2017 IL App (1st) 170422-U

FIRST DIVISION
July 24, 2017

No. 17-0422

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

IN THE INTEREST OF LEO S., a minor,	)	Appeal from the Circuit Court
	)	of Cook County.
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	
	)	No. 13 JD 2930
v.	)	
	)	
LEO S. a minor,	)	
	)	Honorable Lana Charise Johnson
Respondent-Appellant.)	)	Judge Presiding

JUSTICE SIMON delivered the judgment of the court.
Justice Harris and Mikva concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court was not biased against the minor-respondent when it revoked his probation and committed him to the Juvenile Department of Corrections. The evidence established that the minor was delinquent of aggravated unlawful use of a weapon and possession of crack cocaine.

¶ 2 Respondent Leo S. appeals from a circuit court order revoking his probation after he was found delinquent of aggravated unlawful use of a weapon and unlawful possession of cocaine. On appeal, respondent argues that the trial court was biased against him and denied him the right to a fair and impartial trier of fact. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 A petition for adjudication of wardship was filed on July 12, 2013, alleging that respondent committed residential burglary on July 13, 2013, when he was 14 years old. Respondent pleaded guilty to the offense of residential burglary, was found delinquent, and sentenced to five years of probation.

¶ 5 The 2013 case was assigned to Honorable Lana Johnson who monitored respondent's progress while on probation between January 14, 2014, and February 1, 2017. During the three year reporting period, respondent was arrested 31 times, had 21 cases referred to court, 14 new cases filed with the court, and three findings of violation of probation. Respondent was also found delinquent for committing the following offenses: residential burglary, attempted burglary, attempted theft, possession of cannabis, and aggravated battery. As a result of the additional delinquency adjudications, the court recommitted respondent to the original probation.

¶ 6 On December 14, 2016, the State filed another petition for adjudication of wardship alleging that, on December 13, 2016, respondent committed aggravated unlawful use of a weapon, unlawful possession of a firearm, possession of a controlled substance, and resisting a peace officer. The State also filed a violation of probation petition for the 2013 case.

¶ 7 At trial, Chicago police officer Braun testified that, on December 13, 2016, at about 11 a.m. he received a radio call of an auto theft in progress with a description of the suspects. Officer Braun went to the location of the alleged theft and noticed two black males who fit the description walking down the street. Both males fled when they saw him approaching. Officer Braun stated that he saw respondent trying to hold on to something at his waist. Based on Officer Braun's experience, he believed that respondent was holding on to a gun. Braun caught respondent, managed to subdue him, patted him down, and found a gun on his person.

Respondent did not have a valid FOID card at the time of his arrest. At the station, the police found 35 bags of crack cocaine as well as $479 in cash in respondent's pants. The parties stipulated to the chain of custody and the chemical composition of the drugs.

¶ 8 Respondent testified that he had marijuana on his person but did not possess a gun or any cocaine at the time of his arrest. He stated that he tried to go to school earlier that day, but was turned around for "smelling like weed." Respondent testified that, when he got off the bus to go home, he noticed an unmarked police car which followed him about ten minutes. Respondent started to record the police with his cellphone, and one of the officers asked him to "come here." He ran away because he was afraid they would find marijuana on him. As he was running away, he threw the marijuana on the ground.

¶ 9 At the conclusion of the trial, the court adjudicated respondent delinquent of the aggravated unlawful use of a weapon and possession of cocaine charges, and found that these adjudications constituted a violation of respondent's probation in the 2013 case. At the sentencing hearing, the probation department recommended respondent's commitment to the Department of Juvenile Justice (DOJJ) until the age of 21. The court committed respondent to DOJJ. Respondent's probation in the 2013 case was terminated unsatisfactorily. This appeal follows.

¶ 10 ANALYSIS

¶ 11 Respondent argues that the trial court denied his right to a fair trial because the trial judge was biased against him and denied his right to an impartial and fair trier of fact. Respondent contends that, during the three years that the trial judge monitored his probation, the judge became familiar and ultimately frustrated with respondent's struggles on probation. According to respondent, that frustration became prejudice, and when he was arrested and charged with the

offenses in the instant case, even before the evidence was presented, the trial judge prejudged his guilt.

¶ 12 Respondent points to the trial judge's comments as indicative of the judge's bias against him. For example, during a hearing following respondent's arrest, after defense counsel entered a "general denial" in the case, and filed a motion for discovery, the trial judge replied, "Can't wait to hear this one." The State made its probable cause proffer, and the judge told respondent he was just "special and extra" and asked "How stupid are you?" Respondent further contends that the judge's comments that respondent was "a menace to society and just further destroys our community," or a "thug," indicated that the judge accepted the truth of the State's allegations before they had been proved.

¶ 13 Respondent acknowledges that he did not object at trial, and did not include this claim in his posttrial motion, but asks us to review it for plain error or, in the alternative to relax the forfeiture rule because it concerns the trial court's conduct. Under plain error review, we will grant relief to a defendant in either of two circumstances: (1) if the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, or (2) if the 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. Herron*, 215 Ill. 2d 167, 178-79 (2005). Before addressing either of these prongs of the plain-error doctrine, however, we must determine whether a "clear or obvious" error occurred at all. *People v. McLaurin*, 235 Ill. 2d 478, 489 (2009).

¶ 14 We have reviewed each allegation of improper conduct cited by respondent and find that no error occurred. Most of the complained-of comments were made at the hearing for probable cause and for "immediate and urgent necessity" following respondent's arrest in the instant case.

See 705 ILCS 405/5–501(2) (West 2012). The record indicates that, at the hearing, the judge initially informed respondent that he was charged with aggravated unlawful use of a weapon, unlawful possession of a firearm, possession of a controlled substance and resisting a peace officer stemming from the events that took place on December 13, 2016. Respondent indicated that he understood the charges.

¶ 15 Next, the State made its proffer on probable cause informing the court about the contents of Officer Braun's potential testimony. According to the State, Officer Braun would have testified to the following facts: respondent fit the description he received of one of the two suspects of an auto theft; respondent fled as he saw the officer approaching; respondent was holding his right side waistband as he ran; the officer detained respondent; respondent actively resisted by stiffing his body, pulling away and swinging his arms to defeat the arrest; respondent was handcuffed; the officer recovered from respondent's person, a gun, and, at the police station, 35 plastic bags containing what the officer believed to be crack cocaine, and $479 in cash. Based on the alleged evidence and finding that there was probable cause to believe that the minor was delinquent, the court told respondent:

> "You are not a good criminal. You want to be a criminal. You want to be a thug. You want to be a drug dealer, and you're terrible at it. Not that you should want to do that, but you suck at it. Did you realize that? Cause [sic] every firkin [sic] time you go out of your house, you get arrested for the same thing.
>
> We've had this conversation. They know you. They know that you might be up to something when you walk out of the house. How foolish. How stupid."

¶ 16 Next, the probation officer informed the court about respondent's probation background and asked for a finding of urgent and immediate necessity to detain respondent. The probation

officer indicated that respondent's probation was "getting worse and worse by the day." During his probation, respondent had 31 police arrests, with 21 cases filed in court. He also had six findings of delinquency, and three violations of probation. Not only did respondent have a "horrendously long criminal history," but he was also on electronic monitoring while committing the alleged offenses in the instant case. The judge made the following comment, that respondent claims is reflective of the judge's bias against him:

> "You are just stupid. Oh, my God. Some days you just hear stuff and just really can't believe it 'cause [sic] stupid as stupid does. You are bad at this. You really need to choose a different career path. You suck at it. You commit—allegedly committed stuff while you're on EM? Did you not know that that was a GPS tracking device?"

¶ 17 The probation officer also informed the court that she was getting phone calls from respondent's father almost daily complaining about respondent's behavior, his unwillingness to listen and to follow the rules at home. Respondent was suspended from school and school issues had been a constant battle for him. In this context, the judge reiterated that clearly respondent refused all the help that was provided to him, and that he wanted instead "to be a menace to society" and a "thug." The court entered a finding of urgent and immediate necessity and placed him into custody.

¶ 18 Judges are presumed impartial, and the burden of overcoming the presumption by showing prejudicial trial conduct or personal bias rests on the party making the charge. *In re Marriage of O'Brien*, 2011 IL 109039, ¶ 31. Allegations of judicial bias or prejudice must be viewed in context and should be evaluated in terms of the trial judge's specific reaction to the events taking place. *People v. Jackson*, 205 Ill. 2d 247, 277 (2001). Prejudice refers to a condition of mind that creates a fixed anticipatory judgment as opposed to opinions that yield to

the evidence. *People v. Wright*, 234 Ill. App. 3d 880, 898 (1992) (defining prejudice in the context of a motion for substitution of judge for cause). Such prejudice must come from an extrajudicial source and result in an opinion on the merits that is based on something other than what the judge learned from participating in the case. *Id.* A display of displeasure or irritation with an attorney's behavior is not necessarily evidence of the trial judge's bias against a party or his counsel unless it displays a deep-seated favoritism or antagonism that would make fair judgment impossible. *Id.* A trial judge's bias or prejudice is shown where there is active personal animosity, hostility, ill will, or distrust toward a party or his counsel. *People v. Shelton*, 401 Ill. App. 3d 564, 583 (2010).

¶ 19 We will not lightly or easily reach a conclusion that a trial judge is disqualified because of prejudice; such a judgment "will be viewed by some as reflecting unfavorably upon the judge, and it tends to disrupt the orderly functioning of the judicial system." *People v. Hooper*, 133 Ill. 2d 469, 514 (1989). The standard of review for determining whether an individual's constitutional rights were violated is *de novo. People v. Carini*, 357 Ill. App. 3d 103, 113 (2005).

¶ 20 Here, when the trial judge's remarks are viewed within the context they were made, they do not evidence a bias or prejudice against respondent. Judge Johnson's comments made during the hearing for probable cause and for urgent and necessary detention derived from the alleged facts combined with respondent's lengthy criminal record incurred while being placed on probation for the 2013 case. Judge Johnson's reference to respondent as a "menace to society" viewed in the context was not misplaced considering respondent's numerous arrests while on probation and the alleged fact that he was running on the streets with a loaded gun. The judge's comment that he was "not a good criminal" was accurate as respondent was constantly being caught by police and arrested after he had been repeatedly given the chance to succeed on

probation. Similarly, the trial judge's comments regarding the commission of the alleged offenses while wearing an electronic monitoring bracelet as "stupid" does not reflect any bias or prejudice. Instead, it indicates the judge's opinion derived from the facts alleged in the State's proffer–that respondent tried to flee from police even though he was wearing the bracelet and the bracelet had GPS tracking capabilities. See *Liteky v. United States*, 510 U.S. 540, 555 (1994). ("[O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion").

¶ 21 Finally, the judge's comment that defense counsel kept a "straight face" in asking that respondent be permitted to remain on electronic monitoring after being arrested for the gun and cocaine charges simply acknowledged that, in light of the gravity of the alleged facts and respondent's criminal background, respondent could not have been permitted to remain on electronic monitoring but needed to be taken into custody. Based on the record, contrary to respondent's arguments, Judge Johnson's comments did not suggest that she prejudged the case. The judge was simply making a determination and found both probable cause to declare respondent delinquent and an "immediate and urgent necessity" to detain him on the charges. See 705 ILCS 405/5–501(2) (West 2012). The judge based its conclusion on the State's proffer and what the judge had learned while monitoring respondent's probation. See *People v. Wright*, 234 Ill. App. 3d at 898.

¶ 22 Contrary to respondent's argument, the circumstances to which respondent refers as evidence of judicial bias do not display "a deep-seated favoritism or antagonism that would make fair judgment impossible." Rather, when reviewing the record in its entirety, although at times Judge Johnson expressed her disappointment with respondent's action and scolded him for his

failure to abide the terms of his probation, the judge gave respondent every opportunity to succeed on probation, tried to help him become "a contributing member of society" and tried to prevent him from "going to 26th and California." The record reflects that the judge thanked respondent when he complied with the terms of probation, when he obtained good grades, or when he tried out for a basketball team. Judge Johnson also allowed respondent to justify his actions, to correct them, and encouraged him to continue his education. In order to get her point across, Judge Johnson used a hands-on approach, but her actions and comments indicated that she truly wanted respondent to succeed in his probation and ultimately in life. We find no error and respondent did not overcome his burden of challenging the court's presumption of impartiality.

¶ 23 In so ruling, we note that the role of the trial court in juvenile proceedings is broader than in adult criminal proceedings since the proceedings under the Juvenile Court Act of 1987 (the Act) (705 ILCS 405/1–1 *et seq.* (West 2012)) are not criminal in nature, but are to be administered in a spirit of humane concern for, and to promote the welfare of, the minor. *In re Moses W.*, 363 Ill. App. 3d 182, 188 (2006) citing *In re A.G.*, 195 Ill. 2d 313, 317 (2001). Moreover, the trial court is charged with the role of equipping juvenile offenders with competencies to live responsibly and productively using a more hands-on approach tailored to the juvenile's understanding. *Id*.

¶ 24 We also disagree with respondent that Judge Johnson's demeanor and comments indicated that she prejudged respondent's guilt or that she should have recused herself. The court's finding of delinquency was based on the evidence presented at trial and not on any actual or potential bias against respondent. At respondent's trial, both Officer Braun and respondent testified at length. Officer Braun testified that he received a call of an auto theft in progress and a

description of two suspects. When Officer Braun went to the location, he noticed two black males who fit the description. One of them was respondent. When seeing the police, both males fled. Officer Braun stated that he saw respondent trying to hold on to something at his waist and he believed that respondent was holding on to a gun. Officer Braun caught respondent, handcuffed him, patted him down and found a gun on respondent's person. Respondent did not have a valid FOID card at the time of his arrest. At the station, the police found 35 bags of crack cocaine and $479 in cash in respondent's pants.

¶ 25 Respondent testified that he had marijuana on his person at the time of his arrest, but did not have a gun or any cocaine on him. Respondent stated that when he got off the bus to go home, he noticed an unmarked police car which followed him about ten minutes. Respondent started to record the police with his cell phone, and one of the officers asked him to "come here." He ran away because he was afraid they would find marijuana on him. Respondent testified that, as he was running away, he threw the marijuana on the ground.

¶ 26 The court found Officer Braun credible while deeming respondent's testimony incredible. The court indicated that some of respondent's testimony corroborated Officer Braun's testimony, and noted that respondent did not dispute or explain the fact that the police recovered $479 from his person. The court adjudicated respondent delinquent on the aggravated unlawful use of a weapon and possession of cocaine charges, and found that these adjudications constituted a violation of respondent's probation in the 2013 case. The court revoked respondent's probation based on the evidence presented at respondent's trial, and not based on any bias or prejudgment against him. Accordingly, the trial judge cannot be faulted for failing to *sua sponte* recuse herself.

¶ 27 In sum, respondent failed to show that any error occurred to justify the application of the plain error doctrine because he failed to overcome the presumption of impartiality and show any actual or potential bias on the part of Judge Johnson. Even assuming *arguendo* that any of the judge's comments were improper, any error would be harmless because respondent cannot establish prejudice. *People v. Harris*, 123 Ill. 2d 113, 137 (1988) ("In order for a trial judge's comments to constitute reversible error, a defendant must demonstrate that the comments constituted a material factor in the conviction or were such that an effect on the jury's verdict was the probable result."). Here, based on the evidence presented, even in the absence of the trial judge's remarks, the disposition of delinquency was warranted.

¶ 28 Lastly, respondent argues that we relax the forfeiture rule because the alleged error concerns the trial judge's conduct. The application of the forfeiture rule is less rigid where the basis for the objection is the trial court's conduct. *People v. McLaurin*, 235 Ill. 2d 478, 488 (2009). However, courts generally relax application of the forfeiture rule only in the "most compelling of situations," such as when a trial judge makes inappropriate remarks to the jury or in cases involving capital punishment. *Id.* Here, respondent has not established that an extraordinary or compelling reason exists to relax application of the forfeiture rule. See *People v. Faria*, 402 Ill. App. 3d 475, 478 (2010) (forfeiture rule was not relaxed where there was no indication in the record that objections would have fallen on deaf ears in defendant's bench trial for a noncapital offense). The complained-of comments were not made before a jury, but during a hearing for a determination of probable cause. Furthermore, the record does not show that respondent's objections would have fallen on deaf ears as the trial court never acted in defense counsel's absence or prevented counsel from objecting. See

People v. Faria, 402 Ill. App. 3d at 478. Consequently, we decline to relax the forfeiture rule in this case, and respondent's claim is forfeited.

¶ 29 CONCLUSION

¶ 30 Based on the foregoing, we affirm.

¶ 31 Affirmed.

¶ 32