

NOTICE

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FILED

March 30, 2018
Carla Bender
4th District Appellate
Court, IL

2018 IL App (4th) 150745-U
NO. 4-15-0745

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Vermilion County
ERIC D. WILLIAMS,)	No. 14CF402
Defendant-Appellant.)	
)	Honorable
)	Nancy S. Fahey,
)	Judge Presiding.

PRESIDING JUSTICE HARRIS delivered the judgment of the court.
Justices Steigmann and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant forfeited his challenge to the trial court’s evidentiary ruling, sustaining the State’s objection to a question posed by defense counsel during direct examination of a defense witness. However, setting defendant’s forfeiture aside, any alleged error was harmless and reversal of defendant’s conviction was unwarranted.

¶ 2 Defendant, Eric D. Williams, was convicted of aggravated criminal sexual assault (720 ILCS 5/11-1.30(a)(1) (West 2012)) and sentenced to 39 years in prison. He appeals, arguing the trial court erred by restricting his counsel’s direct examination of a defense witness. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In August 2014, the State charged defendant with three counts of aggravated criminal sexual assault (720 ILCS 5/11-1.30(a)(1), (a)(2), (a)(3) (West 2012)) (counts I, II, and

III), one count of aggravated battery (720 ILCS 5/12-3.05(a)(1) (West 2012)) (count IV), and one count of criminal sexual assault (720 ILCS 5/11-1.20(a)(1) (West 2012)). In July 2015, the matter proceeded to a jury trial on only counts I and II, which were based on allegations that defendant committed an act of sexual penetration upon the victim, L.M., and (1) displayed, threatened to use, or used a dangerous weapon other than a firearm (count I) (720 ILCS 5/11-1.30(a)(1) (West 2012)) or (2) used force or the threat of force and caused L.M. bodily harm (count II) (720 ILCS 5/11-1.30(a)(2) (West 2012)).

¶ 5 At trial, police officer Jon Stonewall testified that on the morning of August 17, 2014, he went to Presence United Samaritans Hospital in Danville, Illinois, in response to a report of a sexual assault. He arrived at the hospital at 5:30 a.m. and spoke with N.M., the victim's mother. N.M. reported to Stonewall that she and a man, who per Stonewall's recollection was either N.M.'s boyfriend or husband, found L.M. in their bathroom with blood in the toilet. L.M. asserted he had been raped by someone he knew and who was described as a black male in his 30s. N.M. stated she also knew the man "from walking the area" and she informed Stonewall that the man had a twin brother. Stonewall stated he observed L.M. in his hospital bed, "moaning and rocking back and forth." He testified L.M. also reported that "he had been raped."

¶ 6 N.M. testified that she resided in Danville, Illinois, with L.M. and another son. On August 16, 2014, N.M. went to bed at 10 p.m. However, she and her significant other were awakened early the next morning by N.M.'s dog. L.M. was discovered and taken to the hospital. At the hospital, N.M. observed that L.M. "couldn't stop bleeding" and was lying in a fetal position and groaning. She stated L.M. reported to her that he had been raped by a man who went by the street name "Twin." N.M. testified she had seen the man L.M. described walking in her

neighborhood and speaking to L.M. approximately a week before the incident at issue occurred. Further, she identified defendant as the person she saw in her neighborhood speaking with L.M.

¶ 7 Domaine Miles testified he had known L.M. and N.M. for approximately three years. He was aware of the sexual assault on L.M. in August 2014, and stated that, approximately three to four days before the assault, he observed an altercation between L.M. and defendant. Miles stated he was talking with L.M. and another individual when defendant approached L.M. and said he was “gonna beat [L.M.’s] ass.” Miles described defendant as “all aggressive in [L.M.’s] face” and stated defendant was “actually trying to beat [L.M.] up.” Miles testified he intervened “to break it up” and heard defendant say he was “going to give [L.M.] a pass this time.” Defendant then walked away but kept looking back and appeared angry. Miles asked L.M. what was going on and L.M. said defendant “was mad that [L.M.] didn’t smoke a blunt with him or something.”

¶ 8 At trial, L.M. testified he was 19 years old and lived in Danville, Illinois, with his mother and brother. He stated he graduated high school and, while in school, attended “special classes.” L.M. further stated that he was assisted by a tutor who went to classes with him and helped him to read and write.

¶ 9 On the evening of August 16, 2014, L.M. was walking home from a friend’s house when he was assaulted in an alley behind a vacant school. He testified he was forced to the ground and his pants were pulled down. L.M. saw his assailant put on a condom and testified the assailant “forced his penis in [L.M.’s] rectum.” The assailant also used a stick to anally penetrate L.M. four times. L.M. testified that neither he nor his assailant said anything during the assault. L.M. stated he was “in shock” but that he did scream.

¶ 10 L.M. testified he was able to view his attacker as the man reached for the stick. L.M. testified the man “slipped his hand off of [L.M.’s] back for a minute to reach for the stick,” allowing L.M. to get a glimpse of his face. He stated the man then forced him back on the ground. When asked to describe what he saw, L.M. stated his attacker had a “bald head, no beard, [and a] white face.” He testified he recognized his attacker as defendant, an individual that he knew by the street name “Twin.” On cross-examination, defendant’s counsel questioned L.M.’s testimony that his attacker had a “white face” when defendant was black. L.M. replied as follows: “I know, but I was talking about the—the—the light hitting in his face.” On redirect examination, L.M. testified the person that raped him was black and he identified that person as defendant.

¶ 11 L.M. testified he met defendant approximately a week prior to the attack, stating defendant approached him at a gas station and L.M. “sold [defendant] a sack of weed.” He next saw defendant in front of his house. Defendant requested a “front,” meaning he wanted L.M. to give him some marijuana for free and then he would pay L.M. back later. L.M. refused defendant’s request. The next day, defendant approached L.M. on a city street while L.M. was outside smoking marijuana with Miles and another individual. Defendant complained that L.M. had refused to front him marijuana and stated he should “bitch slap” L.M. According to L.M. defendant stated he would “give [L.M.] this time to slide.” The next time L.M. saw defendant was when defendant raped him.

¶ 12 L.M. stated, after the attack, he was in pain and was left bleeding with his pants and boxers pulled down. He testified he had to crawl home because his legs were not working right and he noticed that he was bleeding a lot. When he got home, he went to the bathroom

where he was discovered by his family and taken to the hospital. L.M. stated he received a blood transfusion and was air-lifted to another hospital. He required surgery, as well as a colostomy bag and catheter.

¶ 13 L.M. recalled speaking to Detective Ralph Dunham while in the hospital. Specifically, on August 19, 2014, Dunham showed L.M. a photographic lineup from which L.M. identified his attacker. L.M. testified he circled the photograph of his attacker and wrote his initials next to his attacker's photograph, which was located at the bottom right of the lineup. On cross-examination, L.M. recalled that he spoke with the police approximately four times regarding his attack. He agreed that when viewing the photographic lineup he initially identified his attacker as the individual in the bottom left photograph of the lineup. He agreed the individual in that photograph was not defendant. L.M. further testified that he was on a lot of pain medication while in the hospital, including morphine.

¶ 14 Dr. Paul Tender testified he was a colorectal surgeon and treated L.M. following the August 2014 attack. He described L.M. as being "very sick" when he first saw him, stating L.M. had very low blood pressure, a low oxygen level in his blood, and was unable to have a conversation. Dr. Tender stated L.M.'s symptoms were manifestations of a severe systemic illness, which was usually from infection, blood loss, or a combination of the two. He described L.M.'s injuries as potentially fatal if left untreated. Dr. Tender testified L.M. had internal hemorrhaging, a perforated rectum, and injuries to his prostate gland and urethra. He provided months-long treatment to L.M. that included surgeries and a colostomy to prevent the spreading of infection.

¶ 15 Jason Reynolds testified he was a registered nurse. In August 2014, he worked as

an emergency room nurse and performed a “forensic collection” or “rape kit” on L.M. Initially, he interviewed L.M. to help determine what “samples” to collect. During the interview, L.M. reported he was walking down an alley and ran into “a dude he knew for a minute.” L.M. told Reynolds the man inserted a stick, the man’s penis, and the man’s finger “into [L.M.’s] rectum.”

¶ 16 David Carey testified he knew both L.M. and defendant. He stated that he witnessed an altercation between L.M. and defendant that occurred four to five days before the August 2014 assault on L.M. Carey recalled that defendant approached L.M. and stated he “ ‘should whoop [L.M.’s] ass for what [L.M.] did.’ ” Another individual intervened on L.M.’s behalf, telling defendant to leave L.M. alone. According to Carey, defendant then stated “ ‘That’s all right. I will give him a pass today, but I’ll get him.’ ”

¶ 17 Police officer Nathan Howie testified he was on duty on August 20, 2014, and observed defendant walking. He testified he was aware of a “pickup” on defendant for criminal sexual assault, meaning that police officers investigating a case “wanted [defendant] arrested.” Howie stated that as he approached defendant in his squad car, defendant hid behind a tree. He then approached defendant and took him in to custody. On cross-examination, Howie acknowledged that he had gone to the location where he found defendant in response to a call asking that defendant be removed from a residence. Defendant did not resist arrest.

¶ 18 Detective Dunham testified he investigated the August 2014 assault on L.M. On August 19, 2014, he went to speak with L.M. in the hospital. Dunham testified L.M. was being treated for internal bleeding and was on pain medication. He showed L.M. a photo array that included defendant, the suspect in the case, and five photographs of subjects with characteristics similar to defendant. Dunham stated that L.M. identified defendant as his attacker by circling a

photograph of defendant in the photo array and placing his initials next to defendant's photo. He denied that L.M. ever chose any of the other photos in the array.

¶ 19 On September 4, 2014, Dunham returned to the hospital to meet with L.M. During that meeting, Dunham showed L.M. the photo array for a second time and L.M. agreed that it was the same photo array from which he had previously identified his attacker. According to Dunham, L.M. pointed to the photograph of defendant that he had previously circled, which was located in the bottom right corner of the array, and identified defendant as his attacker; however, at the same time, L.M. "stated that [his attacker] was in the left bottom corner." Dunham testified that L.M. corrected himself by pausing and stating that the photo of his attacker was located in the bottom right corner of the array. Dunham believed L.M. "just misspoke" in that "he knew who he had identified as the suspect and he called it by the wrong corner." He denied that L.M. identified anyone other than defendant as his attacker.

¶ 20 On cross-examination, Dunham agreed that it was important to memorialize everything that happens in a case in his police report, but acknowledged that he did not document L.M.'s statement that his attacker was depicted in the left bottom photo or his subsequent correction to the right bottom photo. He stated, however, that an audio recording was made of the meeting, which demonstrated L.M. saying " 'left bottom, left bottom,' " then a pause with L.M. saying " 'right bottom.' " Dunham further agreed that he did not record his initial August 19, 2014, meeting with L.M.

¶ 21 Following the State's evidence, Denise Jackson testified on defendant's behalf. In August 2014, she resided in Danville with defendant. Jackson stated she and defendant had a dating relationship, which she agreed was "somewhat" on and off. When asked if she recalled the

evening of August 16, 2014, Jackson testified as follows: “That was, like, on our—on a Saturday. That’s when we get—like prepare ourself [*sic*] for church. We lay around and watch movies and do what normal couples would do.” Jackson stated that was their “[r]egular routine” and defendant was with her the whole night. The following colloquy then occurred:

“Q. Now, what do you do for a living?

A. I’m disabled.

Q. And are you also a minister?

A. Yes.

Q. And where are you a minister at?

A. Mount Olive Baptist Church under the Reverend Frank McCullough,

Jr.

Q. How long have you been a minister?

MR. MOCKBEE [(Assistant State’s Attorney)]: Objection as to relevance.

THE COURT: Sustained.

MS. LACY [(Defense Attorney)]: May I have one moment, Judge?

THE COURT: You may.

(Discussion between defense counsel.)

MS. LACY: I don’t have any further questions, Judge.”

¶ 22 On cross-examination, Jackson testified she and defendant were “[s]omewhat” still a couple and she described him as her “lover.” Additionally, she agreed that she did not specifically remember August 16, 2014, she just knew the routine that occurred “every Saturday.”

¶ 23 At trial, stipulations entered into by the parties showed that boxer shorts belonging to L.M. and a sexual assault kit were collected as evidence in the case and sent to the Illinois State Police Crime Lab for forensic testing. No semen was identified on anal swabs contained within the sexual assault kit performed on L.M. Additionally, trace semen detected on L.M.'s boxer shorts matched the deoxyribonucleic acid profile of L.M. and not defendant.

¶ 24 At the conclusion of the trial, the jury found defendant guilty of both counts of aggravated criminal sexual assault. Defendant filed a posttrial motion for judgments of acquittal notwithstanding the verdicts or, in the alternative, a new trial. Relevant to this appeal, he argued the trial court “erred when it sustained objections made by the State during Denise Jackson [*sic*] testimony based upon relevance as to her employment.” In August 2015, the court conducted a hearing on defendant’s motion, however, defendant’s counsel made no specific argument regarding the claim of error at issue on appeal. Rather, counsel chose to “stand on [the posttrial] motion” as to that issue. The court denied the motion.

¶ 25 In September 2015, the trial court conducted defendant’s sentencing hearing. At the conclusion of the hearing, the court sentenced defendant to 39 years in prison in connection with count I (based on aggravated criminal sexual assault with a dangerous weapon) and 30 years in prison in connection with count II (based on aggravated criminal sexual assault causing bodily harm). However, the court also ordered that the two counts merged.

¶ 26 This appeal followed.

¶ 27 II. ANALYSIS

¶ 28 On appeal, defendant argues the trial court improperly restricted defense counsel’s direct examination of a defense witness. Specifically, he challenges the trial court’s deci-

sion to sustain the State’s objection to a question posed by defendant’s counsel to Jackson regarding the length of time Jackson had been a minister. He maintains his counsel’s question was “a basic background question” that was relevant to aid the jury in assessing Jackson’s credibility.

¶ 29 In response, the State argues that defendant has forfeited review of this issue by failing to “present a challenge to the court” on the State’s objection at trial and because the allegation of error in his posttrial motion lacked specificity. On the merits, it contends that no error occurred or, alternatively, that any error was harmless.

¶ 30 Here, we agree with the State’s assertion that defendant has forfeited his challenge to the issue presented on appeal. To preserve an issue for appellate review, a party must both make an objection at trial and raise the issue in a written posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186, 522 N.E.2d 1124, 1130 (1988). Further, “[i]t is well recognized that the key to saving for review an error in the exclusion of evidence is an adequate offer of proof in the trial court.” *People v. Andrews*, 146 Ill. 2d 413, 420-21, 588 N.E.2d 1126, 1131 (1992). “The two primary functions of an offer of proof are to disclose to the trial judge and opposing counsel the nature of the offered evidence, enabling them to take appropriate action, and to provide the reviewing court with a record to determine whether exclusion of the evidence was erroneous and harmful.” *People v. Thompkins*, 181 Ill. 2d 1, 10, 690 N.E.2d 984, 989 (1998).

¶ 31 “Where an objection is sustained to the offered testimony of a witness, an adequate offer of proof is made if counsel makes known to the trial court, with particularity, the substance of the witness’ anticipated answer.” *Andrews*, 146 Ill. 2d at 421, 588 N.E.2d at 1131. Failing to make an adequate offer of proof results in a forfeiture of the issue. *Id.*

¶ 32 Here, at trial, defense counsel posed a question to Jackson on direct examination

regarding how long she had been a minister. The State objected to the question on the basis of relevance and the trial court sustained the objection. However, at no time during the trial did defendant present an offer of proof as to Jackson's anticipated response to the question at issue. Defendant's failure to make an adequate offer of proof has resulted in an inadequate record, which frustrates review.

¶ 33 Defendant argues that testimony regarding how long Jackson had been a minister was important to give the jury "background and context" and suggests that Jackson's answer to the question his counsel posed could have enhanced Jackson's credibility. However, even in his reply brief, defendant acknowledges that "[i]t is unclear how much the answer to the question of how long [Jackson] had been a pastor would have affected the jury's evaluation of her credibility." In this instance, the lack of clarity is due in large part to defendant's failure to properly preserve the issue for review.

¶ 34 Nevertheless, even if we were to excuse defendant's forfeiture, we would deem the alleged error harmless. "A nonconstitutional evidentiary error is harmless if there is no reasonable probability that the jury would have acquitted the defendant absent the error." *People v. Forrest*, 2015 IL App (4th) 130621, ¶ 57, 40 N.E.3d 477.

¶ 35 Here, we find no reasonable probability that defendant would have been acquitted of the charges against him had Jackson been permitted to testify regarding the length of time she had been a minister. Defendant argues the evidence presented at trial was close and came down to a credibility determination between Jackson and L.M. We disagree. There appears to be no dispute by defendant that L.M. was attacked, sexually assaulted, and significantly injured. Further, the State's evidence demonstrated that L.M. repeatedly and consistently reported that his

attacker was someone he knew and that he identified defendant as that individual both shortly following the attack and at the time of trial. L.M. had at least three interactions with defendant in the week leading up to the attack and at least one of those interactions involved threats by defendant directed at L.M. Miles and Carey corroborated L.M.'s testimony that defendant threatened to "beat" or "whoop" "[L.M.'s] ass."

¶ 36 Further, although defendant relies heavily on Jackson as his alibi witness, her testimony that defendant was with her at the time of the attack was far from certain. In fact, on cross-examination by the State, Jackson admitted that she did not specifically remember the date of the attack and, instead, based her testimony on her "every Saturday" routine. Further, the jury was presented with testimony that Jackson was a minister. Thus, the jury was provided with background and context to evaluate her credibility. Given all of the evidence presented, we find no reasonable probability that the result of defendant's trial would have been different had the jury also been told the period of time that Jackson had been a minister. Thus, even assuming the trial court erred in excluding Jackson's testimony, the error was harmless and reversal is unwarranted.

¶ 37

III. CONCLUSION

¶ 38 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 39 Affirmed.