2018 IL App (1st) 152883-U
Order filed: April 27, 2018

FIRST DISTRICT
FIFTH DIVISION

No. 1-15-2883

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 CR 6857
	)	
MICHAEL REED,	)	Honorable
	)	Maura Slattery Boyle,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Justice Hall and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: We affirmed defendant's convictions for attempted murder and aggravated battery where the trial court's admission of a witness's prior consistent statement during trial, and the court's misstatement of a portion of defendant's testimony when rendering its oral ruling, did not constitute plain error.

¶ 2 Following a bench trial, the court convicted defendant of attempted murder and aggravated battery and sentenced him to 35 years' imprisonment. On appeal, defendant contends: (1) the trial court denied him a fair trial when, in finding him guilty of attempted murder and aggravated battery, it misstated his testimony regarding whether he had seen the victim pull a gun from his waistline and aim it at him at the time of the shooting; and (2) the court erred by admitting the victim's prior consistent statement to Detective Jones. We affirm.

¶ 3 At trial, Michael Turner testified that in October 2012 he was an automobile technician living in the 8000 block of South Saginaw Avenue in Chicago. He had three prior convictions for driving with a suspended driver's license and, at the time of trial, he had another pending case for driving with a suspended license from 2013.

¶ 4 On October 10, 2012, Mr. Turner was at his home with Rachelle Andrewin, his girlfriend and the mother of four of his children, and Prentice Courtney, his cousin. At about 10 a.m., he learned that Ms. Andrewin was allowing his neighbor, defendant: "to spend inappropriate time around [his] kids." Mr. Turner became upset, and he and Ms. Andrewin verbally argued.

¶ 5 Mr. Turner subsequently looked out his window at about two or three in the afternoon and saw defendant standing on the corner with five or six other people. Mr. Turner walked out of the house, approached defendant, and told him to stay away from his children. Mr. Turner did not have a weapon on him while speaking with defendant.

¶ 6 Mr. Turner turned around and walked back toward his house. He noticed defendant, who was on the opposite side of the street, skipping and yelling to him: "I ain't no b****." Defendant was carrying a chrome gun in his right hand, but he did not aim it at Mr. Turner.

¶ 7 Mr. Turner went inside his house, blocked the doors, moved the kids to safety, and retrieved a .9 millimeter gun from a lockbox in his upstairs bedroom. Mr. Turner then confronted Ms. Andrewin and struck her twice on the head with the gun. Ms. Andrewin left the house, and Mr. Turner drove around the block for about 20 minutes in an unsuccessful attempt to find her.

¶ 8 Mr. Turner drove home, parked his car in the garage, and went back inside. He told Mr. Courtney that he was going around the corner to his brother's house to "cool off." He also told Mr. Courtney to keep the children in the basement and the doors locked.

¶ 9 Mr. Turner left the house through the back door and entered a walkway that led to the service door of the garage. He entered the garage, placed his gun inside an unlocked cabinet, then pushed the button to open the garage door. Mr. Turner entered the driver side door of the car, started the engine, and then noticed defendant standing on the passenger side of the car. Defendant was holding the chrome gun.

¶ 10 Mr. Turner asked defendant what he was doing there. Defendant took a step, raised the gun, and fired at least five shots at him. Mr. Turner initially ducked for cover, then ran to the service door as more shots were fired, but he was unable to open the door. Mr. Turner turned around and saw that defendant was directly behind him. Defendant shot Mr. Turner in the face, striking him in the bridge of the nose between the eyes.

¶ 11 Mr. Turner opened the service door and ran inside his home. Mr. Courtney called the police. Officer Mayer arrived at Mr. Turner's home and he told the officer that defendant had shot him and gave the officer defendant's address.

¶ 12 An ambulance transported Mr. Turner to the hospital, where it was determined that the bullet broke the bridge of his nose and that bone fragments penetrated his pupils, leaving him blind in the left eye. Seven surgeries saved the sight in his right eye.

¶ 13 Two days after the shooting, Mr. Turner communicated with Detective Jones at the hospital. Mr. Turner could not speak at that time due to his injuries, so he wrote down notes identifying defendant as the shooter. Mr. Turner also wrote that he never pulled a gun on defendant.

¶ 14 On March 26, 2013, Mr. Turner picked out defendant from a lineup and identified him as the shooter.

¶ 15 Mr. Turner testified on cross-examination that he never pointed his gun at defendant during the altercation in the garage.

¶ 16 Mr. Turner testified on redirect-examination that, about one hour had passed, from the time he first confronted defendant on the corner outside his home, to when he saw defendant in the garage.

¶ 17 Officer Mark Mayer testified that, at about 4 p.m., on October 10, 2012, he was dispatched to the scene of the shooting at 8242 S. Saginaw Avenue. When he arrived, Officer Mayer spoke with Mr. Turner, who identified the shooter and his location. Officer Mayer then went three houses down the street and spoke with two individuals, but he did not find anyone there named Michael Reed.

¶ 18 Detective Devon Jones testified he was assigned to investigate the shooting. He went to the hospital on October 12, 2012, and met with Mr. Turner. Mr. Turner was unable to verbally communicate, but he was able to write out answers to the detective's questions. Mr. Turner identified defendant as the shooter and provided defendant's address. Mr. Turner also wrote that his own gun was in a cabinet and that he had not pulled it on defendant.

¶ 19 Detective Jones issued an investigative alert for defendant in October 2012. On March 25, 2013, defendant turned himself in. The following day, March 26, 2013, Detective Jones conducted a lineup, and Mr. Turner identified defendant as the shooter.

¶ 20 Officer Kevin Norris, an evidence technician, testified that, on October 10, 2012, he arrived at the scene of the shooting at about 6 p.m. He found three fired .45 caliber cartridge casings in the alley, which he recovered and inventoried. He also recovered and inventoried a loaded .9 millimeter handgun, "set in the back wall" of the garage between the wall studs, on the passenger side of the vehicle.

¶ 21 Officer Norris observed that the front passenger side of the vehicle had been struck by at least two bullets. He also noticed that the vehicle was running and that the driver side door was open. Officer Norris followed a blood trail that began in the garage, through the service door, the backyard, the rear door of the home, and into a bathroom on the first floor.

¶ 22 On cross-examination, Officer Norris testified he did not find a loaded .9 millimeter handgun in a cabinet.

¶ 23 The parties stipulated to the following: if called to testify, Kellen Hunter would state that he is a forensic scientist in the firearms identification section of the Illinois State Police, Division of Forensic Services, in Chicago; he is qualified as an expert in the field of firearms identification and would be so found by the trial court; he received People's exhibit number 43, a .9 millimeter semiautomatic pistol in a sealed condition, and People's exhibit numbers 44, 45, and 46, three .45 caliber fired cartridge casings in a sealed condition; he formed an opinion within a reasonable degree of scientific certainty that the three fired cartridge casings were all fired from the same firearm; and that the three cartridge casings were not fired from a .9 millimeter semiautomatic pistol.

¶ 24 The State rested, and defendant moved for a directed finding, which the trial court denied.

¶ 25 Defendant testified that, on October 10, 2012, he was 19 years old and lived on the same block as Mr. Turner. At about 4 p.m. on that day, Mr. Turner approached defendant as he was walking outside with two or three other men. Mr. Turner told defendant to stay away from his house and his children. Defendant had a .45 caliber gun in the front pocket of his sweater at the time and he did not take it out when Mr. Turner approached him.

¶ 26 Mr. Turner walked away. About one hour later, defendant saw Mr. Turner enter his garage. Defendant followed him to the garage to talk with him about his relationship with Ms. Andrewin. Defendant still had his .45 caliber gun in his sweater pocket.

¶ 27 Defendant approached the garage and saw Mr. Turner inside. Mr. Turner had a gun "on his waistline." When he saw defendant, Mr. Turner reached for his gun, pulled it out, and aimed it at defendant. Fearing for his life, defendant pulled out his .45 caliber gun and shot at Mr. Turner. Defendant denied that he was trying to kill Mr. Turner.

¶ 28 On cross-examination, defendant denied having a relationship with Ms. Andrewin, but acknowledged that he sometimes walked her and her children to school in the morning.

¶ 29 Defendant testified that, when Mr. Turner first approached him on the street, Mr. Turner "adjusted himself," like he had a gun, and spoke to him in a "disrespectful" manner. However, Mr. Turner did not pull out a gun or point a gun at defendant at that time.

¶ 30 Defendant subsequently walked to Mr. Turner's garage, approached the passenger side of the vehicle that was parked there, and saw Mr. Turner on the other side of the car. Defendant conceded that Mr. Turner never fired his gun at defendant. Defendant also conceded that he shot at least three times in Mr. Turner's direction. Defendant ran away and turned himself in to the police five months later.

¶ 31 Following all the evidence, the trial court issued an oral ruling, and then a written order, convicting defendant of attempted murder and aggravated battery. In its oral ruling, the court recapped the relevant trial testimony, including Mr. Turner's testimony—that he placed his gun in a cabinet in the garage prior to the shooting; and defendant's testimony—that he saw Mr. Turner "go towards the waistband and that he was afraid for himself and so that is why he fired the shots." In its recap of defendant's testimony, the trial court made one misstatement: that

defendant "indicated he did not see [Mr. Turner] with a gun and *** [a]t no time did he actually see it in his hand." Defendant did not object to the court's misstatement or, otherwise, call the misstatement to the court's attention.

¶ 32 The court found that, although Mr. Turner was a convicted felon who had hit his girlfriend twice with his gun, his testimony regarding the shooting was credible and supported by the "physical evidence in regards to the car and the bullet wound on the passenger side." The court concluded:

> "[Defendant] went over there. He was upset about being confronted. He wanted to talk to him, but the manner in which he went about it, it clearly indicates that was not the intent of talking.
>
> By standing at the location he was standing in and the manner in which he pulled out the gun and fired numerous times and hit him in the eye when raising a gun and firing it five times, five times, there can be no other but intent to kill."

¶ 33 Following his conviction, defendant filed a motion for a new trial, which the court denied. In so ruling, the court reiterated that defendant had gone to Mr. Turner's garage with a gun in his hand. The court recognized that Mr. Turner had earlier gone to the garage with a gun in his hand, too, but that he had either put the gun in a cabinet or in the wall, and "either way [Mr. Turner] did not have it on him and he did not raise it."

¶ 34 The court stated:

> "[Defendant] didn't go over and knock on the front door to have a conversation about how we can work this out. He didn't call him. What he did was he waited outside and for a situation to present itself where he had an opportunity to discharge his firearm. He felt disrespected or whatever else he felt, but no way did he conduct himself in a

> manner [in] which he was trying to clear the air. He had a weapon, shot it and the bullet and ballistics corroborate the version of the events. Bullet holes, passenger side right where he is standing."

¶ 35 The court concluded that Mr. Turner's testimony was "very credible" and supported by the ballistics evidence, and that such evidence overwhelmingly proved defendant's guilt beyond a reasonable doubt.

¶ 36 The court subsequently sentenced defendant to 35 years' imprisonment. Defendant appeals.

¶ 37 On appeal, defendant first contends that the trial court denied him a fair trial when, in finding him guilty of attempted murder and aggravated battery, it misstated his testimony regarding whether he saw Mr. Turner pull a gun from his waistline and aim it at him at the time of the shooting. Defendant forfeited review by failing to object at trial to the court's misstatement. *People v. McLaurin*, 235 Ill. 2d 478, 485 (2009). Defendant argues that we should relax the forfeiture rule because the basis of the objection is the trial court's conduct.

¶ 38 In *People v. Sprinkle*, 27 Ill. 2d 398 (1963), the supreme court recognized that judicial misconduct could provide a basis for relaxing the forfeiture rule. The trial court conducted witness examinations during the defendant's jury trial and used several questions to imply its own opinions of the case and the witnesses, but defense counsel never objected. *Id.* at 400-03. Our supreme court granted review of defendant's claims, stating:

> "It is particularly incumbent upon the trial judge to exercise a higher degree of care in his comments regarding, or interrogations of, witnesses before a jury in order to avoid influencing the jurors to any extent, and we therefore hold that a less rigid application of the rule requiring timely and proper objection and preservation of rulings

thereon should prevail where the basis for the objection is the conduct of the trial judge than is otherwise required." *Id*. at 401.

¶ 39 More recently, our supreme court has held that "trial counsel has an obligation to raise contemporaneous objections and to properly preserve those objections for review. Failure to raise claims of error before the trial court denies the court the opportunity to correct the error immediately and grant a new trial if one is warranted, wasting time and judicial resources. This failure can be excused only under extraordinary circumstances, such as when a trial judge makes inappropriate remarks to a jury or relies on social commentary, rather than evidence, in sentencing a defendant to death. That we have seldom applied *Sprinkle* to noncapital cases further underscores the importance of uniform application of the forfeiture rule except in the most compelling of situations." (Internal citations omitted). *McLaurin*, 235 Ill. 2d at 488.

¶ 40 The present case involved a bench trial, not a jury trial, in a noncapital case, and defendant has shown no extraordinary or compelling reason to relax the forfeiture rule here. Defendant has argued plain error in his reply brief, which is sufficient to allow us to review the issue for plain error. *People v. Ramsey*, 239 Ill. 2d 342, 412 (2010). We will apply the plain-error doctrine when: "(1) 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, or (2) 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, regardless of the closeness of the evidence." *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007).

¶ 41 We begin our analysis by addressing the second prong of the plain-error doctrine, specifically, whether the trial court committed a clear or obvious error that was so serious that it affected the fairness of defendant's bench trial.

¶ 42 Defendant argues that the trial court committed plain error under the second prong and denied him a fair trial by inaccurately stating that he testified to never seeing a gun on Mr. Turner's body or in his hands at the time of the shooting.

¶ 43 During a bench trial, a trial court's failure to recall and consider testimony crucial to the defense may result in a denial of the defendant's due process rights. *People v. Mitchell*, 152 Ill. 2d 274, 323 (1992). However, if the trial court properly recalls the crux of the defense, then an incorrect reference or mere misstatement by the court, when considered in context, does not amount to a denial of the defendant's due process rights. *People v. Roman*, 2013 IL App (1st) 102853, ¶¶ 21-24. Defendant is not denied a fair trial where the misstatement had no affect on the basis of the court's ruling and did not result in a mistake in the decision-making process. *People v. Schuit*, 2016 IL App (1st) 150312, ¶ 107.

¶ 44 We find that the trial court's misstatement did not deny defendant a fair trial under the second prong of the plain-error doctrine, where the trial court correctly recalled the crux of the defense, *i.e.*, that defendant claimed he fired his gun in self-defense because he feared that Mr. Turner had a weapon and was going to shoot him, and where the court's misstatement did not result in a mistake in the decision-making process.

¶ 45 Specifically, review of the trial court's oral ruling shows that the court explicitly recognized that the question before it was whether defendant's shooting of Mr. Turner was "self-defense or was this an indication of something else."

¶ 46 In determining that defendant did not act in self-defense, the trial court found Mr. Turner's testimony, that he was unarmed at the time of the shooting, to be credible and that his version of the shooting, in which defendant surprised him in the garage and shot at him multiple times from the passenger side of the car, was supported by the physical evidence. The court found defendant's testimony that he went to the garage only to talk with Mr. Turner, and that he shot Mr. Turner only after he feared that Mr. Turner was going to shoot him, to be incredible. Noting that defendant shot at Mr. Turner, who was unarmed, five times, the court found "there can be no other but intent to kill." Thus, the record shows that the trial court understood and rejected the crux of defendant's claim of self-defense.

¶ 47 Defendant argues, though, that he was denied a fair trial by the trial court's comment in which it inaccurately recalled that defendant testified he never saw a gun on Mr. Turner's body or in his hands at the time of the shooting. However, even if the trial court had accurately recalled defendant's testimony that he saw Mr. Turner pull the gun from his waistline and aim it at him, the court still would have rejected defendant's self-defense claim because it had already determined that defendant's testimony regarding the circumstances of the shooting was incredible and self-serving. Defendant's testimony conflicted with Mr. Turner's testimony, which the court found credible and corroborated by the physical evidence. Accordingly, the court's misstatement had no affect on the basis of its ruling and did not result in a mistake in the decision-making process. Thus, defendant was not denied a fair trial under the second prong of the plain-error doctrine.

¶ 48 The trial court's comments, when denying defendant's motion for a new trial, provide further support for our holding that defendant was not denied a fair trial. When denying defendant's posttrial motion, the court again found that Mr. Turner was unarmed at the time of

the shooting, but the court did not repeat its misstatement that defendant testified to never seeing Mr. Turner with a gun on his body or in his hands at the time of the shooting. Rather, the court premised its finding on Mr. Turner's testimony that he put his gun in the cabinet and, on the evidence technician's testimony that his gun was found in the wall studs, the court stated that "either way [Mr. Turner] did not have it on him and he did not raise it." The court found Mr. Turner's testimony was "very credible," and that his account of the shooting was supported by the ballistics evidence. The court disbelieved defendant's testimony that he went to the garage to talk with Mr. Turner, noting that he never spoke a word before commencing shooting, and that he shot at Mr. Turner even as he was backing away from defendant. The court again rejected defendant's self-defense claim, finding the evidence against him to be "overwhelming."

¶ 49 Given the trial court's credibility findings and the "overwhelming" evidence against defendant, we find that the court would have convicted defendant, even if it had recalled and considered defendant's testimony that he shot Mr. Turner, because he saw him pull his gun from his waistline and aim it at him. Defendant was not denied a fair trial under the second prong of the plain-error doctrine.

¶ 50 Nor has defendant shown plain error under the "closely balanced" prong. Plain-error review under the closely-balanced-evidence prong of plain error requires defendant to show that the evidence is so closely balanced that the alleged error would tip the scales of justice against him, *i.e.*, that the verdict may have resulted from the error and not the evidence properly adduced at trial. *People v. White*, 2011 IL 109689, ¶ 133. As discussed earlier in this order, though, the verdict would have been the same even in the absence of the error. Accordingly, there was no plain error here under the closely-balanced-evidence prong.

¶ 51 Next, defendant contends that the trial court erred by admitting Mr. Turner's prior consistent statement to Detective Jones; that he put the gun in the cabinet upon entering the garage. Generally, prior consistent statements are inadmissible for the purpose of corroborating the trial testimony of a witness, because they serve to unfairly enhance the credibility of the witness. *People v. Johnson*, 2012 IL App (1st) 091730, ¶ 60. An exception to the rule exists when the prior consistent statement is admitted to rebut an allegation that the witness was motivated to testify falsely, or otherwise to rebut an allegation of recent fabrication. *Id.* ¶ 61. Defendant contends that neither exception applies here.

¶ 52 Defendant forfeited review by failing to object to the admission of the prior consistent statement at trial. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Defendant argues for plain error review under the "closely-balanced-evidence" prong, or, alternatively, that his trial counsel provided ineffective assistance for failing to object at trial.

¶ 53 As discussed earlier in this order, review of the trial court's oral ruling shows that the court found Mr. Turner's testimony that defendant shot him while he was unarmed to be credible and that Mr. Turner's testimony regarding the shooting was supported by the physical evidence. The court briefly alluded to the testimony of Detective Jones, that Mr. Turner "communicated by notes" with him while at the hospital, but the court did not specifically reference the testimony that Mr. Turner told Detective Jones that he put the gun in the cabinet upon entering the garage. In the absence of any showing that the trial court actually relied on the prior consistent statement to Detective Jones regarding Mr. Turner's placement of the gun inside the cabinet, we presume that the court did not consider it. *People v. Martin*, 112 Ill. App. 3d 486, 496 (1983). As such, defendant has failed to show plain error under the "closely-balanced-evidence prong," as he has not shown that the allegedly improper admission of the prior consistent statement tipped the

scales of justice against him such that the verdict resulted from the error and not from the evidence properly adduced at trial. *White*, 2011 IL 109689, ¶ 133.

¶ 54 In the absence of any showing of prejudice from the admission of the prior consistent statement, defendant's claim of ineffective assistance also fails. *Id*. ¶ 134.

¶ 55 For the foregoing reasons, we affirm the circuit court.

¶ 56 Affirmed.