2011 IL App (2d) 100813-U
No. 2-10-0813
Order filed December 29, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Lake County.
Plaintiff-Appellee,	)	
v.	)	No. 10-TR-1559
JOSEPH M. DOPP,	)	Honorable George D. Strickland,
Defendant-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE JORGENSEN delivered the judgment of the court.
Justices Bowman and Hutchinson concurred in the judgment.

ORDER

Held: (1) The State proved defendant guilty beyond a reasonable doubt of leaving the scene of an accident, as the trial court could credit the evidence that defendant was driving and, in light of the circumstances, could discredit his claim that he was unaware of the accident; (2) there was no plain error or ineffective assistance of counsel as to the trial court's awards of restitution: one victim's testimony as to her expenses was sufficient to support the award to her, and the award to another victim was expressly to be reduced by any insurance recovery.

¶ 1 Following a bench trial, defendant, Joseph M. Dopp, was found guilty of leaving the scene of an accident resulting in property damage (625 ILCS 5/11-402(a) (West 2008)). The trial court sentenced him to 12 months' probation and 150 hours' community service. The court also ordered

that defendant pay restitution of $1,328.83 to Danielle Duha and $6,805.20 to Nancy Runyon. Following the denial of his motions for a new trial and reconsideration of his sentence, defendant timely appealed. Defendant argues: (1) the evidence was insufficient to prove him guilty beyond a reasonable doubt; and (2) the trial court abused its discretion by ordering restitution in the amounts ordered. For the reasons that follow, we affirm.

¶ 2 I. BACKGROUND

¶ 3 Defendant was charged with leaving the scene of an accident resulting in property damage (625 ILCS 5/11-402(a) (West 2008)) and reckless driving (625 ILCS 5/11-503(a)(1) (West 2008)). The State nol-prossed the reckless driving charge, but the charge was subsequently refiled. (We note that the record does not contain a copy of the refiled charge. However, prior to trial, the parties agreed that the charge had been refiled. Defendant answered ready to, and was tried on, both charges.) A bench trial took place on May 28, 2010, at which the following relevant testimony was adduced.

¶ 4 Testimony from Patrick Runyon and Danielle Duha established that, on the evening of December 26, 2009, just before 10 p.m., Patrick was driving north in his 2005 Ford pickup truck on Route 12, from Round Lake to Ingleside, with Danielle in the passenger seat. Route 12 consisted of two northbound lanes and two southbound lanes, separated by a median. It was snowing heavily. Patrick was in the far right lane, traveling 35 miles per hour in a 45-miles-per-hour zone, when he and Danielle saw a black sedan come out from a side street on the left, travel across all the lanes, and hit a curb to the right. Patrick testified that the black sedan had spun out and was stopped by the curb. The driver of the black sedan had apparently tried to turn right from a side street and enter the southbound lanes on Route 12 and lost control of the car. In an effort to avoid hitting the black

sedan, which Patrick estimated came to a stop a couple hundred feet in front of Patrick's vehicle, Patrick drove off the road to the right, passing the sedan, which was to his left. In doing so, Patrick hit a telephone pole with the front passenger side of his truck, which resulted in Danielle hitting her head hard on the side window. Patrick estimated that he drove about 10 feet off the road. At the time of the accident, both vehicles had their headlights on. In addition, the area was illuminated by street lights. When they exited the truck, Patrick and Danielle were told by a witness that the police had been called. The black sedan was no longer on the scene, and they never saw its driver. Patrick and Danielle were taken by ambulance to the hospital. Danielle sustained a concussion.

¶ 5 Frederick Bolger testified that, on the evening of December 29, 2009, he was traveling north on Route 12 when he also observed the black sedan come from a side street to the left and attempt to turn right and "beat the traffic that was oncoming." The black sedan spun out and traveled across all lanes of traffic, stopping in front of Bolger's car when it hit the curb. Bolger was able to stop his car without incident. Bolger saw a lot of snow fly into the air, and he saw a utility pole shake snow off of the power lines. He figured that one of the cars that swerved to miss the spinning sedan had struck the pole. According to Bolger, there were about eight other cars that were trying to get out of the way. When Bolger stopped his car, he was facing the black sedan, which was sideways. Bolger saw the driver and the passenger of the black sedan look to the right and left and then leave on Route 12. He was unable to identify who was driving the black sedan, but he was able to obtain the vehicle's license plate number. Bolger called 911 and provided the information. Several emergency vehicles responded to the scene, and Bolger remained on the scene for about an hour and a half.

¶ 6 Lake County deputy sheriff David Tomasello testified that, on December 27, 2009, he went to an address provided to him by Lake County deputy sheriff Ryan Eagar who had responded to the scene of the accident on December 26, 2009, and interviewed defendant. Defendant told Tomasello that, on the previous evening, he was driving on Route 12, at around 9:15 p.m., when he lost control of his vehicle, spun out across the northbound lanes, and came to rest against a curb. Defendant further told him that he had waited and looked around but that there did not seem to be any problems, so he pulled into the southbound lanes and continued on his way. Defendant had a passenger in his car. No one else had driven his car that night. According to Tomasello, defendant also told him that he went to a cigarette store and then returned home via the same route. Defendant did not see an accident or notice emergency vehicles. On cross-examination, Tomasello reviewed his police report and acknowledged that it was defendant's passenger, not defendant, who told him that defendant returned home the same way that he had gone. The trial court noted that it would not consider that testimony for the truth of the matter asserted.

¶ 7 The trial court found defendant guilty of leaving the scene of an accident resulting in property damage and not guilty of reckless driving. The matter proceeded to a sentencing hearing.

¶ 8 At the sentencing hearing, the following evidence was presented as to restitution. Danielle testified that she paid $408.83 in medical costs. She stated that "[i]t was all the stuff that we had [to] pay out of pocket that insurance would not pick up." She also received a $920 bill for the ambulance ride to the hospital and recently learned that her insurance was not going to cover it. Her total out-of-pocket costs amounted to $1,328.83.

¶ 9 Patrick testified that all of his medical bills were covered by insurance. However, he stated that it would cost $6,805.20 to repair his vehicle.

¶ 10 Nancy Runyon, Patrick's mother, testified that she and her husband owned Patrick's vehicle. She paid $2,100 "just to get the vehicle back where [Patrick] can use it to go back and forth to work." The vehicle still needed more work. She was working with the insurance company for the payment for the remainder of the work. The insurance company had not denied coverage. Her deductible was $500.

¶ 11 At the close of testimony on restitution, defense counsel asked that the court award restitution of only $408.50 to Danielle and only $500 to Nancy, because Danielle failed to provide documentation to support the $920 ambulance bill and because Nancy testified that her auto insurance deductible was $500. The State asked for the entire amounts testified to.

¶ 12 In allocution, defendant apologized but stated that he "had no knowledge this happened."

¶ 13 The trial court told defendant that it did not believe his claim that he was unaware that he caused an accident and sentenced him to 12 months' probation and 150 hours' community service. The court ordered that defendant pay restitution of $1,328.83 to Danielle, stating that it found Danielle's testimony to be credible: "There's certainly nothing to indicate she's fabricated the ambulance bill in any way." The court also ordered that defendant pay restitution of $6,805.20 to Nancy, payable over six months, stating:

> "The Court is going to order that if the Runyon's [*sic*] receive compensation from the insurance company that they provide that to the State and the Probation Department and any amounts which are, in fact, paid by insurance will be deducted from the amount the defendant is ordered to pay."

¶ 14 Defendant filed a motion for acquittal or for a new trial and a motion for reconsideration of his sentence or for a new sentencing hearing. The trial court denied both motions. Defendant timely appealed.

¶ 15 II. DISCUSSION

¶ 16 A. Sufficiency of the Evidence

¶ 17 Defendant argues that he was not proved guilty beyond a reasonable doubt of leaving the scene of an accident. When reviewing a challenge to the sufficiency of the evidence, " 'the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (Emphasis in original.) *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). The trier of fact is responsible for determining the witnesses' credibility, weighing their testimony, and deciding what reasonable inferences to draw from the evidence. *People v. Lamon*, 346 Ill. App. 3d 1082, 1089 (2004). A reviewing court will not set aside a criminal conviction unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *Collins*, 106 Ill. 2d at 261.

¶ 18 Defendant was charged with violating section 11-402(a) of the Illinois Vehicle Code (625 ILCS 5/11-402(a) (West 2008)), which provides:

> "(a) The driver of any vehicle involved in a motor vehicle accident resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such motor vehicle accident or as close thereto as possible, but shall forthwith return to and in every event shall remain at the scene of such motor vehicle

accident until the requirements of Section 11-403 have been fulfilled." 625 ILCS 5/11-402(a) (West 2008).

"[T]o support a conviction under section 11-402, the prosecution is required to prove that the accused had knowledge that the vehicle he was driving was involved in an accident, though not necessarily that defendant was aware he caused damage to such other vehicle." *People v. Hileman*, 185 Ill. App. 3d 510, 515 (1989). The defendant's identity as the driver of the vehicle may be proven by circumstantial evidence. *People v. De Angelo*, 50 Ill. App. 3d 848, 851 (1977).

¶ 19 We first find that the evidence was sufficient to establish that defendant was the driver of the black sedan. Bolger testified that he took down the license plate number of the black sedan and gave the information to the police. The license plate of the vehicle led the police to defendant. Tomasello testified that defendant told him that he owned a black sedan and that on the evening in question no one else had driven his vehicle. Concerning the accident, defendant told Tomasello that he was driving on Route 12 at about 9:15 p.m. when he lost control of his vehicle and spun out across several lanes of traffic, stopping against a curb on the opposite side of the roadway. This was consistent with the description of the accident provided by Bolger, Patrick, and Danielle. Thus, the evidence was sufficient to establish that defendant was the driver of the vehicle that caused the accident.

¶ 20 We next find that the evidence was sufficient to establish that defendant knew that he was involved in an accident. The evidence established that the roadway in question was illuminated by street lamps and that Patrick's truck and defendant's car had their headlights on. At least eight cars had to take evasive action to avoid being hit by defendant's car. According to Patrick, his truck went off the road just 10 feet from defendant's vehicle and came to rest about 200 feet past defendant's

vehicle. Bolger testified that he saw defendant look to the left and right after causing the accident and then drive away. Although defendant claimed that he was unaware of the accident (both to Tomasello and to the court in allocution), the court, which was solely responsible for determining the witnesses' credibility, weighing their testimony, and deciding what reasonable inferences to draw from the evidence, found this claim incredible. Given the evidence, we find that a rational trier of fact could have found that defendant knew that he was involved in an accident.

¶ 21 Based on the foregoing, we find that State proved defendant guilty beyond a reasonable doubt of leaving the scene of an accident.

¶ 22 B. Restitution

¶ 23 Defendant next argues that the trial court erred in assessing restitution in the amounts of $1,328.83 to Danielle and $6,805.20 to Nancy, because, according to defendant, the evidence presented at the hearing was insufficient to support those amounts.

¶ 24 Defendant acknowledges that he did not include this issue in his motion to reconsider and that this would normally result in forfeiture of the issue on appeal. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (both trial objection and written posttrial motion are required to preserve issue for review). However, he asks that we consider the issue for plain error or, alternatively, for the ineffective assistance of counsel.

¶ 25 The plain-error doctrine allows a reviewing court to consider unpreserved error when (1) a clear or obvious error occurs and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurs and that error is 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, 565 (2007). For plain error to exist, however, an error must have actually occurred. *People v. Naylor*, 229 Ill. 2d 584, 593 (2008). Thus, we consider that issue.

¶ 26 Section 5-5-6(b) of the Unified Code of Corrections provides, in relevant part, as follows:

> "(b) In fixing the amount of restitution to be paid in cash, *** the court shall assess the actual out-of-pocket expenses, losses, damages, and injuries suffered by the victim named in the charge and any other victims who may also have suffered out-of-pocket expenses, losses, damages, and injuries proximately caused by the same criminal conduct of the defendant, and insurance carriers who have indemnified the named victim or other victims for the out-of-pocket expenses, losses, damages, or injuries, provided that in no event shall restitution be ordered to be paid on account of pain and suffering." 730 ILCS 5/5-5-6(b) (West 2008).

¶ 27 With respect to Danielle, defendant argues that the court erred in awarding her $920 for the ambulance bill, because she failed to provide any supporting documentation. We find no error. Danielle testified that she received a bill for $920 for the ambulance ride and that her insurance denied coverage. The court found her testimony to be credible. Thus, notwithstanding the absence of documentary evidence, the amount was properly supported by her testimony. See *People v. Morgan*, 259 Ill. App. 3d 770, 786 (1994) (testimony as to medical expenses sufficient to support award of restitution); *People v. Duff,* 152 Ill. App. 3d 896, 898 (1987) (same). Defendant's reliance on *People v. Jones*, 206 Ill. App. 3d 477 (1990), is misplaced, because in that case there was no evidence, testimonial or otherwise, to support the court's restitution award. Here, as noted, Danielle's testimony supported the award.

¶ 28 With respect to Nancy, defendant challenges the court's award of the entire amount of the cost to repair the truck, because Nancy testified that she had a $500 insurance deductible and that the insurance claim was still pending. Defense counsel argued below that Nancy should be awarded the amount of the deductible only. Again, we find no error in the court's award. Nancy's testimony established that the full cost to repair the truck was $6,805.20 and that of this amount she had paid $2,100. Although she also testified that her insurance deductible was $500, she stated that the claim was still pending. The court found Nancy's testimony credible and awarded her the full cost to repair the truck, taking the pending insurance claim into consideration. Although defendant argues that Nancy will receive a windfall if her insurance company covers the entire amount, this ignores the court's written order that "restitution shall be reduced by any monies paid to Nancy *** by an insurance company."

¶ 29 Based on the foregoing, because the trial court's restitution awards to Danielle and Nancy were supported by the evidence, we find no error; thus plain-error review is not warranted.

¶ 30 We further find that defendant cannot establish that he received ineffective assistance of counsel based on counsel's failure to challenge the restitution awards. To succeed on a claim of ineffective assistance of counsel, a defendant must demonstrate that (1) counsel's performance was objectively unreasonable; and (2) it is reasonably probable that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984); *People v. Evans*, 369 Ill. App. 3d 366, 383 (2006). As noted above, we found no error in the court's awards of restitution. Therefore, even if counsel had raised the issue, defendant would not have prevailed.

¶ 31 III. CONCLUSION

¶ 32 In light of the foregoing, we affirm the judgment of the circuit court of Lake County.

¶ 33 Affirmed.