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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF)	Appeal from the
ILLINOIS,)	Circuit Court of
)	Cook County.
Plaintiff-Appellee,)	
)	No. 13 CR 6085
v.)	
)	Honorable
MELVIN JACKSON,)	Rickey Jones,
)	Judge Presiding.
Defendant-Appellant.)	

JUSTICE COBBS delivered the judgment of the court.

Presiding Justice McBride and Justice Howse concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant has failed to demonstrate the evidence at trial was closely balanced to warrant plain error review of his forfeited claims that he was denied a fair trial when the court allowed the State to present a police officer's inadmissible hearsay testimony regarding the serial numbers on pre-recorded funds or that such evidence violated the best evidence rule.

¶ 2 Following a bench trial, defendant Melvin Jackson was found guilty of delivery of a controlled substance (720 ILCS 570/401(d)(1) (West 2012)) and sentenced to seven years' imprisonment as a Class X offender. On appeal, defendant contends he was denied a fair trial when the trial court allowed the State to present inadmissible hearsay testimony that was

critical to the State's case, regarding the serial numbers on pre-recorded funds found on defendant's person following a controlled narcotics transaction. He also contends that this testimony violated the best evidence rule. We affirm.

¶ 3 At trial, Chicago police officer Darrell Smith testified that on January 4, 2013, at approximately 12 p.m., he approached defendant as an undercover police officer in an attempt to purchase narcotics pursuant to an ongoing narcotics investigation. He had in his possession two pre-recorded \$10 bills marked with serial numbers. He received these funds, and some additional funds, from the bursar's office two days earlier and recorded them on a pre-recorded funds sheet. Smith "crossed out" the other numbers on the funds sheet as he did not use those funds in the transaction with defendant. A copy of the funds sheet was admitted into evidence.

¶ 4 According to Officer Smith, he yelled "blows" at defendant from his vehicle, which is street terminology for heroin. Defendant yelled back and directed Smith to park his vehicle in a nearby alley. Defendant met Smith in the alley and got into the front passenger seat of his vehicle. After a brief conversation, Smith exchanged two \$10 pre-recorded bills for two Ziploc bags from defendant containing a white powdery substance. It was later stipulated that this substance was heroin.

¶ 5 After the transaction was complete, Smith notified the other officers on his team, via radio, of the "positive narcotics transaction." He provided to them a description of defendant, including his approximate height and weight, and described defendant's clothing as an "orange jacket and blue jean pants." Once defendant had been detained, Smith drove his vehicle to the detainment area and positively identified defendant to enforcement officers as the individual who sold him narcotics. Defendant was not taken into custody, however, as

"procedure [was] not to arrest the offenders during that time so not to compromise the identity of the undercover officer." Later that day, Smith identified defendant from a photo array. He also positively identified defendant in court.

¶ 6 On cross-examination, Smith testified that defendant was in his vehicle for approximately one minute during the alleged narcotics transaction. Smith's on-scene identification of defendant was made in "a few seconds" as he drove his vehicle by the area where defendant had been detained. He did not stop or exit his vehicle during this identification. Smith also confirmed that the photo array had been prepared by one of the surveillance officers.

¶ 7 Officer Andre Reyes testified that he was a surveillance officer on the date of the alleged offense. He observed defendant approach Smith's vehicle and engage in what appeared to be a brief conversation through the front passenger-side window of the vehicle. Smith then drove his vehicle to a nearby alley. Defendant walked to Smith's parked vehicle and got in the front passenger seat. After a brief period, defendant exited the vehicle, walked westbound, and Officer Smith drove away.

¶ 8 Reyes then received a radio communication from Smith that was "positive for transaction." He "maintained surveillance" of defendant and notified enforcement officers of defendant's location. Reyes described defendant as a "male black with an orange jacket." The enforcement officers subsequently detained defendant and another individual and Reyes left the scene. Reyes also positively identified defendant in court.

¶ 9 On cross-examination, Reyes stated that he maintained surveillance of defendant for approximately two minutes until he was detained by enforcement officers near an area approximately "two or three streets" from the location of the controlled transaction. Reyes

briefly lost sight of defendant during this period as defendant was on foot and he was driving his vehicle.

¶ 10 Officer Raymond Rau was an enforcement officer on the date of the offense. Following the alleged narcotics transaction, Reyes notified Rau of defendant's location and described defendant's clothing as "blue jeans and an orange jacket." Rau subsequently located and detained defendant. While defendant was being detained, Rau searched him and conducted a "street interview."

¶ 11 Pursuant to the search, Rau recovered "two \$10 bills that were the 1505 funds used in the purchase." He identified the \$10 bills as the pre-recorded funds used by Smith by matching the serial numbers on the currency to the serial numbers he had written on a scrap piece of paper. Rau explained that "[p]rior to going out to make the street purchase we met with Smith and were provided the bills that he was to use for the street purchase, and I annotated those [serial] numbers on a piece of paper." He also reviewed the serial numbers listed on the pre-recorded funds sheet prepared by Smith, but did not bring a copy of the funds sheet "on the street" with him "just in the odd chance that it's lost" and "because we – not this time, but have before where you got [*sic*] two or three officers going to make a buy rather than carrying a big re[a]m of paperwork, I'll write down each person's serial numbers that they are going to use." Rau explained that the other serial numbers were redacted from the funds sheet as they were "used and not recovered."

¶ 12 Referring to the pre-recorded funds sheet, Rau testified that the two non-redacted serial numbers on the pre-recorded funds sheet were the serial numbers for the bills used by Officer Smith during the controlled transaction. He also stated that the serial numbers on the bills used by Smith were the same numbers he had written on the scrap paper. Rau referenced the

scrap paper when looking at the serial numbers on the \$10 bills he found in defendant's possession and confirmed that they matched those he had written. He then returned the funds to defendant so as not to "alert them that there was an investigation going on [i]n that spot." Rau did not have the scrap paper with him in court.

¶ 13 On cross-examination, Rau testified that the other individual detained with defendant was also a middle aged African American male of a similar height and weight. Rau did not recover any other large sums of money or drugs from defendant during the search. His interaction with defendant lasted approximately five to ten minutes, during which he was notified via radio that "the ID was positive." Defendant did not give the officers any photo identification. However, they were able to locate defendant in the police database which displayed, *inter alia*, an older photograph of defendant. On redirect examination, Rau confirmed that he recognized the individual in the photograph as the same person "who had just given [him] that information."

¶ 14 Following closing arguments, the court found defendant guilty beyond a reasonable doubt of delivery of a controlled substance and sentenced defendant to a Class X term of seven years' imprisonment. The court did not articulate any factual findings on the record with regard to its finding of guilt.

¶ 15 On appeal, defendant contends Officer Rau's testimony that the serial numbers written on the scrap paper matched the serial numbers on the \$10 bills found on defendant and the pre-recorded funds sheet (1) was inadmissible hearsay as neither the pre-recorded \$10 bills nor the officer's scrap paper was entered into evidence, and (2) violated the best evidence rule as the scrap paper itself was the best evidence of its contents and the State failed to prove its unavailability.

¶ 16 Defendant concedes that he has forfeited review of these issues as he neither objected to this testimony at trial nor raised them in a posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (to preserve an issue on appeal defendant must both object at trial and include the alleged error in a written posttrial motion). He argues, however, that his forfeiture may be excused under the plain error doctrine as the evidence was closely balanced and the only "hard evidence" linking him to the crime was the inadmissible testimony regarding pre-recorded funds. The State responds that no error occurred and even if it did, plain error is not available because the evidence was not closely balanced. The State further argues the alleged error was not so serious as to warrant reversal.

¶ 17 The plain error doctrine bypasses normal forfeiture principles and allows a reviewing court to consider unpreserved error when either (1) the evidence is close, regardless of the seriousness of the error, or (2) the error is serious, regardless of the closeness of the evidence. *People v. Herron*, 215 Ill. 2d 167, 178 (2008). Under first prong plain error analysis, the defendant must show both that there was plain error and that the evidence was so closely balanced that the error alone severely threatened to tip the scales of justice against him. *People v. Piatkowski*, 225 Ill. 2d 551, 564-565 (2007); see also *People v. Nitz*, 219 Ill. 2d 400, 427 (2006). The burden of persuasion rests with the defendant. *Piatkowski*, 225 Ill. 2d at 565.

¶ 18 Before invoking the plain error exception, it is appropriate to determine whether any error occurred at all. *People v. Sims*, 192 Ill. 2d 592, 626 (2000) (quoting *People v. Wade*, 131 Ill. 2d 370, 376 (1989)). However, because we find that the evidence in this case is not closely balanced, we need not determine whether the alleged inadmissible testimony was prejudicial error. In making a determination of whether evidence is closely balanced, a reviewing court

must make a commonsense assessment of the evidence within the context of the circumstances of the individual case. *People v. Belknap*, 2014 IL 117094, ¶ 52. Defendant argues only first prong plain error, maintaining that, at issue here is the credibility and reliability of the officers' testimony. He argues that, as the identification testimony was weak and the only "hard evidence" of his involvement was established through Rau's inadmissible testimony regarding pre-recorded funds, the evidence at trial was closely balanced. Our review of the evidence at trial supports a contrary conclusion.

¶ 19 Smith engaged in a face-to-face controlled transaction with defendant that lasted approximately one minute. He viewed defendant during daylight hours and in close proximity as defendant was seated next to him in the front passenger seat of his vehicle. Following the transaction, Smith positively identified defendant on scene and again later that day in a photo array. Rau also testified he was able to identify defendant as the person he had detained based upon a photograph from the police database and the contact information provided to him by defendant. In addition, Reyes confirmed that he maintained surveillance of defendant until he observed that defendant had been detained just minutes later.

¶ 20 Further, all three officers positively identified defendant in court and their description of defendant, including his clothing, was consistent throughout their testimony. Thus, even absent Rau's testimony regarding pre-recorded funds, we find the evidence of defendant's guilt overwhelming. See *People v. Smith*, 185 Ill. 2d 532, 541 (1999); *People v. Johnson*, 94 Ill. App. 3d 200, 206 (1980) (testimony of a single witness is sufficient to convict a defendant even if the identification testimony is contradicted by the accused if the witness is credible and the accused is viewed under circumstances which would permit a positive identification).

¶ 21 We also acknowledge, as defendant highlights, that there were minor inconsistencies in the officers' testimony, especially regarding the rationale for redacting certain serial numbers from the pre-recorded funds sheet. However, we do not find these inconsistencies so fundamental as to render the evidence closely balanced because the State was not required to prove that money was exchanged to sustain a conviction. See 720 ILCS 570/401(d) (West 2012); *People v. Trotter*, 293 Ill. App. 3d 617, 619 (1997). Further, we disagree that the officers' testimony was "strange" or improbable given their substantially consistent account of events leading up to defendant's detainment and subsequent identification of the pre-recorded funds.

¶ 22 Finally, we disagree with defendant's assertion that the evidence at trial was closely balanced "where it boiled down to witness credibility." See *People v. Naylor*, 229 Ill. 2d 584, 606-08 (2008). Defendant did not provide an alternate version of events such that the trial court was required to choose which version it found more credible. *Naylor*, 229 Ill. 2d at 609 ("[I]n this case, the essential task of the trial court, as the trier of fact, was to determine whose version of events to believe."). Further, as previously stated, we find the officers' testimony consistent and credible. Accordingly, any potential error here did not rise to the level of plain error as the evidence of defendant's identity was not closely balanced. See *Herron*, 215 Ill. 2d at 178 (plain error exists when the evidence was so closely balanced that the verdict may have resulted from the error and not the evidence).

¶ 23 As defendant has failed to satisfy his burden in demonstrating that the evidence in this case was closely balanced, we need not determine whether the admission of Officer Rau's testimony constituted error. See *Belknap*, 2014 IL 117094, ¶ 66. Accordingly, defendant's procedural default must be honored. Moreover, we are mindful that defendant was not tried

before a jury. Unlike in a jury trial, when a judge sits as the trier of fact, we must presume that he or she will only consider competent evidence. *Naylor*, 229 Ill. 2d at 603-04. Thus, even were we to conclude that Officer's Rau's testimony constituted inadmissible hearsay, absent some affirmative showing that the trial judge considered this evidence in its finding of guilt, we would not find error.

¶ 24 Defendant failed to demonstrate that the evidence in this case was closely balanced. Thus, plain error analysis is not warranted and his unpreserved claims are forfeited. Accordingly, we affirm the judgment of the circuit court.

¶ 25 Affirmed.