

No. 1-12-2274

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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|--------------------------------------|---|------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the  |
|                                      | ) | Circuit Court of |
| Plaintiff-Appellee,                  | ) | Cook County.     |
|                                      | ) |                  |
| v.                                   | ) | No. 11 CR 3371   |
|                                      | ) |                  |
| RICHARD WASHINGTON,                  | ) | Honorable        |
|                                      | ) | Michael Brown,   |
| Defendant-Appellant.                 | ) | Judge Presiding. |

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JUSTICE ROCHFORD delivered the judgment of the court.  
Presiding Justice Hoffman and Justice Lampkin concurred in the judgment.

**O R D E R**

¶ 1 *Held:* We vacated an erroneous fee but affirmed defendant's conviction where the trial court did not err in denying a motion to quash arrest arguing lack of probable cause and, where it was unclear whether the trial court improperly considered codefendant's proceedings in finding defendant guilty, any error did not rise to the level of plain error.

¶ 2 Following a bench trial, defendant Richard Washington was found guilty of aggravated robbery and sentenced to 12 years' imprisonment with fines and fees. On appeal, defendant argues that the trial court erred in denying his motion to quash arrest and suppress evidence, improperly considered a codefendant's proceedings when finding him guilty, and incorrectly imposed a court system fine. We affirm but vacate the court system fine.

¶ 3 Defendant was charged with the armed robbery and aggravated robbery of Nara Kim and Yena Kim, on or about January 25, 2011, two counts of vehicular invasion for reaching into the interior of the vehicle occupied by Nara and Yena Kim, and misuse of Nara Kim's stolen debit card. Codefendants, Michael Elem and Paris Miller, were also charged in connection with the robbery of Nara and Yena Kim.

¶ 4 Defendant filed a motion to quash his arrest and suppress evidence, alleging that his warrantless arrest on February 9, 2011, was made without probable cause.

¶ 5 At the hearing on the motion to quash, police detective Steve Buglio testified that he was assigned to investigate the January 25, 2011, robbery of Nara and Yena Kim. Detective Buglio determined Nara Kim's debit card, which was stolen in the robbery, was being presented at various stores. In particular, Detective Buglio learned the stolen card was used, along with the Dominick's rewards card of a person named China Young at a Dominick's store. The detective obtained the Dominick's store video which depicted the transaction with people at the checkout counter, including two males. Detective Buglio viewed this video several times. Detective Buglio testified that he was not "100 percent sure who was using the [stolen] card," but the group, including codefendant Miller, was shopping and checking out together. Detective Buglio met Ms. Young and learned that she was codefendant Miller's wife. Ms. Young viewed the Dominick's video, identified codefendant Miller therein, but said she could not identify anyone else by name. Ms. Young's daughter also viewed the video and identified the other male as a friend of codefendant Miller whom she knew as "Richie Rich."

¶ 6 On February 9, 2011, "shortly after noon," Detective Buglio and three other officers went to a "two flat" residence located at 1323 South Millard Avenue in Chicago. Detective Buglio

had information that codefendant Miller could be found on the second-floor of the building. Detective Buglio and a plain-clothes officer knocked on the building's front door, and a male tenant of the building opened the door. This tenant said that codefendant Miller lived in the building. Detective Buglio entered the building and found the first floor was subdivided into multiple dwelling units. While standing in the first-floor hallway, Detective Buglio saw defendant enter the building. Detective Buglio believed that he "matched" one of the males depicted in the Dominick's video. On request, defendant provided the officer with his identification card showing his name as Richard Washington. The detective then believed defendant "may have some connection to Richie Rich." Detective Buglio told defendant that he was investigating an armed robbery and asked him if he used the nickname Richie Rich. Defendant denied using that name. When Detective Buglio told defendant that "he was going to need to go to the police station," defendant agreed to accompany the officers to the station at Harrison Street and Kedzie Avenue; he was not handcuffed.

¶ 7 At the station, defendant was placed alone in an unlocked interview room by himself where again, he was not handcuffed. Defendant identified himself and codefendant Miller as the two males in the Dominick's video. Detective Buglio told defendant he was investigating the use of stolen credit cards and asked if he would "stand in a lineup to see if he was part of that." Defendant agreed to participate in a lineup but, a short time later, asked to leave the station. Detective Buglio then placed defendant under arrest and told him there was "enough probable cause." Nara tentatively identified defendant in a lineup as one of the robbers, but was not certain. Yena did not make an identification. After the lineup, defendant made a statement to Detective Buglio and an Assistant State's Attorney.

¶ 8 Defendant testified at the hearing that in February 2011 he lived in a first-floor room at the Millard address. The first floor had several rooms rented separately. On February 9, defendant was awoken in his room by Detective Buglio, along with three other officers. The officers asked him for identification which defendant then produced. Defendant told the detective that he knew codefendant Miller, and that codefendant Miller lived upstairs. Detective Buglio did not immediately go upstairs but "looked in some more rooms." After returning, Detective Buglio told defendant to come with him to the police station. When defendant refused to go, Detective Buglio said that he was going, and another officer handcuffed him. At the station, defendant was handcuffed to the wall in an interview room. When defendant asked to leave, he was told that he would be released after a lineup "if everything was okay." Defendant asked to call his attorney and was allowed to do so. A lineup was held, and defendant was not released afterward.

¶ 9 On cross-examination, defendant testified that he and codefendant Miller were friends. When Detective Buglio asked defendant to come to the police station, he declined. In the interview room, defendant identified himself and codefendant Miller on the Dominick's video. Defendant denied that he was known as Richie Rich. Defendant testified he did not refuse to participate in the lineup and denied that Detective Buglio told him that he was under arrest before the lineup. Defendant was told by Detective Buglio that he could leave if he was not identified in the lineup. After the lineup, defendant was not released and was told he was picked out of the lineup. Defendant testified that he "told them a story" and led the police to the gun used in the robbery.

¶ 10 The trial court denied the motion to quash. The trial court made certain findings, including findings that defendant voluntarily went to the police station and he was not handcuffed at that time. When defendant asked to leave the police station, the police had reasonable grounds to suspect his involvement in a crime based on the store video and the identifications of codefendant Miller and defendant therein. Defendant was told that he would be released if not identified in the lineup, but he was identified. Defendant "continued his cooperation" by giving a statement and retrieving the gun used in the robbery, at which time the police had probable cause.

¶ 11 Defendant and codefendant Miller were tried simultaneously at a bench trial. Codefendant Elem pled guilty prior to his codefendants' bench trial.

¶ 12 At trial, Nara Kim testified that she was with her friend Yena Kim at about 1 a.m. on January 25, 2011, sitting in a parked car at 1211 S. Newberry Street in Chicago. Nara was in the driver's seat and Yena in the front passenger seat. Nara heard knocking at her window and saw a man standing on either side of the car.

¶ 13 When Nara refused to open her door for the man at her side, he showed her a gun and she opened the door. The man took Nara's purse containing her phone, camera, and wallet, which in turn contained her debit card. He demanded her car keys, pointing the gun at her head and threatening to shoot her. Nara could see that the other man was rifling through Yena's purse. After the incident, Nara informed the police they were robbed by two males.

¶ 14 When Nara viewed a lineup on February 9, she identified one of lineup participants as the person who robbed her, but she was not certain. Nara also identified at trial the recovered gun as

the one used in the robbery. She admitted that it was plastic and not a "real handgun" though it "looked like a real gun." Nara was not asked at trial to identify defendant.

¶ 15 Yena Kim testified consistently with Nara, except that from her perspective Nara's robber was holding a "black metal thing" that Nara told her was a gun. Yena's purse containing identification, cash, and a phone were taken in the robbery. When Yena viewed the lineup on February 9, she made no identification.

¶ 16 Detective Buglio's testimony at trial was consistent with his testimony at the hearing on the motion to quash. He had been a detective for 17 years. The detective specified that he returned to the station with defendant around 2 p.m. on February 9, 2011. When defendant was first asked to stand in a lineup, he agreed to participate and said "them girls wouldn't be able to identify me." Detective Buglio had never mentioned to defendant "who the victims were \*\*\* just that there was a robbery." Defendant later refused to voluntarily stand in a lineup. The detective identified at trial the replica gun which police had recovered from the Millard address with defendant's assistance.

¶ 17 In his statement to Detective Buglio and an assistant State's Attorney, defendant acknowledged he had been advised of and understood his *Miranda* rights and that his statement was made freely and voluntarily. Defendant said that on January 25, 2011, just before the robbery, he was with codefendant Miller and a man he knew only as "Mike-Mike" in a van. The men resolved to rob two women in a nearby parked car, using a realistic-looking replica gun which defendant knew was in the van. Defendant had previously found the replica gun in an alley. Defendant and Mike-Mike committed the robbery with codefendant Miller waiting in the van to drive them away. Mike-Mike robbed the driver and held the replica gun while defendant

robbed the passenger. After the robbery, defendant and Mike-Mike rejoined codefendant Miller in the van and they drove away. Codefendant Miller used a credit card from the robbery to buy gasoline for his van. The cash from the robbery was divided. Defendant went with codefendant Miller and two women to a Dominick's store to use the stolen credit card, but their transaction was rejected. On February 9, 2011, the police came to his home. Defendant voluntarily accompanied Detective Buglio to the police station and was not handcuffed. Defendant later agreed to bring the police back to the Millard address and led the police to the replica gun.

¶ 18 Codefendant Elem testified that he pled guilty to the robberies of Nara and Yena Kim and was serving a prison sentence. He admitted at trial that he committed the robbery but could not recall details as he had been "drinking and smoking." Codefendant Elem identified defendant and codefendant Miller as acquaintances, confirming defendant's nickname as Richie Rich, but did not identify them as participants in the robbery. When asked various questions about the robbery, codefendant Elem answered that he did not remember, did not recall, or did not know. When confronted with his prior written statement, codefendant Elem conceded that one of the various signatures on it may be his but could not remember signing it as he was "high." Following codefendant Elem's testimony, the trial court held codefendant Elem in direct contempt of court for refusing to answer certain questions.

¶ 19 The State then asked to recall Detective Buglio to testify about codefendant Elem's prior statement because codefendant Elem "didn't remember anything." The following discussion took place:

"THE COURT: Overruled. I have heard enough as far as Mr. Elem goes.

[THE STATE]: Okay, Judge.

THE COURT: All right. And I do recall his plea and the reference to that statement, and I will consider that.

[THE STATE]: Thank you, Judge.

THE COURT: That was in front of me. I don't need to hear from Detective Buglio. All right."

There were no further discussions about codefendant Elem's prior statement. The State did not formally seek to admit codefendant Elem's written statement into evidence and did not make an offer of proof as to Detective Buglio's testimony relating to the statement.

¶ 20 The court granted directed findings on defendant's charges of armed robbery and misuse of a credit card. The defense rested without presenting evidence. The State did not refer to any prior statement by codefendant Elem during closing arguments. The court found defendant guilty of two counts of aggravated robbery and two counts of vehicular invasion, based on defendant's inculpatory statement which was corroborated by the other evidence. The trial court, in reaching the guilty findings, did not refer to codefendant Elem's statement.

¶ 21 Defendant filed a posttrial motion arguing, in part, there was insufficient evidence to support the guilty findings and that the motion to quash was erroneously denied. After denying the motion, the trial court sentenced defendant to 12 years' imprisonment with fines and fees on one count of aggravated robbery. Defendant's motion to reconsider his sentence was denied and this appeal timely followed.

¶ 22 On appeal, defendant argues that the trial court erred in denying his motion to quash because there was no probable cause for his arrest prior to the lineup and that the fruits of the

arrest—the lineup identification, defendant's statement, and his retrieval of the replica gun—should have been suppressed.

¶ 23 We review *de novo* the court's ultimate legal ruling to grant or deny the motion. *Grant*, 2013 IL 112734, ¶ 12. However, when a trial court's ruling on a motion to suppress involves factual determinations or credibility assessments, the findings will not be disturbed on review unless they are against the manifest weight of the evidence. *Grant*, 2013 IL 112734, ¶ 12. The reviewing court accords great deference to the findings of fact made by the trial court. *People v. Gomez*, 2011 IL App (1<sup>st</sup>) 092185, ¶ 54. We may consider the trial evidence, as well as the evidence from the hearing on the motion to quash, in our analysis. *Hopkins*, 235 Ill. 2d at 473.

¶ 24 The trial court, in denying defendant's motion, found Detective Buglio's testimony credible when it specifically found defendant had not been handcuffed at the time he was transported to the police station, and that defendant had gone to the police station voluntarily. We find no reason to disturb those findings of fact, or the credibility determination, which are supported by the manifest weight of the evidence.

¶ 25 Defendant first argues the trial court erred in denying the motion to quash by finding probable cause existed based on the lineup identification and the recovery of the gun which took place after defendant's arrest. However, we may affirm the trial court's ruling on the motion to quash "for any reason in the record, regardless of whether the trial court relied on this reason as a basis for the conclusion." *Gomez*, 2011 IL App (1<sup>st</sup>) 092185, ¶ 55.

¶ 26 Police-citizen encounters are divided into three tiers: arrests, which must be supported by probable cause; brief investigatory detentions, or *Terry* stops, which must be supported by reasonable and articulable suspicion of criminal activity; and encounters that involve no coercion

or detention and thus do not implicate constitutional rights. *People v. Grant*, 2013 IL 112734, ¶ 11; *People v. Hopkins*, 235 Ill. 2d 453, 471 (2009).

¶ 27 A person is taken into custody—that is, is arrested or detained—when his freedom of movement is restrained by physical force or a show of authority. *Hopkins*, 235 Ill. 2d at 473. The test is whether a reasonable person would conclude under the circumstances that he was not free to leave. *People v. Gomez*, 2011 IL App (1st) 092185, ¶ 58. While no single factor is dispositive of whether a defendant was taken into custody, the factors to consider include: the time, place, length, and mood of the encounter between the defendant and police; the number of officers present; any indicia of formal arrest or restraint, such as using handcuffs or drawing guns; the officers' intention; the defendant's subjective belief or understanding; the officers' language, including whether the defendant was told he could refuse to accompany the police, was free to leave, or was under arrest; and whether the defendant was transported in a police car. *Id.* ¶ 59.

¶ 28 Probable cause for an arrest exists if the facts and surrounding circumstances, considered as a whole, are sufficient to justify a belief by a reasonably cautious person that the defendant is or has been involved in a crime. *Grant*, 2013 IL 112734, ¶ 11. Our analysis of probable cause is based on common sense, with the arresting officer's law enforcement experience a relevant factor, and concerns the probability of criminal activity rather than proof beyond a reasonable doubt. *Id.* Because an arrest has an investigatory function, the State need not show that it was more likely true than false that defendant was involved in criminal activity. *Hopkins*, 235 Ill. 2d at 472. The difficulty of establishing probable cause is reduced when the police know that a crime has been committed. *Id.* at 476.

¶ 29 We do agree with the trial court's conclusion that defendant was not seized at his home, and that he voluntarily went to the police station. As stated, not "every encounter between the police and a private citizen results in a seizure." *People v. Gomez*, 2011 IL App (1<sup>st</sup>) 092185, ¶ 57. At defendant's home, the police had not drawn their guns, exhibited no hostility toward defendant, or given defendant his *Miranda* warnings. Defendant was not told he was under arrest. Defendant was transported to the police station without handcuffs and was placed in an unlocked interview room, still not handcuffed. Defendant did not receive *Miranda* warnings when first placed in the interview room. See *People v. Sturgess*, 364 Ill. App. 3d 107, 113 (2006); *People v. Gomez*, 2011 IL App (1<sup>st</sup>) 092185, ¶ 58 (citing *People v. Redmond*, 341 Ill. App. 3d 498, 507 (2003) ("When one voluntarily accompanies police officers, he has not been arrested and has not been 'seized' in the fourth amendment sense.")).

¶ 30 Defendant viewed the Dominick's video and identified himself and codefendant Miller as depicted therein. When defendant changed his mind about his voluntary participation in a lineup, and the police wished to proceed with the lineup, the consensual nature of the interaction ended. Detective Buglio then placed defendant under arrest.

¶ 31 On appeal, defendant and the State dispute whether there was probable cause to arrest defendant for the robbery of Nara and Yena Kim prior to the lineup. We need not address that particular issue, as an arrest may be proper if the police have probable cause to believe defendant is, or has been, involved in *any* crime.

¶ 32 We conclude that Detective Buglio had probable cause to arrest defendant, before the lineup, for the misuse of the stolen debit card. As stated, the police knew two males had robbed Nara and Yena Kim, and a debit card stolen during the robbery was being used without

permission. The Dominick's video showed defendant, codefendant Miller and his wife with one other female, and showed Nara Kim's stolen debit card being presented. Detective Buglio testified that the persons shown in the Dominick's video, including defendant and codefendant, had been shopping and checking out together. Defendant admitted he and codefendant Miller were depicted in the Dominick's video. Defendant had a relationship with codefendant Miller which existed before the use of the stolen debit card at Dominick's. Defendant and codefendant were friends and lived in the same building. The police could reasonably conclude that defendant and codefendant had not, randomly or by happenstance, met at the Dominick's store. Based on multiple viewings of the video, Detective Buglio could not rule out defendant as the person who actually presented the stolen debit card to the cashier. Defendant revealed his personal knowledge of the robbery during which the debit card had been stolen when he referred to the victims as "them girls." Taking these facts as a whole, a reasonably cautious person could conclude that defendant had been involved in criminal activity and an unlawful enterprise with codefendant Miller involving the unauthorized use of the stolen debit card at Dominick's. Because probable cause is not proof beyond a reasonable doubt, the fact the trial court ultimately did not find defendant guilty of the charge of misuse of a debit card, does not prevent or negate our conclusion that probable cause existed to arrest defendant as to that charge. We conclude that the trial court did not err in denying defendant's motion to quash.

¶ 33 Defendant also argues that the trial court improperly considered the proceedings in codefendant Elem's case in determining defendant's guilt.

¶ 34 First, defendant has forfeited this issue when he failed to object at trial or to raise the issue in his posttrial motion. *People v. Thompson*, 238 Ill. 2d 598, 611-12 (2010) (both a trial

objection and a written posttrial motion raising the issue are required to preserve most claims of error). Defendant seeks review of this claim under the *Sprinkle* doctrine. See *People v. Sprinkle*, 27 Ill. 2d 398, 401 (1963). The *Sprinkle* doctrine allows review where the forfeited issue relates to a trial court which "has overstepped its authority in the presence of the jury or when counsel is effectively prevented from objecting as any objection would have 'fallen on deaf ears.'" *People v. Hansen*, 238 Ill. 2d 74, 118 (2010) (quoting *People v. McLaurin*, 235 Ill. 2d 478, 488 (2009)). However, the *Sprinkle* doctrine has been applied only in extraordinary situations, such as when a judge makes inappropriate remarks to a jury or relies on social commentary rather than the evidence in imposing a death sentence. *Thompson*, 238 Ill. 2d at 612. *Id.* Here, defense counsel made no attempt to object or seek clarification when the trial court referenced codefendant Elem's plea proceeding during defendant's bench trial, after denying the State's request to recall Detective Buglio. Additionally, we find nothing in the record which indicates defendant was prevented from raising an objection or that an objection would have "fallen on deaf ears." Nonetheless, we will review defendant's claim under the plain-error doctrine. See *People v. Enoch*, 122 Ill. 2d 176, 190 (1988).

¶ 35 The plain-error doctrine allows a reviewing court to consider an otherwise-forfeited error when either: (1) the evidence was so closely balanced that the error alone threatened to change the outcome of the trial, regardless of the seriousness of the error; or (2) the error is so serious that it undermined the fairness of the trial and eroded the integrity of the judicial process, regardless of the closeness of the evidence. *Id.* at 613-14. Under both prongs of plain error, the defendant bears the burden of persuasion. *Id.* We must first consider whether an error occurred at all. *People v. Sergeant*, 239 Ill. 2d 166, 189 (2010).

¶ 36 When the trial court stated: "I have heard enough as far as Mr. Elem goes;" and "I do recall his plea and the reference to that statement, and I will consider that;" we cannot say for certain the trial court was finding it would use the prior statement of codefendant Elem at his sentencing as evidence against defendant. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). However, even if we assume the trial court erred and considered codefendant Elem's prior statement as evidence against defendant, we do not find the error would rise to the level of plain error.

¶ 37 We find the first prong of the plain-error doctrine inapplicable here because, a review of the record shows the evidence which was properly admitted at trial was not so closely balanced that the trial court's guilty verdict may have resulted from the alleged error. *People v. Herron*, 215 Ill. 2d 167, 178 (2005).

¶ 38 The trial court, in finding defendant guilty, made particular note of Nara Kim's testimony which described the circumstances surrounding the armed robbery. In his inculpatory statement, defendant admitted to robbing Nara and Yena Kim with codefendant Elam. Defendant admitted codefendant Miller was the getaway driver. Defendant described items which were stolen, including cash and the debit card, which was corroborated by the testimony of the victims and Detective Buglio. Defendant stated that a replica gun (which he had previously found) had been used during the robbery. At trial, Nara Kim identified the replica gun which had been recovered by the police with the assistance of defendant.

¶ 39 Thus, after reviewing the trial testimony, we conclude the evidence was not so closely balanced that any error, based on codefendant Elem's prior statement, threatened to tip the scales of justice against defendant. See *Piatkowski*, 225 Ill. 2d at 551. We conclude that, even without

any consideration of codefendant Elem's statement during his guilty-plea proceedings, defendant would have been found guilty of aggravated robbery. In reaching this conclusion, that defendant has not shown prejudice from the claimed error, we note that the State never described the nature of the statement made by codefendant Elem at any stage of the trial, and did not refer to the statement during its closing arguments. The trial court never referenced codefendant Elem's statement when finding the evidence supported defendant's guilt.

¶ 40 Additionally, we find the second prong of the plain-error doctrine to be inapplicable in this case because defendant has not shown the trial court's alleged error was so serious that it denied him a fair trial. As stated above, it is difficult to determine whether the trial judge actually relied on codefendant Elem's statement in finding defendant guilty. However, assuming that the trial court did consider that statement in finding defendant guilty, we conclude defendant has not shown " 'the error was so serious that it demonstrably affected the fairness of defendant's trial and challenged the integrity of the judicial process.' " *People v. Averett*, 237 Ill. 2d 1, 20 (2010) (quoting *People v. Walker*, 232 Ill. 2d 113, 131 (2009)).

¶ 41 Based on the overwhelming evidence of defendant's guilt, we may reasonably conclude that the trial court's reference to codefendant Elem's guilty plea had little or no effect on the fairness of defendant's trial. We conclude that any error in the trial court's reference to codefendant Elem's statement and plea proceedings does not rise to plain error and the claim is forfeited.

¶ 42 Finally, defendant contends and the State agrees, that his \$5 court system fee under section 5/1101(a) (55 ILCS 5/1101(a) (West 2012)), must be vacated as it applies only to vehicular offenses.

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¶ 43 Accordingly, we vacate the \$5 court system fee and, pursuant to Illinois Supreme Court Rule 615(b)(2) (Ill. S. Ct. Rule 615(b)(2) (eff. Aug. 27, 1999)), direct the clerk of the circuit court to so correct the order assessing fines and fees. The judgment of the circuit court is otherwise affirmed.

¶ 44 Affirmed in part, vacated in part, and order corrected.