2017 IL App (5th) 140350-U

NO. 5-14-0350

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Christian County.
	)	
v.	)	No. 13-CF-231
	)	
REGINALD L. BRITTON,	)	Honorable
	)	Bradley T. Paisley,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE BARBERIS delivered the judgment of the court.
Presiding Justice Moore and Justice Welch concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not abuse its discretion in admitting other-crimes evidence where the testimony was factually similar and close in proximity to the charged offense, and no ineffective assistance of counsel where the defendant failed to show he was prejudiced by counsel's performance.

¶ 2 The defendant, Reginald L. Britton, appeals his conviction, following a jury trial in the circuit court of Christian County, for the offense of domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2010)). For the reasons which follow, we affirm.

¶ 3 BACKGROUND

¶ 4 On November 20, 2013, the defendant was charged by indictment in the circuit court of Christian County with attempted first-degree murder (720 ILCS 5/8-4(a) (West 2010)), aggravated domestic battery (720 ILCS 5/12-3.3(a) (West 2010)), and aggravated battery (720

ILCS 5/12-3.05(a) (West 2010)). The attempted first-degree murder charge alleged that the defendant performed a substantial step toward the commission of the offense of first-degree murder; the aggravated domestic battery charge alleged that in committing a domestic battery the defendant caused great bodily harm to Roxanne Fanshier (Fanshier); and the aggravated battery charge alleged that in committing a battery the defendant intentionally caused great bodily harm to Fanshier. Additionally, these three charges contained the following factual allegation:

> "[The defendant], without legal justification knowingly beat Roxanne Fanshier severely about the head and body with his hands and fists and confined her in a dog kennel in a remote rural location where discovery of Roxanne Fanshier was not likely or timely, and where she was exposed to the weather conditions that would cause her death or great bodily harm ***."

¶ 5 On November 19, 2013, during the grand jury proceeding, Fanshier testified that at the time of the offense she had been the defendant's live-in girlfriend for about two months. She further testified that she and the defendant had decided to go out that evening to a local tavern. They first went to the bar and then to the defendant's cousin's house, stopping to purchase liquor along the way. Eventually, the defendant and Fanshier went to another bar in Springfield, Illinois. She testified that while standing outside of the bar she reached into the car to retrieve her cell phone, and the defendant struck her in the head with his fists. Fanshier testified that she could not recall anything that happened after she was struck in the head. However, she testified that she recalled waking up at the hospital on November 18, 2011. She also testified that she had been physically abused by the defendant on another occasion roughly three weeks into their relationship. During that incident after the defendant had been drinking, he choked and threatened to kill Fanshier if she ever left him.

¶ 6 Next, Sergeant Brad Sterling (Sterling) testified that he received a call from the Christian County Sheriff's Department to assist in an investigation of a possible attempted murder. When he arrived, he initially spoke to Matthew Kemp (Kemp) and Christopher Eckenrodt (Eckenrodt). Kemp informed Sterling that he first observed Fanshier from a deer stand on Eckenrodt's property. Sterling testified that after Kemp called Eckenrodt, Kemp, Eckenrodt, and his wife approached Fanshier. Eckenrodt told Sterling that he was "extremely mortified" at the degree of Fanshier's injuries. After removing Fanshier from the dog kennel, emergency personnel arrived and Fanshier was transported by ambulance to the hospital.

¶ 7 Sterling testified that when he arrived at the hospital to speak to Fanshier, he "didn't think she was going to live" and that he had "seen many dead bodies and she looked like she was going to die ***." Although Fanshier was on a gurney, intubated, and incoherent at times, Sterling conducted an interview and was able to determine the defendant's identity from Fanshier.

¶ 8 Sterling testified that he had interviewed Fanshier multiple times following the initial interview at the hospital. He testified that Fanshier and the defendant visited several taverns in Jacksonville, Illinois, the night he struck her in the head, before visiting the defendant's cousin's house. Sterling further testified that Fanshier and the defendant eventually went to a tavern in Springfield, Illinois, where she recalled getting out of the car, but did not remember entering the tavern. Sterling testified that the still photographs taken from the tavern's video camera showed that Fanshier and the defendant entered the tavern, and that the defendant had a confrontation with the bartender before the two left. Sterling testified that Fanshier remembered reaching into the vehicle to retrieve her cell phone before she was "struck on the side of her head and then *** lost consciousness."

¶ 9 In addition, Sterling testified that Fanshier's medical records were admitted into evidence showing that she had sustained multiple injuries associated with blunt force trauma, including subdural hemorrhages, a fractured eye socket and nasal bone, as well as numerous facial bruises. She also had abrasions on her knees and on the tops of her feet.

¶ 10 After the grand jury returned a bill of indictment against the defendant, the circuit court issued an arrest warrant and he was subsequently arrested.

¶ 11 On December 23, 2013, the special prosecutor filed a motion *in limine* pursuant to section 115-7.4 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-7.4 (West 2010)) to admit prior evidence of the defendant's commission of other acts of domestic violence against three previous girlfriends, Corey Ondrey (Ondrey), Trista Graves (Graves), and Taylor Dodd (Dodd).

¶ 12 On February 21, 2014, the circuit court conducted a hearing on the State's motion *in limine* to admit the testimony of the defendant's three former girlfriends, Graves, Ondrey, and Dodd.

¶ 13 Graves testified that she had a sexual relationship with the defendant that lasted several months. In July 2012, following an altercation at her home, Graves testified that the defendant punched her in the face with his fists and rendering her unconscious. When she awoke, the defendant had left her home.

¶ 14 The circuit court next heard testimony from Ondrey regarding multiple incidents of past domestic violence. In particular, Ondrey testified that she was "unable to count" the numerous times that the defendant had struck her in the face with his fists. Ondrey testified that she knew the defendant for five to six years, and that they had one child together. Ondrey testified that on July 27, 2010, the defendant struck her in the face with his fist while the two were at a local bar.

Ondrey further testified that after she left the bar with the defendant, he struck her in the face two more times with his fists. The force was sufficient enough that it caused swelling in her face. Additionally, Ondrey testified to an incident that occurred on September 1, 2012, where the defendant grabbed, pushed, and held her by her throat against a counter while he threatened to kill her. Lastly, the court heard testimony from Dodd. Similar to Fanshier, Graves and Ondrey, Dodd, too, testified that she was involved in a romantic relationship with the defendant. Dodd testified that on November 7, 2013, the defendant pushed her, and then grabbed her by the throat with his hands.

¶ 15 After considering the testimony and arguments from the parties, the circuit court granted the State's motion, so long as Fanshier testified at trial consistent with her earlier grand jury testimony.

¶ 16 On March 4, 2014, the defendant's trial commenced, and Sterling testified first. He testified to the scope of his investigation and provided many of the same details he had testified to in his grand jury testimony on November 19, 2013, including his opinion as to Fanshier's condition at the hospital, as well as Fanshier's statements describing the defendant's physical actions in striking her in the face and rendering her unconscious.

¶ 17 Next, Kemp testified that on the morning of November 18, 2011, while hunting on rural property belonging to his friend, Eckenrodt, he observed Fanshier inside a nearby dog kennel from his deer stand. He did not know Fanshier at that time and was unsure if she was drunk or a homeless person. He called Eckenrodt to come to the property to investigate. Kemp testified that "it didn't take long" for Eckenrodt and his wife to arrive at the property.

¶ 18 Eckenrodt testified that after he received a call from Kemp, he and his wife went to the property. Upon arrival, Eckenrodt testified that it was an unseasonably cold, windy morning,

and that as they approached Fanshier, he observed that she was barefoot, wearing only a t-shirt and a ripped pair of jeans. She appeared badly beaten. She had blood on her face and in her hair; her face, eyes, and lips were bruised and swollen. Eckenrodt testified that she was shivering from the cold and mumbling, "Help me." As they waited in Eckenrodt's vehicle for emergency personnel to arrive, Fanshier indicated that her boyfriend had hit her. Eckenrodt asked her for his name. Eckenrodt had a difficult time understanding Fanshier because her speech was mumbled and impaired. He asked her if she was saying, "Rick Reed?" She shook her head indicating no. After he made several more attempts at repeating other names, Eckenrodt testified that Fanshier stated, "Reggie." Over defense counsel's objection, this testimony was admitted as an excited utterance. The circuit court found that the occurrence was "startling enough" to make an "unreflecting statement," and that the statement related to the "circumstances of the startling occurrence." Because Fanshier had no recollection of the events after the defendant struck her, the court found that there was no time to fabricate her statement.

¶ 19 Fanshier confirmed Sterling's testimony regarding her account of the events. Fanshier also testified that she was very intoxicated and had no recollection of either her or the defendant entering the last bar. However, Fanshier testified that she remembered that the defendant called her a "lying bitch" immediately before he struck her in the head.

¶ 20 Lastly, Fanshier's treating physician, Dr. Jarod Wall, testified that Fanshier's injuries were consistent with blunt force trauma. Moreover, he identified several photographs that were admitted into evidence which depicted the serious nature of her injuries.

¶ 21 At the close of the evidence, the State dismissed the attempted murder and aggravated battery counts. The circuit court also granted the defendant's request for the lesser-included instruction for domestic battery. 720 ILCS 5/12-3.2(a)(1) (West 2010).

¶ 22 After deliberation, the jury found the defendant guilty of domestic battery. At sentencing, the circuit court determined that the defendant was eligible for an enhanced sentence based on the defendant's prior misdemeanor convictions for domestic battery and sentenced him to three years' imprisonment with four years' mandatory supervised release.

¶ 23 ANALYSIS

¶ 24 The defendant raises two issues on appeal. First, the defendant claims that the court abused its discretion in allowing in testimony of the defendant's three prior victims of domestic violence. In addition, the defendant claims ineffective assistance of counsel for counsel's failure to preserve the first issue in a written posttrial motion regarding the testimony of his three prior victims, as well as failing to object to the introduction of Fanshier's prior consistent out-of-court statements as inadmissible hearsay.

¶ 25 First, the defendant argues that the admission of three other instances of domestic violence committed by the defendant bore almost no resemblance to the acts of violence against Fanshier, and that the probative value of the evidence was substantially outweighed by the prejudicial effect. The defendant contends that the testimonies of Graves and Dodd, as well as Ondrey's testimony regarding a September 1, 2012, incident, should not have been admitted.[1] In response, the State argues, and we agree, that the prior instances are sufficiently factually similar to permit admissibility as a means to show the defendant's propensity for domestic violence. *People v. Taylor*, 101 Ill. 2d 508, 518 (1984).

[1]The defendant does not argue on appeal that one of the four incidents–a battery allegedly committed against Ondrey on July 27, 2010–was inadmissible under section 115-7.4. Instead, he contends that the testimonies of Trista Graves and Taylor Dodd, as well as Ondrey's testimony regarding a September 1, 2012, incident, should not have been admitted.

¶ 26 We note at the onset that the defendant failed to preserve this first issue on appeal by failing to raise it in a written posttrial motion. Therefore, this issue is forfeited. Although the defendant concedes that the issue is forfeited, he argues that this court should review the matter under the plain-error doctrine, or, in the alternative, as an ineffective assistance of counsel claim.

¶ 27 The plain-error doctrine offers criminal defendants a narrow path to appellate review of forfeited trial error. *People v. Walker,* 232 Ill. 2d 113, 124 (2009). "Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court." Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967). When seeking plain-error review, a defendant has the burden to persuade the court that the forfeiture should be excused. *People v. Johnson,* 238 Ill. 2d 478, 485 (2010). If the defendant fails to meet that burden, the issue will remain forfeited. *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). The plain-error doctrine applies when: "(1) a clear or obvious error occurs 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, or (2) a clear or obvious error occurs and that 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. Piatkowski*, 225 Ill. 2d 551, 565 (2007). The first step is determining whether any error occurred. *People v. Sargent*, 239 Ill. 2d 166, 189 (2010). If it did not, then the plain-error doctrine does not apply. *People v. Kitch*, 239 Ill. 2d 452, 465 (2011).

¶ 28 Section 115-7.4 of the Code provides in pertinent part:

> "(a) In a criminal prosecution in which the defendant is accused of an offense of domestic violence as defined in paragraphs (1) and (3) of Section 103 of the Illinois Domestic Violence Act of 1986, evidence of the defendant's commission of another

offense or offenses of domestic violence is admissible, and may be considered for its bearing on any matter to which it is relevant.

(b) In weighing the probative value of the evidence against undue prejudice to the defendant, the court may consider:

(1) the proximity in time to the charged or predicate offense;

(2) the degree of factual similarity to the charged or predicate offense; or

(3) other relevant facts and circumstances." 725 ILCS 5/115-7.4(a), (b) (West 2010).

The admissibility of evidence of other crimes under section 115-7.4 is a matter within the sound discretion of the circuit court, and the court's decision will not be overturned on appeal absent a clear abuse of discretion. *People v. Dabbs*, 239 Ill. 2d 277, 284 (2010). A reviewing court will only find an abuse of discretion if the court's evaluation was unreasonable, arbitrary, or fanciful, or where no reasonable person would adopt the court's view. *People v. Donoho*, 204 Ill. 2d 159, 182 (2003). Although some dissimilarity will always exist between independent offenses, only general similarity is required for the admission of other-crimes evidence. *Taylor*, 101 Ill. 2d at 518.

¶ 29 During the hearing on the State's motion *in limine*, the circuit court reviewed the testimony of all three women in accordance with section 115-7.4. First, citing *Donoho*, the court found in regards to Graves' testimony that the proximity in time, which was approximately eight months after the charged offense, did not render the evidence too prejudicial. *People v. Donoho*, 204 Ill. 2d 159, 182 (2003). Additionally, the court considered the degree of factual similarity to the charged offense. Specifically, in concluding that the danger of undue prejudice did not substantially outweigh the probative value of Graves' testimony, the court considered the short-

term nature of the relationships prior to the acts of domestic violence, the defendant's use of his fists to strike his victims in the face, and that the force he used was so strong that it rendered his victims unconscious.

¶ 30 Next, in regards to Ondrey's testimony, the circuit court heard testimony regarding multiple instances of domestic violence inflicted upon Ondrey by the defendant. However, the court ruled those inadmissible under section 115-7.4, as too prejudicial to be admitted. However, the court did allow Ondrey's testimony regarding the July 27, 2010, and September 1, 2012, incidents. The court found that these incidents were sufficiently close in proximity to the charged offense and factually similar as well. Both incidents involved the defendant making physical contact with the victim with his hands. Thus, the court found that any undue prejudice to the defendant caused by the admission of these incidents did not substantially outweigh the probative value of the evidence. Moreover, the defendant does not argue on appeal that the July 27, 2010, incident was inadmissible.

¶ 31 Lastly, the circuit court compared the proximity in time and the degree of factual similarity between the testimony of Dodd and Fanshier. The court noted that, "they both involve [an] alleged victim in a romantic relationship with the defendant and they both involve the defendant making physical contact with the victim with his hands." The court found that these incidents were sufficiently proximate in time and factually similar, so that any prejudicial effect would be outweighed by its probative value. We agree.

¶ 32 On review, we find that the circuit court did not err in allowing the testimony of the defendant's three prior victims of domestic abuse. The evidence considered by the court shows general similarity in the defendant's propensity to harm women, specifically his girlfriend at the time, either by striking them in the face with his fists, or grabbing them by the throat, or both,

always using sufficient force to overpower his victims. The court, in weighing the probative value of the evidence against the potential undue prejudicial effect to the defendant, reasonably applied the statutory considerations and made the appropriate findings. Therefore, we find that the defendant failed to show that error occurred, and that his forfeiture should be excused.

¶ 33 Additionally, even if we were to assume *arguendo* that the testimony of the defendant's prior acts of domestic violence were erroneously admitted, we would still conclude that the defendant cannot show that this testimony amounted to prejudicial error, because the defendant cannot show that the evidence was so closely balanced that the testimony alone threatened to tip the scales of justice against him. See *People v. Herron*, 215 Ill. 2d 167, 187 (2005). In fact, the evidence presented at trial strongly favored the defendant's conviction for domestic battery and, thus, is not closely balanced.

¶ 34 To prove the offense of domestic battery, the State must prove that the defendant "knowingly without legal justification *** [c]auses bodily harm to any family or household member." 720 ILCS 5/12-3.2(a)(1) (West 2010). Here, the circuit court admitted testimony from Eckenrodt as to an excited utterance made by Fanshier, which identified the defendant as her boyfriend and that he had hit her. The defendant does not deny, and the evidence is not rebutted, that he was Fanshier's live-in boyfriend. In addition, video-taped evidence placed the defendant and Fanshier together at the tavern in the early morning hours, which is consistent with Fanshier's testimony regarding their location outside of the tavern prior to her being struck and rendered unconscious. Additionally, Fanshier, herself, testified that she was in a romantic relationship with the defendant and that he had rendered her unconscious by striking her in the face. Lastly, the record shows that her treating physician, Dr. Jarod Wall, testified to the serious nature of Fanshier's injuries. In particular, he testified that her injuries were consistent with blunt

force trauma, and he identified several photographs that were admitted into evidence which depicted her injuries as well. Moreover, testimony of the defendant's domestic violence against Ondrey on July 27, 2010, was admitted as propensity evidence under section 115-7.4, and the defendant does not contest this admission. Thus, in light of this evidence, the defendant cannot prove the evidence was so closely balanced that the admission of the testimony of the defendant's other acts of domestic violence alone threatened to tip the scales of justice against him. See *Herron*, 215 Ill. 2d at 187.

¶ 35 Next, we address the defendant's claims of ineffective assistance of counsel. First, the defendant argues, in the alternative, that there was ineffective assistance of counsel where counsel failed to preserve the issue regarding the admission of the prior acts of domestic violence, as a means to excuse forfeiture. Second, the defendant argues that it was ineffective assistance where counsel failed to object to the introduction of Fanshier's prior consistent out-of-court statements as inadmissible hearsay.

¶ 36 A claim of ineffective assistance of counsel must satisfy the two-prong test set forth by *Strickland v. Washington*, 466 U.S. 668 (1984). To satisfy the first prong, defendant must show that his counsel's performance was deficient because it fell below an objective standard of reasonableness. *People v. Harris*, 206 Ill. 2d 1, 16 (2002). To meet the second prong, defendant must demonstrate prejudice by showing a reasonable probability that, but for counsel's deficiencies, the result of the proceeding would have been different. *Id.* If such a claim can be disposed of because defendant suffered no prejudice, then a court should not decide whether counsel's performance was deficient. *People v. Villanueva*, 382 Ill. App. 3d 301, 308 (2008).

¶ 37 We find the defendant's first argument of ineffective assistance to be meritless, as it fails to satisfy *Strickland*. As previously determined, we find that the defendant failed to prove that

he was prejudiced by counsel's failure to preserve the issue in a written posttrial motion. The prior acts were proximate in time and factually similar. Accordingly, and as previously determined, the prejudicial effect did not substantially outweigh its probative value. As such, the defendant's claim of ineffective assistance of counsel fails.

¶ 38 Next, the defendant argues that trial counsel rendered ineffective assistance for failing to object to the introduction of Fanshier's prior consistent out-of-court statements as inadmissible hearsay during Sterling's testimony. We disagree. Assuming *arguendo* that counsel's performance was deficient, we agree with the State that any error was harmless in nature, as the defendant was not prejudiced. We first note that had counsel objected to Sterling's testimony regarding his investigation of the sequence of events the night of the assault, it is likely that the circuit court would have sustained that objection. Regardless, without Sterling's testimony, there is sufficient evidence to support the court's conviction. First, Sterling's testimony was corroborated by Fanshier's testimony. Additionally, Eckenrodt testified, consistent with Sterling and Fanshier, to an excited utterance made by Fanshier where she identified the defendant as her boyfriend and that he had hit her. Fanshier, herself, testified that she was in a romantic relationship with the defendant and that he had rendered her unconscious by striking her in the face. Therefore, Sterling's testimony was cumulative of other properly admitted testimony, which identified the defendant and his act of assault against Fanshier. *People v. Torres*, 18 Ill. App. 3d 921, 929 (1974) (court concluded "[e]ven if hearsay testimony is improperly admitted, reversal is not warranted where the same matter has been proved by properly admitted evidence"). Moreover, the record reflects that the defense counsel was not deficient in cross-examining the witnesses, pointing out inconsistencies in their testimony, and, in fact, presented well-argued facts to the jury as to why the evidence against the defendant should not be trusted.

Thus, we find there is no reasonable probability that a different result would have occurred without the admission of Sterling's testimony. Because the testimony was cumulative and supported by other testimony, we find the admission of Sterling's testimony to be harmless error. Given our analysis above, we find that the defendant failed to establish that he was prejudiced. His claims of ineffective assistance of counsel fail as a result.

¶ 39 We find the circuit court did not abuse its discretion where the testimony of the defendant's acts of domestic violence was factually similar to permit admissibility to show the defendant's propensity for domestic violence. Lastly, the defendant's claims of ineffective assistance of counsel fail where the defendant failed to show he was prejudiced by counsel's performance.

¶ 40 CONCLUSION

¶ 41 For the reasons stated, the order of the circuit court of Christian County is hereby affirmed.

¶ 42 Affirmed.