

FIFTH DIVISION  
August 9, 2013

No. 1-11-2933

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 CR 19389
	)	
TYREACH STONE,	)	Honorable
	)	Joseph G. Kazmierski,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE HOWSE delivered the judgment of the court.  
Justices Palmer and Taylor concurred in the judgment.

**ORDER**

¶ 1 *HELD:* Based on the evidence presented at trial, a rational trier of fact could have concluded that defendant possessed a firearm during the commission of the robbery; the trial court's 15-year enhancement sentence for possessing a firearm during the commission of the robbery was proper; and the trial court's failure to strictly comply with Supreme Court Rule 431(b) did not result in reversible error under the plain-error doctrine.

¶ 2 On appeal, defendant argues: (1) the State failed to prove

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beyond a reasonable doubt that he possessed a firearm during the commission of the robbery, (2) defendant's 15-year enhancement for possession of a firearm was improper, and (3) the trial court committed reversible error in failing to properly instruct the jurors pursuant to Illinois Supreme Court Rule 431(b). Ill. S. Ct. R. 431(b) (eff. May 1, 2007). For the reasons below, we affirm the trial court's findings.

¶ 3 BACKGROUND

¶ 4 On August 11, 2011, following a jury trial, defendant was convicted of armed robbery with a firearm. On September 12, 2011, he was sentenced to a 27-year term in the Illinois Department of Corrections, consisting of a 12-year sentence for armed robbery plus a 15-year enhancement for possessing a firearm during the commission of the robbery.

¶ 5 Prior to the trial in this matter, the parties selected a jury. During *voir dire*, the trial court judge offered the following admonishments to the first group of jurors:

"Do all of you understand and accept the following fundamental principles of our legal system. I am going to ask all of you individually if you can adhere to these principles during the course of the trial.

First, a person accused of a crime is

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presumed to be innocent of the charge against him. That presumption stays with the defendant throughout the trial and is not overcome unless from all the evidence you believe the State had proved his guilt beyond a reasonable doubt; that the defendant does not have to prove his innocence; that the defendant does not have to present evidence on his own behalf.

I am going to ask all of you individually if you will be able to adhere to those principles of our legal system."

The trial court judge then called each juror's name in the first group, and each juror responded "yes."

¶ 6 When addressing the second group of jurors, the trial court judge offered the following admonishments:

"Again, I am going to ask each of you individually to respond to this particular question regarding the principles of law that applies [sic] to this case and our legal system as a whole.

First of all, that a person accused of a crime is presumed to be innocent of the

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charges against him, that the presumption stays with the defendant through the trial and is not overcome unless from all of the evidence you believe the State proved its case beyond a reasonable doubt; that the defendant does not have to prove his innocence; that the defendant does not have to present any evidence on his own behalf.

Would each of you be able to follow the principles of law I said here today[]\*\*\*?"

The trial court judge then called each juror's name in the second group, and each juror responded "yes."

¶ 7 When addressing the third and final group of jurors, the trial court judge offered the following admonishments:

"I am going to ask all of you individually to respond to the question regarding the principles of law that apply to this case.

First of all, a person accused of a crime is presumed to be innocent of the charges against him. That presumption remains with the defendant throughout the trial and is not overcome unless from all the evidence you believe the State proved the

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defendant guilty beyond a reasonable doubt;  
that the defendant does not have to prove his  
innocence; the defendant does not have to  
present evidence on his own behalf.

Do you agree to apply the principles of  
law in this case[ ]\*\*\*?"

The trial court judge then called each juror's name in the third group, and each juror responded "yes." At no time were any objections made regarding the trial court judge's admonishments to the jurors.

¶ 8 After a jury was selected, the State called its first witness, Mr. Steven Tigner, the victim allegedly robbed by defendant. Tigner testified that on October 16, 2010, following his Saturday class, he was using his computer in a classroom at Kennedy King College. At approximately five o'clock p.m., a security guard at the college, who he later learned to be Mr. Morris Purnell, informed him that the school was closing and he would have to leave. Tigner packed his belongings in two bags, a black backpack and a green laptop bag, and headed out of the building to catch his bus at 63rd and Halsted.

¶ 9 Prior to reaching his bus stop, Tigner stopped at a convenience store for a snack. The convenience store was located across the street from his bus stop. As he entered the

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convenience store, he noticed three men standing outside. Upon leaving the convenience store, he noticed the three men were still there. Tigner ate his snack and crossed the street to get to his bus stop.

¶ 10 Once at the bus stop, Tigner observed the three men cross the street to the side where he was standing and stand behind the wall of one of the buildings. Tigner then saw one of the men, an African American man with braids in his hair, peek around the corner at him. Shortly thereafter, all three men approached him.

¶ 11 One of the men, who Tigner later identified as defendant, came within three feet of Tigner, held a gun to Tigner's chest and said "give me your shit." Tigner described the gun as being black and having a barrel. He testified that there was no doubt in his mind that defendant had a gun. Tigner then smacked the gun out of defendant's hand. In the process of smacking the gun out of defendant's hand, Tigner felt the gun with his palm and testified that it felt like metal. The gun landed on the sidewalk, making a sound that sounded like metal hitting the ground. Both Tigner and defendant tried to recover the gun off the ground. Defendant ultimately recovered it. Upon regaining control of the gun, defendant struck Tigner twice in the head with the gun, leaving a scar on Tigner's head and bump behind his

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ear.<sup>1</sup> The blows to the head left Tigner stunned allowing defendant to grab his black backpack. Defendant and the other two men then ran off with the black backpack. The men did not take Tigner's green laptop bag.

¶ 12 Shortly after having his black backpack taken, Purnell approached Tigner and gave him back the contents of his backpack. Tigner then spoke with the Chicago police, who had arrived at the scene. The police transported Tigner a few blocks to where defendant and the man with the braids were being held in police custody. Tigner identified the men as the ones who had just robbed him.

¶ 13 The State then called its second witness, Mr. Morris Purnell, the security guard that had been on duty at Kennedy King College on October 16, 2010. Purnell testified that after asking the student, who he later learned to be Tigner, to leave the classroom, he got into his car and began driving northbound on Halsted. It was approximately five o'clock when he was approaching the stop light at the intersection of Halsted and 63rd Street. As he approached the red light, he could see the bus stop where Tigner was standing and saw three other men with him. Purnell later identified one of the three men as defendant.

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<sup>1</sup>The jurors were presented with photos of the injuries Tigner sustained to his head.

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Purnell testified that initially he saw a scuffle on the ground between the men and Tigner. He assumed the scuffle was just "horseplay" until he observed the men try to take Tigner's backpack away from him. Purnell testified that he could not specifically see defendant's hands, but from approximately 60 feet away he observed defendant punch Tigner in the head, grab a bag from him and then walk away briskly with the other men.

¶ 14 Upon walking away, Purnell followed the men. He stayed approximately 20 to 30 behind the men as they headed north on Halsted Street. He observed the men cross over a parking lot and then enter a grassy area. Once in the grassy area, defendant handed the backpack to the man with the braids, who dumped the contents of the bag onto the grass. The man with the braids dropped the backpack and then all three men ran into an alley.

¶ 15 Purnell retrieved the items that were dumped in the grassy area and brought them back to Tigner, who was now on the opposite side of the street from where the incidents had occurred.

Shortly thereafter, Chicago police officers arrived to the scene and began questioning Tigner.

¶ 16 The State then called Officer Matthew Johnson to testify. Officer Johnson, a Chicago police officer, testified that he was in the area of 63rd and Union Street when he and his partner, who were driving a marked police SUV, saw three man drop a bag in a

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grassy field and continue walking. Officer Johnson did not see any crime being committed, but followed the men because of the unusual and suspicious behavior. Officer Johnson testified that he and his partner lost sight of the men after they went down into an alley.

¶ 17 Minutes after losing sight of the men, a call came over the police radio stating that there had just been a robbery by three men at 63rd and Halsted. Officer Johnson and his partner began looking for the men that they had been following earlier. Within a few minutes, they spotted two of the men and pursued them in the SUV and by foot and took them into custody. Officer Johnson did a pat down of both men and did not find weapons on their person.

¶ 18 While Officer Johnson and his partner held the two men in custody, Tigner was brought to their location where he identified the two men as the men who had just robbed him. Officer Johnson and his partner did a search of the area where they had seen the men walking and were able to recover Tigner's black backpack. Officer Johnson testified that they did not find a gun.

¶ 19 At the close of the evidence, defendant elected to have the jury instructed on both armed robbery and the lesser offense of robbery. The jury returned a verdict of guilty of armed robbery with a firearm. Defendant filed a motion for a new trial, which

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was denied. The motion did not contain any arguments relating to Illinois Supreme Court Rule 341(b).

¶ 20 At sentencing, the State argued that defendant should not receive the minimum sentence because defendant had a prior criminal history, including a prior robbery conviction. The trial court agreed and sentenced defendant to 12 years in the Illinois Department of Corrections. The trial court added an additional 15 years due to the presence of the firearm during the commission of the robbery. In total, defendant was sentenced to 27 years in the Illinois Department of Corrections.

¶ 21 I.Conviction of Armed Robbery with a Fireman

¶ 22 A person commits robbery when he or she knowingly takes property, except a motor vehicle covered by section 18-3 or 18-4, from the person or presence of another by the use of force or by threatening the imminent use of force. 720 ILCS 5/18-1(a) (West 2008). A person commits armed robbery when he or she violates section 18-1 and he or she carries on or about his or her person or is otherwise armed with a firearm. 720 ILCS 5/18-2(a)(2) (West 2008). Defendant argues that the State failed to prove beyond a reasonable doubt that defendant had a firearm during the commission of the robbery and, therefore, no rational trier of fact could have found that defendant possessed a firearm at the time of the robbery. We disagree.

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¶ 23 On review, the relevant question is whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found defendant guilty beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004); *People v. Ornelas*, 295 Ill. App. 3d 1037, 1049 (1998). It is the responsibility of the trier of fact to determine the credibility of witnesses and the weight to be given to their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from the evidence. *People v. Williams*, 193 Ill. 2d 306, 338 (2000). A criminal conviction will not be reversed unless the evidence is so improbable or unsatisfactory that a reasonable doubt of defendant's guilt is justified. *People v. Moore*, 171 Ill. 2d 74, 84 (1996).

¶ 24 Here, we cannot say that the evidence presented by the State regarding defendant's possession of a firearm during the commission of robbery was so improbable or unsatisfactory that a reasonable doubt of defendant's guilt is justified. Tigner testified that he saw, felt and heard the firearm that defendant possessed during the robbery. Tigner saw the firearm when defendant held it up to his chest while standing just three feet away from him. There was nothing obstructing his view of the firearm, and at five o'clock p.m., when he observed the firearm, it was still light outside. Tigner described the firearm as

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having a barrel and being black.

¶ 25 Tigner felt the firearm with the palm of his hand when he smacked it away from defendant. He testified that it felt like metal. He felt the firearm again when defendant used it to strike him in the head. Tigner suffered a scar to the top of his head as a result of the firearm hitting his head, and the jurors saw photographs of this scar.

¶ 26 Tigner also heard the firearm when it hit the sidewalk after being smacked out of defendant's hand. Tigner testified that when the firearm hit the ground it sounded like metal hitting the sidewalk.

¶ 27 When the sufficiency of the evidence is challenged in a criminal matter, the trier of fact remains responsible for determining the credibility of the witnesses, the weight to be given to their testimony, and the reasonable inferences to be drawn from the evidence. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). Therefore, even though defendant argues that Tigner's testimony is "contrary to human experience," given that Tigner clearly testified that defendant had a firearm during the commission of the robbery, we see no reason to disturb the trial court's findings.

¶ 28 Additionally, the security guard, Purnell, testified that he observed a scuffle on the ground involving Tigner and the men.

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This corroborates Tigner's testimony that there was a scuffle on the ground after he knocked the firearm free from defendant's hand. Further, even though Purnell was not able to see defendant's hands from where he was located, he did see defendant hit Tigner in the head causing Tigner's head to turn back. This corroborates Tigner's testimony that defendant struck him in the head.

¶ 29 Moreover, there was no evidence presented at trial that the defendant had in his possession a BB gun or a toy gun or anything other than firearm. The only evidence that was presented indicated that defendant possessed a black, metal firearm at the time of the robbery.

¶ 30 For all the reasons above, including the testimony of Tigner indicating that defendant had a firearm at the time of the robbery, Purnell's testimony that corroborates Tigner's testimony to the extent he was able to observe the robbery and the lack of any evidence suggesting that defendant possessed anything other than a firearm, we affirm the jury's finding that defendant possessed a firearm during the commission of the robbery.

¶ 31 II. Constitutional Challenge to 15-year Firearm Enhancement

¶ 32 Next, defendant argues that the trial court improperly enhanced his sentence by 15 years pursuant to 720 ILCS 5/18-2(b). See 720 ILCS 5/18-2(b) (West 2008). Specifically, defendant

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argues because the Illinois Supreme Court found 720 ILCS 5/18-2(b) to be unconstitutional in *People v. Hauschild*, 226 Ill. 2d 63 (2007), the 15-year enhancement provision was void *ab initio* and could not be applied in his case.

¶ 33 The State argues that Illinois Public Act 95-688 revived the 15-year enhancement provision for armed robbery, making defendant's sentence of 27 years constitutional and proper. See Ill. Pub. Act 95-688 (eff. Oct. 23, 2007).

¶ 34 While both defendant and the State pointed out conflicting rulings on this issue amongst the divisions of the appellate court, the Illinois Supreme Court has since settled this issue. In *People v. Blair*, 2013 IL 114122 (2013), the Illinois Supreme Court held that Public Act 95-688 revived the armed robbery sentencing statute, including the 15-year enhancement provision for using a firearm during the commission of a robbery. *People v. Blair*, 2013 IL 114122, ¶ 2 (2013).

¶ 35 In *Blair*, a jury convicted the defendant of armed robbery while armed with a firearm. *Id.* at ¶ 4. The trial court sentenced the defendant to a 23-year imprisonment, which included a 15-year enhancement pursuant to section 18-2(b) of the armed robbery statute. 720 ILCS 5/18-2(b). The defendant appealed, and the appellate court found that because the 15-year enhancement provision for armed robbery had been declared

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unconstitutional under the proportionate penalties clause of the Illinois Constitution in *Hauschild*, that clause was void *ab initio*.<sup>2</sup> Further, because the legislature had not done anything to amend the armed robbery statute, the appellate court found that the 15-year enhancement provision had not been revived by Public Act 95-688, because that act amended the armed violence statute, not the armed robbery statute.

¶ 36 The Illinois Supreme Court reversed the appellate court's ruling and found that Public Act 95-688 revived the 15-year enhancement provision for armed robbery. The Court stated "[w]hen a statute is found to violate the proportionate penalties clause under the identical elements test,\*\*\*[] amendment or reenactment of that statute is not the legislature's only recourse. This is so because of the unique nature of an identical elements proportionality violation." *Id.* at ¶ 31. Thus, the Court found that when the legislature enacted Public Act 95-688, which amended the armed violence statute, it "revived the unconstitutional [armed robbery] statute by curing the

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<sup>2</sup>In *Hauschild*, the Court held that the 15-year firearm sentencing enhancement in the armed robbery statute was unconstitutional because the elements of armed robbery while armed with a firearm were identical to the elements of armed violence predicated on robbery, yet armed robbery while armed with a firearm carried a proportionally greater possible sentence than the armed violence statute. *People v. Hauschild*, 226 Ill. 2d 63, 86-87 (2007).

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proportionality violation through amendment of the comparison statute." *Id.* at ¶ 35.

¶ 37 Because the Illinois Supreme Court has ruled that the legislature revived the 15-year enhancement through its enactment of Public Act 95-688, we find that the trial court did not err in adding the 15-year enhancement to defendant's sentence. See *People v. Blair*, 2013 IL 114122 (2013).

¶ 38 III. Failure to Instruct Jurors Pursuant to Illinois Supreme Court Rule 431(b)

¶ 39 Defendant contends that the trial court denied his right to a fair and impartial jury by: (1) failing to admonish the jurors that the defendant's failure to testify cannot be held against him, and (2) failing to ascertain whether the jurors understood and accepted the admonishments that the trial court judge did read to the jurors. See Ill. S. Ct. R. 431(b) (eff. May 1, 2007). When presented with an issue concerning compliance with a supreme court rule, the court's review is *de novo*. *People v. Lloyd*, 338 Ill. App. 3d 379, 384 (2003).

¶ 40 As pointed out by the People, defendant neither objected to the trial court's Rule 431(b) admonishments at trial nor raised the issue in a post-trial motion. Accordingly, the People contend defendant waived the issue on appeal. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). As the record indicates that

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defendant did not make an objection, we agree that defendant failed to preserve this issue on appeal. However, the plain-error doctrine allows a reviewing court to consider unpreserved error when: (1) a clear or obvious error occurs and the evidence is so closely balanced that the error alone threatens to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurs and that error is so serious that it affected that fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). Accordingly, defendant argues that the trial court's failure to strictly comply with Rule 431(b) falls within prong one of the plain-error doctrine warranting reversal of his conviction.

¶ 41 Before considering whether the plain-error doctrine applies, we must first determine whether any error occurred in this case. *People v. Lovejoy*, 235 Ill. 2d 97, 148 (2009).

¶ 42 Rule 431(b) provides, in its entirety:

“The court shall ask each potential juror, individually or in a group, whether that juror understands and accepts the following principles: (1) that the defendant is presumed innocent of the charge(s) against

him or her; (2) that before a defendant can be convicted the State must prove the defendant guilty beyond a reasonable doubt; (3) that the defendant is not required to offer any evidence on his or her own behalf; and (4) that the defendant's failure to testify cannot be held against him or her; however, no inquiry of a prospective juror shall be made into the defendant's failure to testify when the defendant objects.

The court's method of inquiry shall provide each juror an opportunity to respond to specific questions concerning the principles set out in this section." Ill. S. Ct. R. 431(b) (eff. May 1, 2007).

¶ 43 Here, the trial court judge offered the following admonishments to the first group of jurors:

"Do all of you understand and accept the following fundamental principles of our legal system. I am going to ask all of you individually if you can adhere to these principles during the course of the trial.

First, a person accused of a crime is

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presumed to be innocent of the charge against him. That presumption stays with the defendant throughout the trial and is not overcome unless from all the evidence you believe the State had proved his guilt beyond a reasonable doubt; that the defendant does not have to prove his innocence; that the defendant does not have to present evidence on his own behalf.

I am going to ask all of you individually if you will be able to adhere to those principles of our legal system."

The trial court judge then called each juror's name in the first group, and each juror responded "yes."

¶ 44 When addressing the second group of jurors, the trial court judge offered the following admonishments:

"Again, I am going to ask each of you individually to respond to this particular question regarding the principles of law that applies [sic] to this case and our legal system as a whole.

First of all, that a person accused of a crime is presumed to be innocent of the

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charges against him, that the presumption stays with the defendant through the trial and is not overcome unless from all of the evidence you believe the State proved its case beyond a reasonable doubt; that the defendant does not have to prove his innocence; that the defendant does not have to present any evidence on his own behalf.

Would each of you be able to follow the principles of law I said here today[]\*\*\*?"

The trial court judge then called each juror's name in the second group, and each juror responded "yes."

¶ 45 When addressing the third and final group of jurors, the trial court judge offered the following admonishments:

"I am going to ask all of you individually to respond to the question regarding the principles of law that apply to this case.

First of all, a person accused of a crime is presumed to be innocent of the charges against him. That presumption remains with the defendant throughout the trial and is not overcome unless from all the evidence you believe the State proved the

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defendant guilty beyond a reasonable doubt;  
that the defendant does not have to prove his  
innocence; the defendant does not have to  
present evidence on his own behalf.

Do you agree to apply the principles of  
law in this case[ ]\*\*\*?"

The trial court judge then called each juror's name in the third  
group, and each juror responded "yes."

¶ 46 Under Rule 431, it is insufficient for a trial court to  
merely instruct the jurors on these principles and then issue a  
general admonition for them to follow the law. See Ill. S. Ct.  
R. 431 (eff. May 1, 2007), Committee Comments (trial court may  
not simply give "a broad statement of the applicable law followed  
by a general question concerning the juror's willingness to  
follow the law"). Rather, "[t]he rule requires an opportunity  
for a response from each prospective juror on their understanding  
and acceptance of those principles." *People v. Thompson*, 238  
Ill. 2d 598, 607 (2010). Further, where the trial court failed  
to advise the jurors of one of the four principles outlined in  
Rule 431(b), such noncompliance with the rule results in error.  
See *People v. Johnson*, 2012 IL App (1st) 091730, ¶ 41 (2012).

¶ 47 Here, it is plain from the record that the trial court did  
not fully comply with the strictures of Rule 431(b) as the trial

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court judge did not instruct the jurors on principle number four of Rule 431(b), that the defendant's failure to testify cannot be held against him, and failed to ask all the groups of potential jurors whether they understood and accepted the other principles that were read to them.

¶ 48 Finding that the trial court erred in failing to comply with the requirements of 431(b), we now turn to the plain-error doctrine. Here, defendant raises a challenge under the first prong of the plain-error doctrine. "Under the first prong, the defendant must prove 'prejudicial error' by showing both that there was plain error and that 'the evidence was so closely balanced that the error alone severely threatened to tip the scales of justice against him.'" *People v. Magallanes*, 409 Ill. App. 3d 720, 728 (2011) (citing *People v. Herron*, 215 Ill. 2d 167, 187 (2005)). Accordingly, we must determine whether the evidence was so closely balanced that the error alone severely threatened to tip the scales of justice against defendant.

¶ 49 In plain-error review, the burden of persuasion rests with the defendant. *People v. Thompson*, 238 Ill. 2d 598, 613 (2010). Here, defendant argues that the evidence was closely balanced because no firearm was ever recovered; Purnell never testified that he saw a firearm; Tigner's description of the firearm and his actions upon seeing the firearm did not comport with human

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experience; and there was no evidence to prove that what the victim saw was a firearm as opposed to some other dangerous weapon. We disagree.

¶ 50 Tigner testified that he saw, felt and heard the firearm during the robbery. Tigner saw the firearm when defendant held it up to his chest while standing just three feet away from Tigner. There was nothing obstructing his view of the firearm, and at five o'clock, it was still light outside. Tigner described the firearm as having a barrel and being black. Tigner felt the firearm with the palm of his hand when he smacked it away from defendant. He testified that it felt like metal. He felt the firearm again when defendant used it to hit him in the head. Tigner suffered a scar to the top of his head as a result of the firearm hitting his head, and the jurors saw photographs of that scar. Tigner heard the firearm when it hit the sidewalk after being smacked out of defendant's hand. Tigner testified that when the firearm hit the ground it sounded like metal hitting the sidewalk.

¶ 51 Moreover, Purnell testified that he observed a scuffle on the ground involving Tigner and the men. This corroborates Tigner's testimony that there was a scuffle on the ground after he knocked the firearm free from defendant's hand. Further, even though Purnell was not able to see defendant's hands from where

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he was located, he did see defendant hit Tigner in the head causing Tigner's head to turn back. This also corroborates Tigner's testimony that defendant struck him in the face with the firearm.

¶ 52 Defendant cites to *People v. Johnson*, 2012 IL App. (1st) 091730 (2012) and *People v. Naylor*, 229 Ill. 2d 584 (2008) in support of his argument that the evidence was closely weighed in this case. We find those cases distinguishable from the case at bar.

¶ 53 In *Johnson*, where the defendant was charged with first-degree murder and aggravated battery, the court held that the evidence was "closely weighed" where the case hinged on conflicting eye witness and alibi testimony. *Johnson*, 2012 IL App. at ¶ 44. In *Johnson*, the State presented two witnesses to testify that the defendant was in the area of the shooting at the time it occurred; however, both witnesses were impeachable because they were from a rival gang of the defendant's gang. *Id.* The defendant, on the other hand, presented witnesses to testify that the defendant was in Fulton, Kentucky at the time of the shooting; however, those witnesses were also impeachable because they had positive connections with the defendant. *Id.* at ¶ 45. Neither side offered any physical evidence as to the defendant's whereabouts on the date of the shooting. *Id.* at ¶ 44.

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Therefore, in *Johnson*, whether the defendant was convicted of first-degree murder and aggravated battery depended on the conflicted, uncorroborated testimony of the eye witness and alibi witnesses.

¶ 54 Similarly, in *Naylor*, a case involving the sale of heroin, the court held that the evidence was "closely weighed" where the trial court was presented with conflicting, uncorroborated testimony as to whether the defendant was legitimately involved in the sale of drugs. "On the one side, the two officers testified that defendant sold them heroin. On the other side, defendant testified that he had left his apartment to pick up his son from school when he was mistakenly swept up in a drug raid." *Naylor*, 229 Ill. 2d at 607. Accordingly, the court held that the evidence was "closely weighed" because "the trial court was faced with two different versions of events, both of which were credible." *Id.* at 608.

¶ 55 Here, there was no conflicting evidence presented at trial suggesting that the defendant did not have a firearm at the time of the robbery. Rather, the State presented Tigner, who testified that he saw, felt and heard the firearm that defendant used while robbing him. Further, while Purnell was too far away to see defendant's hands, Purnell's testimony regarding what he was able to see from a distance corroborated Tigner's testimony.

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More importantly, though, there was no evidence presented to the jury that defendant did not possess a firearm during the robbery of Tigner. While defendant points out that no firearm was ever found and no one besides Tigner testified to seeing the firearm, this evidence does not directly challenge Tigner's testimony that defendant had a firearm during the robbery. Given there was no testimony to directly rebut Tigner's testimony, and given that portions of Tigner's testimony were corroborated by Purnell, we cannot find that the evidence in this case was "closely balanced." As such, we find that there are no grounds upon which to reverse defendant's conviction and affirm the trial court's findings.

¶ 56 For the foregoing reasons, we affirm the trial court's findings.

¶ 57 Affirmed.