2018 IL App (4th) 160089-U

NO. 4-16-0089

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
October 2, 2018
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macoupin County
JAMIE C. HAWLEY,	)	No. 15CM450
Defendant-Appellant.	)	
	)	Honorable
	)	Joshua Aaron Meyer,
	)	Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Presiding Justice Harris and Justice Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: The record on appeal does not affirmatively demonstrate the trial court improperly shifted the burden of proof, misapplied the law, or disregarded the applicable statutory elements. Finding no error, we conclude the plain-error doctrine does not apply and does not serve to excuse defendant's forfeiture of the issue raised for the first time on appeal.

¶ 2 Defendant, Jamie C. Hawley, was convicted of one count of domestic battery after a bench trial and sentenced to 208 days in jail. He appeals from his conviction and sentence, raising two claims of error. One, defendant claims his due-process rights were violated when the trial court shifted the burden of proof to him, requiring him to prove his innocence. He acknowledges he raises this issue for the first time in this appeal, but he urges this court to review the error under the first prong of the plain-error doctrine. That is, he insists the error tipped the scales of justice against him given that the evidence was so closely balanced. Two, he claims certain fines that were improperly imposed by the circuit clerk must be vacated.

¶ 3 Finding no error, we affirm defendant's conviction. With regard to defendant's second claim of error, we conclude we are without jurisdiction to review his claim regarding the clerk-imposed fines.

¶ 4 I. BACKGROUND

¶ 5 In September 2015, the State charged defendant with domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2014)), a Class A misdemeanor, alleging he knowingly caused bodily harm to Dianne Hawley, his sister, when he struck her with a closed fist on her neck. In October 2015, defendant put the State on written notice that he was asserting self-defense as an affirmative defense. In December 2015, defendant amended his assertion to specifically claim he may have made contact with Hawley (1) by holding his hands out in order to create space as she attacked him and (2) when he attempted to close the bathroom door to flee from her as she pursued him.

¶ 6 The bench trial took place on December 18, 2015. The record before us does not include a transcript or a report of proceedings of the trial. However, defendant submitted a bystander's report that was signed and approved by defendant's counsel, the prosecutor, and the trial judge pursuant to Illinois Supreme Court Rule 323(c) (eff. Dec. 13, 2005). The bystander's report summarizes the testimony of each witness and the trial court's ruling. According to the bystander's report, the evidence presented at trial was as follows.

¶ 7 Macoupin County deputy sheriff Matthew Tranter responded to a domestic-battery call at 575 Hickory in Royal Lakes and spoke with Hawley and Marge Brooks, defendant's and Hawley's mother. Tranter noticed red marks on Hawley but nothing on defendant. Defendant advised Tranter that Hawley was the aggressor and had been hitting him.

¶ 8 Hawley testified she had an argument with defendant about whether the lights in the house should be on or off. A physical altercation ensued. She claimed defendant pushed her

into the door and she fell down. She went into the bedroom. Defendant stood in the doorway of the bedroom, preventing Hawley from exiting. Hawley pushed defendant in order to leave the bedroom. She grabbed defendant's phone from his hands, and he ripped her glasses off. Hawley denied starting the altercation and denied defendant was trying to get away from her.

¶ 9 Brooks testified she was in the living room and witnessed the confrontation between Hawley and defendant. She called the police because defendant was hitting Hawley.

¶ 10 Defendant testified he and Hawley got into an argument that turned physical. Hawley pushed, hit, and scratched him. He denied hitting or pushing Hawley. He said he straightened his arms to keep her away. He denied being the aggressor and stated he was merely defending himself. He introduced photographs of his injuries depicting cuts and bruises as they appeared approximately one week after the altercation.

¶ 11 Following the summary of the trial testimony, the bystander report provided the following as the trial court's ruling: "Judge Meyer states that he doesn't believe that [defendant] didn't hit or push [Hawley]. [Defendant] found guilty of domestic battery."

¶ 12 This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 Defendant claims he is entitled to a new trial because the trial court improperly shifted the burden of proof to him to prove his innocence. He acknowledges he failed to properly preserve this issue for appeal by not objecting at trial or raising it in a posttrial motion. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). However, he insists the error rises to the level of plain error, which may allow for our review despite his procedural default. See *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005) (to bypass forfeiture, a reviewing court may consider an unpreserved error if 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). When applying plain error, the burden of persuasion remains with defendant. *Herron*, 215 Ill. 2d at 187. "The first step of plain-error review is determining whether any error occurred." *People v. Thompson*, 238 Ill. 2d 598, 613 (2010).

¶ 15 Under Illinois Supreme Court Rule 323(c) (eff. Dec. 13, 2005), when no verbatim transcript is available, a party can prepare a proposed report of proceedings "from the best available sources, including recollection." The party that has prepared the proposed report must serve it on the other parties, and they may in turn prepare proposed amendments or an alternative report. The trial court reviews the submissions and certifies the report to the extent that it finds the report accurate. Here, the State accepted the bystander's report that defendant submitted and the judge certified it.

¶ 16 However, the bystander's report provided is insufficient to demonstrate the trial court error advocated by defendant. For the purpose of our review, we have two lines of the bystander's report attributed to the court's decision: "Judge Meyer states that he doesn't believe that [defendant] didn't hit or push [Hawley]. [Defendant] found guilty of domestic battery." This statement can be reasonably interpreted (if we remove the double negatives) to mean the court believed defendant hit or pushed Hawley. Despite this interpretation, defendant insists "the more reasonable inference that can be made from the court's finding is that it misapplied the law." We disagree.

¶ 17 Defendant further claims the trial court's ruling does not take into account the required elements of the charged offense. The State charged defendant with domestic battery, alleging defendant caused bodily harm to Hawley (720 ILCS 5/12-3.2(a)(1) (West 2014)), not that he made physical contact of an insulting or provoking nature (720 ILCS 5/12-3.2(a)(2)

(West 2014)). With that said, and knowing defendant admitted touching Hawley but asserted self-defense, the issues for trial were (1) whether defendant caused Hawley to suffer bodily harm and (2) whether defendant was legally justified to use force. Because the trial court's ruling does not address these issues, defendant claims the "court's finding affirmatively confirms it applied the wrong subsection of the statute, and also failed to determine if [defendant] was justified in using force." Again, we disagree.

¶ 18 Without sufficient support from a more complete record, we cannot assume the trial court improperly shifted the burden of proof, misapplied the law, or disregarded the applicable subsection of the statute. The record simply does not allow for such an assumption. Instead, without a record affirmatively showing otherwise, this court must presume the trial judge knew the law and applied it properly. *People v. Howery*, 178 Ill. 2d 1, 32 (1997) ("[T]he trial court is presumed to know the law and apply it properly. However, when the record contains strong affirmative evidence to the contrary, that presumption is rebutted.").

¶ 19 Generally, any doubts arising from an incomplete record will be resolved against the appellant. *E.g.*, *People v. Ortiz*, 313 Ill. App. 3d 896, 900 (2000). This principle is commonly referred to as the *Foutch* principle. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). However, we cannot apply the *Foutch* principle so broadly as to render a bystander's report worthless; we must assume a bystander's report is materially complete on the points it addresses. *People v. Majka*, 365 Ill. App. 3d 362, 368 (2006). Nevertheless, the bystander's report here simply does not convince us the trial court committed error. Having found no error, we conclude defendant has forfeited the issue for purposes of appeal.

¶ 20 Defendant also contends this court should vacate the following fines improperly imposed by the circuit clerk: (1) $10 for arrestee's medical, (2) $5 for court finance, (3) $10 for

probation operations, and (4) $15 for state police operations. Circuit clerks may not assess any criminal fines on their own initiative. *People v. Vara*, 2018 IL 121823, ¶ 31. Although the clerk's action was improper, defendant cannot challenge the action through the direct appeal process. *Vara*, 2018 IL 121823, ¶ 23. On this issue, our supreme court concluded "the appellate court lacked jurisdiction to review the clerk's recording of mandatory fines that were not included as part of the circuit court's final judgment." *Vara*, 2018 IL 121823, ¶ 23. In light of the supreme court's decision in *Vara*, we find we have no jurisdiction to review the circuit clerk's imposition of these fines.

¶ 21 III. CONCLUSION

¶ 22 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.

¶ 23 Affirmed.