

No. 1-08-2611

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

FIFTH DIVISION  
JUNE 30, 2011

---

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. 07 CR 21466
	)	
TERRELL WILLIAMS,	)	Honorable
	)	John T. Doody, Jr.,
Defendant-Appellant.	)	Judge Presiding.

---

JUSTICE JOSEPH GORDON delivered the judgment of the court.  
Presiding Justice Fitzgerald Smith and Justice Howse  
concurred in the judgment.

---

**O R D E R**

*HELD:* Where the jury found the police officers' testimony credible, defendant was proven guilty beyond a reasonable doubt. Also, defendant failed to establish plain error, and thus, forfeited his claim that he was denied his right to cross-examine the witnesses to discredit the surveillance officer's testimony. In addition, under the doctrine of invited error, defendant is prohibited from arguing that the trial court erred when it precluded him from questioning the officer about his exact surveillance location because defendant agreed that such information was not necessary prior to trial. Affirmed.

Following a joint jury trial, defendant Terrell Williams and codefendant Larell Williams\* were convicted of possession of a controlled substance with intent to deliver. The trial court sentenced defendant to five years' imprisonment. On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt because the surveillance officer's testimony was illogical, contradicted by police reports and contrary to human experience. Defendant also contends that he was denied his right to a fair trial where counsel was precluded from questioning other officers to show that the surveillance officer's testimony was unbelievable. Finally, defendant contends that he was denied his right to cross-examine the witness when the trial court precluded counsel from questioning the officer about his exact surveillance location. We affirm.

Defendant was charged with one count of possession with intent to deliver between 1 and 15 grams of a substance containing cocaine. Several months before trial, defendant filed a motion *in limine* for pretrial disclosure of the police officer's surveillance location, arguing that his case rested exclusively on the ability of the officer to observe the purported narcotics transaction. A few days before trial, the State filed a motion *in limine* arguing, *inter alia*, that the

---

\*Codefendant is not a party to this appeal.

1-08-2611

defense should be precluded from eliciting testimony regarding the exact location of the police officer's point of surveillance to protect the safety of the private individual and the police.

At a hearing on the pretrial motions, the State asserted that the exact point of surveillance should not be disclosed because it involved private property and the private individual needed to be protected. The State further argued that there was an issue regarding officer safety because it is a location that the police may use again. The State argued against disclosure to protect the public's interest and to maintain the integrity of the surveillance location. The following colloquy then occurred:

"[THE STATE:] Of course counsel can cross-examine on ability to observe and see and the distance and all those things, but we ask the exact point of surveillance not be disclosed.

THE COURT: Certainly we'll give leeway.

[DEFENSE COUNSEL]: And all I would ask is some leeway. I don't need an address. I would like to know if the officer is inside or outside because there is an alleged statement made.

THE COURT: What else do you need?

[DEFENSE COUNSEL]: You know, elevated number of feet away, things like that.

[THE STATE]: As long as we're not pointing to exactly where it is.

[CODEFENDANT'S COUNSEL]: I'm fine with no pinpointing the exact location but the dynamics of the location.

THE COURT: Granted with the understanding there is going to be leeway on cross, any obstructions, the lighting conditions, that type of thing?

[CODEFENDANT'S COUNSEL]: Yes.

THE COURT: That's not a problem."

At trial, Chicago police officer Armando Randon testified that on the evening of September 24, 2007, he was working as part of a narcotics team with his partner, Officer Loaiza, and enforcement officers Kubik, Rojas, Bocanegra and Medina. The police received a complaint of narcotics being sold at Komensky Avenue and 15th Street, and headed to that location about 7 p.m. Officer Randon set up a narcotics surveillance about 7:40 p.m. While Officer Randon conducted surveillance, Officer Loaiza was a couple blocks away waiting for Officer Randon to relay information to him. During the prior two years, Officer Randon had been assigned to that area more than 50 times and was in the area constantly. He described the location as a residential area with high narcotics activity.

1-08-2611

During his surveillance, Officer Randon observed defendant standing on the parkway on the east side of Komensky Avenue, and codefendant stood on the west side of the street. At his surveillance point, Officer Randon was elevated 30 feet and was 150 to 200 feet away from the defendants. Throughout his surveillance, Officer Randon used binoculars and his view of the defendants was clear and unobstructed. Defendant wore black jeans, a white t-shirt and a black cap, and codefendant wore blue jeans, a white t-shirt and a white do-rag. There were many other people in the area, including about 20 people playing basketball about three properties away from defendant.

About 7:40 p.m., Officer Randon observed a man approach codefendant, and after a brief conversation, hand him money which codefendant placed inside his pants pocket. Codefendant then shouted to defendant "he needs one rock." Officer Randon explained that "rock" is a street term for crack cocaine. In his 21 years of experience as a police officer, he had conducted narcotics surveillance hundreds of times and made hundreds of narcotics arrests. Based on that experience, Officer Randon knew the man was buying crack cocaine. Defendant ran into an empty lot on the east side of the street and picked up a white bag that was along the wall. Defendant removed a small item from that bag, returned the bag to the ground, then approached the man and handed him the small item. A minute later, a second man

1-08-2611

approached codefendant and an identical transaction occurred. As the second transaction ended, a third man approached codefendant and a similar transaction occurred. Following the third transaction, Officer Randon called Officer Loaiza and told him to get the enforcement team ready. Immediately thereafter, a fourth man approached codefendant and an identical transaction occurred. Based on his experience, Officer Randon believed he was witnessing drug sales.

The enforcement officers arrived on the scene within two minutes. Officer Randon stayed at his surveillance point to direct the officers to the defendants and to the location of the white bag. Officers Bocanegra and Medina arrived first. Officer Bocanegra detained codefendant while Officer Medina detained defendant. Officers Kubik and Rojas then arrived in a second car. Officer Kubik stayed with defendant while Officer Randon directed Officer Medina to the white bag in the vacant lot from which defendant had repeatedly retrieved the small items. Officer Medina recovered the white bag and told him it was "positive." Officer Randon then left his surveillance point and joined the other officers on the street where he identified defendant as the man who handed items from the white bag to the men who had given money to codefendant. The officer identified codefendant as the man who received money from the unknown men

1-08-2611

and directed defendant to hand items to those men. Officer Randon also identified the white bag recovered by Officer Medina.

On cross-examination, Officer Randon testified that he arrived at his surveillance location about 7:37 p.m. and saw the first transaction about 7:40 p.m. The first transaction took less than 30 seconds. About two minutes, maybe a little more, passed between the second and third transaction, and about one minute passed between the third and fourth transaction. He estimated that from the time he began his surveillance to the time he left that point and arrived on the scene on the drug sales, 10 to 15 minutes had passed. Officer Randon further confirmed for defense counsel that at his surveillance point, he was outside, elevated 30 feet, and 150 to 200 feet away from the defendants. He did not know Officer Loaiza's exact location during the surveillance. Officer Randon believed the first and third men approached codefendant from the south, but he was not positive. He also believed codefendant placed the money from the first man inside his right pants pocket.

Officer Randon further testified on cross-examination that he heard codefendant yell to defendant "he needs one rock" only the first time. The other times he saw codefendant look toward defendant and it appeared he said something. Officer Randon acknowledged that his police reports did not indicate that the first and third men approached codefendant from the south, or

1-08-2611

that codefendant placed the money from the first man inside his right pocket. The reports also did not include any physical characteristics of the first man. Officer Randon testified that the police reports are merely summaries and that some information is not included in those reports. The officer testified that he radioed for enforcement officers about three to four minutes after the first transaction. He estimated that the police station was about two miles away from the crime scene.

Chicago police officer Peter Medina testified that on September 24, 2007, he and his partner, Officer Bocanegra, were working as enforcement officers as part of the tactical team. About 7:45 p.m., they received a radio call from Officers Randon and Loaiza to come to 1507 South Komensky Avenue to detain two men. At the scene, Officer Medina saw defendant and codefendant, who fit the descriptions he was given over the radio. Officer Medina identified himself, called the men to his car, and spoke with defendant while Officer Bocanegra spoke with codefendant.

Officers Kubik and Rojas then arrived at the scene, followed by Officer Loaiza. While Officer Kubik detained defendant, Officer Randon directed Officer Medina via the radio to the side of a building in a vacant lot where there was a piece of a white plastic bag on the ground. Officer Medina recovered the plastic bag and found 16 clear mini ziplock bags inside, each of which contained a white rock-like substance that appeared to be crack

1-08-2611

cocaine. Officer Medina put the bag inside his vest pocket and later gave it to Officer Loaiza, who inventoried the suspect narcotics at the police station.

On cross-examination, Officer Medina testified that the team of officers had met to plan a strategy for their surveillance of that street because they had received complaints. When Officer Randon called for enforcement, Officers Medina and Bocanegra were at the police station because they had arrested another offender, Marlon Thurman, for drugs during a separate surveillance in the same area about 7:15 p.m. Officer Bocanegra had conducted the surveillance of Thurman, and Officers Randon and Loaiza assisted in Thurman's arrest. Officers Medina and Bocanegra arrived on the scene in this case about 7:45 p.m. Officer Medina acknowledged that the arrest report stated that they transported Thurman to the police station at 7:40 p.m. He explained, however, that the times on the reports were estimates and that he actually arrested Thurman "probably definitely before that." Officer Medina testified that the police station was less than two miles from the scene, and that he had time to take Thurman to the police station and return to arrest defendant in this case.

Chicago police officer Bocanegra testified substantially similar to Officer Medina regarding their arrival at the scene in this case, adding that after the drugs were recovered, he arrested codefendant and found \$217 in his front pants pockets

1-08-2611

during a custodial search. On cross-examination, Officer Bocanegra confirmed that he was at the police station at 7:40 p.m. when he received the call from Officer Loaiza to come to the scene about a mile and a half from the station. They arrived at the scene within two minutes of receiving the call. When asked what he was doing at the station before he was called to the scene, the trial court sustained the State's objection that the question was outside the scope of the direct examination. When asked how long he was at the station before going to the scene, the court overruled the State's objection, and Officer Bocanegra testified that he was at the station for a minute or two.

Chicago police officer Louis Loaiza testified that the defendants were detained when he saw them. He then saw Officer Kubik place defendant under arrest and recover \$20 from his pants pocket during a custodial search. Officer Kubik gave the money to Officer Loaiza, and he placed it inside his vest pocket. At the police station, Officer Bocanegra gave him \$217, and Officer Medina gave him a white piece of plastic that contained 16 ziplock bags of suspect crack cocaine. Officer Loaiza then testified in detail as to the steps he took to inventory the money and drugs. During cross-examination, the trial court sustained 14 objections to defense counsel's questions as being beyond the scope of the direct examination.

The parties stipulated that a forensic chemist tested the contents of 14 of the 16 recovered ziplock bags. The contents tested positive for 1.1 grams of cocaine.

Erica Briggs, defendant's sister-in-law, testified for the defense that at 6:15 p.m. she was sitting in her car talking with the defendants, who were standing outside her car. About 6:45 p.m., the police arrested a man near the alley, and after 20 to 30 minutes, they left. A few minutes later, about 7:30 or 7:45 p.m., a police car came around the corner, and the officers told defendant and codefendant to put their hands on the police car. Briggs did not see any other men inside the police car. One of the officers searched Briggs' car while two other officers searched the defendants. Briggs testified that she was not asked to get out of her car and stayed inside while they searched it. She never saw any of the officers enter the vacant lot.

Following deliberations, the jury found defendant guilty of possession of a controlled substance with intent to deliver. The trial court subsequently denied defendant's posttrial motion and sentenced him to five years' imprisonment.

On appeal, defendant first contends that the State failed to prove him guilty beyond a reasonable doubt because Officer Randon's testimony was illogical, contradicted by police reports and contrary to human experience. Defendant notes that Officer Randon testified that he arrived in the area about 7 p.m.,

established his surveillance point at 7:37 p.m., and observed four narcotics transactions between 7:40 and 7:44 p.m. Defendant claims that this testimony was impeached by Officers Medina and Bocanegra who testified that Officer Randon was assisting them with the arrest of Marlon Thurman at 7:15 p.m. three houses away from the location where defendant was arrested. Defendant claims that Officer Randon's testimony was further impeached by the arrest report which shows that Thurman was removed from the scene at 7:40 p.m., which is a few minutes after Officer Randon began his surveillance. Defendant argues that Officer Randon could not be conducting surveillance of defendant and arresting Thurman at the same time.

In addition, defendant argues that it defies belief that he would conduct drug sales with police activity 40 feet away, and that it is improbable that a buyer would walk through one drug arrest to buy drugs in the same location minutes after one drug dealer was removed from the scene. He further claims that it is contrary to human experience that codefendant yelled "he needs one rock" in the same location where Thurman had just been arrested. Defendant asserts that it is more logical that all of the officers were still on the scene following Thurman's arrest, and that defendant and codefendant were arrested due to their proximity to Thurman.

When defendant argues that the evidence is insufficient to support his conviction, this court must determine whether any rational trier of fact, after viewing the evidence in the light most favorable to the State, could have found the elements of the offense proved beyond a reasonable doubt. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). A criminal conviction will not be reversed based upon insufficient evidence unless the evidence is so improbable or unsatisfactory that there is reasonable doubt as to defendant's guilt. *People v. Schmalz*, 194 Ill. 2d 75, 80 (2000). The jury is responsible for determining the credibility of the witnesses, weighing the testimony, resolving conflicts in the evidence, and drawing reasonable inferences therefrom. *People v. Evans*, 209 Ill. 2d 194, 211 (2004).

Here, we find nothing inherently implausible in Officer Randon's testimony. Moreover, we find that his testimony was not contradicted, but instead, was corroborated by the other officers. Officer Randon testified that he was working with the narcotics team and went to the location on Komensky Avenue about 7 p.m. He did not establish his narcotics surveillance point until 7:37 p.m. According to Officer Medina, Officer Bocanegra conducted a separate surveillance of Thurman, and Officer Randon assisted in Thurman's arrest at 7:15 p.m. It is entirely plausible and logical that Officer Randon arrived in the area at 7 p.m. as part of the narcotics team, that he first assisted as

an enforcement officer in the arrest of Thurman at 7:15 p.m., and thereafter, he remained in the area and established his own separate surveillance of the defendants in this case at 7:37 p.m. The evidence does not support defendant's contention that Officer Randon claimed to be making an arrest and conducting surveillance at the same time.

The arrest report for Thurman indicated that Officers Medina and Bocanegra transported Thurman to the police station at 7:40 p.m. rather than 7:15 p.m. Officer Medina explained, however, that the time on the arrest report was merely an estimate and that he arrested Thurman "probably definitely before that." It was within the province of the jury to resolve the timing conflict in this evidence, and we will not disturb its apparent determination that Officer Medina's explanation was credible.

Officer Randon further testified that he observed the first narcotics transaction at 7:40 p.m., the second transaction a minute later, and the third transaction immediately thereafter. He then called for the enforcement officers, and Officers Medina and Bocanegra arrived on the scene within two minutes. This testimony was corroborated by Officers Medina and Bocanegra who both testified that they were at the police station less than two miles away when they received the call for enforcement. Officer Medina testified that they arrived at the scene about 7:45 p.m. Officer Bocanegra testified that they received the call for

assistance about 7:40 p.m. and arrived at the scene within two minutes. Officer Medina further testified that they had ample time to transport Thurman to the police station and return to the street to arrest defendant in this case. We find no reason to disturb the jury's finding that this testimony was credible.

Similarly, we reject defendant's challenge to the plausibility of the officers' testimony that the drug sales took place in nearly the same location within the same hour. Officer Randon testified that the narcotics team headed to this location because the police received complaints about drugs being sold in this area. He further testified that he had been in this area numerous times and that it was known for high narcotics activity. Sitting as the trier of fact, the jury was in the superior position to assess the credibility of the witnesses, weigh their testimony, resolve any conflicts in the evidence, and draw all reasonable inferences therefrom. *Evans*, 209 Ill. 2d at 211. Again, we find no reason to disturb its finding that the evidence in this case was sufficient to find defendant guilty beyond a reasonable doubt.

Defendant next contends that he was denied his right to a fair trial where defense counsel was precluded from questioning Officers Bocanegra and Loaiza on cross-examination to show that Officer Randon's testimony was unbelievable. Defendant claims that the trial court improperly sustained the State's objections

during cross-examination, which prevented the defense from fully testing the State's case. Specifically, defendant points to two instances where the trial court limited counsel's questioning of Officer Bocanegra, and 14 instances where it limited the questioning of Officer Loaiza.

Defendant acknowledges that he forfeited review of this issue on appeal because he failed to raise it in his posttrial motion. He asserts, however, that this court should review his claim under the plain error doctrine. Ill. S. Ct. R. 615(a) (eff. Aug. 27, 1999). Defendant contends that plain error review can be applied here because the evidence was close, and the error of restricting his cross-examination was so fundamental that he was denied a fair trial.

The plain error doctrine is a limited and narrow exception to the forfeiture rule that applies only where the error is so substantial that it deprived defendant of a fair trial, or where the evidence is so closely balanced that the finding of guilt may have resulted from the error. *People v. Caffey*, 205 Ill. 2d 52, 103 (2001). To obtain relief under the doctrine, defendant must first establish that a clear or obvious error occurred. *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). The burden of persuasion is on defendant, and if he fails to meet his burden, the forfeiture will be honored. *Id.*

Defendant has a constitutional right to confront the witnesses against him and conduct a reasonable cross-examination. *People v Davis*, 185 Ill. 2d 317, 337 (1998). However, the trial court may limit the scope of that cross-examination, and the appellate court will not disturb the trial court's ruling unless there has been a clear abuse of discretion that prejudiced defendant. *People v. Frieberg*, 147 Ill. 2d 326, 357 (1992); *People v. Green*, 339 Ill. App. 3d 443, 455 (2003). To determine whether defendant's confrontation right has been violated, the reviewing court does not look at what defendant was prohibited from doing, but instead, analyzes what he was allowed to do. *People v. Sykes*, 341 Ill. App. 3d 950, 978 (2003). Where a review of the entire record shows that the trier of fact was made aware of sufficient factors regarding the relevant areas of impeachment of the witnesses, defendant's rights were not violated merely because he was precluded from pursuing other areas of inquiry during cross-examination. *Id.*

Here, our review of the record reveals that defendant had an ample opportunity to present his case and that the limitations imposed by the trial court were proper. In all of the instances cited by defendant, the court sustained the State's objections on the basis that the questions were beyond the scope of the direct examinations of the officers. Counsel attempted to ask Officer Bocanegra what he was doing at the police station before he was

called to the scene, and if he was supposed to write police reports after arresting Thurman and bringing him to the police station. The record shows that the State's direct examination of the officer was limited to his arrival at the scene to arrest the defendants in this case, and his recovery of money from codefendant. The State did not ask Officer Bocanegra about Thurman's arrest; therefore, the two questions posed by defense counsel were beyond the scope of the direct examination, and the trial court properly sustained the State's objections.

In addition, the court sustained the State's objections when defense counsel attempted to ask Officer Loaiza if he and the other officers had formulated a surveillance plan, where he was when Officer Randon was on surveillance, if he was called in by Officer Randon, how he arrived on the scene, if he took any photographs, and what he was doing while Officer Kubik was with defendant. The record shows that the State's direct examination of Officer Loaiza was limited to his observation that Officer Kubik arrested defendant and recovered \$20 from him, which she then gave to Officer Loaiza. He also testified that he later received the money recovered from codefendant and the recovered drugs, and he testified in detail regarding the steps he took to inventory those items. The record thus shows that the questions posed by defense counsel were beyond the scope of his direct examination, and the trial court properly sustained the State's

objections. Consequently, we find that the trial court did not abuse its discretion when it sustained the State's objections, and therefore, there was no error. Accordingly, defendant's procedural default of this issue cannot be excused. *Hillier*, 237 Ill. 2d at 545.

Finally, defendant contends that he was denied his right to cross-examine the witness when the trial court precluded counsel from questioning Officer Randon about his exact surveillance location. Defendant argues that the trial court abused its discretion when it granted the State's motion *in limine* precluding the defense from eliciting testimony regarding the exact location without conducting an *in camera* hearing to weigh the competing interests. Defendant acknowledges that defense counsel told the court that she did not need the exact address, but he maintains that the court should have conducted a hearing to determine if the information was truly privileged.

Defendant further acknowledges that this issue has also been forfeited for review because trial counsel failed to object and make an offer of proof at the time of the motion and failed to raise the issue in the posttrial motion. He again asks this court to review the issue under the plain error doctrine, arguing that the evidence was closely balanced and that the error was so serious that it affected the fairness of the trial.

As stated above, to obtain relief under the plain error doctrine, defendant must first establish that a clear or obvious error occurred. *Hillier*, 237 Ill. 2d at 545. The burden of persuasion is on defendant, and if he fails to meet his burden, the forfeiture will be honored. *Id.*

Here, we find that it would be highly inappropriate for this court to consider this issue as plain error where the record shows that defense counsel expressly agreed that it was not necessary to reveal the exact location of Officer Randon's surveillance. Our supreme court has stated that a defendant's agreement to a procedure that he later challenges on appeal "goes beyond mere waiver" and is sometimes referred to as estoppel. *People v. Harvey*, 211 Ill. 2d 368, 385 (2004), citing *People v. Villarreal*, 198 Ill. 2d 209, 227 (2001). It is well settled that " 'under the doctrine of invited error, an accused may not request to proceed in one manner and then later contend on appeal that the course of action was in error.' " *Id.*, citing *People v. Carter*, 208 Ill. 2d 309, 319 (2003). "To permit a defendant to use the exact ruling or action procured in the trial court as a vehicle for reversal on appeal 'would offend all notions of fair play' (*Villarreal*, 198 Ill. 2d at 227), and 'encourage defendants to become duplicitous' ([*People v.*] *Sparks*, 314 Ill. App. 3d [268,] 272 [2000])." *Harvey*, 211 Ill. 2d at 385.

As stated above, defense counsel expressly agreed that it was not necessary to reveal the exact location of Officer Randon's surveillance. She stated that she did not need the address, and instead, asked for some leeway in her questioning to show the dynamics of Officer Randon's location, such as if he was inside or outside, and his distance from the defendants. The record shows that on cross-examination, Officer Randon confirmed for defense counsel that at his surveillance point, he was outside, elevated 30 feet, and 150 to 200 feet away from the defendants. Thus, counsel was given the exact leeway she requested. Accordingly, defendant cannot now claim on appeal that the procedure to which he agreed was error.

In addition, we note that defendant alternatively argues that the forfeiture rule should be relaxed here because trial counsel rendered ineffective assistance when she failed to preserve the issue for review. Defendant states that attacking Officer Randon's credibility was the only defense available, and that counsel's failure to object constituted ineffective assistance. Defendant offers no further argument beyond his conclusory statements. We therefore find that defendant has waived his argument as to his claim of ineffective assistance of counsel. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008); *People v. Page*, 193 Ill. 2d 120, 146 (2000).

1-08-2611

For these reasons, we affirm the judgment of the circuit court of Cook County.

Affirmed.