2018 IL App (2d) 160088-U
No. 2-16-0088
Order filed May 31, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. RONNIE L. ALLEN, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Stephenson County. No. 12-CM-325 Honorable James M. Hauser, Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Zenoff and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant showed no plain error in the trial court's sustaining the State's hearsay objections to two questions: although the questions might have elicited testimony with impeachment value, they were so broad that they also invited hearsay.

¶ 2 Following a jury trial in the circuit court of Stephenson County, defendant, Ronnie L. Allen, was convicted of disorderly conduct (720 ILCS 5/26-1(a)(1) (West 2012)). In a prior appeal, we reversed defendant's conviction because of error instructing the jury, and we remanded for a new trial. *People v. Allen*, 2014 IL App (2d) 130404-U. Defendant's second trial, which was also before a jury, again resulted in a conviction of disorderly conduct.

Defendant appeals from that conviction, arguing that the trial court committed reversible error by excluding evidence that would have impeached an important prosecution witness. We affirm.

¶ 3 At defendant's second trial, Autumn Love testified that on April 20, 2012, she was holding a garage sale at her mother's house. A table and a set of chairs that belonged to Love's grandmother were for sale. Love's aunt spoke with defendant about holding the table and chairs for him. Love agreed to hold them for 15 minutes. Defendant returned about an hour later, but by then the table and chairs had been sold to someone else. Defendant was angry that the table and chairs had been sold. He left, but returned about 15 to 20 minutes later. Love was standing at the garage door opening. Defendant started yelling at Love and angrily "charg[ed]" at her. As defendant approached he called Love nasty names, including "bitch." Defendant kept yelling at Love and she backed up into the garage. Love asked defendant to leave, but he entered the garage. Love started to climb over a baby gate leading to a porch where Love had left her two-year-old daughter. Defendant also started to climb over the gate. As he was doing so, he told Love that he was going to kill her. Love felt scared for herself and for her daughter. Love called for her aunt and told her to call the police. Love's aunt and two men came out of the house. At that point, defendant left.

¶ 4 Vicky Benoodt testified that she was shopping at the garage sale. She testified that she heard defendant yelling. Defendant was harassing Love, saying "I'm going to kill you." On cross-examination, Benoodt testified that she spoke with a police officer, Katherine Ludewig. Benoodt told Ludewig that she heard defendant "cussing" at Love. She also told Ludewig that she had heard defendant say that he was going to kill Love.

¶ 5 Freeport police officer Aaron Hass testified that he spoke with defendant on April 21, 2012. Defendant initially denied any knowledge of the incident at Love's garage sale.

Defendant later admitted that he had been at the garage sale and that a woman was supposed to hold a table for him. Defendant told Hass that the woman was racist.

¶ 6 Before defendant's attorney finished cross-examining Hass, she informed the court that defendant wanted to proceed *pro se*. The trial court allowed defendant to discharge counsel. In his case-in-chief, defendant testified in narrative form that he and his fiancée went to Love's garage sale. They saw a quilt in the garage and asked its price. Love said that the price was $30. However, Love's aunt said that they could have the quilt for $3. Defendant and his fiancée bought the quilt for $3. Then they saw a table. Defendant did not have money to pay for the table. He asked Love's aunt to hold the table for them. Defendant and his fiancée returned and saw a sign on the table indicating that it had been sold. Love's aunt said that there was another table, but she left and did not come back. Defendant approached Love, who appeared to be upset that her aunt sold the quilt to defendant and his fiancée for $3. Love was getting impatient. Defendant and Love had a conversation. According to defendant, "[t]here wasn't no argument, no demeanor, there was no threats."

¶ 7 Ludewig was defendant's last witness. Defendant asked Ludewig two questions that are pertinent to this appeal. First, he asked Ludewig, "When you questioned [Love and Benoodt], did they say anything to you—anything to you about they was being threatened and bodily harmed?" The State objected, on hearsay grounds, at which point defendant clarified, "I mean, had they been threatened or intimidated." The trial court sustained the State's objection. Second, defendant asked Ludewig, "Did Vicki Benoodt report any—can you tell how—what her report was Vicki Benoodt, when you interviewed her?" The trial court ruled that the question sought hearsay. The jury found defendant guilty and the trial court imposed sentence. This appeal followed.

¶ 8 Defendant challenges the adverse rulings on the two questions quoted above. He contends that Ludewig would have testified that Benoodt said nothing to her about defendant threatening to kill Love. But defendant did not make an offer of proof with respect to either question. Nor did he argue in his posttrial motion that the trial court's rulings on the questions were erroneous. "[I]n order to preserve an issue concerning the trial court's preclusion of impeaching evidence at trial, the defendant must set forth an offer of proof at trial." *People v. Wallace*, 331 Ill. App. 3d 822, 831 (2002). Furthermore, "to preserve a claim of error for review, counsel must object to the error at trial and raise the error in a motion for a new trial before the trial court." *People v. McLaurin*, 235 Ill. 2d 478, 485 (2009). Defendant argues, however, that the trial court's rulings are reviewable under the plain-error rule. The plain error rule permits review of forfeited errors "(1) where a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error and (2) where a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Belknap*, 2014 IL 117094, ¶ 48.

¶ 9 In *People v. Thompson*, 238 Ill. 2d 598, 613 (2010), our supreme court observed that "[t]he first step of plain-error review is determining whether any error occurred." We thus consider whether the trial court erred in ruling that defendant's questions called for inadmissible hearsay. Defendant argues that his questions were designed to elicit evidence that would impeach Benoodt's testimony that defendant threatened to kill Love. According to defendant, Ludewig would have testified that, when she interviewed Benoodt, Benoodt did not mention that defendant threatened to kill Love. At defendant's first trial, Ludewig testified that Benoodt did

not mention any such threat. According to defendant, had Ludewig been permitted to answer his questions, her testimony would have impeached Benoodt's testimony.

¶ 10 Illinois Rule of Evidence 801(c) (eff. Jan. 1, 2011) provides that " '[h]earsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." *People v. Wills*, 2017 IL App (2d) 150240, ¶ 54. However, an out-of-court statement is not hearsay where it is admitted to impeach a witness and not to prove the truth of the matter asserted. *People v. Bradford*, 106 Ill. 2d 492, 499 (1985). Prior inconsistent statements that are either directly or indirectly contrary to trial testimony may be admitted for the purpose of impeaching that testimony. *Racky v. Belfor USA Group, Inc.*, 2017 IL App (1st) 153446, ¶ 105. Moreover, " '[i]f a witness fails to mention facts under circumstances which make it reasonably probable that he would mention them if true, the omission may be shown as an indirect inconsistency.' " *Strino v. Premier Healthcare Associates, P.C.*, 365 Ill. App. 3d 895, 902 (2006) (quoting *Esderts v. Chicago, Rock Island & Pacific R.R. Co.*, 76 Ill. App. 2d 210, 228 (1966)).

¶ 11 Mindful of these principles, we conclude that defendant's questions were improper. As noted, defendant asked Ludewig whether Love and Benoodt said anything to her "about they was being threatened and bodily harmed?" Defendant then corrected the question, stating, "I mean, had they been threatened or intimidated." That question might have elicited testimony that Benoodt did not mention any threats by defendant against Love. That said, due to the breadth of the question, it would also have elicited testimony with no impeachment value. As the State argues, "if [Ludewig] had answered the exact question posed, she would have addressed whether Benoodt said anything *** about defendant threatening her *** and she also would have addressed whether Love said anything about defendant threatening her." As the State notes, such

testimony would have had no impeachment value. The second question at issue was "Did Vicki Benoodt report any—can you tell how—what her report was Vicki Benoodt, when you interviewed her?" That question was even broader than the first. We therefore conclude that the trial court committed no error in barring defendant from asking those questions.

¶ 12 For the foregoing reasons, the judgment of the circuit court of Stephenson County is affirmed. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2016); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 13 Affirmed.