

No. 1-10-0265

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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. 07 CR 8965
)	
BRYAN ESTRADA,)	Honorable
)	Kevin M. Sheehan,
Defendant-Appellant.)	Judge Presiding.
)	

JUSTICE STERBA delivered the judgment of the court.
Justices Fitzgerald Smith and Pucinski concurred in the judgment.

ORDER

¶ 1 *HELD:* The State met its burden of proving defendant guilty beyond a reasonable doubt where the testimony of the two eyewitnesses, who were allegedly members of rival gangs, was not in conflict on the central issue of identifying defendant as the shooter. Credibility determinations are the province of the trier of fact and the jury received sufficient evidence to make such determinations with respect to both eyewitnesses. The circuit court erred in failing to ask the venire whether they accepted each of the four principles enumerated in Rule 431(b). However, this did not constitute plain error under the first

prong of the plain error doctrine. The evidence was not closely balanced where there was no conflicting testimony on the central issue of identification even though the two eyewitnesses had competing interests. The fact that the jurors must assess credibility does not by itself lead to a conclusion that the evidence was closely balanced where the testimony is not called into question by conflicting testimony or evidence. Finally, the circuit court did not abuse its discretion in refusing to allow cross-examination on the subject of whether a witness would testify on behalf of the codefendant where this line of questioning was irrelevant and speculative and where sufficient cross-examination was permitted to show bias, interest, or motive to testify falsely.

¶ 2 Defendant Bryan Estrada and codefendant Rufino Castillo were charged with first degree murder and attempted murder following a shooting. Defendant was also charged with personally discharging the firearm that caused the death of Luis Villegas, and for personally discharging a firearm in the attempted murder of Edgar Martinez. Following a jury trial before a separate jury, defendant was convicted of first degree murder and of personally discharging the firearm that caused the death. Defendant was also convicted of attempted murder and of personally discharging a firearm during the commission of that offense. He was sentenced to a total of 80 years in prison. On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt where the only evidence linking defendant to the crimes consisted of testimony from two eyewitnesses who provided conflicting, impeached and wholly unbelievable testimony. Defendant further contends that his convictions should be reversed because the trial court failed to comply with Illinois Supreme Court Rule 431(b) in a case in which the evidence was closely balanced. Finally, defendant contends that the trial court committed reversible error when it did not allow him to question a key witness for the State regarding whether he was going to testify for the defense in the case against Estrada's codefendant. For the reasons that follow, we affirm the judgment of the circuit court.

¶ 3

BACKGROUND

¶ 4 Defendant and Rufino Castillo were charged by indictment with the murder of Villegas and the attempted murder of Martinez in a shooting that occurred on March 25, 2007.

Defendant's motion for severance was granted and he and Rufino were tried together before separate juries. A third defendant, James Castillo, Rufino's brother, was originally charged with first degree murder, but those charges were dropped and he was subsequently charged with concealing or aiding a fugitive.

¶ 5 At trial, Martinez testified that he and Villegas had driven to an automotive store with Martinez's father. Martinez was driving a Chevy Tahoe. On the way back to his father's house, Martinez saw a red car on his left with two people he recognized in the front seat, Rufino and James. Martinez had known them for years from the neighborhood. Martinez said that he looked at them and motioned for them to go ahead but they motioned for him to go ahead, so Martinez drove off and the red car was behind him. Martinez drove for another block and then turned onto his street while the red car continued going straight. After dropping his father off at their home, Martinez drove off to look for Rufino and James with Villegas still in the car.

¶ 6 Martinez testified that he and Villegas were members of the Spanish Gangster Disciples street gang, and that Rufino and James were members of the Imperial Gangsters. Martinez stated that he went to look for Rufino and James because he wanted to "mess with them." When asked to explain what he meant by that, Martinez said, "Just, just talk crap to them, you know, like fight with them. Start trouble with them, you know." Martinez testified that he did not have any weapons with him at the time. He drove through an alley and when he came to a T intersection

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with another alley, he saw the red car in the intersecting alley. He stopped in the middle of the intersection and Villegas started "throwing gang signs." The people in the red car responded by "throwing gang signs" back. Martinez said that an individual got out of the back seat on the driver's side and started shooting in the direction of his car. He identified the shooter in court as the defendant. Martinez stated that James was driving the red car and Rufino was in the passenger seat. A fourth individual was in the back seat, but defendant was the only one who got out of the car.

¶ 7 Martinez testified that the window was down on the passenger side of his car where Villegas was sitting. When defendant started shooting, Martinez drove off. He drove two blocks away and then stopped the car to make sure Villegas was okay. He saw that a bullet had hit Villegas in the back of the head, so he called 911. The police came and Martinez told them what had happened and then went with them to the police station, where he identified James and Rufino in a photo array. The next day, the police contacted Martinez again and brought additional photos to his home. Martinez identified defendant in the photo array as the shooter. Martinez went back to the police station that same day and identified Rufino in a lineup. A few days later, Martinez identified defendant in another lineup.

¶ 8 On cross-examination, Martinez testified that two of his younger brothers were members of the Imperial Gangsters street gang and were friends with defendant. Martinez stated that when his brothers were in high school, he had picked them and defendant up after school. However, Martinez stated that he did not know defendant's name. Martinez further testified that at the time of the shooting, Villegas was his best friend, lived at his home, and was like a brother to him.

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Martinez testified that the shooter was approximately 5' 7" and had "fade" short hair. Martinez stated that he did not remember telling the police that the shooter had "black, slick back hair." Martinez confirmed that he initially told the police that James and Rufino were in the car, but did not mention defendant's name or tell the police that he knew defendant.

¶ 9 On redirect examination, Martinez testified that he told the police the shooter was between 5' 5" and 5' 7", 150 pounds, and had a "fade" haircut. He was then shown the photo of defendant that he previously selected from the photo array and he described the haircut in the photo as a "short fade." On recross, Martinez acknowledged that he never told the police that the shooter was someone his younger brothers knew and that he used to come to their house.

¶ 10 Jodi Villanueva testified that Rufino is the father of one of her two children and she was in a relationship with him at the time of the shooting. On the morning of March 25, 2007, Rufino and his brother James, who had both spent the night at her house, left in her maroon Ford Contour. Rufino returned to her house around 6 p.m. that day without James.

¶ 11 Mevludin Ibrisevic testified that on the afternoon of March 25, 2007, he was cleaning his car in his garage. His garage opened onto an alley and his garage door was open. He noticed a red car drive past his garage twice within 5 to 10 minutes. After the car passed the second time, he heard approximately four or five gunshots. On cross-examination, Ibrisevic testified that he saw four young men inside the car when it passed by his garage.

¶ 12 Officer Eron Glascott testified that he received a call from the dispatcher on March 25, 2007, reporting shots fired in the area of Bernard and Ainslie. Officer Glascott arrived on the scene within three to five minutes and saw a black SUV parked on the side of the street. A

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young man who was covered in blood was standing outside the car. Officer Glascott spoke to him and learned that his name was Edgar Martinez. Another young man was sitting in the passenger seat, but he was unresponsive. Martinez informed Officer Glascott that the shooting occurred in the alley between Monticello and Lawndale. On cross-examination, Officer Glascott testified that the description Martinez initially gave of the shooter was that he was a male Hispanic.

¶ 13 Marvin Otten testified that he was a forensic investigator with the Chicago Police Department, and that he and his partner were assigned to process the crime scene and collect evidence after the shooting. They took photographs of the scene, and of what appeared to be a bullet hole on the front panel of the passenger side of the car between the fender and the door. Investigator Otten testified that he searched the vehicle and did not find any weapons inside. From the alley between Monticello and Lawndale, Investigator Otten recovered four spent shell casings and a metal fragment.

¶ 14 Fred Bojic testified that he was an evidence technician with the Chicago Police Department, and that he processed the red Ford Contour. He recovered a spent shell casing from the middle of the lower part of the windshield in the cowl area, which is an area at the bottom of the windshield on the outside of the vehicle. Kurt Zielienski testified that he was a forensic scientist with the Illinois State Police. Zielinski examined the recovered shell casings and determined that the four spent shell casings from the alley and the spent shell casing from the lower windshield of the vehicle were all fired from the same weapon.

¶ 15 Detective Steven Suvada testified that he and his partner, Detective Mark Pawelski, went

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to the scene of the shooting on March 25, 2007. They spoke with Martinez, and he identified James and Rufino Castillo by name and described the shooter as a Hispanic male with a fade haircut, between 5' 4" and 5' 7". Detective Suvada testified that Martinez never described the shooter as having slick hair, but told them the shooter had a fade haircut. Martinez accompanied the detectives to the police station, where he viewed a photo array and identified James as the driver of the red car and Rufino as the front seat passenger. Detective Suvada was shown the photo array and asked about a specific photo of a person by the name of Manuel, who had slick hair. He verified that "IG Chino" was written on the back of that photo, underneath Manuel's name. Detective Suvada testified that neither he nor Detective Puwalski wrote "IG Chino." He further testified that Martinez did not write it and that he did not know who did.

¶ 16 The following day, Detectives Suvada and Pawelski went to a residential address and saw a red Ford Contour parked on the street outside the residence. They arrested Rufino at the residence and impounded the vehicle. Detective Suvada noticed there was a spent shell casing on the windshield of the vehicle so he notified an evidence technician. Later that evening, Detective Suvada and another officer went to Martinez's home and showed him another photo array. Martinez identified defendant in the array as the person who shot Villegas.

¶ 17 On March 28, 2007, Detectives Suvada and Pawelski arrested defendant and Carlos Vasquez. Martinez returned to the police station in the afternoon to view a physical lineup. Both defendant and Vasquez were in the lineup. Martinez identified defendant as the individual who shot Villegas. He did not identify anyone else in the lineup. Detective Suvada stated that Martinez never told him that he had previously known defendant. Detective Suvada testified that

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it was his understanding that Vasquez was the fourth person in the red car, but that Vasquez was never charged in connection with the shooting.

¶ 18 James testified on behalf of the State with only the defendant's jury present for his testimony. James testified that he was originally charged with first degree murder but those charges were dropped. James was subsequently charged with aiding a fugitive and he entered into a plea agreement with the State on that charge. Under the terms of the agreement, James would receive a sentence of probation in exchange for his truthful testimony. James testified that it was his understanding that the State dropped the first degree murder charges in exchange for his cooperation.

¶ 19 James testified that defendant was his neighbor in the late 1990s into early 2000. James had not had any contact with defendant after they were no longer neighbors until March 25, 2007. On that day, Rufino was driving James to the train station because James lived in Lake County at the time. Defendant called James and asked if he wanted to "go cruising." Defendant said he was at a nearby carwash, so Rufino drove to the carwash and James got out of the car and spoke briefly with defendant. Rufino and James then followed defendant and an individual James only knew as Carlos, who were driving separate cars, to a location in the neighborhood where the shooting later occurred. Defendant and Carlos parked their cars and got into the Ford Contour. At some point during these stops, Rufino said that he was tired of driving so he and James switched places. When the others got into the Ford Contour, defendant was seated behind James on the driver's side and Carlos was seated behind Rufino.

¶ 20 James testified that he drove around the neighborhood for approximately 30 to 45

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minutes. At some point, he drove down an alley between Lawndale and Monticello. James stated that it was the first time he had driven down the alley that day. Right before he got to the T intersection with another alley, a dark SUV blocked them. He saw the passenger door on the SUV crack open a little and then he heard gunshots from behind him. James testified that he went down for cover, heard the door behind him close, and knew immediately that defendant was the shooter. James stated that he did not see anyone flashing any gang signs before the shooting. After the shots were fired, defendant started shouting at James to get out of there, and James saw the SUV drive off. James testified that Rufino was shouting at defendant and everyone was "yelling and screaming." Defendant repeatedly told James to drop him off. James pulled over somewhere on Fullerton and defendant and Carlos got out of the car. Rufino then dropped James off at the train station.

¶ 21 During cross-examination, defense counsel asked James about his brother being charged with first degree murder. Counsel then began to ask a question related to Rufino's involvement in the shooting and the trial court called a sidebar. In chambers, the trial court cautioned defense counsel against pursuing a line of questioning involving Rufino. The court stated that it did not want the cross-examination to involve a defendant who was not before the current jury. Defense counsel stated that his next question was going to relate to James testifying against his brother. The trial court said that defendant's jury did not need to know whether James would be testifying against his brother and stated that was yet to be determined.

¶ 22 James testified that he had not seen Martinez on the day of the shooting. He said that when he saw the black SUV in the alley, he could not see who was inside the vehicle, and that he

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had not seen the vehicle earlier that day. James testified that he believed the windows on the SUV were closed, and that he did not see anyone throwing gang signs from either the vehicle he was driving or from the SUV. James confirmed that he had never seen a gun and did not see the actual shooting. James further testified that he had not gone to the police until a year-and-a-half after the shooting, and stated that he had no idea that his brother had been arrested because he had no contact with his family during that time. James stated that when he turned himself in with his attorney present on July 22, 2008, he was incarcerated on first degree murder charges. The trial court called another sidebar to discuss what defense counsel was allowed to ask regarding the charges and incarceration. The trial court said that defense counsel could ask a general question in order to establish bias, interest or motive to tell the truth, but could not get into the details. When cross-examination resumed, James testified that eventually the murder charges were dropped, and he posted bond on the charge of aiding a fugitive.

¶ 23 With only defendant's jury present, the parties stipulated that, if called as a witness, Ron Ryan, an investigator employed by the Cook County State's Attorney, would testify that he witnessed and documented the interview of James by two Assistant State's Attorneys on January 8, 2009. The parties further stipulated that Ryan would testify that when James was asked whether defendant was in a gang, he responded that defendant was an "IG."

¶ 24 Detective Michael Landando testified that he was assigned to participate in the investigation of the homicide of Villegas. On March 26, 2007, his partner picked Martinez up and brought him to the police station to view a physical lineup. Martinez identified Rufino as the passenger in the red vehicle and said that Rufino was "flashing gang signs."

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¶ 25 Defense counsel moved for a directed verdict on the basis that the two eyewitnesses had been impeached. The trial court denied the motion. The defense then called Detective Mark Pawelski. Detective Pawelski testified that he spoke to Martinez at the scene of the shooting. He stated that Martinez gave him a description of the shooter and he wrote it down in his notes. Detective Pawelski did not remember if Martinez said the person was Spanish, and he did not believe that Martinez described the shooter as having slick hair. Detective Pawelski was shown his police report to refresh his memory, and confirmed that he had written that the shooter had slick hair. He stated that he was told the shooter had slick hair by someone, but not by Martinez. He further testified that he could not remember who told him the shooter was short, Spanish, and had slick hair. Detective Pawelski was shown the exhibit of the photo array shown to Martinez on which "IG Chino" had been written on one of the photos. He testified that he did not know where the handwriting came from.

¶ 26 On cross-examination, Detective Pawelski testified that the report with the description of the shooter as having slick hair was not from the interview of any specific person. He testified that the report for his interview with Martinez did not mention slick hair. After he wrote the general reports, Detective Pawelski stated that he prepared a supplementary report and, in that report, he noted that the shooter had a fade haircut. On redirect, Detective Pawelski stated that the supplementary report was prepared within a day of the incident. He acknowledged that none of his handwritten notes contained a reference to a short, fade haircut, and that the supplementary report was the first document that mentioned a fade haircut.

¶ 27 In closing arguments, defense counsel noted that the photo in the array with the words

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"IG Chino" written on it was of a person with slick hair, and argued that the photo was of someone who fit the initial description of the shooter. During deliberations, the jury requested and received two copies of the transcript of Martinez's testimony. The jury was sequestered overnight. The following morning, the jury requested and received a transcript of James' testimony. The jury found defendant guilty of first degree murder, and that he personally discharged a firearm during the commission of that offense. The jury also found defendant guilty of attempted first degree murder, and that he personally discharged a firearm during the commission of that offense. Finally, the jury found defendant guilty of aggravated discharge of a firearm. The trial court entered judgment on the jury's findings on all counts.

¶ 28 Defendant's motion for a new trial was denied. Following a sentencing hearing, defendant was sentenced to 25 years for first degree murder with a 25-year enhancement for personally discharging a firearm, and 10 years for attempted first degree murder with a 20-year enhancement for personally discharging a firearm, to run consecutively, for a total of 80 years in prison. Defendant timely filed this appeal.

¶ 29 ANALYSIS

¶ 30 Defendant first contends that the State failed to prove him guilty beyond a reasonable doubt where the only evidence linking him to the crime consisted of eyewitness testimony from two witnesses who provided conflicting, impeached, and wholly unbelievable testimony. When considering whether the evidence was sufficient to sustain a criminal conviction, it is not the function of the reviewing court to retry the defendant. *People v. Hall*, 194 Ill. 2d 305, 329-30 (2000). "Rather, the relevant question on appeal is whether, after viewing the evidence in the

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light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.* at 330. We will only set aside a criminal conviction where the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *Id.*

¶ 31 The State presented testimony that on the day of the shooting, defendant called James and told him he wanted to "go cruising." The State also presented testimony that defendant was seated directly behind James in the car, that James heard gunshots coming from behind him, and that he then heard the door close behind him. Testimony at trial further established that Martinez identified defendant as the shooter within a day or two of the murder. Moreover, the State presented testimony that defendant was known to each of the individuals who identified him prior to the shooting.

¶ 32 In reviewing a challenge to the sufficiency of the evidence, this court will not substitute its judgment for that of the jury on questions regarding the weight of the evidence or the credibility of witnesses. *People v. Evans*, 209 Ill. 2d 194, 211 (2004). It is well settled that it is the province of the trier of fact to resolve conflicts or inconsistencies in the evidence, and reversal is not warranted merely because the defendant contends that a witness was not credible. *Id.* The mere suggestion that someone else may have committed the offense does not necessarily raise a reasonable doubt of the guilt of the accused. *People v. Manning*, 182 Ill. 2d 193, 211 (1998).

¶ 33 In the case *sub judice*, the jury was presented with conflicting testimony. Martinez testified that the red car had pulled up beside him and he had exchanged looks and gestures with

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the occupants of the vehicle, while James testified that he had never seen the black SUV that day before he encountered it in the alley. Martinez testified that the passenger window of the SUV was down and that occupants in both vehicles were "throwing gang signs." James testified that the windows in the SUV were up, that he could not see the occupants, and that nobody in either vehicle was displaying gang signs. Ibrisevic testified that he saw the red car drive past his garage in the alley twice within 10 minutes while James testified that he only drove through the alley once. Moreover, there was conflicting evidence presented about the initial description of the shooter, with Martinez testifying that he described the shooter as having a short fade haircut. Although the police interview notes taken by Detective Pawelski indicate that someone described the shooter as having slick hair, his supplementary report describes the shooter as having a short fade haircut.

¶ 34 However, it is the province of the jury to resolve conflicts in the evidence and assess the credibility of witnesses. We note that on the central issue of identification, the testimony of the two eyewitnesses, who allegedly were rival gang members, was not in conflict. Regarding credibility, Martinez testified that he was a member of a different gang than that of the defendant. He also testified that he did not tell police that he or his brothers knew the defendant. Moreover, the jury was aware that James was initially charged with first degree murder, was never apprehended by police, turned himself in more than a year after the shooting, and was ultimately only charged with aiding a fugitive. The jury was also aware that under the terms of his plea agreement with the State, James was sentenced to probation on the lesser charge in exchange for his testimony against the defendant. Finally, the jury was aware that James and Rufino were

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brothers. Thus, the jury possessed sufficient information regarding the credibility of the witnesses and determined that the identification of defendant was credible. Although we note that the evidence against the defendant was not overwhelming, after reviewing the entire record in the light most favorable to the prosecution, we cannot say that the evidence was so improbable or unsatisfactory that no rational trier of fact could have found defendant guilty beyond a reasonable doubt of first degree murder and attempted first degree murder.

¶ 35 Defendant next contends that the trial court's failure to comply with Illinois Supreme Court Rule 431(b) constitutes reversible error because the evidence was closely balanced.

Defendant concedes that he did not object to this error at trial or raise it in a posttrial motion, but argues that this court should review the error under the first prong of the plain error doctrine.

¶ 36 Issues raised on appeal are preserved for review by both objecting during trial and filing a written posttrial motion raising the alleged error. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988).

The plain error doctrine allows errors not previously challenged to be considered on appeal if 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. Piatkowski*, 225 Ill. 2d 551, 565 (2007); *People v.*

Herron, 215 Ill. 2d 167, 178-79 (2005). However, before conducting a plain error analysis we must determine whether an error in fact occurred. *People v. Sims*, 192 Ill. 2d 592, 621 (2000).

¶ 37 Rule 431(b) mandates a specific question and response process that the trial court must follow with each potential juror. Ill. S. Ct. R. 431(b) (eff. May 1, 2007); *People v. Thompson*,

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238 Ill. 2d 598, 607 (2010). Potential jurors must be asked whether they understand and accept the following four principles:

"(1) that the defendant is presumed innocent of the charge(s) against him or her; (2) that before a defendant can be convicted the State must prove the defendant guilty beyond a reasonable doubt; (3) that the defendant is not required to offer any evidence on his or her own behalf; and (4) that the defendant's failure to testify cannot be held against him or her." Ill. S. Ct. R. 431(b) (eff. May 1, 2007).

¶ 38 In the case *sub judice*, the trial court asked the entire panel of prospective jurors if they understood the principle that the defendant is not required to testify, but did not ask whether they accepted this principle. The trial court subsequently asked prospective jurors individually whether they understood each of the four principles, but again did not ask whether they accepted the principles. Our supreme court has held that Rule 431(b) requires questioning on whether potential jurors both understand and accept each of the four principles, and the failure to do so constitutes error. *Thompson*, 238 Ill. 2d at 607. Thus, the trial court erred in failing to ask the prospective jurors whether they accepted each of the principles.

¶ 39 Under the first prong of the plain error doctrine, we must consider whether the evidence was so closely balanced that the jury's guilty verdict may have resulted from the error and not the evidence, in order to preclude an argument that an innocent person was wrongly convicted. *Herron*, 215 Ill. 2d at 178. "Whether the evidence is closely balanced is, of course, a separate question from whether the evidence is sufficient to sustain a conviction on review against a

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reasonable doubt challenge." *Piatkowski*, 225 Ill. 2d at 566. Defendant relies on *People v.*

Belknap, 396 Ill. App. 3d 183 (2009) in support of his contention that the evidence here is closely balanced. We find this reliance to be misplaced.

¶ 40 In *Belknap*, two jailhouse informants testified that the defendant confessed to hitting the victim prior to her death, while the defendant denied making any such statements. *Id.* at 206-07. The remaining evidence against the defendant was circumstantial, and, although it tended to prove that the defendant had opportunity and motive, it was not sufficient on its own to prove the defendant guilty beyond a reasonable doubt. *Id.* at 207. In holding that the evidence was closely balanced, this court noted that the testimony of jailhouse informants can be the basis for a guilty verdict, but such testimony should also be treated with caution. *Id.* at 206-07 (citing *People v. Manning*, 182 Ill. 2d 193, 210-11 (1998) and *People v. Williams*, 65 Ill. 2d 258, 267 (1976)).

¶ 41 In the case *sub judice*, there was no conflicting testimony presented on the central issue of identification of the defendant as the shooter. We also note that the two eyewitnesses had competing interests in terms of gang affiliation, and, therefore, no reason to cooperate with each other. While James' testimony contained many inconsistencies with the testimony of other witnesses and defense counsel demonstrated a clear bias and motive to shift attention away from himself and his brother, no evidence was presented to suggest any motive for James to falsely identify the defendant specifically as the shooter. Regarding the initial description of the shooter, Detective Pawelski testified that he could not remember who described the shooter as having slick hair but it was not Martinez, and his partner, Detective Suvada, testified that Martinez initially described the shooter as having a fade haircut.

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¶ 42 We have examined other cases in which the evidence has been found to be closely balanced, and have determined that those cases are also distinguishable. See *People v. Evans*, 369 Ill. App. 3d 366, 376 (2006) (concluding that the evidence was closely balanced where the verdict was based on the jury's credibility determination of two expert witnesses who testified to competing theories); *People v. Wilson*, 199 Ill. App. 3d 792, 795 (2011) (concluding that the evidence was closely balanced where the victim's testimony constituted the principal evidence against the defendant and a witness testified that the victim had a motive to lie); *People v. Vesey*, 2011 IL App (3d) 090570, ¶ 17 (holding that the evidence was closely balanced where each side presented witnesses and the verdict was based on the credibility of the competing witnesses); *People v. Naylor*, 229 Ill. 2d 584, 608 (2008) (holding that the evidence was closely balanced where the conviction was based on the testimony of two police officers against that of the defendant and no additional evidence was introduced to contradict or corroborate either version of events).

¶ 43 Each of these cases involved a credibility determination by the finder of fact between competing accounts in which little or no corroborating evidence was presented. Here, there is no competing account of the issue that is central to the case, namely, the identification of the defendant as the shooter. Only two eyewitnesses testified, and both of them identified defendant as the shooter. The mere fact that the jury must determine whether the identification witnesses were credible does not, by itself, lead to a conclusion that the evidence was closely balanced. See *People v. Hammonds*, 957 N.E. 2d 386, 407 (2011) (noting that the need for a credibility assessment of a witness whose testimony was not called into question by a competing witness or

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other evidence does not make the evidence closely balanced). There was no witness who provided a conflicting identification, therefore, the jury was not asked to determine the relative credibility of witnesses who testified to competing identifications. Moreover, there was no evidence presented that called into question the identification of defendant as the shooter, but rather mere speculation regarding a seeming discrepancy related to the initial description in the investigating detective's notes, and a photo in an array that appeared to match the alleged initial description but that was not selected by the State's primary witness. Thus, we conclude that, while the evidence against defendant was not overwhelming, the evidence was not so closely balanced that the jury's guilty verdict may have resulted from the error and not from the evidence.

¶ 44 Finally, defendant contends that the trial court violated his right to confrontation when it did not allow him to question James about the fact that he was planning to testify on behalf of the defense in his brother's case. Defendant concedes that he did not object to this error at trial or raise it in a posttrial motion, but argues that this court should review the error under both prongs of the plain error doctrine. Before conducting a plain error analysis, we must determine whether an error in fact occurred. *Sims*, 192 Ill. 2d at 621.

¶ 45 The United States and Illinois Constitutions guarantee a criminal defendant the right to confront the witnesses against him. U.S. Const., Amend. VI; Ill. Const. 1970 art I, § 8. The exposure of a witness' bias, interest or motive to testify falsely is an important function of this constitutional right. *People v. Klepper*, 234 Ill. 2d 337, 355 (2009). However, trial courts still retain wide latitude to impose reasonable limits on inquiries into potential bias without violating a defendant's constitutional rights. *Id.* Moreover, a reviewing court is not required to look at a

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particular limitation in isolation but will look to the record in its entirety to determine whether the limitation created a substantial danger of prejudice by depriving the defendant of the only means available for impeachment of the witness. *Id.* at 355-56. Thus, if the trier of fact "has been made aware of adequate factors concerning relevant areas of impeachment of a witness, no constitutional question arises merely because the defendant has been prohibited on cross-examination from pursuing other areas of inquiry." *Id.* at 356. On review, we will not disturb the trial court's imposition of limits on cross-examination unless there has been a clear abuse of discretion resulting in manifest prejudice to the defendant. *People v. Kirchner*, 194 Ill. 2d 502, 536 (2000).

¶ 46 The record discloses that the jury was well aware of James' bias, interest, or motive to testify falsely. The testimony disclosed that James was the codefendant's brother, and that James had also initially been charged with murder and attempted murder. Although the State repeatedly attempted to establish that the first degree murder charges were dropped first and only then was James offered probation on the lesser charge in exchange for his testimony, James himself testified that it was his understanding that the first degree murder charges were dropped because he agreed to testify. James' credibility was further called into question on a number of issues where his account differed from that of other witnesses. The only limitation imposed on James' cross-examination was that defense counsel was barred from asking about his potential testimony on behalf of his brother. The trial court explained that this line of questioning was irrelevant and speculative. We agree. Because the jury was made aware of adequate factors concerning relevant areas of impeachment, the trial court did not abuse its discretion in prohibiting questions

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regarding James' potential testimony on behalf of his brother. We conclude that the trial court did not err and thus, there can be no plain error.

¶ 47 Accordingly, we affirm the judgment of the circuit court.

¶ 48 Affirmed.