

NOTICE

Decision filed 09/24/13. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2013 IL App (5th) 110315-U  
NO. 5-11-0315  
IN THE  
APPELLATE COURT OF ILLINOIS  
FIFTH DISTRICT

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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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	St. Clair County.
	)	
v.	)	No. 10-CF-320
	)	
LASON ELLIOT,	)	Honorable
	)	John Baricevic,
Defendant-Appellant.	)	Judge, presiding.

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JUSTICE WELCH delivered the judgment of the court.  
Justices Goldenhersh and Chapman concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The defendant's conviction is affirmed where his constitutional right to confront a witness against him was not violated, as the testimony in question was not hearsay, and even if that evidence was in fact testimonial hearsay, the defendant cannot meet his burden under the plain error doctrine.
- ¶ 2 Following a jury trial in St. Clair County, the defendant, Lason Elliot, was found guilty of first-degree murder. The circuit court sentenced the defendant to 40 years' imprisonment. The defendant appeals the judgment, arguing that the State's use of testimonial hearsay during his trial violated his constitutional right to confront a witness against him. U.S. Const., amend. VI; Ill. Const. 1970, art. I, § 8. The defendant concedes that he did not object to this alleged constitutional violation at trial, nor did he raise it in a posttrial motion, and therefore must seek our review under the plain error doctrine. For the following reasons, we affirm the judgment of the circuit court.
- ¶ 3 The following evidence was adduced at the defendant's trial. Robert Jones testified

that in the early morning hours of March 24, 2010, he and his friends, Martin Lampe and Chris Collier, traveled in Collier's gold Impala from Missouri to the Metro East area of Illinois. The men stopped at Route 3 Liquor Store in Sauget, Illinois, which serves alcohol from a window covered by an awning. Jones stated that they parked in a space next to the awning and store walk-up. To their right, on the other side of the awning and store walk-up, was a white Pontiac G8. The G8 had been backed into its parking spot, and a red Dodge Magnum was parked next to the G8. Jones testified that Collier and Lampe exited the vehicle and joined the long line of customers. Lampe smoked half of a cigarette and offered the remainder to Jones, who then exited the vehicle. Lampe got into the Impala, and Jones joined the line with Collier. Jones spoke with the owner of the G8 about his vehicle. Jones testified that the owner was somewhat tall, with long dreadlocks, gold teeth, and a hat. Jones identified a photograph of Marquis Seddens as depicting the G8's driver. Jones noted that the G8 contained a female passenger, but the window tint prevented Jones from viewing the backseat of the G8. Jones testified that the G8 "went right out of the liquor store," departing "around the store." Jones testified that two to three minutes later, he saw a man dressed in black and wearing a black stocking cap enter the Impala and put a gun to Lampe's head. Jones could not see the gunman's face. Jones heard the gunman tell Lampe to "get the fuck out of the car," and when Lampe did not immediately comply, the gunman said: "Dude, I'm not playing. Get the fuck out [of] the car." A scuffle ensued, and Jones heard a gunshot. Jones stated that he ran to his right, "towards the Oz," and heard two more gunshots. Jones saw the gunman kick Lampe out of the car, back up, and drive away.

¶ 4 Chris Collier testified that in March 2010 he owned a Chevrolet Impala, and on the night of the incident, he had new 22-inch rims and tires on the car that were worth approximately \$2,000. Collier stated that there was a flashy G8 automobile at Route 3 Liquor Store that night, and he identified a photograph of Marquis Seddens as depicting the

G8's driver. Collier testified that he saw an individual come from around the store and get in his Impala. Collier stated that he ran to the car in response to the ensuing commotion between Lampe and the armed individual. He noted that the gunman was African-American, wearing all black clothing and a skull cap. When asked to identify someone in the courtroom as the gunman, Collier stated that the defendant "looks like him" and that "I would say it was him."

¶ 5 Detective Tim Mueller testified that he retrieved video surveillance from Route 3 Liquor Store and from the Blue Fountain Apartments in North St. Louis. The prosecution showed the surveillance video from several different camera angles as Mueller narrated. The video from Route 3 Liquor Store, which was played during Mueller's testimony, depicted the G8 heading south, "either on the parking lot or on Route 3." Video from a different surveillance camera angle depicted the suspect, wearing dark clothing and a black stocking cap, walking from the back of the building around the east side and getting directly into the Impala. Gunshots can be heard on the video, and the victim is seen being pushed out of the passenger side door. The victim's vehicle backs out and departs in the direction of Route 3 at 3:22 a.m. The video from Blue Fountain Apartments, which was played during Mueller's testimony, depicted the victim's vehicle being followed by a black truck or Suburban, heading around the back side of the apartment complex at 5:29 a.m. Approximately 25 minutes later, the truck is seen departing the way from which it came. Mueller testified that the victim's vehicle was recovered from that parking lot.

¶ 6 Kiewauna Williams testified that on the evening of March 23, 2010, she was picked up by her friend Marquis Seddens in his G8 automobile. She testified that Seddens' friend "Doughboy" was also in the car at that time. Williams stated she did not recognize Doughboy if he was present in the courtroom at trial, but that on the night of the incident, she did not remember Doughboy wearing glasses, and his hair was styled in small dreads or

"twisties."<sup>1</sup> Williams stated that the group proceeded to a nightclub with a minimum age requirement of 21, but that she was not sure whether Doughboy went into the nightclub. She guessed that Doughboy was under 21 at the time, because Seddens had noted that Doughboy could not gain entry into the club. She testified that Doughboy was in the car when they left the nightclub and proceeded to Route 3 Liquor Store. She stated that there was an Impala parked next to them, with a white man sitting in the passenger seat. While Seddens stood in line, Williams heard Doughboy state, "I'm on this—I'm on this nigger, he needs to come out." Williams testified that Seddens returned to his car after approximately 15 minutes and had begun to drive away when Doughboy asked Seddens to drop him off in the back of the store. Williams stated that Doughboy repeatedly said "I got this" before exiting the car behind the liquor store. Williams did not see Doughboy again that night. In her police interview, she could not identify the defendant from a photo lineup as the man with Seddens on that night. However, Williams agreed that she did not tell the police about Doughboy's presence in the car when she was initially interviewed because she was scared.

¶ 7 Sergeant Thomas Trice testified that he interviewed Williams as part of the investigation into Lampe's death. He stated that in an initial interview, Williams was unable to identify the defendant in a photo lineup and had told the investigators that only she and Seddens were in the vehicle that night. However, during a break in the interview, Williams indicated to Trice that she feared for her life regarding the matter, as she had been receiving threatening phone calls. Trice testified that when the interview resumed, Williams admitted there was a third person in the car, describing that person as a young black male, with "twisties" in his hair. Trice agreed that Williams never gave a name or nickname for this person. Trice noted that he had interviewed Seddens before interviewing Williams, and he

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<sup>1</sup>Based on the trial transcript, it appears the defendant was wearing glasses at his trial and no longer wore his hair in braids or "twisties."

identified a photograph of Seddens as the man he interviewed.

¶ 8 Nicholas Bentmann testified that he spent the night of March 23, 2010, at the defendant's mother's house, who was his girlfriend at the time. The defendant's brother, Lamont, asked Bentmann if he could borrow his truck, because "Dough[boy] had a flat somewhere." Bentmann thought that the conversation occurred around midnight, but he was sleeping and could not be sure of the time. He stated that Lamont and the defendant returned around 6 a.m., and the defendant was acting nervous. Bentmann stated that the defendant offered to sell him some 20-inch rims that he needed to get rid of "quickly," but Bentmann declined because they would not fit his truck. Bentmann agreed that the defendant had offered to sell him rims before, as the defendant knew that Bentmann was in the market for new rims. Bentmann testified that later that morning, he gave the defendant a ride to his grandmother's house on his way to work. Before exiting Bentmann's vehicle, the defendant retrieved a jack and two jack stands out of the truck. Bentmann testified he had never seen those items before. Bentmann stated that he was shown a surveillance video of Route 3 Liquor Store, and that he was about 80% sure that the suspect depicted in the video was the defendant. Bentmann testified that he was also shown video footage from Blue Fountain Apartments, and he was certain that the truck seen following the victim's vehicle was his because of the distinguishing camper shell and unique paint on the back. Bentmann agreed that the first time he offered information about the defendant was after he was arrested for a DUI. In court, Bentmann identified the defendant as Doughboy, though he thought that the defendant looked different. Bentmann stated that he had never before seen the defendant wearing glasses, and that the defendant normally wore his hair in braids.

¶ 9 Investigator Jerry Zacheis testified that he is a crime scene investigator for the Illinois State Police. Zacheis stated that he had processed a champagne-colored Impala and a black truck with a camper shell and "Heartbeat of America" painted on the back. He testified that

a four-way lug wrench and a black stocking cap were recovered from the truck.

¶ 10 Lamont Elliot identified his son, Lason "Doughboy" Elliot, as the defendant in the courtroom. Elliot testified that he had viewed video footage from Route 3 Liquor Store, but that he could not tell whether the individual in the video was the defendant. However, in his videotaped police interview, Elliot indicated that the suspect in the video was the defendant, and that he recognized the person's clothing and shoes as belonging to the defendant.

¶ 11 Detective Sergeant John "Vito" Parisi testified that over the course of the investigation, approximately 65 leads were generated. Parisi stated that based on one such lead, the investigators procured an interview with Seddens, but Parisi was not personally involved in the interview. Parisi testified that based on the interview with Seddens, he conducted an interview with Kiewauna Williams. As to investigational leads regarding the defendant, the following exchange took place between the prosecution and Parisi:

"Q. Okay. Based also on that interview with Marquis [Seddens], did—Was there a lead on a gentlemen by the name of Lason Elliot?

A. Yes, sir, there was.

Q. And did you—through your investigation, did you learn a nickname?

A. Yes, sir, I did.

Q. And what was his nickname?

A. The nickname was Doughboy.

Q. Did—And then you saw video footage of Route 3?

A. That's correct.

Q. And it showed different cars leaving and which direction they were headed to?

A. Yes, sir.

Q. And are you aware of which way Marquis Seddens left the—

A. He—

Q. Let me show you—I'll have you describe it, please, sir, on People's Exhibit 20.

A. He was backed in here, right in this general area (indicating). And when he left, he came out, made a right-hand turn and came this way (indicating).

Q. And also through your investigation with the Major Case Squad, did it become aware of when he dropped off an individual?

A. Yes, sir.

Q. Did you—Can you show an approximation location?

A. Yes, sir.

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A. He was backed in here (indicating), and came out, came this way (indicating), dropped this individual off here (indicating).

Q. You learned who that individual was?

A. Yes, sir, we did.

Q. And who was that?

A. Lason 'Doughboy' Elliot.

Q. And that was through an interview that you had with—that the Major Case Squad had with Marquis and Kiewauna?

A. That's correct."

Parisi testified that he had attempted to serve a subpoena on Seddens but had been unable to locate him, and that Seddens had indicated through an attorney that he was not going to come in. Parisi agreed that not every eyewitness from that night could be located and interviewed, including the occupants of the red Magnum vehicle.

¶ 12 Parisi also testified that he searched for the defendant from April until August of

2010. He stated that he put out wanted posters and billboards with the defendant's information on them, and also placed a story in The Evening World, which is known as a "black newspaper" in St. Louis. Parisi stated that he spoke to the defendant's mother, father, and girlfriend on several occasions. Parisi also stated that he interviewed Bentmann, which led to Bentmann's positive identification of his truck in the Blue Fountain Apartments surveillance video and the recovery of the items in the truck. Parisi noted that the defendant was 20 years old in March 2010. Parisi testified that on August 4, 2010, the defendant was arrested at his mother's house as he attempted to climb out the window. After requesting that the defendant remove his glasses, Parisi positively identified the defendant as the man that he arrested, Lason "Doughboy" Elliot.

¶ 13 In closing argument, the prosecution noted that "[Kiewauna Williams] identified the individual in the backseat. She didn't say 'that's Doughboy.' Marquis did that." Defense counsel objected to "facts not in evidence," to which the court responded: "Ladies and gentlemen, the testimony came in from a police officer not the witness—not Marquis. It is your duty to decide what weight you want to give to that evidence." The jury found the defendant guilty of first-degree murder. The defendant appeals.

¶ 14 The defendant admits at the outset that he did not object to this alleged confrontation clause violation nor did he raise it in a posttrial motion. Unless both steps are taken, the issue is forfeited. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Thus, he seeks review under the plain error doctrine, a limited and narrow exception to the general waiver rule, to be invoked only where: (1) the evidence is closely balanced or (2) the alleged error is so substantial that it deprived the defendant of a fair trial. *People v. Kuntu*, 196 Ill. 2d 105, 128 (2001). The threshold question in this analysis is whether any error occurred at all. *People v. Herron*, 215 Ill. 2d 167, 186 (2005).

¶ 15 In the instant case, we believe that no error occurred. The defendant argues Parisi's



trial testimony regarding his conversation with Seddens was testimonial hearsay, in violation of the sixth amendment's confrontation clause ("In all criminal prosecutions, the accused shall enjoy the right \*\*\* to be confronted with the witnesses against him \*\*\*." U.S. Const., amend. VI) and *Crawford v. Washington*, 541 U.S. 36, 68 (2004) (holding that testimonial hearsay statements of a witness who is not available at trial may not be admitted against a criminal defendant unless the defendant had a prior opportunity to cross-examine him). Specifically, the defendant asserts that Parisi's testimony regarding the Seddens interview was testimonial hearsay because it revealed the content of that interview.

¶ 16 Hearsay evidence is an out-of-court statement offered to prove the truth of the matter asserted. *People v. Tenney*, 205 Ill. 2d 411, 432-33 (2002). However, the confrontation clause does not bar the admission of testimonial statements that are offered for purposes other than establishing the truth of the matter asserted. *Crawford*, 541 U.S. at 49. Where testimony of an out-of-court statement is offered, not for the truth of the matter asserted, but for the limited purpose of explaining the reason the police conducted their investigation as they did, the testimony is not objectionable on the grounds of hearsay. *People v. Rodriguez*, 312 Ill. App. 3d 920, 929 (2000). An officer may testify that a conversation with an individual took place and that he acted thereon because such testimony is within the officer's knowledge; it is admissible although the inference logically to be drawn therefrom is that the information received motivated the officer's subsequent conduct. *People v. Gacho*, 122 Ill. 2d 221, 248 (1988).

¶ 17 Here, Parisi did not testify about the content of his conversation with Seddens. His testimony leading up to the exchange at issue was a step-by-step explanation of the course of his investigation, and the testimony at issue was that he spoke to Seddens and Williams in order to learn the identity of the man in the backseat of Seddens' G8 that night, and pursued the defendant as a suspect based on those conversations. Parisi's testimony was

proper because it was offered to show the steps taken in his investigation of the crime and how he learned of the defendant, not to identify the defendant as the perpetrator of the crime. The testimony did not "gratuitously reveal" the substance of Parisi's conversation with the nontestifying witness, and thus was properly admitted nonhearsay testimony. See *People v. Henderson*, 142 Ill. 2d 258, 304 (1990) (declined to follow on other grounds) (holding that recounting the steps taken in a police investigation is admissible and does not violate the sixth amendment as long as the testimony does not gratuitously reveal the substance of the nontestifying witness's statements and so inform the jury that they told the police that the defendant was responsible for the crime).

¶ 18 Even assuming *arguendo* that the testimony in question was indeed improperly admitted hearsay evidence, we find that the defendant cannot sustain the burden of plain error under the weight of the remaining evidence. Admission of hearsay identification testimony constitutes plain error only when it serves as a substitute for courtroom identification or is used to strengthen or corroborate a weak identification. *People v. Mitchell*, 200 Ill. App. 3d 969, 975 (1990). Such evidence is harmless error where it is merely cumulative or is supported by a positive identification and other corroborative circumstances. *Mitchell*, 200 Ill. App. 3d at 975. Though the defendant argues that Parisi's testimony, "at a minimum, was used to strengthen a weak identification," we believe that the remaining evidence presented at the defendant's trial sufficiently corroborates properly admitted testimony and is therefore fatal to the defendant's argument, as "there is no legal distinction between direct and circumstantial evidence as to the weight and effect thereof." *People v. Robinson*, 14 Ill. 2d 325, 331 (1958).

¶ 19 Kiewauna Williams testified that a young man was a passenger in the backseat of Seddens' vehicle that night, that Seddens called him "Doughboy," and that the passenger was dropped off behind the liquor store that night. Though she did not make an in-court

identification, her description of the passenger was consistent with the defendant's age and appearance at the time of the incident, and the prosecution established that the witness feared for her safety regarding this incident. Both the defendant's father, Lamont Elliot, and his mother's former boyfriend, Nicholas Bentmann, testified that the defendant is known as "Doughboy," and identified him in court as Doughboy. Elliot indicated in his police interview that he believed that the suspect in the Route 3 surveillance video was his son, and Bentmann testified that he was "about 80% sure" that the defendant was the suspect in the video. Bentmann also positively identified his truck as the vehicle following Collier's Impala in the apartment complex surveillance video, which he had lent to the defendant's brother on the night of the incident. Bentmann's testimony regarding the defendant's actions the morning of March 24, 2010, is also compelling, as the defendant was acting strangely and had offered to sell Bentmann some rims that he needed to get rid of "quickly." The defendant actively evaded police questioning for three months regarding the incident. In short, the State's case did not hinge on its limited identification testimony, due to the wealth of other corroborative evidence presented to the jury. Thus, we find that Parisi's testimony, even if admitted in error, was harmless.

¶ 20 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 21 Affirmed.