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FIFTH DIVISION
May 13, 2011

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, Illinois. |
| |) | |
| |) | |
| |) | No. 09 CR 5815 |
| v. |) | |
| |) | |
| MATTHEW WILLIAMS, |) | Honorable |
| |) | James B. Linn |
| Defendant-Appellant. |) | Judge Presiding. |

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices JOSEPH GORDON and HOWSE concurred in the judgment.

ORDER

HELD: Although a circuit court's decision to shackle a defendant during his bench trial, without a prior hearing to determine whether the restraints are necessary, constitutes error, the defendant, here, failed to demonstrate that the error rose to the level of plain error since the evidence presented against him was overwhelming, and since he failed to show that his presumption of innocence, his ability to assist his counsel, or the dignity of the proceedings were somehow compromised by the shackling. The defendant similarly failed in his burden to establish that his trial counsel was ineffective for failing to include the shackling error in the defendant's posttrial motion, since he failed to show how absent

No. 1-09-3424

this failure the outcome of his proceedings would have been different.

Following a bench trial in the circuit court of Cook county, the defendant, Matthew Williams, was found guilty of one count of aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1) (West 2002)) and sentenced to nine years' imprisonment. On appeal, the defendant contends that he was denied his due process right to a fair trial when the circuit court refused to remove his shackles during his bench trial, without first holding a hearing to determine whether such shackling was necessary, as is required by our supreme court's decision in *People v. Boose*, 66 Ill. 2d 261, 265 (1977). The defendant requests that we reverse his conviction and remand for a new trial. For the reasons that follow, we affirm.

I. BACKGROUND

On March 3, 2009, the defendant was charged with five counts of attempted first degree murder (720 ILCS 5/8-4(a) (West 2002); 720 ILCS 5/9-1(a)(1)-(4) (West 2002)) and one count of aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1) (West 2002)) for his involvement in the shooting of the victim, David Neira.

The defendant proceeded with a bench trial on September 16, 2009. Immediately before opening arguments, defense counsel asked the court to have the defendant's shackles removed, but the trial judge denied that request. The record reveals the following very brief colloquy between defense counsel and the court on this point.

“MR. KAUFMAN [Defense Counsel]: Judge, is it possible to take his leg shackles off?”

THE COURT: No, he's not—

No. 1-09-3424

State, do you want to make an opening statement?"

After this colloquy, the State proceeded with its opening statement.

During the bench trial, the State introduced two eyewitnesses, the victim, David Neira, and his brother, Roland Neira. David testified that shortly before 5 p.m., on March 3, 2009, he was with his brother, Roland, in Roland's van. Roland was driving the van and David was in the front passenger seat. The two had just dropped off David's friend, Jay, at Jay's father's house, and were traveling south on Leavitt Avenue, when David observed the defendant and another man, Edward Baker, standing on Baker's porch, at the intersection of Ohio Street and Leavitt Avenue. David explained that he has known both the defendant and Baker for about two years and that he knows them from the neighborhood. According to David, as the van rolled by the porch, Baker pointed a "black object" at him. Although David stated that the object "looked like a gun," he could not be certain what it was.

David next averred that soon thereafter, he heard a noise coming from the front passenger side of the van and Roland asked him to step outside and "check it out." Roland therefore pulled the van over to the west side of Leavitt Avenue just before the next intersection and stop sign at Race Avenue. David then jumped out of the van, leaving his door open, and went to the front to see what was wrong. As he was returning to the van, he saw the defendant standing by the mouth of the alley on the opposite side of the street with a gun in his hand. According to David, the defendant immediately began to shoot at him. David felt a bullet hit his left thigh, and heard about four or five more shots. He jumped back into the van, and Roland immediately drove off. David testified that soon thereafter he fainted in the van, and that when he came to he was at

No. 1-09-3424

Stroger Hospital.

On the following day, while still at the hospital, David spoke with several Chicago police officers and identified photographs of Baker and the defendant given to him by police. At trial, he identified People's Exhibit Nos. 1 and 2 as those photographs.¹

On cross-examination, David admitted that about an hour prior to the shooting, he drank about five or six beers at his sister's house. He admitted that he consumed a couple of those beers while riding around in Roland's van. David denied having smoked marijuana on the day of the incident, and could not recall whether he told nurses at Stroger Hospital that he had in fact smoked marijuana.

On cross-examination, David also acknowledged that when he initially spoke to police on March 4, 2009, he told them that he only saw Baker on the porch the first time he looked up, and that Baker was pointing the gun at him. David could not recall whether he initially told police that after Roland stopped the van, he saw the defendant and Baker running toward him.

On cross-examination, David also admitted that when he identified photographs of the defendant and Baker at the hospital, the police did not have him pick those photographs out of an array, but rather showed him the two photographs of the offenders. On redirect, however, David explained that he did not talk to his brother about the incident before talking to the police in the hospital. In fact, he stated that the first people he spoke to in the hospital upon waking up were

¹ At trial, David also identified People's Exhibit Nos. 3 through 6 as photographs of the intersection where the shooting occurred. He also identified People's Exhibit Nos. 7 and 8 as the photograph of his brother's van, including the passenger side seat with blood on it.

No. 1-09-3424

the police.

When the trial judge asked David to explain further how the police came to obtain photographs of the two offenders, David stated that upon initial questioning by the police, he told the officers that he knew the shooter and identified the defendant as the man who shot him. When asked by the judge if he knew the defendant, David stated that they had been friends and that he had known him for about two years. Although David could not explain why “a friend,” would shoot him, he averred that he “used to hang around [the defendant], but then *** stopped hanging around with him, so [maybe] he got mad because of that.” When asked about gang involvement by the trial judge, David admitted that he used to be a member of the Satan Disciples gang and that the defendant used to be in a rival gang, called the C Notes.

After David’s testimony, the defendant’s bench trial was continued to September 24, 2009. There is nothing in the record to indicate whether or not the defendant was shackled on that day, but defense counsel made no reference or objection with respect to any restraints on the defendant’s movements on that day. The State proceeded with its case and called the victim’s brother, Roland Neira. Roland largely testified consistently with his brother. He stated that after picking up David from their sister’s house on March 3, 2009, he and David were planning on driving downtown, when they saw their friend Jay at a bus stop. Roland testified that it was about 1 p.m. when they picked up Jay,² and proceeded to dropped him off at his house.³

²This testimony contradicted David’s statement that they had picked up Jay about 30 minutes prior to the shooting, which occurred at about 5 or 6 p.m.

³Roland’s testimony was inconsistent with that of David, who testified that they dropped

No. 1-09-3424

According to Roland, after they dropped Jay off, he and David continued to drive around, intending to go downtown. Roland stated that as they were driving south on Leavitt Avenue, at the corner of Leavitt Avenue and Ohio Street he saw the defendant and Baker standing on Baker's porch, leaning over the railing. Roland stated that he had known both men for about five or six years and that he always got along well with the defendant. Contrary to his brother's testimony, Roland then testified that he observed the defendant, and not Baker, pointing a gun at them while on the porch. Roland also stated that the defendant was wearing a big black coat and that Baker was wearing a big black hoodie.

Roland next averred that almost immediately after driving by Baker's porch, he heard a noise coming from the front passenger side of his van, so he pulled over to the west side of the street and had David get out of the van and check the front passenger tire. Roland stated that he was about to exit the van himself, and opened his door to do so, when he looked up and saw the defendant in the alleyway across the street, extending his arm out and pointing a black gun in their direction. Roland stated that he knew the defendant was about to shoot, so he immediately closed the van door. He heard several shots and saw his brother jump back into the van, with blood pouring from his left thigh. Roland immediately sped off to the nearest hospital.

Roland testified that on the following day he was given two photographs by the Chicago police, one of the defendant and the other of Baker, whom he identified as the offenders. At trial, Roland identified People's Exhibit Nos. 9 and 10 as these photographs.

Jay off at Jay's father's house. David also testified on cross-examination that Jay did not live with his father.

No. 1-09-3424

Roland admitted that he has two prior felony convictions: (1) a 2000 conviction for possession of a controlled substance, and (2) a 2004 conviction for aggravated unlawful use of a weapon. He admitted that after being placed on probation following his controlled substance conviction in 2000, his probation was terminated unsuccessfully, and in 2008 he was again arrested and convicted on a misdemeanor cannabis charge.

On cross-examination, Roland admitted that prior to the incident David had been drinking heavily, and that he had finished a can of beer in the van. Roland, however, denied that David consumed drugs. Roland also acknowledged that he told a nurse at Stroger Hospital that David drinks beer every day, but denied having told her that David smokes marijuana.

After Roland's testimony, the defendant's trial was once again continued to October 20, 2009. The transcript of the proceedings for that day, indicates that when the defendant was brought into the courtroom, the judge had the following colloquy with the sheriff:

“THE COURT: Mr. Williams, you can have a seat over there at the table.

THE SHERIFF: You want the restraints off too?

THE COURT: Yes, please. Thank you.”

Afer this colloquy, the State proceeded with its case-in-chief by way of stipulation. The parties stipulated that on March 3, 2009, the police recovered four expended shell casings from the mouth of the alley between Ohio Street and Race Avenues. The parties further stipulated that the police issued an investigative alert for the defendant because of his involvement in the shooting of the victim, and that on March 11, 2009, at approximately 11 p.m., the defendant came to Area 4 police station, whereupon he was placed under arrest.

No. 1-09-3424

After the State rested, defense counsel moved for a directed verdict. The trial judge denied that motion and the defense then proceeded by introducing four stipulations into the evidence. First, the parties stipulated that if called to testify, nurse Sue Hong from Stroger Hospital would state that on March 3, 2009, Roland told her that David consumed 12 beers every day, and that he regularly smokes marijuana. In addition, the parties stipulated that David's toxicology report from Stroger Hospital revealed that he had a .167 blood alcohol level at the time of his hospital admission.

The parties next stipulated that if called to testify at trial, police officers Romo and Columbo would aver that on March 3, 2009, Roland told them that he saw the defendant point and fire between six and eight shots toward David "in the direction of Eddie Baker's home." The parties finally stipulated that if called to testify, Detective Egan would state that on March 4, 2009, David told him that he observed only Baker standing on his porch and pointing a gun at Roland's van, in which he and Roland "had been drinking."

After hearing arguments by both counsel, the trial judge found the defendant not guilty of attempted murder but guilty of aggravated battery with a firearm. In coming to this decision, the trial judge specifically found the eyewitness testimony identifying the defendant as the shooter, credible, stating:

"The Court has heard the evidence presented at trial, considered all the testimony, the exhibits, and stipulations, as well as the arguments of Counsel. The case really is, for the most part, an identification case that two people David Neira and Roland Neira, who immediately after this event happened, there's no question but that a shooting took place

No. 1-09-3424

and there were shot, somewhat cold bloodily, shot at cold bloodily on the street, David was hit. They immediately named Matthew Williams as the offender and talked about who was there, and where he was, and described him, not only physically but by name. And did so without the opportunity for reflection or scheming, did so in the harshest of circumstances after a traumatic event had just taken place.

As to Count 6 *** aggravated battery with a firearm I find the government has met their burden of proof, he is the shooter in this case.”

The trial judge subsequently sentenced the defendant to nine years’ imprisonment. The defendant now appeals.

II. ANALYSIS

1. Defendant’s Shackling During the Bench Trial

On appeal, the defendant contends that he was denied his due process right to a fair trial because he was shackled during the proceedings, without the judge having first conducted a hearing to determine that the shackles were necessary. The defendant concedes that he has waived this issue for purposes of appeal by failing to include it in his post-trial motion, but asks this court to review the claim under the plain error doctrine. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (“the failure to raise an issue in a written motion for a new trial results in a waiver of that issue on appeal”).

The plain error doctrine bypasses normal forfeiture principles and allows a reviewing court to consider unpreserved error where either: (1) a clear and obvious error occurred and the

No. 1-09-3424

evidence is so closely balanced that such error threatens to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred that is so serious that it affects the fairness of the defendant's trial and challenges the integrity of the judicial process, regardless of the closeness of the evidence. *People v. Walker*, 232 Ill. 2d 113, 124 (2009); *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). In both instances, the burden of persuasion remains on the defendant. *People v. Herron*, 215 Ill. 2d 167, 187 (2005), citing *People v. Hopp*, 209 Ill. 2d 1, 12 (2004).

The State concedes that it was error to shackle the defendant, but argues the defendant has failed in his burden to establish either that the evidence presented against him was closely balanced, or that the error was of such magnitude that it impacted his right to a fair trial and challenged the integrity of the judicial process. For the reasons that follow, we agree with the State.

We begin by noting that it is unclear from the record for what period of time in the three-day interim during which his bench trial was conducted, the defendant actually remained shackled. As noted in the statement of facts above, it is apparent from the record only that the defendant may have been shackled during the first day of his trial, when the victim's testimony was offered by the State. As noted, on that day, before opening arguments defense counsel asked the trial judge whether "it [w]as possible to take [the defendant's] shackles off," and the trial judge responded, "No, he's not—." From this very brief colloquy it is unclear whether the trial judge was stating that the defendant's shackles could not be removed, or merely remarking on the fact that the defendant was not wearing shackles at all.

On the other hand, the record further reveals that the trial judge specifically permitted the removal of the defendant's shackles on the third and last day of the bench trial, during which the State and defense counsel read stipulations into the record. On that day, the defendant was brought into the courtroom by the sheriff, and the judge instructed him to have a seat at the table. At that point, the sheriff asked the judge whether he "want[ed] the restraints off too," to which the judge responded, "Yes, please. Thank you."

Finally, it is unclear what happened during the second day of trial, as the record contains no mention by either defense counsel, the trial judge, the sheriff, or, for that matter, anyone, of the shackles or any other type of restraints being made on the defendant's movements.

In any event, however, there can be no doubt, as the State concedes, that it would have been error for the trial judge to shackle the defendant, whatever the duration of the shackling may have been, absent a prior determination that those shackles were necessary. In *Boose*, our supreme court held that, regardless of whether it is a bench or a jury trial, the accused may not be shackled during trial absent a showing of manifest need. *Boose*, 66 Ill.2d at 266–67. The *Boose* court set forth 13 factors to be considered in deciding whether there is a manifest need to restrain a defendant at trial: (1) the seriousness of the offense; (2) the defendant's temperament and character; (3) the defendant's age and physical characteristics; (4) the defendant's past record; (5) any past escapes or attempted escapes; (6) evidence of a present plan of escape by the defendant; (7) any threats by the defendant to harm others or create a disturbance; (8) evidence of self-destructive tendencies; (9) the risk of mob violence or of attempted revenge by others; (10) the possibility of rescue attempts by any co-offenders at large; (11) the size and mood of the

No. 1-09-3424

audience; (12) the nature and physical security of the courtroom; and (13) the availability of alternative remedies. *Boose*, 66 Ill.2d at 266–67. Here, the court never held a *Boose* hearing to determine whether there was a manifest need to restrain defendant. Accordingly, shackling the defendant without such a hearing would have been error. See *Boose*, 66 Ill.2d at 266–67; see also *People v. Clark*, 406 Ill. App. 3d 622, 768 (2010) (holding that “shackling a defendant [during a bench trial] without [first] conducting a *Boose* hearing was error.”)

Since the State here concedes that an error in shackling the defendant occurred, we turn our attention to whether the defendant has met his burden under either prong of the plain error doctrine in establishing that this is the type of error that we must review under the plain error doctrine. The defendant, here, does not argue that this issue should be reviewed under the second prong of the plain error analysis. Instead, he solely contends that we should review his claim under the first prong as the evidence presented against him was closely balanced. We disagree.

Contrary to the defendant’s contention, the evidence in this case was nothing short of overwhelming. At trial, the State presented the testimony of two eyewitnesses, the victim, David, and his brother, Roland, who corroborated each other as to all relevant and material aspects of the incident, including: (1) the name and identity of the shooter; (2) the location of the shooting; (3) the chronology of events leading up to the shooting and following the shooting; (4) the approximate number of shots fired; and (5) the description of the gun used. As already detailed above, both David and Roland specifically testified that they had known defendant and his companion, Baker, from the neighborhood for several years. Both testified that on the afternoon of March 3, 2009, they were in Roland’s van when they saw a mutual friend, Jay, standing at a

No. 1-09-3424

bus stop and decided to pick him up and give him a lift. David and Roland both averred that after dropping Jay off, they headed southbound on Leavitt Avenue, with Roland behind the wheel and David in the front passenger seat, when they observed the defendant and Baker standing on Baker's porch, near Leavitt Avenue and Ohio Street. Both stated that after passing Baker's porch, the van began making a noise from the front passenger side and Roland asked David to get out of the van and inspect it. Both further averred that Roland pulled the van over just before the stop sign at Race and Leavitt Avenues and that David went outside to look at the front tire. Both stated that after David got out of the van, they saw the defendant standing across the street, in the mouth of the alley between Ohio Street and Race Avenue, pointing a gun at them. The brothers both testified that defendant began firing his gun at them and that David was shot in his left thigh. Both further stated that after David jumped back into the van, Roland drove off and immediately took David to Stroger Hospital. Both brothers agreed that David bled profusely in the car, and that he fainted prior to getting to the hospital.

In addition, at trial both David and Roland testified that they immediately identified the defendant as the shooter to police. The reliability of their identification was bolstered by the fact that they both knew the defendant from the neighborhood for a couple of years, as well as with David's testimony that after waking up in the hospital, the first individuals he spoke to were Chicago police detectives, and that he had no prior opportunity to speak with Roland about the shooting. Both David and Roland identified photographs of the defendant at trial, which they had previously identified to the police, as well as made in-court identifications of the defendant as the shooter.

No. 1-09-3424

The eyewitness' testimony was further corroborated by the forensic evidence collected from the scene, namely four expended shell casings retrieved by the police from the precise location, the mouth of the alley, where Roland and David, testified the defendant stood as he fired the gun. In addition, the State introduced several photographs of the scene of the crime, as well as the inside of Roland's van with the blood stains on the passenger side seat. Under these facts, there can be no doubt that the evidence of the defendant's guilt was overwhelming.

Although the defendant does not directly challenge the sufficiency of the evidence in this case, he nevertheless points out to the following inconsistencies in the eyewitnesses testimony, which he contends, establish that the evidence in this case was closely balanced. First, he points out that while David stated that he and Roland picked Jay up in the afternoon and drove him to his father's house, Roland stated that they picked Jay up earlier at 1 p.m., and drove him home. Next, the defendant contends David and Roland testified inconsistently regarding what they observed on Baker's porch. He points out that at trial David testified that when he saw the defendant and Baker on Baker's porch, Baker was pointing a gun at him. Roland, on the other hand, only testified that he saw Baker and the defendant "leaning forward" against the porch looking at them. The defendant points out that in their prior statements to police, stipulated to by the parties, David and Roland gave different accounts of what they saw on Baker's porch. While David initially told police that he only saw Baker on the porch, Roland told them that he saw the defendant holding a gun. Finally, the defendant argues that David's and Roland's testimonies should not be believed as Roland has two prior felonies, and David lied on the stand about his marijuana use. For the reasons that follow, we disagree.

It is well settled that questions involving the “weight of the evidence, credibility of witnesses or resolution of conflicting testimony,” are the province of the trier of fact, and that a reviewing court will not substitute its judgment for that of the fact finder on these issues. *People v. Jones*, 295 Ill. App. 3d 444, 452 (1989). The trier of fact determines how any flaws in part of a witness’s testimony affect the credibility of the whole (*People v. Cunningham*, 212 Ill. 2d 274, 283 (2004)), and minor inconsistencies in the testimony of the witnesses do not of themselves create a reasonable doubt as to the defendant’s guilt (*People v. Myles*, 257 Ill. App. 3d 872, 884 (1994)). Here, the circuit court resolved the credibility question in favor of the State’s two eyewitnesses and the inconsistencies pointed out by the defendant do not permit us to disturb that determination. *People v. Berland*, 74 Ill. 2d 286, 306 (1978). In particular, the trial judge found David’s and Roland’s testimonies as to the events that transpired credible, and their identification of the defendant reliable. As the trial judge stated, after the shooting, David and Roland “immediately named [the defendant] as the offender and talked about who was there, and where he was, and described him, not only physically but by name. And did so without the opportunity for reflection or scheming, did so in the harshest of circumstances after a traumatic event had just taken place.”

We similarly reject the defendant’s contention that the evidence was closely balanced because the State failed to present any physical evidence linking the defendant to the shooting, such as bullet holes on the van, in whose direction the defendant allegedly fired shots, or the gun from which the defendant shot the shell casings retrieved from the scene of the crime. Contrary to defendant’s contention, our courts have consistently held that the failure of the State to point

No. 1-09-3424

to any physical evidence corroborating the testimony of an eyewitness, does not in and of itself render the eyewitness' testimony insufficient to sustain a conviction. See *e.g.*, *People v. Negron*, 297 Ill. App. 3d 529, 529 (1998); *People v. Shum*, 117 Ill. 2d 317, 356 (1987); *People v. Delgado*, 376 Ill. App1 3d 307, 311 (2007).

As already explained above, the two eyewitnesses consistently testified as to all the elements of the charged offense, and there is nothing in the record, which would compel us to find that the evidence in this case was anything but overwhelming. See *People v. Homes*, 274 Ill. App. 3d 612, 621 (1992) (“[t]he testimony of a single eyewitness, if positive and credible, is sufficient [to] sustain a conviction”); see also *People v. Benson*, 266 Ill. App. 3d 994, 1005 (1994) (“The identification of the accused by a single, credible witness is sufficient to sustain the conviction of a defendant. [Citation.] *** The reliability of identification testimony is an issue of fact for the [trier of fact] to resolve.”); see also, *People v. Collins*, 106 Ill. 2d 237, 261, quoting *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979) (“[o]nce a defendant has been found guilty of the crime charged, the fact finder’s role as weigher of the evidence is preserved through a legal conclusion that upon judicial review *all of the evidence* is to be considered in the light most favorable to the prosecution”). Accordingly, under the present record, we find that the defendant has failed in his burden of establishing that the evidence against him was so closely balanced that the error in having him shackled during the bench trial somehow tipped the scales of justice against him, so as to permit our review under the first prong of the plain error analysis. See *e.g.*, *Clark*, 406 Ill. App. 3d at 769-70; see also, *In re Jonathan C.B.*, 386 Ill. App. 3d 735, 745 (2008); *People v. Allen*, 222 Ill.2d 340, 351 (2006). We therefore

No. 1-09-3424

cannot review the alleged error under the plain error doctrine.

The defendant similarly cannot avail himself of the second prong of the plain error analysis. As already noted above, the defendant does not even attempt to argue, nor could he, that this error was of such magnitude that it challenged the fairness of his trial or impacted the integrity of the judicial process, regardless of the closeness of the evidence. Our supreme court has made it clear that “[r]estraining a defendant without a *Boose* hearing does not automatically constitute reversible plain error,” but rather that to establish plain error under the second prong of the plain error analysis, the defendant bears the burden of showing that “his presumption of innocence, ability to assist his counsel, or the dignity of the proceedings was [somehow] compromised.” *Allen*, 222 Ill. 2d at 351. The defendant here does no such thing and has therefore failed in his burden. See *e.g.*, *Clark*, 406 Ill. App. 3d at 769-70 (noting that the defendant failed to establish the second prong of the plain error analysis because “that the trial judge knew defendant was shackled without more [wa]s not enough to constitute reversible error. Similarly, defendant’s assertion that he was limited in his ability to participate in his defense, without specifics, [wa]s not enough to show reversible plain error. As we have stated, restraining a defendant without a *Boose* hearing does not *per se* constitute reversible error. [Citation.] Because defendant did not object to being shackled at trial, he must do more than set forth the reasons shackling is improper in the abstract; he must set forth why he, in particular, was denied a fair trial or was impeded from assisting his counsel. Defendant has not shown that, in actuality, his presumption of innocence, his ability to assist counsel, or the dignity of the proceedings was compromised”); see also, *In re Jonathan C.B.*, 386 Ill. App. 3d at 745 (“Respondent has *** failed to show the error was so

No. 1-09-3424

serious it affected the fairness of his trial and challenged the judicial process's integrity. *** The record does not show the court was prejudiced by respondent's shackles, they restricted his ability to assist his counsel, or the dignity of the judicial process was offended."); see also, *Herron*, 215 Ill. 2d at 187 (explaining that in order to review a forfeited issue under the second prong of the plain error analysis, the defendant must meet his burden and establish that a clear or obvious error occurred that was so serious that it affected the fairness of his trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence); *but see*, *Deck v. Missouri*, 544 U.S. 622, 635, 125 S. Ct. 2007, 2015 (2005) (emphasis added) (noting that "where a court, without adequate justification, orders the defendant to wear shackles *that will be seen by the jury*, the defendant need not demonstrate actual prejudice to make out a due process violation.") Accordingly, we cannot review the error under the second prong of the plain error doctrine.

2. Ineffective Assistance of Counsel

The defendant argues in the alternative that we should review this issue because trial counsel was ineffective in failing to preserve it. Specifically, the defendant contends that he was denied his right to the effective assistance of counsel because counsel failed to include his objection to the defendant's shackling in his posttrial motion. To establish a claim of ineffective assistance of counsel, a defendant must demonstrate that his counsel's representation was deficient and that he was prejudiced by that deficiency. *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052 (1984). Both prongs of the *Strickland* test must be satisfied to establish an ineffective assistance of counsel claim. *People v. Albanese*, 104 Ill. 2d 504, 525-27 (1984). Counsel's performance is deficient if he fails to satisfy an objective standard of reasonableness.

No. 1-09-3424

Strickland, 466 U.S. at 687, 80 L.E.2d at 693, 104 S. Ct. at 2064. The defendant must overcome a strong presumption that the challenged action or inaction was the product of sound trial strategy. *People v. Evans*, 186 Ill. 2d 83, 93 (1999). A defendant is prejudiced if there is a reasonable probability that the outcome of the trial would have been different or that the result of the proceeding was unreliable or fundamentally unfair. *People v. Evans*, 209 Ill. 2d 194, 220 (2004). Such a reasonable probability “is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694, 104 S. Ct. at 2068. In deciding whether a defendant has demonstrated deficient performance and the reasonable probability of a different result, a review court must “consider the totality of the evidence before the judge or jury.” *Strickland*, 466 U.S. at 695, 104 S. Ct. at 2069. Where a defendant fails to satisfy *Strickland*’s second prong by failing to show prejudice, the reviewing court need not determine whether *Strickland*’s first prong of deficient performance has been met. *People v. Grant*, 372 Ill. App. 3d 772, 777 (2007).

In the present case, the defendant has failed to overcome the second prong of the *Strickland* analysis since he has failed to show how, absent counsel’s failure to include the shackling error in his posttrial motion, the outcome of his proceedings would have been different. We have already found that because the evidence of the defendant’s guilt was overwhelming, the defendant was not prejudiced by being required to wear the shackles on the first day of his trial. Accordingly, there is nothing to suggest that had defense counsel included the shackling issue in his posttrial motion, and had that motion been granted so as permit the defendant to be retried without shackles, the outcome of that trial would in any way have been different. Since the defendant has failed to establish the prejudice prong of the *Strickland* two-prong test, his

No. 1-09-3424

ineffective assistance of counsel claim must fail. See *People v. Crutchfield*, 353 Ill. App. 3d 1014, 1022 (2004) (holding that defendant failed to establish that counsel was ineffective for failing to object to the defendant wearing a stun belt during trial where there was overwhelming evidence of the defendant's guilt); see also *People v. Dupree*, 353 Ill. App. 3d 1037, 1045 (2004) (finding that in light of the overwhelming evidence presented against the defendant at his trial the defendant was not prejudiced by being required to wear a stun belt, thereby precluding any claim of ineffective assistance of counsel for counsel's failure to object to the wearing of the belt); see also *People v. Robinson*, 375 Ill. App. 3d 320, 329-34 (2007) (holding that the defendant's postconviction petition did not sufficiently allege the prejudice needed for a successful claim of ineffective assistance of counsel, despite the due process violation inherent in the visible shackling of a defendant, without justification, during the guilt phase of his jury trial, where there was overwhelming evidence of the defendant's guilt); see also *People v. Williams*, 228 Ill. App. 3d 981, 1014 (1992) ("failure to preserve an issue for appeal does not constitute ineffective assistance of counsel where there is overwhelming evidence of defendant's guilt").

For all of the foregoing reasons, we affirm the judgment of the circuit court.

Affirmed.