FOURTH DIVISION
August 2, 2012

No. 1-10-1914

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 08 CR 12339
	)	
	)	
JOHNNY SPEARS,	)	The Honorable
	)	Thaddeus L. Wilson,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE LAVIN delivered the judgment of the court.
Justice Smith and Pucinski concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly admitted, as substantive evidence, prior inconsistent statements of various witnesses for the State and did not commit error in admitting the testimony of the State's prove-up witnesses. Second, defendant's constitutional right to confront witnesses against him was not violated because he did not provide a formal offer of proof supporting the evidence of which he wished to inquire and the matter itself was collateral. Finally, even if the trial court committed error by failing to ask the jury members prior to trial if they understood the principles stated in Illinois Supreme Court Rule 431(b) (eff. May 1, 2007), as required, the error did not rise to the level of plain error because the evidence was not closely balanced. The decision of the trial court was therefore affirmed.

¶ 2 Following a jury trial, defendant was found guilty of first degree murder for the shooting

death of Octavious Dandridge, and he was sentenced to 45 years in prison. His conviction rested in part on prior inconsistent statements admitted as substantive evidence (recanted at trial) that pointed to him as the shooter. On appeal, defendant raises three contentions. Defendant first argues the court committed plain and reversible error in admitting those prior inconsistent statements of the State witnesses. He next contends his constitutional right to confront Charles Munyi and DeAngelo Jones as to bias was violated when denied the opportunity to cross-examine them about Munyi's alleged use of the Dandridge murder weapon in a subsequent armed robbery. Defendant finally contends that the trial court failed to comply with Illinois Supreme Court Rule 431(b) (eff. May 1, 2007) when questioning the jury, and this constituted plain and reversible error because the evidence in this case was closely balanced. We affirm.

¶ 3 BACKGROUND

¶ 4 Defendant was arrested and then charged with the murder of Dandridge after police identified him as a prime suspect in the shooting, which occurred at Chicago and St. Louis Avenues in the city of Chicago on April 22, 2008. The State's evidence revealed that defendant and his three cohorts were walking by this area after dropping a friend at the bus stop when they encountered Dandridge and Deon Richard. Defendant and Dandridge exchanged unpleasantries, and defendant then shot Dandridge. The defense theorized that Munyi, who was with defendant on the evening in question, was the shooter.

¶ 5 Prior to trial, defense counsel notified the court that he wished to ask Munyi and Jones about allegations that they used the same gun in an armed robbery shortly after the murder. By then, Jones had been convicted of the armed robbery and the charges against Munyi remained pending. The court ruled that defense counsel would be prohibited from questioning either witness about the gun in that regard. The court thus rejected defense counsel's argument that

such proposed questioning would be relevant to show Munyi had access to the murder weapon and that if Munyi used the gun later, "he certainly had access at an earlier point when the shooting happened."

¶ 6 As stated, defendant's conviction rested in part on formal written statements and grand jury testimony admitted as substantive evidence at trial pursuant to section 115-10.1 of the Illinois Code of Criminal Procedure of 1963 (725 ILCS 5/115-10.1 (West 2008)), but ultimately recanted by three witnesses who testified for the State. The first of such witnesses to testify was Richard, best friend of the victim. Richard's testimony revealed that he met with police and an assistant State's Attorney (ASA) several days after the murder, on April 24, 2008, during which time he detailed the events of the fatal shooting. The ASA recorded Richard's statement by hand. Richard then reviewed and signed each page of the statement as a testament to its accuracy. At trial, Richard acknowledged and identified this statement, which was introduced into evidence both as an exhibit and through Richard's testimonial acknowledgments. According to this statement, he and Dandridge were standing near the intersection of Chicago and St. Louis Avenues when Richard observed two black men pass within feet of them. One, whom he later referred to as "Shorty," was about six-feet tall, dark skinned, of medium weight, and with braids and a black hoodie. Shorty asked Dandridge "what did he say," and when Dandridge responded that they were "not on that," street slang meant to indicate that they didn't want any problems, an argument ensued. This prompted Shorty to grab a black gun from his waistband and shoot at Dandridge, who ran but the shooter pursued him, firing his weapon seven or eight more times and hitting Dandridge in the back and neck. Richard, who stated no one else had a gun, then flagged down police. At the time of his statement, Richard identified defendant as the shooter from a photographic array. He also identified defendant's companion that day as a man named

Jerrell Dillard. At trial, Richard acknowledged he had made these identifications. His statement indicated that he signed it absent threats or promises. According to his statement, although Richard did not know defendant's given name, he knew defendant lived in the area and Richard had been familiar with him for several years.

¶ 7 Richard acknowledged at trial that his June 18, 2008, grand jury testimony was substantially the same as his written statement to police, as well as the information he conveyed to the State's Attorney prior to going before the grand jury. As was the case with Richard's police statement, the State reviewed the content of Richard's grand jury testimony with him at trial, and the grand jury testimony was entered as an exhibit.

¶ 8 Richard's trial testimony was different. Richard testified that although he was at the scene, he only heard the gunshots. He did not see the shooter. He testified that police essentially forced his statement, which he fabricated based on the neighborhood gossip surrounding the event. He explained that he was angry and wanted someone to be convicted for his best friend's murder, so he added his "own one's and two's."

¶ 9 Following Richard's testimony, the State presented three witnesses to prove up Richard's prior inconsistent statements. Chicago police sergeant Daniel Gallagher, who interviewed Richard at the police station on April 24, verified the contents of Richard's statement at trial and his photo identification of defendant as the shooter. Sergeant Gallagher stated that Richard had believed that the man named Dillard was next to defendant during the shooting, but Sergeant Gallagher's investigation subsequently revealed that this person was really Munyi. ASA Joy Tolbert Nelson, present April 24, testified that she took Richard's statement, which she identified in court, and reviewed it with him. She noted that he had signed each page. ASA Nelson verified that Richard identified defendant as the shooter, but she did not specifically testify as to

the contents of the statement. And, finally, ASA Patrick Keane, who presented Richard to the grand jury on June 18, verified that Richard relayed the same story as provided in his statement to the grand jury. During the grand jury presentation, Richard again identified defendant as the shooter and Dillard as the companion, this time from a still photo taken by a pod camera close to the murder scene. ASA Keane also did not specifically testify as to the contents of Richard's police statement or grand jury testimony. All three aforementioned witnesses for the State testified that there was no foul play involved and that Richard never indicated that his story was fabricated. Richard in fact told ASA Nelson that the information in his statement was based on his own observations, and he told ASA Keane that he personally witnessed the shooting.

¶ 10 The second State witness to be impeached by his prior inconsistent statement was defendant's uncle, Owen Turner. At trial, Turner acknowledged that he also spoke with the police several days after the shooting and, on June 20, 2008, gave a signed statement. The statement was entered into evidence through Turner's testimonial acknowledgments and as an exhibit. Turner's statement revealed that when presented with the pod camera photo, Turner identified himself, Rodney, Munyi, and defendant coming back after dropping off Dillard at a bus stop. Turner stated that defendant then exchanged words with Dandridge, whom Turner identified in a photo.

¶ 11 Turner's trial testimony differed significantly in that he implicated Munyi as the shooter. Turner denied observing defendant and Dandridge arguing, suggesting instead that it was Munyi who argued with Dandridge immediately before shots were fired. Specifically, Turner testified that on the day in question he, Rodney, Munyi, and defendant walked Dillard to the bus stop where Turner saw Dillard take something from his waistband and hand it to Munyi. Defendant, meanwhile, had stepped into a convenience store. Dillard hopped on the bus, leaving the scene.

After this occurrence, Turner, Rodney, Munyi, and defendant walked near Chicago and St. Louis Avenues, with Munyi and defendant lagging a few feet behind. According to Turner's trial testimony, Rodney then stated that "Ghost and dude was arguing," meaning that Munyi and apparently another person had been arguing, which Turner felt was "none of our business." The group continued to walk when Turner suddenly heard gunshots. At that point, he and the other men fled. Although Turner testified that he did not see the gun after the shooting, on cross-examination Turner stated that he saw Munyi with the gun, which was black with a pearl handle. Later, Turner saw Munyi and Jones in the alley with a shovel burying the gun. Turner acknowledged on redirect that he had not told the police or the ASA the information regarding the gun until trial.

¶ 12 Following Turner's testimony, the State presented two witnesses to prove up Turner's prior inconsistent statements refuting the defense theory that Munyi was the shooter. Chicago police detective Donald Hill, who interviewed Turner at the police station on June 20, and ASA Jose Villareal, who took Turner's statement in the presence of Detective Hill the next day, both testified that Turner made no mention of Dillard passing something to Munyi at the bus stop, of Munyi and Dandridge arguing, or of seeing Munyi with a gun several days after the shooting. Rather, Detective Hill testified that, according to Turner, it was defendant and Dandridge who were arguing. Detective Hill further verified that ASA Villarreal took a handwritten statement from Turner.

¶ 13 The third impeachment involved defendant's cousin Jones. Jones' grand jury testimony was entered into evidence through his testimonial acknowledgments and as an exhibit. His trial testimony and prior grand jury testimony revealed the following. Jones testified that shortly after the murder, defendant telephoned him, asking him to retrieve a gun, which Jones agreed to do.

Soon thereafter, Munyi also telephoned Jones and asked him to accompany Munyi to "get rid" of a gun. Jones acknowledged at trial that he did not mention this telephone conversation with Munyi in his grand jury testimony. Jones nonetheless testified that he, Munyi, and Turner retrieved the gun from an appointed spot. Munyi "threw" the gun at Jones, a black .22 caliber revolver with a pearl handle wrapped in a blue bandana. Jones wiped his prints off the gun, returned it to Munyi, and Munyi drove the men to bury the gun. Munyi buried it, while Jones and Rodney looked on.

¶ 14 A few days after they buried the gun, Jones asked defendant "[w]hat would make you do something stupid like [that]?" and defendant responded, "[i]f the shoe was on the other feet he would have did me in." Although Jones testified that he and defendant were referencing an unrelated incident that *did not* involve killing anyone, his grand jury testimony indicated otherwise, that the two were referencing defendant's act of shooting Dandridge in "broad daylight" and that defendant then asked Jones to get rid of the gun for him.

¶ 15 In addition, at trial, when defense counsel confronted Jones on cross-examination with his grand jury testimony regarding his conversation with defendant, Jones again revised his account, maintaining that he and defendant actually were referring to Munyi. Jones acknowledged on cross-examination that he was incarcerated for the armed robbery which he had committed with Munyi at the time that he gave his grand jury testimony.

¶ 16 The State called two prove-up witnesses, Detective Hill and ASA Keane, both of whom interviewed Jones before his grand jury appearance. Jones never mentioned that Munyi had called him after the shooting and told him to get rid of the gun. Also contrary to his trial testimony, Jones reported that both Munyi and Turner (as opposed to just Munyi) had the gun several days after the shooting. In addition, per ASA Keane, Jones described the conversation he

had with defendant after the gun was buried, but never made mention that the conversation was really about Munyi, *i.e.* that it was Munyi admitting to the shooting.

¶ 17 Munyi testified at trial that he had pending convictions for robbery and armed robbery. One of the armed robberies took place in 2008 with Jones as his codefendant. He denied making deals with the State in exchange for his testimony.

¶ 18 Munyi testified that he knew defendant and defendant's relatives who lived next door. On the day in question, Munyi was at defendant's house when he, Rodney, Turner, and defendant decided to walk with Dillard some three blocks to the bus stop because, with so much animosity in the "turf," Dillard did not feel safe going it alone. After Dillard boarded the bus, the group of men walked back from the bus stop. Munyi identified a still photo of the group doing just that. While walking, Turner and Rodney cut across a vacant lot, but Munyi and defendant remained on the sidewalk, where they eventually encountered Dandridge and his friends. Munyi testified that Dandridge began to threaten defendant, an argument ensued, during which time Dandridge labeled defendant a "snitch." At that point, defendant pulled out a long-nosed black revolver with a white handle from his waist and shot Dandridge in the head. Dandridge tried to run, but was shot again, he staggered, then fell to the ground. Meanwhile, defendant fired more shots at Dandridge's back.

¶ 19 Days later, while visiting the next-door residence of Rodney and Jones, Munyi saw the same gun being passed around. Munyi acknowledged his grand jury testimony that he knew it was the same gun because it had an ivory handle, long chamber, and held nine shots. Munyi testified that the last time he saw the gun, was in that house. He did not know what happened to it thereafter. He denied that he telephoned Jones to get rid of the gun or that he partook in its burial, stating he was unaware of its burial at all.

¶ 20 Prior to Munyi's cross-examination, the judge held a meeting in his chambers during which time defense counsel renewed his request to inquire into the armed robbery, where counsel claimed Munyi and Jones had used the same gun as used in the shooting. Counsel argued the questions were relevant to impeach Munyi's testimony that he saw the gun only a few days after the shooting, but never again, and to corroborate the testimony of Turner and Jones at trial that Munyi partook in the gun's burial. The court inquired whether defense counsel was specifically able to "link" the gun used in murder to the gun used in the armed robbery. Counsel responded that Jones told him, "the armed robbery he and Munyi had pulled off was with that gun." The court said that its earlier ruling denying counsel's request to so inquire would stand, explaining that if counsel could not "prove it up with certainty," the court would not "get into this other case."

¶ 21 At the conclusion of the State's case, the parties stipulated that, according to Dr. James A. Filkins of the Cook County Medical Examiner's Office, Dandridge died of multiple gunshots to his neck, back, buttocks and the manner of death was a homicide.

¶ 22 The only testifying witness for the defense was Jerrell Dillard, defendant's step-brother. Dillard testified that he had known defendant his entire life. Dillard testified that he asked defendant to walk him to the bus stop on the evening in question as a protective measure. Dillard did not want to travel alone because there had been a confrontation with Dandridge earlier and Dandridge was "patrolling" the area. The rest of the group arrived, including Rodney, Turner, and Munyi. Dillard asked Munyi for a gun, and Munyi handed him a black revolver with a long barrel and white handle. The group, which included defendant, then proceeded to the bus stop. Before boarding the bus, Dillard handed Munyi the gun and never saw it again.

¶ 23 On cross-examination, Dillard admitted that he lied to the police after the shooting and

said he had not seen defendant recently. He also did not mention going to the bus with the group.

¶ 24 The State called Detective Hill, who verified those statements Dillard made on cross-examination by testifying as a rebuttal witness. Detective Hill added that Dillard did not mention borrowing a gun from Munyi. Dillard did not indicate that Munyi was even present that evening. The State also called Munyi as a rebuttal witness. Munyi denied giving Dillard the gun or taking it from him. He testified he did not possess a gun on the evening in question.

¶ 25 Following evidence and argument, the jury found defendant guilty of first degree murder and determined that he personally discharged the gun that caused Dandridge's death. Defendant filed a motion for a new trial, wherein he once again argued he should have been allowed to cross-examine Jones and Munyi regarding their alleged use of the murder weapon in a later armed robbery. The trial court denied defendant's motion for a new trial, then sentenced him to 45 years in prison. Defendant appealed.

¶ 26 ANALYSIS

¶ 27 Issue 1: Admission of Prior Inconsistent Statements

¶ 28 Defendant first challenges the admission of certain prior inconsistent statements in the State's case-in-chief, claiming they were prejudicial. Initially, the State responds that defendant forfeited his claim because he did not object both at trial and raise the issue in his posttrial motion. Defendant acknowledges this fact, but contends the plain error rule applies because the evidence was closely balanced and the cumulative nature of the error affected the integrity of the judicial process, thus permitting our review of his unpreserved claims. See *People v. Thompson*, 238 Ill. 2d 598, 613 (2010). The first step of plain-error review is determining whether any error occurred. *Id.* For the reasons to follow, we conclude defendant has failed to fulfill his burden of persuasion in this regard because no error occurred at all. See *Id*.

¶ 29 Defendant argues that the State "introduced *nine* prior witness statements," including "four from Deon Richard *** two from Owen Turner *** and three from DeAngelo Jones." Defendant purports to challenge the admissibility of these prior inconsistent "statements" and also argues they were unduly repetitive and cumulative.

¶ 30 We observe the admission of evidence lies within the sound discretion of the trial court, and we review the trial court's decision to admit evidence for an abuse of discretion. *People v. Wilson*, 2012 IL App (1st) 101038, ¶ 38. Hearsay, of course, is inadmissible at trial. *People v. McCarter*, 385 Ill. App. 3d 919, 929 (2008). One of the many exceptions to this rule allows admission of prior inconsistent statements of a testifying witness at trial. *Id*. at 930. Under relevant portions of section 115-10.1 of the Illinois Code of Criminal Procedure of 1963 (725 ILCS 5/115-10.1 (West 2008)), a prior inconsistent statement may be admitted as substantive evidence when (1) the prior statement is inconsistent with the witness's trial testimony; (2) the witness is subject to cross-examination regarding the prior statement; and (3) either the prior statement was made under oath at a trial, hearing, or other proceeding, *or* the prior statement is within the witness's personal knowledge. If within the witness's personal knowledge, either the prior statement must be proved to have been written or signed by the witness, *or* must be acknowledged by the witness at trial. 725 ILCS 5/115-10.1(c)(2)(A),(B) (West 2008).

¶ 31 We must clarify that the only prior inconsistent statements that were formally admitted by the State in this case included Richard's statement to police, Richard's grand jury testimony, Turner's grand jury testimony, and Jones' grand jury testimony. At trial, defendant never disputed the admissibility of these prior inconsistent statements as substantive evidence under section 115-10.1, and he does not appear to dispute their admissibility on appeal; rather, defendant is challenging the prove-up testimony submitted by the State regarding these

statements.

¶ 32 Defendant first challenges the testimony by both ASA Keane and Detective Hill regarding statements made by Richard and Jones prior to their respective appearances before the grand jury. Defendant maintains the statements testified to were not admissible as substantive evidence because they were not "written or signed" by the witnesses who made them or acknowledged by them under oath. This argument is devoid of merit.

¶ 33 Here, Detective Keane testified that during his pre-grand-jury interview, Richard identified defendant as the shooter. Keane testified that Richard reported what he saw and heard during the shooting and that he saw the shooting himself. During this interview, Richard did not say his statement was based on neighborhood gossip, that it was a result of police coercion, or that Richard was merely pinning the murder on defendant because Richard was depressed about his friend's death. This testimony was entirely proper as prove-up testimony, where Richard acknowledged on direct examination that his prior police statement was substantially the same as both his grand jury testimony and *also* the information he conveyed to the State's Attorney prior to going before the grand jury. We conclude that Richard then acknowledged the statements made to ASA Keane in a fashion sufficient to satisfy section 115-10.1.

¶ 34 Were we to find the error that defendant urges, it would surely be harmless because Sergeant Gallagher and ASA Nelson testified to the same statements made by Richard, and defendant does not contest the admissibility of their testimony in that specific regard. See *People v. Harvey*, 366 Ill. App. 3d 910, 921-22 (2006). Defendant's claim as to ASA Keane fails.

¶ 35 Defendant's claim regarding the statements made by Turner to ASA Keane and Detective Hill also fails, albeit for different reasons. Given the record, defendant has waived the right to even make his substantive argument. The record shows that in the middle of ASA Keane's

testimony, the parties held a side conference. The State expressed that it wished to ask ASA Keane about whether Jones relayed to ASA Keane during the pre-grand-jury interview that both Munyi and Turner threw the gun in his hand and whether Jones relayed the same information to the grand jury. The State also expressed its desire to question ASA Keane about what Jones said to ASA Keane regarding the conversation wherein Jones asked defendant about killing the victim in broad daylight and also what Jones said to the grand jury in that regard. Defense counsel did not object and indeed agreed that the State was permitted to ask these questions. Similarly, when the State presented Detective Hill as a witness, defense counsel stated that it was "okay" for the State to ask Detective Hill whether Munyi called Jones after the murder and directed him to get rid of the gun. Defendant cannot now complain about an alleged error with respect to the testimony that was elicited as a result of these questions, when he not only failed to object to the questions but consented to their admission at trial. See *People v. Bush*, 214 Ill. 2d 318, 333 (2005).

¶ 36 Defendant's second admissibility argument is that the State improperly bolstered its case by introducing repetitive and cumulative testimony regarding the prior inconsistent statements by Richard and by Turner. In particular, defendant argues that Sergeant Gallagher and ASA Nelson testified in a repetitive manner regarding Richard's police statement, and, ASA Keane, regarding Richard's grand jury testimony. Defendant argues that Detective Hill and ASA Villareal testified in a repetitive manner regarding Turner's police statement. Defendant argues that the same evidentiary rule prohibiting presentation of a prior consistent statement to bolster trial testimony should apply here. Putting aside the fact that not all of these witnesses actually testified to the specific content of the witness' statements, defendant's claim still fails.

¶ 37 Defendant acknowledges a similar claim was recently rejected by *People v. Johnson*, 385

Ill. App. 3d 585, 608 (2008), which held that prior inconsistent statements, by their very nature, cannot bolster the witness's trial testimony because they are different from the earlier statement, and, thus, the evidentiary rule prohibiting repeated consistent statements should not apply. Defendant has not provided this court with a persuasive reason to depart from *Johnson* and its substantial progeny. See also *People v. White*, 2011 IL App (1st) 092852, ¶ 53 (agreeing with *Johnson* and further reasoning that applying general bar to inconsistent statements which are consistent with each other would "frustrate the legislature's goal of discouraging recanting witnesses"); *People v. Santiago*, 409 Ill. App. 3d 927, 932-34 (2011), and cases cited therein (agreeing with *Johnson* and rejecting application of second-prong plain error). We therefore reject defendant's argument.

¶ 38 Defendant's argument that the prior inconsistent statements were needlessly cumulative fares no better. The jury was required to assess the prior inconsistent statements of Richard in light of his trial claim that the statements were not true and were forced by police. The jury was simply better able to do this knowing that Richard made the statements at different times to different officials and before the grand jury, but omitted the details he set forth at trial. See *People v. Wilson*, 2012 IL App (1st) 101038, ¶ 47. The same reasoning applies to the testimony of Detective Hill and ASA Villareal regarding Turner's statement. Based on the foregoing, because there was no error, there was no plain error. Defendant's claim fails.

¶ 39 Issue 2: Confrontation Clause

¶ 40 Defendant next contends that the trial court violated his constitutional right to confront witnesses against him when the court denied defense counsel's request to cross-examine both Jones and Munyi about their alleged use of the murder weapon in a subsequent armed robbery. Defendant argues the opportunity to cross-examine on this point was relevant to establish bias

and would have served as important impeachment evidence showing Munyi had access to the gun, as well as corroborative evidence that Munyi buried the gun. The State responds that the court acted within its discretion and no constitutional right was implicated.

¶ 41 The confrontation clause of the sixth amendment of the United States Constitution (U.S. Const., amend. VI; see also Ill. Const. 1970, art. I, sec. 8) guarantees a defendant the right to cross-examine a witness's bias, interest or motive to testify falsely. *People v. Klepper*, 234 Ill. 2d 337, 355 (2009). That is, a cross-examiner is allowed to delve into a witness's story, test the witness's perceptions, and impeach or discredit a witness. *Delaware v. Fensterer*, 474 U.S. 15, 19 (1985). Although any limitation on the right to cross-examine requires scrutiny, a defendant's rights under the confrontation clause are not absolute. *People v. Averhart*, 311 Ill. App. 3d 492, 497 (1999). The confrontation clause guarantees an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way and to whatever extent the defense desires. *Id.*, citing *Fensterer*, 474 U.S. at 20. A court has discretion to impose reasonable limits on cross-examination to curtail possible harassment, prejudice, jury confusion, witness safety, or repetitive and irrelevant questioning, but this discretionary authority only comes into play after the court has permitted, as a matter of right, sufficient cross-examination to satisfy the confrontation clause. *People v. Tabb*, 374 Ill. App. 3d 680, 689 (2007); *Averhart*, 311 Ill. App. 3d at 497.

¶ 42 For the reasons to follow, we conclude the court did not abuse its discretion in this case and defendant's constitutional rights were honored. Where, as here, a line of questioning is denied by the trial court, the defendant must set forth an offer of proof either to convince the trial court to allow the testimony or to establish on the record that the evidence was directly and positively related to the issue of bias or motive to testify falsely. *Tabb*, 374 Ill. App. 3d at 689.

A formal offer of proof is typically required; however, an informal offer of proof, involving counsel's summary of what the proposed evidence might prove, may be sufficient if specific and not based on speculation or conjecture. *Id*. In other words, where it is not clear what a witness would say, or what the basis would be for saying it, the offer of proof must be considerably detailed and specific. *People v. Leak*, 398 Ill. App. 3d 798, 822 (2010). This procedure ensures that a reviewing court can know what was excluded and determine whether the exclusion was proper. *People v. Peeples*, 155 Ill. 2d 422, 457 (1993). Indeed, the failure to make an adequate offer of proof results in a waiver of the issue on appeal. *Id*. at 458.

¶ 43 Here, the trial court requested that defense counsel provide a formal offer of proof that the weapon used in the murder was the same as that allegedly used in the armed robbery committed by Munyi and Jones. Counsel, however, was unable to provide any definitive proof in that regard. Counsel did not provide a case number, record, affidavit, police report, ballistics testing, or other evidence besides the conjectured testimony of Jones, the State's turncoat witness, to substantiate counsel's assertion that the gun was the same. See *Leak*, 398 Ill. App. 3d at 822-23. Counsel's informal pretrial offer of proof was also lacking. Prior to trial, counsel notified the court that he had recently interviewed Munyi and that based on that interview, and on Munyi's grand jury testimony, counsel averred that Munyi had been "involved in hiding or getting rid of the gun" used in the murder. Counsel then added that Munyi "was also involved in an armed robbery with the same gun at a later point, which I believe will come up." Although defendant argues otherwise, the record does not reveal any reliable basis for counsel's assertion that Munyi used the same gun in the later armed robbery. In addition, contrary to defendant's suggestion now on appeal, there is no evidence that Munyi was motivated to testify falsely in exchange for leniency from the State. Based on the foregoing, we conclude the trial court did not abuse its

discretion in rejecting counsel's informal offer of proof, as it was too speculative and lacked a specific basis. See *Tabb*, 374 Ill. App. 3d at 690 (offer of proof insufficient where it was conclusory statement based only on counsel's conversation with defendant). Defendant has waived his claim for review. *Id.*

¶ 44 We note, finally, that even waiver aside, like the trial court, we question the relevance of defendant's proposed line of inquiry. Whether Munyi and Jones used the gun in a later armed robbery following the murder does not in any way vitiate the State's competent evidence showing it was defendant who was the shooter. This evidence included the eyewitness statement from Richard, which he repeated to the grand jury, and the eyewitness testimony of Munyi identifying defendant as the shooter, as well as the statement of Jones that defendant essentially admitted shooting the victim. As the State notes, no witnesses at trial actually identified Munyi as the shooter, and Munyi's later use of the gun would not competently support the defense theory that he was the shooter. The evidence shows that multiple people in defendant's posse handled the gun and, as the trial court noted, anyone could have buried the gun or participated in a later crime, yet still not have been the shooter. We therefore believe that this proposed line of inquiry was both collateral and irrelevant regarding the shooter's identity.

¶ 45 We note, finally, that defense counsel made the jury more than aware through his cross-examination of his defense theory that it was Munyi, and not defendant, who was the shooter. The recanted testimony of the State's witnesses also supported this theory. See *People v. Maldonado*, 193 Ill. App. 3d 1062, 1069 (1989) (if the entire record shows that the jury had been made aware of adequate factors concerning relevant areas of impeachment of a witness, no constitutional question arises merely because defendant had been prohibited on cross-examination from pursuing other areas of inquiry). This limitation on cross-examination

did not eviscerate defendant's theory of defense. Defendant's constitutional claim must fail.

¶ 46 Issue 3: Supreme Court Rule 431(b)

¶ 47 Defendant finally contends that the court committed reversible error by failing to question the jurors, as required during *voir dire*, whether they understood the principles stated in Supreme Court Rule 431(b) (eff. May 1, 2007), which codified our supreme court's ruling in *People v. Zehr*, 103 Ill. 2d 472 (1984). Defendant concedes that the trial court espoused the proper 431(b) principles that (1) a defendant is presumed innocent, (2) that the State must prove its case beyond a reasonable doubt, (3) that a defendant is not required to offer evidence on his own behalf, and (4) that the defendant's failure to testify cannot be held against him. Defendant also concedes that the court properly questioned the jury regarding their willingness to accept those principles. Defendant, however, argues the court did not fulfill its duty under 431(b) of specifically questioning whether the jurors *understood* the stated principles.

¶ 48 The State responds that defendant forfeited review of this issue by failing to object at trial or in a posttrial motion to the *voir dire* proceedings. Defendant acknowledges this point, but contends that the issue also may be reviewed under the first prong of the plain error doctrine, which allows courts to review an unpreserved error where the evidence is closely balanced, regardless of the seriousness of the error. *People v. Martin*, 2012 IL App (1st) 093506, ¶ 71. Again, the first step of plain-error review is determining whether any error occurred. *Thompson*, 238 Ill. 2d at 613. Our review of this matter is *de novo*. *Id*. at 606.

¶ 49 In this case, jury selection began on April 12, 2010. The court brought in the jury at large and then stated the 431(b) principles. After reciting the first principle, that a defendant is presumed innocent, the court asked the jury: "Does anyone disagree with this rule of law, anyone? Do each of you accept and will follow this rule of law? Is there anyone that would not

follow that rule of law?" The court recited the second and third principles, that the State is required to prove its case beyond a reasonable doubt and that defendant need not present evidence but can rely on his own presumption of innocence. The court asked jury after each of those admonishments whether they disagreed with the rule of law and whether there was anyone who would not accept or follow the rule of law. Finally, the court admonished the jury that defendant did not need to testify, then asked the jury whether anyone would hold that fact against defendant at trial. The court also asked whether the jury accepted and would follow that principle of law and whether there was anyone who would not accept or follow the rule. In between questions, the court noted that there was no response from the jury and no hands raised. The court then proceeded to question the jurors individually, and a jury was selected.

¶ 50 The State concedes that the court erred by failing to ask jurors if they *understood* the 431(b) principles. However, even assuming the court erred in this limited regard, still this case would not constitute plain and reversible error because the evidence was not closely balanced. The evidence, while not overwhelming in light of the recantations, was substantial. Again, two eyewitnesses, Richard and Munyi, identified defendant as the shooter and Jones reported defendant as having admitted essentially that he shot Dandridge. Defendant also requested that Jones dispose of the murder weapon. Although defendant argues the evidence pointed to Munyi, as previously stated, no one actually witnessed Munyi commit the shooting. Dillard, defendant's sole trial witness, was apparently on the bus when the shooting happened. The medical examiner's testimony and the consistency between various witnesses of the corroborating details support the State's theory of the case that defendant was the shooter. The State showed the testimony implicating Munyi was significantly impeached by the witness' prior inconsistent statements and grand jury testimony. Moreover, among defendant's cohort, Munyi was the only

non-relative member, thus casting doubt on the accusations those witnesses threw Munyi's way. While one would not expect Richard, as the victim's best friend, to recant his previous statement, the State provided sufficient explanation for this by eliciting on redirect that Richard recently was freed from prison and lived again in the neighborhood, where he saw defendant's friends and family. Richard even testified that he refused to give the names of others with knowledge of the incident because they would be "in jeopardy *** coming to court." Based on foregoing, defendant's claim that the evidence was closely balanced fails. He has not fulfilled his burden of establishing plain error. We therefore reject defendant's 431(b) argument.

¶ 51 CONCLUSION

¶ 52 For the reasons stated above, we affirm the judgment of the circuit court.

¶ 53 Affirmed.