

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).

FOURTH DIVISION
November 14, 2013

No. 1-12-0366

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County, Illinois,
)	County Department,
v.)	Criminal Division.
)	
RAFAEL PADILLA,)	No. 09 CR 2787 (02)
)	
Defendant-Appellant.)	Honorable
)	Timothy Joseph Joyce
)	Judge Presiding

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Howse and Justice Epstein concurred in the judgment.

ORDER

¶ 1 *Held:* It was not plain error for the circuit court to admit into evidence testimony by a key eyewitness that he was threatened in jail by persons related to the codefendant. The statement was used for the limited purpose of establishing why the witness made inconsistent statements regarding the defendant's involvement in the crime. Even if it was an abuse of discretion to admit such testimony, the remaining evidence at trial was not closely balanced but rather overwhelmingly supported the defendant's finding of guilt. In addition, the error was not structural and did not affect the fairness of the defendant's trial or the integrity of the judicial system.

¶ 2 I. BACKGROUND

¶ 3 Following a bench trial in the circuit court of Cook county, the defendant, Rafael Padilla,

No. 1-12-0366

was found guilty of first degree murder and sentenced to 23 years' imprisonment. On appeal, the defendant contends that he is entitled to a new trial because the circuit court erred when it admitted into evidence testimony from one of the key eyewitnesses that he was threatened in jail prior to signing an affidavit recanting his grand jury testimony, wherein he implicated the defendant in the murder. The defendant contends that the State failed to establish any nexus between the defendant and those threats, so as to permit the testimony into evidence. For the reasons that follow, we affirm.

¶ 4

I. BACKGROUND

¶ 5 The record reveals the following pertinent facts and procedural history. The 19-year-old defendant was charged with several codefendants, including Felix Padilla, Jose Estrella¹, Marquis Ollie, Timothy Smith and Jordan Rivera, with two counts of murder (720 ILCS 5/9-1(a)(1), (a)(2) (West 2010)) for his involvement in the beating death of the 31-year-old victim, Juan Reyes (hereinafter the victim). The defendant and codefendant Estrella (hereinafter Estrella) were tried together in a joint bench trial, where the following relevant evidence was adduced.

¶ 6

A. Officer Mario Segoviano

¶ 7 Officer Mario Segoviano (hereinafter Officer Segoviano) testified that at about 9:30 p.m., on July 23, 2007, he responded to a call of battery in progress at 2748 West Haddon Avenue, Chicago. When he and his partner arrived, they observed a large crowd gathered around an individual lying on the ground, who was later identified as the victim. Officer Segoviano told the

¹The record reveals that at the time of the incident, codefendant Estrella was 23 years old.

No. 1-12-0366

crowd to stand back and then began questioning those in his nearest vicinity about what had happened. The officer was told by several individuals that the victim had too much to drink and was just passed out.

¶ 8 After Officer Segoviano called an ambulance, however, someone in the crowd told him that the victim was beaten. The officer then proceeded to interview more witnesses and specifically spoke to Kenneth Holowka, Yesenia Colon (hereinafter Colon) and Megan Finch (hereinafter Finch). While he was speaking to Holowka, Holowka pointed to a male African-American standing nearby and identified him as one of the offenders. Officer Segoviano gave chase, but was unable to apprehend the offender.

¶ 9 On cross-examination, Officer Segoviano testified that he did not smell any alcohol on Holowka's breath and that Holowka did not seem intoxicated to him.

¶ 10 B. Kenneth Holowka

¶ 11 Kenneth Scott Holowka (hereinafter Holowka)² next testified that he was a close friends with the victim for over 23 years. Holowka averred that at about 2 or 3 p.m. on July 23, 2007, he picked up the victim from the 2700 block of West Haddon Avenue and the two of them went to a nearby Applebee's restaurant to have lunch. They each had a beer and met two girls who were also having lunch. The victim also knew one of the waitresses at the restaurant. According to Holowka, the five of them spent the next couple of hours at the restaurant socializing, before

²Holowka admitted that on May 20, 2003 he was convicted in DuPage County under case No. 03-CF-8790010 of the crime of financial identity theft.

No. 1-12-0366

heading to Fagan's bar in River Grove to play pool and drink. Holowka admitted that he had between two and four drinks at Fagan's.

¶ 12 After several hours at the bar, Holowka, the victim and the two women they met in the bar proceeded to West Haddon Avenue where they "hung out" on the street and socialized with others who were out on the block. Holowka testified that he was not aware that Haddon was gang territory. He acknowledged, however, that he knew the victim had once been a member of the Spanish Cobras.

¶ 13 Holowka testified that after a few minutes on the block, he saw the victim argue with a woman on the street. He heard the woman say she was going to call her brother, who ran the block. According to Holowka, the woman was angry because the victim had called her son a "gangbanger." Holowka testified that after the argument, the victim walked back to their group and the woman went inside her house. According to Holowka, a few minutes later a black Dodge pickup truck pulled up on the street, and the driver approached the victim and spoke to him. Holowka heard them arguing and the driver asking the victim to leave. Holowka went to the victim and said "let's go." The driver then went back into his vehicle and drove off.

¶ 14 Holowka, the victim, and the two women from the Applebee's restaurant headed toward Holowka's car. As the victim was getting into the front passenger seat, a group of about ten teenagers approached Holowka's car and dragged the victim out. Holowka watched as the men proceeded to beat the victim with their hands and feet. Holowka testified that he tried to dial 911 but was told that "the situation did not concern him" and "to put the phone down." Holowka tossed his cell phone onto his dashboard. For the next ten minutes or so, two individuals stood

No. 1-12-0366

next to Holowka to make sure he did not dial 911. When the two men watching him left, Holowka drove away in his car to pick up the two women, who had been in the back seat of his car but had exited and walked away to a nearby alley. Holowka also dialed 911, and drove back to the victim to see if he was alright. When he returned, the victim was alone, lying on the ground and appeared unconscious. Holowka took off his shirt and tried to clean him up.

¶ 15 Holowka testified that he "got a good look" at some of the offenders. He testified that once the police arrived, he identified a young slender African American male in the crowd as one of them and that the police gave chase but were unable to apprehend him. Holowka also described some of the other offenders to the police. He said there were "three blacks [and] seven Hispanics" and told the police what each was wearing.

¶ 16 Holowka next made an in-court identification of codefendant Estrella as one of the offenders and testified that he observed him striking the victim numerous times. Holowka also testified that on November 14, 2007, he identified codefendant Estrella from a lineup at Area 4 police station. Holowka did not identify the defendant either in the lineup or in court.

¶ 17 C. Jackson Gomez

¶ 18 Jackson Gomez (hereinafter Gomez) next testified that he is a former member of the Spanish Cobras, which he was affiliated with between 1997 and 2005. Gomez testified on the night of the offense, he was with his girlfriend and his father in his third floor apartment at 2748 West Haddon Avenue. Gomez testified that he was in the front room that evening watching television and looking out the window. At about 7:30 or 8 p.m., he heard an argument outside and looked out the window. Gomez testified that he saw the victim arguing with an African

No. 1-12-0366

American woman, known as "Mama," and later identified as Eddie Mae Bennem (hereinafter Bennem). Gomez testified that the victim and Bennem were arguing because Bennem was offended that the victim had tried to give some of her grandchildren money. According to Gomez, the victim was drunk, "started getting loud" and called Bennem a "bitch."

¶ 19 Gomez testified that Bennem's son then crossed the street to see what was happening. He told Bennem to get inside the house, and approached the victim, telling him "Everybody's drunk, know what I'm saying?"

¶ 20 When Bennem's son walked away, stepped away from the window and continued to watch television. About 15 minutes later, he heard another commotion outside and looked out of the window again. He heard "people going crazy," saying "call somebody, call somebody." He observed codefendant Estrella on his cell phone, and heard him say, "we have to call somebody." According to Gomez, someone then called Bennem's brother, known in the neighborhood as "Brother Ray."

¶ 21 According to Gomez, about ten minutes later a white van pulled up in front of Bennem's house, and five individuals got out, including, Brother Ray, and the defendant. Gomez testified that Brother Ray was a ranking member of the Spanish Cobras. After speaking with his sister, Brother Ray ordered a "violation." Gomez explained that "a violation" is a gang punishment that often includes a beating.

¶ 22 Gomez testified that he watched as the victim was pulled from and minutes later attacked by a mob. According to Gomez, a young man known as "Gangero," and later identified as Timothy Smith, was the first one to punch the victim in the face. The victim fell to the ground

No. 1-12-0366

and according to Gomez, the group then "rushed in" and started beating and kicking him with their fists and legs. Gomez averred that he could "see everybody perfect" from his third-floor window, and identified both the defendant and codefendant Estrella as participating in the attack.

¶ 23 According to Gomez, about two minutes into the beating someone in the crowd yelled, "stop, stop, stop" and the group dispersed. Gomez continued to watch until the ambulance arrived. He then left his apartment. Gomez admitted that he did not speak to police that night, explaining that "it was none of his business" and "he was no longer affiliated with the Spanish Cobras."

¶ 24 Gomez further testified that four days later, on July 27, 2007, the police came to his home with a search warrant for drugs, and found cocaine and bullets. After Gomez was arrested, the police asked him about the beating that had taken place on his block of West Haddon Avenue a few nights before. Gomez told the police what he saw, but testified that he was not offered a deal in exchange for the information, and that he was later sentenced to three years' imprisonment on that drug case. Gomez testified that he again spoke to police on November 14, 2007, when he viewed a lineup and identified the defendant and codefendant Estrella as participating in the beating. That same day, Gomez testified before a grand jury.

¶ 25 Gomez next testified that in December 2008, he was in Cook County Jail, when "eight guys," who had homemade knives, came to his cell and told him he had to sign "this affidavit," and that, if he did not, his "life would be a waste." The men gave Gomez a blank piece of paper and he signed it. The men also told Gomez that he would receive a visit within a couple of days from a lawyer "for whom I am testifying against" and asked him to sign another affidavit that the

No. 1-12-0366

lawyer would bring with her. The men told Gomez that if he did not sign that affidavit they would try to kill him. According to Gomez, a couple of days later, he was visited in jail by codefendant Estrella's attorney and signed an affidavit. Gomez testified that he neither wrote nor read over the affidavit. The affidavit was written by Estrella's attorneys, after he answered their questions. Gomez averred that those answers were "all lies he made in fear for his life."

¶ 26 Codefendant Estrella's counsel objected to Gomez's testimony about the visit of the eight men in jail, arguing that there was nothing connecting Estrella to the alleged threats.³ The following colloquy then took place between the State and the court:

"[Assistant State's Attorney (ASA)] Mr. Cook: Your Honor, Mr. Gomez is not testifying that it was Mr. Estrella who threatened him. He was simply stating, explaining that he signed this affidavit and that he was afraid that he was threatened and that was the motivation for signing this affidavit. It's inconsistent with the two prior statement[s] he gave, both the handwritten [statement to the police] and the Grand Jury statement.

The Court: Well, the handwritten statement and the Grand Jury statement aren't in evidence. They are not going to be in evidence for the moment, because they're prior consistent statements, I would imagine. So they are not admissible.

Mr. Cook: We are presenting the affidavit and having him explain why he signed it just for that narrow purpose only. It's not to say that he was threatened by the [co]defendant [Estrella]. It's just that he was threatened and that is the reason he signed this affidavit."

³Defense counsel did not object, nor joined in codefense counsel's objection.

No. 1-12-0366

The trial judge asked Estrella's counsel if she had an argument in rebuttal and after she stated she did not, the court overruled her objection.

¶ 27 On cross-examination, Gomez admitted that he was visited in jail by codefendant Estrella's attorney and her partner and that they asked him what happened on the night of the incident. Gomez testified that he told Estrella's counsel that, after he was arrested for drugs and weapons, the police threatened to charge him with possession of drugs that were not his, and that he was afraid of going to prison, so he told the police what he had learned on the street about the what happened to the victim. Gomez told Estrella's counsel that he never saw the actual beating because he was not at home, but rather out with his girlfriend, Marisol, picking up McDonald's. Gomez averred, however, that he told Estrella's counsel that no one threatened him to sign the affidavit, because "they told him not to say anything."

¶ 28 D. Ermelida Luera

¶ 29 Ermelida Luera (hereinafter Luera) next testified that she was one of the women that Holowka and the victim met on July 23, 2007 at Applebee's. Luera testified that she was at the restaurant with three friends when they met Holowka and the victim in the bar area. Together with her friends and a pregnant waitress, Luera went with Holowka and the victim to Fagan's bar to play pool and have a couple of drinks. Two of Luera's friends left, and Holowka and the waitress then went to pick up two underage girls to bring back to the bar. When the underage girls were not allowed into the bar, they decided to go to Humboldt Park to hang out. Luera drove her own car, and her friend, Denisha Towns (hereinafter Towns), rode with her. They met Holowka and the victim in front of a liquor store and followed them to the 2700 block of West

No. 1-12-0366

Haddon Avenue.

¶ 30 Luera testified that the block was "filled with people," including a man in a wheelchair that the victim introduced to Luera. Luera asked the victim where she could find a restroom, and he told her to wait while he went to find out. When the victim didn't return, one of the women on the block told her there was a gas station around the corner and that she could use their restroom. Luera and her friend Towns followed the woman to the gas station.

¶ 31 When Luera returned to the 2700 block of West Haddon Avenue, she saw the victim walking toward her, with an African-American woman following behind him and cursing at him. Luera testified that she heard the victim tell the woman that he did not care "who she was or who she knew," and the woman respond, "Well you'll see, you'll see what happens," before walking away.

¶ 32 According to Luera, soon thereafter a truck and a van pulled up in the middle of the street where the woman was waiting, and several guys jumped out of the van and talked to her. Luera testified that two of them men kept looking in their direction.

¶ 33 Luera asked the victim what happened and the victim told her the woman was upset because he told "some kids [who were related to the woman] that they could not serve on the block." Luera explained that "serving" meant "selling drugs." Luera testified that she then knew there "was going to be trouble." She therefore told Holowka that they should leave. According to Luera, the victim was "pretty drunk" and did not want to get into the car, so she and her friend kept encouraging him to do so.

¶ 34 The victim finally started to get into the front passenger seat of Holowka's car, when three

No. 1-12-0366

teenagers came up to him and pulled him out of the car and dragged him to a nearby tree.

According to Luera, more than a dozen teenagers then surrounded the victim and started beating him with their hands and feet. Luera testified that she and Towns yelled at the crowd to stop and leave the victim alone but nobody paid attention to them. The beating lasted about a minute and then the attackers walked away. Luera, who was a certified nursing assistant, saw that the victim was gasping for air. She felt his pulse, which was barely there, and yelled for Holowka to help. As Luera was kneeling over the victim, someone in the crowd told her to "just leave him alone, that he is drunk and eventually would get up." That individual also threw a cup of water in the victim's face before walking away.

¶ 35 When the police arrived at the scene, they asked Luera to get away from the victim.

Luera waited until she knew the victim was in the ambulance and then left with Towns. Luera testified that a few days later she read an article in the newspaper and learned that the victim had died. She immediately called the police. On July 30, 2007, Luera was shown several photo arrays, and identified codefendant Estrella from one of them. Although she was shown a photo of the defendant, she did not identify him at that time. Luera testified that on November 14, 2007, she viewed lineups at Area 4 police station, and identified both the defendant and codefendant Estrella as individuals involved in the beating. Luera also made an in-court identification of both the defendant and Estrella.

¶ 36 E. Detective Roberto Garcia

¶ 37 Detective Roberto Garcia next testified that on evening of July 23, 2007, he was assigned to investigate the victim's homicide. Together with his partner he immediately proceeded to the

No. 1-12-0366

scene at 2748 West Haddon Avenue. Once there, he observed "a lot of people out on the block and on their porches." Detective Garcia spoke with the officers already on the scene and learned that the victim had been transported to the hospital and that a male African American suspect was chased but lost. Detective Garcia also spoke with several witnesses present at the scene, including, Holowka, Colon, Finch and Aileen Nieves. He also spoke to Bennem, the African American woman with whom the victim had been arguing, both at the scene and later at Area 4 police station. Detective Garcia explained that after these interviews, he was looking for young Hispanic and African American men associated with the Spanish Cobras.

¶ 38 Detective Garcia testified that on July 24, 2007, he received a telephone call from the victim's girlfriend, Leslie Randazzo. After that conversation, he was looking for Raymond Jackson, Jordan Rivera, the defendant's brother, Felix Padilla, and Timothy Smith. He was also looking for Marquis Ollie.

¶ 39 Detective Garcia further averred that on July 27, 2007, he came into contact with the recently arrested Gomez, and that after speaking with Gomez, he additionally began looking for the defendant and codefendant Estrella.

¶ 40 Detective Garcia also received a telephone call from Luera on July 29, 2007, and spoke to her at the police station the next day. Detective Garcia showed Luera several photo arrays of various Spanish Cobra gang members, including the ones in the investigation. Luera identified Smith, Estrella and the defendant's brother, Felix Padilla, as some of the offenders. Luera also identified Bennem as the woman engaged in the altercation with the victim, and Israel Torres as the man in the wheelchair to whom she was introduced. The detective acknowledged that Luera

No. 1-12-0366

did not identify the defendant from any of the photo arrays, even though his photograph was among those shown to her.

¶ 41 Detective Garcia next testified that he arrested the defendant, codefendant Estrella, the defendant's brother, Felix Padilla, Ollie Marquis, and Timothy Smith on November 13, 2007, and that they were all brought to Area 4 police station for questioning. Detective Garcia conducted a lineup on November 14, 2007, and Luera identified both the defendant and codefendant Estrella. On cross-examination, Detective Garcia acknowledged that there was not much difference in the defendant's appearance in the July photograph shown to Luera, and the November lineup in which she identified the defendant. On redirect examination, however, he explained that in the lineup the defendant had "a more profound moustache," looked older and had a buzz cut, whereas in the photograph he had a full head of hair, and a clean face.

¶ 42 Detective Garcia also testified that on November 14, 2007, he interviewed the defendant at Area 4 police station, with several other detectives, including Detective David Roberts (hereinafter Detective Roberts).

¶ 43 On cross-examination, Detective Garcia admitted that he interviewed the defendant about seven times over the course of November 13, and 14, 2007.

¶ 44 On redirect examination, he testified to the contents of the defendant's statement. Detective Garcia averred that the defendant initially told him that he did not know anything about the murder, and that he was "pitching pennies" earlier in the day with the victim. Detective Garcia explained, however, that by the time he finished interviewing the defendant, the defendant admitted that he was the Spanish Cobra gang member appointed by the "high ups" to supervise

"the violation" to make sure that "it did not get out of hand." The defendant confessed to Detective Garcia that he hit the victim once, but "softly on the back of the head" and "only to show the other guys out there that he was participating."

¶ 45 F. Detective Roberts

¶ 46 Detective Roberts next testified that he was present for the defendant' interviews at Area 4 police station. He testified that he told the defendant to "tell the truth "or else you're going to get slammed." Detective Roberts averred that he told the defendant to stop lying to avoid a substantial amount of jail time.

¶ 47 G. The Defendant's Statement

¶ 48 After the testimony of the two detectives, the parties stipulated to the transcript of the defendant's interview at Area 4 police station and that transcript was received into evidence.⁴ The transcript reveals the following. The defendant, who was 19 years old at the time, was advised of his *Miranda* rights and stated that he wanted to speak with the police without the presence of an attorney. The defendant initially told the detectives that at about noon on the day of the incident, he and the victim were drinking and "pinching quarters" in front of the defendant's house. At some point, the defendant went upstairs and when he returned, the victim was gone. The defendant told police that later that evening, when the beating took place, he was "around the corner." The defendant claimed that had he been present for the beating, he would have helped the victim defend himself because the victim was a close friend and "like [his]

⁴At this point during the trial, codefense counsel, asked the trial court for a severance, but after further discussion, withdrew the request.

No. 1-12-0366

uncle." According to the defendant, he and the victim would "go upstairs and get drunk when they were bored" and "get drunk on special occasions." The defendant would also let the victim stay the night at his place whenever the victim's girlfriend kicked him out.

¶ 49 The transcript of the video statement further reveals that after the detectives informed the defendant that he was identified as one of the individuals involved in the beating, the defendant continued to deny his participation and told the detectives that he heard the beating was "a violation went wrong." The defendant also told the officers that when the police arrived at the scene "they put him on the gate and were cuffing him, but someone on the scene said, 'Nah [*sic*], it wasn't him.' "

¶ 50 Later on during the interview, the defendant expressed concern about anyone hearing what he had to say because "[b]am, they come by you in the jail because you know how it works," or "you go home and [your] family all got shot up." The defendant mentioned his young daughter and said that he "can't do no 60 years life." He also told the police that he would rather kill himself and that he would not want to go to jail for "this man." The defendant then told the detectives that Bennem's brother, Raymond Jackson (hereinafter Jackson), ordered the violation because the victim had disrespected his sister. The defendant told the detectives that he went to the store and that when he came back, Jackson told him to supervise the violation and "make sure it don't get out of hand." The defendant said that his sisters were there and could confirm that he did not touch the victim, but "as the one helping when [the victim] was on the floor." The defendant continued to deny hitting the victim, but stated that he had to be "up there close" to supervise the beating so that "it's looking like I'm hitting him too." According to the defendant,

No. 1-12-0366

he was "protecting" the victim and "getting hit along with the victim too."

¶ 51 The transcript of the videotaped statement further reveals that the defendant told the detectives that he looked different at the time of the incident than he did at the time of the interview (and the lineup, wherein he was identified) because at the time of the incident he had a unibrow.

¶ 52 During the interview, the defendant next asked the detectives whether he "still could get time depending on how it goes," and the detective responded that he did not know. The defendant then asked if Jackson would "get a warrant 'cause he's the main guy that sent everybody," but the detective told him, "No *** that's not necessarily true."

¶ 53 Detective Roberts reiterated to the defendant that he was already identified as one of those in the crowd who hit the victim and that it would be easier for him to tell the truth. Detective Roberts told the defendant that if he hit the victim, "[i]t's not the end the world," and that "if [he thought it as going to stick [the defendant] in the a**, [he] would've just not f***ing not talk to you okay." The detective said that the situation was the same as "in the Marines, somebody f*** up they [inaudible] and they beat him." The defendant, nevertheless, continued to deny hitting the victim.

¶ 54 The transcript of the defendants' interview next reveals that the defendant asked the detectives to telephone his mother to "make sure they're ok," and the detectives responded, "[o]nce you tell us all this bullshit, we'll let you call your mom, okay." When the defendant asked the detectives if he was going to jail and whether "this would mess up his parole," the detectives responded that they did not know but that "that's not necessarily going to

No. 1-12-0366

happen." Later in the interview, the detectives further minimized the suggestion that the defendant could go to jail, stating "just 'cause you punched somebody doesn't mean you killed him."

¶ 55 The transcript of the defendant's interview reveals that hours later, the defendant eventually confessed to hitting the victim, prefacing his confession with "it looks like you guys can get me out of this mess." The defendant stated that he swung at the victim, but that it "wasn't really intentionally for him." Rather, the defendant said he took "two swings" so that he would not be criticized or punished for not participating when he was ordered to do so. The defendant explained that if he had not participated he would have gotten beaten himself. He stated "I had to prove myself you know you know who I am." The defendant then affirmed that he hit the victim "on the side," but maintained that Jackson ordered the beating and asked him to make sure it did not "get out of hand."

¶ 56 H. Medical Examiner

¶ 57 Deputy Chief Medical Examiner, Dr. Mitra Kalelkar, testified that she performed the autopsy on the victim on July 24, 2007. The victim had 18 injuries about his head and torso. According to Dr. Kalelkar, his first cervical vertebra was fractured, which would have severed his spinal cord. Dr. Kalelkar believed that the victim died from blunt force trauma.

¶ 58 Dr. Kalelkar also testified that the toxicology report revealed that the victim's blood alcohol level was .97, which is approximately three and a half times the legal limit of .08. She testified that this amount of alcohol would have rendered the victim "pretty inebriated" and he had likely been drinking for quite a while.

¶ 59

I. Stipulations

¶ 60 The parties stipulated that at about 11:20 p.m., on July 23, 2007, forensic investigator, Brian Smith arrived at the scene, where he photographed, recovered and inventoried several items, including clothing, beer bottles and beer cans. Smith also photographed Holowka's vehicle and processed the car for latent prints. Smith was able to lift several fingerprints from the car. The parties further stipulated that the latent prints were sent to the Illinois State Police crime lab, where they were received by Moira McEldowney, an expert in fingerprints and fingerprint identification. McEldowney was able to match one fingerprint lifted from the rear passenger window of the car to that of codefendant Estrella. She matched two prints taken from a plastic bag found at the scene of the crime to those of the victim. None of the prints lifted from the scene or the car, matched those of the defendant.

¶ 61 The parties further stipulated that on July 23, 2007, the sun set at 8:18 p.m., and that there are streetlights on the 2700 block of West Haddon Avenue.

¶ 62

J. Motions for Directed Finding

¶ 63 After the State presented its case-in-chief, both parties filed motions for a directed finding. The circuit court deferred ruling on both until after it could review the recording of the defendants' videotaped statement to police.⁵ The defendant did not call any witnesses and the court proceeded to hear the testimony offered by codefendant Estrella. The defendant's counsel did not question Estrella's witnesses or formally adopt their testimony. However, because the defendant rested his case after Estrella's witnesses testified in this joint bench trial, we will

⁵Both motions were eventually denied.

No. 1-12-0366

nevertheless summarize that testimony below.

¶ 64 K. Codefendant Estrella's Witnesses

¶ 65 Codefendant Estrella presented five witnesses. Denisha Towns (hereinafter Towns) testified that on July 23, 2007, she was with Luera at the Applebee's restaurant when they met Holowka and the victim. She acknowledged that they accompanied the two men to Fagan's Bar and then to Humboldt Park, and admitted that they were drinking both at Applebee's and Fagan's. Towns, however, could not recall whether Luera had any alcoholic beverages while they were together. She also could not recall describing herself and Luera as feeling "nice and toasty."

¶ 66 Leah Meyers next testified that she works part-time for Estrella's defense counsel. She stated that on June 10, 2010, she was in the hallway of the courtroom with Estrella's attorneys when they introduced themselves to Luera. Meyers testified that Estrella's attorney asked Luera what she saw on the night of the offense, and Luera responded that she did not remember, just that she saw people kicking and punching someone on the ground. When asked if she recognized a photo, Luera responded, "I don't know. They all looked alike to me." Meyers testified that Luera then became upset, that she stated "I don't even want to be here," and walked away. Meyers acknowledged that Israel Torres was in the hallway with some other men. Meyers testified that Torres was a Spanish Cobra gang member and that he was present at the scene when the victim was killed.

¶ 67 Israel Torres, who is legally blind and in a wheel chair due to multiple sclerosis, next testified that he is a former Spanish Cobra gang member and that the victim was his best friend. Torres averred that on the day of the incident, at about 1 or 2 p.m., he and the victim were on the

No. 1-12-0366

sidewalk "chilling" when codefendant Estrella and Holowka came by. The victim introduced them to Torres, and then he, Estrella and Holowka went to look at Holowka's car.

¶ 68 Rolando Galindo next testified that in 2008 he was an intern at the Office of the Public Defender and that he assisted in Estrella's defense. Galindo averred that at about 9 p.m., on July 23, 2008, one year after the victim's death, he accompanied Estrella's attorney to the scene of the crime at 2748 West Haddon Avenue. According to Galindo, although there was a streetlight on that corner, it was very dark on the parkway. Galindo testified that he went to Gomez's apartment on the third floor of 2748 West Haddon Avenue and looked out of the front window. He averred that he was unable to see the parkway below because the tree in front was in full bloom.

¶ 69 Galindo also testified that on December 18, 2008, he went to Cook County jail with Estrella's defense counsel to interview Gomez. Gomez told them that he did not want codefendant Estrella to "do time for something he was not involved in." Gomez also said that he identified Estrella only because he felt pressured by police and believed that he would be charged with additional drug offenses unless he came up with "something big." According to Galindo, Gomez was very friendly and cooperative throughout the interview.

¶ 70 John Vergara next testified that he is currently a member of the Humboldt Park branch of Cease Fire, an organization that sends volunteers to intervene and prevent gang violence. Vergara explained that he is a former member of the Spanish Cobras and that he knew the victim for over 15 years.

¶ 71 Vergara testified that at about 8:30 p.m. on July 23, 2007, he received a telephone call

No. 1-12-0366

from the Cease Fire office to go to the 2700 block of West Haddon Avenue to respond to a potential problem. Vergara arrived at about 9:15 p.m. and walked toward the center of the block, where he saw a little crowd under a tree. According to Vergara, people were arguing and shouting. Vergara saw codefendant Estrella walking in his direction and asked him what was going on. Estrella told Vergara that he did not know but that "something was going on" with the victim. Vergara stated that a fight broke out then and that he told Estrella to cross the street. When the fight ended, Vergara and Estrella approached the victim, and Estrella immediately tried to revive him. According to Vergara, two women walked up and said they were nurses, and Vergara and Estrella got out of their way so that they could attend to the victim, while Estrella "waived down" the police.

¶ 72 Vergara stated that at that point, Holowka pulled up in his car, got out and began shouting, "You're all going to jail. What you going to beat me up too? You're all going to jail." According to Vergara, Holowka was "drunk out of his mind."

¶ 73 Vergara further averred that he saw Gomez that evening. He explained that Gomez drove onto Haddon Avenue with his girlfriend, asked Vergara what happened, and offered him a chicken sandwich.

¶ 74 On cross-examination, Vergara admitted that he did not approach the group surrounding the victim, or try to break up the fight. He acknowledged that he was unable to see anyone because it was too dark, and admitted that the only person he could identify was Estrella, who was with him the entire time. When asked why he did not tell any police officers or the State's Attorneys that Estrella was innocent, Vergara responded, "I just didn't want to."

¶ 75 After Vergara's testimony, the parties proceeded with their closing arguments, and the case was continued so that the trial court could review the testimony and the entirety of the transcript of the defendant's videotaped statement to police.

¶ 76 L. Trial Court's Finding of Guilt

¶ 77 On the following day, the circuit court made its ruling, finding both the defendant and codefendant Estrella guilty of murder. In doing so, the circuit court specifically stated that it believed the testimony of Luera and Galindo, but that it found Vergara's testimony "absolutely incapable of belief." The trial court summarized the testimony of each witness it had relied on.

¶ 78 Relevant to the defendant's conviction, the court first noted that Holowka, who drank "some appreciable amount" on the day of the incident identified codefendant Estrella, but not the defendant. The court next noted that Gomez "another individual who has got what we could again call baggage" identified both the defendant and codefendant Estrella, but also signed an affidavit, "essentially recanting his testimony." The court noted that Gomez's affidavit stated that the drugs and bullets he was charged with on July 27, 2007, were not his, but that his case was already resolved and disposed of in December of 2007, one year before he gave the affidavit.

¶ 79 The court stated that it reviewed the entirety of the defendant's videotaped statement to police. The court noted that the defendant initially denied being at the scene of the incident, then denied doing anything, then admitted to hitting the victim, but only to give the impression that he was involved in the "violation." The trial court stated that it did not believe the defendant when he said that he was only there to make sure that the beating did not get out of hand. The court also found relevant that the defendant was reluctant to discuss the involvement of any other

No. 1-12-0366

participants in the beating. The court, nevertheless concluded that his "statement does tend to confirm that which ***Gomez said, perhaps *** Luera, as well."

¶ 80 The trial court next addressed Luera's testimony. The court observed that Luera was not a gang member and that she had no ties to the neighborhood or the Spanish Cobras, and in fact, "no connection to anybody" in this case. As the court found relevant, Luera called the police when she found out the victim had died, and with "no beef, no agenda, no motive, no bias to say yeah or nay about anyone." According to the trial court, although Luera did not initially identify the defendant in the photo array, she did later identify him in the lineup, as well as in court. With regard to Luera's conversation with defense counsel in the courtroom hallway, the trial court believed Mayer's testimony as to what happened, but stated that it had to be viewed in the context of the fact that the conversation took place in the presence of other people that Luera recognized from the scene. As to any inconsistencies between Luera's testimony and Holowka's the trial court observed "frankly those disparities are on minor points." The court concluded: "I believe Ms. Leura's testimony. I believe her identifications of [codefendant] Estrella and [the defendant] Mr. Padilla without qualification."

¶ 81 M. Motions for a New Trial and Additional Evidence

¶ 82 After the trial court issued its ruling both the defendant and codefendant Estrella filed motions for a new trial, and Estrella sought to present additional witnesses who were also present on the night of the incident but were previously unknown to the defense. The trial court asked defense counsel whether he wanted to adopt codefendant Estrella's motion as to the additional witnesses, and defense counsel replied, "I would like to reserve the right to ask them some

No. 1-12-0366

questions, and depending on what they say, I'll potentially make an oral amendment to anything that I've put in my motion for a new trial." The trial court allowed the new witnesses to testify, and both codefense and defense counsel elicited the following testimony from them.

¶ 83 Jason Ares testified that he was not aware that codefendant Estrella was on trial for murder in this cause until September 22, 2011, when he saw the codefendant in the courthouse. At that time he spoke to Estrella, who asked him to get in touch with his defense attorneys so that Ares could talk to them about the case. Ares averred that on the night of the incident he was on the 2700 block of West Haddon. He saw the victim get into a fight with a woman. He also saw that shortly thereafter the victim was beaten by a group of men. Ares, averred, however, that Estrella was not part of the group beating the victim. Rather, Estrella was with Vergara, who worked with Cease Fire. Ares also testified that he knows the defendant, but that he did not see him on Haddon Avenue on the evening of the incident.

¶ 84 Jose Antonio Medina next testified that Estrella's mother was asking people in the neighborhood if they knew anything about the beating and could testify for Estrella. Medina agreed to do so, but testified that he was "confused with everything" and that as a result of his testimony in court he was having "various problems."

¶ 85 Medina recalled that at about 8 or 8:30 p.m., on July 23, 2007, he was dropped off from work at West Haddon Avenue near California Avenue. He saw the victim, who looked drunk, with a lot of other people. The victim was arguing with a black woman, who then made a telephone call. Medina testified that he saw codefendant Estrella walk over with a "guy with *** tattoos." Meanwhile, the victim continued to argue with the people on the scene until a black

No. 1-12-0366

man called "Mangera"⁶ threw the first punch at him and "started the brawl." After the beating, Medina saw codefendant Estrella helping the victim by putting his head on his knees and giving him water. An intoxicated woman also came over and tried to help.

¶ 86 As to the defendant, Medina was unable to identify him in open court and stated that he did not remember whether he was at the scene.

¶ 87 After hearing the testimony of the witnesses, the trial court denied the motions for a new trial. The court found that while defense counsel was diligent and could not have found the two witnesses prior to trial with reasonable efforts, the testimonies were not credible. The court noted that while both Ares and Medina testified that Estrella was not involved in the attack, they could provide no details about what other individuals on the scene were doing. The court further found that Medina "was not sincere or credible," and concluded, "[t]he bottom line is that I do not believe them."

¶ 88 At a subsequent sentencing hearing, the circuit court sentenced the defendant to 23 years' imprisonment. The defendant now appeals.

¶ 89 II. ANALYSIS

¶ 90 On appeal, the defendant contends that the trial court erred when it permitted Gomez to testify that he was threatened in jail prior to signing an affidavit recanting his statement to police and his grand jury testimony, because there was no evidence whatsoever that those threats were made by, or even related to, the defendant.

⁶The parties stipulated that Medina previously identified Timothy Smith as "Gangero" or "Mongaro" and said that he threw the first punch.

¶ 91 The State initially argues, and the defendant concedes that he has waived this issue for purposes of appeal by failing to raise it in his posttrial motion.⁷ In order to preserve an issue for appeal, a defendant must first make an objection to the alleged error at trial, and then raise it in a posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186-87 (1988); see also *People v. Allen*, 222 Ill. 2d 340, 352 (2006) (noting that "even constitutional errors can be forfeited"). The defendant nevertheless asks this court to review his claim under the plain error doctrine. See Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967) ("[a]ny error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court"); *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005).

¶ 92 The plain error doctrine is a narrow and limited exception to the general rule of forfeiture (*People v. Bowman*, 2012 IL App (1st) 102010, ¶ 29 (citing *Herron*, 215 Ill. 2d at 177)), and it "allows a reviewing court to consider unpreserved error when (1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the 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) (citing *Herron*, 215 Ill. 2d at 186-87). Under either prong of the plain error doctrine, the burden of persuasion remains on the

⁷The record reveals that the defendant also failed to object to this line of questioning during trial, and that only codefense Estrella's counsel made objections to it.

No. 1-12-0366

defendant. *Bowman*, 2012 IL App (1st) 102010, ¶ 29 (citing *People v. Lewis*, 234 Ill. 2d 32, 43 (2009)).

¶ 93 "The first step of plain-error review is to determine whether any error occurred." *Lewis*, 234 Ill. 2d at 43; see also *People v. Wilson*, 404 Ill. App. 3d 244, 247 (2010) ("There can be no plain error if there was no error at all."). This requires "a substantive look" at the issue raised." *People v. Johnson*, 208 Ill. 2d 53, 64 (2003). We will therefore first review the defendant's claim to determine if there was any error before considering it under plain error.

¶ 94 We begin by noting that, contrary to the defendant's assertion, the admission of evidence lies within the sound discretion of the trial court, and a reviewing court will review the trial court's ruling for an abuse of discretion. *People v. Leak*, 398 Ill. App. 3d 798, 824 (2010). An abuse of discretion occurs "only where the [trial court's] ruling is arbitrary, fanciful, or unreasonable or where no reasonable person would take the view adopted by the trial court." *Leak*, 398 Ill. App. 3d at 824.

¶ 95 In the present case, the defendant takes issue with Gomez's testimony at trial as to his reasons for signing the affidavit recanting his prior statement to police and his identification of the defendant and codefendant Estrella as the offenders. The defendant posits that such testimony was inadmissible because the State failed to establish a link between the defendant and the threats Gomez received in jail. For the reasons that follow, we disagree.

¶ 96 It is well-accepted that a witness can be impeached by showing interest, bias, or an inclination to testify falsely. *People v. Williams*, 262 Ill. App. 3d 734, 743 (1994); see also *People v. Barajas*, 322 Ill. App. 3d 541, 556 (2001). "Evidence of witnesses' fears are also

No. 1-12-0366

relevant and admissible where it tends to prove a material fact in issue and its probative value outweighs its prejudicial effect." *Williams*, 262 Ill. App. 3d at 743 (citing *People v. Eycler*, 133 Ill. 2d 173 (1989)); see also *Barajas*, 322 Ill. App. 3d at 556 ("testimony from State's witnesses that they feared for their own and their family's safety is properly admitted when used to illustrate why the witness had given inconsistent statements"). What is more, the State "has a right to anticipate and deflect the impact of potential impeachment of its witnesses," by impeaching its own witnesses. *People v. Rainge*, 211 Ill. App. 3d 432, 448 (1991)).

¶ 97 In the instant case, Gomez gave conflicting statements as to whether he was inside his apartment on the night of the beating so as to be able to implicate the defendant and codefendant Estrella in the attack. Gomez testified that a few days after the incident, after he was arrested on a drug charge, he spoke to police and told them that he observed the attack on the victim from inside his apartment window on Haddon Avenue. Gomez told the police he saw both the defendant and Estrella hitting the victim. The State then elicited testimony from Gomez that prior to trial he signed an affidavit, recanting his statement to the police as well as his grand jury testimony (which was consistent with that statement to the police). In his affidavit, Gomez averred that he was not in his apartment on the night of the incident, and that he fabricated his statement to the police because of his pending drug charge, by telling them what he "heard on the street" regarding the incident.

¶ 98 At trial, the State further elicited testimony from Gomez explaining why he signed that affidavit, recanting his testimony. Gomez testified that while he was in Cook County jail in December 2008, he was visited by "eight guys" with homemade knives, who told him that he had

No. 1-12-0366

to sign an affidavit and that, if he did not, his "life would be a waste." The men told Gomez that he would receive a visit within a couple of days from a lawyer "for whom I am testifying against" and asked him to sign the affidavit that the lawyer would bring. They also told Gomez that if he did not sign that affidavit they were going to try and kill him. According to Gomez, a couple of days later, he was visited in jail by codefendant Estrella's attorneys and he signed the affidavit.

Gomez testified that he fabricated the affidavit because he feared for his life.

¶ 99 There can be no doubt that the aforementioned testimony was relevant in explaining why Gomez recanted his trial testimony (as well as his initial statement to the police). Once Gomez was threatened, he had motivation to give a version of events that did not implicate all those "for whom he was testifying against," including both the defendant and codefendant Estrella. It was in the discretion of the trial court to determine that the probative value of this evidence outweighed its prejudicial effect and was relevant to show why Gomez's account of the beating had changed over the course of time. *People v. Colin*, 344 Ill. App. 3d 119, 129-30 (2003).

After a review of the record, we find no abuse of discretion by the trial judge's decision to admit the evidence for the limited purpose of impeaching Gomez's prior inconsistent statement (*i.e.*, his affidavit recanting his trial testimony and statement to police). See *e.g.*, *People v. Tolliver*, 347 Ill. App. 3d 203, 222 (2004) (holding that the trial court did not abuse its discretion by admitting evidence that members of a particular gang and relatives of the codefendant confronted a witness, threatened to blow up her apartment, hurt her, and kill her niece in retaliation for her testimony against the codefendant before the grand jury, since the evidence explained why the witness had recanted her grand jury testimony implicating the defendant, who was a member of the same

No. 1-12-0366

gang); see also *People v. Thigpen*, 306 Ill. App. 3d 29 (1999) (holding that trial court did not abuse its discretion in admitting evidence that attempts had been made to intimidate prosecution witness into not testifying against the defendant; the evidence was admitted only for impeachment purposes, to explain the witness's inconsistent statements and show a motive for the witness to recant his testimony); *Williams*, 262 Ill. App. 3d at 743-44 (holding that evidence that a State's witness and his family were threatened and offered money by a friend of the defendant, and were forced to move, and that the witness was afraid to testify, was admissible; held that the probative value of the evidence, which was offered to explain why the witness told different versions of the crime at different times, outweighed any prejudicial effect of the evidence, which suggested that the defendant was guilty and had committed other crimes).

¶ 100 In that respect, we note that this was a bench trial, wherein a trial judge is presumed to know and follow the law. *People v. Stoffel*, 239 Ill. 2d 324, 328 (2010). What is more, in the present case, the record affirmatively supports this presumption. Specifically, in its ruling finding the defendant guilty, the trial court discussed Gomez's testimony, noting that Gomez signed an affidavit "essentially recanting his testimony." The court then explained:

"I suppose there are Spanish Cobras in every division of the Cook County jail. Whether they could get to Mr. Gomez in the manner in which his testimony seems to suggest is a reason for him having given that affidavit--Well whether he gave it of his own volition."

Accordingly, since the trial court explicitly stated that it considered Gomez's testimony only for its limited and proper purpose of explaining why Gomez made a prior statement inconsistent with his trial testimony, there can be no abuse of discretion and no plain error in its admission.

No. 1-12-0366

See *Wilson*, 404 Ill. App. 3d at 247 ("There can be no plain error if there was no error at all.").

¶ 101 What is more, even if we were to find that the admission of the aforementioned evidence was an abuse of discretion, we would nevertheless conclude that the defendant has failed in his burden of establishing that the error was either prejudicial or so serious that it affected the fairness of his trial and challenged the integrity of the judicial process. See *Piatkowski*, 225 Ill. 2d at 565.

¶ 102 With respect to prejudice prong of the plain error analysis, after a review of the record, we find that the evidence presented at trial was not so closely balanced that the error alone threatened to tip the scales of justice against the defendant. See *Piatkowski*, 225 Ill. 2d at 565. The record reveals that apart from Gomez's testimony regarding the defendant's involvement in the crime, the State presented: (1) the testimony of Luera, who identified the defendant in a lineup on November 14, 2007, and in court, as one of the participants in the beating of the victim; and (2) the defendants' own inculpatory statements to police that he struck the victim at least once, and that he was in charge of overlooking the "violation" and ensuring that it "did not get out of hand." This evidence was un rebutted and overwhelmingly supported a finding of guilty.

¶ 103 What is more, the record reveals that the trial court itself primarily relied on these two pieces of evidence in finding the defendant guilty. The trial court discounted Gomez's testimony, noting that Gomez had "essentially recanted his testimony" and was a witness with "what we might call baggage." Rather, the trial court believed Luera's testimony and identification "without qualification," noting that she had no connection to the neighborhood, to the Spanish

No. 1-12-0366

Cobras or to any of the parties in this cause. With respect to Luera's failure to identify the defendant in the photo array, the trial court observed that this was adequately explained by the fact that the defendant "looked very different" in the photo array than he did in the lineup. The trial court therefore concluded that Luera's testimony, combined with the defendant's confession, overwhelmingly supported a finding of guilty. Under this record, we fail to see how the defendant can establish that the introduction of Gomez's testimony regarding any threats he may have received in jail was outcome determinative. See *Piatkowski*, 225 Ill. 2d at 565.

¶ 104 The defendant has similarly failed to establish that the error in introducing this testimony could have been so serious as to affect the fairness of his trial and the integrity of the judicial system. *Piatkowski*, 225 Ill. 2d at 565. In that respect, we note that our supreme court has held that to succeed under the second prong of the plain error analysis, the defendant "must demonstrate not only that a clear or obvious error occurred [citation], but [also] that the error was a structural error." *People v. Eppinger*, 2013 IL 114121, ¶ 19 (citing *People v. Thompson*, 238 Ill. 2d 598, 613-14 (2010)); see also *People v. Cosmano*, 2011 IL App (1st) 101196, ¶ 78 ("Error under the second prong of plain error analysis has been equated with structural error, meaning that automatic reversal is only required where an error is deemed to be a systemic error that serves to 'erode the integrity of the judicial process and undermine the fairness of the defendant's trial.'" (Internal quotation marks omitted.) (quoting *People v. Glasper*, 234 Ill.2d 173, 197-98 (2009))). An error rises to the level of structural "only if it necessarily renders a criminal trial fundamentally unfair or an unreliable means of determining guilt or innocence." *Cosmano*, 2011 IL App (1st) 101196, ¶ 78. Structural errors have been recognized by our courts "in only a [very]

No. 1-12-0366

limited class of cases," including:

"a complete denial of counsel; trial before a biased judge; racial discrimination in the selection of a grand jury; denial of self-representation at trial; denial of a public trial; and a defective reasonable doubt instruction." *Cosmano*, 2011 IL App (1st) 101196, ¶ 78.

Errors in the admission of evidence do not fall into the category of errors recognized as structural. What is more, the defendant nowhere in his brief makes an allegation, nor could he, that the alleged error in this case falls within one of the limited classes of cases where structural errors have been recognized. See *Cosmano*, 2011 IL App (1st) 101196, ¶ 78. Accordingly, we conclude that the defendant has failed to establish the second-prong of the plain error analysis.

¶ 105

III. CONCLUSION

¶ 106 For all of the aforementioned reasons, we find that there was no plain error in the admission of Gomez's testimony regarding the threats he received in jail prior to his recantation. Accordingly, we affirm the judgment of the circuit court.

¶ 107 Affirmed.