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2023 IL App (3d) 220034-U

Order filed June 26, 2023
Modified upon denial of rehearing July 14, 2023

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2023

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 18th Judicial Circuit, Du Page County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-22-0034 Circuit No. 20-CF-686
LUIS P. CASTILLO,)	Honorable Ann Celine O’Hallaren Walsh,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE ALBRECHT delivered the judgment of the court.
Justices Hettel and Peterson concurred in the judgment.

ORDER

¶ 1 *Held:* Neither the introduction of evidence of defendant’s postarrest conduct, nor the State’s questioning of defendant regarding the credibility of the other witnesses constituted plain error.

¶ 2 Defendant, Luis P. Castillo, appeals from his convictions for aggravated assault on a peace officer and resisting a peace officer. Defendant argues that the State’s introduction of other-crimes evidence and questioning defendant about the credibility of other witnesses constituted plain error.

We affirm.

¶ 3

I. BACKGROUND

¶ 4

On March 30, 2020, the State charged defendant with aggravated assault on a peace officer (720 ILCS 5/12-2(b)(4.1)(i) (West 2020)) and resisting a peace officer (*id.* § 31-1(a)). Count I alleged that “defendant, without lawful authority, knowingly engaged in conduct which placed Officer Abigail Lauer, a peace officer performing her official duties, in reasonable apprehension of receiving a battery, in that said defendant approached *** Lauer with his hands raised in the air while holding a glass bottle.” Count II alleged that defendant:

“knowingly resisted the performance of Ofc. E. Gouty *** of an authorized act within his official capacity, being the arrest of [defendant], knowing [Gouty], to be a peace officer engaged in the execution of his official duties, in that he tightened and flexed his arms and refused to put his hands behind his back to be handcuffed, and he refused to walk to the patrol vehicle and had to be carried.”

Counsel was appointed to represent defendant. The case proceeded to a bench trial on October 21, 2021.

¶ 5

Officer Eric Gouty of the Lombard Police Department testified that on March 29, 2020, just before midnight, he was dispatched to a residence on South Highland Avenue due to a report of a domestic disturbance in progress. Gouty was the first officer to arrive. Other officers, including Officer Lauer, also responded to the scene. The officers were all wearing police uniforms and in marked patrol vehicles. Upon his arrival, Gouty encountered defendant near the front door of the residence. Defendant invited officers into the residence. Other occupants included defendant’s sister, Jessica Castillo; her friend, Liliana Flores; defendant’s girlfriend, Brittany Ponton; and defendant’s roommate, Tylor Martin. There was a child sleeping on the second floor of the residence.

¶ 6 Gouty testified that defendant had “a very agitated and angry demeanor” and appeared to be intoxicated. Defendant spoke loudly to Gouty and yelled at Jessica, who was sitting on his couch. Numerous open glass beer bottles were spread throughout the front room and kitchen of defendant’s residence. Defendant explained to Gouty why he had called the police to the residence, ordered Gouty to remove Jessica and Flores from his residence, and yelled at Gouty to “[d]o [his] job.” Gouty attempted to interview Jessica and Flores inside the home but moved the conversation outside due to defendant’s continued belligerence and yelling. Officers determined that it would be best if Jessica and Flores left the residence. Defendant continued to yell from inside the residence before walking to the front door. Officers prevented defendant from exiting the residence.

¶ 7 Gouty further testified that he and other officers accompanied Jessica and Flores inside the house to gather their belongings and the sleeping child so they could depart. Defendant was inside the residence, still agitated and yelling. He held a glass beer bottle in his hand. Gouty explained to defendant what was happening and that the women would be gathering their belongings. The officers requested defendant’s information. Defendant refused to identify himself. An officer located defendant’s identification card (ID) on a countertop and ran his information. This action caused defendant to become irate. Defendant yelled at officers to vacate his residence and threatened to sue officers for touching his property. Attempts to calm defendant were unsuccessful, and he began to make derogatory and insulting comments, specifically directed toward the female officers. Gouty provided numerous explicit examples of defendant’s comments. Defendant made comments about Lauer being “a dumb blond that can’t read or write.”

¶ 8 Gouty went on to state that officers helped Jessica and Flores safely leave the residence. Ponton indicated to officers that she would also like to leave. Gouty testified that, as officers stood

outside the residence speaking with Ponton, defendant approached the front door and slammed it shut. Seconds later, defendant opened the door “in a very fast and aggressive motion.” He had a beer bottle in his hand and began yelling at officers to “[g]et the fuck off [his] property” and referred to them as “pigs.” Gouty indicated that Lauer was the closest officer to the door, and she was much smaller than defendant.

¶ 9 He further testified that at this point, Lauer illuminated defendant with her flashlight and told him to stay inside the residence. Gouty informed defendant that they had almost completed their investigation and would be leaving shortly. Defendant remained agitated. He flung the door open in “a very aggressive manner” and walked “very aggressively and fast” toward Lauer. Defendant made a sweeping motion with his hands while yelling “[g]et off my property, go” and raised the beer bottle over his head. Gouty indicated that based on defendant’s agitated demeanor, threatening comments, and hostile attitude, he feared for Lauer’s safety and believed defendant was going to strike her with the beer bottle.

¶ 10 Gouty moved to intercept defendant and struck him in the chest with a defensive maneuver which caused defendant to lose his balance and his grip on the beer bottle. Defendant fell to the ground on top of the bottle. Gouty testified that he immediately “kneeled down on [defendant’s] side” and attempted to place him under arrest. Defendant did not place his hands behind his back. Instead, he attempted to push himself up. Gouty rolled defendant fully onto his stomach and attempted to gain control of his arms to handcuff him. Defendant ignored commands to place his hands behind his back and continued to try and push himself up. Another officer moved to help Gouty. Defendant flexed and tightened his arms, pulling away from Gouty’s grip. Eventually, the two officers were able to gain control, and Lauer stepped in and handcuffed defendant. Defendant

continued to yell and swear at officers and refused to walk to the squad car. Gouty had to physically lift defendant and carry him to the squad car.

¶ 11 Defendant was transported to the police station. Gouty continued to interact with defendant throughout the booking process. Defense counsel repeatedly objected to the admission of defendant's postarrest behavior arguing that the evidence was irrelevant. The State informed the court that it sought the admission of the evidence to demonstrate defendant's demeanor. The court allowed the State to question Gouty about defendant's postarrest behavior. Defendant was "completely uncooperative, belligerent, loud, [and] profane" throughout the booking process. Gouty testified to numerous profane and insulting statements and threats defendant made during that period. Defendant refused to comply with the booking process and was transferred to jail and later returned to the station. Upon his return, defendant complained to Gouty about difficulty breathing and pain in his right hand. Defendant requested medical treatment and was transported to the hospital. Gouty followed defendant to the hospital. Defendant was treated and released. Gouty transported defendant to the jail. During the drive, defendant "continued to be agitated and loud, yelling numerous insults and crude comments towards [Gouty]."

¶ 12 On cross-examination, Gouty testified that when defendant exited the front door of his residence with the beer bottle, he walked from the residence and did not run. He extended his arms and made a sweeping motion with them. Defendant was holding the beer bottle by the base as an individual would if they were drinking from the bottle.

¶ 13 Lauer's testimony was consistent with the account provided by Gouty. She testified that upon her arrival, defendant was agitated but did not start yelling at officers and attempting to eject them from his residence until officers began inspecting defendant's ID. After the officers exited the residence, Lauer indicated that as defendant was in the doorway yelling at them, she

illuminated him with her flashlight for officer safety. Lauer testified that when defendant exited the residence and began walking aggressively toward her, swinging his arms, and holding his beer bottle above his head, she felt threatened and believed defendant was going to harm her. Defendant held the beer bottle by the base in one hand. He was gesturing with both hands as he approached her. Lauer stepped back and Gouty moved to stop defendant's advance. Lauer assisted in handcuffing defendant. Defendant went limp as the officers stood him up; however, Lauer testified that he was conscious and speaking while officers carried him to the squad car. Further, Lauer testified that she helped transport defendant to the jail on the first occasion and described his demeanor as very agitated and angry. She detailed a few racially insulting comments made by defendant to a Hispanic officer. After the officers testified, the State admitted a photograph of the outside of defendant's residence and then rested.

¶ 14 Defendant testified that on March 29, 2020, he called police to his residence to have his sister removed from the premises. He indicated that his initial interaction with Gouty was pleasant. He explained to Gouty the reason for the call and invited the officers into the residence. Defendant did not impede efforts to remove Jessica and Flores from the residence. When asked if Jessica and Flores eventually left, defendant answered that he did not believe they had but could not remember. Defendant never gave officers permission to search the home. When officers were inside his home attempting to gather Jessica and Flores's belongings, defendant noticed officers looking at his personal effects, including his ID, jewelry, and other medical devices that were laid out on a table. Defendant then became "angry with [the officers] being in the house."

¶ 15 Defendant indicated that after the officers had exited, he walked out of the residence and began asking to speak to their supervisor. Defendant first testified that he spoke directly to Lauer when he made the request. Later, he indicated that he was not speaking to any particular officer

but to the group of officers. He was loud and shouting that he wanted the officers off his property. At that time, Lauer “grinned in [defendant’s] face” and shined her flashlight on him. Defendant consumed several beers that night and probably would not have been sober enough to operate a vehicle. He testified that he recalled the events of the evening despite his intoxication. Defendant admitted that he used profane language when yelling at officers to get off his property. Defendant indicated that he was gesturing and speaking with his arms. He had a beer bottle in his hand. He denied raising the bottle above his shoulder. He did not attempt to strike any officer with the bottle. Defendant stopped in front of Lauer and “[t]he last thing [he] remember[ed] *** was being lifted off the ground and Officer Gouty yelled, That’s assault, motherfucker—.” Defendant described being lifted and slammed to the ground. Defendant indicated that his arm was broken as a result. He did not recall anything after that point until he regained consciousness in the back of a squad car.

¶ 16 Defendant admitted that the officers’ testimony regarding his postarrest demeanor at the police station was accurate “[t]o some extent.” He explained that he had an adverse interaction with another officer at the Sheriff’s department which caused him to lash out in anger. Defendant admitted to insulting and yelling at the officers and making derogatory jokes about blonde-haired women. Defendant denied making any racial slurs.

¶ 17 On cross-examination, defendant admitted to drinking for several hours prior to officers’ arrival at his residence. He denied that all the beer bottles belonged to him. The State reminded defendant that the officers testified that defendant was the only person in the residence who appeared intoxicated. The State then asked “[t]hat’s not accurate?” about the officers’ testimony on that issue and “[t]hey were lying?” Defendant indicated that contrary to Gouty’s testimony, he was not belligerent with officers upon their initial arrival. Defendant was angry with his sister.

Defendant asserted that he discovered Jessica consuming cocaine in his basement which is what led to him calling the police to have her removed. Defendant agreed that the police allowed Jessica to drive away from the residence with her child that night. He agreed that she had been searched and the police found no contraband on her person. Later, defendant indicated that Jessica was outside speaking with officers just before he was slammed to the ground by Gouty and, again, could not remember her leaving.

¶ 18 Defendant explained his version of events again and the State asked:

“Now, is it your testimony that your recollection of what happened that night is better than the officer’s testimony, even though you had consumed between six and 12 beers prior to their arrival?

[DEFENDANT]: Yes.

[THE STATE]: You remember it better than they do?

[DEFENDANT]: Up to the point where I got knocked unconscious, yes, I do.”

Turning to defendant’s arrest, the State asked:

“Okay. You heard the officers say that you were talking and pushing yourself off the ground—

[DEFENDANT]: Correct.

[THE STATE]:—and resisting arrest during all of the time that you allege that you were unconscious, correct?

[DEFENDANT]: Correct.

[THE STATE]: So all of that is a lie?

[DEFENDANT]: I was unconscious. I can’t tell you yes or no.

[THE STATE]: Could it be because you were intoxicated that you don't exactly remember how it happened?

[DEFENDANT]: It was not due to the intoxication.

[THE STATE]: So too drunk to drive, but not too drunk to remember?

[DEFENDANT]: Too drunk to put anybody's life at risk for some minimal amount of alcohol. Not to drink and drive. Drinking and driving does not go together.

[THE STATE]: I'm sorry, I didn't understand that.

[DEFENDANT]: I—no, I don't drink and drive whatsoever. It could be one, it could be half, I don't do it.”

Upon questioning from the State, defendant admitted that he had a prior violation of driving while under the influence from 2010. Further, defendant admitted that he was informed that there was no fracture and was “diagnosed merely with a contusion” upon leaving the hospital that night. Defendant denied making threats of violence against officers but admitted to threatening to sue them.

¶ 19 The court found defendant guilty of both charges. In its decision, the court recounted the testimony of the witnesses and indicated that it did not find defendant's version of events credible for either charge. In so finding, the court highlighted the corroborative nature of the officers' testimony and the significant number of details provided by each officer. Defendant was sentenced to 24 months' probation. Defendant appeals.

¶ 20 II. ANALYSIS

¶ 21 On appeal, defendant argues that two errors occurred during his trial: (1) the State introduced evidence of defendant's bad acts following his arrest, and (2) the State repeatedly asked

defendant to comment on the credibility of the officers who had testified against him. Defendant acknowledges that he forfeited these issues but requests we review them under the plain error doctrine.

¶ 22 The plain error doctrine enables a forfeited error to be reviewed when: (1) “the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error,” or (2) “that error is so serious that it affected the fairness of the defendant’s trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence.” *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). Defendant contends that his claims of error are reversible under the first prong of the plain error analysis. The first step of the plain error analysis is to determine whether an error occurred. *People v. Eppinger*, 2013 IL 114121, ¶ 19.

¶ 23 A. Other Crimes/Bad Acts Evidence

¶ 24 First, defendant argues that the circuit court erred in admitting highly prejudicial evidence of bad acts committed by defendant following his arrest for the charged offenses. Evidence of wrongs, bad acts, or other crimes are inadmissible if it is used to demonstrate a defendant’s propensity to commit crimes. Ill. R. Evid. 404(b) (eff. Jan. 1, 2011). However, “[s]uch evidence may *** be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” *Id.* Additionally, “evidence of another crime is admissible if it is part of a continuing narrative of the event giving rise to the offense or, in other words, intertwined with the offense charged.” *People v. Thompson*, 359 Ill. App. 3d 947, 951 (2005). Further, “[w]hen facts concerning uncharged criminal conduct are all part of a continuing narrative which concerns the circumstances attending the entire

transaction, they do not concern separate, distinct, and unconnected crimes.’ ” *Id.* (quoting *People v. Collette*, 217 Ill. App. 3d 465, 472 (1991)).

¶ 25 Here, evidence of defendant’s continued aggressive and belligerent behavior was solicited by the State to demonstrate defendant’s demeanor. The evidence immediately followed his arrest and was part of a continuing narrative. It established that defendant was transported to the police station, the jail, and the hospital at various points after his arrest. At all times, he was accompanied by officers who had been interacting with him since before his arrest. The evidence spanned the time Gouty arrived at defendant’s residence until Gouty left defendant at the jail. It was not separate or distinct. Neither were defendant’s postarrest actions undertaken for different reasons. Defendant began yelling and verbally abusing officers both before and after his arrest because an officer upset him. Accordingly, the admission of the evidence was not error.

¶ 26 In coming to this conclusion, we reject defendant’s contention that the admitted postarrest evidence occurred over the course of several hours and did not constitute a continuing narrative as the continuing narrative exception does not apply to crimes or bad acts that are “distinct and ‘undertaken for different reasons at a different place at a separate time.’ ” *People v. Jacobs*, 2016 IL App (1st) 133881, ¶ 68 (quoting *People v. Adkins*, 239 Ill. 2d 1, 33 (2010)). While the postarrest evidence did take place in several locations over the course of a few hours, it concerns circumstances encompassing the entire situation between defendant and officers that night. The postarrest evidence is part of the continuing narrative of the events of March 29, 2020.

¶ 27 B. Questioning Defendant about the Credibility of Other Witnesses

¶ 28 Next, defendant argues that the State improperly questioned defendant regarding the credibility of the officers. It has repeatedly been held that it is improper to question a criminal defendant regarding his opinion on the veracity of other witnesses. See *People v. Leonard*, 391 Ill.

App. 3d 926, 936 (2009); *People v. Robinson*, 219 Ill. App. 3d 235, 239 (1991). This manner of questioning intrudes on the trier of fact's function of determining the credibility of the witnesses. *People v. Mitchell*, 200 Ill. App. 3d 969, 977 (1990).

¶ 29 Here, defendant was asked to comment on the veracity of the officers several times. Regarding the officers' testimony about whether anyone else in the residence appeared intoxicated, the State asked: "[t]hat's not accurate?" and "[t]hey were lying?" When questioned about the officers' testimony regarding his resisting arrest, the State asked "[s]o all of that is a lie?" The State's questions were improper and not intended to merely comment on defendant's own credibility. The State repeatedly asked defendant to comment on the accuracy of the officers' testimony and accused the officers of lying under oath.

¶ 30 Having found clear error, the next step is to examine the record to determine whether the evidence is closely balanced. Defendant bears the burden to persuade the reviewing court that the evidence is closely balanced. *Piatkowski*, 225 Ill. 2d at 567. Whether evidence is closely balanced differs from whether the evidence is sufficient to support defendant's conviction beyond a reasonable doubt. *Id.* at 566. "A reviewing court's inquiry involves an assessment of the evidence on the elements of the charged offense or offenses, along with any evidence regarding the witnesses' credibility." *People v. Sebby*, 2017 IL 119445, ¶ 53. A defendant must show prejudice under the first prong of the plain error doctrine; however, "prejudice rests not upon the seriousness of the error but upon the closeness of the evidence. What makes an error prejudicial is the fact that it occurred in a close case where its impact on the result was potentially dispositive." *Id.* ¶ 68.

¶ 31 Defendant argues that the evidence presents a closely balanced credibility contest where the entirety of the evidence consisted of the testimony of two officers with no extrinsic corroborating evidence against the competing testimony of defendant. Evidence may be

considered closely balanced when the trier of fact's verdict is primarily based on its credibility determination. See *People v. Naylor*, 229 Ill. 2d 584, 608 (2008); *People v. Vesey*, 2011 IL App (3d) 090570, ¶ 17. However, there is no credibility contest where one party's account is "unrefuted, implausible, or corroborated by other evidence." *People v. Montgomery*, 2018 IL App (2d) 160541, ¶ 31. In evaluating the strength of the evidence, we must consider both "the quantum and quality" of evidence. *Piatkowski*, 225 Ill. 2d at 571.

¶ 32 Here, the two officers testified consistently with one another that defendant interacted with officers in a belligerent and aggressive manner that night. Defendant quickly approached Lauer swinging his arms and raised his beer bottle over his head. Both Gouty and Lauer believed that defendant was going to strike Lauer with the bottle. Gouty intervened and attempted to arrest defendant. Defendant pushed and struggled with the officers. It took three officers to handcuff defendant. Defendant went limp after being handcuffed and had to be carried to the squad car. The officers testified that defendant was conscious and speaking during this time.

¶ 33 Defendant offered his version of events which corroborated the officers' testimony in several places and contained inconsistencies. He testified that he walked out of the residence and spoke directly with Lauer, requesting to speak with her supervisor. Defendant later indicated that he was loud and profane. Defendant then testified that he was not speaking directly to Lauer, but to the group of officers in general. His last memory of Jessica was her standing outside speaking with officers just before he was knocked unconscious. He did not believe she left the residence. Defendant later testified that Jessica had driven away with her child after police had searched her and found nothing on her person. Defendant testified that he suffered a broken arm because of Gouty's conduct in the yard but later admitted that he had been diagnosed only with a contusion that night. Additionally, defendant definitively stated "I don't drink and drive whatsoever."

However, he later admitted that he had a prior driving under the influence violation from 2010. Defendant had no recollection of the events surrounding his handcuffing due to his unconscious state. Defendant's inconsistent version of events, coupled with the impeachment evidence provided by the State, is simply not plausible considering the totality of the evidence.

¶ 34 Further, “[a]nalysis under the first prong of the plain error rule typically requires the same type of analysis as harmless error review.” *People v. Jackson*, 2022 IL 127256, ¶ 23 n.1 We note that defendant was convicted following a bench trial. The court, as the trier of fact, is presumed to know and follow the law and to have considered the evidence only for its proper, limited purpose. See *People v. Felton*, 2019 IL App (3d) 150595, ¶ 48. Nothing in the record rebuts this presumption. In its decision, the court stated that it determined the officers were credible due to the very detailed and corroborative nature of their testimony. The court's reasoning did not indicate that it considered the small number of improper questions asked by the State. Thus, it is clear from the court's statements that its credibility determination would remain the same in the absence of the State's improper questioning.

¶ 35 Defendant argues that we cannot presume the court's decision was unaffected by this error because the questions went directly to the issue of credibility which was the fundamental issue in this matter. However, courts are frequently called on to make credibility determinations which we must give great deference to, especially when the record contains the court's explicit findings. See *People v. Williams*, 2013 IL App (1st) 111116, ¶ 76; *People v. Carter*, 2021 IL App (4th) 180581, ¶ 68. Here, the court indicated the reasoning for its credibility determinations, which did not include any consideration of the State's improper questions. Accordingly, no reversible error occurred.

¶ 36 For the foregoing reasons, we find the admission of defendant's postarrest behavior and the State's improper questioning regarding the credibility of other witnesses do not constitute reversible plain error. We affirm defendant's convictions for aggravated assault on a peace officer and resisting a peace officer.

¶ 37 III. CONCLUSION

¶ 38 The judgment of the circuit court of Du Page County is affirmed.

¶ 39 Affirmed.