

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

FILED

August 10, 2017
Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 160569-U
NO. 4-16-0569

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	De Witt County
WILLIAM D. SPENCER,)	No. 15CF53
Defendant-Appellant.)	
)	Honorable
)	Roger B. Webber,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Turner and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding defendant’s arguments were either forfeited or meritless.

¶ 2 Following a May 2016 trial, a jury found defendant, William D. Spencer, guilty of aggravated battery (720 ILCS 5/12-3.05(c) (West 2014)). In July 2016, the trial court sentenced defendant to 12 months’ probation.

¶ 3 Defendant appeals, arguing his conviction should be reversed or a new trial should be ordered because (1) a sheriff’s deputy narrated what occurred in a video without any personal knowledge of the events portrayed, (2) the jury was not instructed as to his right to remain silent, and (3) he was not allowed to show the entirety of a video to support his theory of defense. In the event any of the preceding errors alone do not warrant reversal or a new trial,

defendant asserts the cumulative effect of those errors and others denied him a fair trial. We affirm.

¶ 4

I. BACKGROUND

¶ 5

A. Information

¶ 6

In August 2015, the State charged defendant by information with aggravated battery (720 ILCS 5/12-3.05(c) (West 2014)). The State alleged, on September 11, 2014, defendant “knowingly and without authority made physical contact of an insulting or provoking nature with Dustin Peterson [by using] his body to strike and move *** Peterson, knowing *** Peterson to be on public property[,] to wit: the De Witt County Courthouse.”

¶ 7

B. Jury Trial

¶ 8

In May 2016, the trial court conducted a jury trial. The following is a summary of the relevant testimony and evidence.

¶ 9

On September 11, 2014, at 8 p.m., the De Witt County Board held a meeting in a De Witt County courtroom. Sheriff’s Deputy Mack King provided security for the county board meeting. Deputy King was equipped with a body camera on the front of his jacket.

¶ 10

At that time, the De Witt County Board consisted of members of two opposing political factions. Sherrie Brown, the county board chairman and paramour of defendant, ran a coalition to preserve clean water and stop the dumping of hazardous waste at the Clinton landfill, which was located above the Mahomet Aquifer. The majority of the county board members were members of the coalition. Defendant, a non-board member, was both a member of the coalition as well as the WATCH Clinton Landfill group, a group dedicated to protecting the water in the county. Members of the Better Government for De Witt County organization opposed the actions

of the coalition. Several county board members were members of that organization. Peterson, a non-board member, was also a member of the Better Government for De Witt County organization.

¶ 11 That evening, a vacancy on the county board existed, and members of the Better Government for De Witt County organization sought to approve one of their members, Christina Pruser, to fill the position. The issue caused a commotion at the meeting. At one point, Danny Ballenger, a county board member and member of the Better Government for De Witt County organization, called out to Peterson, who was seated in the audience. At approximately 8:40 p.m., Brown adjourned the meeting because members of the Better Government for De Witt County organization were being uncivil. Board members objected to the adjournment and directed disparaging comments at Brown. Deputy King began to clear the courtroom. Members of the opposing political factions began to argue with each other. Due to the disparaging comments directed at Brown, defendant yelled, “ ‘Bullies and wife beaters.’ ” Defendant testified he was not angry when he made the comment. Defendant, who was seated in the back of the courtroom, stood up and began to walk down an aisle toward the front of the courtroom to collect recording equipment he brought to the meeting. The aisle was three feet wide.

¶ 12 At that time, Peterson was standing in the courtroom aisle, leaning up against the courtroom bench with his hands on his hips, and talking with Pruser and Andy Hedrick. Peterson testified, “out of my left corner of my eye, I saw [defendant] approaching, and at that point he lowered his shoulder and tried to knock me over.” Peterson indicated he was struck in the “shoulder, left chest area,” causing him to shuffle his feet and grab the bench in front of him. Peterson testified he did not try to block the aisle, stick his elbow into defendant’s path, or strike

defendant. He believed sufficient space existed behind him for a person to walk by without making contact. Peterson also stated neither before nor after the incident did he and defendant exchange comments with each other.

¶ 13 Pruser testified, while talking with Peterson after the county board meeting adjourned, she observed defendant “lower his shoulder and run into” Peterson, causing Peterson to lose his balance. She believed Peterson was struck on the right side of his body. Pruser disclosed what she observed to Deputy King on the night of the incident.

¶ 14 Hedrick testified, while talking with Peterson after the county board meeting adjourned, he observed defendant “coming down the [aisle] toward [Peterson], and when he got up there to him he lowered his shoulder like a football player and hit him in the back.” Hedrick believed the contact occurred intentionally. Hedrick testified he did not hear Peterson say anything to defendant. He acknowledged, however, he stated in a September 12, 2014, interview he heard Peterson say something to defendant. Hedrick testified if Peterson said something, it occurred after the contact. Hedrick was not a member of the Better Government for De Witt County organization.

¶ 15 Defendant testified, in approaching the front of the courtroom, he first passed Jerry Nowicki in the aisle. Defendant acknowledged he could pass Nowicki without having to turn his body. After passing Nowicki, defendant observed Peterson staring at him. Peterson was standing in the middle of the aisle, with his elbows sticking out behind his back and his hands on his hips. When defendant was approximately a step away from Peterson, Peterson called him an “asshole.” Defendant did not respond to Peterson’s comment. Defendant turned his shoulder away from Peterson and toward the wall and continued forward, believing he had sufficient

space to pass Peterson without making contact. Defendant asserted Peterson intentionally blocked his path by rotating his arm and turning into him. Defendant was unsure whether contact actually occurred. Defendant demonstrated for the jury the movements he made when passing by Peterson. After collecting his equipment in the front of the courtroom, defendant returned down the aisle and passed Peterson without making any contact. Defendant testified, prior to rendering his testimony, he reviewed a video recording of the incident approximately 20 times.

¶ 16 Karen Musick testified she watched defendant walk up the aisle after the county board meeting, and he never made contact with anyone, either intentionally or unintentionally.

¶ 17 Video footage from Deputy King's body camera was published to the jury. The trial court allowed video footage to be shown beginning after the county board meeting adjourned. Defendant sought to introduce video footage of the entire county board meeting. The State objected, noting it was already established the two political factions did not get along, which the trial court sustained. The video footage published to the jury shows the incident between defendant and Peterson. The jury was also given still images taken from the video.

¶ 18 After the incident occurred, Deputy King finished clearing the courtroom. During that time, defendant collected his equipment and left to drive his friend home. Keith Koons testified defendant did not appear to be upset after the incident. Deputy King did not ask defendant to discuss the incident prior to him leaving the building.

¶ 19 Defendant later received a phone call from Deputy King, but he did not answer. Defendant testified he called a "criminal lawyer" and did not return Deputy King's phone call based on the legal advice he received. Deputy King acknowledged defendant had the right not to speak to the police.

¶ 20 Terry Hoffman, a member of the coalition, recalled incidents in the past where members of the Better Government for De Witt County organization would block the aisles during county board meetings.

¶ 21 Multiple witnesses testified defendant had a reputation for peacefulness. Defendant acknowledged the witnesses who rendered such testimony were his friends.

¶ 22 On the night of the incident, Peterson told Deputy King he did not desire charges to be pursued against defendant. Later, after reviewing video footage from the incident, Peterson requested charges be pursued as he was “shocked” and “wasn’t sure why [the incident] happened.” Peterson acknowledged after the incident he stated “he was not going to stoop to their level” and “[h]e knows he’s an idiot,” referring to defendant. Peterson testified he did not engage in a conspiracy to stand by the aisle and block defendant to get him in trouble.

¶ 23 In closing argument, defendant presented a theory of defense suggesting Peterson was acting in concert with other, like-minded politicians to retaliate against him for his political speech and political acts.

¶ 24 Following deliberations, the jury found defendant guilty of aggravated battery.

¶ 25 C. Defendant’s Posttrial Motion and Sentencing

¶ 26 In June 2016, defendant filed a posttrial motion and a memorandum of law in support. Defendant argued, in part, the trial court erred in refusing to allow him to show the entire video of the county board meeting to support his theory of defense. Following a July 2014 hearing, the court denied defendant’s posttrial motion and then sentenced him to 12 months’ probation.

¶ 27 This appeal followed.

¶ 28

II. ANALYSIS

¶ 29 On appeal, defendant, proceeding *pro se*, argues his conviction should be reversed or a new trial should be ordered because (1) Deputy King narrated what occurred in the video footage from his body camera without any personal knowledge of the events portrayed, (2) the jury was not instructed as to his right to remain silent, and (3) he was not allowed to show the entirety of the video footage from the county board meeting to support his theory of defense. In the event any of the preceding errors alone do not warrant outright reversal or a new trial, defendant asserts the cumulative effect of those errors and others denied him a fair trial.

¶ 30

A. Deputy King's Narration

¶ 31 Defendant asserts his conviction should be reversed or a new trial should be ordered because Deputy King improperly narrated what occurred in the video footage from his body camera without any personal knowledge of the events portrayed. Defendant contends, similar to what occurred in *People v. Sykes*, 2012 IL App (4th) 111110, 972 N.E.2d 1272, Deputy King's narration violated the silent witness rule and invaded the province of the jury. In response, the State argues defendant has forfeited his argument.

¶ 32

A criminal defendant preserves an issue for review by "(1) raising it in either a motion *in limine* or a contemporaneous trial objection, and (2) including it in the posttrial motion." *People v. Denson*, 2014 IL 116231, ¶ 11, 21 N.E.3d 398. Defendant did not include his contention of error in his posttrial motion, thereby forfeiting it for review. Defendant suggests his claim may be reviewed as a claim of ineffective assistance of counsel. Illinois Supreme Court Rule 341(h)(7) (eff. Jan. 1, 2016) requires an appellant's brief to contain "[a]rgument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the

authorities and the pages of the record relied on.” The failure to comply with Rule 341(h)(7) results in the forfeiture of an argument on appeal. *People v. Snow*, 2012 IL App (4th) 110415, ¶ 11, 964 N.E.2d 1139. The entirety of defendant’s argument consists of the following: “[D]efense counsel was ineffective for failing to object to this testimony.” He provides no reasoned argument, citation to legal authority, or citation to the record. This court is not a depository into which an appellant can dump the burden of argument and research. *People v. Ramirez*, 2013 IL App (4th) 121153, ¶ 74, 996 N.E.2d 1227. Defendant has forfeited review of this issue.

¶ 33 B. Jury Instruction

¶ 34 Defendant asserts his conviction should be reversed or a new trial should be ordered because the jury was not instructed as to his right to remain silent. Defendant suggests the trial court should have, *sua sponte*, given such an instruction where the State told the jury during closing argument he “lawyered up” on the night of the incident. In response, the State argues defendant has forfeited his argument.

¶ 35 Defendant did not include his contention of error in his posttrial motion, thereby forfeiting it for review. See *Denson*, 2014 IL 116231, ¶ 11, 21 N.E.3d 398. Defendant again suggests his claim may be reviewed as a claim of ineffective assistance of counsel. Defendant provides a paragraph outlining the standards to evaluate a claim of ineffective assistance and cites two cases concerning the failure to give a second degree murder instruction and a credibility of an accomplice instruction. Defendant’s argument consists of the following: “[C]ounsel was ineffective for not requesting a limiting jury instruction or a mistrial.” He provides no reasoned argument, citation to relevant legal authority, or citation to the record. See

Ramirez, 2013 IL App (4th) 121153, ¶ 74, 996 N.E.2d 1227. Defendant has forfeited review of this issue.

¶ 36 C. Video Footage

¶ 37 Defendant contends his conviction should be reversed or a new trial should be ordered because he was not allowed to show the entirety of the video footage from the county board meeting to support his theory of defense. In response, the State contends any error was harmless.

¶ 38 The admissibility of evidence rests with the sound discretion of the trial court, and the trial court's decision will not be disturbed absent an abuse of that discretion. *People v. Pikes*, 2013 IL 115171, ¶ 12, 998 N.E.2d 1247. An abuse of discretion will be found only where the trial court's evaluation is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the trial court. *People v. Donoho*, 204 Ill. 2d 159, 182, 788 N.E.2d 707, 721 (2003). Any error in the exclusion of evidence will be deemed harmless if the excluded evidence is merely cumulative of other evidence presented by the parties. See *People v. Caffey*, 205 Ill. 2d 52, 92, 792 N.E.2d 1163, 1190 (2001); *People v. Bartall*, 98 Ill. 2d 294, 319, 456 N.E.2d 59, 71 (1983).

¶ 39 Defendant argues the additional video footage would support his theory Peterson was acting in concert with other, like-minded politicians to retaliate against him for his political speech and political acts. Defendant's theory of defense was presented to the jury through testimony from numerous witnesses and during closing argument. The jury was made aware (1) the two political factions had opposing views, (2) conflicts occurred between members of the two political factions, and (3) of who belonged to the particular political factions. Even if error

occurred, that error would be harmless as the additional video footage was merely cumulative of the other evidence presented. See *Caffey*, 205 Ill. 2d at 92, 792 N.E.2d at 1190; *Bartall*, 98 Ill. 2d at 319, 456 N.E.2d at 71.

¶ 40

D. Fair Trial

¶ 41 Defendant asserts his conviction should be reversed or a new trial should be ordered because the cumulative effect of the preceding errors and others denied him a fair trial. Again, we find the contentions of error previously discussed to be either forfeited or meritless. Defendant also complains of the credibility of the State’s witnesses and criticizes the State’s opening and closing arguments, the lack of evidence as to his motive to commit the offense, and the absence of a limiting instruction on “motive evidence.” Defendant’s additional complaints and criticisms are bereft of reasoned argument, citation to relevant authority, and citation to the record, forfeiting them for review. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016). Defendant has failed to demonstrate he was denied a fair trial.

¶ 42

III. CONCLUSION

¶ 43 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. 55 ILCS 5/4-2002(a) (West 2016).

¶ 44

Affirmed.