2014 IL App (1st) 120709-U

FIRST DIVISION
DATE: April 14, 2014

No. 1-12-0709

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	Nos. YP 750662
	)	YP 750663
	)	YP 750664
	)	YP 750665
	)	
ANGELO J. BENACKA,	)	Honorable
	)	Gregory R. Ginex,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Justices Cunningham and Delort concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for driving with a suspended license is affirmed where the trial court properly admitted defendant's driving abstract as a self-authenticating public record and did not assume the role of prosecutor while briefly questioning a police officer witness regarding the relevance of defendant's driving abstract.

¶ 2 Following a bench trial, defendant Angelo Benacka was convicted of failing to stop at a stop sign, driving with a suspended license, and driving under the influence (DUI). He was sentenced to two years of supervision. Defendant appeals his conviction for driving with a suspended license, arguing that (1) the State failed to lay the proper foundation for admission of

his certified driving abstract and (2) the trial court improperly assumed the role of prosecutor when it questioned a witness to lay the proper foundation, after the State was unable to do so.

¶ 3 At trial, Officer Joseph Gulino testified that at about 7:54 p.m. on May 26, 2010, he stopped defendant's car at the intersection of Chestnut and Edgington in Franklin Park, Illinois. He observed that defendant did not come to a complete stop at the stop sign of the intersection and pulled over defendant's vehicle. Gulino asked defendant for a driver's license and proof of insurance and defendant replied that his license was suspended.

¶ 4 Gulino also detected a strong odor of an alcoholic beverage, noticed that defendant's face was flushed, that defendant was shaking, and his eyes were watery. Defendant performed the walk-and-turn, one-legged stand, and the finger-to-nose field sobriety tests. Gulino determined that defendant failed the tests and was under the influence of alcohol, and consequently, he placed him in custody for driving on a suspended license and DUI.

¶ 5 The State then asked that State's Exhibit #3, defendant's driving abstract, be admitted into evidence, and the court interrupted, stating the document must be identified first. The prosecutor replied that "it would be our contention it's an official record," and the court replied, "I understand it's an official record. It's got to be identified. You can't just introduce documents or items." The State then requested a brief recess, without identifying the basis for the recess. The court granted the State's request, and the trial was recessed.

¶ 6 When the trial resumed, the State asked Gulino how he determined that defendant was driving while his license was suspended. Gulino replied that he learned either through the squad car computer or via radio dispatch. The State then marked the abstract as State's Exhibit #3 and asked that it be entered into evidence, stating that the document is a certified abstract, and asking

the court to take notice of defendant's name and date of birth. The court told the Assistant State's Attorney that she needed to have the witness identify the document. The State inquired the same of Gulino, and he replied that the document appeared to be a "certified statutory summary suspension" for defendant. After additional questioning, defense counsel objected to the foundation of the document, and the court sustained the objection. The State argued that the document is self-authenticating because it is a certified driving abstract. The court replied that while the document may well be a self-authenticating document, the State must lay a proper foundation for the admission of the document relative to defendant, and show that the document is in fact the same abstract for defendant. It explained that the document must be relevant to defendant.

¶ 7 The State then asked Gulino whether he learned defendant's driver's license number, and whether it is the same as that listed on the abstract. After Gulino replied affirmatively, the State again asked that the abstract be admitted into evidence. Defense counsel stated that it continued its objection. At which point, the following exchange occurred between the trial court and Gulino:

"Q. All right. Officer, did you run this Defendant's driving background?
A. Yes.
Q. When you ran it, did you obtain results of that background?
A. Yes.
Q. What was that result?
A. That his license status was suspended at the time of the stop. Anything else I can't recall at this time.
Q. Now, you've just seen [the driving abstract] for identification, is that correct?
A. Yes.
Q. Is that, in fact, the same information you received from the abstract you ran?
A. Yes.

Q. Does that abstract truly and accurately reflect the information you received?
A. Yes."

Defense counsel did not object to the court's questioning but continued his objection to the document's admission into evidence.

¶ 8 The trial court considered its notes and then admitted the exhibit over defense counsel's objection. The court found defendant guilty of DUI, failing to yield at a stop sign, and driving with a suspended license. Regarding the license suspension, the court found that defendant "admitted and there [was] sufficient basis to believe the suspension based on the information provided, the abstract that's certified admitted into court, based on the summary suspension stop in effect." Defendant was sentenced to two years of supervision.

¶ 9 On appeal, defendant contends the State failed to lay the proper foundation for admission of his certified driving abstract and that the trial court improperly assumed the role of prosecutor when it questioned Officer Gulino, laying the proper foundation. As a result, defendant argues, his conviction for driving with a suspended license should be reversed.

¶ 10 Initially, the parties disagree about the standard of review to be applied. Defendant argues that a *de novo* standard of review should be applied "when a trial court's admission of hearsay evidence does not involve fact-finding or weighing witness credibility," and here, he argues, the trial court erred in admitting the certified copy of his driving abstract. See *People v. Williams*, 188 Ill. 2d 365, 368-69 (1999). The State contends, however, that we review the trial court's admission of the driving abstract for an abuse of discretion. See *People v. Tenney*, 205 Ill. 2d 411, 436 (2002); *People v. Jones*, 2012 IL App (1st) 093180. *Williams* is inapplicable here because, as our supreme court explained, *Williams* held that "reviewing courts should defer to trial court's evidentiary rulings even if they involve legal issues unless [the] 'trial court's

exercise of discretion has been frustrated by an erroneous rule of law.' " *People v. Taylor*, 2011 IL 11067, ¶ 27 (quoting *Williams*, 188 Ill. 2d at 369). The instant case does not involve an "erroneous rule of law," thus this court reviews defendant's claim for an abuse of discretion.

¶ 11 Turning to the merits, we now decide whether the trial court abused its discretion in admitting defendant's driving abstract. Defendant contends the driving abstract was inadmissible hearsay offered for the truth of the matter therein. *People v. Williams*, 238 Ill. 2d 125, 143 (2010). The State responds that the driving abstract was admissible as a self-authenticating public record. See Ill. Evid. Rules 902(1) and 803(8). (Eff. Jan. 1, 2011).

¶ 12 Before the Illinois Rules of Evidence were adopted, section 115 of the Code of Criminal Procedure of 1963 recognized public records as a well-established exception to the hearsay rule in criminal cases. 725 ILCS 5/115(5) (West 2010); see also *Arlington Heights v. Anderson*, 2011 IL App (1st) 110748, ¶17. For admission of public records as an exception to the hearsay rule, "the record must be made in the ordinary course of business and is authorized by statute, rule, or regulation, or required by the nature of the public office." *People v. Turner*, 233 Ill. App. 3d 449, 452 (1992).

¶ 13 Pursuant to the Illinois Vehicle Code (Code), the Secretary of State (Secretary) is required to retain records of revocation and suspension. 625 ILCS 5/6-117(b) (West 2010). The Secretary is also authorized to "prepare under the seal of the Secretary of State certified copies of any records of his office and every such certified copy *shall be admissible in any proceeding in any court*[.]" (Emphasis added.) 625 ILCS 5/2-108 (West 2010). The Secretary may also provide abstracts of a driver's record to any law enforcement agency or court. 625 ILCS 5/2-123(g)(5) (West 2010).

¶ 14 Here, defendant's driving abstract bears the seal of the State of Illinois and the facsimile signature of the Illinois Secretary of State, Jesse White. The document also states that is an "official record," albeit a computerized one. See *Arlington Heights*, 2011 IL App (1st) 110748, ¶ 18 (noting that Rule 803(8) "makes no distinction between public records and computerized public records."). Further, there is no indication that defendant's driving abstract provided unreliable information; defendant has not challenged any of the information contained in his abstract. See *Arlington Heights*, 2011 IL App (1st) 110748, ¶ 14. Although the proponent of a public record must show that the document is reliable and accurate in order to lay a proper foundation, (*Arlington Heights*, 2011 IL App (1st) 110748, ¶ 14), the requirement of laying a proper foundation does not apply to a self-authenticating public record. *People ex rel. Madigan v. Kole*, 2012 IL App (2d) 110245, ¶ 56 (" 'the [federal] public records exception is one of the few hearsay exceptions that does not require a foundation' since the documents are presumed trustworthy[.]" (quoting *United States v. Loyola-Dominquez*, 125 F.3d 1315, 1318 (9th Cir. 1997)). The trial court did not abuse its discretion when it admitted the driving abstract.

¶ 15 While the parties raise the issue of whether defendant's driving abstract was properly admitted as a business record, we need not reach this issue having found that the document was properly admitted as a self-authenticating public record. Similarly, defendant's cited cases, *People v. Clark*, 108 Ill. App. 3d 1071, 1080-81 (1982), and *People v. Virgin*, 302 Ill. App. 3d 438, 449-51 (1998), are inapposite because they involve the business records exception.

¶ 16 Defendant next contends that the trial court improperly assumed the role of the prosecutor in questioning Officer Gulino to lay a foundation for admission of defendant's driving abstract. The State replies that the trial court's questioning merely clarified for the court that

Gulino ran defendant's background and learned that his license was suspended and that most of the questions the trial court asked had already been asked of the officer.

¶ 17 Defendant asks this court to review his claim for plain error because his trial counsel failed to object to the judge's questioning during trial. In reviewing a plain error contention, this court first determines whether error occurred at all. See *People v. Bannister*, 232 Ill. 2d 52, 65 (2008). This requires "a substantive look at the issue." *People v. Naylor*, 229 Ill. 2d 584, 593 (2008). For the reasons that follow, we find that, because there was no error, plain error does not apply.

¶ 18 A trial judge may question witnesses to elicit the truth or to "bring enlightenment on material issues which seem obscure." *People v. Falaster*, 173 Ill. 2d 220, 231 (1996). The court, however, may not assume the role of an advocate or through comments or questions, suggest an opinion regarding the facts of the case or the credibility of witnesses. *Id.* at 231-32. The court's examination must also be "conducted in a fair and impartial manner, without indicating bias or prejudice against either party." *People v. Williams*, 173 Ill. 2d 48, 79 (1996). "The appropriate scope of questioning by the court depends on the facts and circumstances of the case and lies largely within the trial judge's discretion." *Id.* at 232. The propriety of the trial judge's questioning of witnesses resting largely in the judge's discretion is especially true where the defendant is tried without a jury and the danger of the defendant suffering prejudice is lessened. *People v. Cofield*, 9 Ill. App. 3d 1048, 1050-51 (1973). "The relevant inquiry in a non-jury trial is whether the tenor of the court's questioning indicates that the court has prejudged the outcome before hearing all the evidence." *People v. White*, 249 Ill. App. 3d 57, 61 (1993).

¶ 19 Here, the trial court's questioning indicated that it was clarifying whether Gulino learned that defendant's driver's license was suspended by reviewing defendant's driving abstract and whether the abstract the State offered to admit into evidence contained the same information that Gulino reviewed on the date of defendant's arrest. The court's questions established that the driving abstract was in fact relevant to this defendant's case, and was not, as defendant argues, intended to lay a foundation for the document's admission, particularly because laying a foundation on the record was unnecessary considering that the document was a self-authenticating public record. See *Kole*, 2012 IL App (2d) 110245, ¶ 56. It appears that the trial court made a choice between explaining to the State the relatively minor deficiency in its presentation of the evidence or demonstrating, through its questioning, how to establish the relevance of the driving abstract. We do not find that asking a handful of questions constituted an abuse of discretion, even if doing so streamlined the State's presentation of the evidence and simplified the admission of a document that undoubtedly would have eventually been admitted. The exchange between the trial court and Gulino does not suggest that the court prejudged the outcome or that the court had an opinion regarding the facts of the case or the credibility of Gulino. See *White*, 249 Ill. App. 3d at 61.

¶ 20 Defendant's reliance on *Cofield* is misplaced because in that case, the trial judge called the State's witnesses, examined them, and asked questions to elicit testimony to prove that the defendant was guilty of the allegations against him. *Cofield*, 9 Ill. App. 3d at 1051. The trial court's questioning of Gulino is not in the least bit analogous to the trial court in *Cofield*, and we cannot say that in defendant's case, the trial court's questioning of Gulino was improper.

¶ 21 Based on the foregoing, we affirm the judgment of the circuit court of Cook County.

¶ 22 Affirmed.