2022 IL App (4th) 210299-U

NO. 4-21-0299

FILED
July 26, 2022
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
JONATHAN S. PERRY,	)	No. 20CF358
Defendant-Appellant.	)	
	)	Honorable
	)	Randall B. Rosenbaum,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Knecht and Justice Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Defendant's claim that the trial court failed to adequately question or remove a juror who "defied the court's order not to discuss the case with anyone" was waived and not subject to a plain-error analysis.

(2) Defendant failed to establish that he received ineffective assistance of counsel.

¶ 2 Following a jury trial, defendant, Jonathan S. Perry, was convicted of two counts of first degree murder (720 ILCS 5/9-1(a)(1) (West 2018)) and sentenced to concurrent terms of natural life in prison. He appeals, arguing he was denied his right to a fair trial before an impartial jury because "the trial court failed to remove or adequately question a juror who defied the court's order not to discuss the case with anyone." Alternatively, he contends his trial counsel was ineffective for failing to properly question, or seek the removal of, the juror at issue. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In March 2020, the State charged defendant with eight counts of first degree murder (*id.* § 9-1(a)(1), (a)(2)). The charges were based on allegations that defendant shot and killed his girlfriend, Kimberly Coyne (Kim), and Kim's daughter, Blair Coyne.

¶ 5 In March 2021, defendant's jury trial was conducted. Jurors in the case were selected in two panels of six veniremen plus two alternates. After the selection of jurors from each panel, the trial court allowed the selected jurors to leave the courthouse, instructing them to return at a specified time and to "not discuss th[e] case with anybody," read about the case, investigate the case, or "form any opinions."

¶ 6 When the proceedings resumed after jury selection, the trial court notified the parties about a report it received from a deputy that a juror discovered "over the lunch hour" that he worked with someone related to defendant. The court recounted the information it received, stating: "one of the jurors went to their place of employment, Juror No. 74, to take care of business or to let them know how long he would be out and someone at that place of business said, oh, did you know the Defendant was a relative of someone who works there." The court noted that it did not know "the details of the relationship, who the person was[,] or anything like that." The State suggested that the juror be individually questioned about whether working with one of defendant's relatives "would make it difficult for him to serve as a juror," and defendant's attorney agreed with that course of action. The court then questioned juror No. 74 as follows:

> "THE COURT: It's really important that we get jurors who don't know anything about the case and can be fair and impartial.
>
> The deputy informed me that you went back to work over lunch and had some conversation with a coworker, I don't know what the details were, but at some point you learned that someone you may work with may know the Defendant or is

related to the Defendant; is that correct, sir?

JUROR NO. 74: Yes.

THE COURT: Is this somebody that you work with all the time?

JUROR NO. 74: No.

THE COURT: Is it somebody that you have talked to about this particular case before?

JUROR NO. 74: No.

THE COURT: Would you feel compelled to discuss your verdict or try to justify your verdict to this colleague of yours regardless of what the verdict might be?

JUROR NO. 74: No.

THE COURT: Knowing that someone you work with may be related to the Defendant do you feel that you can be fair and impartial to both sides and render a fair and impartial verdict?

JUROR NO. 74: Yes."

¶ 7 After the trial court concluded its inquiry, it asked if either party had follow-up questions. Both the State and defendant's counsel responded, "No." The court then allowed juror No. 74 to return to the jury room and asked the parties whether they had "any concerns." The State responded that it did not, and it believed juror No. 74 could "be a fair and impartial juror." Defendant's counsel responded similarly by stating, "No concerns, your Honor." The matter then proceeded with defendant's jury trial.

¶ 8 At trial, the State's evidence showed defendant was involved in a dating relationship with Kim and that the couple resided in a home with Blair. Around 1 a.m. on March

29, 2020, Blair sent a "Snapchat video" to a friend, Hailey Everege. Everege testified that in the video, Blair's "mom and her boyfriend were just arguing and screaming back and forth." She stated she recognized Kim's voice because she had talked to her before. She described the other voice as "a distinctive male voice" and noted that the only other person who lived in the home was defendant. Around 1:21 a.m., Everege spoke with Blair on a FaceTime call for approximately 15 minutes. During the call, she believed she could still hear arguing in the background. Around 2:30 a.m., Everege sent Blair a Snapchat picture. She stated Blair never opened or responded to that picture.

¶ 9 Synthia Sydnor testified that Kim and Blair were her neighbors. Around 1:44 a.m. on March 29, 2020, she heard a series of loud "bangs." Sydnor thought the sounds were gunshots and she called 911. The police responded to the area of the call but found nothing to warrant any further investigation and "cleared the scene." Later, at approximately 4:15 a.m., the police were dispatched to the home of defendant's parents after defendant's mother, Monica Perry, called 911. On that call, Monica reported defendant had arrived at her home about 15 minutes earlier and was "talking crazy." She asserted he was supposed to be "taking medication" and she thought he was suicidal and possibly "on some stuff." Monica also reported that defendant told her that he had "killed somebody" and that he identified "Kim" as the person he killed. While his mother was on the phone with 911, defendant told her "Kim's inside and her daughter's outside."

¶ 10 After the police arrived on the scene, defendant made statements that were captured on a police officer's body camera. He stated that he lived with "Kim," had "killed the Antichrist and Satan," had "turned [him]self in," and "didn't go out and kill other people." When asked about a gun, defendant referenced a "9 millimeter" and a "38 millimeter." He further stated as follows: "I left one gun with Satan and I left the other gun with the Antichrist."

¶ 11 The State's evidence further showed that the police discovered Kim and Blair's bodies at their residence. Both suffered multiple gunshot wounds, which caused their deaths. Kim was located inside the residence with a ".38 special revolver" lying near her body. Blair's body was outside the residence with a "9[-]millimeter handgun" lying nearby. Evidence suggested the ".38 special revolver" had been used to shoot Kim and that the 9-millimeter handgun had been used to shoot Blair. Finally, forensic testing indicated the blood of both victims was on the pants defendant was wearing at the time of his arrest and deoxyribonucleic acid (DNA) consistent with defendant's DNA profile was found on both guns.

¶ 12 Following the State's presentation of evidence, defendant rested without presenting any evidence or witnesses. Ultimately, the jury found him guilty of the first degree murder of both victims. It also found the State had proven that defendant had personally discharged a firearm that proximately caused the victims' deaths.

¶ 13 Defendant filed a motion for an acquittal or, in the alternative, a new trial. He challenged an evidentiary ruling of the trial court, the court's denial of motions he made for a directed verdict, and the sufficiency of the State's evidence against him. Defendant did not raise any issue with respect to the incident involving juror No. 74, the court's questioning of that juror, or the juror's potential bias. In April 2021, the court denied defendant's posttrial motion and sentenced him to concurrent terms of natural life in prison. The same month, defendant filed a motion to reconsider his sentences, which the court also denied.

¶ 14 This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 On appeal, defendant argues he was denied his right to a fair trial before an impartial jury because the trial court failed to adequately question or remove juror No. 74 after learning that

the juror "defied the court's order" to refrain from discussing defendant's case with another. He maintains juror No. 74 should have been questioned "about the substance of [his] interaction with his co[ ]worker" and "rebuke[d]" for not following the court's order. Defendant acknowledges that he "acquiesced to [j]uror No. 74 remaining on the jury." However, he contends we may review the court's error under the plain-error doctrine. Alternatively, defendant argues that his counsel was ineffective for not ensuring that juror No. 74 was adequately questioned and acquiescing to that juror's presence on his jury.

¶ 17 The State responds that because defendant acquiesced to the underlying procedure involving juror No. 74, a plain-error analysis is not available to him. Further, it contends that defendant cannot establish ineffective assistance of counsel because the trial court's procedure was sound and the evidence of defendant's guilt was overwhelming.

¶ 18 A. Plain Error

¶ 19 Pursuant to the plain-error doctrine, a reviewing court may consider an unpreserved error if "a clear or obvious error occurred" and either (1) "the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant," or (2) the "error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process." *People v. Birge*, 2021 IL 125644, ¶ 24, 182 N.E.3d 608. However, the plain-error doctrine applies only to cases involving forfeiture, not affirmative acquiescence or waiver. *People v. McGuire*, 2017 IL App (4th) 150695, ¶ 29, 92 N.E.3d 494.

¶ 20 "Waiver is the intentional relinquishment of a known right, whereas forfeiture is the failure to make a timely assertion of a known right." *People v. Bowens*, 407 Ill. App. 3d 1094, 1098, 943 N.E.2d 1249, 1256 (2011). "In the course of representing their clients, trial attorneys may (1) make a tactical decision not to object to otherwise objectionable matters, which thereby

waives appeal of such matters, or (2) fail to recognize the objectionable nature of the matter at issue, which results in procedural forfeiture." *Id.* "When defense counsel affirmatively acquiesces to actions taken by the trial court, any potential claim of error on appeal is waived, and a defendant's only available challenge is to claim he received ineffective assistance of counsel." *McGuire*, 2017 IL App (4th) 150695, ¶ 29.

¶ 21 Here, defendant's counsel affirmatively acquiesced to the manner in which juror No. 74 was questioned and to juror No. 74's continued presence on the jury. The record reflects that after juror No. 74 reported discovering that one of his coworkers was related to defendant, the parties agreed that it would be appropriate to conduct an inquiry into the matter. The trial court then questioned juror No. 74 about his reported discovery. Following the court's questioning, defendant's counsel declined the opportunity to ask any additional questions and represented that she had "[n]o concerns" regarding juror No. 74's ability to serve as a juror in the case. Given these circumstances, we agree with the State that defendant's claim of error has been waived, not forfeited, and that it is not subject to a plain-error analysis.

¶ 22 B. Ineffective Assistance of Counsel

¶ 23 On appeal, defendant makes the alternative argument that his counsel was ineffective for not ensuring that juror No. 74 was adequately questioned and acquiescing to juror No. 74's presence on his jury. As noted above, this type of challenge is available to a defendant in circumstances involving waiver. *Id.* Accordingly, we address the merits of defendant's claim.

¶ 24 Ineffective-assistance-of-counsel claims are evaluated under the two-prong test set forth by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Gayden*, 2020 IL 123505, ¶ 27, 161 N.E.3d 911. "Under the *Strickland* test, a defendant must establish both that counsel's performance fell below an objective standard of reasonableness

and that a reasonable probability exists that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* "[A] 'reasonable probability' is defined as a showing sufficient to undermine confidence in the outcome, rendering the result unreliable or fundamentally unfair." *People v. Patterson*, 2014 IL 115102, ¶ 81, 25 N.E.3d 526.

¶ 25 A defendant's failure to establish either *Strickland* prong precludes a finding of ineffective assistance of counsel. *Gayden*, 2020 IL 123505, ¶ 27. Additionally, an ineffective-assistance claim may be disposed of "by proceeding directly to the prejudice prong without addressing counsel's performance." *People v. Hale*, 2013 IL 113140, ¶ 17, 996 N.E.2d 607.

¶ 26 Here, we find that even assuming that defense counsel's performance was deficient, defendant cannot establish *Strickland* prejudice. As the State argues, strong and persuasive evidence of defendant's guilt was presented at his trial. The evidence showed defendant was romantically involved with Kim and that he resided in a home with both victims. Witness testimony suggested that he argued with Kim shortly before the shootings occurred. The State presented evidence that both victims were shot multiple times in two different locations and with different firearms. Within hours of the shootings, defendant made statements to his mother and the police that he had killed someone. He also made statements that showed he had knowledge of specific location of the bodies and type and location of the murder weapons. Additionally, the State's evidence showed that blood from both victims was found on defendant's pants and DNA consistent with defendant's DNA profile was found on both guns.

¶ 27 Moreover, we agree with the State's assertion that defendant's claims of juror bias are entirely speculative. Initially, contrary to defendant's assertion on appeal, the record in this case does necessarily establish that juror No. 74 discussed defendant's particular case with anyone. As noted by the State, the record, at most, reflects the juror went to his place of employment "to

take care of business or to let them know how long he would be out" and someone else provided information that "[d]efendant was a relative of someone who works there." The record does not show whether the juror provided information about the jury he was serving on or if the other person interjected that information into the conversation.

¶ 28 Further, the record does not show that juror No. 74 discussed or received information regarding the substance of defendant's case. During questioning by the trial court, he denied discussing the case with defendant's alleged relative and represented that he would not feel compelled to discuss or justify any verdict in the case to that person. Finally, juror No. 74 represented that he could "be fair and impartial to both sides." Accordingly, we find this record does not support a finding of juror bias.

¶ 29 Under the circumstances presented, defendant has failed to establish that there is a reasonable probability that, but for his counsel's alleged error, the result of the underlying proceedings would have been different. See *People v. Metcalfe*, 202 Ill. 2d 544, 560-63, 782 N.E.2d 263, 274-75 (2002) (rejecting the defendant's argument that *Strickland* prejudice must be presumed where juror bias is alleged and finding the defendant failed to establish prejudice because "the evidence was more than sufficient to prove [him] guilty beyond a reasonable doubt" and there was "absolutely no evidence" that the challenged juror was biased against him). Because defendant has not established that he was prejudiced by his counsel's alleged deficient performance, he cannot establish ineffective assistance of counsel.

¶ 30 III. CONCLUSION

¶ 31 For the reasons stated, we affirm the trial court's judgment.

¶ 32 Affirmed.