

No. 1-10-3388

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).

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 C6 60219
)	
ROBERT FORD,)	Honorable
)	Frank G. Zelezinski,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Karnezis and Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* Where no error was found in the trial court's supplemental instruction made in response to the jury's note regarding a police report, plain error analysis was not warranted and defendant's forfeiture of the issue is honored.

¶ 2 Following a jury trial, defendant Robert Ford was found guilty of possession of a stolen motor vehicle and sentenced as a Class X offender to 16 years' imprisonment. On appeal, defendant contends that he was denied a fair trial because the trial court issued a supplemental instruction that misinformed the jury that a police report was not evidence and that they were not to consider the report "at all."

¶ 3 The record shows that after midnight on January 14, 2010, a black sport utility vehicle (SUV) belonging to Bobbie Hoover was stolen from his driveway. Hoover called the police and learned that his SUV had been recovered. When he went to the police station, he identified his SUV and observed that the rear window was broken and the steering column was peeled. Although Hoover did not see defendant take his SUV, Harvey police officer Sherri Harris positively identified the defendant in court as the person whom she saw in the SUV matching a radio broadcast description, and whom her partner arrested following a five-minute foot chase. Harris further testified that she observed defendant's face from a distance of several inches when her partner pulled their squad car alongside the SUV in an attempt to curb it, the lighting conditions were adequate, and defendant was the only person inside the SUV. The license plate and vehicle identification number of the SUV were registered to Hoover.

¶ 4 On cross-examination, Harris acknowledged that she did not include a number of details to which she testified on direct examination in her police report, including that she had a good look at defendant's face and made eye contact with him under adequate lighting conditions. On redirect examination, Harris stated that her police report was a summary of the significant facts and not a detailed report of every last detail that the defense pointed out.

¶ 5 Defendant did not testify or present any evidence, and his motion for a directed finding based on the "serious omissions" in Officer Harris' police report, proved unsuccessful.

¶ 6 Before deliberations, the trial court advised the jury, "Do not ask for any police reports because you cannot be given them as a matter of law." The jury began its deliberations at 3:45 p.m., and, about an hour later, the jury sent a note to the trial court asking, "Please confirm. Are we not to consider the police report as evidence?" Outside the presence of the jury, the trial court discussed the note with the attorneys and listened to their respective arguments regarding what responses, if any, should be given. The State argued, "Police reports are not evidence and they

were clearly told that during the—before they went back to deliberate I believe." The defense responded, "while we understand that the police reports are not evidence, they can discuss what they heard about the police reports. The only thing is the police report can't be sent back in to them and maybe they need to just know that and understand that they can discuss it but they can't see it." The trial court wrote to the jury, "the only evidence which you may consider is the testimony of the witnesses and the exhibits. Police reports are not evidence and have not been admitted into evidence. Please deliberate on the evidence you received."

¶ 7 At 5:12 p.m., the jury sent a note stating, "We have taken several votes and can't come to a unanimous decision. We are at 11 to 1. Please advise our next step." The parties agreed with the trial court's response, "Jurors, when this trial began all of you took an oath to work together, review and evaluate the evidence and work towards obtaining a verdict. Please honor your oath and work towards reaching a verdict. Continue your deliberations." At 5:35 p.m., the jury returned a verdict finding defendant guilty of possession of a stolen motor vehicle.

¶ 8 In this court, defendant solely contends that the trial court denied him a fair trial by giving a supplemental instruction that misinformed the jury that a police report was not evidence and that they were not to consider the report "at all," even though that report was properly used to impeach the State's primary witness. Defendant argues that, because the trial court misstated the law in responding to the jury's question regarding police reports, the issuance of the supplemental instruction constitutes reversible error. Defendant acknowledges that he did not properly preserve this issue in the trial court and requests plain error review.

¶ 9 The State maintains that the trial court's response regarding the police report was legally correct and, alternatively, that defendant forfeited plain-error review of the issue. Under the plain error doctrine, an error is reversible if a clear or obvious error occurred and (1) the evidence is so closely balanced that the error threatened to tip the scales of justice against the defendant, or (2)

that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence. *People v. Franklin*, 2012 IL App (3d) 100618, ¶ 22. Before addressing whether defendant's claim satisfies the plain error doctrine, we must first determine whether a clear and obvious error occurred at all. *People v. McLaurin*, 235 Ill. 2d 478, 489 (2009). If there was no error in the first place, there can be no plain error. *People v. Lopez*, 2012 IL App (1st) 101395, ¶ 64.

¶ 10 In this regard, defendant asserts that the trial court failed to accurately convey the entirety of the law surrounding police reports by instructing the jurors, "Police reports are not evidence." He points out that police reports can be used to impeach the in-court testimony of the author (*People v. Rivera*, 409 Ill. App. 3d 122, 147 (2011)), and, although the trial court correctly responded that Officer Harris' police report was not actually admitted into evidence, it failed to inform the jury that they could consider what they heard about the report as it related to the officer's credibility.

¶ 11 The propriety of a jury instruction is generally reviewed under an abuse of discretion standard; however, we review *de novo* whether the applicable law was correctly conveyed by the jury instruction in this case. *People v. Turman*, 2011 IL App (1st) 091019, ¶ 18.

¶ 12 We find that the trial court accurately stated the law when it instructed the jury, "the only evidence which you may consider is the testimony of the witnesses and the exhibits. Police reports are not evidence and have not been admitted into evidence. Please deliberate on the evidence you received." See *People v. Ramos*, 318 Ill. App. 3d 181, 191-92 (2000). Although police reports may be used for impeachment or to refresh a witness' recollection, they are inadmissible hearsay not subject to any recognized exception to the hearsay rule (*People v. Williams*, 240 Ill. App. 3d 505, 506 (1992)), and cannot be used as substantive evidence against defendant (*People v. Shief*, 312 Ill. App. 3d 673, 680 (2000)). In addition, factual discrepancies

or omissions in a police report do not necessarily impeach or nullify an officer's identification testimony (*People v. Spain*, 91 Ill. App. 3d 900, 905 (1980)) and simply go to the weight of that testimony (*People v. Wehrwein*, 190 Ill. App. 3d 35, 40 (1989)), which the jury in this case ultimately resolved in rendering its verdict (*People v. Nugen*, 399 Ill. App. 3d 575, 584 (2010)).

¶ 13 Defendant acknowledges that the omissions from Harris' police report of various details regarding the incident and her identification of him as the offender were explored during defense counsel's cross-examination of Harris. However, we find no merit in his assertion that the trial court's supplemental instruction effectively told the jury "to entirely disregard the evidence presented to impeach Harris's credibility," or that "the jury was acting under the mistaken belief that it should not question Officer Harris's credibility." *People v. Mayfield*, 72 Ill. App. 3d 669, 678 (1979). We thus conclude that the trial court did not err in its response to the jury's questions and decline defendant's request to engage in a plain error analysis as no error exists for our review. *People v. Nash*, 2012 IL App (1st) 093233, ¶ 41.

¶ 14 Accordingly, we honor defendant's procedural default of the issue and affirm the judgment of the circuit court of Cook County.

¶ 15 Affirmed.