

No. 1-09-3512

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 09 CR 13300
	)	
JERMAINE VILLAMIL,	)	Honorable
	)	John J. Moran, Jr.,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE Garcia delivered the judgment of the court.  
Presiding Justice Gordon and Justice Lampkin concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where defendant's testimony was undermined by the testimony of his witness and his credibility was challenged by his criminal history, defendant could not show plain error based on an isolated comment by the court in explaining its verdict.

¶ 2 After a bench trial, defendant Jermaine Villamil was convicted of possession of a controlled substance and sentenced to four years in prison. On appeal, defendant contends that the trial court committed error when it took judicial notice, after the close of evidence, that "everybody knows in Chicago" that Crown Victorias are unmarked police vehicles, a fact not appropriate for judicial notice. We affirm.

¶ 3 At trial, Officer Brian Murphy testified that around 12:45 p.m. on June 23, 2009, he was driving an unmarked police vehicle, accompanied by a partner, in the vicinity of the 6200 block of North Campbell Avenue when he observed defendant walking down the sidewalk. Both officers were in uniform. According to the Officer Murphy, defendant looked in their direction and, as the car passed him, moved his right hand, dropped three items on the sidewalk, and continued walking. Murphy was looking out the car's rear window when he saw defendant drop the items, with nothing obstructing his view of defendant. No cars or people went by while Murphy observed defendant. The items that defendant dropped were "very white looking rock-like substances" the size of half of a golf ball. Based on his experience, Murphy believed defendant had dropped narcotics. Murphy stopped and exited the car, at which time defendant started walking in the officers' direction. Murphy recovered the items, not losing sight of the items on the sidewalk the entire time, while his partner temporarily detained defendant. Murphy did not see defendant conduct anything that looked like a drug transaction and was unable to recall whether defendant had any drugs on his person after he was arrested.

¶ 4 The parties stipulated that the recovered substance tested positive for the presence of cocaine in the amount of 11 grams.

¶ 5 Defendant testified that around 12:45 p.m. on June 23, 2009, he was on his way home from the gas station and walking on Campbell. As he was walking, he heard a car honk its horn and someone say, "Villamil, come here." Defendant did not know who was honking or calling to him because he has poor eyesight and can only see things clearly if they are within a couple of feet of his face. Though defendant could correct his vision with eyeglasses or contact lenses, he could not afford either. Defendant testified that even if he could have afforded corrective lenses, he did not have a current prescription at the time. It had been "a long time" since he had been to the optometrist, probably since January. The car was about 25 feet away

when defendant heard the honking. When asked to describe the car, defendant responded, "I just know it was a car. I got close it was -- I know it was a Crown Vic." He also testified that the police were the only people who called him by his last name. Defendant approached the vehicle and asked if there was a problem. He recognized Officer Murphy when he was about five feet away. The officers put defendant in handcuffs, put him in the car then drove off. Defendant did not have any cocaine in his possession and did not drop three bags of cocaine onto the sidewalk on the date in question. Defendant helps take care of his two-year old child and works at Levy Restaurant, where he prepares pre-cooked food.

¶ 6 Dr. Scott Ford, defendant's optometrist, testified that defendant has myopia, which requires corrective lenses to see things clearly if they are beyond a foot away. Ford last saw defendant earlier in the year in March. Ford explained that it would be dangerous for defendant to cross the street and difficult to care for a small child without corrective lenses. He also said defendant might be able to prepare food "if he's working right under his nose." Ford did not know whether defendant was wearing glasses or contacts on June 23, 2009, but said that defendant did have a valid prescription for contact lenses at the time. Ford also brought in lenses that simulated defendant's vision without corrective lenses.

¶ 7 The parties entered into evidence a stipulation that defendant had four prior felony convictions, including possession of a controlled substance, possession of a stolen motor vehicle, possession of a controlled substance with intent to deliver, and aggravated fleeing and eluding, which were considered for the limited purpose of impeaching defendant's credibility.

¶ 8 In its findings, the court specifically stated that it found Officer Murphy to be a credible witness. It reasoned that the defense theory that the officer made up the story to frame defendant was not substantiated.

"First off, the glasses that were brought by the doctor so that - the two lenses so the Court could view, and I find that based on that demonstration, that a vehicle that short a distance away, even with blurred vision, could be determined by the defendant to be a police vehicle. And as he indicated, a Crown Victoria[, which] everybody knows in Chicago are unmarked police cars. He has some impairment but not to the - based on that distance and the degree of impairment that would have prevented him from making that determination.

And, also, just common sense tells you that the officer who is going to put a case on the defendant, he could have done a much better job. \*\*\* He's not been impeached in any significant way.

The court finds that he is credible."

The court found defendant guilty of possession of a controlled substance and sentenced him to four years in prison.

¶ 9 On appeal, defendant asserts that he did not receive a fair trial because the trial court *sua sponte* took judicial notice that Crown Victorias are unmarked police cars, a conclusion he contends is not subject to judicial notice. Defendant asks that we reverse his conviction and sentence and remand his cause for a new trial.

¶ 10 The State initially responds that defendant has forfeited this issue by failing to contemporaneously object and properly preserve it in a posttrial motion. *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). Defendant replies that the forfeiture rule should be relaxed where the error arises from a ruling by trial court itself; he should not be expected to object to the trial court's own actions. However, relaxation of the forfeiture rule is generally limited to

extraordinary circumstances, which prevent a defendant from objecting to trial court errors, or where an objection is likely to fall on deaf ears. See *People v. McLaurin*, 235 Ill. 2d 478, 488 (2009) (a failure to make a timely objection can only be excused under extraordinary circumstances); *People v. Speight*, 153 Ill. 2d 365, 379 (1992) (where the trial court *sua sponte* took judicial notice of a fact after the close of evidence and defendant failed to object, the issue was not properly preserved for review).

¶ 11 To avoid forfeiture of the issue, the defendant asserts plain error, which he acknowledges he bears the burden to establish. *Hillier*, 237 Ill. 2d at 545. Defendant contends plain error occurred under the first prong of the plain error doctrine, which applies when the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant. *People v. Walker*, 232 Ill. 2d 113, 124 (2009).

¶ 12 In a bench trial, the trial court is limited to considering only the evidence adduced at trial, or reasonable inferences that may be drawn from the evidence. *People v. Dunn*, 326 Ill. App. 3d 281, 286 (2001). Judicial notice of facts may be taken, but only during the course of the trial. Judicial notice of facts may not be taken after the evidence has closed. *People v. Speight*, 222 Ill. App. 3d 766, 771 (1991), *rev'd on other grounds*, 153 Ill. 2d 365 (1992). Judicial notice is limited to commonly known matters or facts that "are readily verifiable from sources of indisputable accuracy." *Murdy v. Edgar*, 103 Ill. 2d 384, 394 (1984).

¶ 13 With all of that said, this case is not a "judicial notice of fact" case. We reject defendant's characterization of the statement the trial court made during its ruling as a "judicial notice of fact." While we agree with the trial court's statement that police cars and Crown Victorias are often times one and the same, we fail to see how this statement tipped the scales of justice against him, as defendant claims for plain error. In other words, we fail to see how any prejudice arose to defendant from the trial court's explanation of its guilty finding.

¶ 14            Apparently, defendant argues that his poor eyesight prevented him from recognizing the car driving past him as a Crown Victoria and hence a police car, so that there would have been no reason for defendant to have dropped the narcotics. Of course, the defendant testified that he did not have narcotics on his person either before or after the Crown Victoria came upon him so we question why his poor eyesight was a material question at his trial. In his brief, defendant attempts to explain his contention: "In closing arguments, defense counsel argued that Mr. Villamil's extreme nearsightedness, confirmed by the disinterested Dr. Ford, disproved the police version of events. Villamil only had reason to drop any cocaine he was carrying if he believed he was in the presence of police officers that might detain and search him." While that is a plausible defense, it is not dependent on the sort of defense urged by the defendant, that his "extreme nearsightedness" made the officer's version of events incredible.

¶ 15            We infer from the trial court's finding of guilty that it found as a fact that the officer's, while in uniform, were in an unmarked vehicle. While the car passed the defendant, Officer Martin observed the defendant drop suspected narcotics to the ground. The officers detained the defendant and recovered narcotics. That the defendant claims he was virtually blind to everything not directly in front of "his nose" does not mean that he did not drop the narcotics as the Crown Victoria passed. For all we know, the defendant may have *sensed* the car was a police car, without recognizing it as a Crown Victoria. Ultimately, the reason defendant dropped the narcotics makes no difference.

¶ 16            The issue is whether a reasonable finder of fact could be convinced beyond a reasonable doubt that the defendant dropped narcotics as the officer testified. Or, consistent with the defense claim, that defendant's denial of possessing any narcotics was sufficient to raise reasonable doubt. That the trial court explained his verdict of guilty with an observation of the make of the car the officers were in does not mean that the officer's version was credible *only if*

the defendant was able to recognize the car as a Crown Victoria. To make this clear, if the defendant had not testified, this claim based on his poor eyesight would not be before us. Likewise, that he did testify and claimed he could not recognize the vehicle in which the police officers were riding as a police car does not in any sense undermine the version of events as testified to by the officer, which the trial court expressly found credible.

¶ 17           There was no error imbedded in the trial court's comments to explain his guilty finding. The trial court did not take judicial notice, as the defendant claims, that Crown Victorias are always police cars. This isolated comment was not a finding of fact, such that the trial court added it to the scale of incriminating evidence that flowed from the officer's testimony. In effect, the comment simply reflected the trial court's implicit rejection of the defendant's testimony. The trial court's comment was not a "judicial notice of fact" made after the close of the evidence. *Cf. Speight*, 222 Ill. App. 3d at 771, *rev'd on other grounds*, 153 Ill. 2d 365 (1992). Absent error there can be no plain error.

¶ 18           We affirm the judgment of the trial court.

¶ 19           Affirmed.