2018 IL App (1st) 160717-U

SIXTH DIVISION
September 28, 2018

No. 1-16-0717

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ARNETHA LOFTON, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Cook County. No. 15 CR 4496 Honorable Maura Slattery Boyle, Judge Presiding.

PRESIDING JUSTICE DELORT delivered the judgment of the court.
Justices Connors and Harris concurred in the judgment.

ORDER

¶ 1 ***Held:*** Defendant has forfeited her claim that the circuit court failed to comply with Supreme Court Rule 431(b) in the jury selection process, and plain error review of that issue is unwarranted. Additionally, the court did not abuse its discretion in admitting defendant's arrest photo and testimony of specific threats that she made into evidence. Affirmed.

¶ 2 Following a jury trial, defendant Arnetha Lofton was found guilty of aggravated battery of a peace officer. She was sentenced to five years' imprisonment, to be followed by two years of mandatory supervised release. She appeals, contending that the circuit court erred in: (1)

failing to comply with the requirements of Supreme Court Rule 431(b) and (2) improperly admitting unduly prejudicial evidence. We affirm.

¶ 3 BACKGROUND

¶ 4 The State charged defendant with three counts of aggravated battery of a peace officer (720 ILCS 5/12-3.05(d)(4)(i), (ii), and (iii) (West 2014)) and resisting a peace officer (720 ILCS 5/31-1 (West 2014)). The State proceeded to trial only on the first count, aggravated battery of a peace officer while performing his official duties. (720 ILCS 5/12-3.05(d)(4)(i) (West 2014)).

¶ 5 Before trial, defendant also moved to bar the State from introducing her arrest photo into evidence. The photo did not have any numbers on it and the State agreed not to refer to the photo as a "mug shot." The court denied defendant's motion. Defendant also moved to bar testimony about specific threats that she made leading up to her arrest. The court denied that motion as well.

¶ 6 During *voir dire*, the circuit court addressed the potential jurors:

> "Do you understand and accept the following fundamental principles of our legal system? Do you understand and accept a person accused of a crime is presumed to be innocent of the charge against her? Is there anyone that does that [sic] understand and accept that principle, please raise your hand right now?
>
> The first of the [*Zehr*] question [sic] was asked. No one has indicated that they do not understand and accept that principle.
>
> Second, do you understand and accept that the presumption stays with the defendant throughout the trial of innocence and is not overcome unless from all of the evidence you believe the State

> proved her guilt beyond a reasonable doubt? Is there anyone that does not understand and accept that principle, please raise your hand at this time?
>
> The second of the [*Zehr*] questions was asked and no one has indicated that they do not understand and accept that proposition.
>
> Third, do you understand and accept that the defendant does not have to prove her innocence? Is there anyone that does not understand that principle, please raise your hand at this time?
>
> The third of the [*Zehr*] questions was asked. No one has indicated that they do not understand and accept that principle.
>
> Fourth, do you understand and accept that the defendant does not have to present any evidence on her own behalf. If there's anyone in the venire, 14 in here and everyone out there, that does not understand and accept that principle, please raise your hand at this time.
>
> The fourth of the [*Zehr*] questions was asked. There was no indication by the venire that no one understood and accept [sic] those principles."

Defendant did not object to the court questioning the potential jurors in this manner, and a jury was eventually sworn.

¶ 7 The State's first witness was Rickey Griffith. Griffith testified that at the time of the alleged battery, he and defendant were in a romantic relationship. He lived alone in a second-

story apartment. On February 28, 2015, Griffith and defendant were drinking in his apartment. Defendant remained in the apartment when Griffith retired to bed. In the early morning hours of March 1, Griffith was awakened by the sound of a beer bottle being knocked over in his bedroom. Upset that defendant was "messing things up" in the apartment, Griffith began to argue with defendant. Griffith told defendant to leave, but she refused. As defendant became angrier, Griffith told her that he would call the police if she did not leave. Eventually, he did just that. Irate, defendant began "walking around and starting trying to knock things over in [the apartment], trying to destroy things." About ten minutes after the initial call to the police, Griffith made a second call "and told them they need[ed] to hurry up and come."

¶ 8 Griffith then testified that two uniformed police officers, later identified as Adam Stark and Bob Oldenburger, arrived around 5:15 a.m. He told the officers about the argument and that defendant refused to leave his apartment. He then invited them in "so they could see what [defendant] was trying to do." At that time, defendant was still "cursing and fussing." In front of the officers, defendant threatened Griffith, telling him that she knew where he worked and would have somebody "fuck [him] up." The officers told defendant to stop threatening Griffith and leave, but she continued making threats. The police officers then approached defendant, pushed her down on the couch and handcuffed her behind her back. While Officer Stark officer escorted her down the stairs, Officer Oldenburger started filling out a report in the dining room. Officer Stark later returned without defendant, "saying something to the fact that either she grabbed his genitals or she tried to grab his genitals and he was upset about that." Griffith did not see the alleged genital grabbing, nor did he hear Officer Stark yell from the stairwell.

¶ 9 The State then called Officer Adam Stark of the Chicago Police Department. He testified that he was working with Officer Oldenburger the night of February 28, 2015 and into the early

morning of March 1. They received a dispatch to a domestic disturbance around 5:15 a.m. The officers entered the apartment building, and went to Griffith's second-floor apartment. They knocked on the door and Griffith let them in. Griffith told them that he had not been injured by defendant, but that she was causing a disturbance and he did not want to wake his neighbors. Once inside, Officer Stark saw defendant, whom he identified in court. The apartment was in "disarray," with a tipped-over television stand and frozen food dumped all over the kitchen floor. Defendant was "acting very hostile, swearing, speaking very loudly, extremely loudly." Stark testified that they negotiated with defendant that she would leave the apartment and get a ride home. While gathering up her belongings, defendant continued to argue with and yell at Griffith. Officer Stark testified that he heard her tell Griffith that she would have him "dealt with" and that "[i]f he ever came to the north side, *** he was going to be capped."

¶ 10 The officers then arrested defendant for assaulting Griffith. The officers tried to grab control of her hands to handcuff her, but she pulled away. In response, the officers performed an "emergency takedown," by taking her feet out from under her and pushing her face down onto the couch. The officers then put her into handcuffs behind her back. Still, defendant was "pulling away ***, resisting ***, and yelling and screaming."

¶ 11 Once the officers gained control of defendant, they got her onto her feet and gathered some of her belongings. Officer Stark began walking her downstairs to the police car, while Officer Oldenburger stayed with Griffith. Officer Stark walked to the side of and behind defendant down the stairs and to the front door. There was not enough room for them to walk side by side through the door, so Officer Stark opened the door and put defendant in front of him. He testified, "[a]s we went to step out through the door and she's in front of me, she with hands

behind her grabs my testicles with her hands and squeezes them." Officer Stark felt an immediate and "intense radiating pain that *** radiated up towards [his] abdomen area."

¶ 12 In response to the attack, Officer Stark threw his hips back and took defendant down to the ground with him. He did not recall whether defendant's face struck the ground. He also yelled out, "You just grabbed my balls," or words to that effect. Officer Oldenburger, responding to Officer Stark's shout, came down the stairs to see what was happening. Officer Stark was unable to stand for a few minutes because of the pain. After the initial pain subsided, Officer Stark continued to suffer from a "[v]ery lingering discomfort" for "10 to 15 minutes, tops."

¶ 13 The officers then took defendant to their police car, but called for another unit to transport her because their car did not have a protective barrier between the rear passenger area and the front driver area. When the transport unit arrived, defendant was leaning against the hood of Officer Stark's car. Officer Stark testified that when he stepped behind defendant to take her off of his car, she again made a grab for his testicles. Quicker this time, Officer Stark pulled his hips away and said, "You just tried to do it again." Although defendant was able to make contact with the front of Officer Stark's pants, she failed to grab his testicles on this second attempt.

¶ 14 Officer Stark did not recall whether he returned to the apartment after the alleged battery. In filling out his report, Stark indicated that he had been injured but did not seek medical attention. Additionally, the report indicated that defendant had twice grabbed his testicles, rather than identifying one grab and one attempted grab. He attributed the discrepancy to the fact that he had written his report while exhausted at the end of his overnight shift.

¶ 15 Near the end of Officer Stark's testimony, the State introduced the arrest photo. Officer Stark testified that it fairly and accurately depicted defendant on the morning of her arrest.

¶ 16 The last witness was Officer Oldenburger. Officer Oldenburger testified that when he and Officer Stark arrived at Griffith's apartment, defendant was "very belligerent" and told Griffith that "she was going to have him capped and that he better never come up to the north side." He testified that they negotiated with defendant to try to get her to leave the apartment, but that she refused and continued to make threats toward Griffith. Consequently, the officers decided to take defendant into custody.

¶ 17 After defendant was handcuffed, Officer Stark escorted her out of the apartment while Officer Oldenburger stayed with Griffith to get his information. While he was in the kitchen, with Griffith, Officer Oldenburger heard Officer Stark yell, "Let go of my nuts." He went down the stairs to assist Officer Stark and found him on the ground with defendant. Officer Stark then told him that she had "grabbed his scrotum."

¶ 18 The officers then took defendant outside and waited on the sidewalk for the transport car to arrive. When the car arrived, Officer Oldenburger was behind Officer Stark, who was behind defendant. Officer Oldenburger testified that he could not see defendant's hands, but he saw her lean forward and he saw Officer Stark back away from her. Officer Oldenburger heard Officer Stark tell defendant, "Don't even think it, don't do it."

¶ 19 After the State rested, defendant moved for a directed verdict. The circuit court denied the motion. Defendant did not put on any testimony, but did present a stipulation as to what Detective Andrew Burns would have testified to had he been called to the stand. Detective Burns would have testified that he interviewed Officer Stark and made a report of the interview. The report stated that Officer Stark "[r]elated as [defendant] was being transported out of victim's building, [defendant] used her hands to grab Stark's testicle. Stark pulled away and yelled for [her] to stop. [Defendant] grabbed Stark's testicle again, squeezed both testicles causing pain."

Detective Burns also submitted a supplemental report in which he wrote "[t]hat Stark related that he pulled away the first time and [defendant] grabbed his testicles a second time, causing pain and discomfort."

¶ 20 In closing argument, defense counsel argued that it was physically impossible for defendant to have grabbed Officer Stark because of how she had been handcuffed. Further, counsel suggested that the officers fabricated the allegation about the battery as "some type of justification for a rough arrest." In response, the State directed the jury's attention to the arrest photo to show that defendant had not suffered any apparent injuries from her allegedly rough treatment.

¶ 21 The jury began deliberating at 12:45 p.m. An hour later, the jury sent out a note asking, "Do we get a trial transcript?" The jury sent a second note at 3:45 p.m. asking, "What happens if we don't come to a consensus?" The jury then sent a third note asking whether it was standard procedure to request a police car with a protective barrier. The jury reached a verdict at 5:35 p.m., finding defendant guilty of the single count of aggravated battery.

¶ 22 Defendant moved for a new trial; the circuit court denied that motion. The court then sentenced defendant to five years' imprisonment followed by two years of mandatory supervised release. Defendant moved to reconsider the sentences, but the court denied that motion. This appeal followed.

¶ 23 ANALYSIS

¶ 24 Supreme Court Rule 431(b)

¶ 25 Defendant contends that she is entitled to a new trial because the circuit court failed to comply with Illinois Supreme Court Rule 341(b) (eff. July 1, 2012). We note at the outset that similar issues come before us entirely too often. When delivering admonishments to prospective

jurors, criminal defendants, or others, trial court judges need only read from a script. These admonishments are fundamental to ensuring due process of law and avoiding unnecessary appeals.

¶ 26 Defendant argues that the circuit court omitted the fourth enumerated principle under Rule 431(b), that if a defendant does not testify on her own behalf, it cannot be held against her. She acknowledges that this issue was not raised either at trial or in a posttrial motion, but asks that we review this issue for plain error. The State concedes that the circuit court failed to comply with Rule 431(b), but argues that plain error review is unwarranted.

¶ 27 Supreme Court Rule 431(b) provides in relevant part that the trial court shall ask each potential juror whether that juror "understands and accepts the following principles: (1) that the defendant is presumed innocent of the charge(s) against him or her; (2) that before a defendant can be convicted the State must prove the defendant guilty beyond a reasonable doubt; (3) that the defendant is not required to offer any evidence on his or her own behalf; and (4) that the defendant's failure to testify cannot be held against him or her ***." Ill. S. Ct. R. 431(b). "The language of Rule 431(b) is clear and unambiguous." *People v. Thompson*, 238 Ill. 2d 598, 607 (2010). In essence, the rule "mandates a specific question and response process." *Id.* We apply a *de novo* standard of review when considering compliance with supreme court rules. *Id.* at 606-07.

¶ 28 The plain error doctrine allows a reviewing court to bypass normal forfeiture principles and consider an otherwise unpreserved error affecting substantial rights when either: "(1) the evidence is close, regardless of the seriousness of the error, or (2) the error is serious, regardless of the closeness of the evidence." *People v. Herron*, 215 Ill. 2d 167, 187 (2005); see also Ill. S. Ct. R. 615(a). Defendant only argues that the first prong of the plain error analysis applies, *i.e.*,

"where the evidence in a case is so closely balanced that the jury's guilty verdict may have resulted from the error and not the evidence." *Id.* at 178.

¶ 29 Here, the circuit court clearly failed to comply with the letter of Rule 431(b). The court correctly recited the first and second principles – that the defendant is presumed innocent and that it is the State's burden to prove the defendant's guilt beyond a reasonable doubt. See Ill. S. Ct. R 431(b). The court also correctly recited the third principle, albeit out of order – that the defendant is not required to offer any evidence in her own behalf. *Id.* However, the court omitted the fourth principle – that if a defendant chooses not testify, it cannot be held against her. *Id.* Instead, the court announced that "the defendant does not have to prove her innocence." Although that statement is also true, it is a poor substitute for the principles required by the rule. The court did not comply with the "specific question and response process" mandated by the rule. See *Thompson*, 238 Ill. 2d at 607.

¶ 30 Because the court committed clear error on this issue, we must determine whether the first prong of the plain error rule is met. Under that prong, we may disregard forfeiture principles and consider an unpreserved error if the evidence is close, regardless of the seriousness of the error, or, where the evidence is so close that the jury's guilty verdict may have resulted from the error and not the evidence. *Herron*, 215 Ill. 2d at 178, 187. "In determining whether the evidence adduced at trial was close, a reviewing court must evaluate the totality of the evidence and conduct a qualitative, commonsense assessment of it within the context of the case." *People v. Sebby*, 2017 IL 119445, ¶ 53. Our qualitative assessment is that the evidence here was not closely balanced.

¶ 31 The evidence at trial overwhelmingly established that defendant was guilty of aggravated battery to a peace officer. "A person commits a battery if he or she knowingly without legal

justification by any means (1) causes bodily harm to an individual ***." 720 ILCS 5/12-3(a)(1) (West 2014). "A person commits aggravated battery when, in committing a battery *** she knows the individual battered to be *** [a] peace officer *** performing his or her official duties." 720 ILCS 5/12-3.05(d)(4)(i) (West 2014).

¶ 32 Defendant concedes that the evidence at trial established that Officer Stark was a peace officer performing his official duties at the time of the alleged battery. However, she argues the evidence was closely balanced as to whether there was a battery. In particular, defendant claims that Officer Stark's testimony was incredible, there was inadequate *mens rea* evidence, and Officer Stark did not suffer "physical harm." Further, defendant argues that the length of the jury's deliberations and the nature of its questions indicate that the evidence was closely balanced. Those arguments are unavailing.

¶ 33 First, Officer Stark's testimony was not inconsistent enough to make the evidence "close." Defendant argues that Officer Stark was incredible because his trial testimony was inconsistent with his own report and that of Detective Burns. At trial he testified that defendant grabbed him once at the bottom of the stairs and attempted to grab him once on the street. In his report, however, Officer Stark recorded that she had grabbed him twice. Finally, Detective Burns would have testified that Officer Stark told him that he pulled away from the first attempt and defendant grabbed him on her second attempt. However, Officer Stark explained the discrepancy between his report and his testimony, stating that he filled out his report while he was exhausted from his overnight shift. None of the inconsistencies suggest that the battery never happened, and minor discrepancies do not render a witness utterly incredible. *People v. Talach*, 114 Ill. App. 3d 813, 820 (1983) ("Minor inconsistencies in the testimony of the State's witnesses do not destroy

the credibility of these witnesses, and any variations in testimony were for the trier of fact to weigh.")

¶ 34 Second, the jury heard ample evidence to establish that defendant knowingly committed a battery. Defendant argues that the State did not prove that she had the requisite mental state to be convicted of battery. The State argues that this theory was forfeited because trial counsel did not raise it during the trial. Even if the argument was not forfeited, it is of no avail.

¶ 35 Defendant argues that the evidence showed that she was "agitated" and that, consequently, it was a close issue whether she acted knowingly when she squeezed Officer Starke's testicles. She relies on *People v. Jackson*, 2017 IL App (1st) 142879 to support this contention. But in *Jackson*, the trial evidence showed that the defendant's conduct could have been caused by a number of things, including "epilepsy, drug intoxication, some undiagnosed mental illness, or being Tasered 10 times". *Id.*, ¶ 27. In contrast, no evidence suggested that this defendant was unable to act voluntarily due to illness, intoxication, or otherwise. Additionally, defense counsel made no argument to the jury on this element of the crime. The evidence showed that defendant was belligerent and that she not only grabbed Officer Stark at the bottom of the stairs, but she also tried to do so again in the street. In making the qualitative and commonsense analysis required by *Sebby*, we cannot find that the jury would have seen this as close issue, especially given the fact that trial counsel made no effort to draw the jury's attention to it.

¶ 36 Next, there was ample evidence to show that Officer Stark suffered bodily harm. "Although it may be difficult to pinpoint exactly what constitutes bodily harm for the purposes of the [battery] statute, some sort of physical pain or damage to the body, like lacerations, bruises or abrasions, whether temporary or permanent, is required." *People v. Mays*, 91 Ill. 2d 251, 256

(1982). Officer Stark's testimony clearly established that he suffered physical pain at the hands of defendant. He testified that defendant aggressively grabbed him by the scrotum and testicles. As a result, he shouted out loudly enough to be heard by his partner upstairs. He suffered "intense pain" that "radiated up towards [his] abdomen area." This uncontroverted evidence overwhelmingly establishes that Officer Stark suffered bodily harm. See *People v. Freneey*, 2016 IL App (1st) 140328, ¶ 25 (finding that wrestling with an officer who was attempting to restrain the defendant was sufficient to cause bodily harm); *People v. Hayes*, 15 Ill. App. 3d 851, 860 (1973) (finding testimony of a kick to the groin adequate to support a finding of "great bodily harm"); *People v. Bravieri*, 22 Ill. App. 3d 845, 848 (1974) (finding bodily harm to be "self-evident" where officer "testified that the defendant pushed him back into his squad car with such force that his glasses and hat were knocked off and that the defendant struck him on the cheek with his fist.")

¶ 37 Finally, defendant argues that the length of the jury's deliberations and the questions it posed to the court show that the evidence was closely balanced. The length of deliberations and notes from the jury informing the court that it could not reach a consensus can show that the evidence was closely balanced. See *People v. Gray*, 406 Ill. App. 3d 466, 474 (2010). However, lengthy deliberations and jury notes do not necessarily require a finding that the evidence was closely balanced. *People v. Nugen*, 399 Ill. App. 3d 575, 584 (2010). Rather, those are merely considered as part of a commonsense analysis in the context of the totality of the evidence. *Id.* at 585.

¶ 38 Defendant argues that the fact that the jury deliberated for nearly five hours shows that the evidence was closely balanced. This is bolstered by the fact that the jury sent out three notes during deliberation, including one that asked "What happens if we don't come to a consensus?"

The State offers no argument specifically on this issue. However, the State urges that the evidence presented overwhelmingly proved defendant's guilt. We do not find that the deliberations were so long that the evidence must have been closely balanced. Given the overwhelming evidence of defendant's guilt, we give little weight to the length of the deliberations and the jury notes.

¶ 39 In sum, we find that the evidence was not closely balanced. As a result, the circuit court's error in admonishing the potential jurors under Rule 431(b) is not reviewable under the plain error doctrine.

¶ 40 Evidentiary Issues

¶ 41 Defendant also contends that the circuit court abused its discretion by admitting certain evidence. The decision of whether to admit or exclude evidence rests solely with the discretion of the trial court and will not be disturbed absent an abuse of discretion. *Cetera v. DiFilippo*, 404 Ill. App. 3d 20, 36-37 (2010). Such an abuse of discretion occurs only if no reasonable person would take the view adopted by the trial court. *Foley v. Fletcher*, 361 Ill. App. 3d 39, 46 (2005).

¶ 42 Defendant first argues that the circuit court should not have allowed her arrest photo into evidence. "Photographs, like any evidence, may be admitted into evidence when authenticated and relevant either to illustrate or corroborate the testimony of a witness, or to act as probative or real evidence of what the photograph depicts." *People v. Smith*, 152 Ill. 2d 229, 263 (1992).

¶ 43 Defendant argues that the photo was not relevant to any issue before the jury. There was no question of identification, and her appearance had no bearing on whether she committed the battery. Rather, defendant argues that the photo was introduced with the prejudicial goal of showing her in a disheveled state. However, one of trial counsel's theories was that the police fabricated the battery claim to justify a rough arrest. The photo was relevant to refute that

argument, as it showed that defendant had suffered no visible injury at the officers' hands. We cannot find that no reasonable person would agree with the ruling of the circuit court.

¶ 44 Defendant next argues that the circuit court should have barred testimony of specific threats that defendant made toward Griffith because testimony about those threats constituted "other crimes" evidence. If relevant for any purpose other than to show propensity to commit crime, evidence of other offenses is admissible. *People v. Rutledge*, 409 Ill. App. 3d 22, 25 (2011). However, a trial court should exclude otherwise admissible evidence of other offenses if its probative value is outweighed by the danger of unfair prejudice. *Id.* "[I]f the evidence of the other offenses and the evidence of the crime charged are inextricably intertwined, the rule relating to other crimes is not implicated and ordinary relevancy principles apply." *Id.*

¶ 45 In *Rutledge*, the defendant was charged with aggravated battery of a police officer. *Id.* at 22. At trial, a woman testified that she had been drinking with the defendant and that he struck her repeatedly in the face. *Id.* at 23. She testified that she saw an open garage door with a man standing nearby and she ran toward him and into the garage. *Id.* The man to whom she ran turned out to be a police officer. *Id.* The defendant followed the woman to the garage and the police officer intervened. *Id.* Eventually, the defendant punched the police officer. *Id.* at 23-24. On appeal, the defendant argued that the trial court erred in allowing the woman to testify about events that occurred before the encounter with the police officer. *Id.* at 25. We held that the woman's testimony about the defendant's earlier conduct was "an integral and natural part of the [witness's] description of the circumstances surrounding defendant's aggravated battery of Officer Smith." *Id.* at 25.

¶ 46 This case is directly in line with *Rutledge*. Griffith's testimony about his argument with defendant and her conduct when asked to leave his apartment was important to explain why

Officers Stark and Oldenburger arrived at the apartment. His testimony, as well as that of the officers, describing the threats made by defendant explain why the police were called in the first place, and why the officers eventually arrested defendant and put her into handcuffs. Without that testimony, the jury would be left to wonder how defendant ended up with her hands cuffed behind her back with Officer Stark walking her through the door. See *People v. Young*, 118 Ill. App. 3d 803, 808 (1983) (allowing testimony about the defendant climbing out of a broken window because "without it, the jury would have been faced with the unexplained fact that the policeman suddenly appeared and arrested the defendant that day.") This is not a case where evidence of other crimes was introduced to show that the defendant had a propensity to commit crimes. Rather, the testimony established a single chronological narrative of intertwined events.

¶ 47 Defendant argues that the State could have omitted all of the details leading up to the battery and put on evidence "simply that threats were made and that [defendant] was being arrested for assault." As was the case in *Rutledge*, however, the State was under no obligation to omit relevant background information. "Although the State possibly could have proved its case without this evidence, there is no rule that requires the State to present a watered-down version of events simply because otherwise highly probative evidence is unflattering to defendant." *Id.* at 26. The circuit court did not abuse its discretion in allowing the State to put on evidence of the threats that led directly to defendant's arrest and the ensuing battery.

¶ 48 CONCLUSION

¶ 49 Although the circuit court erred in failing to properly admonish the potential jurors in conformity with Supreme Court Rule 431(b), defendant forfeited this error and the plain error doctrine is inapplicable because the evidence was not closely balanced. Further, the circuit court did not abuse its discretion in admitting the defendant's arrest photo into evidence or in allowing

testimony of specific threats that defendant made toward Griffith. Accordingly, we affirm the judgment of the circuit court.

¶ 50 Affirmed.