

No. 1-11-2276

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 CR 17257
	)	
JOHNNIE ROCQUEMORE,	)	Honorable
	)	William J. Kunkle,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE EPSTEIN delivered the judgment of the court.  
Presiding Justice Lavin and Justice Pucinski concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Defendant's conviction for possession of a controlled substance with intent to deliver is affirmed as modified, and his fee order is amended, where defendant's claim that the trial court imposed unequal restrictions on the prosecution and defense during closing arguments was not preserved for appeal, and the \$200 DNA ID System fee is vacated because it was improperly assessed.
- ¶ 2 Following a jury trial, defendant Johnnie Rocquemore was convicted of possession of a controlled substance with intent to deliver and sentenced to eight years' imprisonment as a Class X offender based upon his criminal history. On appeal, defendant contends that the trial court erred when it *sua sponte* imposed unequal restrictions on the prosecution and the defense during

closing arguments, which biased the jury against the defense. Defendant also contends, and the State agrees, that he was erroneously assessed a \$200 DNA ID System fee. We vacate the DNA fee and affirm defendant's conviction and sentence in all other respects.

¶ 3 Defendant was tried on two counts of possession of a controlled substance with intent to deliver – one count for possessing heroin, and the other for possessing cocaine. At trial, Chicago police officer Thomas Crouchelli testified that he was conducting a narcotics surveillance when he saw defendant standing alone in front of a house. When a man approached, defendant met the man at the adjacent alley and conversed with him briefly. The man then handed defendant money, and defendant walked to a garbage can in the alley. Defendant picked up a small yellow potato chip bag that was resting on top of the garbage can, retrieved an item from inside the bag, then returned to the man and handed him the item. The man walked away, and Officer Crouchelli radioed a description of the man to the other police officers on his narcotics team.

¶ 4 Less than a minute later, a woman approached, and defendant met her at the alley, spoke with her briefly, and accepted money from her. Defendant again walked to the garbage can in the alley, picked up the same potato chip bag, retrieved an item from inside that bag, returned to the woman and handed her the item. The woman then walked away. Based on his 15 years of police experience, which included hundreds of narcotic arrests, Officer Crouchelli believed he was witnessing narcotics transactions. The officer radioed the other officers on his team and gave them defendant's description and location. Shortly thereafter, Officer Crouchelli saw Officers O'Neill and Esparza detain defendant. Over his radio, Officer Crouchelli directed Officer Hadac to the garbage can in the alley where Officer Hadac retrieved the yellow potato chip bag. At the police station, Officer Crouchelli saw that the potato chip bag contained 15 Ziploc bags with a black Nike "swoosh" which each contained suspect heroin, and 12 blue tinted bags that each contained suspect crack cocaine. Neither of the alleged buyers were stopped by police.

¶ 5 Chicago police officer Maura O'Neill testified that after receiving a radio call from Officer Crouchelli, she and Officer Esparza drove to the location and saw defendant standing alone on the sidewalk near the alley. Defendant matched the description she had been given from Officer Crouchelli, and she detained defendant. Officers Hadac and Dougherty then arrived on the scene and recovered evidence, after which defendant was arrested. At the police station, Officer O'Neill recovered \$29 from defendant's front pants pocket.

¶ 6 Chicago police officer Allen Hadac testified that Officer Crouchelli radioed him a description of a suspected drug buyer, and Officer Hadac saw a man matching that description enter a nearby house. The police did not stop that man because he was too close to the surveillance location, which would have revealed the police presence in the area. Minutes later, Officers Hadac and Dougherty were called to the scene where they saw defendant standing on the sidewalk. Over the radio, Officer Crouchelli directed Officer Hadac to a garbage can in the alley and told him to recover a yellow potato chip bag that was on top of the garbage can. Inside the yellow bag were numerous small bags of suspect heroin and cocaine. Officer Hadac notified the other officers that there were drugs inside the bag, and defendant was arrested.

¶ 7 Chicago police officer Edward Dougherty testified that he inventoried the recovered potato chip bag and the items inside in accordance with police procedure. Forensic scientist Peter Anzalone testified that he performed tests on the recovered evidence and found that the 12 items in the blue tinted bags tested positive for 1.4 grams of cocaine, and the 15 items in the Nike bags tested positive for 1.1 grams of heroin.

¶ 8 The jury found defendant guilty of two counts of possession of a controlled substance with intent to deliver. The trial court merged those convictions and sentenced defendant to a term of eight years' imprisonment as a Class X offender based upon his criminal history.

¶ 9 On appeal, defendant first contends that the trial court erred when it *sua sponte* imposed unequal restrictions on the prosecution and the defense during closing arguments, which biased the jury against the defense. Specifically, defendant is challenging the following exchange which occurred during defense counsel's closing argument:

"[DEFENSE COUNSEL:] Now, you don't have to agree on what reasonable doubt is. Some of you will say, I mean, the word of one person. That is not enough for proof beyond a reasonable doubt.

THE COURT: Counsel, Counsel, no one is going to Define reasonable doubt for this jury but me.

Do not talk about the application or definition of reasonable doubt.

[DEFENSE COUNSEL]: My only point is, it does not have to be the same for all of you. Somebody might find something as a doubt. Somebody might find something else as a doubt. That doesn't mean that it is not a not guilty.

You don't have to agree on what the reasonable doubt is in this case."

Defendant argues that the court imposed a severe, unwarranted limitation on counsel's closing argument by forbidding counsel to argue about the "application" of the reasonable doubt standard to the facts in this case while allowing such argument from the State. Defendant claims that the prosecutor repeatedly argued whether various facts constituted reasonable doubt using "the same superficial grammatical form" as defense counsel's argument. Defendant asserts that the court's inconsistent limitations on the parties cued the jury that the court was on the State's side, which led the jury to find Officer Crouchelli's testimony credible.

¶ 10 Defendant acknowledges that counsel did not object to the court's ruling during trial, but asks this court to review the issue as plain error, arguing that the evidence in the case was closely balanced, and that the error was so fundamental that it violated his right to a fair trial.

Alternatively, defendant claims the issue is not forfeited because the error was made by the trial court, and therefore, should be excused under the *Sprinkle* doctrine. *People v. Sprinkle*, 27 Ill. 2d 398, 400-01 (1963).

¶ 11 The State argues that the issue is forfeited because there was no objection during trial, and the issue was not raised in defendant's posttrial motion. The State further argues that the plain error doctrine does not apply because there was no error here where the court only prevented counsel from making an incorrect assertion of law, and counsel was allowed to apply the reasonable doubt standard to the facts of the case. In addition, the State asserts that the *Sprinkle* doctrine should not apply because there is no indication an objection would have fallen on "deaf ears" and counsel could have requested a sidebar outside the jury's presence.

¶ 12 It is uncontested that defendant did not object to the trial court's directive during trial, and he did not raise the issue in his posttrial motion. Consequently, defendant has forfeited this issue on appeal. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988).

¶ 13 We therefore consider defendant's contention that his claim should be reviewed as plain error. The plain error doctrine is a limited and narrow exception to the forfeiture rule that exists to protect defendant's rights, and the reputation and integrity of the judicial process. *People v. Herron*, 215 Ill. 2d 167, 177 (2005). The plain error doctrine applies only where the evidence is so closely balanced that the jury's guilty verdict may have resulted from the error, or the error is so substantial that it deprived defendant of a fair trial. *People v. McLaurin*, 235 Ill. 2d 478, 489 (2009). To obtain relief under this 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. *Hillier*, 237 Ill. 2d at 545.

¶ 14 Here, we find that defendant cannot invoke review of his claim under the plain error doctrine as the record shows that no error occurred. Defendant points to the one remark the trial court made during defense counsel's closing argument, noted above, and claims the court prohibited counsel from arguing about the "application" of the reasonable doubt standard to the facts in this case. Our review of the record, however, reveals that counsel presented extensive argument to the jury on the application of the reasonable doubt standard to the facts in this case. For example, counsel told the jurors that they should question Officer Crouchelli's testimony because it is their duty to determine if the State proved defendant guilty beyond a reasonable doubt. Counsel also argued that if police had tested the potato chip bag and found defendant's fingerprints on that bag, it might have been considered proof beyond a reasonable doubt, and the jury should question why the bag was not tested for fingerprints. In addition, counsel argued that defendant did not have a gun, that there was no videotape from a nearby police camera, that there was no photograph of the chip bag on top of the garbage can, that the buyers were not stopped, and that the denominations of the money recovered from defendant did not "add up" if defendant had made two drug sales. Counsel argued that the evidence "doesn't make sense, it is not proof beyond a reasonable doubt."

¶ 15 We recognize that midway through defense counsel's argument, the trial court instructed counsel not to "talk about the application or definition of reasonable doubt." However, even after that directive, counsel continued to apply the standard to the facts, and was allowed to do so without interruption. We therefore conclude that, regardless of its use of the word "application," the only limitation the court placed upon defense counsel was to prevent counsel from defining "reasonable doubt." Our supreme court has repeatedly held that neither the trial court nor counsel should define the reasonable doubt standard for the jury. *People v. Keene*, 169 Ill. 2d 1, 24 (1995); *People v. Failor*, 271 Ill. App. 3d 968, 970 (1995) (citing four Illinois Supreme Court

cases). The court explained its concern that, even if well-intentioned, an attempt to provide a definition may distort the standard and prejudice the defendant. *Keene*, 169 Ill. 2d at 25.

¶ 16 In this case, we find that a distortion of the standard was of concern to the trial court. Counsel had argued "you don't have to agree on what reasonable doubt is. Some of you will say, I mean, the word of one person. That is not enough for proof beyond a reasonable doubt." The court then interrupted counsel and instructed her not to define reasonable doubt. The jury could have interpreted counsel's argument as a legal conclusion that testimony from one person is not enough to prove a defendant guilty beyond a reasonable doubt. However, it is well settled that the testimony of a single credible witness is sufficient to sustain a conviction. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). We find that the trial court was not attempting to limit counsel's argument, but instead, was merely precluding counsel from presenting an incorrect assertion of the law. Therefore, we conclude that the trial court did not err. Because no error occurred, the plain error doctrine does not apply.

¶ 17 Based on our conclusion that no error occurred in this case, we need not consider defendant's argument that his forfeiture of the issue should be excused under the *Sprinkle* doctrine. Accordingly, defendant's failure to preserve the issue for appeal is not excused, and his claim is forfeited.

¶ 18 Defendant next contends, and the State agrees, that the \$200 DNA ID System fee under section 5-4-3(j) of the Unified Code of Corrections (730 ILCS 5/5-4-3(j) (West 2010)) was erroneously assessed to him because he was previously assessed the fee and submitted a DNA sample in December 2003 as the result of a prior conviction. See *People v. Marshall*, 242 Ill. 2d 285 (2001). We therefore vacate the \$200 DNA fee from the Fines, Fees and Costs order.

¶ 19 For these reasons, we vacate the \$200 DNA ID System fee from the Fines, Fees and Costs order, and affirm defendant's conviction and sentence in all other respects.

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¶ 20 Affirmed as modified.