

2019 IL App (1st) 161743-U

No. 1-16-1743

Order filed February 13, 2019

Second Division

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 14 CR 1156
)	
TEVIN RATCLIFF,)	Honorable
)	James Michael Obbish,
Defendant-Appellant.)	Judge, presiding.

PRESIDING JUSTICE MASON delivered the judgment of the court.
Justices Lavin and Hyman concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant's convictions and sentences are affirmed over his contention that the trial court erred in admitting a photograph into evidence because the State did not establish he was the person depicted in the image. The fines, fees, and costs order is corrected.
- ¶ 2 Following a bench trial, defendant Tevin Ratcliff was convicted of aggravated battery with a firearm (720 ILCS 5/12-3.05(e)(1) (West 2012)) and aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2012)) and was sentenced to concurrent eight-year terms of

imprisonment. On appeal, Ratcliff contends that the trial court erred in admitting a photo of the alleged shooter into evidence. He argues the foundation for the photo was inadequate because the State did not establish that he was the person depicted in it. Ratcliff also challenges the propriety of three assessments imposed by the trial court.

¶ 3 We affirm Ratcliff's convictions and sentences, vacate the three assessments, and order correction of the fines, fees, and costs order.

¶ 4 Ratcliff's convictions arose from a shooting that occurred on December 22, 2013. That day, shortly after 2 p.m., Devonte Scott and his girlfriend, Tiffany Maxwell, walked out the front door of a two-flat building where Scott lived. Scott and Maxwell noticed two men across the street, one of whom was wearing jeans and an orange hoodie. Scott noticed that the other man wore a black hat. The two men crossed the street and walked in Scott's direction. Scott watched them, as they were acting "strangely." He had never seen either of the men before. In court, he identified Ratcliff as the man in the orange hoodie.

¶ 5 Ratcliff and the other man stopped in front of Scott's gate. It was sunny, nothing obstructed Scott's or Maxwell's view, and nothing was covering Ratcliff's face. Ratcliff pulled a black handgun from his waist, pointed it at Scott, and fired five or six shots. Scott shielded Maxwell, who banged on the locked first-floor door of the two-flat. Scott felt sharp pain in his right foot. After the shooting, Ratcliff and the other man ran from the scene. Scott's aunt flagged down a police officer and Scott was later taken to the hospital by ambulance where he remained for about two hours. Scott was treated for a bullet graze wound to his right foot, wore a walking boot for more than a month, and was unable to work for three months due to the injury.

¶ 6 After Scott was taken to the hospital, a man identified in the record only as “Ron Ron,” a friend of Scott’s cousin who was present in Scott’s home, showed Maxwell a photo he had taken on his cell phone. The photo depicts a man in an orange hoodie. Maxwell identified that person as the man who was firing at them.

¶ 7 Scott talked to the police at the hospital and told them shooter had a “fuzzy” hairstyle. He denied telling police the shooter had braids.

¶ 8 Maxwell later visited Scott at the hospital and showed him a photo she had taken on her phone of the photo Ron Ron had showed her earlier. Scott recognized the man in the photo as the person who shot him and so informed police who were also shown the photo. The person’s hairstyle is not visible in the photo. Maxwell did not know when the photo Ron Ron showed her was taken or who took it.

¶ 9 Five 9 millimeter shell casings were recovered from the area in front of Scott’s residence. Based on the information they learned from Scott and Maxwell, police assembled a photo spread that included Ratcliff’s picture.

¶ 10 Five days later, detectives came to Scott’s residence and showed him the photo array. When Scott viewed the spread, he immediately recognized Ratcliff as “[t]he person that shot me.” The next day, Scott and Maxwell went to the police station to view a lineup. Again, Scott immediately recognized Ratcliff as “the person that shot me.” Maxwell separately viewed the lineup and likewise identified Ratcliff as the shooter. Both the photo array and the photo of the lineup show Ratcliff with a close-cut hairstyle that does not appear to be braided.

¶ 11 At Ratcliff’s trial, Scott and Maxwell recounted the events of December 22, 2013, and made in-court identifications of Ratcliff as the shooter. The prosecution showed Scott and

Maxwell the photo Maxwell had taken on her cell phone, labeled as People's Exhibit #1. The cell phone's screen depicts the blurry face, shoulders, and right hand of a person wearing an orange hoodie, further distorted by a reflection of a tree on the screen. During Scott's testimony, the following exchange ensued:

“Q. What is this a photograph of?

A. The photograph of the person that shot me.

* * *

Q. * * * [I]s this a picture of somebody on [a] cell phone?

A. Yes.

Q. And whose cell phone is this?

A. [Maxwell's] cell phone.

Q. The picture on the cell phone, is that the picture that you looked at [at] the hospital?

A. Yes.

A. Other than the fact that there's some glare on this from the cell phone being photographed, is this picture of the person a true and accurate photograph of the person that [Maxwell] showed you?

A. Yes.

Q. And you said that you identified this person as the shooter, is that correct?

A. Yes.”

¶ 12 Maxwell likewise identified the photo she took of the photo on Ron Ron's phone and stated that it truly and accurately depicted the photo she was shown by Ron Ron on the day of the shooting. She further identified People's Exhibit #1 as "a picture of the guy that shot at us."

¶ 13 Defense counsel objected to both Scott's and Maxwell's testimony on the basis of foundation. Counsel also objected to the admission of the cell phone photo into evidence on the same basis. The court overruled the objection, finding that both Scott and Maxwell identified the exhibit as a picture of the person who shot at them.

¶ 14 After the State rested, Ratcliff moved for a directed finding. The trial court granted the motion with regard to two counts charging aggravated unlawful restraint, one count charging aggravated assault, and two counts charging aggravated unlawful use of a weapon.

¶ 15 Ratcliff called Chicago police officer Derrick Cross, who testified that he spoke with Scott at the hospital. By the time of trial, Cross had no independent recollection of the description of the shooter given to him by Scott. When Cross filled out his report after speaking with Scott, he listed Scott's description of the shooter as a "male black with an orange hoodie." Cross also checked the box indicating a description of the shooter as having a "braids hairstyle." There was no box on the form for a "fuzzy" hairstyle, but he could have instead checked a box indicating an "Afro" hairstyle. While Cross was not shown a picture on a cell phone at the hospital, there were other responding officers present.

¶ 16 During closing arguments, defense counsel argued that the State had not established Ratcliff's identity as the shooter. Among other things, counsel noted that five days passed between the shooting and Scott's viewing of the photo array. Counsel stated, "During that time him and his girlfriend only have a picture of Tevin who they believed is the shooter." Counsel

also stated that Scott and Maxwell had been looking at a “photograph of Tevin” for those five days and argued that “Ron Ron showed a picture of Mr. Ratcliff that we still believe is inadmissible based on a lack of foundation.”

¶ 17 The trial court acquitted Ratcliff of all counts of attempted first degree murder and one of three counts of aggravated discharge of a firearm. The court found Ratcliff guilty of the aggravated battery of Scott, aggravated discharge of a firearm in the direction of Scott, and aggravated discharge of a firearm in the direction of Maxwell, and merged the aggravated discharge count regarding Scott into the aggravated battery count. In announcing its verdict, the court, referencing the cell phone photo, observed that the victims’ exposure to the photo actually inured to Ratcliff’s benefit because it allowed him to argue that their later identifications of him as the shooter in the photo array and the lineup were influenced by that photo. But the court ultimately concluded that “I don’t think [Scott and Maxwell] were identifying Mr. Ratcliff merely because somebody else had shown them the photo in a cell phone. I believe they were identifying Mr. Ratcliff because they actually had seen him produce the weapon and open fire.”

¶ 18 Ratcliff filed a motion for a new trial in which he argued, in relevant part, that “[t]he State was allowed to introduce a photograph of the defendant over objection that was more prejudicial than probative,” and “[t]he actions of another person (‘Ron Ron’), where ‘Ron Ron’ produced the above mentioned photograph, led the witnesses to mistakenly believe the defendant was the shooter.” The trial court denied Ratcliff’s motion, noting that “[t]he circumstances surrounding Mr. Ratcliff’s identification were sufficiently credible so that the court was able to determine that the State had, in fact, proven the defendant’s guilt beyond a reasonable doubt.”

¶ 19 The court later sentenced Ratcliff to concurrent eight-year sentences for aggravated battery and aggravated discharge of a firearm, to be followed by three years of mandatory supervised release, and imposed \$909 in fines, fees, and costs. The court denied Ratcliff's motion to reconsider sentence and Ratcliff timely appealed.

¶ 20 Here, Ratcliff first contends that the trial court erred in admitting the cell phone photo Maxwell took of Ron Ron's cell phone. He argues that where the State did not establish that he was the person depicted in the image on the phone's screen, the photo was not relevant and the foundation for it was inadequate. Ratcliff argues that while the State established Scott and Maxwell believed the person in the picture was the person who shot at them, "[m]issing from the State's evidence was anyone with actual personal knowledge that People's Exhibit #1 was Tevin Ratcliff." He asserts that the trial court erred in allowing the photo into evidence absent a sufficient foundation from a witness, such as Ron Ron, who possessed personal knowledge of who was depicted in the photo and could testify that it was correctly portrayed. He maintains that the error was not harmless since Scott and Mitchell viewed the shooter under stressful conditions and did not know Ratcliff prior to the shooting. Ratcliff concludes that because the State did not establish that he was "the shooter in People's Exhibit #1," his convictions should be reversed and the cause remanded for a new trial.

¶ 21 As an initial matter, we note that Ratcliff has changed his theory regarding why he believes the photo should not have been admitted into evidence. When defense counsel objected to the photo during Scott's testimony, he asserted that "there's no foundation of where that picture is coming from." During Maxwell's testimony, he objected generally "to foundation" and on the basis of hearsay. When the State sought to admit the photo into evidence, defense counsel

again objected generally on the basis that there was not “proper foundation for that photograph to be in.” In closing, after referring to the photo as “a picture of Tevin,” “the photograph of Tevin,” and “a picture of Mr. Ratcliff,” counsel argued that the photo was inadmissible “based on lack of foundation.” Counsel then switched gears in the motion for a new trial, asserting that the “photograph of the defendant” was more prejudicial than probative and led the witnesses to mistakenly believe Ratcliff was the shooter. Now, Ratcliff contends the foundation for the photo was inadequate because the State did not establish that it was an image of him.

¶ 22 Although defense counsel objected to admission of the photo at trial, the ground upon which he is now challenging it was not brought to the attention of the trial court. During trial, counsel never argued that the foundation for the photo was inadequate due to a lack of evidence that his client was the person depicted in it. In fact, in closing arguments and the motion for a new trial, counsel embraced the opposite scenario, describing the photo as an image of Ratcliff three separate times in closing and once again in the posttrial motion. Our supreme court has held that a party must make a specific objection in order to preserve that same issue for review. *People v. O’Neal*, 104 Ill. 2d 399, 407-08 (1984). This requirement prevents appellants from asserting objections that are different from the ones they advanced below, and ensures that the trial court had an opportunity to review the claim. *People v. Heider*, 231 Ill. 2d 1, 18 (2008). Here, Ratcliff did not present his current contention to the trial court. As such, it is forfeited for appeal. *People v. Phipps*, 238 Ill. 2d 54, 62 (2010).

¶ 23 Forfeiture notwithstanding, Ratcliff’s contention fails on the merits.

¶ 24 The admission of evidence is a matter within the sound discretion of a trial court that will not be reversed absent a showing of an abuse of that discretion. *People v. Becker*, 239 Ill. 2d 215,

234 (2010). An abuse of discretion will be found where the trial court's decision is arbitrary, fanciful, or unreasonable, or where no reasonable person would agree with the trial court's position. *Id.*

¶ 25 In general, the steps of an investigation are relevant to explaining the State's case, and the State must be allowed to explain why a previously unidentified defendant became a suspect. *People v. Flores*, 2014 IL App (1st) 121786, ¶ 72. Here, the photo was relevant to establish how Ratcliff was identified as a suspect in the case. See *id.* ¶ 73. Maxwell testified that she showed the photo to the police, and Cunningham testified that after speaking with Maxwell, Scott, and some of the responding officers, he assembled a photo spread that included Ratcliff's picture. Given these circumstances, Ratcliff's argument that the photo should not have been admitted because it was not relevant lacks merit.

¶ 26 With regard to foundation, an adequate foundation for a piece of documentary evidence is laid when the document is identified and authenticated. *People v. Alsup*, 373 Ill. App. 3d 745, 758 (2007). Authentication of a document occurs when evidence is presented that demonstrates the document is what its proponent claims. *Id.* Such evidence may include the testimony of a witness with knowledge that a matter is what it is claimed to be. Ill. R. Evid. R. 901(b)(1) (eff. Jan. 1, 2011); *Flores*, 2014 IL App (1st) 121786, ¶ 74.

¶ 27 Maxwell testified that People's Exhibit #1 was a photo of her cell phone, the cell phone screen depicted a picture of the person that shot at her, and the exhibit truly and accurately represented what she was shown by Ron Ron the day of the shooting. Similarly, Scott testified that People's Exhibit #1 was a photo of Maxwell's cell phone, the screen depicted an image of the person who shot him, and the image on the cell phone was the one Maxwell showed him at

the hospital. Thus, Maxwell's and Scott's testimony authenticated that People's Exhibit #1 was what it was claimed to be: the photo of an image on Maxwell's cell phone depicting the person who shot at them. The foundation for the exhibit was sufficient for its admission into evidence. See *Flores*, 2014 IL App (1st) 121786, ¶ 74. The foundational question Ratcliff now advances – whether it was established that the person in the image was actually him – was, in effect, conceded at trial. Given that Ratcliff proceeded at trial as though there was no question that the person depicted in People's Exhibit #1 was him, and in light of Maxwell's and Scott's authenticating testimony, we cannot find that the trial court abused its discretion in allowing the photo into evidence.

¶ 28 Finally, we agree with the State that even if there were any error in admitting the exhibit, such error would be harmless beyond a reasonable doubt. Scott identified Ratcliff as the shooter in a photo array, and both Scott and Maxwell identified Ratcliff as the shooter in a lineup and in court. In explaining its guilty finding, the trial court specifically stated it believed Scott and Maxwell identified Ratcliff not because of the image on the cell phone, but “because they actually had seen him produce the weapon and open fire.” Where properly admitted evidence is overwhelming, an error in admitting evidence does not compel reversal. *People v. Nixon*, 2015 IL App (1st) 130132, ¶ 120. Further, the experienced trial judge aptly noted that the existence of the photo worked to Ratcliff's advantage because it enabled him to argue that Scott and Maxwell identified him in the photo array and the lineup as the shooter based on the photo, not because they recognized him from the incident. In any event, the trial court did not rely on the cell phone photo in finding Ratcliff guilty, but rather, on the repeated positive and credible identifications

made by Scott and Maxwell. Therefore, even if we were to find a preserved error for review, reversal would not be warranted.

¶ 29 Ratcliff's second contention on appeal is that the trial court improperly imposed three assessments against him. Ratcliff acknowledges that he did not raise the issue of fines and fees in the trial court. Nevertheless, Ratcliff argues that we may reach his arguments under the doctrine of plain error or because trial counsel was ineffective for failing to ensure that the imposed assessments were correct. The State has responded that the fines, fees, and costs order contains errors which should be corrected. By this statement, the State has waived any forfeiture argument. *People v. Brown*, 2018 IL App (1st) 160924, ¶ 25; *People v. Smith*, 2018 IL App (1st) 151402, ¶ 7. As such, we will address Ratcliff's claims. Our review of the propriety of the trial court's imposition of fines and fees is *de novo*. *Brown*, 2018 IL App (1st) 160924, ¶ 25; *Smith*, 2018 IL App (1st) 151402, ¶ 7.

¶ 30 Ratcliff has identified three assessments that he contends must be vacated. The first of these is a \$25 Violent Crime Victim Assistance fine imposed pursuant to section 10(c) of the Violent Crime Victims Assistance Act. 725 ILCS 240/10(c) (West 2010). Ratcliff asserts, and the State correctly concedes, that subsection (c), which provided for this assessment, was only effective through July 15, 2012. See Pub. Act 97-816, § 10 (eff. July 16, 2012) (amending 725 ILCS 240/10). Because the instant crime was committed after this date, the assessment should not have been imposed.

¶ 31 The second assessment Ratcliff challenges is a \$25 Electronic Citation Fee, which the trial court imposed pursuant to section 27.3e of the Clerks of Courts Act. 705 ILCS 105/27.3e (West 2012). The State concedes that this assessment should not have been imposed. We agree

with the parties, as the Electronic Citation Fee does not apply to felonies. *People v. Moore*, 2014 IL App (1st) 112592-B, ¶ 46.

¶ 32 The third assessment Ratcliff challenges is a \$5 Court System fee. 55 ILCS 5/5-1101(a) (West 2012). Again, the State concedes the issue and we agree. This assessment applies only to vehicle offenses. *People v. Williams*, 394 Ill. App. 3d 480, 483 (2011).

¶ 33 We vacate the \$25 Violent Crime Victim Assistance fine, the \$25 Electronic Citation fee, and the \$5 Court System fee, thus reducing the total amount of Ratcliff's fines, fees and costs from \$909 to \$854. We direct the circuit court to correct the fines, fees, and costs order accordingly.

¶ 34 Affirmed; remanded to the circuit court for correction of the fines, fees, and costs order.