

No. 1-13-0208

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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. 12 CR 3742
)	
CRAIG WILSON,)	Honorable
)	Thaddeus L. Wilson,
Defendant-Appellant.)	Judge Presiding.

JUSTICE GORDON delivered the judgment of the court.
Presiding Justice Palmer and Justice McBride concurred in the judgment.

O R D E R

¶ 1 *Held:* Defendant's conviction is affirmed because the State laid a sufficient foundation for its evidence that defendant was found with a prerecorded \$20 bill. Moreover, even assuming the 1505 fund sheet constituted inadmissible hearsay, the evidence at trial was not closely balanced; accordingly, defendant has failed to establish plain error occurred when the court admitted the sheet into evidence.

¶ 2 Following a bench trial, defendant, Craig Wilson, was convicted of delivery of a controlled substance and sentenced to nine years in prison. He appeals, asserting the trial court erroneously relied on evidence that he was found with a prerecorded \$20 bill because the State

failed to lay an adequate foundation for that evidence and also failed to establish that a 1505 fund sheet fell within an exception to the rule against hearsay. For the following reasons, we affirm.

¶ 3 At trial, the State presented three witnesses, Chicago police officers Archell Dennis, Jerome Hoffman, and Joseph Mirus. Their testimony established the following: Officer Dennis approached defendant in an empty alley in the 700 block of 66th Street at approximately 3:30 p.m. on January 31, 2012. There was clear visibility at that time. Dressed in civilian clothes and driving an unmarked vehicle, Officer Dennis intended to make an undercover purchase as part of a "violence suppression mission." After Dennis engaged defendant in a conversation, defendant asked Dennis what he needed, and Dennis responded, "diesel," meaning heroin. Dennis "[v]aguely" recalled that defendant was wearing a black work suit with red markings and a black hat. However, Dennis could clearly observe defendant's face, which was not covered.

¶ 4 Defendant walked to a tree located about two or three lots away, bent down, and picked up something. He then walked back to Dennis and gave him two clear bags containing a white powder substance, which Dennis suspected as heroin. In return, Dennis handed defendant a \$20 bill in "1505 funds" or "marked bills." The prosecutor then asked Dennis the following: "And when you say 'mark,' do you mean that there is something that is done with the serial number?" Dennis responded, "Yes." Dennis identified People's exhibit No. 1 as a true and accurate copy of the 1505 fund sheet. The prosecutor then asked Dennis whether the sheet contained "that 20-dollar bill that [Dennis] used and handed to the defendant," and Dennis responded affirmatively. Defendant made no objection. The prosecutor then requested that Dennis mark on the 1505 funds sheet the \$20 bill he used. Defendant objected to the marking because the sheet was pre-circled. The trial court overruled defendant's objection. Dennis marked number IE94926351B.

¶ 5 Dennis's first conversation with defendant lasted less than 10 seconds, and their second exchange lasted less than five seconds. Both interactions took place in close proximity to each other. After the second exchange, Dennis walked back to his vehicle, drove away from the area, and radioed to his team that he had made a positive buy. He provided a description of the seller as a black man with a dark complexion wearing a black hat and a black jumpsuit with red markings on it. Officers Hoffman and Mirus, who were waiting approximately two to three blocks away, relocated to the alley, arriving about a minute after receiving Dennis's message. They stopped defendant, who matched the description Dennis had provided. Officer Hoffman did not recall seeing any other people in the alley.

¶ 6 After defendant was detained, Dennis drove by the alley and viewed him from approximately 50 feet away. He radioed Hoffman and Mirus to positively identify defendant. Hoffman and Mirus then placed defendant into custody. Mirus conducted a custodial search, during which he recovered money from defendant but no narcotics. He also searched the immediate area where defendant was standing but did not find any additional contraband or narcotics.

¶ 7 When asked whether there was "anything unique" about the money Officer Mirus retrieved from defendant, Officer Hoffman responded it was a \$20 bill "that matched the pre-recorded 1505 serial number." Hoffman then explained he was able to make that determination because "[t]here's a pre-recorded 1505 fund sheets [*sic*] with the numbers of bills that have been pre-recorded. We take the money and match it up to and it matched the serial numbers." Hoffman testified that when Mirus retrieved the money from defendant, Mirus "checked it against [their] numbers and informed [Hoffman] that [they] had recovered the 1505 fund." When

Hoffman and Mirus returned to the police station, Hoffman also observed Mirus take the \$20 bill, inventory it, and check "to make sure that it was the same 20-dollar bill that he recovered." Hoffman identified People's exhibit No. 1 as "the pre-recorded 1505 fund sheet." He also said he "believe[d] it was a true and accurate copy of the sheet he observed Mirus compare" with "the \$20 bill." The prosecutor then asked whether the \$20 bill was "contained within" People's exhibit No. 1, to which Hoffman responded, "That is correct." Defendant made no objection. Hoffman marked the relevant serial number on the prerecorded funds sheet, number IE94926351B.

¶ 8 Officer Mirus testified that during his custodial search of defendant, he recovered \$20 of "1505 funds." He determined the \$20 bill was a 1505 fund because it "had the serial number that matched the prerecorded fund sheet." Mirus brought the \$20 bill back to the station and inventoried it. The prosecutor showed Officer Mirus People's exhibit No. 1, asking what he did with the \$20 bill that he recovered in relation to the 1505 fund sheet. Mirus responded, "I matched the serial numbers." The prosecutor then asked whether there was "an entry on that 1505 fund sheet that matched the serial number of the \$20 bill." Defendant made no objection, and Mirus responded, "yes." The prosecutor requested that Mirus mark the relevant serial number on People's exhibit No. 1. Defendant again objected to the use of the pre-circled sheet. The following colloquy then ensued.

"THE COURT: Well, is this the sheet that he had or produced? I don't know how it got there. Overruled unless you—

[DEFENSE COUNSEL]: Judge, I do have foundation as to whether or not Officer Mirus is the one who generated this sheet as he recognized it.

THE COURT: He said it's the one that was given to him.

[DEFENSE COUNSEL]: By whom?"

The State then asked Mirus whether the sheet was a "photocopy of the 1505 fund sheet," and Mirus responded affirmatively, stating he did not recall any markings on the sheet when he first compared the \$20 bill to it. He explained he marked People's exhibit No. 1 based on his recollection of "the last four digits including the alpha character on the end of it." Mirus marked number IE94926351B.

¶ 9 The State moved to enter into evidence People's exhibit No. 1. Defense counsel objected, stating as follows. "Your honor, this witness was the recovering witness and I believe this witness, and that being Officer Mirus' testimony regarding the 1505 fund sheet, had a vague recollection, and did not through his testimony today identify this as I believe a document he was sufficiently familiar with." The trial court admitted the exhibit into evidence.

¶ 10 Officer Dennis maintained custody of the two baggies defendant had given him, later inventorying them at a facility in Homan Square. The parties stipulated that Amanda Shambaum, an Illinois State Police Crime Lab forensic chemist, would testify she tested one of the bags, which was positive for the presence of heroin and weighed 0.1 gram, and the recovered items weighed an estimated total of 0.2 gram.

¶ 11 The defense presented one witness, Chicago police officer Curtis Ivy, who worked surveillance on the day of defendant's arrest. Ivy acknowledged that in his arrest report, he wrote that "offenders" were transferred to the police station, but he explained that he was referring solely to defendant and that only one offender was arrested that day. He also said he made a "typing error" when he listed the date he submitted his report as December 16, 2011, approximately six weeks before defendant's arrest.

¶ 12 Following closing arguments, the trial court found defendant guilty of delivery of a controlled substance. In doing so, the court made the following findings.

"Officers as part of a surveillance team go to an area, sees [sic] the defendant. An officer working as the buy officer approached the defendant, asked the defendant if he was working. The defendant asked him what did he need. He told him diesel, which is the slang term for heroin. The defendant walked away to a tree two to three yards—lots away, picked up an item, walked back towards the officer, gave the officer two plastic bags of narcotics. The officer gave the defendant a \$20 bill prerecorded 1505 funds.

The officer left the area, radioed his team of a positive buy. The defendant was detained. The buy officer identified the defendant as the person who sold him the narcotics. The defendant was searched. The area was searched. The defendant was arrested and taken to the station. The \$20 marked 1505 funds used to purchase the narcotics were recovered from the defendant."

¶ 13 Defendant filed a posttrial motion but did not include therein his contentions relating to the unmarked funds or admission of the 1505 fund sheet. In December 2012, the trial court denied defendant's motion and sentenced him to nine years in prison. Defendant's motion to reconsider sentence was subsequently denied. This appeal followed.

¶ 14 On appeal, defendant first argues his conviction must be reversed because the State's evidence concerning the use of prerecorded funds, including the 1505 fund sheet and the officers'

testimony, was irrelevant. According to defendant, the State failed to lay an adequate foundation for its evidence concerning the prerecorded funds because it did not show Officer Dennis used money that had actually been prerecorded. Defendant acknowledges he has forfeited review of this issue by failing to object to the officers' testimony at trial or include the issue in his posttrial motion. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (To preserve an issue for appellate review, a defendant must object both at trial and in a written posttrial motion). Nonetheless, he urges this court to review the matter pursuant to the plain-error doctrine, asserting the evidence at trial was closely balanced.

¶ 15 Under the plain-error doctrine, we may consider unpreserved claims of error when a clear or obvious error occurred and either (1) the evidence is so closely balanced the error alone threatened to tip the scales of justice against defendant, or (2) the error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). Our first step in plain-error review is to determine whether error occurred. *People v. Thompson*, 238 Ill. 2d 598, 613 (2010).

¶ 16 The admission of evidence is within the trial court's discretion, and we will not reverse a trial court's decision absent an abuse of that discretion. *People v. Becker*, 239 Ill. 2d 215, 234 (2010). An abuse of discretion occurs when the court's decision is arbitrary, fanciful or unreasonable, or where no reasonable person would agree with the court's view. *People v. Taylor*, 2011 IL 110067, ¶ 27. "Relevance is a threshold requirement that must be met by every item of evidence," and evidence that is irrelevant is inadmissible. *People v. Dabbs*, 239 Ill. 2d 277, 289 (2010). Evidence is relevant if it tends to make the existence of a fact of consequence to the determination of the action more or less probable than it would be without the evidence.

People v. Patterson, 192 Ill. 2d 93, 115 (2000). Proper foundation for evidence concerning marked funds is laid when the State shows "the connection of the money to the crime charged and its relation to defendant's guilt." *People v. Morrison*, 23 Ill. 2d 201, 205 (1961).

¶ 17 The evidence in this case concerning the prerecorded \$20 bill was relevant. Although the officers did not explicitly state how the bill was recorded or explain how the 1505 fund sheet was created, the trial court could infer that the \$20 bill had, in fact, been recorded on the 1505 fund sheet using its serial number. Specifically, Officer Dennis testified he handed defendant a \$20 bill in "1505 funds" or "marked bills," and he stated the 1505 fund sheet contained the \$20 bill he gave to defendant. Officer Hoffman said the \$20 bill retrieved from defendant "matched the pre-recorded 1505 serial number," explaining "[t]here's a pre-recorded 1505 fund sheets [*sic*] with the numbers of bills that have been pre-recorded. We take the money and match it up to and it matched the serial numbers." Officer Mirus likewise testified that he determined the \$20 bill he recovered from defendant was a 1505 fund because it "had the serial number that matched the prerecorded fund sheet." The foregoing testimony was sufficient to establish Officer Dennis used a prerecorded bill, which Officer Mirus later recovered from defendant. It was therefore probative of defendant's identity as the person who sold Dennis heroin. Accordingly, the trial court did not err by admitting evidence of the prerecorded funds.

¶ 18 Defendant also asserts his conviction must be reversed because the 1505 fund sheet was hearsay and the State failed to demonstrate it fell within a recognized hearsay exception. As with his relevancy argument, defendant has forfeited review of his hearsay claim by failing to object on those grounds at trial or in his posttrial motion, but he asserts the matter is reviewable under the closely-balanced prong of the plain-error doctrine.

¶ 19 The State does not respond to defendant's hearsay argument. However, even assuming any error occurred, defendant has failed to show the evidence was closely balanced such that the erroneous admission of the 1505 fund sheet threatened to tip the scales of justice against him. "In determining whether the closely balanced prong has been met, we must make a 'commonsense assessment' of the evidence [citation] within the context of the circumstances of the individual case." *People v. Adams*, 2012 IL 111168, ¶ 22 (quoting *People v. White*, 2011 IL 109689, ¶ 139).

¶ 20 To sustain defendant's conviction for delivery of a controlled substance, the State was not required to prove that money was exchanged. See 720 ILCS 570/401(d) (West 2012); see also *People v. Trotter*, 293 Ill. App. 3d 617, 619 (1997) ("[T]here is no requirement that pre-recorded or marked funds used in a narcotics transaction be recovered for a conviction to stand."). While the 1505 fund sheet corroborated Officer Dennis's identification of defendant as the person who sold him heroin, no serious claim can be made that the outcome of defendant's trial would have been different absent admission of the 1505 fund sheet. Officer Dennis interacted with defendant in an empty alley from an arm's-length distance for a total of approximately 15 seconds on a day with clear visibility. He could clearly see defendant's face, which was not covered. After his transaction, Dennis radioed Officers Hoffman and Mirus and described the person who sold him heroin as a black man wearing a cap and black suit with red markings. Although nobody maintained surveillance of the alley after Dennis departed, Hoffman and Mirus arrived only a minute later. They did not recover any drugs or contraband on defendant. However, defendant matched the physical description provided by Dennis, and Dennis then positively identified defendant as he drove by from 50 feet away. In addition, neither Dennis nor Hoffman recalled seeing anybody else in the alley. Based on the foregoing, defendant has failed to establish the

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evidence at trial was closely balanced as to his identity. Accordingly, we honor his procedural default. Any error here did not arise to the level of plain error.

¶ 21 For the reasons stated, we affirm the trial court's judgment.

¶ 22 Affirmed.