2017 IL App (4th) 150337-U

NO. 4-15-0337

FILED
April 19, 2017
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.	)	Macon County
HENRY L. RICE,	)	No. 14CF1388
Defendant-Appellant.	)	
	)	Honorable
	)	Robert C. Bollinger,
	)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Harris and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, finding the State did not impermissibly shift the burden of proof during rebuttal closing argument.

¶ 2 In March 2015, a jury found defendant, Henry L. Rice, guilty of domestic battery. In April 2015, the trial court sentenced him to five years in prison.

¶ 3 On appeal, defendant argues the State impermissibly shifted the burden of proof to the defense during closing argument. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In November 2014, the State charged defendant by information with one count of domestic battery with four or more prior domestic battery convictions (720 ILCS 5/12-3.2(a)(1) (West 2014)), alleging he knowingly caused bodily harm to Karen Todd, a family or household member of defendant, in that he grabbed Todd and threw her to the ground, causing injury.

Defendant pleaded not guilty.

¶ 6 In March 2015, defendant's jury trial commenced. Karen Todd testified defendant was her ex-boyfriend and they lived together between May 2013 and March 2014. On May 27, 2014, defendant came to Todd's house around noon to retrieve his belongings from a shed. Todd had called him earlier that day, and they "got into an altercation on the phone." Upon arrival, defendant "came charging" after Todd. She stated he was mad because she told him he could not retrieve his belongings from the shed. Todd testified defendant picked up a lawn chair and threw it at the house next door. He then grabbed Todd by the back of the neck and threw her up against the neighbor's house. Thereafter, Todd went inside her house. She tried to shut the door, but defendant came inside behind her. Further argument ensued, and Todd said she was going to call the police. Defendant came at Todd, got in her face, and said he would damage her possessions if she called the police. Defendant and Todd scuffled over an Xbox gaming console, and after it went sliding across the living room floor, Todd remembered defendant lying on top of her and being unable to breathe. After Todd told her friend to call the police, defendant left. Todd testified she received a cut on her right pinkie finger and a bruise on her left arm.

¶ 7 Decatur police officer Sean Bowsher testified he arrived on the scene and found Todd to be "upset" and "crying," with a "redness about her face" and "disheveled" clothing. Todd observed "some redness" on her neck and noted she was "nursing her pinkie finger."

¶ 8 Shameka King, Todd's friend, testified she was present when defendant arrived at Todd's house. King stated defendant "jumped out" of his vehicle and started talking "about stuff in the shed." Defendant threw a lawn chair against the neighbor's house. He then "threw" Todd up against the neighbor's house. After Todd ran into her house, defendant grabbed her by the

neck and "threw her on the floor." Defendant eventually left.

¶ 9 Crystal Hibbler, Todd's friend, testified she, Todd, and King were outside when defendant arrived. After an argument ensued between Todd and defendant, he "threw her up against the neighbor's house" and then threw a chair at the house. Todd went inside her house, and defendant followed her. Further arguments ensued before defendant grabbed Todd by her neck and "dropped her to the floor." When defendant realized Hibbler had called the police, he left.

¶ 10 In the defense case, Michael Buckner testified Todd called defendant and told him to retrieve his belongings from her house. Once Buckner and defendant arrived, Todd and defendant got into an argument. Buckner testified defendant did not put his hands on anyone prior to going inside the house. Buckner stated he went inside to convince defendant to leave, but Todd blocked their path to the door and would not let them leave. Todd grabbed defendant, and then defendant and Buckner left.

¶ 11 On cross-examination, Buckner stated he was able to leave the house because defendant moved Todd out of the way by "chest bumping" her. Buckner stated he did not find out about the court case until a couple of days before the trial. He stated he did not think it was important to report his observations to the police because he tries not to stick his "nose in other people's business." Defendant elected not to testify.

¶ 12 Following closing arguments, the jury found defendant guilty of domestic battery. In April 2015, defense counsel filed a motion for a new trial, arguing the State failed to prove him guilty beyond a reasonable doubt. The trial court denied the motion. Thereafter, the court sentenced defendant to five years in prison. This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 Defendant argues the State impermissibly shifted the burden of proof to the defense when it suggested, during rebuttal argument, that defendant could only be acquitted of the offense of domestic battery if he provided some evidence that Todd initiated the physical altercation. We disagree.

¶ 15 Initially, we note defendant acknowledges trial counsel did not object to the State's rebuttal argument and did not raise the issue in a posttrial motion. Thus, the issue is forfeited on appeal. See *People v. Hestand*, 362 Ill. App. 3d 272, 279, 838 N.E.2d 318, 324 (2005) (a defendant must object at trial and raise the issue in a posttrial motion to preserve the issue for review). Defendant, however, asks this court to review the issue as a matter of plain error.

¶ 16 The plain-error doctrine allows a court to disregard a defendant's forfeiture and consider unpreserved error in two instances:

> "(1) where 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, regardless of the seriousness of the error and (2) where 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. Belknap*, 2014 IL 117094, ¶ 48, 23 N.E.3d 325.

¶ 17 Under both prongs of the plain-error analysis, the burden of persuasion remains with the defendant. *People v. Wilmington*, 2013 IL 112938, ¶ 43, 983 N.E.2d 1015. As the first step in the analysis, we must determine whether any error occurred at all. *People v. Eppinger*, 2013 IL 114121, ¶ 19, 984 N.E.2d 475. "If error did occur, we then consider whether either

prong of the plain-error doctrine has been satisfied." *People v. Sykes*, 2012 IL App (4th) 111110, ¶ 31, 972 N.E.2d 1272.

¶ 18 "Every defendant is entitled to [a] fair trial free from prejudicial comments by the prosecution." *People v. Young*, 347 Ill. App. 3d 909, 924, 807 N.E.2d 1125, 1137 (2004). "A prosecutor has wide latitude in making a closing argument and is permitted to comment on the evidence and any fair, reasonable inferences it yields." *People v. Glasper*, 234 Ill. 2d 173, 204, 917 N.E.2d 401, 419 (2009). Moreover, "statements of counsel and argument based upon facts and circumstances proved, or upon legitimate inferences drawn from them, do not exceed the bounds of proper debate." *People v. Bowen*, 241 Ill. App. 3d 608, 621, 609 N.E.2d 346, 357 (1993). A reviewing court "will find reversible error only if the defendant demonstrates that the improper remarks were so prejudicial that real justice was denied or that the verdict resulted from the error." *People v. Runge*, 234 Ill. 2d 68, 142, 917 N.E.2d 940, 982 (2009).

¶ 19 In the case *sub judice*, defendant takes issue with the prosecutor's following statement on rebuttal:

> "There is not a single suggestion from anybody that Karen Todd attacked the defendant at any point, that she initiated the physical element of this altercation, and that's what we're here today to discuss."

Defendant argues this statement asserted he had a burden to prove Todd initiated the physical attack against him to obtain an acquittal, which undermined his right to a fair trial.

¶ 20 "A prosecutor shifts the burden of proof by suggesting to the jury that the defendant was obligated to *present evidence in the trial*." (Emphasis in original.) *People v. Appelt*, 2013 IL App (4th) 120394, ¶ 90, 996 N.E.2d 751. Here, the prosecutor did not

improperly shift the burden of proof, and we find no error.

¶ 21 The State's evidence included the testimony of the victim and two occurrence witnesses. Testimony indicated an altercation occurred outside Todd's home and then moved inside. Todd stated she went to grab a gaming console when defendant grabbed her by the neck and took her to the floor. Accounts by King and Hibbler were consistent with Todd's testimony. The State also presented photographs of Todd's injuries. The defense theory was that Todd initiated the physical contact with defendant and was responsible for the altercation. The defense's only witness was Buckner, who claimed Todd grabbed defendant on the arm to stop him from leaving the house. On cross-examination, Buckner stated defendant moved Todd out of the way by chest bumping her.

¶ 22 During closing arguments, defense counsel told the jury it needed to look at who started the events. Counsel stated it was not defendant. Instead, counsel argued it was Todd who was confrontational and the reason why "all this stuff transpired."

¶ 23 The prosecutor's rebuttal argument did not suggest to the jury that defendant was obligated to present evidence that Todd was the aggressor. Instead, the comment was a proper statement that the evidence did not support defendant's claim that Todd was the aggressor. The prosecutor did not argue defendant had the burden of proof or failed to present evidence to prove his innocence. The prosecutor simply commented on her belief as to what the evidence and testimony showed. As we find no error, we hold defendant to his forfeiture of this issue.

¶ 24 III. CONCLUSION

¶ 25 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.

¶ 26 Affirmed.