

No. 1-14-0458

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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. 13 CR 3569
)	
JASON FREEMAN,)	Honorable
)	Charles P. Burns,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Mason and Justice Fitzgerald Smith concurred in the judgment.

O R D E R

¶ 1 *Held:* We affirm defendant's conviction of delivery of a controlled substance over his contention that the trial court improperly admitted hearsay testimony of prerecorded money.

¶ 2 Following a bench trial, defendant Jason Freeman was convicted of delivery of a controlled substance and sentenced, as a Class X offender, to six years' imprisonment. On appeal, defendant contends that the trial court improperly admitted hearsay testimony to establish

that the serial number of the \$20 bill recovered from him matched the serial number of prerecorded funds used in a controlled narcotics purchase. We affirm.

¶ 3 At trial, Officer Isaac Shavers testified that he was working undercover with a team of officers near 2435 East 79th Street in Chicago at about 9:20 a.m. on January 24, 2013. Shavers saw defendant on the street in front of a barber shop and asked defendant if he had any "rocks," *i.e.*, crack cocaine. Defendant asked Shavers how many he wanted, and Shavers replied that he wanted two rocks. The men stepped into the vestibule of the barber shop where defendant handed Shavers two rocks in clear plastic bags, and Shavers gave defendant a prerecorded \$20 bill. Shavers walked away and told his team via radio transmission that a positive transaction had taken place with defendant. Defendant was detained by police, and, about 20 minutes after the transaction occurred, Shavers identified defendant as the seller. Shavers gave Officer Story the suspect crack cocaine at the police station to be processed and inventoried.

¶ 4 On cross-examination, Shavers testified that he did not recall when he obtained the \$20 of prerecorded funds used in this matter, but indicated that the "prerecorded fund sheet" would refresh his memory. Defense counsel showed Shavers a document marked as Defense Exhibit No. 1, which counsel referred to as an "inventory sheet," in order to refresh Shavers' memory as to when he obtained the \$20 of prerecorded funds. After viewing the document, Shavers indicated that his memory was refreshed and testified that he obtained the prerecorded funds on January 8, 2013. During the weeks between when Shavers obtained the \$20 prerecorded bill and the incident in question, Shavers indicated that he was a full-time undercover officer who made all kinds of "buys" throughout the city. He nevertheless had the same \$20 bill with him when he bought cocaine from defendant.

¶ 5 Officer Don Story testified that after receiving a radio transmission from Officer Shavers, he went to the area near 2435 East 79th Street and saw defendant inside of a barber shop. Story brought defendant outside where he was identified by Shavers as the individual who sold him narcotics. Following the positive identification, Story searched defendant and recovered \$20 of prerecorded funds commingled with another \$80 he had on his person. The recovered \$20 bill had a serial number on it that Story compared to the previously recorded serial number of the bill, and found that they matched. Story returned to the police station where he inventoried the recovered suspect crack cocaine that Shavers gave him and the prerecorded \$20 bill.

¶ 6 The parties stipulated that forensic scientist Laneen Blount would testify that after performing tests on the contents of the recovered items, her expert opinion within a reasonable degree of scientific certainty was that the tested items were positive for the presence of cocaine and weighed less than .1 gram.

¶ 7 Following closing arguments, the trial court found defendant guilty of delivery of a controlled substance. In so finding, the court stated that the fact that defendant did not have drugs on him at the time of his arrest was not dispositive where he was not charged with possession of a controlled substance and drug dealers do not typically keep drugs on their person. Moreover, the court found Officer Story's testimony that he recovered prerecorded funds on defendant credible, and that Shavers clearly identified defendant as the person who sold him drugs.

¶ 8 On appeal, defendant contends Officer Story's testimony that the serial number of the \$20 bill recovered from him matched the serial number of prerecorded funds was inadmissible hearsay because, in so testifying, Story relied on the contents of a prerecorded funds sheet, which was a written, out-of-court assertion that the bill listed on that sheet was used as prerecorded funds by the police to make controlled drug buys. Defendant maintains that the assertion was

relevant only if true, as it was used to prove that the \$20 bill in defendant's possession was the prerecorded bill given to him by Officer Shavers.

¶ 9 We initially note that Officer Shavers was asked on cross-examination when he obtained the \$20 of prerecorded funds used in this matter, and defense counsel used the document to which defendant now objects on appeal to refresh the officer's recollection that he obtained the prerecorded \$20 bill on January 8, 2013. Defense counsel further elicited from Officer Shavers that between January 8 and January 24 he continued to "make buys" throughout the city. See *People v. Johnson*, 334 Ill. App. 3d 666, 680 (2002), quoting *In re E.S.*, 324 Ill. App. 3d 661, 670 (2001), (" 'A party forfeits [his] right to complain of an error where to do so is inconsistent with the position taken by the party in an earlier court proceeding' ").

¶ 10 Additionally, defendant concedes that he forfeited this claim by failing to object at trial or including it in the written posttrial motion (see *People v. Enoch*, 122 Ill. 2d 176, 186 (1988)), but argues that we can consider it as plain error. Plain error is a clear and obvious error where either the evidence was closely balanced, or it was so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process. *People v. Herron*, 215 Ill. 2d 167, 187 (2005)). Here, defendant contends that the evidence was closely balanced. The first step in plain error analysis, however, is to determine whether error occurred at all. *People v. Walker*, 232 Ill. 2d 113, 124-25 (2009).

¶ 11 An out-of-court statement, whether oral or written, is hearsay if it is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. *People v. Leach*, 2012 IL 111534, ¶ 66, citing Ill. R. Evid. 801(a), (c) (eff. Jan. 1, 2011). Hearsay evidence is generally inadmissible due to its lack of reliability (*People v. Olinger*, 176 Ill. 2d 326, 357 (1997)), and the fundamental reason for

excluding hearsay is the lack of an opportunity to cross-examine the declarant. *People v. Yancy*, 368 Ill. App. 3d 381, 385 (2005). Admission of evidence is within the sound discretion of the trial court. *People v. Thomas*, 171 Ill. 2d 207, 218 (1996).

¶ 12 Defendant asserts that the trial court improperly relied upon the contents of the prerecorded funds sheet as evidence in determining his guilt of the charged offense. During direct examination, Officer Shavers testified that he had a prerecorded \$20 bill on his person when he went to the scene. Later, Officer Story testified that he recovered the same \$20 bill from defendant. Story knew the serial numbers matched because he checked them against the prerecorded funds sheet. The prerecorded funds sheet was never entered into evidence or relied upon by Officer Shavers during examination by the State. Thus, we agree with the State that it did not elicit any hearsay testimony from the police officers with respect to the prerecorded funds sheet.

¶ 13 Further, even if Officer Shaver's reference to the prerecorded funds sheet could be characterized as hearsay, it would be admissible under the past recollection recorded and business record exceptions to the hearsay rule. See *People v. Strother*, 53 Ill. 2d 95, 101 (1972) (finding that although the prerecorded funds sheet, which was introduced to prove that the serial numbers recorded were in fact those of the currency used in the controlled purchase, may have been hearsay evidence, it was properly admitted under the past recollection recorded exception to the hearsay rule); *People v. Rivas*, 302 Ill. App. 3d 421, 432 (1998) (prerecorded funds sheet qualifies as a business record as the "document is not likely to indicate a bias or prejudice against defendant"). Therefore, the law establishes the proper admission of Officers Story's and Shavers' testimonies concerning the prerecorded funds sheet.

¶ 14 Finally, even assuming, *arguendo*, the trial court erred in admitting hearsay evidence

regarding the prerecorded funds sheet, we find that the evidence was not closely balanced and thus there was no plain error to overcome forfeiture. Defendant was convicted of delivery of a controlled substance, which requires the delivery of narcotics. Whether money was exchanged in return for the narcotics is not an element the State must prove. See 720 ILCS 570/401 (West 2012). Officer Shavers' unrefuted trial testimony showed that defendant handed him narcotics, thus proving delivery. After defendant was apprehended by Officer Story, Shavers identified defendant as the individual who gave him narcotics. See *In re M.W.*, 232 Ill. 2d 408, 435 (2009), quoting *People v. Piatkowski*, 225 Ill. 2d 551, 566 (2007) (a "positive identification by a single eyewitness who had ample opportunity to observe is sufficient to support a conviction"). The \$20 bill and the prerecorded funds sheet are not material to whether defendant delivered narcotics to Shavers.

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

¶ 16 Affirmed.