2016 IL App (2d) 131282-U
No. 2-13-1282
Order filed February 18, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Stephenson County.
Plaintiff-Appellee,	)	
v.	)	No. 12-CF-55
PARIS WALKER,	)	Honorable Michael P. Bald,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Hutchinson and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Defendant showed no plain error in the trial court's jury instruction that "reasonable doubt" was for the jury to define, as the instruction was correct; (2) we vacated defendant's conviction of the inchoate offense of criminal drug conspiracy, as he was also convicted of the principal offense of unlawful delivery of a controlled substance.

¶ 2 Defendant, Paris Walker, appeals from his convictions of unlawful delivery of a controlled substance within 1,000 feet of a church (720 ILCS 570/407(b)(2) (West 2012)) and criminal drug conspiracy (720 ILCS 570/405.1 (West 2012)). Defendant argues (1) that the trial court erred when it told the jury that "[r]easonable doubt is whatever it amounts to as far as your

findings are" and (2) that his conviction of criminal drug conspiracy should be vacated where he was convicted of unlawful delivery of the controlled substance. For the reasons that follow, we affirm defendant's conviction of unlawful delivery of a controlled substance within 1,000 feet of a church, and we vacate defendant's conviction of criminal drug conspiracy.

¶ 3 I. BACKGROUND

¶ 4 Defendant was indicted on one count of unlawful delivery of a controlled substance within 1,000 feet of a church (720 ILCS 570/407(b)(2) (West 2012)) and one count of criminal drug conspiracy (720 ILCS 570/405.1 (West 2012)). At defendant's jury trial, testimony established that Felix Rios had agreed to make controlled buys from three drug dealers in exchange for the dismissal of certain charges against him. Rios testified that he bought cocaine from defendant and Sabrina Goldman on four dates while wearing a "button" video camera. The purchases took place in front of Rios's house, where defendant and Goldman would drive up in a car. After each sale, Rios would enter his house and wait for defendant to leave. Rios was under surveillance during each transaction, but not when he entered the house. Rios would then meet up with an undercover officer, where he would turn over the drugs. The videos taken by the button video camera were shown to the jury. The videos did not show the drugs being handed to Rios.

¶ 5 Goldman testified for the defense that she was a prostitute and that defendant arranged dates for her and two other prostitutes. She testified that the videos did not show drug deals; rather, they showed her and defendant giving Rios, a frequent customer, a location and room number.

¶ 6 During closing arguments, defense counsel argued that the issue in the case was whether the source of the cocaine was defendant or Rios. According to defense counsel, because Rios

had access to cocaine from other sources and because he was a convicted felon trying to rid himself of criminal charges and make some money, he was not credible. Defense counsel reminded the jury that no drugs were visible on camera and argued that "they can't know where the drugs came from for sure, but they sure want you folks to say that you do." The State objected, arguing that defense counsel was "defining reasonable doubt [by saying] that they have to know for sure." Defense counsel stated, "I'm not defining reasonable doubt." Thereafter, the court stated:

> "I was going to say, it is improper to define reasonable doubt. So ladies and gentlemen, if you're taking that as some sort of a definition of what reasonable doubt is, it would be improper to do so. Reasonable doubt is whatever it amounts to as far as your findings are. The People have the burden of proving the defendant guilty beyond a reasonable doubt."

Defense counsel continued: "Right. And I'm not going to tell you what that is. That's up to you folks."

¶ 7 The jury found defendant guilty of both counts, and the trial court sentenced him to concurrent 14-year prison terms. Defendant timely appealed.

¶ 8 II. ANALYSIS

¶ 9 Defendant first argues that the trial court erred in instructing the jury on reasonable doubt and that therefore the matter should be remanded for a new trial. The State argues that defendant forfeited this argument by failing to object and that we should not apply the plain-error doctrine, because there was no error. We agree with the State.

¶ 10 Defendant concedes that he failed to object to the trial court's reasonable-doubt instruction and failed to raise the issue in his motion for a new trial. To preserve review of a

jury-instruction error, a defendant must object to the instruction at trial and include the issue in a posttrial motion. *People v. Sharp*, 2015 IL App (1st) 130438, ¶ 74. Nevertheless, Illinois Supreme Court Rule 451(c) (eff. Apr. 8, 2013) provides that a defendant does not forfeit "substantial defects" in criminal jury instructions by "failure to make timely objections thereto if the interests of justice require." The errors must either be grave or occur in cases that are factually so close that fundamental fairness requires that the jury receive proper instructions. *People v. Downs*, 2015 IL 117934, ¶ 14. We construe Rule 451(c) identically to the plain-error rule of Illinois Supreme Court Rule 615(a) (eff. Jan. 1, 1967). *Downs*, 2015 IL 117934, ¶ 14. To obtain relief under the plain-error rule, a defendant must first show that a clear or obvious error occurred. *Id*. ¶ 15. In determining whether there was error, our standard of review is *de novo*. *Id*.

¶ 11 Defendant acknowledges that this court has held that "[a] trial court's instruction that the meaning of 'reasonable doubt' is for the jurors to determine is a correct statement of Illinois law." *People v. Thomas*, 2014 IL App (2d) 121203, ¶ 47. Nevertheless, defendant requests that we "revisit this issue" in light of *People v. Gashi*, 2015 IL App (3d) 130064, ¶¶ 25-28, wherein the Third District found plain error in the trial court's statement to the jury that reasonable doubt was for them to determine.

¶ 12 Given our supreme court's recent decision in *Downs*, 2015 IL 117934, we have no reason to revisit our decision. In *Downs*, the court found that we reached the correct conclusion in *Thomas*. *Id*. ¶ 24. Further, the *Downs* court held that the trial court's statement to the jury that it could not give the jury a definition of reasonable doubt and that it was the jury's duty to define it was "unquestionably correct" and thus no error had occurred. *Id*. Here, as in *Downs*, the trial court told the jury that "it [was] improper to define reasonable doubt" and that "[r]easonable

doubt is whatever it amounts to as far as your findings are." Accordingly, we find no error in the trial court's instruction.

¶ 13 Defendant next argues that his conviction of criminal drug conspiracy must be vacated because he was also found guilty of unlawful delivery of the controlled substance. Defendant concedes that he failed to raise the issue in his motion for a new trial but asks that we review the issue for plain error.

¶ 14 Section 8-5 of the Criminal Code of 2012 (720 ILCS 5/8-5 (West 2012)) provides that "[n]o person shall be convicted of both the inchoate and the principal offense." Under this statute, courts have vacated convictions of criminal drug conspiracy where the defendants have also been convicted of the principal offense. See *People v. Millsap*, 374 Ill. App. 3d 857, 869 (2007) (vacating as a matter of plain error the defendant's conviction and sentence for criminal drug conspiracy where the defendant was also convicted of unlawful delivery); *People v. Haycraft*, 349 Ill. App. 3d 416, 429-30 (2004) (vacating as a matter of plain error the defendant's conviction and sentence for criminal drug conspiracy where the defendant was also convicted of unlawful manufacture); *People v. Sonntag*, 238 Ill. App. 3d 854, 857 (1992) (vacating as a matter of plain error the defendant's convictions and sentences for criminal drug conspiracy where the defendant was also convicted of unlawful delivery).

¶ 15 Notwithstanding defendant's failure to raise the issue below, the State concedes that it was error to convict defendant of criminal drug conspiracy and agrees that the conviction must be vacated. Accordingly, we vacate the conviction.

¶ 16 III. CONCLUSION

¶ 17 For the reasons stated, we affirm defendant's conviction and sentence for unlawful delivery of a controlled substance within 1,000 feet of a church, and we vacate his conviction

and sentence for criminal drug conspiracy. As part of our judgment, per the State's request, we assess defendant $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2014); see also *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

¶ 18 Affirmed in part and vacated in part.