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2021 IL App (3d) 180231-U

Order filed March 4, 2021

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2021

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-18-0231
SHERMAN COLLINS JR.,)	Circuit No. 17-CF-1860
Defendant-Appellant.)	Honorable Edward A. Burmila Jr., Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Presiding Justice McDade and Justice Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* The victim's written statement was properly admitted as a prior inconsistent statement.

¶ 2 Defendant, Sherman Collins Jr., appeals his two domestic battery convictions. He argues the Will County circuit court improperly admitted into evidence the written statement of the victim, Tiffany Cole. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The State charged defendant by indictment with aggravated domestic battery (720 ILCS 5/12-3.3(a-5) (West 2016)), felony domestic battery (*id.* § 12-3.2(a)(2)), and misdemeanor domestic battery (*id.* § 12-3.2(a)(2)). The cause proceeded to a bench trial.

¶ 5 Officer Ricky Scallate testified that he responded to a domestic violence report at Cole's residence on September 10, 2017. Cole told Scallate that defendant hit her during an argument. Scallate observed scratches around Cole's mouth and noted that her lip was swollen and bleeding. Scallate recalled that Cole did not exhibit signs of impairment during his interactions with her. Scallate did not smell alcohol, and he noted that Cole was able to communicate clearly. Scallate also identified Cole's written statement and her signature.

¶ 6 Cole testified that she previously had a dating relationship with defendant. However, that relationship ended before September 10, 2017. On that date, Cole called 911 and reported that she and defendant had an argument that caused her to have high blood pressure. At the time of the call, Cole was intoxicated. Due to her intoxication, she could not remember when defendant arrived at her residence or why he was there. Cole solely remembered speaking with the police officers who responded to her 911 call. She did not remember telling the officers that the argument with defendant had been about who she was with that night. Cole did not recall telling the officers that defendant "punched" her in the head. She stated that the injury on her lip was "probably from tussling." She did not recall how she received the scratches around her mouth. Cole denied telling the officers that those scratches came from defendant putting his hand over her mouth to prevent her from screaming.

¶ 7 Cole remembered that an ambulance transported her to the hospital. There, she made a written statement regarding the events that occurred that evening. The State presented Cole with her written statement, and she identified her signature and admitted that she wrote the statement.

Cole said the officers told her what to write. Cole did not remember what the officer told her to write. The State moved to admit the statement as a prior inconsistent statement. The court admitted the statement as substantive evidence over defendant's objection.

¶ 8 In the statement, Cole wrote that defendant "started arguing [*sic*] about who I been with and I go to get up and he started hitting me in the face bust my lip hit me in the head I fell to the bed and I started to scream real loud that's how I got scratched up by my mouth." Cole described her injuries as "head hurts and lip." She also noted that defendant had "abused" her "Lip, face, neck, head."

¶ 9 After the parties questioned Cole, the court inquired, "Are you telling [the State] you don't know whether that happened and you don't remember whether you told the police, or are you saying that did not happen?" Cole answered, "That did not happen." The State clarified, "When you say that didn't happen, what is the thing you are saying didn't happen?" Cole said, "[Defendant] did not hit me, punch me, or whatever."

¶ 10 At the conclusion of the State's case-in-chief, the court granted defendant's motion for a directed verdict on count I, aggravated domestic battery. The trial proceeded on counts II and III.

¶ 11 Defendant testified that he was not at Cole's apartment when the incident occurred. Instead, defendant was in Cole's vehicle looking for her. Defendant was unable to find Cole and fell asleep in the backseat. Defendant denied having any contact with Cole on September 10, 2017.

¶ 12 The court found defendant guilty of the domestic battery charges alleged in counts II and III. The court sentenced defendant to 36 months of probation.

¶ 13 **II. ANALYSIS**

¶ 14 On appeal, defendant argues the circuit court erred in admitting Cole's written statement as substantive evidence. Specifically, the court failed to follow the procedure set forth in section

115-10.2a of the Code of Criminal Procedure of 1963 (Code). 725 ILCS 5/115-10.2a (West 2016). The State argues the court did not err because Cole’s statement was properly admitted under section 115-10.1 of the Code. We agree with the State, that the written statement was admissible under section 115-10.1 as a prior inconsistent statement.

¶ 15 We note that defendant forfeited review of this issue and argues that it is reviewable under the plain error doctrine. The plain error doctrine permits a reviewing court to remedy a “clear or obvious error” when: “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.” *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). The first step of the plain error analysis is to determine whether an error occurred. *People v. Eppinger*, 2013 IL 114121, ¶ 19.

¶ 16 Section 115-10.1 of the Code provides:

“In all criminal cases, evidence of a statement made by a witness is not made inadmissible by the hearsay rule if

(a) the statement is inconsistent with his testimony at the hearing or trial,

and

(b) the witness is subject to cross-examination concerning the statement,

and

(c) the statement—

(2) narrates, describes, or explains an event or condition of which the witness had personal knowledge, and

(A) the statement is proved to have been written or signed by the witness, or

(B) the witness acknowledged under oath the making of the statement either in his testimony at the hearing or trial in which the admission into evidence of the prior statement is being sought, or at a trial, hearing, or other proceeding ***.” 725 ILCS 5/115-10.1 (West 2016).

¶ 17 Cole’s prior written statement was properly admitted because it satisfied each of the section 115-10.1 requirements. First, Cole testified that she did not remember why defendant was at her residence or what she told police they argued about. However, Cole’s written statement contradicted her testimony. It provided a reason for defendant’s presence at her residence and the cause of their argument. Additionally, at trial, Cole denied that defendant hit her or caused injuries to her face, but her written statement indicated that defendant hit her, she received injuries from the blow, and documented the extent of the injuries. Second, Cole was subject to cross-examination at trial. Finally, the statement described the violent interaction between Cole and defendant that occurred on September 10, 2017, the testimony of Cole and Scallate established that Cole wrote and signed the statement, and Cole acknowledged under oath that she made the prior written statement. Therefore, Cole’s written statement satisfied each of the requirements of section 115-10.1 of the Code and was properly admitted as a prior inconsistent statement.

¶ 18 Having found that Cole’s written statement was admissible under section 115-10.1, we need not address defendant’s argument that the statement was erroneously admitted under section 115-10.2a of the Code. While section 115-10.2a is applicable in domestic violence prosecutions, the section does not preclude the application of other hearsay exceptions. Moreover, we may affirm for any reason supported by the record, and here, the record directly establishes that the written statement was admissible under section 115-10.1. *People v. Tondini*, 2019 IL App (3d) 170370, ¶ 25. Accordingly, we find no error, and therefore, no plain error.

III. CONCLUSION

¶ 19

¶ 20

For the foregoing reasons, we affirm the judgment of the circuit court of Will County.

¶ 21

Affirmed.