

No. 1-12-2582

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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 MC1 186096
)	
ERIC TERRY,)	Honorable
)	Yolande M. Bourgeois,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Justices LAMPKIN and ROCHFORD concurred in the judgment.

O R D E R

¶ 1 *Held:* Defendant's conviction for criminal damage to property was affirmed where his claims that the trial court erred in limiting cross-examination and making findings outside the evidence either did not amount to error or constituted harmless error, and where defendant neither requested nor merited a *Krankel* hearing.

¶ 2 Following a bench trial, defendant Eric Terry was found guilty of criminal damage to property of less than \$300 and sentenced to serve 30 days in jail and 18 months of probation. On appeal, he contends the trial court erred in limiting defense counsel's cross-examination of the

State's key witness, basing its guilty finding on the erroneous conclusion that eyewitness testimony was corroborated, and failing to conduct a *sua sponte Krankel* hearing. We affirm.

¶ 3 Willie Whitehead, a 23-year veteran of the Chicago Police Department, testified for the prosecution that he had been married to Luwanda Thomas for two years. Whitehead had known Luwanda for 18 years, but intermittently defendant had dated her. Whitehead had known defendant for several years, and defendant had been to Whitehead's home previously.

¶ 4 On February 4, 2012, at about 11:45 p.m., Whitehead had just arrived home from work. He and his wife lived at 8547 South Dorchester. As Whitehead entered his house, his dog began to bark at the front door. Whitehead looked outside and saw defendant "standing up next to the rear tires on the passenger side of my wife's car going to the front tire." His wife's car, a Lexus ES 300, was parked directly in front of his front door on the street at the curb underneath a streetlight. The driver's side of the car was facing the house, and defendant was standing on the opposite side of the car from Whitehead. The car was about 20 or 25 feet from where Whitehead was standing at the glass screen door of his front door. Defendant was just standing up from the rear tire and moving toward the front of the car, and then he bent down again at the front tire. A second later, defendant stood up, "kind of looked" in Whitehead's direction, and took off running. Having removed his shoes when he entered his house, Whitehead put his shoes back on, got his service weapon, and ran out the door. He was unable to catch defendant. He returned home, spoke with his wife, and they went out to her car with a flashlight. The front and rear tires on the passenger side of the car had been sliced. Whitehead called the police.

¶ 5 A surveillance system consisting of cameras surrounded Whitehead's home and was working at the time of the offense. At trial, the prosecutor approached Whitehead with a laptop

computer. On its screen was an image of his wife's car and a date and time stamp showing the 4th of February at 11:47 p.m. Whitehead identified the still frame of the video image from one of his security cameras. As the prosecutor began to play the video on the laptop computer, defendant's trial counsel asked the court for permission to approach to view the laptop screen. The trial court asked her, "You haven't seen this before?" Counsel replied, "Not what he's talking about, no.

*** I saw part of it, Judge." Whitehead described what the video portrayed: a man getting up from the rear tire, moving to the front tire, bending down again, getting up, and running.

Whitehead had observed those events in real time. The video was played again for the benefit of the court. The event took place at night; the cameras were infrared. The video just showed a male black figure. Whitehead could not see the facial features on the video as clearly as what he actually saw at the time of the incident. After the incident, Whitehead had to pay \$250 to have the two tires repaired.

¶ 6 Defendant's trial counsel questioned Whitehead on cross-examination:

"Q Okay. You don't like my client; right?

A I don't like your client damaging my property.

Q Do you like my client or not?

MS. HALLIMAN [*sic*]: Objection.

THE COURT: Sustained."

¶ 7 Luwanda Thomas testified that she and Willie Whitehead had been married two years. She has known him for 18 years, during which time they dated on and off. Before her marriage to Whitehead, she had dated defendant for several years. Since then she had not had contact with defendant for several years but he continued to have contact with her; the contact was not

consensual on her part. At about 11:45 p.m. on February 4, 2012, Luwanda was home when her husband came home. Their dog began to bark "outrageously." She heard her husband come in one door and then she heard another door open; she concluded he must have gone out again. He returned about 15 to 20 minutes later. She and her husband walked out to her car, which was parked under a streetlight. She always parked beneath the streetlight. Her husband had a flashlight. She observed that her two passenger-side tires had been sliced and were flattened. She had driven home in the car between 8 and 8:30 that evening and at that time the tires were not flattened.

¶ 8 Defendant testified that he was 37 years old and a full-time graduate student a few months away from receiving his master's degree in healthcare administration. Defendant and Luwanda dated from 1997 to 2002 and they continued to have sexual encounters until about 2006. Defendant is married and for the last six years he has had no relationship with Luwanda. He also knows Willie Whitehead. Defendant had a "situation" with Whitehead in the past when defendant found out Luwanda was cheating on him with Whitehead. Previously Whitehead had filed a charge against defendant for assault, and defendant was convicted. On the night of February 4, 2012, he was at home with his three daughters, ages 15, 11, and 9. He did not slash the Whiteheads' tires and was nowhere near 8547 Dorchester at any time that day. Defendant has never been to the Whiteheads' house. When asked whether he knew Luwanda's car, he replied, "Well, that's not the only Lexus. So why would I know that's her car?"

¶ 9 In its findings, the court observed that the case was one of identification and credibility. The court noted that Whitehead and defendant "have had issues in the past" and "there have been previous altercations." As to the security camera video, the court stated: "You can't clearly see

his face on the video." The court observed that defendant had testified he was home with his three daughters at the time of the offense but had not called the eldest daughter as a trial witness. The court stated: "That most definitely would have swayed my opinion if I had heard from another witness that the defendant was some place other than where the complaining witness and her husband saw him that night." The court ruled that the State had sustained its burden and it found defendant guilty. A two-year order of protection was entered in favor of Whitehead and Luwanda.

¶ 10 At defendant's sentencing hearing, the State informed the court that in 2003, defendant was charged with aggravated assault on Whitehead and was sentenced to probation. In 2004, his probation was terminated unsatisfactorily and he was sentenced to 120 days in jail. In 2002, defendant was convicted of reckless conduct in a case unrelated to the present charge. In the instant case, the court sentenced defendant to 30 days in jail and 18 months of probation.

¶ 11 Defendant filed an amended motion for a new trial which included the contention that the court had reached its decision after relying on facts not in evidence, namely, that Luwanda testified she had seen defendant at her car on the night of the incident. The court responded: "[M]y erroneous statement that the wife, the complaining witness, also saw the Defendant that night was in error. However, I believe it is harmless error and there was more than sufficient evidence to convict the defendant of this crime." "I had no doubt in my mind as to the identification made from the stand by the witness for the prosecution." The court also ruled that it had not admitted proof of other crimes, only evidence that went to how Whitehead knew and could identify defendant.

¶ 12 On appeal, defendant's first contention of error is that the trial court impermissibly limited defense counsel's cross-examination of Willie Whitehead. In an attempt to show that Whitehead was biased against defendant, counsel asked Whitehead, "You don't like my client, right?" Whitehead replied, "I don't like your client damaging my property." Counsel persisted, "Do you like my client or not?" The State's objection to the latter question was sustained. Defendant acknowledges he failed to include this allegation of error in his written amended posttrial motion but asks that we consider it under the plain-error exception. The State contends defendant has forfeited this argument and asserts in the alternative that, in sustaining the State's objection, the court's evidentiary ruling was not an abuse of discretion or was harmless.

¶ 13 To preserve an issue for review, a party ordinarily must raise it both at trial and in a written posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). The plain-error rule allows a reviewing court to consider an unpreserved trial error if either of the two prongs of the rule is satisfied. *People v. Harvey*, 211 Ill. 2d 368, 389 (2004). Under the first prong, the defendant must prove prejudicial error, *i.e.*, that there was clear or obvious error and that the evidence was so closely balanced that the error threatened to tip the scales of justice against the defendant. Under the second prong, the defendant must establish there was clear or obvious error so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence. *People v. Piatkowski*, 225 Ill. 2d 551, 564-65 (2007). Under both prongs, the defendant bears the burden of persuasion. *People v. Sargent*, 239 Ill. 2d 166, 189-90 (2010). We begin our plain-error analysis by determining initially whether any error occurred at all. *Id.* at 189.

¶ 14 Defendant's claim that he was prejudiced by an abridgment on his right to cross-examine is without merit. The right to cross-examination is not absolute, and the trial court has broad discretion in determining the extent of cross-examination. *People v. Price*, 404 Ill. App. 3d 324, 330 (2010). "It is well established that a trial judge retains wide latitude insofar as the confrontation clause is concerned to impose reasonable limits on such cross-examination based on concerns about harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or of little relevance." *People v. Harris*, 123 Ill. 2d 113, 144 (1988). Here, we cannot say that clear or obvious error occurred, as Whitehead's answer to counsel's initial question was not clearly unresponsive. The testimony of both Whitehead and defendant revealed that both men had sought the affections of Luwanda in the past. The two men had previous hostile dealings that could have provided either man with a motive to lie. At the close of the evidence, the court observed that the men "had issues in the past and there have been previous altercations." Consequently, evidence of Whitehead's possible bias was made clear to the court even without a response to defense counsel's repetitive question. We conclude that clear or obvious error did not occur. Accordingly, we need not consider defendant's contention under plain-error analysis. *People v. Willhite*, 399 Ill. App. 3d 1191, 1197 (2010).

¶ 15 Defendant also assigns error to the trial court's mistaken belief that both Whitehead and his wife Luwanda had viewed defendant at the time of the incident, whereas the testimony showed that only Whitehead observed defendant. After reading defendant's amended posttrial motion, the trial court conceded it was mistaken in its initial comment that both Whitehead and his wife Luwanda observed defendant. The court ruled that the mistake was "harmless error and there was more than sufficient evidence to convict the defendant of this crime." We agree with

the trial court that its mistake was harmless. A complainant's testimony requires no corroboration. *People v. Doll*, 371 Ill. App. 3d 1131, 1138 (2007). The testimony of a single credible witness who had ample opportunity to make a positive identification is sufficient evidence to convict. *People v. Morales*, 339 Ill. App. 3d 554, 563 (2003). Here, Whitehead's testimony, standing alone, was sufficient to support the finding of guilty. Whitehead was a 23-year veteran of the police force, and we have held that a police officer's degree of attention would be high and greater than that of an average citizen witnessing or being victimized by a crime. *People v. Stanley*, 397 Ill. App. 3d 598, 611 (2009). Although it was nighttime when Whitehead viewed defendant at Luwanda's vehicle, the car was parked directly beneath a streetlight. Whitehead knew defendant from past encounters and viewed him from a distance of only 20 or 25 feet. After initially believing erroneously that Luwanda had also testified to observing defendant at her car, the trial court corrected its error, finding that Whitehead's testimony alone was "more than sufficient" to support the finding of guilty. The court ruled: "I had no doubt in my mind as to the identification" of defendant made by Whitehead. We reject defendant's claim that the court's initial error, later corrected, affected its findings.

¶ 16 Defendant's final contention on appeal is that this court must remand to the trial court for the appointment of counsel pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984), because defendant's trial counsel admitted during the playing of the security camera video at trial that she had viewed only part of the video before trial. Defendant portrays counsel's concession as an admission of her ineffectiveness as defendant's trial counsel.

¶ 17 When a defendant raises a *pro se* posttrial claim of ineffective assistance of counsel, the trial court should conduct an adequate inquiry (commonly known as a *Krankel* inquiry) to

determine the factual basis for defendant's claim. *Id.* at 189; *People v. Johnson*, 159 Ill. 2d 97, 125 (1994). The proper scope of a preliminary investigatory hearing to determine whether to appoint new counsel for defendant is a question of law which is reviewed *de novo*. *People v. Fields*, 2013 IL App (2d) 120945, ¶ 39. Generally, where defendant makes no claim of ineffective counsel, no *Krankel* inquiry is required. See *People v. Taylor*, 237 Ill. 2d 68, 77 (2010). The record reflects that at no time did defendant make an explicit or implicit claim of ineffectiveness of his trial counsel. However, defendant relies on *People v. Williams*, 224 Ill. App. 3d 517 (1992), which held that a defendant's failure in alleging ineffectiveness of trial counsel does not result in a *Krankel* forfeiture where there is a "clear basis" for such an allegation of ineffectiveness. *Id.* at 524.

¶ 18 We reject defendant's argument and find that it is unnecessary to remand the case to the trial court for a *Krankel* hearing to determine whether defendant's trial counsel was ineffective, because we conclude there has been no showing that counsel was ineffective. The record reveals that during the playing of the video at trial, defense counsel stated she had viewed "part of" the video before trial, although which part she had viewed was not clarified. At trial, counsel and the court viewed that portion of the video when the tire-slashing incident took place. Critically, defendant's conviction rested on the identification testimony of Whitehead, not on the video. When the video was played in court, Whitehead testified that at the time of the offense, he was able to observe clearly that defendant was the tire-slasher, but that the video did not clearly show the face of the perpetrator. The security camera imaging that was shown in court was included in the record on appeal and we have viewed it. The video, taken at night, does not provide a very distinct image and does not clearly show the face of the offender. At most, the video

corroborated only that the offense occurred but not that defendant was the person who committed it.

¶ 19 We believe that the trial court was under no obligation to conduct a *Krankel* hearing *sua sponte* where defendant has proffered no explanation as to how defense counsel's failure to view the entire video prior to trial has prejudiced him. Defendant's counsel followed a sound trial strategy on the critical issue of identification in attempting to attack Whitehead's credibility. See *People v. Gillespie*, 276 Ill. App. 3d 495, 503 (1995). The video did not corroborate Whitehead's identification of defendant as the perpetrator. Defendant's conviction rested on Whitehead's identification testimony as to what he saw on the night of the offense, not on what the video showed. Defendant has not shown how his trial counsel's failure to view the entire security camera video prior to trial affected the outcome of this case or provided "a clear basis for an allegation of ineffectiveness of counsel" as in *Williams*. Consequently, we find harmless any alleged failure by the trial court to conduct a *Krankel* inquiry or appoint new counsel for defendant based on his trial counsel's failure to view the entire video before trial. See *People v. Tolefree*, 2011 IL App (1st) 100689, ¶ 34.

¶ 20 For the reasons set forth above, we affirm defendant's conviction.

¶ 21 Affirmed.