

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).

2012 IL App (3d) 110118-U

Order filed October 9, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,) Appeal from the Circuit Court
) of the 10th Judicial Circuit,
Plaintiff-Appellee,) Tazewell County, Illinois,
)
v.) Appeal No. 3-11-0118
) Circuit No. 10-CF-212
SEDRICK L. POSTLEWAITE,)
) Honorable
Defendant-Appellant.) Richard E. Grawey and Stuart P. Borden,
) Judges, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Holdridge and McDade concurred in the judgment.

ORDER

- ¶ 1 *Held:* Introduction of evidence of defendant's uncharged criminal acts was not so prejudicial as to require a new trial.
- ¶ 2 After a jury trial, defendant, Sedrick L. Postlewaite, was convicted of unlawful possession of a controlled substance with intent to deliver (720 ILCS 570/401(a)(2)(A) (West 2010)) and sentenced to 20 years' imprisonment. On appeal, defendant argues that the trial court erred in allowing the State to introduce evidence of his uncharged acts of an unlawful firearm sale and

domestic violence. We affirm.

¶ 3

FACTS

¶ 4 Defendant was charged by indictment with unlawful possession of a controlled substance with intent to deliver. During defendant's jury trial, the State introduced three recorded telephone conversations. In the recordings, Victoria Martin was heard arranging a drug buy and attempting to arrange a gun buy. Martin testified that in a fourth, unrecorded telephone call, a drug buy was set to occur at the East Peoria Walmart.

¶ 5 Stephanie Walker testified that she was defendant's girlfriend. Prior to defendant's arrest, Walker was subjected to four separate instances of domestic violence perpetrated by defendant. After several of the incidents, defendant instructed Walker not to call the police. Defense counsel objected to this line of testimony; however, the court allowed it, ruling that the evidence was relevant to judge Walker's actions on the day of the arrest. At the time, the court instructed the jury that defendant was not on trial for domestic abuse and "this evidence can only be used to weigh [Walker's] testimony, to judge her actions on the day of the arrest with regard to what she told the police."

¶ 6 On April 22, 2010, Walker picked up defendant and drove to the East Peoria Walmart. While en route, defendant handed Walker a bag of what she believed was cocaine. Initially, she refused to hold the bag, but defendant "reached his fist back and *** said, you better hold it." Walker hid the bag in her bra. Walker complied with defendant's demand because she was "scared of him" and "was scared of what he would do if [she] didn't hold it."

¶ 7 As Walker pulled up to the Walmart, police surrounded her car, and she and defendant were placed under arrest. While searching the car, police found crack cocaine on the floorboard between

the driver's seat and the driver's door. Walker initially told the police that the drugs belonged to her. However, she later admitted to the police that she had lied to them to protect defendant. Before she was booked at the county jail, she produced the bag of cocaine that defendant had instructed her to hold.

¶ 8 Prior to deliberations, the court instructed the jury on the limited purpose for which it could consider the gun buy and domestic violence evidence. The jury found defendant guilty of unlawful possession of a controlled substance with intent to deliver, and the court sentenced defendant to 20 years' imprisonment. Defendant appeals.

¶ 9 ANALYSIS

¶ 10 Defendant argues that the trial court erred in allowing the State to introduce evidence of uncharged acts of unlawful firearm sale and domestic violence. Defendant contends that the probative value of this evidence was outweighed by its prejudice, and he requests that we reverse his conviction and remand the cause for a new trial.

¶ 11 We review the trial court's decision to admit other crimes evidence for an abuse of discretion. *People v. Ross*, 395 Ill. App. 3d 660 (2009). A trial court abuses its discretion when its ruling is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by it. *People v. Smith*, 406 Ill. App. 3d 747 (2010).

¶ 12 I. Gun Sale Evidence

¶ 13 We first address the admissibility of the gun sale evidence. Evidence of collateral crimes may be admitted for any purpose other than to show a defendant's propensity to commit crime, so long as its probative value outweighs its prejudicial effect. *People v. Stewart*, 105 Ill. 2d 22 (1984). However, relevant other-crimes evidence must not become a focal point of the trial and serve to

create a trial within a trial. *People v. Chromik*, 408 Ill. App. 3d 1028 (2011).

¶ 14 Here, the evidence of the possible gun sale was properly admitted. Evidence of the prospective gun sale was intertwined with evidence of the drug buy. The gun sale evidence was relevant to explain the course of the police investigation and the events leading up to defendant's arrest. See *Chromik*, 408 Ill. App. 3d 1028. This evidence was so closely connected with Martin and defendant's discussion of the drug buy that it became part of the continuing narrative of events that gave rise to the offense. See *People v. Thompson*, 359 Ill. App. 3d 947 (2005).

¶ 15 We further note that the court issued a limiting instruction before deliberations. This instruction reduced any prejudicial effect created by the admission of the gun sale evidence. See *People v. Illgen*, 145 Ill. 2d 353 (1991). The jury was presumed to follow the law provided in these instructions. See *People v. Foster*, 195 Ill. App. 3d 926 (1990).

¶ 16 II. Domestic Violence Evidence

¶ 17 Next, we address defendant's contention that the trial court erred in admitting the domestic violence evidence. The State contends that defendant waived review of this issue because he failed to raise it in his posttrial motion, and it notes further waiver in that defendant did not make a plain error argument in his appellant's brief. However, defendant asks us to exercise our power to review an otherwise waived argument because the domestic violence evidence was prejudicial.

¶ 18 Generally, a defendant waives review of an issue when he fails to object at trial or does not include the issue in a written posttrial motion. *People v. Enoch*, 122 Ill. 2d 176 (1988). Here, defendant forfeited review of the domestic violence evidence issue. Although defendant objected to this evidence at trial, he did not raise this issue in his posttrial motion, and he did not argue in his brief that we should review this issue for plain error. See *People v. Patel*, 366 Ill. App. 3d 255

(2006). Points not argued in a defendant's opening brief are waived and cannot be raised in the reply brief. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). Therefore, we hold that defendant has forfeited review of this issue. Defendant, nonetheless, asks in his reply brief that we review the issue because of its prejudicial effect. In the interest of providing a complete review, we elect to do so.

¶ 19 An error is reversible under the plain error doctrine when the error is clear or obvious and either: (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 (2012). The supreme court has equated the second prong of plain error with structural error. *People v. Thompson*, 238 Ill. 2d 598 (2010). An error is structural if it "necessarily renders a criminal trial fundamentally unfair or an unreliable means of determining guilt or innocence." *Id.* at 609.

¶ 20 Although the trial court erred in admitting the domestic violence evidence, this error was not reversible error. Defendant does not argue, and we do not find, that the evidence was so closely balanced that the introduction of the domestic violence evidence tipped the scales of justice against defendant. The evidence showed that a drug buy was arranged and defendant arrived at the Walmart parking lot in a car that contained packages of illegal drugs.

¶ 21 We further do not view the error to be of sufficient magnitude to have deprived defendant of a fair trial. The improper introduction of other-crimes evidence is harmless error when a defendant is neither prejudiced nor denied a fair trial based upon its admission. *People v. Nieves*, 193 Ill. 2d 513 (2000). Such an error is not presumptively prejudicial in ordinary circumstances. See *People v. Strawbridge*, 404 Ill. App. 3d 460 (2010).

¶ 22 Here, the domestic violence evidence was probative of Walker's actions at the time of her arrest. We also note that at the time it was introduced, the court instructed the jury that defendant was not on trial for domestic abuse or battery and that the evidence could only be used to weigh Walker's testimony regarding her statements to the police. Before deliberations, the jury was again instructed on the limited use for which it could consider this evidence. Consequently, defendant was not denied a fair trial by the introduction of the domestic violence evidence, and any error was harmless.

¶ 23

CONCLUSION

¶ 24 For the foregoing reasons, the judgment of the circuit court of Tazewell County is affirmed.

¶ 25 Affirmed.