2014 IL App (2d) 130195-U
No. 2-13-0195
Order filed September 29, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Kane County.
Plaintiff-Appellee,	)	
v.	)	No. 11-CF-1203
TRAVIS OLIVER,	)	Honorable Marmarie J. Kostelny,
Defendant-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices Hutchinson and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: Even assuming the trial court abused its discretion by permitting the State to pose the *voir dire* questions at issue, defendant has not established either prong of the plain error doctrine and, it necessarily follows that defendant's ineffective assistance of counsel claim also fails; affirmed.

¶ 2 Following a jury trial, defendant, Travis Oliver, was convicted of domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2010)), and he was sentenced to three years' imprisonment. The sole issue raised by defendant on appeal is whether the trial court abused its discretion by allowing the State to pose various questions during *voir dire*. For the foregoing reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On June 13, 2011, Aurora police officers responded to a call at an apartment where defendant and his live-in girlfriend, Kari Young, resided. An intoxicated Young told the officers that defendant had pulled her hair, punched her, and kneed her in the face. Defendant was arrested and charged with two counts of domestic battery, and the case proceeded to a jury trial.

¶ 5 Young testified at trial that she had no recollection of what she told the police on June 13. She remembered that she and defendant had been hosting a barbeque and that she began drinking around noon. Young testified that, around 9:30 p.m., defendant and his cousin, Clanee, got into a verbal argument, but Young did not remember what it was about. Young became involved in the argument but denied that it became physical and that she called the police.

¶ 6 However, police did arrive at Young's apartment, and she remembered speaking to them. Young admitted that she was upset and probably crying at the time she spoke with them. She did not remember telling the police that defendant grabbed her, punched her, and kneed her in the face. Young also admitted that she voluntarily gave the police a written statement that night. Young testified that she wrote the statement because she was mad at defendant and she thought that, if she gave a statement, the police would leave. She testified that there was no physical contact between her and defendant that night. Young further testified that, since the incident in June 2011, defendant had proposed to Young and that she loved him and intended to marry him.

¶ 7 Photographs taken at the time of the offense, which were introduced into evidence, depict Young with a swollen, bloody lip, dried blood on her shirt, and disheveled hair. When these were presented to Young, she denied that they showed any sign of injury. Young testified that she did not know who caused the injuries to her except that it was not defendant, and "it's not really any injuries;" it was just a "scratch."

¶ 8 Officer Ted Grommes of the Aurora police department testified that he encountered Young in the parking lot of the apartment complex where he was dispatched. To Grommes, Young appeared very upset and disheveled. She had blood on her lip and shirt and her hair appeared to have been pulled. Young told him that defendant had beaten her up, punched her in the face, and pulled her hair. Grommes stated that a second officer, Sean Fancsali, went with Young inside her apartment, where she wrote out a narrative statement and Young and the officers signed it. In the statement, which was introduced into evidence, Young wrote that defendant hit her in the face and pulled her hair in front of her 13-year-old son. Grommes denied that Young was coerced into giving a written statement. At some point, defendant entered the apartment and the police arrested him.

¶ 9 Officer Fancsali testified that Young appeared upset and was crying. He stated that Young told him that her live-in boyfriend hit her, kneed her, and grabbed her hair. He noticed that Young had a bloody lip and scratches on her neck, but she did not ask for medical assistance. Fancsali stated that Young smelled of alcohol, but he had no trouble understanding her. Fancsali identified the photographs he took of Young at the scene, and observed that they depicted Young with a bloody lip, blood on her shirt, and scratches on her neck. He testified that Young was not coerced into writing a statement. Fancsali stated that defendant had a swollen eye when he transported him to the police station after his arrest.

¶ 10 The jury found defendant guilty of two counts of domestic battery. The trial court merged the counts and subsequently sentenced defendant to three years' imprisonment. Defendant timely appeals.

¶ 11 II. ANALYSIS

¶ 12 Defendant contends that he was denied the right to an impartial jury because the prosecution's questions during *voir dire* predisposed the jury to convict him. This issue was not preserved by objections at the time the questions were posed or by raising it in a posttrial motion. Defendant asserts, however, that we should overlook the forfeiture, claiming that the error is plain error and alternatively, shows ineffective assistance of counsel.

¶ 13 The plain-error doctrine offers criminal defendants a narrow path to appellate review of procedurally forfeited trial error. *People v. Walker*, 232 Ill. 2d 113, 124 (2009). The doctrine permits review of otherwise forfeited matters where either the evidence is closely balanced, or the error affected the fairness of the defendant's trial and undermined the integrity of the judicial process. *People v. Bannister*, 232 Ill. 2d 52, 65 (2008).

¶ 14 The constitutional right to a jury trial encompasses the right to an impartial jury. *People v. Rinehart*, 2012 IL 111719, ¶ 16. The trial court is primarily responsible for conducting *voir dire*. Under Illinois Supreme Court Rule 431 (eff. May 1, 2007), the trial court must permit the parties to supplement its examination of potential jurors by inquiry which the court deems proper. *Id*. There is no precise test for determining which questions to allow and which will filter out partial jurors, so the manner and scope of the examination is within the discretion of the trial court. *Id.* An abuse of discretion occurs when the conduct of the trial court thwarts the purpose of *voir dire* examination—namely, the selection of a jury free from bias or prejudice. *People v. Williams*, 164 Ill. 2d 1, 16 (1994).

¶ 15 Consequently, *voir dire* questions, whether asked by the trial court or by the parties with the sanction of the court, must not be "a means of indoctrinating a jury, or impaneling a jury with a particular predisposition." *People v. Bowel*, 111 Ill. 2d 58, 64 (1986). This is not a bright-line rule but rather a continuum. *People v. Rinehart*, 2012 IL 111719, ¶ 17. Broad questions are

generally permissible. "Specific questions tailored to the facts of the case and intended to serve as 'preliminary final argument' are generally impermissible." *Id*. (quoting *People v. Mapp*, 283 Ill. App. 3d 979, 989-90 (1996)).

¶ 16 Defendant claims that plain error resulted when the prosecutor allegedly biased the jurors during *voir dire* by asking each potential juror a variation of the following questions: (1) "And do you believe that the State has an obligation to prosecute people who are accused of domestic violence even if the victim doesn't want to proceed with the case?"; (2) "And so do you think that if a victim does not want to testify, that a defendant should not be prosecuted?"; (3) "Do you think that people sometimes will lie to protect those that they love?"; and (4) "Do you think the police are ever overzealous with domestic violence *** in investigating cases?" Defendant maintains that the questions asked during *voir dire* predisposed the jurors to prejudge the credibility of the complaining witness and only served to predispose them to disbelieve her.

¶ 17 We disagree with defendant that the evidence presented against him at trial was closely balanced, so as to permit review under the first prong of plain error analysis. Grommes testified that Young appeared disheveled, her lip was bloody and swollen, and her shirt had dried blood on it. Young told the officer that defendant had beaten her up, punched her in the face, and pulled her hair. Fancsali also testified that Young was upset and crying, and she told him that her live-in boyfriend had hit her, grabbed her hair, and kneed her. He identified the photographs he took of Young at the scene and observed that she had blood all over her shirt, her lip, and scratches on her neck.

¶ 18 Defendant argues that "[t]he evidence here was very weak, given that the purported victim denied that anything untoward occurred. The State relied almost entirely on the [written] statement Young gave to the police." That written statement was substantive evidence of what

occurred. See 725 ILCS 5/115-10.1 (West 2010); Illinois Rules of Evidence 801(1)(d)(1)(A)(2)(a). The police testimony and the photographs of Young's injuries corroborated her written account. Evidence has been found to be closely balanced when there are two opposing versions of events and there is no extrinsic evidence presented to "corroborate or contradict either version." People v. Naylor, 229 Ill. 2d 584, 607 (2008). This was not the case here. While defendant argues that the error was prejudicial because the outcome rested on a credibility determination, we fail to see how the questions posed by the prosecutor during *voir dire* affected that outcome.

¶ 19 Furthermore, even if the questions were error, they did not rise to the level of plain error such that they undermined the integrity of the judicial process. The questions did not constitute a material factor in defendant's conviction or result in substantial prejudice to the accused. The questions complained of here were harmless beyond a reasonable doubt based on the overwhelming inculpatory evidence presented at trial. See *People v. Mapp*, 283 Ill. App. 3d 979, 989-90 (1996) (improper indoctrination questions held to be harmless beyond a reasonable doubt as the admitted evidence was so overwhelming that no fair-minded trier of fact could reasonably have voted to acquit defendant).

¶ 20 Defendant argues in the alternative that defense counsel was ineffective for failing to object to the *voir dire* questions at issue. See *Strickland v. Washington*, 466 U.S. 668, 687 (1984) (a defendant establishes ineffective assistance of counsel by showing (1) his counsel's representation fell below an objective standard of reasonableness; and (2) there exists a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different). Because the evidence was not closely balanced, even if counsel had objected to the questions asked by the prosecutor during *voir dire*, the outcome of the trial would not have been

different. Thus, defendant cannot establish the required prejudice to sustain his ineffective assistance of counsel claim. See *People v. Marcos*, 2013 IL App (1st) 111040, ¶ 77 (failure to establish either prong of *Strickland* test will doom an ineffectiveness claim); see generally *People v. White*, 2011 IL 109689 (holding that prejudice prong for ineffective assistance of counsel is similar to closely balanced evidence prong of plain error review).

¶ 21 III. CONCLUSION

¶ 22 For the reasons stated, the judgment of the circuit court of Kane County is affirmed.

¶ 23 Affirmed.