

2018 IL App (2d) 160318-U
No. 2-16-0318
Order filed July 27, 2018

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 13-CF-1375
)	
LUIS LOMELI,)	Honorable
)	James C. Hallock,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice Hudson and Justice Hutchinson concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant showed no plain error (and thus no ineffective assistance of counsel) as to the trial court's admission of other-crimes evidence, as the court properly balanced the evidence's probative value against its prejudicial effect and ruled that the former was not substantially outweighed by the latter.

¶ 2 Defendant, Luis Lomeli, appeals from the judgment of the circuit court of Kane County, contending that the trial court erred in admitting other-crimes evidence and that his trial counsel was ineffective for not raising the other-crimes issue in a posttrial motion. Because the court did not abuse its discretion in admitting the other-crimes evidence and counsel was not ineffective for failing to raise the issue in a posttrial motion, we affirm.

¶ 3

I. BACKGROUND

¶ 4 Defendant was indicted on one count of attempted first-degree murder (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2010)), one count of armed violence (720 ILCS 5/33A-2(a) (West 2010)), one count of armed robbery (720 ILCS 5/18-2(a)(1) (West 2010)), and two counts of aggravated battery (720 ILCS 5/12-4(a), 4(b)(1) (West 2010)).¹ The charges arose out of an incident in which defendant and three companions robbed Rolando Perez.

¶ 5 Before trial, the State moved *in limine* to admit evidence of another robbery, which occurred about an hour after the Perez robbery and which involved defendant and the same companions. The State contended that the other-crimes evidence was relevant to show intent and motive. In objecting to admission of the other-crimes evidence, defendant noted that to admit the evidence the trial court must decide, among other things, whether the prejudicial effect substantially outweighed the probative value. The State reiterated that assertion.

¶ 6 In its written order admitting the other-crimes evidence, the trial court found that the evidence was similar to the charged incident and that it was relevant to prove purpose, identity, and motive. The court noted that relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. However, the court did not state that it had applied the balancing test in deciding to admit the other-crimes evidence.

¶ 7 The following facts were established at defendant's jury trial. On May 1, 2011, defendant and his girlfriend, Sylvia Enriquez, drove to defendant's sister's home in Ottawa. They arrived in the early afternoon. Two brothers, Josh Ward and Jason Ward, were already there. Defendant, Josh, and Jason began drinking. To continue partying, defendant, Josh, Jason, and Sylvia decided to drive to Aurora so that Josh could get money from a woman he knew.

¹ The State nol-prossed the aggravated-battery charges.

¶ 8 Because they were unsuccessful in getting any money from the woman, the foursome decided to rob someone. To that end, they switched vehicles with Josh's ex-girlfriend, Ashley. They then drove to La Villita, a bar and liquor store in Aurora. Sylvia drove, defendant sat in the front passenger seat, and Josh and Jason sat in the back.

¶ 9 The plan was for Sylvia to flirt with a man in the bar and lure him outside, where the others would rob him. When they arrived at La Villita, they parked near a Burger King that shared the parking lot with La Villita. Defendant and Jason entered the liquor store to buy beer. Sylvia went in the bar to target a customer.

¶ 10 Around that same time, Perez arrived at La Villita to buy cigarettes and beer. After doing so, he walked to his vehicle, which was parked close to the one in which the foursome had arrived. As Perez entered his vehicle, a man approached him and asked for a light for his cigarette. When Perez reached for a lighter, the man punched him in the head. Although Perez could not identify the assailant, Josh testified that it was defendant. After defendant struck Perez, Josh and Jason joined in beating Perez. According to Perez, after he gave one of the men his money, one of the men yelled that Perez was going to die. When Perez tried to escape through the passenger-side front door, he could feel himself being stabbed in the back. According to Josh, defendant held Perez while Jason stabbed Perez in the back multiple times.

¶ 11 Perez escaped the attack and ran toward La Villita. As he did so, a security officer came out to assist him. Defendant, Josh, and Jason then drove away without Sylvia.

¶ 12 A video from La Villita's security cameras showed defendant and Jason in the liquor store buying beer. A video also showed Sylvia in the bar talking to a man. The security cameras did not cover the area where the attack occurred. Defendant's DNA was found in blood on the front passenger door handle of the vehicle the four had driven to La Villita.

¶ 13 As Sylvia exited La Villita, she saw a commotion in the parking lot. After she realized that her companions had left, she called defendant's sister. Defendant's sister told her to walk a couple of blocks to defendant's aunt's house.

¶ 14 When Sylvia arrived at defendant's aunt's house, Jason and defendant were cleaning blood from their hands. Jason was also cleaning blood off of a knife. Defendant had money with blood on it.

¶ 15 After again switching vehicles with Ashley, the four left and purchased cocaine from a dealer in Aurora. They then used the cocaine in the vehicle.

¶ 16 At around 11 p.m., the four went to the Montgomery home of Sylvia's ex-boyfriend, Fernando Mata. They did so because Mata owed Sylvia money. Because they did not expect Mata to give her the money, they planned to forcibly take it.

¶ 17 After arriving at Mata's home, Sylvia knocked on the front door, while defendant, Josh, and Jason waited alongside the house. When Mata opened the door, the three men forcibly entered through that door. While Josh and Jason ordered the other two occupants to lie on the floor, defendant chased Mata and began fighting with him. Mata escaped out the back door and called the police.

¶ 18 After leaving Mata's, the four hid out for the next few days. Eventually, they were arrested.

¶ 19 Josh and Sylvia both testified for the State pursuant to plea agreements. Sylvia pled guilty to felony criminal trespass to Mata's residence and was sentenced to two years' imprisonment. Although she pled guilty to burglary of Mata's home, she was not sentenced. Instead, because she testified for the State, her guilty plea would be withdrawn. Josh pled guilty

to attempted home invasion of Mata's residence and aggravated battery of Perez. He was sentenced to concurrent 12- and 10-year prison terms, respectively.

¶ 20 When Mata testified about the incident at his home, the trial court instructed the jury, pursuant to Illinois Pattern Jury Instructions, Criminal, No. 3.14 (4th ed. 2000) (hereinafter IPI Criminal 4th No. 3.14)), about the limited purpose of the other-crimes evidence. The court repeated that instruction when Sylvia testified about the Mata incident. It did not do so when Josh testified. The court gave that instruction again before jury deliberations.

¶ 21 Jason, who was serving a prison term for the armed robbery and attempted murder of Perez, testified on behalf of defendant. According to Jason, the robbery at La Villita was his idea and defendant was not involved. Jason maintained that he was the person who asked Perez for a light. When he grabbed Perez by the throat, Perez tried to punch him. He then began stabbing Perez. While Jason attacked Perez, defendant sat in the car. Perez then escaped and ran toward La Villita. When Jason noticed that a security guard saw him, he ran toward the security guard. At that point, defendant grabbed Jason and told him to stop. The three men then drove away without Sylvia. Later, at defendant's aunt's house, Jason threatened to kill defendant, Josh, and Sylvia that if they told anyone about what he had done.

¶ 22 Although Jason never told the authorities that defendant was not involved until five months before trial, he claimed that he came forward because defendant had children. He added that he was testifying to clear his conscience and not because he had anything to gain.

¶ 23 On cross-examination, Jason testified that, when they arrived at Mata's, Sylvia went to the front door, while the three men went with her in case Mata attacked her. When Mata opened the door, Jason ran inside before Josh or defendant. Because he ordered the other occupants to lie on the floor, he did not see what happened between defendant and Mata.

¶ 24 In rebuttal, a La Salle County prosecutor testified that defendant had testified in a case in La Salle County that neither he, Josh, nor Jason was involved in the Perez incident. Defendant further testified that he was the first to enter the Mata house.

¶ 25 The jury found defendant guilty of all three offenses. Defendant filed a posttrial motion, but did not raise any issue regarding the other-crimes evidence. The trial court sentenced defendant to concurrent terms of imprisonment of 22 years for the attempted-murder conviction and 10 years for the armed-robbery conviction. The court merged the armed-violence conviction with the attempted-murder conviction. Defendant, in turn, filed a timely notice of appeal.

¶ 26 **II. ANALYSIS**

¶ 27 On appeal, defendant contends (1) that the trial court committed plain error in admitting the other-crimes evidence involving the Mata incident, because the court failed to balance the probative value against the prejudicial effect and the evidence overall was closely balanced and (2) that his trial counsel was ineffective for failing to raise the other-crimes issue in his posttrial motion.

¶ 28 To preserve an issue for review, a defendant must both object to the error and raise it in a posttrial motion. *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). Here, defendant did not challenge in his posttrial motion the admission of the other-crimes evidence. Thus, he forfeited the issue.

¶ 29 However, a forfeited issue may be considered under the plain-error doctrine. Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967). The plain-error rule allows a reviewing court to consider an unpreserved error 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 the error is

so serious that it affected the fairness of the 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). A defendant carries the burden of establishing either prong of the plain-error rule. *People v. Lewis*, 234 Ill. 2d 32, 43 (2009). The first step of plain-error review is to determine whether any error occurred. *Lewis*, 234 Ill. 2d at 43. Here, defendant relies on the first prong of plain error.

¶ 30 Other-crimes evidence encompasses misconduct or criminal acts that occurred either before or after the charged offense. *People v. Gregory*, 2016 IL App (2d) 140294, ¶ 23. Evidence of other crimes may be admissible if it is relevant for any purpose other than to demonstrate the defendant's propensity to commit the charged offense. *People v. Wilson*, 214 Ill. 2d 127, 135 (2005). Such evidence may be admissible when it is relevant to show, among other things, motive, intent, identity, absence of mistake or accident, *modus operandi*, or a common plan or design. Ill. R. Evid. 404(b) (eff. Jan. 1, 2011); *Gregory*, 2016 IL App (2d) 140294, ¶ 24. However, relevant other-crimes evidence may be excluded if its prejudicial effect substantially outweighs its probative value. *Gregory*, 2016 IL App (2d) 140294, ¶ 24. The admissibility of other-crimes evidence is committed to the sound discretion of the trial court, and its decision will not be disturbed absent a clear abuse of that discretion. *Gregory*, 2016 IL App (2d) 140294, ¶ 24. An abuse of discretion occurs only when the trial court's ruling is arbitrary, fanciful, or unreasonable, or when no reasonable person would take the view adopted by the trial court. *Gregory*, 2016 IL App (2d) 140294, ¶ 24.

¶ 31 We first address defendant's contention that the trial court failed to balance the probative value of the other-crimes evidence against its prejudicial effect. It did not.

¶ 32 In arguing the State's motion to admit the other-crimes evidence, both the State and defendant asserted that the trial court must determine whether the prejudicial effect substantially outweighed the probative value. Further, in its written ruling, the court reiterated that, even if the evidence was relevant, it must be excluded if its probative value was substantially outweighed by the danger of unfair prejudice. Undoubtedly, the court was fully aware of its obligation to balance the probative value against the prejudicial effect. Moreover, a trial court is presumed to know the law, and we will ordinarily presume that it followed the law unless the record shows otherwise. *People v. Groel*, 2012 IL App (2d) 090595, ¶ 43 (citing *People v. Gaultney*, 174 Ill. 2d 410, 420 (1996)). Absent a showing to the contrary, we presume that the court followed the law and conducted the required balancing before admitting the other-crimes evidence.

¶ 33 Not only did the trial court properly consider whether the probative value was substantially outweighed by the prejudicial effect, its conclusion that it was not was correct. The Mata incident was particularly probative of the motive behind the Perez incident. The evidence showed that defendant and his companions decided to commit a robbery at La Villita to obtain money to party. The evidence regarding the Mata incident showed that defendant and the same three companions decided to rob Mata to obtain money to party. The motives for both crimes were identical. Thus, the Mata incident was highly probative of defendant's motive for the charged crime.

¶ 34 Additionally, the Mata incident was relevant to show a common plan or design. In the Perez incident, defendant and his compatriots planned to use Sylvia to lure a man out of La Villita so that they could rob him. Similarly, they planned to have Sylvia lure Mata to his front door so that they could enter his house and rob him. Clearly, the Mata incident showed defendant's common plan and design in committing the charged crime.

¶ 35 Not only was the Mata incident probative of motive and plan, it occurred only an hour after the charged crime. The closeness in time to the charged offense increased the probative value of the other-crimes evidence. See *People v. Illgen*, 145 Ill. 2d 353, 370 (1991).

¶ 36 Although the evidence of the Mata incident was highly probative, its prejudicial effect was minimal. The trial court was careful to instruct the jury, pursuant to IPI Criminal 4th No. 3.14, on the limited purpose for that evidence. It did so when both Mata and Sylvia testified. It repeated that instruction before the jury deliberations. Although the court did not give the instruction when Josh testified, the jury was already aware of the limited purpose of the Mata evidence. The giving of the instruction multiple times effectively minimized the prejudicial impact of the other-crimes evidence.

¶ 37 When the strong probative value of the Mata incident was balanced against its minimal prejudicial effect, we cannot say that the trial court abused its discretion in admitting the other-crimes evidence. Because there was no clear or obvious error in admitting the other-crimes evidence, there was no plain error. See *Lewis*, 234 Ill. 2d at 43.

¶ 38 There being no error in the admission of the other-crimes evidence, we reject defendant's claim that his counsel was ineffective for failing to include that issue in his posttrial motion. See *People v. Easley*, 192 Ill. 2d 307, 332 (2000).

¶ 39 III. CONCLUSION

¶ 40 For the reasons stated, we affirm the judgment of the circuit court of Kane County. 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); *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 41 Affirmed.