2020 IL App (2d) 170491-U
No. 2-17-0491
Order filed February 28, 2020

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. WILLIE MABRY, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Kane County. No. 16-CF-1615 Honorable Linda S. Abrahamson, Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices McLaren and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: Defense counsel was not ineffective and plain error did not occur because evidence of domestic battery was overwhelming; police officers who arrested defendant testified at trial, without objection, that they had encountered defendant several times before and described him as "physical, intimidating," and "a handful" when uncooperative.

¶ 2 Following a jury trial, defendant, Willie Mabry, was convicted of domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2016)) and sentenced to four years' imprisonment. He appeals, contending that his counsel was ineffective for failing to object to testimony by two police officers

that they had encountered defendant previously. Alternatively, he contends that admitting this evidence was plain error. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged with home invasion, two counts of domestic battery, and unlawful restraint. The State nol-prossed the home invasion charge before trial.

¶ 5 At trial, Enedelia Ramirez testified that, on September 14, 2016, she was in her Elgin apartment when she heard yelling outside. She looked out and saw a man standing over and punching a woman who was on the ground. Ramirez did not see the woman hit the man, but she admitted looking away briefly to call 911. The woman sounded upset, asking the man to stop. Ramirez identified Rebecca Burnett as the woman and defendant as the man.

¶ 6 Elgin police sergeant Ken Ericson investigated the incident and encountered Burnett and defendant, whom Ericson recognized. Ericson had "met him many times" in his career. Defendant continued yelling at Burnett. He had a cut on his head and scratches on his chest.

¶ 7 Monique Aurand testified that Burnett was her next-door neighbor. On the date of the incident, she was on her porch with friends when they heard yelling. She saw Burnett and defendant run out of their house and into the street. Aurand described defendant "[g]oing after" Burnett. She told an officer at the scene that defendant caught up to Burnett and began punching her in the head while she was against a chain-link fence.

¶ 8 Julianne Baldwin testified that she lived upstairs from Burnett. On the day of the incident, she heard defendant and Burnett arguing for 30 to 40 minutes. She heard Burnett say, " '[p]lease stop,' " and defendant tell her to " 'shut up.' " Later, Burnett, wearing only a nightgown, ran out of the house. Defendant followed her out a short time later. He chased her around a car and began

hitting her with his fist. Burnett told Baldwin to call the police but she did not because her phone was not charged.

¶ 9 Burnett testified that she and defendant were living together at the time of the incident. She answered most other questions, "I don't know," or "I don't remember." On cross-examination, she acknowledged that she had been arrested for stabbing defendant and that a condition of her bond was not to have contact with him. They argued every day, but they continued to live together.

¶ 10 Elgin police officer John Slocum responded to the incident on September 14, 2016. He found Burnett upset and crying. She said that defendant had punched her in the head several times. As Slocum interviewed Burnett, defendant was still shouting at her. Burnett was complaining of head and neck pain, so an ambulance took her to the hospital.

¶ 11 At the hospital, Burnett wrote a statement. She said that defendant entered the house without her permission and found her asleep in the bedroom. He refused to let her leave the bedroom for 45 to 60 minutes and choked her. Burnett eventually escaped, but defendant followed her into the street, where he began punching her. On cross-examination, Slocum recalled seeing an injury to defendant's head, but did not notice any injuries to Burnett.

¶ 12 Officer Tim Young, who also investigated the incident, recognized defendant "[f]rom previous contacts on the job." He assisted Ericson because defendant is "a very physical, intimidating, and capable man" and "[i]f he chooses not to cooperate, then he will be a handful." Young noticed that defendant had a small cut on his head and scratches on his chest.

¶ 13 Officer Todd Pavoris described a domestic violence incident between defendant and Burnett on August 24, 2011. On that occasion, Burnett said that defendant struck her in the eye and nose three or four times. As she tried to leave, defendant blocked the doorway, struck her, pinned her to the ground, and tried to choke her.

¶ 14 Defendant testified that he and Burnett were living together on the day of the incident. They argued frequently and "[s]ometimes it got physical." On the day in question, Burnett began arguing with him as soon as they got up, accusing him of cheating on her. The argument lasted 45 minutes to an hour. Defendant said that he was going to pack his clothes, and Burnett struck him twice with a glass cross. He wrestled with Burnett to prevent her from hitting him again. Burnett ran out of the house, and defendant followed to ensure that she would not pick up something else to hit him with.

¶ 15 Defendant testified that he needed to defend himself from Burnett because she had recently cut him on the right arm with a knife. Police had responded to another incident in which Burnett pulled a knife on him.

¶ 16 Defendant acknowledged that he had followed Burnett out of the house rather than run in another direction. However, he denied hitting her. He testified that he never hit Burnett with a closed fist because she could have been badly hurt.

¶ 17 Elgin police officers testified that defendant appeared at the police station with a cut on his arm. Burnett was also there and appeared to be intoxicated. Police responded to defendant's home a few months later to investigate a report of someone with a weapon. Defendant's brother testified that he saw Burnett going after defendant with a knife.

¶ 18 The jury found defendant guilty of both counts of domestic battery, but not guilty of unlawful restraint. The court sentenced him to four years' imprisonment, and defendant timely appeals.

¶ 19 II. ANALYSIS

¶ 20 Defendant contends that defense counsel was ineffective for failing to object to testimony by police officers that defendant was "very physical, intimidating, and capable," and could be a

"handful" when uncooperative. Alternatively, defendant argues that the admission of the testimony was plain error.

¶ 21 A defendant has the constitutional right to the effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984). To prevail on such a claim, "a defendant must show both that counsel's performance was deficient and that the deficient performance prejudiced the defendant." *People v. Petrenko*, 237 Ill. 2d 490, 496 (2010). To establish deficient performance, the defendant must show his attorney's performance fell below an objective standard of reasonableness. *People v. Evans*, 209 Ill. 2d 194, 220 (2004). To establish the second prong of *Strickland*, a defendant must show that, "but for counsel's unprofessional errors, there is a reasonable probability that the result of the proceeding would have been different." *People v. Houston*, 229 Ill. 2d 1, 4 (2008). "A defendant must satisfy both prongs of the *Strickland* test and a failure to satisfy any one of the prongs precludes a finding of ineffectiveness." *People v. Simpson*, 2015 IL 116512, ¶ 35.

¶ 22 Defendant argues that defense counsel should have objected to the officers' testimony that they had encountered defendant on previous occasions. Evidence that the police are familiar with a defendant at least implies that the defendant has been engaged in illicit activity before and for that reason " 'is better avoided, unless somehow relevant.' " *People v. Carter*, 297 Ill. App. 3d 1028, 1036 (1998) (quoting *People v. Bryant*, 113 Ill. 2d 497, 514 (1986)).

¶ 23 However, even if counsel's failure to object to the evidence of prior police contacts was unreasonable, we conclude that defendant was not prejudiced. Defendant argues that the challenged testimony was extremely prejudicial because the case boiled down to a simple credibility battle between defendant and Burnett. Further, defendant postulates that Burnett testified to virtually nothing of substance at trial, and therefore, the jury must have given considerable weight to the officers' testimony about their prior contacts with defendant.

¶ 24 Defendant's argument disregards the overwhelming evidence of his guilt apart from Burnett's testimony. Three independent witnesses saw defendant chase Burnett out of the house and punch her while she asked him to stop and requested assistance. Slocum testified that Burnett gave two contemporaneous statements that defendant had struck her without provocation. The State introduced evidence that defendant had battered Burnett on a previous occasion. The State also introduced the recording of Ramirez's 911 call in which she described defendant repeatedly hitting Burnett, as well as photographs of Burnett that Slocum took at the hospital.

¶ 25 Against that evidence, defendant offers only his own self-serving testimony that, he was afraid of Burnett, but followed her out of the house anyway, attempting to prevent her from gaining access to anything with which she could attack him. He also presented evidence that Burnett had previously cut him with a knife. However, none of the witnesses testified to seeing Burnett with a weapon on the date of the incident. Indeed, the witnesses testified that defendant chased Burnett while she pleaded with him to stop. Defendant admitted on cross-examination that, although he claimed to be afraid of Burnett, he followed her out of the house rather than run in another direction. Defendant's testimony was contrary to virtually all of the other evidence, as well as common sense. As the evidence of defendant's guilt was overwhelming, he was not prejudiced by counsel's failure to object to evidence that police officers had encountered defendant previously.

¶ 26 For similar reasons, admission of the evidence was not plain error. Generally, failing to object to allegedly improper evidence when introduced forfeits the issue on appeal. *People v. Hudson*, 228 Ill. 2d 181, 190 (2008). An exception exists for plain error. Plain error occurs where (1) the evidence is closely balanced, or (2) the error is of such magnitude that the defendant is denied the right to a fair trial and remedying the error is necessary to preserve the integrity of the judicial process. *People v. Johnson*, 208 Ill. 2d 53, 64 (2003).

¶ 27 As noted, the evidence of defendant's guilt was overwhelming. And defendant does not seriously contend that the officers' somewhat vague testimony that they encountered defendant on previous occasions and that he could be a "handful" was of such magnitude that the fairness of his trial was compromised.

¶ 28 III. CONCLUSION

¶ 29 The judgment of the circuit court of Kane County is affirmed.

¶ 30 Affirmed.