2017 IL App (2d) 141184-U
No. 2-14-1184
Order filed January 25, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. CHRISTOPHER GARCIA, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Kane County. No. 13-DT-326 Honorable Robert J. Morrow, Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices McLaren and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court erred in precluding defendant from introducing evidence to support his theory that his erratic behavior was the product of a mental illness rather than the consumption of alcohol, as the evidence was relevant to whether he was guilty of DUI, specifically whether he was under the influence of alcohol to such a degree that his ability to drive was impaired; the error was not made harmless by the evidence that defendant also exhibited standard indicia of intoxication.

¶ 2 In the early morning of March 31, 2013, police observed defendant, Christopher Garcia, speeding and driving through two stop signs while he had an open bottle of alcohol in his car. Defendant was stopped, and several officers, at least one of whom knew that defendant had mental health problems, observed, in addition to typical indicia of intoxication, that defendant

was acting peculiarly. Defendant was arrested for driving while under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(2) (West 2012)) and illegal transportation of an alcoholic beverage (625 ILCS 5/11-502(a) (West 2012)). At trial, defendant sought to introduce evidence that his mental health problems were the source of his strange behavior, but the trial court refused to let defendant present an offer of proof as to all of the evidence he had in support of his claim. A jury found defendant guilty of DUI and not guilty of illegal transportation of an alcoholic beverage; defendant filed a posttrial motion, delineating of what his offer of proof would have consisted; the trial court denied the motion; and the court sentenced defendant to 180 days in jail. In this timely filed appeal, defendant argues that he is entitled to a new trial, as the court denied him his right to present a defense. For the reasons that follow, we reverse and remand.

¶ 3 I. BACKGROUND

¶ 4 At a hearing on the State's discovery motion (see Ill. S. Ct. R. 413 (eff. July 1, 1982)), defendant advised the State and the court that it was going to call Dr. Marc Crescenzo to testify at trial about defendant's mental condition. Crescenzo treated defendant when he was brought to Provena Mercy Medical Center (Mercy) after his arrest for DUI. The State asked for the doctor's curriculum vitae and any evidence defendant was going to present concerning the doctor's observations of defendant around the time of the incident. Defendant told the court that, given that this was a misdemeanor case, he did not believe that the State was entitled to a curriculum vitae. Moreover, defendant advised the court that the State already possessed all the evidence concerning the doctor, as the State had tendered it in discovery, and that defendant was not going to be receiving any additional documents from the doctor. The trial court ordered the State to contact Crescenzo and noted that, if the doctor did not give the State the information it

believed it needed, the State could renew its discovery motion. Nothing in the record indicates that the State renewed its motion.

¶ 5 Thereafter, right before the parties picked a jury, the court advised the parties that "[t]his is a one-day case." The court then asked the parties, "Do we all think we can do this in a day?" The State told the court that it would call four witnesses, and defendant, who told the court that he had five witnesses and was going to play a video, said that he would try to finish his case in a day. Although the court suggested that the case be "sen[t] *** to a judge who can do this," the case was not transferred to another courtroom, and no further discussion about the duration of the trial was had.

¶ 6 Before *voir dire* began, the court advised the jury pool that Crescenzo, in addition to several other employees of Mercy, would testify. During defendant's opening statement, he told the jury members that they would see a video of defendant at the police department after his arrest.

¶ 7 At trial, Officer Steve Pacenti testified that he was on duty on March 31, 2013, at around 1:14 a.m., when he paced defendant driving 50 miles per hour in a 25-mile-per-hour speed zone. Pacenti also observed defendant drive past two stop signs without stopping or slowing down. Pacenti activated his squad car's emergency lights, and defendant stuck both of his hands out of the driver's window and began slowing down.

¶ 8 Pacenti ran defendant's information through the police database and noted that there were "caution[s]" for defendant being mentally unstable and suicidal. Pacenti was aware of these cautions, as he had had prior contact with defendant.

¶ 9 Other officers, including Ronald McNeff and Dominic Tamberelli, arrived and assisted Pacenti. When they helped defendant get out of the car, the officers stood defendant up, and he

immediately went limp and fell to the ground. Pacenti asked defendant where he was going, and defendant first told Pacenti that he had a family emergency. He then said that he believed that Pacenti was a gangbanger and that Pacenti was going to shoot him. In response, Pacenti asked defendant why he did not call 911. Defendant indicated that he did not need to do so, as Pacenti was behind him. Eventually, defendant stated that he just wanted to go home.

¶ 10 During the exchange defendant had with the officers, the officers observed that defendant's eyes were red, bloodshot, and glassy; his speech was slurred; and a strong odor of alcohol was emanating from defendant's breath. Pacenti asked defendant to perform some field sobriety tests, and defendant declined to do so. Defendant was then handcuffed and placed on a curb where he waited to be transported to the police station. While waiting, defendant became very belligerent and aggressive, and he began "free-style rapping" and talking nonsense.

¶ 11 Pacenti inventoried defendant's car and discovered an uncapped bottle of Hennessy cognac standing up on the front-passenger seat. The bottle was about three fourths full.

¶ 12 At the police station, when Pacenti read the warning to motorists to defendant, defendant screamed at Pacenti throughout the entire warning, threatening to kick Pacenti and other jail personnel in their throats. Defendant refused to submit to either a Breathalyzer or blood test. Pacenti then escorted defendant to a jail cell. While being taken there, defendant again made his body go limp.

¶ 13 Pacenti, McNeff, and Tamberelli all believed, based on their professional and personal experiences observing people under the influence of alcohol, that defendant was "very intoxicated" and not fit to drive. The officers based their opinions on defendant's erratic behavior around the officers, in addition to the facts that defendant was speeding; failed to stop at two stop signs; failed to yield to an emergency vehicle; changed his story a number of times

when asked where he was going; had difficulty standing; had red, bloodshot, and glassy eyes; smelled of alcohol; slurred his speech; and refused to take any field sobriety tests. Pacenti testified that, when he had encountered defendant in the past, defendant did not slur his speech; smell of alcohol; or have red, bloodshot, and glassy eyes.

¶ 14 After calling these three officers, the State rested, defendant moved for a directed verdict, the court denied the motion, and defendant began presenting his case.

¶ 15 The first witness defendant called was Officer Kayla Soyok. Soyok transported defendant to the police station after defendant was arrested for DUI. During that transport, defendant was singing, screaming, and banging around quite a bit.

¶ 16 Defendant then called Officer Jason Sheldon. The State objected. Defendant made an offer of proof, detailing to what Sheldon would testify if called. Specifically, defendant offered that Sheldon would testify that defendant removed all of his clothes while in his cell, flooded his cell, and threw his underwear and possibly used toilet paper at the camera in his cell. Because of that, Sheldon, who knew that defendant had attempted suicide in the past, was called to transport defendant to another cell, and at a later point, Sheldon took defendant to Mercy. Sheldon would also testify about defendant's agitated state and his attempt to kill himself by hitting his head on the wall. Defendant claimed that Sheldon's testimony was relevant, as it "show[ed] those behaviors [the officers saw at the scene] were consistent for many hours after alcohol could have worn off in his system." Thus, defendant's behavior at the scene could have been attributable to his mental illness and not the consumption of alcohol. In response, the State argued that Sheldon's testimony would be irrelevant given the amount of time that had passed between defendant's arrest and Sheldon's observations. The State also noted that Sheldon could not testify as to whether defendant had a mental illness, and that even if he could, the fact that

defendant had a mental illness had nothing to do with whether he was under the influence of alcohol earlier that day.

¶ 17 Thereafter, the court inquired whether defendant was going to present evidence about defendant's mental condition. Defendant advised the court that he might call several employees of Mercy in addition to Crescenzo. Defendant advised the court that "[a]ll of the names we have are people that are listed in discovery tendered to us by the State." In response to the court's inquiry about whether the State had been notified about Crescenzo, defendant said that they had had an entire hearing on Crescenzo being able to testify and that defendant believed that he could qualify him to render an opinion. As with Sheldon's testimony, the State, which admitted that it was aware of the doctor, claimed that Crescenzo's testimony would be irrelevant, as the doctor saw defendant eight hours after defendant had been arrested. Moreover, the State took issue with the fact that defendant had not tendered the doctor's curriculum vitae, so as far as the State knew, the doctor had no expertise in either psychiatry or psychology. Defendant explained that Crescenzo diagnosed defendant with bipolar disorder after talking with a psychiatrist.

¶ 18 The court sustained the State's objection to Sheldon's testimony. The court then asked defendant if he had any more witnesses to call. When defendant advised the court that the other witnesses from the jail would provide testimony similar to Sheldon's, the court indicated that it was inclined not to permit that evidence. The court said that it did not "see any direct tie into an alcohol or non-alcohol influenced condition eight hours earlier."

¶ 19 Defendant then advised the court that he wanted to introduce a video taken at the jail and make an offer of proof as to what each of his witnesses would say. The court refused to allow defendant to make an offer of proof, telling defendant that "[t]his is a one-day case." The court, without the benefit of an offer of proof, found that testimony from employees at Mercy would be

irrelevant because their observations occurred several hours after defendant's arrest. With regard to the video, the court allowed defendant to play the video from time stamp 2:09 to 2:36, which was when defendant was brought into the booking area and presumably given the warning to motorists. The court barred any recording taken after that, as it showed defendant several hours after his arrest. We reviewed all of the video submitted, and it showed, among other things, defendant fully clothed and being processed; taking off all of his clothes in booking except for his underwear, presumably at the officers' request; going limp as the officers are transporting him to his cell; flooding his cell; taking off his underwear in his cell; throwing his underwear at the camera along with wet and possibly soiled toilet paper; masturbating; pacing around the cell; doing handstands while naked; and banging his head on a cement bench in his cell.

¶ 20 When the portion of the video that the court ruled was admissible was played for the jury, the court stopped the tape at some point before time stamp 2:36, because defendant was barely visible on the recording and was not moving. Defendant then rested.

¶ 21 During his closing argument, defendant asserted that the police were aware of his mental condition and that his behavior that morning was attributable to his mental instability and not intoxication. In support of his theory that his mental illness caused his peculiar behavior, defendant pointed out that he gave conflicting stories to the police when they asked him where he was going, he was free-style rapping, and no breath or blood test was administered indicating that he was intoxicated.

¶ 22 The jury found defendant guilty of DUI and not guilty of illegal transportation of an alcoholic beverage. Defendant filed a posttrial motion, arguing, among other things, that the court erred in sustaining the State's objection to Sheldon's testimony and denying defendant the opportunity to present more of the video and testimony from his witnesses. Defendant

contended that this evidence would have supported his theory that he was suffering from mental health issues at the time of his arrest and that those mental health issues, rather than alcohol, were the cause of defendant's erratic behavior. In support of his claim, defendant made an offer of proof as to what each of his witnesses would have testified if called. Nothing in the offer of proof indicated that any witness would have been able to testify that the specific behavior the officers observed could have been caused by defendant's bipolar disorder. Rather, each witness would have described the strange behavior that he or she observed defendant exhibit and articulated when, in relation to the arrest, those observations were made. In its response to defendant's posttrial motion, the State claimed, among other things, that the evidence of defendant's behavior several hours after his arrest was not relevant to whether defendant had committed DUI.

¶ 23 The court denied defendant's posttrial motion. In doing so, the court, after commenting that defendant should have told the court before trial how many witnesses he had so that the case could have been transferred to another courtroom, found that none of the witnesses were qualified to decide whether defendant's behavior was caused by alcohol consumption or his bipolar disorder.

¶ 24 II. ANALYSIS

¶ 25 At issue in this appeal is whether defendant was denied his right to present a defense. "Whether rooted directly in the Due Process Clause of the Fourteenth Amendment [citation] or in the Compulsory Process or Confrontation clauses of the Sixth Amendment, [citations], the Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense.' " *Crane v. Kentucky*, 476 U.S. 683, 690 (1986) (quoting *California v. Trombetta*, 467 U.S. 479, 485 (1984)). This includes a defendant's right to present his " 'version of the facts as

well as the prosecution's to the [trier of fact] so it may decide where the truth lies.' " *People v. Manion*, 67 Ill. 2d 564, 576 (1977) (quoting *Washington v. Texas*, 388 U.S. 14, 19 (1967)). "[C]onsistent with the right to present a defense, there is the right of an accused to show, by competent evidence, facts which tend to" negate one or more elements of the offense charged. *Id.* However, even in light of this right, a trial court may prevent a defendant from introducing irrelevant or unreliable evidence. *People v. Hayes*, 353 Ill. App. 3d 578, 583 (2004). On appeal, we will not reverse the trial court's ruling on the admissibility of evidence absent an abuse of discretion. *Id.* An abuse of discretion occurs only where the trial court's decision is arbitrary, fanciful, or unreasonable to the degree that no reasonable person would agree with it or where the ruling constitutes an error of law. *People v. Prather*, 2012 IL App (2d) 111104, ¶ 20.

¶ 26 Here, defendant was convicted of DUI. To prove a defendant guilty of DUI as charged here, the State must establish beyond a reasonable doubt that the defendant was (1) in actual physical control of a vehicle and (2) under the influence of alcohol at the time and to such a degree that the defendant's ability to operate the vehicle was impaired. *People v. Eagletail*, 2014 IL App (1st) 130252, ¶ 36; see also 625 ILCS 5/11-501(a)(2) (West 2012). Defendant does not challenge the first element of the offense. Rather, he claims that the court abused its discretion when it barred evidence suggesting that his continued odd behavior, which behavior was part of the reason why the officers concluded that defendant had committed DUI, was attributable to his alleged bipolar disorder and not intoxication. Defendant argues that this improperly excluded evidence consists of (1) testimony from jail personnel who saw defendant at the police station after he was arrested; (2) surveillance video showing defendant's behavior at the police station; and (3) testimony of Mercy medical staff who observed, treated, and diagnosed defendant with bipolar disorder on the day he was arrested for DUI.

¶ 27 A. Court's Refusal to let Defendant Make an Offer of Proof

¶ 28 In resolving the issue raised, we first note that "[a]n adequate offer of proof is the key to preserving a trial court's [alleged] error in excluding evidence." *People v. Thompkins*, 181 Ill. 2d 1, 10 (1998). Without an offer of proof, neither the trial judge nor opposing counsel is aware of the nature of the offered evidence, and thus they are prevented from taking the appropriate action. *Id.* Similarly, in the absence of an offer of proof, we cannot determine whether the exclusion of the evidence was erroneous. *Id.* Given the importance of an offer of proof, "Illinois courts of review have not hesitated to remand cases for new trials where circuit judges have mishandled attempts by defendants to make offers of proof on excluded evidence." *Id.*

¶ 29 Here, defendant made an offer of proof as to what Sheldon would say if called to testify. When defendant attempted several times thereafter to make an offer of proof at trial as to what other jail employees and Mercy nurses and doctors would say, the court prevented him from doing so. If, as the record suggests, the witnesses were available at that time to give testimony toward that offer of proof, the court should have allowed defendant to present that evidence, as live testimony, especially from Crescenzo, would have been preferable over written statements. See, *e.g.*, *Hession v. Liberty Asphalt Products, Inc.*, 93 Ill. App. 2d 65, 71 (1968) ("[W]here it is by no means clear what the witness will say, or what his basis will be for saying it, the offer of proof must be considerably more detailed and specific than [a brief] statement [from] counsel."). That did not happen. Defendant presented a written offer of proof with his posttrial motion, but this was not necessarily an adequate substitute. Although we certainly understand the court's desire to handle the matters before it expeditiously, we caution the court not to elevate that desire over a defendant's right to present a defense.

¶ 30 B. Exclusion of Evidence

¶ 31 That said, we turn now to whether exclusion of the witnesses' testimony and the video was proper. Resolution of that issue turns on whether the evidence was relevant. "Relevant evidence ordinarily should be admitted, unless 'otherwise provided by law.' " *Prather*, 2012 IL App (2d) 111104, ¶ 21 (quoting Ill. R. Evid. 402 (eff. Jan. 1, 2011)). "Evidence is relevant if it tends 'to make the existence of any fact that is of consequence to the determination of the action either more probable or less probable.' " *Id.* (quoting Ill. R. Evid. 401 (eff. Jan. 1, 2011)). Whether evidence makes a fact at issue more or less probable depends on "logic, experience and accepted assumptions as to human behavior." *Marut v. Costello*, 34 Ill. 2d 125, 128 (1965). Evidence can be relevant even if it does not conclusively establish the fact for which a party seeks to introduce it. *Prather*, 2012 IL App (2d) 111104, ¶ 22.

¶ 32 Here, we determine that evidence of defendant's alleged bipolar disorder and continued odd behavior is relevant. Because the officers relied in part on the fact that defendant acted strangely to conclude that defendant had committed DUI, whether, and to what extent, defendant's bizarre behavior was caused by intoxication or his disorder is relevant to the issue of whether he was intoxicated to such a degree that his driving was impaired. If, as defendant claims, his behavior was caused by his disease, then defendant might succeed on his claim that he was not intoxicated to such a degree that his driving was impaired. On the other hand, if, as the State contends, defendant's alleged bipolar disorder was not the source of defendant's strange behavior, then defendant's theory might fail. However, the success or failure of his theory is up to the trier of fact to decide. It must weigh the evidence of defendant's disorder against the State's evidence that defendant had no such disorder, that any such disorder did not cause his odd behavior, or that, even if such disorder did cause his odd behavior, he was under the

influence of alcohol as well. The fact that defendant's evidence might be weak in light of the discrediting evidence simply is not a reason to exclude it. *Id.* ¶ 23.

¶ 33 Two cases provide support for our conclusion. See *People v. Way*, 2015 IL App (5th) 130096, *appeal allowed*, No. 120023 (Ill. Jan. 20, 2016); *Prather*, 2012 IL App (2d) 111104. In *Way*, the defendant was charged with aggravated DUI in connection with an accident. *Way*, 2015 IL App (5th) 130096, ¶ 3. Evidence presented at the stipulated bench trial revealed that the defendant's son would testify that, just before the accident, the defendant fell asleep, and the defendant's son attempted to grab the steering wheel to prevent the car from veering into the opposite lane of traffic. *Id.* ¶ 7. The defendant noted that, if there had been a jury trial, she would have sought to introduce testimony from her doctor concerning the fact that "the defendant ha[d] low blood pressure, and that 'it is possible that the loss of consciousness right before the accident was caused by this condition and not caused by any particular drug.' " *Id.* ¶ 8. However, the State had successfully moved before trial to bar her from presenting evidence that something other than drugs caused her loss of consciousness. *Id.* ¶¶ 4-5. The trial court found the defendant guilty, and she appealed. *Id.* ¶ 10. On appeal, the defendant argued that she was denied her right to present a defense, because she was prohibited from contesting the proximate cause element of the aggravated DUI charge. *Id.* ¶ 12. The reviewing court agreed. *Id.* ¶ 21. In so concluding, the court noted that evidence that there was another or a contributing cause of the defendant's loss of consciousness should have been submitted to the trier of fact, who then would have been charged with evaluating that evidence in light of any evidence the State submitted to discredit it. *Id.*

¶ 34 In *Prather*, the defendant was charged with aggravated battery in that he knew that the victim was pregnant when he battered her. *Prather*, 2012 IL App (2d) 111104, ¶ 3. At trial, the

State sought to introduce the victim's testimony that she showed the defendant a pregnancy test before the battery happened. *Id.* ¶ 7. The State claimed that, based on this evidence, it would argue to the jury that the defendant knew or should have known that the victim was pregnant when he battered her. *Id.* The trial court excluded the evidence, the State appealed, and we reversed and remanded the cause. *Id.* ¶¶ 8, 30. In concluding that the evidence should not have been excluded, we noted that the mere fact that the defendant could challenge the value of the evidence by, for example, "claiming that he never saw the pregnancy test device, that it did not show that [the victim] was pregnant, [or] that [the defendant] did not understand what it meant" did not mean that the evidence could be barred for lack of relevance. *Id.* ¶ 22. Rather, such things concerned the weight to be assigned the evidence, and the assessment of a piece of evidence's weight is something uniquely within the jury's province. See *id.*

¶ 35 Here, evidence of defendant's bipolar disorder and continued odd behavior, like evidence of the low blood pressure in *Way* and the pregnancy test in *Prather*, is relevant to whether defendant committed the offense with which he was charged. That is, it is relevant to the issue of what caused the odd behavior that the officers relied on in part to conclude that defendant had committed DUI. As noted in *Way* and *Prather*, the State may present discrediting evidence that weakens defendant's theory that he was acting strangely because of the disorder and was not under the influence of alcohol. That an examination of all the evidence might not tip the trier of fact's decision in defendant's favor has no bearing on whether his evidence should have been excluded. Rather, such considerations go the weight, not the admissibility, of the evidence.

¶ 36 In reaching our conclusion, we do not comment on defendant's arguments concerning Crescenzo's ability to offer expert testimony about defendant's bipolar disorder. Because we are

remanding this case for a new trial, such matters may be addressed in the trial court before a new trial commences.

¶ 37 Citing *People v. Ward*, 101 Ill. 2d 443, 455 (1984), the State notes that a court may exclude evidence as irrelevant if the evidence has little probative value in light of its remoteness. Although we agree with this proposition, it has no application here. The fact that the evidence was remote, *i.e.*, that defendant's erratic behavior continued hours after any alcohol would have been eliminated from his system, is precisely why defendant contends that it is relevant to his claim that his bizarre behavior was caused by his mental illness rather than intoxication. That is, because a mental illness, unlike intoxication, does not dissipate over time, the fact that defendant was behaving strangely hours after his arrest becomes probative of whether alcohol consumption or a mental illness caused defendant to behave in such a manner that the police believed that he was intoxicated to such a degree that his driving was impaired. In this way, unlike in *Ward*, the remoteness of defendant's evidence cannot justify its exclusion. *Id.* at 456 (that the defendant might have beaten to death the older sibling of the victim four years before she was charged with murdering the victim was not relevant, because, not only was the other incident remote, but it involved a different child who might have been beaten by the defendant's husband and not the defendant).

¶ 38 C. Harmless Error

¶ 39 The State also claims that any error in excluding the evidence was harmless, as there was ample evidence aside from defendant's behavior indicating that defendant had committed DUI. For example, the State points out that the officers testified that defendant smelled of alcohol; slurred his speech; and had red, glassy, and bloodshot eyes. We cannot conclude that the error in excluding the evidence was harmless beyond a reasonable doubt. Like the defendant in *Way*,

defendant here is arguing that the jury should have been allowed to hear his evidence before deciding whether he was intoxicated to such a degree that his driving was impaired. See *Way*, 2015 IL App (5th) 130096, ¶ 20. Thus, we find the State's harmless-error argument unavailing.

¶ 40 III. CONCLUSION

¶ 41 For the above-stated reasons, we reverse the judgment of the circuit court of Kane County, and we remand this cause for a new trial.

¶ 42 Reversed and remanded.