Illinois Official Reports

Appellate Court

People v. Schwandt, 2022 IL App (4th) 200583

Appellate Court Caption	THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. JESSICA SCHWANDT, Defendant-Appellant.
District & No.	Fourth District No. 4-20-0583
Filed	June 30, 2022
Decision Under Review	Appeal from the Circuit Court of McLean County, No. 19-TR-18360; the Hon. Pablo A. Eves, Judge, presiding.
Judgment	Affirmed.
Counsel on Appeal	James E. Chadd, Douglas R. Hoff, and Jennifer L. Bontrager, of State Appellate Defender's Office, of Chicago, for appellant. Don Knapp, State's Attorney, of Bloomington (Patrick Delfino, David J. Robinson, and Courtney M. O'Connor, of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.
Panel	PRESIDING JUSTICE KNECHT delivered the opinion of the court, with opinion. Justices Holder White and Steigmann concurred in the judgment and opinion.

OPINION

¶ 1 Defendant, Jessica Schwandt, appeals from her conviction for driving while her license was suspended. Defendant argues she was denied her sixth amendment right to confrontation when the State relied on a certified copy of her driving abstract to prove its case. We affirm.

¶ 2 ### I. BACKGROUND

¶ 3 In November 2019, the State charged defendant with driving while her license was suspended (625 ILCS 5/6-303(a) (West 2018)), a Class A misdemeanor. The matter proceeded to a jury trial on October 13, 2020.

¶ 4 The State called Illinois State Police Sergeant Shadd Gordon as its only witness. Gordon testified that on October 30, 2019, at approximately 9 a.m., he observed a blue Honda passenger vehicle traveling without its headlights activated. Gordon noted there was "a steady rainfall which requires you have your headlights on[,] and I noticed that vehicle did not have its headlights on when it went by." Gordon initiated a traffic stop and requested defendant's driver's license. Defendant provided Gordon with a state identification card and also informed Gordon her driver's license was not valid. The State introduced into evidence a certified copy of defendant's driving abstract. Defendant did not object to its admission or publication to the jury.

¶ 5 Defense counsel presented no evidence, and both parties rested.

¶ 6 The jury found defendant guilty of driving while her license was suspended. The trial court sentenced defendant to 24 months' court supervision, ordered her to complete 300 hours of community service, and ordered her to pay a $75 fine.

¶ 7 This appeal followed.

¶ 8 ### II. ANALYSIS

¶ 9 Defendant argues her sixth amendment right to confrontation was violated when the State relied on a certified copy of her driving abstract to prove her guilt. Defendant admits she did not raise this issue at trial or in a posttrial motion. Thus, the issue is forfeited on appeal. See *People v. Hestand*, 362 Ill. App. 3d 272, 279, 838 N.E.2d 318, 324 (2005) (holding that a defendant must object at trial and raise the issue in a posttrial motion to preserve the issue for review). She argues, however, this court should consider the matter under either prong of plain error.

¶ 10 To prevail under the plain-error doctrine, a defendant must first demonstrate a clear and obvious error occurred. *People v. Piatkowski*, 225 Ill. 2d 551, 565, 870 N.E.2d 403, 410-11 (2007). If an error occurred, we reverse only where (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) the "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." *Piatkowski*, 225 Ill. 2d at 565. The burden of persuasion rests with the defendant. *People v. McLaurin*, 235 Ill. 2d 478, 495, 922 N.E.2d 344, 355 (2009). The first step under either prong is to determine "whether there was a clear or obvious error at trial." *People v. Sebby*, 2017 IL 119445, ¶ 49, 89 N.E.3d 675.

¶ 11 The sixth amendment of the United States Constitution and article I, section 8, of the Illinois Constitution guarantee a defendant the right to confront the witnesses against her. See U.S. Const., amend. VI; Ill. Const. 1970, art. I, § 8. The right to confrontation protects the defendant from testimonial hearsay. See *Davis v. Washington*, 547 U.S. 813, 823-26 (2006); *People v. Leach*, 2012 IL 111534, ¶ 66, 980 N.E.2d 570 (defining hearsay as "[a]n out-of-court statement" offered for the proof of the matter asserted). Whether an out-of-court statement violates the right to confrontation is a question of law, and therefore, our review is *de novo*. *People v. Williams*, 238 Ill. 2d 125, 141, 939 N.E.2d 268, 277 (2010).

¶ 12 Illinois Rule of Evidence 803(8) (eff. Sept. 28, 2018) provides that "[r]ecords, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth *** matters observed pursuant to duty imposed by law as to which matters there was a duty to report" are generally admissible as evidence. The Illinois Vehicle Code requires the secretary of state to "maintain appropriate records of all licenses and permits refused, cancelled, disqualified, revoked, or suspended." 625 ILCS 5/6-117(b) (West 2018). The Vehicle Code further provides the following:

> "Any certified abstract issued by the Secretary of State *** to a court *** for the record of a named person as to the status of the person's driver's license shall be *prima facie* evidence of the facts therein *** and shall be admissible for any prosecution under this Code and be admitted as proof of any prior conviction or proof of records, notices, or orders recorded on individual driving records maintained by the Secretary of State." 625 ILCS 5/2-123(g)(6) (West 2018).

¶ 13 Here, defendant claims the certified driving abstract was generated in anticipation of litigation and was substantively admitted for the truth of the matter asserted. Defendant also argues (1) she did not have an opportunity to cross-examine its author, who was not present in court, and (2) nothing in the record suggests that such a witness was unavailable to testify or that defense counsel had a prior opportunity to cross-examine such witness.

¶ 14 In support of her argument, defendant cites to *People v. Diggins*, 2016 IL App (1st) 142088, 55 N.E.3d 227. In *Diggins*, the First District found a violation of the confrontation clause occurred when the State introduced a "certified letter" from the Illinois State Police to prove Diggins, who was charged with aggravated unlawful use of a weapon, did not have a Firearm Owners Identification (FOID) card. *Diggins*, 2016 IL App (1st) 142088, ¶¶ 16-18. The "certified letter" indicated the officer had conducted " 'a careful search of the FOID files' " and determined (1) Diggins, prior to his arrest, submitted a FOID card application, and the application was denied, and (2) as of May 7, 2013, a date after Diggins's arrest but before his trial, " 'this office has no other record' " for Diggins. *Diggins*, 2016 IL App (1st) 142088, ¶ 6. The First District reversed Diggins's conviction, concluding that the "certified letter" constituted an affidavit that was issued "presumably in preparation for trial" and, as such, was a testimonial statement. *Diggins*, 2016 IL App (1st) 142088, ¶ 16.

¶ 15 We find *Diggins* distinguishable from the case at bar. We note the secretary of state's certification states, in part, "the information set out herein is a true and accurate copy of the captioned individual's driving record." Unlike the "certified letter" in *Diggins*, the certification on defendant's driving abstract does not set forth the secretary of state's personal knowledge of a fact necessary for the defendant's conviction, *i.e.*, that her driver's license had been suspended. Rather, the certification attests to the secretary of state's knowledge as to what was contained in defendant's driving record. The information included in the body of the abstract

was collected prior to defendant's traffic stop and not in anticipation of trial. The driving abstract was not created for the purpose of establishing a fact at trial and, therefore, was not testimonial. Defendant points to the label "COURT PURPOSES" to bolster her argument that the driving abstract was generated in anticipation of litigation. We disagree. At most, this label indicates when and why the certified driving abstract was copied. It does not indicate the abstract itself was created for the purposes of defendant's trial.

¶ 16 Moreover, we also find the certified driving abstract was admissible under the public records exception to the hearsay rule. See Ill. R. Evid. 803(8) (eff. Sept. 28, 2018). The certified driving abstract contained information the secretary of state was, by law, required to report. See *Leach*, 2012 IL 111534, ¶¶ 130, 137 (finding the admission of an autopsy report did not violate the defendant's right to confrontation because, although autopsy reports "might eventually be used in litigation," said reports are generally "prepared in the normal course of operation of the medical examiner's office" and are, therefore, nontestimonial). Therefore, we find no error. Defendant's constitutional right to confrontation was not violated by the admission of the defendant's certified driving abstract. Thus, we need not address defendant's remaining plain-error argument.

¶ 17 Defendant also claims trial counsel was ineffective for failing to object to the admission of the certified driving abstract. The State disagrees, contending defendant cannot show she was prejudiced when such error was invited by her defense counsel and was a matter of trial strategy.

¶ 18 Claims of ineffective assistance of counsel are analyzed under the two-pronged test set forth in *Strickland v. Washington*, 466 U.S. 668, 687 (1984). To prevail on a claim of ineffective assistance, a defendant must show both (1) "counsel's performance was objectively unreasonable under prevailing professional norms" and (2) "there is a 'reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.' " *People v. Domagala*, 2013 IL 113688, ¶ 36, 987 N.E.2d 767 (quoting *Strickland*, 466 U.S. at 694). A defendant's failure to satisfy either prong of the *Strickland* test precludes a finding of ineffective assistance of counsel. *Domagala*, 2013 IL 113688, ¶ 36.

¶ 19 We find defendant cannot satisfy *Strickland*'s prejudice prong. See *People v. Haynes*, 192 Ill. 2d 437, 473, 737 N.E.2d 169, 189 (2000) ("[I]f [an] ineffective assistance claim can be disposed of on the ground that the defendant did not suffer prejudice, a court need not determine whether counsel's performance was constitutionally deficient."). The admission of the certified driving abstract did not violate defendant's rights under the confrontation clause. As such, defendant cannot establish she was prejudiced by defense counsel's failure to object to its admission on that basis. Defendant's ineffective assistance of counsel claim is without merit.

¶ 20 Since we have concluded defendant's argument was forfeited on appeal, we need not address the State's argument defense counsel invited error.

¶ 21 III. CONCLUSION

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

¶ 23 Affirmed.