

No. 1-12-3096

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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. 11 CR 2881
	)	
FLETCHER WANDICK,	)	Honorable
	)	Brian K. Flaherty,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE REYES delivered the judgment of the court.  
Justices McBride and Gordon concurred in the judgment.

**O R D E R**

¶ 1 *Held:* Defendant's conviction for home invasion affirmed where he forfeited his challenges to a jury instruction and his sentence, and the plain error doctrine does not apply. Defendant's conviction was also not void.

¶ 2 Following a jury trial in the circuit court of Cook County, defendant Fletcher Wandick was convicted of home invasion (720 ILCS 5/12-11(a)(3) (West 2010)) and was sentenced to 25 years' imprisonment. On appeal, defendant contends that the State failed to prove him guilty of home invasion beyond a reasonable doubt "while armed with a firearm" as charged in the

indictment because the jury instructions provided for the finding that he committed the offense "while armed with a dangerous weapon." Defendant also contends that his 25-year sentence was entered in violation of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), because the jury did not find beyond a reasonable doubt that he was "armed with a firearm," as required for the imposition of the 15-year sentencing enhancement. For the following reasons, we affirm the judgment of the circuit court.

¶ 3

### BACKGROUND

¶ 4 The record on appeal discloses the following facts. Defendant, along with codefendants Daviea Ashley and Reco Holmes,<sup>1</sup> were charged with home invasion, armed robbery, residential burglary, possession of a stolen motor vehicle (PSMV), kidnapping, aggravated unlawful restraint, and theft. Ashley was charged with 12 additional counts of aggravated unlawful use of a weapon. The State elected to proceed against defendant on count 1 of the indictment—the home invasion charge—voluntarily dismissing the remaining charges by means of *nolle prosequi*. Count 1 of the indictment alleged in relevant part that defendants knowingly entered a specified dwelling:

"AND WHILE ARMED WITH A FIREARM, THEY USED FORCE OR  
THREATENED THE IMMINENT USE OF FORCE, UPON WILLIE LEWIS  
WITHIN SUCH DWELLING PLACE, WHETHER OR NOT INJURY  
OCCURRED, IN VIOLATION OF CHAPTER 720 ACT 5, SECTION 12-

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<sup>1</sup> Codefendants were not tried with defendant and are not parties to this appeal; codefendant Holmes' appeal is pending before this court in case number 1-14-1962.

11(a)(3), OF THE ILLINOIS COMPILED STATUTES 1992, AS AMENDED

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¶ 5 At trial, Willie Lewis testified that at approximately 6 p.m. on January 26, 2011, defendant telephoned him and then came to his apartment building at 14105 South Stewart in Riverdale, Illinois, to purchase marijuana. Defendant parked his Chrysler 300 next to Lewis' Buick LaSabre in the parking lot behind the building, then telephoned Lewis to inform that he had arrived. Lewis also testified that he met defendant outside and they had a conversation in defendant's automobile. Defendant had been telephoning Lewis twice a day and personally meeting with him for a month, during which time Lewis became familiar with defendant's voice. On this date, Lewis sold some marijuana to defendant, who then left the premises.

¶ 6 Lewis further testified that he returned home between 9 and 10 p.m., and parked his vehicle in his assigned spot in the parking lot. Lewis walked to the door of the building and was about to insert his key into the lock when a man emerged from the bushes and pointed a .38 caliber chrome handgun in his face. The man grabbed Lewis' skull cap and pulled it down over his face, and told Lewis not to move. Lewis heard him tell someone else "come on" and heard another man rustling through the grass. According to Lewis, the second individual took his keys, opened the building door and pulled him into the hallway. Lewis felt the barrel of a handgun pointed against the back of his neck. When asked the location of his apartment, Lewis claimed he was visiting someone and did not live there. The man then struck Lewis in the back of the head with the handgun and threatened to shoot him in the head if he continued lying. Lewis told the men he lived in apartment 3E, and they led him up the stairs with one man in front of him and the man with the weapon behind him. When they reached his apartment, Lewis told them which key to use and confirmed there was no one inside the apartment. The man with the

handgun threatened that if anyone was inside, he would kill everyone, including Lewis.

¶ 7 Lewis additionally testified that the men opened his door, immediately threw him to the floor face down, covered him with sheets from his couch, and tied his arms and legs behind him using cords from his receiver. Lewis heard the first man transfer the handgun to the second man and tell him to shoot Lewis in the head if he moved. According to Lewis, the second man sat on his back and threatened to shoot him if he moved. Lewis testified that he was able to distinguish the voices because the man with the handgun had a deeper, harsher voice, and the other man had a younger voice. Lewis heard his back door open and the first man go downstairs; a few seconds later, he heard two people enter his apartment. A third man with a different voice kicked Lewis in his side and asked "where's it at?" Lewis was familiar with this voice, but could not identify it at that time. Lewis replied that he did not have anything and did not know what they were looking for. During the next 30 to 40 minutes, Lewis heard the men walking around his apartment, rummaging through the rooms, throwing items around, opening closets, and taking items out. Lewis specifically heard the men remove a set of four 22-inch tire rims from his closet, and heard them repeatedly entering and exiting his apartment.

¶ 8 Lewis testified that he then heard the men try to start his automobile, which was parked directly beneath his bedroom window. He knew it was his automobile because he had three alarms on it, including one in the grill which was extremely loud. Thereafter, Lewis did not hear any more footsteps, raised his head up and saw that everything was gone. He scooted to a table, untied his hands and legs, peeked into the hallway, did not hear anything, and exited his apartment. According to Lewis, his neighbor was standing in the hallway and inquired regarding what happened. Lewis went in the neighbor's apartment, where he was told by the neighbor's wife that they heard someone taking his automobile and contacted the police.

¶ 9 Lewis also testified that a Riverdale police officer arrived at his apartment building in approximately 1 minute, and within the next 30 to 40 seconds, Lewis heard a report over the officer's radio that his automobile had been discovered two blocks away. Lewis did not reenter his apartment, but stayed with a nearby relative after spending an hour at the police station. The police telephoned him a couple of hours later and inquired whether he knew what items had been stolen. Lewis recalled the items missing from his living room when he freed himself, but he did not know everything that had been taken. He informed the police that he was missing a black 50-inch Samsung television, a gray Nokia home theater system, and a Sony digital video disc (DVD) player.

¶ 10 Lewis returned to the police station the next morning to identify his automobile, which was parked in the police garage with the tire rims from his closet leaning against it. Lewis then saw defendant's Chrysler 300 parked next to his automobile and his television in the back seat of defendant's vehicle. At that point, Lewis realized that the familiar voice he heard in his apartment during the offense belonged to defendant. Lewis identified defendant's automobile, told police that he knew defendant from the neighborhood and had sold him marijuana. Lewis also identified his computer, a shoe box containing his watches, and his son's water bottle bank containing money, which were in the front seat of defendant's automobile. On January 28, 2011, Lewis viewed a lineup at the Riverdale police station, where he identified defendant and the gunman. At trial, Lewis identified a handgun as the one used by the gunman.

¶ 11 Riverdale police lieutenant Brad Bailey testified that he was on patrol when he heard the radio call regarding the home invasion. As he proceeded to the address where Lewis resided, Lieutenant Bailey was advised by radio that a blue Buick with license plate number 8756DN had been taken during the offense. A minute later, Lieutenant Bailey saw two vehicles parked

behind each other in an alley, and three men removing items from them. He drove into the alley behind the vehicles, turned his spotlight on the license plate of the rear vehicle, and saw that it was the blue Buick. The three men immediately fled from the alley into the adjacent backyard. Lieutenant Bailey exited his vehicle and observed defendant exit the Chrysler parked in front of the blue Buick. Lieutenant Bailey ordered defendant to raise his hands and approach; after initially complying, defendant fled in the same direction as the other men. Lieutenant Bailey then heard a door open and close, and saw numerous items—including tire rims, compact discs and DVDs—in the backyard by the vehicles. Inside the Chrysler, he observed the television set, computer, and a water bottle used as a bank as described by Lewis.

¶ 12 Lieutenant Bailey further testified that numerous police officers from several departments arrived in the alley. According to Lieutenant Bailey, a K-9 dog followed the path taken by the fleeing men and stopped at the corner of a house at 14230 Normal Avenue in Riverdale.<sup>2</sup> Police surrounded the house and over an hour later, defendant and the other men exited the house and were taken into custody.

¶ 13 Riverdale police officer Mark Kozeluh testified that on the night of the offense he recovered two loaded chrome handguns from a planter outside the door of 14230 Normal Avenue while defendant and codefendants were secluded inside. Forensic fingerprint examiner Kerianne Cortese testified that she received fingerprint impressions collected by investigators in this case, but the two prints suitable for comparison and analysis did not match those of

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<sup>2</sup> Carmen Coleman, who dated defendant for approximately six months in 2010, testified that defendant lived on Atlantic Street, but defendant occasionally stayed at his mother's home on Normal Avenue.

defendant or codefendants.

¶ 14 After the State rested its case, the defense moved for a directed verdict, which the trial court denied. The State also informed the trial court of its intention to proceed only on the home invasion charge at this time. Prior to the defense case, the trial court conducted the jury instructions conference, during which the court accepted without objection the pattern jury instructions defining the offense of home invasion and stating the issues to be proved to find defendant guilty of home invasion. Illinois Pattern Jury Instructions, Criminal Nos. 11.53, 11.54 (4th ed. 2000).

¶ 15 Defendant's mother, Shavette Wandick, testified that on the night in question, defendant was at home playing cards with her and some out-of-town guests when he received a telephone call from codefendant Ashley. Shortly thereafter, Ashley arrived at the house and defendant went outside to speak with him. Defendant reentered the house and requested money to buy a television, to which Shavette replied that she did not have any money. Defendant again exited from the house, then returned and stated that the police were outside. Moments later, codefendants Ashley and Holmes pounded on the front door, and Wandick allowed them to enter the house. Ashley and Holmes went to the basement and watched television while Wandick, defendant and her guests continued playing cards. At approximately 1 a.m., hundreds of police officers surrounded the house and ordered everyone to come outside. Wandick acknowledged she never told the police that defendant was at home playing cards with her that evening, and she made that statement for the first time at trial.

¶ 16 The parties presented closing arguments. In accordance with the written instructions, and without objection by the defense, the trial court then instructed the jury in relevant part that to sustain the charge of home invasion, the State must prove that "the defendant or one for whose

conduct he is legally responsible was armed with a dangerous weapon," and that "while armed with a dangerous weapon the defendant or one for whose conduct he is legally responsible used force or threatened the imminent use of force on Willie Lewis a person within the dwelling place." Following deliberations, the jury found defendant guilty of home invasion.

¶ 17 On July 31, 2012, defendant filed his posttrial motion for a new trial. The posttrial motion alleged in part that the State failed to prove every material allegation of the offense beyond a reasonable doubt, and "[t]he court erred in giving instruction [sic] on behalf of the State over the defendant's objection." On August 17, 2012, the trial court denied defendant's posttrial motion for a new trial, and proceeded to a sentencing hearing. During the hearing, the State noted this case involved the use of a firearm, and represented the minimum sentence would be 21 years' imprisonment once the 15-year statutory enhancement for use of a firearm was added to the 6-year minimum sentence for home invasion. Defense counsel observed that defendant was found guilty on the theory of accountability and requested the court to impose the statutory minimum sentence. The trial court noted that defendant had five prior felony convictions, including two for armed robbery, one for manufacturing and delivery of a controlled substance, and unlawful use of a weapon by a felon. The trial court, also noting the nature of the offense, defendant's recidivism and paucity of mitigating factors, sentenced defendant to 25 years' imprisonment. On August 17, 2012, defendant filed a timely notice of appeal to this court.

¶ 18

#### ANALYSIS

¶ 19 On appeal, defendant first contends that the State failed to prove him guilty of home invasion beyond a reasonable doubt because the jury was not instructed to determine whether he was "armed with a firearm" as charged in the indictment. Defendant argues his conviction must be reversed because the jury was never asked to weigh that necessary element of the offense.



¶ 20 Alternatively, defendant contends that he was convicted of a nonexistent offense because the offense of committing home invasion while "armed with a dangerous weapon" no longer exists. Defendant notes that the statute was amended effective January 1, 2000, by splitting that element into two options of being either "armed with a dangerous weapon, other than a firearm," or "armed with a firearm." 720 ILCS 5/12-11(a)(1), (a)(3) (West 2010).<sup>3</sup> Defendant also observes that the pattern jury instructions were never modified to reflect that split following the amendment of the statute.

¶ 21 Lastly, defendant also contends his 25-year sentence was entered in violation of *Apprendi*, because the jury did not find beyond a reasonable doubt that he was "armed with a firearm," as required for the imposition of the statutory 15-year sentencing enhancement. 720 ILCS 5/12-11(c) (West 2010). We address these arguments in turn.

¶ 22 Defendant's Conviction of Home Invasion

¶ 23 Defendant first contends that the State failed to prove him guilty of home invasion beyond a reasonable doubt because the jury was not instructed to determine whether he was "armed with a firearm" as charged in the indictment. Defendant concedes he generally would have forfeited review of the propriety of the jury instructions because he did not object to the jury instructions during the instructions conference and did not raise the issue in his posttrial motion. "Generally, a defendant forfeits review of any putative jury instruction error if the defendant does not object to the instruction or offer an alternative instruction at trial and does not raise the instruction issue in a posttrial motion." *People v. Herron*, 215 Ill. 2d 167, 175 (2005).

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<sup>3</sup> Effective January 1, 2013, the home invasion statute was renumbered and now appears at 720 ILCS 5/19-6 (West Supp. 2013).

Defendant nevertheless argues that the issue may be considered as plain error. Pursuant to the plain error doctrine, this court may address unpreserved errors "when either (1) the evidence is close, regardless of the seriousness of the error, or (2) the error is serious, regardless of the closeness of the evidence." *Id.* at 187. In both cases, the burden of persuasion rests with the defendant. *People v. McLaurin*, 235 Ill. 2d 478, 495 (2009).

¶ 24 The State responds that defendant forfeited review of this issue and that the plain error doctrine does not apply. The State maintains that the alleged error had no effect on the jury's finding because the evidence that a firearm was used during the offense was overwhelming, and thus, defendant was not prejudiced. The State further argues that the second prong of plain error does not apply because the alleged error was not a structural error.

¶ 25 The first step in determining whether the plain error doctrine applies is to determine whether any reversible error occurred. *People v. Patterson*, 217 Ill. 2d 407, 444 (2005). Absent reversible error, there can be no plain error. *People v. Williams*, 193 Ill. 2d 306, 349 (2000).

¶ 26 Jury instructions are intended to guide the jury in its deliberations and to assist it in reaching a proper verdict. *People v. Parker*, 223 Ill. 2d 494, 501 (2006). Jury instructions should be construed as a whole, and we must determine whether the instructions fairly, fully and comprehensively apprised the jury of the relevant legal principles. *Id.* Whether a jury instruction accurately conveyed the law is a question of law subject to *de novo* review. *Id.*

¶ 27 This court has considered an argument similar to the one defendant presents in this case, albeit in the context of convictions for armed robbery. *People v. Daniel*, 2014 IL App (1st) 121171, ¶¶ 56-63; *People v. Ware*, 2014 IL App (1st) 120485, ¶¶ 12-21; *People v. Watt*, 2013 IL App (2d) 120183, ¶¶ 28-39. In *Daniel*, *Ware* and *Watt*, the defendants were charged and convicted of committing armed robbery with a firearm, but the juries were instructed on the

offense of armed robbery with a dangerous weapon, based on the pre-amended version of the armed robbery statute. See *Daniel*, 2014 IL App (1st) 121171, ¶ 57; *Ware*, 2014 IL App (1st) 120485, ¶ 12; *Watt*, 2013 IL App (2d) 120183, ¶ 29. In each case, this court found that the trial court erred when it issued the outdated jury instructions. *Daniel*, 2014 IL App (1st) 121171, ¶ 61; *Ware*, 2014 IL App (1st) 120485, ¶ 18; *Watt*, 2013 IL App (2d) 120183, ¶ 36.

¶ 28 In this case, it is undisputed that the trial court issued the Illinois Pattern Jury Instructions for home invasion. Illinois Pattern Jury Instructions, Criminal Nos. 11.53, 11.54 (4th ed. 2000). These instructions were based on the pre-amended version of the home invasion statute, which required the jury to find that defendant was "armed with a dangerous weapon," rather than "armed with a firearm." See 720 ILCS 5/12-11(a)(1) (West 1998). In accordance with the reasoning of *Daniel*, *Ware*, and *Watt*, we likewise conclude the trial court erred when it issued the outdated home invasion jury instructions in this case.

¶ 29 Our next inquiry is whether this error rose to the level of plain error. Defendant contends the first prong of the plain error doctrine is satisfied in this case because the evidence was closely balanced regarding whether he was accountable for his codefendants' actions, where: (1) there was no DNA or fingerprint evidence that placed him in Lewis' apartment; (2) Lewis never saw him inside the apartment; and (3) no voice lineup identification was conducted. The State responds: (1) it was undisputed that the offenders used a firearm during the offense; and (2) there was no evidence that any other type of dangerous weapon was used. Therefore, the State concludes, the "dangerous weapon" language in the jury instruction had no effect on the jury's verdict.

¶ 30 We agree with the State. The evidence at trial established that Lewis was about to enter his apartment building when a man emerged from the bushes and pointed a chrome handgun in

his face. After being pulled into the hallway, Lewis felt the barrel of a handgun pointed against the back of his neck. When Lewis claimed he did not live in the building, the gunman hit him in the back of the head with the weapon and threatened to shoot him if he continued lying. Inside the apartment, a second man sat on Lewis' back and threatened to shoot him if he moved. Based on his prior conversations with defendant, Lewis later recognized defendant's voice as belonging to the third man inside his apartment during the home invasion. In addition, Lieutenant Bailey testified that he observed defendant flee in the direction of the other men when police located them in the alley. In light of the strong evidence of defendant's participation in the offense and the overwhelming evidence that a firearm was used during the commission of the offense, we conclude that the evidence was not closely balanced, and that defendant cannot satisfy the first prong of the plain error doctrine. *Daniel*, 2014 IL App (1st) 121171, ¶ 62.

¶ 31 Defendant also contends that the second prong of the plain error doctrine applies because the fairness of his trial was undermined by the improper jury instructions. Our supreme court has equated the second prong of the plain error rule to structural errors. *People v. Thompson*, 238 Ill. 2d 598, 613 (2010). A structural error is "a systemic error which serves to 'erode the integrity of the judicial process and undermine the fairness of the defendant's trial.'" *Id.* at 613-14 (quoting *People v. Glasper*, 234 Ill. 2d 173, 197-98 (2009), quoting *People v. Herron*, 215 Ill. 2d 167, 186 (2005)). Structural errors occur only in a limited class of cases. *Glasper*, 234 Ill. 2d at 197-98. The United States Supreme Court has held that a jury instruction which omits an element or misdescribes an element is not a structural error. *Neder v. United States*, 527 U.S. 1, 8-10 (1999); see *Watt*, 2013 IL App (2d) 120183, ¶ 38. Accordingly, in *Watt* and its progeny, this court has ruled that the erroneous use of the phrase "armed with a dangerous weapon" in a jury instruction was not a structural error to which the second prong of plain error

analysis would apply. *Daniel*, 2014 IL App (1st) 121171, ¶ 63; *Ware*, 2014 IL App (1st) 120485, ¶¶ 20; *Watt*, 2013 IL App (2d) 120183, ¶ 39. We adhere to the reasoning of our prior decisions and conclude defendant has failed to satisfy the second prong of the plain error doctrine because the error does not fall within the class of structural errors or rise to the level of an error so serious that it affected the fairness of the defendant's trial or challenged the integrity of the judicial process.

¶ 32 Defendant next claims in the alternative that his conviction is void, arguing that home invasion with a dangerous weapon is a nonexistent offense. Although defendant raises this issue for the first time on appeal, "[a]n indictment which attempts to charge a person with a crime that does not exist in the law is void and may be challenged at any time." *People v. Miller*, 144 Ill. App. 3d 69, 70 (1986). Moreover, "when the judgment of the circuit court is void, it can be attacked at any time." *People v. Johnson*, 200 Ill. App. 3d 1018, 1022 (1990). Accordingly, we address the argument.

¶ 33 In this case, defendant was charged by indictment with the offense of home invasion while armed with a firearm as stated in the amended statute. See 720 ILCS 5/12-11(a)(3) (West 2010). The written sentencing order similarly reflects that defendant was convicted of violating section 12-11(a)(3), home invasion with a firearm, the offense listed in the amended statute and the indictment. Defendant was not convicted of a nonexistent offense. Therefore, we reject defendant's assertion that his conviction is void. *Watt*, 2013 IL App (2d) 120183, ¶ 34.

¶ 34 Defendant further contends the State failed to prove him guilty beyond a reasonable doubt of the charged offense, home invasion with a firearm. As previously noted, there was overwhelming evidence that a firearm was used in the offense. *Supra* ¶ 30. The testimony at trial does not refer to any weapon other than a firearm being used in the offense. "It follows that,

in finding that defendant was armed with a 'dangerous weapon,' the jury implicitly found that defendant was armed with a firearm." *Watt*, 2013 IL App (2d) 120183, ¶ 39. "For this reason, defendant's reasonable-doubt argument also fails." *Id.* ¶ 39 n. 3. We decline defendant's request to adopt the reasoning of the dissent in *People v. Washington*, 2012 IL 107993, that a firearm is not included in the category of dangerous weapons. *Watt*, 2013 IL App (2d) 120183, ¶ 39 n. 3. We agree with the reasoning in *Watt* that by using the language "dangerous weapon other than a firearm," the legislature merely distinguished a firearm from other dangerous weapons. *Id.*; see *Ware*, 2014 IL App (1st) 120485, ¶ 21. Thus, we reject defendant's challenge to the home invasion jury instructions, the validity of the judgment, and the sufficiency of the evidence to prove him guilty of home invasion beyond a reasonable doubt.

¶ 35

## Sentencing

¶ 36 Defendant lastly contends that his 25-year sentence was imposed in violation of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), because the jury did not find beyond a reasonable doubt that he was "armed with a firearm," as required for the imposition of the 15-year sentencing enhancement. See 720 ILCS 5/12-11(c) (West 2010). "It is well settled that, to preserve a claim of sentencing error, both a contemporaneous objection and a written postsentencing motion raising the issue are required." *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). Defendant acknowledges that he forfeited review of this issue by failing to make a timely objection and failing to raise the issue in a postsentencing motion. He again argues, however, that his claim is reviewable as plain error because the evidence against him was closely balanced.

¶ 37 The State responds that no *Apprendi* violation occurred because defendant's sentence did not extend beyond the maximum penalty he could have received without the firearm enhancement. The State also maintains the plain error doctrine does not apply in this case

because the evidence against defendant was not closely balanced.

¶ 38 Before considering defendant's plain error argument, we must first determine whether an *Apprendi* violation occurred. *Daniel*, 2014 IL App (1st) 121171, ¶ 66 (citing *People v. Nitz*, 219 Ill. 2d 400, 416 (2006)). " '*Apprendi* requires that only those facts that increase the penalty for a crime *beyond the prescribed statutory maximum* be proved beyond a reasonable doubt.

(Emphasis in original.)' " *People v. Hopkins*, 201 Ill. 2d 26, 38 (2002) (quoting *People v. Ford*, 198 Ill. 2d 68, 74 (2001)). Whether an *Apprendi* violation occurred is a question of law which we review *de novo*. *Daniel*, 2014 IL App (1st) 121171, ¶ 66.

¶ 39 Home invasion, whether committed with a dangerous weapon other than a firearm or committed with a firearm, is a Class X felony, which has a sentencing range of 6 to 30 years' imprisonment. 720 ILCS 5/12-11(c) (West 2010); 730 ILCS 5/5-4.5-25(a) (West 2010). When the home invasion is committed with a firearm, the statute mandates that 15 years be added to the Class X term of imprisonment. 720 ILCS 5/12-11(c) (West 2010).

¶ 40 In *Daniel*, the defendant was convicted of armed robbery and aggravated unlawful restraint and sentenced to concurrent 34-year and 5-year prison terms. *Daniel*, 2014 IL App (1st) 121171, ¶ 1. The *Daniel* court concluded an *Apprendi* error occurred because the fact that defendant carried a firearm during the armed robbery was not properly submitted to the jury. *Id.*

¶ 69. The *Daniel* court, however, ruled that the State presented overwhelming evidence that defendant committed armed robbery while armed with a firearm, and that *Apprendi* errors do not fall under the narrow category of established structural errors. *Id.* ¶ 70 (and cases cited therein).

Similarly, the evidence that a firearm was used during the commission of the offense in this case was overwhelming, and any *Apprendi* error was not a clear or obvious error so serious that it affected the fairness of defendant's trial and challenged the integrity of the judicial process. See

1-12-3096

*id.* Thus, defendant has failed to establish plain error and has forfeited the issue.

¶ 41

#### CONCLUSION

¶ 42 For all of the aforementioned reasons, we affirm the judgment of the circuit court of Cook County.

¶ 43 Affirmed.