

**NOTICE**  
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2014 IL App (4th) 121069-U

NO. 4-12-1069

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**  
March 26, 2014  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
ELLIS S. NASH,	)	No. 11CF2067
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas J. Difanis,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.  
Presiding Justice Appleton and Justice Harris concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court found the trial court did not deny defendant's right to a fair sentencing hearing.

¶ 2 In August 2012, a jury found defendant, Ellis S. Nash, guilty of theft. In September 2012, the trial court sentenced him to six years in prison.

¶ 3 On appeal, defendant argues he was denied his right to a fair sentencing hearing. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In December 2011, the State charged defendant by information with one count of theft of property having a value exceeding \$500 (count I) (720 ILCS 5/16-1(a)(4) (West 2010)), alleging he knowingly obtained control over stolen property of Urbana School District on December 15, 2011, *i.e.*, a computer valued in excess of \$500, knowing the property to have

been stolen or under such circumstances as would reasonably induce him to believe the property was stolen, and with the intent to permanently deprive the owner of the use and benefit of the property. In August 2012, the State charged defendant with one count of theft with a prior theft conviction (count II) (720 ILCS 5/16-1(a)(4) (West 2010)), alleging he knowingly exerted unauthorized control over the computer and had a previous theft conviction. Defendant pleaded not guilty.

¶ 6 In August 2012, defendant's jury trial commenced. Urbana police officer Sylvia Morgan testified she and several other police officers were involved in a search of a residence occupied by defendant, Teanna Davis, and an infant child. During the search, officers found an Apple laptop computer, which had been reported stolen from Thomas Paine School. The computer was engraved with "Urbana School District Number 116" and a serial number.

¶ 7 Urbana police investigator Jim Kerner testified he spoke with defendant in connection with the search. When asked if he knew anything about burglaries in the area, defendant stated he heard a male by the name of Shawn had been committing residential burglaries in the neighborhood. Defendant identified a photo of Deadric Shawn Gaines as the Shawn he knew. As to the computer, defendant stated he bought the laptop from Rashad Smith, who had been arrested for the burglary at Thomas Paine School. During further conversation with Kerner, defendant stated he was aware Gaines had burglarized Thomas Paine School and defendant received the laptop as a result of the burglary.

¶ 8 At the close of the State's evidence, the trial court directed a verdict on count I, finding the State failed to prove the value of the laptop. As a defense witness, Teanna Davis testified she bought the laptop from Gaines. She claimed defendant told her to give it back after he found the engraving that signified it was property of Urbana School District. She did not

return it.

¶ 9 Defendant declined to testify. Following closing arguments, the jury found defendant guilty of theft on count II. In September 2012, defendant filed a motion for a new trial or, in the alternative, for judgment notwithstanding the verdict. The trial court denied the motion.

¶ 10 At the sentencing hearing, Urbana police officer Mike Cervantes testified he investigated the case of the stolen laptop. He received information from Rae Corzine that defendant "acted as a fence, was a leader of the Four Corner Hustler street gang," and he took stolen property to trade for drugs or money. The following exchange occurred between the prosecutor and Officer Cervantes.

"Q. And how did that information from Rae Corzine come to your attention.

A. Ms. Corzine provided a statement as to a burglary that she was a witness to and actually the reporting person in which she observed several individuals, five black male youths, enter her residence. She subsequently gave us statements about overhearing conversations that those individuals made about trading stolen property to Mr. Nash and being directed to rob people in the past—

MR. RATCLIFFE [(defense counsel)]: I'm going to object.

THE WITNESS: —by Mr. Nash.

MR. RATCLIFFE: I'm going to object to that not only for foundation but for the hearsay within hearsay element that it's being proffered.

THE COURT: All right. Well the hearsay objection is overruled. It's a question of reliability. Hearsay is admissible in this type of a hearing. And the other objection as to the testimony concerning the Defendant being a fence that objection is also overruled."

Cervantes stated Corzine had been a witness to a burglary on December 7, 2011, and he interviewed her as to what she observed. She saw five black males enter a residence. She identified Deadric Gaines as the individual who forced entry to the back door. She saw the individuals inside the residence and then saw them exit carrying an item the size of a pillowcase. Corzine also identified three other individuals, including Marcus Taylor, Joshua Kane, and Jeremy O'Neal. She stated she had heard these young men speak of committing burglaries in the past. When she asked the males why they were burglarizing homes, Corzine stated her belief that it was at the direction of defendant. Cervantes testified Corzine had said Shawn told her that defendant had directed Shawn to rob a drug dealer and to bring the drugs and money back to defendant. Corzine mentioned the males talked of wanting to be members of the Four Corner Hustlers, of which defendant was the leader. She also heard Gaines talk about getting marijuana in exchange for stolen property.

¶ 11 Officer Cervantes testified he was familiar with interviews conducted in this case. In separate interviews, Scott Gaskin and Shawn Gaines mentioned bringing stolen property to defendant's house. An interview with Jeremy O'Neal revealed he had sold or traded stolen property for cannabis to defendant. In an interview with defendant, he admitted knowing a digital video disc player and the laptop were stolen. He also had information of another laptop, a television, additional stolen property, and "trap houses," where items from burglaries were kept.

Individuals brought the stolen goods to him because they knew he was a Four Corner Hustler, he had previously committed burglaries, and they thought he could sell the property. Cervantes stated defendant did not agree to help them sell the property.

¶ 12 Officer Cervantes testified he received specialized training in how to identify street gang members. He testified regarding several notebooks containing gang literature that were found during the search of defendant's residence.

¶ 13 Defendant's mother, Alanda Banner, and Teanna Davis testified on his behalf. Following arguments by counsel, the trial court sentenced defendant to an extended term of six years in prison. The court noted defendant had three prior convictions for theft as well as convictions for residential burglary, battery, and possession with intent to deliver cannabis. The court found the evidence indicated defendant was a gang member and, "very likely," a gang leader, and he provided individuals "with a place to get rid of their stolen property."

¶ 14 In October 2012, defendant filed a motion to reconsider sentence, which the trial court denied. This appeal followed.

¶ 15 **II. ANALYSIS**

¶ 16 Defendant argues the trial court denied his right to a fair sentencing hearing when it considered in aggravation double and triple hearsay statements without independent corroboration alleging he directed teenagers to commit burglaries and robberies so he could trade the stolen goods for drugs or money. We disagree.

¶ 17 As defendant concedes, defense counsel failed to raise this issue in the motion to reconsider sentence. Thus, defendant has forfeited this issue on appeal. See *People v. Hestand*, 362 Ill. App. 3d 272, 279, 838 N.E.2d 318, 324 (2005) (a defendant must object at trial and raise the issue in a posttrial motion to preserve the issue for review).

¶ 18 Defendant, however, asks this court to consider the issue as a matter of plain error. The plain-error doctrine allows a court to disregard a defendant's forfeiture and consider unpreserved error when either:

"(1) the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant; or (2) the error was so fundamental and of such magnitude that it affected the fairness of the trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Wilmington*, 2013 IL 112938, ¶ 31, 983 N.E.2d 1015.

¶ 19 Under both prongs of the plain-error analysis, the burden of persuasion remains with the defendant. *Wilmington*, 2013 IL 112938, ¶ 43, 983 N.E.2d 1015. As the first step in the analysis, we must determine whether any error occurred at all. *People v. Taylor*, 2011 IL 110067, ¶ 30, 956 N.E.2d 431. "If error did occur, we then consider whether either prong of the plain-error doctrine has been satisfied." *People v. Sykes*, 2012 IL App (4th) 111110, ¶ 31, 972 N.E.2d 1272.

¶ 20 The ordinary rules of evidence governing a trial are relaxed at the sentencing hearing. *People v. Blanck*, 263 Ill. App. 3d 224, 234, 635 N.E.2d 1356, 1364 (1994). Moreover, "a sentencing judge is given broad discretionary power to consider various sources and types of information so that he can make a sentencing determination within the parameters outlined by the legislature." *People v. Williams*, 149 Ill. 2d 467, 490, 599 N.E.2d 913, 924 (1992). At the sentencing hearing, evidence is admissible if it is relevant and reliable. *Williams*, 149 Ill. 2d at 490, 599 N.E.2d at 924. "[P]rior uncharged criminal conduct is relevant in a sentencing determination." *People v. Flores*, 153 Ill. 2d 264, 296, 606 N.E.2d 1078, 1094 (1992).

"Merely because testimony contains hearsay does not render it *per se* inadmissible at a sentencing hearing. [Citation.] If the evidence is 'double hearsay[, it] should be corroborated, at least in part, by other evidence.' [Citation.] A hearsay objection at sentencing goes to the weight of the evidence rather than its admissibility. [Citation.] Determining the reliability of hearsay rests within the sound discretion of the trial court." *People v. Varghese*, 391 Ill. App. 3d 866, 873, 909 N.E.2d 939, 946 (2009).

¶ 21 In the case *sub judice*, defendant objects to Officer Cervantes' testimony at sentencing concerning statements from Rae Corzine. Defense counsel objected to this testimony on hearsay grounds. The trial court overruled the objection, stating hearsay was admissible at a sentencing hearing and noting the question was one of credibility.

¶ 22 Defendant, however, argues Cervantes' testimony included double and triple hearsay, without corroboration, that portrayed him as a gang leader who provided a place for young males to fence their stolen goods.

¶ 23 We find the hearsay statements pertaining to defendant's role as a fence for stolen property was sufficiently corroborated by other evidence. The evidence at trial established: defendant was in possession of a stolen laptop; he made statements to the police that he received it as a result of the burglary of Thomas Paine School; he had information concerning other stolen property; and various individuals brought stolen property to his house to ask for his help in selling the property. At the sentencing hearing, Cervantes testified regarding police interviews in which males indicated they had taken stolen property to defendant in trade for cannabis. Further, Cervantes stated defendant also had information about other stolen property and trap houses. A

review of all the evidence and testimony leads to the conclusion the trial court did not abuse its discretion in concluding defendant was a fence for stolen property.

¶ 24 A similar conclusion can also be made as to the trial court's conclusion defendant was a gang leader. At the sentencing hearing, Cervantes testified Corzine said she had heard the young men say defendant was the leader of the Four Corner Hustlers. In corroboration of this statement, Cervantes testified that, during the search of defendant's residence, the police found a shoe box with notebooks containing street gang literature. In one of the notebooks, defendant referred to himself as "Lord Black Owl." In Cervantes' interview of Teanna Davis, she said defendant was a Four Corner Hustler and she referred to him as "king." Cervantes also stated a search of Rashad Smith's backpack revealed a written oath to the Four Corner Hustlers. In defendant's statement to the police, Smith had sold defendant the laptop. The evidence indicates the court did not abuse its discretion in concluding defendant was a gang leader.

¶ 25 Defendant also argues Cervantes' hearsay allegation that Corzine heard one of the burglars state defendant told him to rob a drug dealer was unreliable and uncorroborated. However, the trial court did not reference this evidence in fashioning a sentence and even stated "the theory that [defendant] was directing young people to commit burglaries I'm not sure that one can make that assumption, that leap." Accordingly, defendant was not prejudiced by this evidence.

¶ 26 We note defendant also argues the trial court improperly relied on the unreliable and uncorroborated claims of Teresa Owens, the mother of Teanna Davis, in a letter received prior to sentencing, wherein Owens claimed defendant had a history of manipulating young children and asked the court to protect others from "this child pedophile." As the State points out, the court noted at the end of the evidence at the sentencing hearing that it received the letter

