FIFTH DIVISION
MARCH 31, 2016

No. 1-14-1605

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 5014
	)	
DEANTE WEST,	)	Honorable
	)	Michael McHale,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE GORDON delivered the judgment of the court.
Presiding Justice Reyes and Justice Harris concurred in the judgment.

O R D E R

¶ 1 *Held:* We affirm defendant's conviction of delivery of a controlled substance over his contentions that the trial court improperly admitted police testimony regarding prerecorded funds used to buy a controlled substance without laying a proper foundation and that the testimony was predicated on inadmissible hearsay.

¶ 2 Following a bench trial, defendant Deante West was convicted of delivery of a controlled substance and sentenced, as a Class X offender, to nine years' imprisonment. On appeal, defendant contends that the trial court erred in admitting the State's evidence about the

prerecorded funds used to buy the controlled substance because the State failed to lay an adequate foundation for its introduction. Defendant also contends this testimony was inadmissible hearsay. We affirm.

¶ 3 At the simultaneous bench trial of defendant and codefendant Edward Jennings,[1] Officer Scott Slechter testified that he and several other officers were near South Campbell Avenue in Chicago at approximately 9:43 a.m. on February 18, 2012, to make a controlled narcotics purchase. Slechter approached a woman named Catrese, who was never arrested, and told her that he wanted to buy "some rocks." She called an unknown person on her cell phone, asked Slechter how many he wanted, and, after Slechter replied two, she informed the person on the phone "two CD's," which is a street term for crack cocaine. Catrese directed Slechter to wait with her near the bus stop at 63rd Street and Campbell Avenue. About 5 to 10 minutes later, a blue Dodge Challenger drove up and Catrese and Slechter approached it. Defendant was the driver of the vehicle and Jennings was the passenger.

¶ 4 Officer Slechter testified he gave defendant $20 of Chicago police department "1505" funds. As Slechter's memory was exhausted regarding the denominations of the 1505 funds, the State showed him an "inventory slip," which refreshed his memory that he gave defendant two $10 bills. Slechter initially testified that defendant handed the money to Jennings, but later testified he did not see where the $20 went after he gave the money to defendant. Defendant then gave Slechter a "C & C Plumbing" company business card with two cell phone numbers on it. The card did not contain defendant's name. Jennings next handed defendant two clear plastic

[1] Edward Jennings filed a separate appeal in No. 1-14-1818.

baggies containing suspect crack cocaine, which defendant gave to Catrese. Catrese gave Slechter one of the baggies and then started to walk away. As Catrese walked away, he could not observe what was in her hands as her back was to him. He could, however, observe that she did not reach into any of her pockets. Slechter told Catrese to give him the other bag, and she complied. After Slechter received both baggies of suspect cocaine, which appeared identical, he placed them in his pocket.

¶ 5 Slechter radioed enforcement officers and described the incident, providing a description of the vehicle's occupants. Slechter returned to his vehicle and learned that officers had stopped the vehicle occupied by defendant and Jennings on West 61st Street. Slechter drove to where defendant and Jennings were being detained, and positively identified both men over the radio. Slechter later had the items he received at the scene of the alleged purchase inventoried.

¶ 6 Officer Haidari[2] testified that he was an enforcement officer working with Officer Slechter near South Campbell Avenue. Through a radio transmission, Slechter indicated that he had made a narcotics purchase and gave a description of the vehicle involved in the transaction. Haidari stopped the vehicle on West 61st Street and observed defendant driving the vehicle with Jennings in the passenger seat. Haidari removed both men from their vehicle and brought them to the front of his automobile. Slechter "made a pass by" and positively identified both men, via radio transmission, as the individuals who sold him the suspected narcotics. Haidari arrested both men.

[2] Officer Haidari did not testify to his first name.

¶ 7 Officer Haidari performed a custodial search on defendant and Jennings. He recovered the two $10 bills used in the undercover purchase from Jennings' pocket. Haidari indicated that both $10 bills were "1505 funds," with one containing the serial number IL88432726A and the other containing the serial number IL89623257A. Both bills were subsequently inventoried. An additional $150 was also recovered from Jennings, which was returned to him.

¶ 8 The parties stipulated that forensic chemist Linda Raiford would testify that she tested the contents of one of the two bags recovered, found it weighed .2 gram, and found that the substance tested positive for cocaine.

¶ 9 The State rested and defendant moved for a directed finding, which was denied. Defendant did not present any evidence.

¶ 10 Following closing arguments, the trial court found defendant guilty of delivery of a controlled substance. In so finding, the court stated that the officers' testimony and their identifications of defendant and Jennings were credible.

¶ 11 On appeal, defendant contends that the police testimony about prerecorded funds was entered without a proper foundation and constituted inadmissible hearsay. Defendant specifically asserts that the officers testified that Jennings possessed the same prerecorded $10 bills that Officer Slechter gave defendant in an alleged drug transaction without explaining how they knew the bills were prerecorded funds, *i.e.*, there was no evidence indicating that the serial numbers matched those on a prerecorded funds sheet, or that the serial numbers on the bills given to defendant matched those recovered from Jennings.

¶ 12 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 should consider it as plain error. Plain error is a clear and obvious error where either the evidence was closely balanced, or the error 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). 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).

¶ 13 The admission of evidence is within the trial court's discretion and should not be reversed absent a clear showing of abuse of discretion. *People v. Caffey*, 205 Ill. 2d 52, 115 (2001). A trial court abuses its discretion when its 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). Relevant evidence makes 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). When a defendant contends the State failed to lay the proper foundation for the admission of evidence, his failure to make a timely and specific objection deprives the State of the opportunity to correct any foundational deficiency in the trial court. *People v. Simpson*, 2015 IL App (1st) 130303, ¶ 34 (citing *People v. Woods*, 214 Ill. 2d 455, 470 (2005)).

¶ 14 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)). It is well settled that hearsay evidence, if admitted without objection, is to be considered and given its natural probative effect. *People v. Foster*, 190 Ill. App. 3d 1018, 1026 (1989) (citing *People v. Collins*, 106 Ill. 2d 237, 263 (1985)).

¶ 15 Here, the evidence showed Officer Slechter gave defendant $20 of "1505" funds. When Slechter could not remember the denominations of the 1505 funds, the State showed him an "inventory slip," which refreshed his memory that he gave defendant two $10 bills. Officer Haidari said he recovered two $10 bills from Jennings' pocket, and both were "1505 funds." Haidari then listed the serial numbers of both bills and said they were inventoried. The foregoing testimony was sufficient for a reasonable trier of fact to infer that Slechter purchased drugs from the offenders using two prerecorded bills, and Haidari later recovered two prerecorded bills from Jennings upon his arrest. It was therefore probative of defendant and Jennings' identities as two of the individuals who sold Slechter cocaine. Accordingly, the trial court did not err by admitting relevant evidence of the prerecorded funds.

¶ 16 Defendant nevertheless asserts that the State failed to lay a proper foundation for the relevance of the officers' testimony regarding the prerecorded funds because it did not demonstrate a connection between the prerecorded funds and the crime charged. Defendant, citing to *People v. Rivas*, 302 Ill. App. 3d 421 (1998), maintains that a proper foundation for

prerecorded funds testimony is laid when evidence is presented that (1) the buying officer previously checked out confiscated funds from a police custodian, (2) the serial numbers on those bills were transcribed onto a police generated prerecorded funds sheet, (3) the serial numbers on the bills given to the defendant matched those on the funds sheet, and (4) such matching funds were thereafter recovered from the defendant or an associate. *Rivas*, 302 Ill. App. 3d at 427, 432.

¶ 17 Despite defendant's above description, the *Rivas* court did not outline such a test for the proper admission of testimony regarding prerecorded funds. Nevertheless, to the extent the State did not elicit similar testimony from the officers about the prerecorded funds, defendant could have objected at trial regarding any alleged deficiency in laying the foundation for the evidence. If defendant had made a timely objection, the State could have cured any alleged defect in laying the foundation by further questioning the officers regarding how the prerecorded funds were checked out, transcribed, and whether the serial numbers on the bills given to defendant and recovered from Jennings matched those on a funds sheet. Furthermore, the State could have admitted a funds sheet into evidence under the past recollection recorded or 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); *Rivas*, 302 Ill. App. 3d at 432 (prerecorded funds sheet qualifies as a business record as the "document is not likely to indicate a bias or prejudice against defendant"). We

acknowledge, as defendant points out in his reply brief, that there was no evidence presented at trial of the existence of a prerecorded funds sheet. However, had defendant made a timely objection, the State would have been given an opportunity to produce a funds sheet, thus curing any defect.

¶ 18 Even assuming, *arguendo*, the trial court erred in admitting testimonial evidence of the prerecorded funds, 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); 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."). Officer Slechter's unrefuted trial testimony showed that Jennings handed defendant two clear plastic baggies containing suspect crack cocaine, which defendant gave to Catrese. Catrese then gave Slechter one of the baggies immediately, and the other one after defendant and Jennings drove away. After defendant was apprehended by Officer Haidari, Slechter identified defendant as one of the individuals who delivered narcotics to him. The trial court specifically found such identification reliable where "[i]t [was] 9:43 in the morning. It is light. The identifications don't seem to lack any credibility. The car stopped mere blocks away minutes later." See *People v. Lewis*, 165 Ill. 2d 305, 356 (1995) ("a single witness' identification of the accused is sufficient to sustain a conviction if the witness viewed the accused under

circumstances permitting a positive identification"). The recovered $10 bills are thus not material to whether defendant delivered narcotics to Slechter.

¶ 19 Defendant nevertheless emphasizes that the case was close as only one of the two bags he allegedly delivered tested positive for cocaine, and Officer Slechter admitted that he commingled the first bag he received directly from defendant (via Catrese), with the second bag Catrese gave him after she had started to walk away from him with her back turned, where her hands were not visible. Defendant provides no reason why this evidence makes the case a close one, and, to the extent he is attempting to imply that he only provided the bag that did not test positive for cocaine, such a claim is speculative and not based on the evidence, particularly where the second bag was never tested by the chemist at all.

¶ 20 Furthermore, in an attempt to establish the police arrested the wrong men, defendant highlights that the evidence demonstrated neither of them had any narcotics on their person or in their vehicle immediately after the transaction occurred, defendant did not possess any money or business cards similar to the one he provided to Officer Slechter, and nothing on the business card Slechter took showed it belonged to defendant. However, there was no question enforcement officers stopped the vehicle involved in the transaction where Slechter provided a description of it and its occupants via radio transmission, and it was stopped in close proximity to the scene. Significantly, as stated above, Slechter's identification of defendant and Jennings was reliable. Defendant's assertions that the identification of defendant was lacking because Slechter's in-court identification of him was predicated on a 30-second interaction that occurred

more than two years before trial, and no contemporaneous lineup or photo array at the police station was conducted after their arrest, are unpersuasive.

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

¶ 22 Affirmed.