

No. 1-13-0375

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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. 11 CR 18984
)	
TORREY LAMPKIN,)	Honorable
)	Diane Gordon Cannon,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Justices Hyman and Mason concurred in the judgment.

O R D E R

¶ 1 **Held:** Defendant's conviction for aggravated vehicular hijacking is affirmed where he forfeited his claim that the trial court improperly considered his prior convictions as substantive evidence rather than for impeachment, and the plain error doctrine does not apply.

¶ 2 Following a bench trial, defendant Torrey Lampkin was convicted of aggravated vehicular hijacking and sentenced to 12 years' imprisonment. On appeal, defendant solely contends that the trial court erred when it considered his prior convictions as substantive

evidence rather than considering them only for the permissible purpose of impeachment.

Defendant acknowledges that he failed to preserve this issue for appellate review, but asserts that it should be considered as plain error. We affirm.

¶ 3 Defendant was tried on charges of aggravated vehicular hijacking, armed robbery, unlawful vehicular invasion, aggravated battery, aggravated unlawful restraint, and intimidation. At trial, Gregory Reynolds testified that about 4:30 a.m. on September 25, 2011, he met with a woman he had spoken with on the telephone, Deanna, in his Cadillac DeVille at 98th Street and Lowe Avenue. When Deanna requested money for sex, Reynolds asked her to get out of his car. Deanna then made a phone call and asked Reynolds to drive her to the next block, which he did. A minute later, Reynolds was asking Deanna to get out of his car again when defendant opened the driver's door, pointed a gun against Reynolds' left temple, and ordered him out of the car. Defendant pulled Reynolds out of the car, causing him to fall to the ground. Reynolds got up and stood "face to face" with defendant for 5 to 10 seconds. Defendant then hit Reynolds in the head with the gun and Reynolds fell to the ground. Defendant stood over Reynolds looking at him, then got in Reynolds' car and drove away with Deanna. Reynolds did not know defendant, had never seen him before that day, and could not recall if he gave police a description of defendant.

¶ 4 Reynolds further testified that while he was being treated at the hospital, he attempted to call Deanna. Shortly thereafter, Reynolds received a phone call from an unknown woman, and he offered her a reward for information about his car. Subsequently, an unknown man called Reynolds and asked him if he wanted his car back. Following that conversation, Reynolds contacted police and gave them consent to listen to his telephone calls.

¶ 5 On September 27 and 28, 2011, Reynolds received several telephone calls from the same unknown man giving him directions for the return of his car. It sounded like the man was

disguising his voice, and Reynolds did not know if the caller was the same man who had carjacked him. The man requested \$700 for the return of the car, and police gave Reynolds a white envelope containing \$27. The man directed Reynolds to several locations before finally directing him to 79th Street and South Shore Drive, and Chicago police officer McClendon drove Reynolds to that location. In accordance with the man's instructions, Reynolds placed the envelope containing the money inside a garbage can in the liquor store parking lot. The man then called Reynolds and told him that his keys were near a black glove, and after he found the keys, the man told Reynolds where his car was located, remaining on the phone with him until he found the car.

¶ 6 Later that night, Reynolds viewed a photo array and identified defendant as the man who pointed a gun to his head and stole his car. On October 21, 2011, Reynolds viewed a lineup and identified defendant as the man who carjacked him. Reynolds also identified defendant in court, and noted that defendant had long braids at the time of the offense, but had since cut his hair. A recording of the telephone calls between Reynolds and the unknown man was played in court.

¶ 7 Chicago police officer Perry Williams testified that he and several other officers conducted surveillance of a particular garbage can which had been designated as a drop location in the parking lot of a liquor store at 7912 South Shore Drive. Officer Williams sat in his parked car about 10 feet from the garbage can and saw Reynolds place the white envelope containing \$27 inside that can. Officer Williams then saw defendant walk up to the garbage can and retrieve the white envelope. No one was near defendant when he was at the garbage can, and no other person went near the garbage can during the surveillance. Defendant walked northbound, then ran southbound. Two young men, Kendal Leggett and Terrance Richardson, were standing on the side of the liquor store and were arrested at the scene. Officer Williams acknowledged that he

wrote in his police report that after retrieving the envelope, defendant handed money to either Leggett or Richardson. A video of the surveillance was played in court. Following the surveillance, Officer Williams conducted a computer search for people who resided or were arrested on that block, and found a photo of defendant, whom he recognized as the man in the liquor store parking lot. Defendant lived about 60 feet from the liquor store.

¶ 8 Kendal Leggett testified that he was standing near the liquor store with his friend, "Baby T," when defendant, whom he recognized from the neighborhood, approached them and asked if they saw anyone put an envelope anywhere. Leggett replied "[n]o," and defendant then asked them to check the garbage cans and offered them money if they found an envelope. Leggett and Baby T searched the garbage cans in front of the store but did not find an envelope; nonetheless, defendant gave them \$20. Leggett could not recall if they checked the garbage can on the south end of the parking lot. Leggett and Baby T then walked across the street and were taken into custody by police, who brought them to the police station where Leggett explained what happened, gave police the \$20 defendant had given them, and they were released. Leggett testified that he was 19 years old at the time of this incident, and he denied ever taking a Cadillac from anyone. Leggett subsequently viewed a lineup and identified defendant as the man who gave him money in front of the liquor store.

¶ 9 Defendant testified that he is 35 years old, six feet four inches tall and weighs about 185 pounds. He acknowledged that he was on parole for a drug offense. Defendant denied knowing a woman named Deanna, but recognized Baby T from seeing him near the liquor store. Defendant testified that he was walking near that store when Leggett and Baby T offered him money to look inside some garbage cans. Defendant did as they asked because he wanted the money. Defendant searched the garbage can near the fence at the south end of the liquor store, found an envelope,

and gave it to Baby T and Leggett, but they never gave him any money. Instead, they told him to "[b]eat it," and he walked home, which was about seven or eight houses from the store.

Defendant denied ever seeing Reynolds before trial, and denied carjacking a Cadillac, owning a handgun, pulling Reynolds from the car and hitting him with a gun, and driving away with Deanna. Defendant acknowledged that he cut his braids since that time. In rebuttal, the State presented certified copies of two of defendant's prior convictions.

¶ 10 In announcing its findings, the court stated:

"[t]he Court has heard the testimony, and it really is a credibility of the witnesses [*sic*], Mr. Lampkin. There is no way that a Class X felon 35 years old with these *Certified Copies of Conviction coming in that affect your believability* would take any orders from Mr. Kendal Leggett. There is no way that little punk would tell you to beat it and you would run away. That little punk and his Baby T friend wouldn't tell you squat, sir. They wouldn't tell you that, and, if they did, you wouldn't do what they said.

The victim identified you. He was clear, unequivocal, photo I.D., and then the physical lineup." (Emphasis added.)

The court stated that it would give defendant the benefit of the doubt about whether or not the weapon was an actual firearm, but found that he used the object as a bludgeon when he struck Reynolds over the head and took his car. Regarding the intimidation charges, the court stated that defendant disguised his voice, and again gave him the benefit of the doubt. Accordingly, the trial court found defendant guilty beyond a reasonable doubt of aggravated vehicular hijacking with a weapon that was not a firearm, and found him not guilty on the remaining charges.

¶ 11 In denying defendant's subsequent posttrial motion, the court stated that, based on the credibility of the witnesses and the evidence presented, the State proved defendant guilty beyond a reasonable doubt. The court then sentenced defendant to a term of 12 years' imprisonment.

¶ 12 On appeal, defendant relies solely on the trial court's statement in announcing its findings, quoted above, and contends that this statement shows that the trial court erroneously considered his prior convictions as substantive evidence that he would not be bullied by "punks," rather than considering them for proper impeachment purposes. Defendant acknowledges that the court expressly stated that the convictions were admitted because they "affect your believability," but claims it is apparent from the court's additional comments that it considered them as evidence of his propensity to act as a "hardened criminal" who would not comply with the desires of a punk. Defendant further acknowledges that he failed to preserve this issue for appeal, but asserts that we should review it as plain error because the evidence in the case was closely balanced.

¶ 13 The State argues that defendant forfeited this issue, and alternatively, that the trial court properly considered his prior convictions only as impeachment evidence to assess his credibility, and not as substantive evidence. The State asserts that no error occurred in this case, and therefore, the plain error doctrine does not apply.

¶ 14 It is well established that to preserve an issue for review, defendant must make a contemporaneous objection during trial and raise the issue in a posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Here, it is undisputed that defendant did neither, and thus, his claim is forfeited.

¶ 15 We therefore consider defendant's contention that his claim should be reviewed as plain error. Ill. S. Ct. R. 615(a) (eff. Aug. 27, 1999). The plain error doctrine is a limited and narrow exception to the forfeiture rule that exists to protect defendant's rights, and the reputation and

integrity of the judicial process. *People v. Herron*, 215 Ill. 2d 167, 177 (2005). The plain error doctrine applies only where the evidence is so closely balanced that the guilty verdict may have resulted from the error, or the error is so substantial that it deprived defendant of a fair trial.

People v. McLaurin, 235 Ill. 2d 478, 489 (2009). To obtain relief under this doctrine, defendant must first establish that a clear or obvious error occurred. *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). The burden of persuasion is on defendant, and if he fails to meet his burden, the forfeiture will be honored. *Id.*

¶ 16 Generally, evidence of defendant's prior convictions is inadmissible to demonstrate his propensity to engage in criminal activity. *People v. Donoho*, 204 Ill. 2d 159, 170 (2003).

However, when defendant testifies in his own defense, his prior convictions may be admitted for the purpose of impeaching his credibility. *People v. Montgomery*, 47 Ill. 2d 510, 516 (1971). "As a matter of law, we must presume that the trial court considered defendant's prior conviction 'only with respect to the purpose for which it was competent.'" *People v. Naylor*, 229 Ill. 2d 584, 603 (2008).

¶ 17 Here, we find that the trial court did not consider defendant's prior convictions as substantive evidence, but instead, properly considered them for impeachment purposes when assessing the credibility of his testimony. Defendant testified that Leggett and Baby T offered him money to search the garbage cans, and he did as they asked because he wanted the money. He further testified that after he gave them the envelope he retrieved from the garbage can, they did not give him any money, but instead, told him to "[b]eat it," and he complied with their order and walked home. The evidence showed that Leggett was just 19 years old, while defendant was 35 years old and stood at six feet four inches tall, weighing 185 pounds. The trial court's comments demonstrate that it did not believe defendant's testimony that he would "take any

orders" from Leggett. The court expressly found that there was "no way" Leggett, a "little punk," would tell defendant to "beat it," and that defendant would comply with that order. We find that the court's remarks reflect its determination that defendant's testimony was not credible.

¶ 18 Moreover, the court prefaced its assessment of defendant's credibility by specifically stating "these Certified Copies of Conviction coming in that affect your believability." We find it significant to note that in quoting the trial court's comments, defendant omitted the first sentence wherein the court stated "[t]he Court has heard the testimony, and it really is a credibility of the witnesses [*sic*], Mr. Lampkin." These statements clearly demonstrate that the court considered defendant's prior convictions for the purpose of assessing the credibility of his testimony.

¶ 19 In addition, after rejecting defendant's testimony, the court found that Reynolds made "clear, unequivocal" identifications of defendant when viewing the photo array and the lineup. This statement shows that the trial court based its guilty finding on the evidence presented, not on defendant's prior convictions. We find no indication whatsoever that the trial court considered defendant's prior convictions as substantive evidence, and we disagree with defendant's interpretation of the court's remarks. Accordingly, we conclude that no error occurred in this case, and we honor defendant's procedural default of this issue. *Hillier*, 237 Ill. 2d at 545.

¶ 20 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 21 Affirmed.