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2019 IL App (3d) 170276-U

Order filed June 5, 2019

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2019

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 10th Judicial Circuit, Tazewell County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-17-0276
)	Circuit No. 16-CF-381
HARVEY PETER BLAKELY,)	
Defendant-Appellant.)	Honorable Stephen A. Kouri, Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Presiding Justice Schmidt and Justice Lytton concurred in the judgment.

ORDER

¶ 1 *Held:* The court did not err when it allowed the jurors to view a trial exhibit during deliberations.

¶ 2 Defendant, Harvey Peter Blakely, appeals his conviction and sentence arguing that the Tazewell County circuit court erred when it allowed the jury to view a trial exhibit during its deliberations. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The State charged defendant with burglary (720 ILCS 5/19-1(a) (West 2016)). The charges were based on the allegation that defendant entered a Kohl's retail store and committed a theft.

¶ 5 During the jury trial, the State admitted two video recordings from security cameras at the Kohl's store. The two videos showed an individual enter the Kohl's store. The individual approached a glass jewelry case and broke the glass with a pipe. The individual then exited the store and drove away.

¶ 6 While the jury was deliberating, the jurors wrote a note to the court requesting to view the videos from the security cameras at Kohl's. In responding to the jury's request, the State informed the court that the DVD which contained the video recordings presented at trial also contained video recordings from other security cameras that were not presented. The DVD had individual files from each camera recording. The State suggested providing the jury with specific instructions on how to properly view only those recordings which were admitted into evidence at trial. Defendant agreed, and the parties created a detailed instruction on how to play the DVD. The written instructions identified the exact file names that the jury was permitted to open and view. The instructions set forth exactly how to open the specified files. Once the instructions were created, the court brought the jury foreman into the court room and explained that it would provide the jury with a laptop. The laptop had the DVD loaded, and the court told the foreman to follow the written instructions when viewing the video recordings. The court also admonished the foreman to access only those files which were identified in the instructions. The foreman then took the laptop into the deliberation room.

¶ 7 Ultimately, the jury found defendant guilty. The court sentenced defendant 15 years' imprisonment.

¶ 8 II. ANALYSIS

¶ 9 Defendant claims that the court erred when it provided the jury with the DVD containing the Kohl’s security camera footage during deliberations. Defendant concedes he has forfeited review of this error because he did not object or offer any alternative means of providing the jury with the video recordings. Despite this, he contends that the error constitutes plain error. The plain error doctrine allows an appellate court to remedy a clear and obvious error. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). However, it is well settled that, where there is no error, there can be no plain error. *Id.* Therefore, we first determine whether error occurred at all.

¶ 10 In this case, defendant does not dispute that the jury was permitted to view the video recordings that were actually presented at trial. Instead, defendant contends that error occurred because the DVD containing the admitted video recordings also contained video files that were not presented at trial. Because the jury was provided with detailed instructions on how to correctly view the video recordings, we find no error occurred.

¶ 11 A circuit court has discretion to determine whether to grant or deny the jury’s request to review evidence or testimonial transcripts. *People v. Kliner*, 185 Ill. 2d 81, 163 (1998). A circuit court is also vested with discretion as to what exhibits the jury may have in the jury room. *People v. White*, 2011 IL App (1st) 092852, ¶ 59. However, a circuit court errs when it allows a deliberating jury to view evidence that was not presented at trial. *People v. Long*, 316 Ill. App. 3d 919, 928 (2000).

¶ 12 Here, we find that the court, prosecution, and defense implemented a reasonable solution to address the potential that the jury could view video recordings that were not presented at trial. The court admonished the jury foreman that the jury was to view only those video files that were identified in the instructions. The written instructions identified the specific file names that the

jury was permitted to view. If followed, there is no concern that the jury may have seen the video files that were not presented at trial, because the only way to view those files was to open them individually. The jury is presumed to follow instructions. *People v. Pulliam*, 206 Ill. 2d 218, 256 (2002). Further, there is no indication that the jury did in fact view anything other than those video recordings which were presented at trial. Consequently, we find no error occurred. Therefore, there can be no plain error.

¶ 13

III. CONCLUSION

¶ 14

The judgment of the circuit court of Tazewell County is affirmed.

¶ 15

Affirmed.