

No. 1-11-1153

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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 Cook County
Plaintiff-Appellee,)	
)	
v.)	07 CR 05470
)	
STEVIE JUNIOUS,)	
)	Honorable
Defendant-Appellant.)	Kenneth Wadas,
)	Judge Presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice Epstein and Justice J. Gordon concurred in the judgment.

ORDER

¶ 1 HELD: (1) Where defendant did not file a motion for new trial and did not argue for his contentions of error to be considered as plain error, he forfeited his contentions; and (2) Where two eyewitnesses reliably identified defendant as the attacker, and the three complaining witnesses testified that defendant approached them and, without provocation, stabbed them with a knife, the evidence was sufficient to support defendant's convictions.

¶ 2 Following a jury trial, defendant Stevie Junious was found guilty of the offense of attempt first degree murder, aggravated battery of a child, and aggravated battery. The trial court sentenced defendant to an aggregate of 30 years in prison. On appeal, defendant contends that:

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(1) the trial court erred when it admitted irrelevant and inflammatory evidence, denied defendant's request for a continuance to locate a material witness, and excluded relevant and impeaching evidence; and (2) the evidence was insufficient to prove defendant guilty beyond a reasonable doubt. We affirm.

¶ 3 Between 5:30 and 6 p.m. on January 20, 2007, 15-year-old Lavoyus Garrett, 16-year-old Martin Christian, and 12-year-old Isaac Maiden were stabbed while standing near the intersection of Keating and Wabansia Avenues. The following evidence was presented at defendant's April 2010 jury trial.

¶ 4 Lavoyus Garrett testified that he first noticed defendant when defendant about 40 feet away. Garrett paid attention to defendant's approach while he listened to Maiden tell a story. At first, Garrett thought defendant was his friend's older brother, but soon saw that he was not. When defendant reached the boys, "he stopped and looked at [Garrett and Christian] for a minute." Garrett noticed defendant was wearing black boots, a black Carhartt-brand jacket or coat, a black winter cap, and a hood. Then defendant "just got to attacking." He pulled a knife from his coat pocket and stabbed Christian in the stomach. Maiden had his back to defendant. Garrett and Christian both told Maiden to run, but defendant grabbed Maiden and stabbed him in the chest. Garrett then tried to hit defendant, but his finger was slashed by defendant's knife. As Garrett turned to run away, defendant stabbed Garrett in the back, causing Garrett to fall to the ground. Defendant tried to sit on top of Garrett and, as Garrett attempted to push defendant off, Garrett was able to see defendant because their faces were very close. Garrett successfully kicked defendant off of him and stood up. He heard Christian say "look out" and then defendant

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stabbed Garrett again in the back. Christian told Garrett to run to Christian's grandmother's house, located at 4725 West Wabansia. When Garrett reached the building, he was losing a lot of blood. Garrett identified defendant in open court as the man who had stabbed him. Garrett said, because defendant tried to take his life, he was "always going to remember him."

¶ 5 Garrett was taken to Mount Sinai Hospital, where his wounds were cleaned in surgery. He recalled meeting Detective Wo on January 22, 2007, while he was still in the hospital, and telling Wo what had happened.

¶ 6 On February 26, 2007, Garrett, accompanied by an adult family member, went to the police station to view a lineup. He went into the lineup room by himself and identified defendant as the man who had stabbed him. Garrett had never seen defendant before the night he was stabbed. Although Garrett saw Christian and Maiden at the police station, they arrived separately. No one told Garrett who to choose in the lineup and he did not tell Christian who he identified.

¶ 7 On cross-examination, Garrett said he could not remember whether he told Wo that defendant was wearing a maroon or dark jacket, but responded, "[m]aroon, dark, black, it is all the same color." Garrett also did not recall telling Wo that, after defendant had stabbed them, defendant jumped over a fence leading to the Wal-Mart parking lot. Garrett did tell Wo that a cigar found near the crime scene belonged to him. Garrett also remembered telling Wo that defendant stabbed Christian first, then stabbed Maiden, and then Garrett tried to hit defendant.

¶ 8 Martin Christian testified that he first noticed defendant approaching them when defendant was north of Wabansia on Keating. Christian watched defendant approach for two or

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three minutes and noticed defendant was wearing black boots, blue jeans, a blue hooded sweatshirt or coat, and a black hat with his hood on. No one else was on the street at the time. When defendant was closer, he looked at Christian and Garrett; Maiden had his back to defendant. Defendant stabbed Maiden and stabbed Christian in the lower abdomen. When defendant stabbed Christian, their faces were only inches apart. Christian then told Maiden to run because Maiden "didn't know what was going on" but defendant grabbed Maiden and stabbed him in the chest. After he crossed the street, Christian turned and saw defendant approaching Garrett. Garrett tried to punch defendant but defendant cut Garrett's finger. Garrett tried to run away but defendant grabbed him and stabbed him in the back, causing Garrett to fall. Defendant then tried to "get on top" of Garrett but Garrett kicked defendant off. Garrett stood up and Christian told Garrett to look out just before defendant stabbed Garrett once more in the back. Christian told Garrett to run to his grandmother's. When Christian reached the building, he was beginning to feel numb and cold. Christian identified defendant in open court as the man who had stabbed him.

¶ 9 Christian was taken to Children's Memorial Hospital and he was in pain. Christian did not remember his wound being treated or going into surgery. He remembered talking to a detective before he went into surgery, but could not remember what he said. At the hospital, Christian "felt like [he] was still sleep [*sic*]" and "blanked out" before surgery.

¶ 10 On February 22, Christian went to the police station with his mother to view a photo array. Detective Wo showed Christian an array of six photographs from which Christian identified defendant as the person who had stabbed him. No one told Christian who to identify

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from the photo array.

¶ 11 On February 26, Christian and his mother returned to the police station to view a lineup. Wo was the only person in the room when Christian viewed the lineup. Christian identified defendant as the person who had stabbed him. He had never seen or had any problems with defendant before the night of the attack. Christian was kept separate from Garrett and Maiden before and after he viewed the lineup.

¶ 12 On cross-examination, Christian testified that he did not remember talking to any nurses or doctors when he arrived at the hospital, and did not remember speaking to Doctors Madonna or Brannon. He never told medical personnel that he had been getting a tattoo when he was stabbed by a masked man who had entered the tattoo parlor. When he spoke with Wo, Christian did not recall telling Wo that defendant was wearing a black skullcap, a black puffy jacket, and brown boots. Christian did not tell Wo that he lived at 4725 West Wabansia or that, on the night of the attack, he first saw defendant walking west on Wabansia. Christian met with Wo twice after he was released from the hospital, but did not tell Wo that defendant stabbed Maiden first. Christian admitted that he never told Wo he saw defendant stab Garrett.

¶ 13 Isaac Maiden testified that on January 20, 2007, he was in the middle of telling a story when Christian told him to run. He turned to see what was happening and saw a black man in a black coat. Maiden tried to run but the man grabbed his left arm and stabbed him in the chest. Maiden then ran away. He turned before he entered a gangway and saw the man on top of Garrett. Maiden ran through the gangway, hopped over a fence, and then ran into Wal-Mart where he told a security guard he needed help because he had been stabbed. Maiden was taken to

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Mount Sinai Hospital. He never saw the attacker's face. Maiden had his cell phone with him on the day of the stabbing but could not remember whether he still had it when he ran to Wal-Mart. He identified a picture of his cell phone, which was recovered from the crime scene.

¶ 14 At the hospital, Maiden went through two surgeries. He spoke to the police while he was still in the hospital. He did not tell the detective that he saw the person who stabbed him walking west on Wabansia and then south on Keating. He did not remember telling the detective that none of his friends smoked. Maiden never viewed a lineup because he did not see the attacker's face.

¶ 15 Doctor Mary Beth Madonna, the attending pediatric surgeon at Children's Memorial, testified that she treated Christian for the duration of his stay in the hospital. Christian had been stabbed in the upper right side of his abdomen and received morphine for the pain while he was in the emergency room. Morphine can effect a patient's mental status or orientation, however nothing in Madonna's records indicated that Christian appeared to be hallucinating and when he arrived in the operating room he appeared alert and oriented. Christian's injury was caused by a sharp instrument. The object went all the way through his liver and "[c]onsiderable force" would have been necessary to cause the extent of his injury. In her operative report, Madonna had written that Christian was attacked by an unknown assailant while he was getting a tattoo. However, she admitted that her report did not state where that information came from and at the time of trial she was unable to recall where it came from. During the operation, Christian was under general anesthesia and he retained a breathing tube afterwards. Madonna indicated that Christian would have been unable to speak "[u]ntil the breathing tube was removed."

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¶ 16 Doctor Ryan Sullivan, a trauma surgeon at Mount Sinai, testified that he treated both Garrett and Maiden on January 20, 2007. Garrett suffered three stab wounds: one near his shoulder blades, one near the small of his back, and a third wound on his right-hand pinky finger. The wound to Garrett's upper back caused his left lung to collapse and he was given a chest tube to ease his breathing. The wound to his lower back caused an injury to a nerve root near Garrett's spine. The doctor also stated that if the knife "had actually severed the spinal cord, [Garrett] would have been [a] paraplegic." Garrett was in the hospital for approximately nine days.

¶ 17 Maiden had a stab wound on the left side of his chest which penetrated his chest cavity and caused his left lung to collapse. No other major organs were damaged and a tube was placed in his chest to ease his breathing. The stab wound also caused bleeding within the chest cavity and Maiden had a procedure to remove the clotted blood from the area. He was in the hospital for 10 days.

¶ 18 Officer Matthew Blomstrand testified that at approximately 5:42 p.m. on January 20, 2007, he and his partner received a call reporting a stabbing at 1640 North Keating. When they arrived, they were directed to the basement apartment of 4725 West Wabansia, where they saw two juveniles who appeared to have been stabbed. They received a description of the attacker and then sent out a message to police officers in the area with the description. The officers searched the area for the offender but were unsuccessful.

¶ 19 Officer James Walker, an evidence technician, testified that when he arrived at the crime scene on January 20, 2007, he observed a broken cell phone, a red cloth glove, a cigar still in the wrapper, and bloodstains on the sidewalk itself. He took samples of the blood on the sidewalk

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using sterile swabs and inventoried the swabs and the other items as evidence.

¶ 20 Officer Herminio Flores testified that he received an investigative alert for defendant, similar to a warrant, and information that defendant would be at 4915 West Division Street on February 26, 2007. At around 12:30 p.m., Flores arrived at the location, arrested defendant, and then turned defendant over to Detective Wo.

¶ 21 At this point in the trial, the jury was excused and defense counsel informed the trial court they had learned that one of the men who had participated in defendant's lineup, Arteco Rhodes, was also a "close acquaintance and quasi-family member" of Garrett, Christian, and Maiden. Counsel said this information cast the lineup identifications in a new light and requested that Christian and Maiden be made available for questioning. Acknowledging that Garrett had returned to Minnesota, where he lived at the time of trial, counsel also requested Garrett's contact information. The trial court ordered the State to supply contact information for Garrett. The defense request to question Maiden and Christian and recall them as witnesses if necessary was also allowed. The court further stated that:

"[I]f [the defense] want[s] the weekend to try to drive up to Minnesota to interview the other witness, I'll give them that opportunity ***."

¶ 22 The following Monday, out of the presence of the jury, one of defense counsel informed the trial court that he had spoken to Garrett on the phone over the weekend. Although Garrett admitted to knowing Arteco, Garrett said he did not want to speak with defense counsel and would not return to Chicago. Counsel said he would "stand on our previous motion and continue

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it from there" and the trial court stood on its previous ruling.

¶ 23 The State recalled Isaac Maiden and Martin Christian. Both admitted to having known Arteco their entire lives and to spending time with Arteco. However, both denied ever speaking to Arteco about the stabbing incident or telling Arteco the name of the person who had stabbed them. Both also denied ever seeing Arteco on the night of the incident or while they were being treated in the hospital.

¶ 24 Christian also testified that, at the lineup, he did not tell the detective he recognized Arteco because he was "only looking for the person that stabbed [him]."

¶ 25 Detective Wo testified that he interviewed all three witnesses about the stabbing incident. When he interviewed Garrett in the hospital, Garrett told him that defendant had been wearing a maroon Carhartt-brand jacket and that Garrett had cut his hand trying to punch defendant. Garrett also said defendant stabbed Christian, then Garrett, and then jumped the fence to Wal-Mart. Garrett never told Wo that the recovered cigar was his. Wo interviewed Christian just before Christian went into surgery. Christian said he lived at 4725 West Wabansia and described the attacker as a black male in his 30s wearing a black skullcap, a black puffy jacket, blue jeans, and brown work boots. Christian said that he saw defendant walking west on Wabansia then south on Keating and that defendant ran toward Wal-Mart after the stabbing. Christian never told Wo that he saw defendant stab Garrett but did say that defendant stabbed Maiden first. Maiden told Wo that none of his friends smoked cigars and that, on the night of the offense, he saw a black man walking toward them on Keating from Wabansia.

¶ 26 Wo corroborated prior testimony that Christian identified defendant as the attacker in a

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photo array on February 22, 2007, and that Garrett and Christian both identified defendant as the attacker in separate lineups on February 26, 2007. Maiden did not view a lineup because he told Wo he was unable to identify the attacker. Wo also testified that when Garrett and Christian were at the police station to view the lineup, they were kept separate from one another and their guardians were not allowed into the room to view the lineups. During the viewing of the lineup, Wo asked both Garrett and Christian whether they recognized anyone. Each identified defendant as the man who had stabbed him and no further questions were asked. Wo was not aware that Garrett and Christian knew a member of the lineup until that day of trial. After the lineup, Garrett told Wo that defendant's jacket the night of the attack was "dark-colored."

¶ 27 The prosecution and the defense then stipulated that neither the recovered cell phone nor cigar had any latent fingerprint impressions suitable for comparison to defendant's fingerprints. Further, the glove did not have sufficient DNA material for profiling and comparing to defendant's DNA.

¶ 28 The State then rested.

¶ 29 Following the denial of defendant's motion for directed verdict and out of the jury's presence, the State moved to bar certain testimony of defense witness, Doctor Brannon. According to the State, Brannon was with Christian for five or six hours in the ICU after he came out of surgery. Brannon's notes indicated that Christian had stated he was getting a tattoo at the time he was stabbed. Her notes, however, did not say who Christian made the statement to and at the time of trial Brannon could not remember to whom it was made. The State argued the statement was improper hearsay and that Brannon conceded that Christian could not have given

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"her this information because he was intubated the whole time that [he] was with her." Without a proper foundation, the State asked that the testimony be excluded. Defense counsel argued that the statement had been made for the purpose of medical treatment and, thus, fell under an exception to the general hearsay rule.

¶ 30 The trial court granted the State's motion in limine and concluded that the substance of the statement had nothing to do with Christian's medical treatment. The trial court also noted that Christian could not have made the statement because he had a tube in his throat and could not physically speak after surgery.

¶ 31 Before Arteco testified, the State asked to introduce Arteco's five prior convictions and also asked to examine Arteco about the fact that he was currently in custody for a pending charge of sexual assault. Defense counsel did not object to the State's introduction of Arteco's prior convictions or to the State eliciting testimony that Arteco was currently in custody. However, defense counsel did object to introduction of testimony as to the nature of the charge pending against Arteco as being highly prejudicial.

¶ 32 The trial court held that the State would be allowed to elicit testimony that Arteco was currently in custody for a pending charge of aggravated criminal sexual abuse because "that whole scenario explains that he is in custody and could explain his circumstances with getting in contact with Defendant in the middle of the case." The court found that any prejudicial effect was outweighed by the probative value of Arteco's possible bias and motive for testifying. The trial court also allowed the defense to elicit testimony that Christian testified on Arteco's behalf in his pending trial.

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¶ 33 The defense then called Arteco Rhodes. Arteco testified that he had known Christian for 17 or 18 years and knew Maiden because Arteco's uncle, Ambrose Rhodes, is married to Maiden's grandmother, Alberta Rhodes. Arteco had also known Garrett for six or seven years because he used to date Garrett's step-mother. On January 20, 2007, Arteco heard about an incident on Keating Avenue and immediately went to the 1600 block of North Keating. He spoke to nearby residents and found out what had happened, then went to look for the man who had stabbed Garrett, Christian, and Maiden. He first went to the home of Alberta Rhodes, then to Mount Sinai Hospital and waited in the visiting room until the doctors let him speak briefly with Maiden. Maiden told Arteco that a guy named "Pookie" had stabbed him. Arteco also spoke to Garrett briefly. Arteco then went to a hospital on the north side of the city to see Christian, but was unable to talk to him that day. Arteco returned to the neighborhood to look for Pookie without success. Later, Arteco spoke to Christian on the phone while he was still in the hospital and Christian told Arteco that Pookie had stabbed him. Arteco did not tell the police about Pookie because he was "going to take the law into [his] own hands" but was never able to. When Arteco went to Mount Sinai, he remembered seeing Alberta, but could not recall whether he saw Ambrose.

¶ 34 Arteco was arrested in February 2007 and, while he was in custody, was asked to participate in a lineup for a case unrelated to his own case. At the time, he did not know what the other case was about. That was the first time Arteco met defendant. Pookie was not a part of the lineup. That same evening, Arteco was released from custody and he ran into Ambrose Rhodes and Christian's mother. They told Arteco they had seen him in a lineup, however Arteco did not

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inform the police that they had the wrong man in custody and that the real offender, Pookie, was not in the lineup. Instead, he just went home. Arteco had not spoken to Christian or Maiden about the stabbing incident since the day of the lineup.

¶ 35 Arteco saw defendant for the second time a week previous to trial when they were both on their way to court from jail. Defendant recognized Arteco and they discussed the lineup they had both participated in.

¶ 36 Arteco then testified that he met with defense counsel on April 16, 2010, after defendant's trial had begun, and informed them that Garrett had named Pookie as his attacker the day he was attacked. That same day, he also met with the Assistant State's Attorneys (ASAs) trying defendant's case, along with Arteco's attorney and Elizabeth Cohen. Arteco informed the ASAs that they had arrested the wrong person and that Pookie stabbed Garrett, Christian, and Maiden. Arteco did not remember being asked who Pookie was or responding that he did not know who Pookie was. He also did not recall being asked when Garrett, Christian, and Maiden told him Pookie was the offender or responding that Garrett, Christian, and Maiden told him on the day they were stabbed. Arteco eventually told the ASAs that he was done speaking to them.

¶ 37 Arteco admitted to currently being on trial for sexual assault. Christian testified in that trial on Arteco's behalf. Arteco had two separate 1998 convictions for unlawful use of a weapon by a felon, a 1998 conviction for aggravated discharge of a firearm while occupying a vehicle, and a conviction for possession of controlled substance in both 2004 and 2008.

¶ 38 In rebuttal, the State first called Elizabeth Cohen, who testified that she was present for the conversation between Arteco and the ASAs trying the case. When asked who Pookie was,

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Arteco said, "I don't know, you tell me." Arteco also said that Garrett, Christian, and Maiden named Pookie as the offender on the day they were attacked. When asked where the conversations took place, Arteco said he was done answering questions.

¶ 39 Ambrose Rhodes, Maiden's grandfather and Arteco's uncle, testified that he received a call from his wife, Alberta, at approximately 6 p.m. on January 20, 2007, and immediately went to Mount Sinai where he learned Maiden had been stabbed. He was the first family member to arrive. Alberta arrived 10 or 20 minutes later. No one was allowed to see Maiden because he was in surgery. After an hour, Alberta was permitted to see Maiden. Ambrose never saw Arteco at the hospital. He was there from 6 p.m. until 2 a.m., at which point he was allowed to see Maiden. Everyone else had left by then. Alberta left the hospital around 4 or 5 a.m., while Ambrose remained at the hospital for days. Arteco did come to the hospital a few days after the shooting. Ambrose was in the room when Arteco spoke to Maiden, but Maiden was unable to speak at the time because he was medicated. Maiden did not tell Arteco who had stabbed him.

¶ 40 Alberta Rhodes substantially corroborated Ambrose's testimony. She received a call from a Wal-Mart security guard at about 5:45 or 6 p.m. on January 20, 2007, and was informed Maiden had been stabbed and taken to Mount Sinai. Arteco did not come to her house that night and she did not see Arteco when she arrived at the hospital. The State then rested in rebuttal.

¶ 41 The jury found defendant guilty of the attempt first degree murder of Garrett, Christian, and Maiden, the aggravated battery of a child as to Maiden, and the aggravated battery of both Garrett and Christian.

¶ 42 After finding that Garrett and Maiden had sustained severe bodily injuries, the trial court

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sentenced defendant to consecutive prison sentences of 10 years for each of the three attempt murder convictions. The court further sentenced defendant to a 10-year term for aggravated battery of a child and two five-year terms for the aggravated battery convictions, all to run concurrent with the attempt murder sentences.

¶ 43 Defendant first contends that the trial court committed several reversible errors, including: (1) allowing the State to elicit testimony about the nature of Arteco's pending criminal charge because Arteco was not biased or motivated to falsely testify; (2) denying defendant's request for a continuance and thereby his right to cross-examine and impeach Garrett on the subject of Arteco; and (3) barring testimony from Doctor Brannon regarding Christian's statement that he was attacked while getting a tattoo.

¶ 44 As an initial matter, the State asserts that defendant has forfeited his contentions of trial court error by failing to contemporaneously object to and properly preserve the errors in a posttrial motion. A defendant is required to both object to at trial and include in a written posttrial motion any alleged error in order to preserve it for review. *People v. Thompson*, 238 Ill. 2d 598, 611 (2010) (citing *People v. Enoch*, 122 Ill. 2d 176, 186 (1988)). This process gives the trial court "the opportunity to grant a new trial, if warranted." *Enoch*, 122 Ill. 2d at 186 (quoting *People v. Caballero*, 102 Ill. 2d 23, 31-32 (1984)). The State argues that, here, all three alleged errors are waived because no motion for a new trial was filed and defendant failed to even object to two of the alleged errors.

¶ 45 Our search of the record has not disclosed a motion for a new trial. We acknowledge that defendant objected to the State's motion in limine seeking to bar Brannon's testimony and to

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allowing the admission of testimony as to the nature of Artec's pending criminal charge.

However, defendant did not object to the admission of testimony that Artec was in custody for a pending criminal case. Furthermore, despite defendant's claim that his request for a continuance to locate Garrett was wrongly denied, there is no evidence in the record that defendant requested any such continuance. See *People v. Batrez*, 334 Ill. App. 3d 772, 778 (2002) (citing *People v. Robinson*, 157 Ill. 2d 68, 78-79 (1993) (holding that where a request for a continuance would have remedied the defendant's claim of error, and the defendant failed to request a continuance, the defendant waived his claim of error). Defendant has also failed to cite to the record where that request or the denial of the request might be. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008) (the argument section of an appellant's brief "shall contain *** citation of *** the pages of the record relied on.") As a result, under general forfeiture principles, defendant has forfeited his claims of trial court error.

¶ 46 In addition, the State contends that none of the errors alleged by defendant would survive plain error analysis because no error occurred. We agree that defendant cannot overcome forfeiture under the plain error doctrine for the following reasons.

¶ 47 The plain error doctrine is a "limited and narrow exception" to the general forfeiture rule. *People v. Walker*, 232 Ill. 2d 113, 124 (2009). To demonstrate plain error, the defendant must first show that a clear and obvious error occurred and that 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 is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process. *Id.* The defendant bears the burden of persuasion under both

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prongs and if he fails to meet the burden, forfeiture will be honored. *Id.* However, "[a] defendant who fails to argue for plain-error review [] cannot meet his burden of persuasion." *People v. Hillier*, 237 Ill. 2d at 545-46 (2010); see also *People v. Nieves*, 192 Ill. 2d 487, 502-03 (2000).

¶ 48 In his opening brief, defendant does not mention "plain error" or cite to any authority that discusses plain error. In addition to not arguing plain error in his brief, defendant has not filed a reply brief. Under these circumstances, since defendant has not met his burden of persuasion, we cannot reach the merits of his forfeited claims. *Hillier*, 237 Ill. 2d at 550.

¶ 49 Defendant next contends that the evidence was insufficient to prove him guilty beyond a reasonable doubt. Specifically, defendant argues that the witness identifications of him as the offender were vague and doubtful and insufficient to support a finding of guilty for his convictions.

¶ 50 The standard of review on a challenge to the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). Therefore, all reasonable inferences from the record must be allowed in favor of the State. *People v. Givens*, 237 Ill. 2d 311, 334 (2010). When considering a challenge to the sufficiency of the evidence, it is not the function of the reviewing court to retry the defendant; it is for the trier of fact to determine the credibility of witnesses, weigh the evidence, draw reasonable inferences, and resolve any conflicts in the evidence. *Siguenza-Brito*, 235 Ill. 2d at 228. A reviewing court will reverse a conviction only where the

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evidence is so improbable or unsatisfactory as to create a reasonable doubt of a defendant's guilt.

Givens, 237 Ill. 2d at 334.

¶ 51 The State must prove the identity of the defendant as the offender beyond a reasonable doubt. *People v. Stanley*, 397 Ill. App. 3d 598, 610 (2009). However, identification by a single witness is sufficient to support a conviction if the defendant is viewed under circumstances permitting a positive identification. *People v. Gabriel*, 398 Ill. App. 3d 332, 341 (2010). In assessing the reliability of a witness identification, the well-established factors to consider are: (1) the witness's opportunity to view the defendant during the offense; (2) the witness's degree of attention at the time of offense; (3) the accuracy of a witness's prior description of the defendant; (4) the witness's level of certainty at the subsequent identification; and (5) the length of time between the crime and the identification. *People v. Slim*, 127 Ill. 2d 302, 307-08 (1989) (citing *Neil v. Biggers*, 409 U.S. 188 (1972)); *Gabriel*, 398 Ill. App. 3d at 341.

¶ 52 We find that Garrett and Christian's identifications were sufficiently reliable. For the first factor, defendant argues that all three victims testified the incident happened quickly, suggesting that they did not have a good opportunity to view defendant. The evidence, however, shows that the streetlights were on and that both Garrett and Christian watched defendant as he approached. Garrett testified that he first noticed defendant when defendant was about 40 feet away, while Christian testified that he watched defendant approach for two or three minutes. Garrett watched as defendant stabbed Christian and Maiden, and when defendant sat on top of Garrett, Garrett was able to see defendant because defendant's face was very close to his. Christian testified that defendant's face was only inches from his when defendant stabbed him, and that he watched

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defendant stab Maiden and Garrett. From the evidence presented, it is clear that Garrett and Christian had a good opportunity to view defendant.

¶ 53 As to the second factor, we disagree with defendant's argument that the "witnesses were inattentive." Garrett and Christian both testified that they saw defendant as he was approaching. Although he was listening to Maiden's story, Garrett was paying enough attention to defendant's approach that he first thought defendant was his friend's brother, but soon realized he was wrong. Furthermore, Garrett and Christian both gave detailed descriptions of defendant's clothing, observing that defendant was wearing boots, a hooded sweatshirt or coat with his hood on, and a black hat. Garrett even identified the brand of coat that defendant was wearing. From the trial testimony, it is reasonable to infer that Garrett and Christian were attentive to defendant.

¶ 54 We find that the third factor, which addresses the accuracy of the witness descriptions of the offender prior to an actual identification, does not favor either party. Defendant argues that Garrett and Christian's descriptions were vague, uncertain, and contained discrepancies. At trial, there was no testimony to suggest that Garrett or Christian gave a description of defendant's physical characteristics beyond being a black male. However, it is worth noting that Garrett and Christian both gave substantially similar detailed descriptions of defendant's clothing. See *People v. Magee*, 374 Ill. App. 3d 1024, 1032 (2007) (quoting *Slim*, 127 Ill. 2d at 309) (" [t]he presence of discrepancies or omissions in a witness' description of the accused do not in and of themselves generate a reasonable doubt as long as a positive identification has been made.' ") Nonetheless, we are unable to determine the accuracy of a physical description when no physical description was provided by the witnesses.

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¶ 55 As to the final two factors, the evidence at trial suggests Garrett and Christian showed no signs of uncertainty when identifying defendant as the offender just over a month after the incident. Christian identified defendant as the offender in a photo array. Just a few days later, Garrett and Christian both identified defendant as the offender at the lineup. Detective Wo corroborated all three identifications and neither Christian, Garrett, nor Detective Wo indicated that the identifications were made with any sort of qualification. Furthermore, at trial Garrett testified that he would always remember defendant because defendant tried to take his life. Considering all five factors, and viewing the evidence in the light most favorable to the State, we find that Garrett and Christian's identifications of defendant were sufficiently reliable to sustain defendant's convictions.

¶ 56 Defendant next claims that the evidence was insufficient to show that he had a specific intent to kill and therefore insufficient to support his convictions for attempt first degree murder.

¶ 57 In order to prove attempt first degree murder, the State must show that a defendant committed an act that constitutes a substantial step toward the commission of murder, with a specific intent to kill. 720 ILCS 5/8-4, 9-1(a)(1) (West 2006); *People v. Johnson*, 368 Ill. App. 3d 1146, 1162 (2006). Intent is a question of fact to be determined by the trier of fact. *Johnson*, 368 Ill. App. 3d at 1162. As a state of mind, intent is rarely proven by direct evidence. *People v. Williams*, 165 Ill. 2d 51, 64 (1995). Thus, intent can be shown by surrounding circumstances such as the seriousness of the injury, the character of the attack, or the use of a deadly weapon. *Johnson*, 368 Ill. App. 3d at 1162.

¶ 58 Here, viewed in the light most favorable to the State, the evidence at trial established that

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defendant approached Garrett, Christian, and Maiden, while armed with a knife that was hidden in his coat pocket. Then, without provocation, defendant began stabbing the boys with the knife. Notably, at the time of the attack, defendant was 47-years old and all three victims were under the age of 17 years. Moreover, defendant prevented both Maiden and Garrett from running away during the attack. Maiden testified that when he tried to run away, defendant grabbed him and stabbed him in the chest. Garrett testified that defendant stabbed him in the back when he tried to run. Garrett then fell to the ground and defendant tried to get on top of Garrett. When Garrett finally succeeded in kicking defendant off, defendant stabbed him in the back once more. Finally, as a result of their wounds, all three boys sustained serious injuries. Christian was stabbed in the abdomen with "considerable force," enough that the knife pierced his liver. Garrett and Maiden both suffered collapsed lungs due to their injuries and required surgery and extended hospitalizations. Based on the evidence, we find that a rational trier of fact could have found that defendant had a specific intent to kill Garrett, Christian, and Maiden when he attacked them. See *People v. Miller*, 284 Ill. App. 3d 16, 24-25 (finding a specific intent to kill where the defendant approached her brother with a knife, stabbed him once, was knocked to the ground, then stabbed him four more times, and finally told him that she hoped he died).

¶ 59 For the foregoing reasons, we affirm the judgment of the trial court.

¶ 60 Affirmed.