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2017 IL App (3d) 150447-U

Order filed November 21, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 21st Judicial Circuit, Kankakee County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal Nos. 3-15-0447 and 3-15-0448
)	Circuit Nos. 13-TR-5607 and 13-TR-14871
JAMIE L. BIGGINS,)	Honorable
Defendant-Appellant.)	Thomas W. Cunningham, Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Presiding Justice Holdridge and Justice Schmidt concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant waived her right to present a closing argument and the court's premature finding is not reversible under the second prong of plain error.
- ¶ 2 Defendant, Jamie L. Biggins, appeals from the court's revocation of her conditional discharge and conviction for driving on a suspended license. Defendant argues that the court violated her rights to counsel and a fair trial when it prejudged the case and deprived her of the right to make a closing argument. We affirm.

¶ 3

FACTS

¶ 4

In case No. 13-TR-5607, defendant pled guilty to one count of driving while license suspended (DWLS) (625 ILCS 5/6-303 (West 2012)) in exchange for a sentence of two years' conditional discharge. While on conditional discharge, the State charged defendant, in case No. 13-TR-14871, with DWLS (625 ILCS 5/6-303 (West 2012)). The State filed a petition to revoke defendant's conditional discharge in case No. 13-TR-5607. On October 24, 2014, the cases were called, along with several traffic citations, for a combined revocation hearing/bench trial.

¶ 5

Bradley Police Officer Ron Ponton testified that on November 8, 2013, at 1:27 p.m., he responded to the scene of an accident. Ponton observed one vehicle on the side of the road with damage to its front quarter panel. After speaking to the driver, Ponton announced over the radio that the police were looking for a female driving a black Chevrolet Corsica. The next day, another officer notified defendant that Ponton needed to speak with her. Defendant went to the police station where she made a written statement that she had loaned her car to a friend who had gotten into an accident or had been hit while in a parking lot. While speaking with Ponton, defendant recanted her written statement and said that she had driven the Corsica. Defendant explained that she was trying to flee from someone when she was involved in the accident. Defendant did not stop at the scene because she was trying to flee from the unnamed individual. Ponton issued citations to defendant for DWLS, no valid insurance, leaving the scene of an accident, and failure to provide information. On cross-examination, Ponton said that he never saw defendant drive either of the cars that were involved in the hit-and-run accident.

¶ 6

Detective Anthony Felesena testified that he also responded to the hit-and-run accident. Felesena observed defendant drive past his location in a vehicle that matched the description of the one involved in the accident. The vehicle registration identified defendant as the registered

owner, and Felesena pursued the vehicle. Felesena lost visual contact of defendant when she drove through a congested construction zone.

¶ 7 At the end of Felesena's testimony, the State rested. Defendant moved for a directed verdict on the DWLS charge and citations. The court denied the motion as to the DWLS charge and granted the motion as to the three traffic citations. Thereafter the following exchange occurred.

“[DEFENSE COUNSEL]: Those were three tickets, Judge? Failure to give information as well?”

THE COURT: Leaving the scene, failure to give information, and, uh, improper turn signal.

And having, uh, found the defendant guilty on 13 TR 14871, then, uh, Court also finds that—Oh, I'm sorry. We have to—Uh, excuse me. I'm sorry. We have the Defense portion—

[DEFENSE COUNSEL]: I have to—

THE COURT: —of the case yet.

[DEFENSE COUNSEL]: —rest, yes.

Defense—

THE COURT: So...

[DEFENSE COUNSEL]: —rests.

THE COURT: Defense rests, okay.

Uh, so the defendant's [*sic*] found guilty. And also, the, uh—Since there's no evidence from the Defense, the petition to revoke conditional discharge has been proven beyond a preponderance of the evidence, Paragraph 2 alleging that,

uh, while on conditional discharge, Defendant committed the additional offense of driving suspended in Case Number 13 TR 14871. So that petition will be allowed.”

¶ 8

ANALYSIS

¶ 9

Defendant argues that the court denied her rights to counsel and a fair trial where it denied her right to make a closing argument and prejudged the case. In support of the two arguments, defendant calls our attention to the fact that the trial court momentarily announced its finding after defendant moved for a directed verdict.

¶ 10

Defendant acknowledges that she failed to preserve these issues by failing to object at trial and raise them in a posttrial motion, but she contends that they are reversible under the second prong of plain error. The plain error doctrine permits a reviewing court to excuse a defendant’s procedural default when “a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant’s trial and challenged the integrity of the judicial process.” *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). The first step of plain error review is to determine if there is error. *Id.* Ultimately, an error that affects the fairness of the trial and challenges the integrity of the judicial process is subject to reversal under the second prong. *People v. Glasper*, 234 Ill. 2d 173, 213 (2009).

¶ 11

I. Closing Argument

¶ 12

Defendant contends that the court denied her right to counsel where it did not allow defense counsel to present a closing argument. Because defendant failed to properly preserve this issue, we first determine if there is error.

¶ 13

A defendant’s right to counsel includes the right to make closing arguments on the evidence and law. *Herring v. New York*, 422 U.S. 853, 865 (1975). A defendant may waive this

right where she makes no attempt to seek a closing argument. *People v. Coleman*, 212 Ill. App. 3d 997, 1004 (1991).

“If a trial court in a bench trial enters its findings directly after the presentation of evidence, defense counsel has the right to object and be given the opportunity to present a closing argument. [Citation.] Where no attempt is made to seek closing argument, it cannot be said that a party was denied the opportunity to present a closing argument.” *People v. Liggins*, 229 Ill. App. 3d 621, 623 (1992).

See also *People v. Brant*, 394 Ill. App. 3d 663, 677 (2009) (applying *Liggins* and concluding that defendant cannot show that she was denied the opportunity to make a closing argument because she did not request one or object when the trial court announced its findings); *Coleman*, 212 Ill. App. 3d at 1004 (defendant was not deprived of the right to present a closing argument where he did not request an opportunity to make such an argument and did not object when the court announced its findings).“ [T]he defendant may not sit idly by and allow alleged irregular proceedings to occur without objection, and afterward seek to reverse his conviction by reason of those same irregularities.’ ” *People v. Bollman*, 163 Ill. App. 3d 621, 633 (1987) (quoting *People v. Mays*, 23 Ill. 2d 520, 525-26 (1962)).

¶ 14 The record in the present case establishes that defendant did not assert her right to make a closing argument, object to the court’s premature finding, or contest the issue in a posttrial motion. As a result, defendant waived her right to present a closing argument.

¶ 15 Faced with this waiver, defendant argues that she did not object or raise this issue posttrial because the record establishes that the court would not have been receptive to her argument. According to defendant, the court’s premature finding of guilt and rapid movement from the point at which the defense rested to the pronouncement of its finding indicated that any

objection to presenting a closing argument would have been futile. See *People v. Faint*, 396 Ill. App. 3d 614, 619 (2009) (acknowledging that “it would have been very difficult for the defense attorney to remind the judge that the defense should be afforded an opportunity to present evidence and a closing argument because the record conveys a sense that the judge would not have been receptive to defense counsel’s suggestion that the approach adopted by the trial court was improper.”).

¶ 16 Unlike *Faint*, the record establishes that the court would have been receptive to defendant’s request to present a closing argument. After the court realized its mistake in prematurely pronouncing its guilty finding, it apologized and provided defendant an opportunity to present her case. Defendant declined, and the court pronounced its guilty finding. The court’s considerate interaction indicates that it similarly would have allowed defendant to present a closing argument if defendant had requested an opportunity to be heard. Accordingly, we find that the court did not violate defendant’s right to counsel.

¶ 17 II. Premature Finding of Guilt

¶ 18 Defendant contends that the court denied her right to a fair trial where it prejudged the case. See *People v. Heiman*, 286 Ill. App. 3d 102, 112-13 (1996). Defendant also failed to properly preserve this issue, but she argues that it is reversible under the second prong of the plain error doctrine. We find that the court erred, however, this error does not warrant reversal under the second prong.

¶ 19 The record is clear that the court prematurely announced its finding of guilt before defendant was allowed to present her case. This was error as the court may not comment on issues of evidence and witness credibility before the defense has an opportunity to argue the

case. *Id.* at 112. However, unlike *Heiman*, the instant error did not establish that the court was biased or prejudiced against defendant.

¶ 20 In *Heiman*, the First District found that the circuit court’s mid-trial comments on the credibility of the defense witnesses and comments during defense counsel’s closing argument evidenced prejudice against the defendant. *Id.* Specifically, during Dr. Paul Geiger’s testimony on the nature of the victim’s injury, the court commented “ ‘really dying to hear how this expert can render this opinion.’ ” *Id.* at 106. The court later told Geiger “ ‘[n]or do I understand your testimony here.’ ” *Id.* During eyewitness Dennis King’s testimony, the court commented “ ‘[b]asically, most of the testimony are things he imagined happened. I don’t know. But his testimony is clear and he thinks things happen that don’t happen.’ ” *Id.* at 108. During closing arguments, the court interrupted defense counsel 45 times. *Id.* at 109. These interruptions included comments that Geiger’s opinion was biased because he was defense counsel’s father, and King was a “ ‘sneak’ ” and “ ‘little piece of garbage who came in here and swore under oath to a lot of things that weren’t true.’ ” *Id.* at 110-11.

¶ 21 On appeal, the First District characterized the circuit court’s comments toward Geiger as “sarcastic,” noted that the circuit court had questioned that witness’s knowledge, observed that the court made “negative comments” about King, and made “excessive and exaggerated derogatory comments about defendant during the defense’s closing argument.” *Id.* at 112.

¶ 22 Unlike *Heiman*, the instant record does not establish that the court was prejudiced or biased against defendant. The record merely establishes that the court mistakenly pronounced its finding before defendant had an opportunity to present her case. The court realized its mistake, took corrective action and provided defendant an opportunity to present her case. In contrast to *Heiman*, the instant error was not the result of prejudice or bias, but the result of mistake. After

the court realized its mistake, it provided defendant an opportunity to present her case. Defendant decided to “rest” her case without presenting evidence and then did not assert her right to make a closing argument. *Supra* ¶ 13. The court then pronounced its guilty finding. Therefore, defendant has not established that the error challenged the integrity of the judicial process and warrants reversal under the second prong.

¶ 23

CONCLUSION

¶ 24

The judgment of the circuit court of Kankakee County is affirmed.

¶ 25

Affirmed.