



was defendant and a large black man. Duich called 9-1-1 at 2:22 a.m. to report the incident and request help.

¶ 4 Wood River police officer Redden was the first to respond. He found Garrison on the bed screaming and moaning in agony. His hair was singed and his skin was still bubbling in some places and missing in others. Redden testified that Garrison was responsive to all questions posed to him despite his obvious agony. According to Redden, Garrison told him that a white guy and a black guy he met at a neighbor's house poured gasoline on him and set him on fire. There was no evidence of fire damage at Duich's house.

¶ 5 Once the paramedics arrived, Officer Redden went to the neighbor's house and, based on his interview with her, attempted to locate defendant and, at that point, an unknown black man. There was no indication that Garrison had been set on fire at the neighbor's house as well. The neighbor explained to the officer that defendant and a black male were at her house at around 10 or 11 p.m. on October 9, 2004. Defendant asked her to call Garrison about drugs that he had gotten from him which apparently were not the right ones. Garrison came over and the three left for a short time. Upon their return, Garrison stated that he had given defendant some electronics as part of a deal for drugs. The two men left and Garrison departed some 15 or 20 minutes later.

¶ 6 Early the next morning, the police located defendant and arrested him. A prescription bottle written for Duich was in defendant's pants pocket. Defendant denied hurting Garrison. He did admit to having been at the neighbor's house and meeting with Garrison. According to defendant, Garrison borrowed money from him and gave him two prescription pills. Later realizing that he had been given the wrong medication, he went back to the neighbor's house to find Garrison but saw him walking down the street. Garrison asked to give him some stereo equipment in exchange for the borrowed money. They went to Garrison's place to get the stereo. After taking the stereo, defendant and his companion left to trade it for crack and

went on about their way. Defendant denied setting Garrison on fire and claimed he was fine when they left. Several other people, however, testified to defendant's activities during the time frame of the incident, activities which tended to confirm his involvement in setting Garrison on fire. And, others testified to overhearing defendant making incriminatory statements about his participation in the murder.

¶ 7 A search of Garrison's apartment turned up numerous burnt items of clothing and foot impressions on the floor in a pattern extending from the bathroom toward the front door. Tools and stereo equipment were stacked just inside the front door, and a red can containing gasoline was found in the living room. An empty bottle of hydrocodone pills was found on a kitchen counter. The prescription for 180 pills was filled on October 4. A partly used roll of masking tape was found in the kitchen hanging on the wall. A piece of the tape was also found on the curtains in the living rooms and on the sidewalk in front of the building, but no human hair was recovered from the tape. A green rug on the floor in the bathroom had a significant burn pattern, and a second, soaking wet rug with a smaller burn pattern was found in the bathtub. There was also a small pocketknife, coins, a lighter, and burned fabric material in the tub. Soot marked the outside portion of the tub as well as the front of the sink indicating that there had been a sustained fire in that room.

¶ 8 The physician who treated Garrison testified that Garrison had third-degree burns over 77% of his body, resulting in less than a 10% chance of survival. He also testified that there were areas of Garrison's body which were not burned including part of his scalp, his forearms and hands, and his lower legs and feet. The burns on his chest and legs were consistent with the areas where clothing would have been worn. Other evidence revealed that Garrison had a blood-alcohol level .085 and opiates, benzodiazepines, and cocaine in his system upon arrival at the hospital. Garrison eventually died from the burn injuries some seven weeks later on December 1, 2004.

¶ 9 The jury found defendant guilty of first-degree murder. The jury further found that the offense was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty. Defendant was sentenced to 50 years' imprisonment. The black man who had participated in the murder, Benjamin Stiff, was separately charged and later entered into an agreement with the State to testify against defendant.

¶ 10 Defendant argues on appeal that the court erroneously allowed into evidence certain hearsay statements which did not constitute spontaneous declarations and were unnecessary to explain police conduct. Defendant further argues he was denied a fair trial when the court allowed the State to present numerous graphic and inflammatory autopsy images of the victim's burned body. We disagree.

¶ 11 Addressing defendant's first issue on appeal, defendant challenges the admission of the alleged hearsay testimony of several witnesses. We initially note that, for the majority of the statements defendant finds objectionable, defendant either failed to raise any contemporaneous objections to the statements at trial and/or failed to mention them in his posttrial motion. Accordingly, defendant has forfeited most of his claims of error with respect to this issue. *People v. McLaurin*, 235 Ill. 2d 478, 496, 922 N.E.2d 344, 355 (2009). We may consider forfeited issues under the plain-error doctrine, however, provided a clear and obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against defendant or affected the fairness of the trial to such an extent as to challenge the integrity of the judicial process. *People v. Sargent*, 239 Ill. 2d 166, 189, 940 N.E.2d 1045, 1058 (2010). On the other hand, plain-error analysis is unnecessary if no error occurred. *People v. Nicholas*, 218 Ill. 2d 104, 121, 842 N.E.2d 674, 684 (2005). In this instance, either no error occurred or any possible error that did occur did not rise to the level of plain error requiring reversal. For example, defendant challenges the admission of the 9-1-1 statements and dispatch calls. First, statements offered for the limited

purpose of showing the course of a police investigation are admissible. See *People v. Loggins*, 134 Ill. App. 3d 684, 692, 480 N.E.2d 1293, 1299 (1985). Hearsay, on the other hand, is an out-of-court statement being used to prove the truth of the matter asserted. *People v. Banks*, 237 Ill. 2d 154, 180, 934 N.E.2d 435, 449 (2010). The testimony that the dispatcher had been advised that a person had been doused with gasoline and set on fire was not offered to prove the truth of that statement. Rather, such statements in this instance imparted important information for the investigating officers to know that they were not dealing with an accidental burning in order to make them aware of any possible security issues as well as the type of evidence they needed to look for once on site. Such statements provided no connection to defendant, nor did they establish any factual elements that were seriously contested by defendant.

¶ 12 Defendant also challenges the testimony of Officer Redden with respect to the victim's identification of the two men he met at the neighbor's house who set him on fire. Prior to trial, defendant filed a motion *in limine* to stop the admission of such statements. The court initially ruled that the victim's statements to the police and to Duich were not admissible either as excited utterances or as dying declarations. The State appealed the ruling, and this court determined that the victim's statements to Duich were not dying declarations but were admissible as excited utterances. *People v. Stiff*, 391 Ill. App. 3d 494, 904 N.E.2d 1174 (2009). The matter of the victim's statements to Officer Redden being excited utterances was not raised on appeal and, as a result, was not addressed by this court. At defendant's trial, Officer Redden testified that the victim told him a white guy and a black guy he met at the neighbor's house threw gasoline on him and set him on fire. Based on this information, investigators went to the neighbor's house. The court admonished the jury that such testimony was introduced solely to show why officers took a particular action. The court determined that the victim's statements to Redden now were admissible as excited utterances

in light of our recent decision because the circumstances of the victim's statements to Duich and those to Redden were extremely similar. Defendant contends on appeal that the trial court was bound by its earlier ruling that such statements were inadmissible. Given that jurisdiction over all orders the trial court had entered in the case was still retained, the court was permitted to reconsider its prior ruling. No finding of a final judgment had yet been entered. Again, the admissibility of the victim's statements to Redden was not raised in the interlocutory appeal or considered by this court. A trial court retains jurisdiction to reconsider any order it entered, even after a remand, as long as the cause is pending before the trial court. *People v. Enis*, 163 Ill. 2d 367, 387, 645 N.E.2d 856, 865 (1994); *People v. Mink*, 141 Ill. 2d 163, 171, 565 N.E.2d 975, 978-79 (1990). Given that a trial court's ruling on a motion *in limine* is an interlocutory order which is subject to review by the trial court any time prior to or during trial (see *People v. Hansen*, 327 Ill. App. 3d 1012, 1027, 765 N.E.2d 1033, 1046 (2002)), we see no reason why the trial court here could not reconsider its prior ruling.

¶ 13 Defendant argues that even if the court could reconsider its prior order, its finding that the victim's statements to Redden constituted excited utterances was incorrect. In order for a statement to be admissible as an excited utterance there must be an event which is sufficiently startling to produce a spontaneous, unreflective statement, the absence of time to fabricate, and the statement must relate to the circumstances of the occurrence. *People v. Georgakopoulos*, 303 Ill. App. 3d 1001, 1012, 708 N.E.2d 1196, 1205 (1999). Officer Redden arrived at Duich's residence within three minutes of receiving the call over dispatch. When Redden encountered the victim lying on Duich's bed, it was immediately clear that the victim was badly burned. As we already established with respect to the victim's statements to Duich, any unknown amount of time that elapsed between the time of the incident and the making of the statements did not render them inadmissible. *Stiff*, 391 Ill. App. 3d at 502-04,

904 N.E.2d at 1181-83. There is little distinction in the facts between the victim's statements to Duich and to Redden. The victim was in no shape at the time of Redden's arrival to contemplate and fabricate a story. The court correctly recognized that its earlier reliance on the time factor was not correct and in the exercise of its discretion determined that the victim's statements to Redden were admissible as excited utterances. Under the circumstances presented, defendant was not denied a fair trial by the admission of the victim's statements to Redden.

¶ 14 Turning to defendant's second issue on appeal, we conclude the court did not abuse its discretion in allowing the State to introduce into evidence five autopsy photographs at trial. At the hearing on a motion *in limine* seeking to prohibit the State from using the autopsy photographs, the State argued the photographs were relevant not only to show the extent of injury, they also showed "protected" areas, bolstering the State's argument that the victim did not pour gasoline on himself as his hands were taped behind his back and his head and hair were intact. The prosecutor further argued that the pictures were relevant to demonstrate the brutality and heinousness of the crime. The court allowed all of the photos but one because of its redundancy. The decision to allow the admission of autopsy photographs is left to the discretion of the trial court, and its decision will not be overturned absent an abuse of that discretion. *People v. Kitchen*, 159 Ill. 2d 1, 34, 636 N.E.2d 433, 448 (1994). Among the valid reasons for admitting autopsy photos are to prove the nature and extent of injury; to establish the position, location, and condition of the body; to prove the manner and cause of death; and to aid in the understanding of the testimony of the pathologist. *People v. Brown*, 172 Ill. 2d 1, 41, 665 N.E.2d 1290, 1308 (1996). Even gruesome photos are admissible if they are related to any fact in the State's case. *People v. Foster*, 76 Ill. 2d 365, 378, 392 N.E.2d 6, 11 (1979). All of the admitted photos were relevant to the State's case. The photographs were utilized during the pathologist's testimony

to identify heavier burn areas to the body. She opined that an accelerant was necessary to cause the burns inflicted and that the primary cause of death was thermal burns. Defense counsel already conceded to allowing the State to use two of the photos at trial to show the jury how the victim had been injured and died. The other photos were admissible to show the cause of death and the nature of the injuries suffered and to prove the State's theory that the victim died as a result of being set on fire by someone else with the use of an accelerant being thrown on his torso while his hands were tied behind his back. We find no abuse of the court's discretion in admitting the autopsy photos in this instance.

¶ 15 For the foregoing reasons, we affirm the judgment of the circuit court of Madison County.

¶ 16 Affirmed.