2011 IL App (1st) 110355-U

THIRD DIVISION
November 9, 2011

No. 1-11-0355

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. 10 CR 4343
	)	
ENRIQUE ARROYO,	)	Honorable
	)	Vincent M. Gaughan,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE MURPHY delivered the judgment of the court.
Justices Neville and Salone concurred in the judgment.

O R D E R

¶ 1 *Held*: Defendant failed to preserve his claim that there was a break in the chain of custody of the evidence and, further, failed to argue plain error on appeal. His claim was forfeited. The evidence was sufficient to sustain his conviction. The judgment of the circuit court was affirmed.

¶ 2 Following a bench trial, defendant Enrique Arroyo was found guilty of residential burglary, then sentenced to five years' imprisonment. Defendant challenges the sufficiency of the evidence to sustain his conviction and, further, contends there was a break in the chain of custody of the fingerprint evidence linking him to the crime. We affirm.

¶ 3 Defendant was charged with the above-stated offense after the police found his fingerprint inside the home of Jennifer and Bryon Earles. The combined testimony of the Earles

established that on September 6, 2009, Jennifer arrived home from work and discovered the house had been "ransacked" and was missing $120 cash, a television, and a computer from the office, among other things. The Earles discovered their cherry wood box clock, which previously hung on the wall, on the floor in their office. There were no witnesses to the crime, and the Earles did not authorize defendant to enter their home.

¶ 4 Police were called. Evidence technician Barry Earls testified that he dusted the clock, air conditioner, two shoe boxes, and a jewelry box for fingerprints. The dusting revealed ridge impressions, and he submitted the evidence to the latent prints lab for processing.

¶ 5 Detective Paul Howard testified he discovered that there were prints recovered from the crime scene and that he then submitted the prints for analysis to the latent print unit. He received a latent print report identifying defendant as a possible suspect.

¶ 6 The parties stipulated that in April 2010, Cook County State's Attorney Investigator Bill Kovaks took 18 ink fingerprints from defendant, then signed and dated the fingerprint card. At this point, the court inquired whether Investigator Kovaks in fact took 18 fingerprints. The State responded that the correct number was nine. The State continued reading the stipulation into evidence, stating that Investigator Kovaks hand-delivered the card to the forensic unit at the Chicago police department for examination. The parties stipulated that the chain of custody of the fingerprint card was maintained at all times. The court emphasized that the stipulation would be to nine fingerprints and allowed the stipulation into evidence. Defendant did not object.

¶ 7 The parties, in addition, stipulated that latent print examiner Thomas Cook was an expert in the field of latent print examination. Cook testified that he received evidence of latent fingerprints, containing five fingerprint "lifts" which had been taken from the crime scene. He then compared defendant's fingerprint card, taken by Investigator Kovaks, to the crime scene's latent prints. Based his extensive experience as a fingerprint examiner, Cook determined that the print from the clock was suitable for comparison. Cook determined to a high degree of scientific

certainty that the right thumbprint found on the clock matched the thumbprint taken from defendant by Investigator Kovaks.

¶ 8 On cross-examination, Cook stated that the fingerprint card contained 10 fingerprints. Defendant did not then raise an objection based on the discrepancy between Cook's testimony and the stipulated evidence wherein the parties agreed the card contained nine prints.

¶ 9 The State then rested. Defendant moved for a directed finding, which was denied.

¶ 10 Defendant's father, Acencio Arroyo, testified that defendant had been at their family home on the day of the burglary.

¶ 11 Defendant also testified that he had been at home on the day in question and that he did not burglarize the Earles' residence. He further testified that several times he had shopped at Value City Furniture, where the Earles had purchased their clock. He handled the same clock about six months prior to the burglary.

¶ 12 Bryon, however, had testified that he had purchased the clock in May 2007, that it was in a sealed condition at the time of purchase, and that he thereafter cleaned the clock on a monthly basis, including about three weeks before the burglary. Cook had testified that wiping a fingerprint would destroy it.

¶ 13 Following evidence and argument, the trial court found defendant guilty of residential burglary. The court found there was no adequate explanation as to how defendant's fingerprint got on the clock.

¶ 14 Defendant filed a motion for acquittal and a new trial, arguing the evidence was insufficient to sustain his conviction. In addition, he argued that there was a break in the chain of custody of the fingerprint evidence because there were discrepancies as to how many fingerprints appeared on the card collected by Investigator Kovaks.

¶ 15 The court denied defendant's motion, then sentenced him to five years' imprisonment. Defendant appealed.

¶ 16 Defendant first contends the State failed to prove him guilty beyond a reasonable doubt of residential burglary. In support, defendant appears to argue that the State failed to establish a proper chain of custody with respect to both the fingerprint evidence collected by Investigator Kovaks and the latent fingerprints collected at the crime scene. That is, defendant argues the State failed to establish that reasonable protective measures were taken to ensure that the prints taken by Kovaks were really those of defendant, where the evidence revealed discrepancies as to the number of prints taken (the State initially stated in reading the stipulation that 18 prints were taken, then amended it to 9, and Cook testified there were 10). Defendant argues the State also failed to establish reasonable protective measures were taken to ensure that the prints collected from the crime scene were really those of defendant, where two witnesses each testified that they delivered the prints to the lab.

¶ 17 Although defendant couches his argument in terms of sufficiency of the evidence, we find he is instead challenging the chain of custody of the evidence, *i.e.* whether the State laid a proper foundation for the admission of the fingerprint evidence. Because defendant's challenge is to the admissibility of the evidence, it is subject to normal rules of forfeiture. See *People v. Alsup*, 241 Ill. 2d 266, 275 (2011).

¶ 18 To avoid forfeiture, a defendant must raise the objection both at trial and in a posttrial motion. *People v. McCarter*, 2011 IL App. (1st) 092864, ¶ 34. Here, although defendant's posttrial motion challenged the chain of custody of the fingerprint evidence that Investigator Kovaks collected, it did not challenge the chain of custody of the latent prints, and defendant did not raise any contemporaneous objection at trial. We agree with the State that defendant did not preserve his arguments for review and thus forfeited them. See *McCarter*, 2011 IL App. (1st) 092864, ¶ 34.

¶ 19 Nevertheless, unpreserved error may be subject to review under the plain error doctrine. *McCarter*, 2011 IL App. (1st) 092864, ¶ 34-35. The plain error doctrine permits a reviewing court to address an unpreserved error when (1) the evidence is so closely balanced that a clear

and obvious error alone threatened to tip the scales of justice against the defendant, or (2) an error so serious occurred that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process. *Id*.

¶ 20 As the State notes, however, defendant does not contend that the alleged error amounts to plain error. Furthermore, the evidence was not closely balanced, and the discrepancies defendant points to were not so serious that this case qualifies as that "rare" one where a "complete breakdown" in the chain of custody occurred. See *Alsup*, 241 Ill. 2d at 280. Under these circumstances, we must honor defendant's procedural default without further analysis. See *People v. Bowens*, 407 Ill. App. 3d 1094, 1110 (2011).

¶ 21 We note finally that to the extent defendant argues the evidence was insufficient to sustain his conviction, we disagree. It is well-established that a conviction may be based solely on fingerprint evidence. *People v. Woods*, 225 Ill. App. 3d 988, 994 (1992). To sustain such a conviction, fingerprints corresponding to those of defendant must have been found in the immediate vicinity of the crime under circumstances establishing beyond a reasonable doubt that the fingerprints were impressed at the time the crime was committed. *Id*.

¶ 22 Here, defendant's thumbprint was found on the clock, which was discovered on the floor but previously hung on the wall, in the same room where the computer was stolen. Although defendant contends he touched the same clock in the store where the Earles purchased it, the trial court apparently did not believe him. Bryon testified that the clock he purchased was in a sealed condition and had been cleaned regularly up until weeks before the burglary. Although defendant on appeal suggests he previously installed carpet at the Earles' home, and thus could have then touched the clock, defendant testified at trial that he did not install carpet there. Based on the evidence, defendant's thumbprint could not have been left at any other time but when the home was burglarized. The evidence was sufficient to sustain his conviction beyond a reasonable doubt.

¶ 23 For the foregoing reasons, we affirm the decision of the circuit court of Cook County.

¶ 24 Affirmed.