demonstrate that it prejudged defendant as guilty without hearing his evidence. In ruling on a motion for a directed finding, a trial court is obliged to construe the evidence in the light most favorable to the nonmovant and may only grant the motion when the evidence so favors the movant that a contrary ruling could never stand. *Pedrick v. Peoria & Eastern R.R. Co.*, 37 Ill. 2d 494, 510 (1967). It seems clear that the trial court's comment that "[i]t's uncontroverted that he made the admission and there was heroin all over the place" was an accurate evaluation of the evidence, in the light most favorable to the State, at that stage of the proceedings. It suggests that the court believed that, at that point, the State had clearly met its burden of making a *prima facie* case warranting denial of defendant's motion for a directed finding. The court's comment "I don't know where we are going on that case" does not, as defendant contends, suggest the trial court had determined that the State had proven its case and that the court "was effectively going through the motions of a trial." Rather, it reflects that the court was waiting to hear where defendant "was going" with the case before it made its final

decision. We find that defendant has failed to overcome the presumption that the trial court was impartial, and, therefore, find that he was not denied the right to a fair trial.

¶ 20 The cases that defendant relies upon to establish that the trial court was not an unbiased, fair, and open-minded trier of fact are all distinguishable from the instant case. In *People v. Ojeda*, 110 Ill. App. 2d 480, 482 (1969), the trial court predicted how a defense witness was going to testify and threatened to "give [the defendant] the limit" if he and the witness were lying. In *People v. McDaniels*, 144 Ill. App. 3d. 459, 462 (1986), during the defendant's cross examination of the first witness, the trial court commented that it "[s]eems to be pretty ridiculous to claim self defense. You might do that before a jury, but this is a bench trial." In *People v. Heiman*, 286 Ill. App. 3d 102, 113 (1996), the trial court commented on the credibility of two defense witnesses before either witness had finished testifying and interrupted defendant's closing argument 45 times. In *People v. Johnson*, 4 Ill. App. 3d 539, 540 (1972), the trial court found the defendant guilty before he was finished presenting evidence in his case. In the instant case, the trial court's comments about the strength of the State's case on defendant's motion for a directed finding were proper, and its comment that it did not "know where we are going on that case" suggests that it was waiting to hear whatever evidence defendant might present. The court's comments did not reflect that it had prejudged defendant's case and were thus a far cry from the egregious nature of the trial courts' conduct in *Odeja*, *McDaniels*, *Heiman*, and *Johnson.*

¶ 21 As we find that the trial court's comments did not indicate that it had prejudged defendant's case before he had the opportunity to present evidence, we find no error and,

therefore, no plain error. *McGee*, 398 Ill. App. 3d at 794 ("Without reversible error, there can be no plain error.") Accordingly, defendant's claim is forfeited.

¶ 22 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 23 Affirmed.