FIFTH DIVISION
December 23, 2011

No. 1-10-1380

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 09 CR 1614
	)	
MAURICE MONTGOMERY,	)	The Honorable
	)	Kevin M. Sheehan,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE EPSTEIN delivered the judgment of the court
Justices Joseph Gordon and McBride concurred in the judgment.

O R D E R

¶ 1 *Held*: Trial court did not abuse its discretion when it held that evidence of other crimes was, despite being hearsay, relevant and reliable and admitted that evidence at defendant's sentencing hearing.

¶ 2 Following a jury trial, defendant Maurice Montgomery was found guilty of armed robbery and aggravated battery and sentenced to concurrent terms of 28 years and 5 years in prison. On appeal, defendant does not contest the guilty finding, but contends, solely, that the trial court abused its discretion during sentencing when it admitted hearsay evidence of other uncharged offenses. We affirm.

¶ 3 Because defendant does not challenge the finding of guilt, we need only set forth a brief

summary of the trial proceedings. Defendant elected to represent himself, *pro se*, during the jury trial. The State presented evidence that, on December 2, 2008, defendant and three other men robbed Ben Willis outside his employer's parking lot. Willis testified that the men took $1,700 cash from him. In a statement he gave to the police, defendant said that the group intended to take drugs from Willis but that they took his wallet instead, after failing to find the drugs or money they expected. During the robbery, defendant sat in his fiance's car and waited for the other offenders while they committed the robbery. The victim was struck with a starter's pistol which was loaded with blank ammunition. A magazine was found at the scene that matched a starter pistol recovered from defendant's fiancee's home. In his statement, defendant said that he yelled at the other men because he did not expect them to use violence. The jury found defendant guilty.

¶ 4 Defendant requested that counsel be appointed for posttrial proceedings, and the trial court granted the request appointing the public defender's office.

¶ 5 Over defendant's objection, the State presented the testimony of three police officers. Officer Robert Mangan testified that he encountered defendant in a parked car on October 17, 2006, while investigating a report of a man with a gun. Defendant was wearing a bullet proof vest and what appeared to be a United States Marshal's badge. Defendant indicated that he was a fugitive recovery agent. Mangan spoke to three individuals at the scene, each of whom indicated that defendant had robbed them days earlier. In the trunk of defendant's car, Mangan discovered additional United States Marshal's clothing, a flashing blue light, and a black plastic replica weapon which looked and functioned similar to a semiautomatic pistol. Mangan attempted to, but was unable to verify, any relationship between defendant and the United States Marshal's fugitive recovery bureau.

¶ 6 Detective Anthony Romanowski testified that on October 17, 2006, he interviewed the three witnesses who claimed they had been robbed by defendant. Defendant objected to the testimony as hearsay, but the trial court overruled the objection stating that the evidence was relevant and reliable. Each witness told Romanowski that defendant was wearing a handgun, a bullet proof vest and a badge and had demanded and taken money. Romanowski investigated and was unable to determine that defendant had ever been a member of local, state or federal law enforcement.

¶ 7 Detective Alfredo Rivas testified on January 3, 2009, he investigated the robbery of Willis. Rivas spoke to defendant's girlfriend and she indicated that he was employed as a United States Marshal. Rivas subsequently arrested defendant and participated in a search of his home pursuant to the girlfriend's consent. Rivas recovered a United States military badge and a two-way radio from defendant's person. In the master bedroom of defendant's home, Rivas recovered a starter pistol with no magazine, handcuffs, a handcuff holder, a shoulder holster and a bullet proof vest carrier which was missing the Kevlar inserts. Rivas investigated and learned that defendant was not employed as a law enforcement officer. On cross-examination, Rivas admitted that he sought charges of impersonating a police officer, but that those charges were not approved by an assistant State's Attorney.

¶ 8 The trial court subsequently sentenced defendant to 28 years' incarceration for armed robbery and a concurrent sentence of 5 years' incarceration for aggravated battery. During sentencing the trial court observed: "[Defendant] in your 36 years on this Earth you have chosen to be a one-man crime wave." The court noted that defendant had a criminal history extending back to the age of 15 and that he had been found delinquent of crimes including aggravated assault, unlawful use of a weapon, possession of a stolen motor vehicle, burglary and criminal

trespass. As an adult, defendant had been found guilty of crimes including, armed robbery, possession of a stolen motor vehicle, and aggravated false impersonation of a police officer. The court concluded that a lengthy sentence was necessary to protect the public.

¶ 9 On appeal, defendant contends that the trial court erred by admitting hearsay testimony of uncharged offenses during the sentencing hearing.

¶ 10 The State argues that this issue was forfeited because although defendant objected during the hearing, he failed to raise the issue in a postsentencing motion. See *People v. Cortes*, 181 Ill. 2d 249, 292 (1998). Defendant concedes that he forfeited the issue, but asks this court to consider his claim as plain error. Before considering whether this error was plain, we must first consider whether error occurred. See *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). For the reasons that follow, we find that no error occurred.

¶ 11 A trial court has broad discretion in determining the types and sources of evidence it will consider when determining the appropriate sentence for an offense. *People v. Tigner*, 194 Ill. App. 3d 600, 607 (1990). The only requirement is that the evidence be reliable and relevant. *Id*. Evidence of other crimes is admissible as relevant to a defendant's character. *People v. Morgan*, 112 Ill. 2d 111, 143 (1986). Hearsay evidence is not *per se* objectionable, as being unreliable. *Id*., see also *People v. Williams*, 181 Ill. 2d 297, 331 (1998). Any objection to such testimony goes to its weight not its admissibility. *Williams*, 181 Ill. 2d at 331.

¶ 12 Here, we find no abuse of discretion. The allegedly objectionable evidence was admitted through the testimony of police officers who were investigating a crime shortly after it was committed and before the crime for which defendant was being sentenced had been committed. Accordingly, we cannot find that the trial court abused its discretion in admitting this evidence. See *Morgan*, 112 Ill. 2d at 144 (holding that a police officer's testimony regarding the official

investigation of an unrelated offense committed years earlier was both relevant and reliable). Although the police officer's testimony contained hearsay statements from the victims, the hearsay nature of the statements affected only the weight to be given the evidence. See *Williams*, 181 Ill. 2d at 331.

¶ 13 Defendant cites *People v. Blanck*, 263 Ill. App. 3d 224, 235 (1994) and argues that "such evidence should be presented by witnesses who can be confronted and cross-examined, and the defendant should have an opportunity to rebut the testimony." We find this argument disingenuous. First, *Blanck*, an appellate court case, was decided years before the supreme court clearly held in *Williams*, that hearsay was admissible in a sentencing proceeding. See *Williams*, 181 Ill. 2d at 331. Second, *Blanck* only appears to support defendant's argument because defendant conveniently omitted the phrase "rather than by hearsay allegations in the presentence report" when paraphrasing the holding. See *Blanck*, 263 Ill. App. 3d at 235. Here, the victims' statements, although hearsay, were admitted through live testimony rather than through the presentence report. Accordingly, we find no support for defendant's argument in *Blanck* or any other case cited to this court.

¶ 14 For the reasons, stated above we cannot conclude that the trial court abused its discretion when admitting evidence of defendant's prior uncharged offenses during sentencing. Because there was no error there can be no plain error. Accordingly, the judgment of the circuit court of Cook County is affirmed.

¶ 15 Affirmed.