2015 IL App (4th) 130460-U

NO. 4-13-0460

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
August 26, 2015
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
ARDIS H. FENN,	)	No. 12CF938
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas J. Difanis,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Harris and Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding: (1) defendant's confrontation rights were not violated; (2) the trial court did not abuse its discretion in sentencing defendant to 30 years' imprisonment; and (3) the circuit clerk improperly imposed various fines.

¶ 2 In February 2013, following a trial in the Champaign County circuit court, a jury found defendant, Ardis H. Fenn, guilty of aggravated battery with a firearm (720 ILCS 5/12-3.05(e)(1) (West 2010)). The trial court subsequently sentenced defendant to 30 years' imprisonment. Defendant appeals, arguing (1) his right to confrontation was violated by the admission of testimonial hearsay statements; (2) the trial court abused its discretion when it sentenced him to the maximum term of 30 years' imprisonment; and (3) various fines were improperly imposed by the Champaign County circuit clerk. For the following reasons, we affirm in part, vacate in part, and remand with directions.

¶ 3 I. BACKGROUND

¶ 4 In June 2012, the State charged defendant by information with one count of aggravated battery with a firearm (720 ILCS 5/12-3.05(e)(1) (West 2010)), alleging that on June 12, 2012, he knowingly shot Curtis Mosley with a firearm. On February 4, 2013, defendant's case proceeded to trial and a jury was impaneled. That evening, the State's complaining witness, Mosley, was murdered.

¶ 5 A. The State's Motion *in Limine*

¶ 6 The next day, the State filed a motion *in limine* pursuant to section 115-10.6 of the Code of Criminal Procedure of 1963 (Code), seeking to allow the introduction of certain hearsay statements Mosley made to the Urbana police department regarding the June 12, 2012, incident. 725 ILCS 5/115-10.6(a) (West 2010). In the motion, the State alleged (1) defendant murdered Mosley with the intent to cause his unavailability as a witness; (2) Mosley made statements to officers of the Urbana police department relevant and material to the trial, and the time, content, and circumstances of those statements provide sufficient safeguards of reliability to warrant their admission at trial; and (3) the interests of justice would best be served by the admission of those statements into evidence.

¶ 7 On February 6, 2013, the trial court conducted a hearing on the State's motion *in limine*. Michelle Kane testified first on behalf of the State. Michelle testified she lived in Urbana, Illinois, with her daughter, Hailey Kane, and her daughter's boyfriend, Curtis Mosley. Michelle stated she was in the living room of their home on the night of February 4, 2013, when Mosley received a telephone call. She stated Mosley seemed very frustrated and scared. She heard Mosley say, " 'No,' " and " 'Fuck you,' " before hanging up the phone. Michelle testified, "He told me that it was a boy that worked at the car wash that he used to work at, that Ardis

asked him to call. The family wanted to offer him money not to show up at court on Tuesday." When asked to clarify who asked to have the call made, she responded, "He just—the person on the phone told him Ardis' family wants to offer him money not to show up in court."

¶ 8 Within an hour of the phone call, a black male with "lightish" brown skin kicked in the door and shot Mosley. Michelle testified the man who kicked in the door had big eyes and a tattoo on his face. Michelle described the tattoo as being on the man's cheek, slightly below his eye, but she was unsure which side of his face the tattoo was on because "it happened so fast." Michelle stated she had never seen the man in person, but she recognized him from photographs used to identify defendant from the first shooting. Michelle then identified defendant as the man who shot Mosley.

¶ 9 Hailey testified next for the State. On the night of February 4, 2013, Hailey, her mother, and Mosley were all seated in the living room, when Mosley received a telephone call. During the call, Mosley appeared very upset, and Hailey heard him say, " 'Fuck you. I'm not doing that, and do not call my phone again.' " Hailey explained she asked Mosley who had called because she could tell he was nervous and agitated. Mosley told her "it was the guy from the car wash with the messed up hand" and he had called to tell him the family would "take care of" him if he did not take the witness stand. Shortly after the telephone call, a man kicked down the door and shot Mosley several times. Hailey described the shooter as a black male wearing a dark brown Carhart jacket, a black "hoodie," and a hunting mask. She described the man as having "huge eyes" and a tattoo on the side of his face. She stated the tattoo appeared to be of two teardrop tattoos and explained, "He was fairly close to me, you know. I could see him." On cross-examination, Hailey clarified the shooter had either one large or two small tattoos "under the right eye of his face." She explained she had seen the man twice at Above and Beyond

Detailing (the car wash) and also in a mugshot photograph that was in the newspaper after the first shooting. Hailey then identified the man who shot Mosley as defendant.

¶ 10 Detective David Smysor with the Urbana police department testified he was in charge of Mosley's murder investigation. Detective Smysor testified, during the course of his investigation, he was advised a man by the name of Jakeem Nelson had spoken to Mosley by telephone shortly before Mosley's murder. The State then asked Detective Smysor what Nelson had told him about the February 4 telephone call. Defendant's attorney made an objection on hearsay grounds, which the trial court overruled. Detective Smysor then explained Nelson told him he had been contacted by an acquaintance he knew as "Ardis." Nelson knew Ardis from the car wash. Ardis had asked him to contact Mosley to convey his apologies for what had happened and to offer him money in exchange for his missing his next court appearance. Nelson explained Ardis had asked him to tell Mosley he "would have tax money coming." Nelson told Detective Smysor Mosley had stated, " 'Fuck that,' " and told him he would be going to court to testify. Nelson relayed the information to Ardis, who responded, " 'All right. Be smooth.' "

¶ 11 Detective Smysor then testified he had examined Mosley's phone and located a conversation between Mosley and a telephone number associated with Nelson at approximately the time of the conversation reported by Michelle and Hailey. Nelson gave Detective Smysor permission to go through his phone, but he stated he had erased the call from his phone when he later heard Mosley had been shot.

¶ 12 Detective Matt Rivers with the Urbana police department testified next for the State. Detective Rivers explained he was the detective in charge of the June 12, 2012, shooting of Mosley at the car wash. During Detective Rivers' testimony, the State introduced a photograph of defendant into evidence. In the photograph, defendant has a tattoo on his left

cheek, which Detective Rivers stated appears to be a "cross or an X." As part of his investigation, Detective Rivers spoke with Mosley on June 14, 2012, at Carle Hospital.

¶ 13 During that interview, Mosley told Detective Rivers he and a coworker, Tommy Jackson, were standing under a tent in front of the car wash when he heard a gunshot. When Mosley looked up, he saw a man he knew as "Ace" holding a rifle, yelling, " 'Give it up. Give it up.' " Mosley stated he began arguing with Ace, and he eventually picked up the end of a picnic table, threw it toward Ace, and began running. Mosley told Detective Rivers this was when Ace began shooting, causing Mosley to run toward a boat parked at the edge of the car wash parking lot. Once he reached the hitch of the boat, Mosley realized he had been shot.

¶ 14 Following presentation of the evidence, the trial court granted the State's motion *in limine*. It stated:

> "The testimony presented was that Mr. Mosley received a phone call shortly before the murder in question, and at that phone call [*sic*], he was offered a sum of money if he wouldn't appear in court and testify against [defendant]. The person that called Mr. Mosley was interviewed by the Urbana Police Department, and he said it was [defendant] that had him call Mr. Mosley to try to arrange a payment so that Mr. Mosley wouldn't testify.
>
> It is true that there was no testimony that [defendant] indicated that he was going to take care of the matter, but approximately an hour later the door was kicked in, Mr. Mosley was shot and killed. The description is an African-American male with a tattoo on his cheek. [Defendant] is an African-American

male with a tattoo on his cheek. [Defendant] has been identified as the individual who tried to get Mr. Mosley to not testify.

I believe the State has proven by a preponderance, if not beyond a reasonable doubt, that *** [defendant] murdered Mr. Mosley, and it was to cause the unavailability of Mr. Mosley as a witness. Tried to bribe him; that didn't work, so he killed him."

¶ 15 On February 7, 2013, the trial court reconvened and questioned each juror individually about things they may have heard regarding the case. At that time, three jurors indicated they had heard information about the murder from the news or friends and believed they could not remain fair and impartial. As a result, the trial judge declared a mistrial.

¶ 16 B. Defendant's Jury Trial

¶ 17 Defendant's second jury trial commenced on February 12, 2013. In addition to testifying regarding Mosley's account of events, Detective Rivers also testified he spoke with defendant about the incident on June 13, 2012. At that time, defendant explained he and his "little brother" began playing a game of dice with a man they did not know who walked up to them on the street. At one point during the game, Mosley joined in, and then, "all of a sudden," the unknown man pulled a "sawed-off M1" rifle out and started shooting. Defendant described the unknown man as "looking just like me" and wearing very similar clothing—a white shirt and white, black, and red shorts. When Detective Rivers asked defendant if he could explain why shell casings were found in a different location than where he was saying the dice game took place, defendant told Detective Rivers he thought there might have been a conspiracy against him.

¶ 18 The State also presented testimony from Tommy Jackson, the employee of the car wash who was present during the June 12, 2012, incident. Jackson testified defendant, who lived next door and had been at the car wash earlier that day, came around the side of the building with a rifle, pointed it at Mosley, and told him to "low it," which Jackson explained meant to "give him the money or whatever he had in his pocket." Jackson testified Mosley picked up a nearby picnic table and threw it in the air as he yelled "Break." Jackson and Mosley then each ran in different directions. Jackson stated he heard multiple gunshots but was not hit by any bullets. He met back up with Mosley near a boat parked in the car wash parking lot, and Mosley informed him he had been shot. Jackson explained he initially told the responding officers he was not sure who had fired the rifle because he did not want to get involved, but then he decided to "do the right thing" and told the officers it was defendant who shot Mosley.

¶ 19 Following presentation of the evidence, the jury found defendant guilty. In March 2013, defendant filed a motion for acquittal, or in the alternative, a motion for a new trial. In the motion, defendant argued, *inter alia*, he did not receive a fair and impartial jury and the judgment was against the manifest weight of the evidence. The court denied defendant's motion following a March 26, 2013, hearing.

¶ 20 C. Sentencing

¶ 21 Following the trial court's denial of defendant's posttrial motion, the court proceeded to sentencing. Following statements and recommendations of the parties, the court explained it had considered the statutory factors in aggravation as well as the statutory factors in mitigation. It noted there were not any statutory mitigating factors but considered defendant's young age as a nonstatutory factor. The court explained, "First of all the Defendant is only 24 years of age. That is a non-statutory mitigating factor. One would hope that someone this young

would have some rehabilitative potential." The court also noted defendant had been able to obtain marginal employment and had not brought any children into the world.

¶ 22 The trial court then considered the factors in aggravation. It explained there were two statutory factors in aggravation, his criminal history and the need for deterrence. With regard to defendant's criminal history, the court noted, "He received first offender probation in Cook County in '09 for possession of a controlled substance. He was convicted in Champaign County for obstructing justice and then—in '09 and then in May of 2010 sent to the Department of Corrections for unlawful possession of a controlled substance so he does have the prior criminal history."

¶ 23 With regard to the deterrent factor, the trial court explained as follows:

> "The other statutory factor in aggravation and, quite frankly, the more important statutory factor in aggravation is the deterrent factor. The Court has to fashion a sentence that will not only deter this [d]efendant but others similarly situated from committing this type of an offense.
>
> ***
>
> What we had here was this [d]efendant arming himself with a firearm in the middle of the day in a facility open for business, opening fire on two individuals, and actually shooting and hitting one of them. It was apparent from the testimony presented and from the exhibits that the victim in this case had some marijuana on his person and the photographs showed a substantial amount of money in his pocket and it's apparent that robbery was the motive

> and this [d]efendant took it upon himself in the middle of the day in what was a residential neighborhood to not only try to effectuate an armed robbery but open fire on the fleeing victims.
>
> It was and is an outrageous crime, and the deterrent factor is one that this Court is aware of. Other individuals, other young men, arming themselves with a firearm and then using that firearm in the commission of a very serious crime."

The trial court then sentenced defendant to 30 years' imprisonment, with credit for 279 days served in presentence custody.

¶ 24 In April 2013, defendant filed a motion to reconsider his sentence, which the trial court denied.

¶ 25 This appeal followed.

¶ 26 II. ANALYSIS

¶ 27 On appeal, defendant raises three main issues. First, defendant argues his sixth-amendment right to confrontation was violated when the trial court allowed the State to present Mosley's out-of-court statements concerning the June 12, 2012, incident. Next, defendant argues the court abused its discretion when it sentenced him to the maximum term of 30 years' imprisonment on the aggravated-battery-with-a-firearm conviction. Last, defendant argues this court should order the trial court to correct errors in the assessment of various fines. We address each issue in turn.

¶ 28 A. Mosley's Out-of-Court Testimonial Statements

¶ 29 Defendant first argues the admission of Mosley's testimonial hearsay statements violated his sixth-amendment right to confrontation, where (1) he had no prior opportunity to

cross-examine Mosley and (2) the State failed to prove by a preponderance of the evidence that he forfeited his right to confront Mosley. The State argues defendant has forfeited his sixth-amendment claim, as he failed to raise the issue in his posttrial motion. We first address the State's forfeiture argument.

¶ 30 1. *Forfeiture*

¶ 31 Ordinarily, to preserve an issue for review, a defendant must (1) raise the issue in either a motion *in limine* or a contemporaneous trial objection, and (2) include the issue in a written posttrial motion. *People v. Denson*, 2014 IL 116231, ¶ 11, 21 N.E.3d 398. However, our supreme court has relaxed the forfeiture rules with regard to "constitutional issues which have properly been raised at trial and which can be raised later in a post-conviction hearing petition." *People v. Enoch*, 122 Ill. 2d 176, 190, 522 N.E.2d 1124, 1131-32 (1988). Thus, because defendant's confrontation-clause claim raises a constitutional issue which was raised before the trial court and could be raised in a postconviction petition, we will excuse his forfeiture of the issue.

¶ 32 In doing so, we note defendant did not raise the issue in either a motion *in limine* or a contemporaneous trial objection. Rather, it was the State who filed a motion *in limine* to admit Mosley's testimonial statements. However, as our supreme court recently explained in *Denson*, 2014 IL 116231, ¶ 13, 21 N.E.3d 398, "the critical consideration in a case such as this is not which party initiated the *in limine* litigation, but rather whether the issue being raised was litigated *in limine*." Therefore, because the issue of Mosley's testimonial statements was fully litigated at the hearing on the State's motion, we will address the merits of his claim.

¶ 33 2. *The Confrontation Clause and the Doctrine of Forfeiture by Wrongdoing*

¶ 34 The sixth amendment to the United States Constitution provides that in all criminal prosecutions, the accused shall have the right to be confronted with the witnesses against him. U.S. Const., amend. VI. However, in *Crawford v. Washington*, 541 U.S. 36, 62 (2004), the United States Supreme Court held "the rule of forfeiture by wrongdoing (which we accept) extinguishes confrontation claims on essentially equitable grounds." Under this doctrine, "one who obtains the absence of a witness by wrongdoing forfeits the constitutional right to confrontation." *Davis v. Washington*, 547 U.S. 813, 833 (2006); see also *Reynolds v. United States*, 98 U.S. 145, 158 (1878) ("The Constitution gives the accused the right to a trial at which he should be confronted with the witnesses against him; but if a witness is absent by his own wrongful procurement, he cannot complain if competent evidence is admitted to supply the place of that which he has kept away."). Pursuant to the doctrine of forfeiture by wrongdoing, the State must show both wrongdoing and intent to procure the unavailability of the declarant by a preponderance of the evidence. *People v. Stechly*, 225 Ill. 2d 246, 278, 870 N.E.2d 333, 353 (2007). "A preponderance of the evidence is evidence that renders a fact more likely than not." *People v. Urdiales*, 225 Ill. 2d 354, 430, 871 N.E.2d 669, 713 (2007).

¶ 35 In January 2011, The Illinois Rules of Evidence codified the existing rules of evidence in Illinois, including the common-law doctrine of forfeiture by wrongdoing. Under Illinois Rule of Evidence 804(b)(5) (eff. Jan. 1, 2011), "[a] statement offered against a party that has engaged or acquiesced in wrongdoing that intended to, and did, procure the unavailability of the declarant as a witness" is not excluded by the hearsay rule.

¶ 36 In the present case, the State filed its motion *in limine* to introduce Mosley's statements as evidence pursuant to section 115-10.6(a) of the Code, which provides, "A statement is not rendered inadmissible by the hearsay rule if it is offered against a party that has

killed the declarant *** intending to procure the unavailability of the declarant as a witness." 725 ILCS 5/115-10.6(a) (West 2010). Under section 115-10.6(e), the proponent of the statement bears the burden of establishing "(1) first, that the adverse party murdered the declarant and that the murder was intended to cause the unavailability of the declarant as a witness; (2) second, that the time, content, and circumstances of the statements provide sufficient safeguards of reliability; [and] (3) third, the interests of justice will best be served by admission of the statement into evidence." 725 ILCS 5/115-10.6(e) (West 2010). However, section 115-10.6(g) states, "This Section in no way precludes or changes the application of the existing common law doctrine of forfeiture by wrongdoing." 725 ILCS 115-10.6(g) (West 2010).

¶ 37 Thus, because our supreme court "has the ultimate authority to determine the manner by which evidence may be introduced into the courts" (*People v. Peterson*, 2012 IL App (3d) 100514-B, ¶ 24, 968 N.E.2d 204), we conclude that, at the forfeiture-by-wrongdoing hearing, the State was required to prove only that it was more likely than not (1) defendant murdered Mosley, and (2) he did so with the intent to procure Mosley's unavailability as a witness. We address each of these elements in turn and will not reverse the trial court's determination absent an abuse of discretion. *People v. Hanson*, 238 Ill. 2d 74, 96, 939 N.E.2d 238, 251 (2010).

¶ 38 a. Whether Defendant Murdered Mosley

¶ 39 Defendant first argues the State failed to prove by a preponderance of the evidence that he was the person who killed Mosley. He claims the State used only "general identifiers" (defendant was an African-American male) to prove his identity. He maintains his key identifying feature is his facial tattoo, and the State's evidence regarding the tattoo was inconsistent and conflicting. We disagree.

¶ 40 Michelle described the tattoo as being on the man's cheek, slightly below his eye. She stated she was unsure which side of his face the tattoo was on, however, because "it happened so fast." Hailey also testified the man had a tattoo on the side of his face. Hailey stated the tattoo appeared to be of two teardrops. On cross-examination, she clarified the tattoo was either one large tattoo or two small tattoos on the man's right cheek. The photograph of defendant admitted into evidence at the hearing, as described by Detective Rivers, showed defendant having a "cross or an X" tattooed on his left cheek.

¶ 41 While we agree the testimony presented regarding defendant's appearance is not identical, the general premise is the same; the shooter had a tattoo on his cheek. More importantly, however, defendant's argument fails to acknowledge that both Michelle and Hailey were familiar with defendant and positively identified him as the shooter. While defendant argues this is a case of "mistaken identification," nothing in the record supports his contention. Defendant presented no evidence at the hearing to contradict Michelle's and Hailey's identification, and the State was only required to prove it was more likely than not defendant was the shooter. We find the State met its burden on this issue.

¶ 42 b. Whether Defendant Intended To Procure Mosley's Unavailability

¶ 43 Defendant next argues, even if the State did prove he murdered Mosley, its reliance on multiple layers of inherently unreliable hearsay failed to establish he intended to procure Mosley's unavailability by a preponderance of the evidence. He first asserts Michelle's testimony regarding his alleged involvement with the phone call was "incredible" because it contained triple hearsay: (1) Mosley told Michelle (2) that the caller told Mosley (3) that Ardis asked him to call. He next contends Hailey's testimony did not connect him to the murder, as she only testified Mosley told her the "family" had asked him not to testify. Last, defendant argues

Nelson's account (as relayed through Detective Smysor's testimony) was inconsistent with both Michelle's and Hailey's testimony, as Nelson never mentioned anything about defendant's family being involved in the bribe. Again, we disagree.

¶ 44 As an initial matter, we note that in *Stechly*, 225 Ill. 2d at 278, 870 N.E.2d at 353, our supreme court established that, in determining the admissibility of evidence at a forfeiture-by-wrongdoing hearing, trial courts are permitted to consider hearsay evidence, including the unavailable witness's out-of-court statements. See also Ill. R. Evid. 104 (eff. Jan. 1, 2011) (stating preliminary questions, including the admissibility of evidence, "shall be determined by the court, *** [and] the court is not bound by the rules of evidence except those with respect to privileges.").

¶ 45 Moreover, because intent is seldom proved by direct evidence, our supreme court has long held that intent may be proved by circumstantial evidence. *People v. De Stefano*, 23 Ill. 2d 427, 431, 178 N.E.2d 393, 395 (1961). "Indeed, circumstantial evidence is most often the *only* way to prove a defendant's intent to commit a *** crime." (Emphasis in original.) *People v. Rudd*, 2012 IL App (5th) 100528, ¶ 14, 970 N.E.2d 580. "Circumstantial evidence is proof of facts or circumstances that give rise to reasonable inferences of other facts that tend to establish the guilt or innocence of the defendant." *People v. Dent*, 230 Ill. App. 3d 238, 243, 595 N.E.2d 18, 21 (1992).

¶ 46 During Michelle's testimony, the State asked her whether Mosley had told her anything about the phone call he received on the evening of February 4, 2013. Michelle responded, "He told me that it was a boy that worked at the car wash that he used to work at, that Ardis asked him to call. The family wanted to offer him money not to show up at court on Tuesday." When Michelle was asked to clarify who asked to have the call made, she responded,

"He just—the person on the phone told him Ardis' family wants to offer him money not to show up in court."

¶ 47 Hailey testified to a similar version of events, stating "the guy from the car wash with the messed up hand" had called Mosley to tell him the family would take care of him if he did not show up to testify against defendant. Detective Smysor testified Mosley's phone showed a call between Mosley and Nelson—an employee of the car wash— at approximately the same time as the call reported by Michelle and Hailey. Detective Smysor questioned Nelson about the call, and he admitted he had made it and that defendant had asked him to do so.

¶ 48 Approximately an hour after the phone call—an hour after both Michelle and Hailey heard Mosley turn down money in exchange for his testimony against defendant—Mosley was shot and killed by a man identified as defendant. Given the facts before us, we conclude the State presented sufficient evidence to support a finding it was more likely than not defendant intended to procure Mosley's unavailability as a witness. Defendant tried to bribe Mosley not to testify against him and when the bribe failed, he broke into Mosley's home and killed him. We find no abuse of discretion in the trial court's ruling on the State's motion *in limine*. Given our finding the State's motion in *limine* was properly granted, defendant's right to confrontation claim is not viable. *Hanson*, 238 Ill. 2d at 96, 939 N.E.2d at 251.

¶ 49 c. Jakeem Nelson's Testimonial Hearsay Statements

¶ 50 Alternatively, defendant argues this court must reverse and remand for a new hearing on the State's motion *in limine* because the trial court improperly allowed Detective Smysor to testify regarding Nelson's testimonial hearsay statements. He maintains Nelson was available to testify at the forfeiture-by-wrongdoing hearing, yet the State chose not to call him as

a witness in violation of his sixth-amendment confrontation rights. The State argues this issue has been forfeited, as it is being raised for the first time on appeal. We agree with the State.

¶ 51 As mentioned earlier, our supreme court has relaxed the forfeiture rules with regard to constitutional issues which were properly raised at trial or in a motion *in limine*. *Enoch*, 122 Ill. 2d at 190, 522 N.E.2d at 1131-32. However, in the present case, defense counsel objected to Nelson's out-of-court statements solely on the basis of hearsay. Accordingly, we conclude defendant failed to properly raise the constitutional issue below, and his sixth-amendment claim is forfeited. See *People v. Lovejoy*, 235 Ill. 2d 97, 148, 919 N.E.2d 843, 871 (2009) ("A specific objection at trial forfeits all grounds not specified.").

¶ 52 Nevertheless, defendant urges we address his claim as plain error. Under the plain-error doctrine, we may consider a forfeited claim 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, 870 N.E.2d 403, 410-11 (2007). Generally, the first step in plain-error analysis is to determine whether an error occurred. *People v. Sargent*, 239 Ill. 2d 166, 189, 940 N.E.2d 1045, 1059 (2010). However, we find resolution of this issue is more easily accomplished by examining whether defendant can satisfy either prong of the plain-error doctrine.

¶ 53 i. *Closely Balanced*

¶ 54 Defendant argues the evidence at the hearing on the State's motion *in limine* was closely balanced because, absent Nelson's statements to Detective Smysor, the trial court could

not have concluded he intended to procure Mosley's unavailability as a witness. He contends neither Michelle's nor Hailey's testimony established that he was connected with the caller's attempt to bribe Mosley into not testifying. Rather, he argues the only evidence connecting him to the phone call and bribe was Nelson's testimonial hearsay statements, which should not have been admitted. We disagree.

¶ 55 Even if we were to completely disregard Nelson's statements, the evidence presented at the hearing showed (1) Mosley received a phone call from Nelson approximately an hour before his murder; (2) Mosley told Michelle and Hailey defendant's family had offered him money to not show up at defendant's trial; (3) approximately an hour later, Mosley was murdered; and (4) both Michelle and Hailey witnessed the murder and positively identified defendant as the shooter. In other words, the amount of evidence presented by the State on the issue of intent was overwhelming. Accordingly, we need not address defendant's sixth-amendment claim under the closely-balanced-evidence prong.

¶ 56 ii. *Structural Error*

¶ 57 We also conclude any confrontation-clause violation resulting from the introduction of Nelson's statements through Officer Smysor did not amount to a structural error affecting the fairness of defendant's trial. Confrontation-clause violations are not automatically reviewable under the second prong of the plain-error doctrine. *People v. Czapla*, 2012 IL App (2d) 110082, ¶ 19, 980 N.E.2d 791. Rather, such claims are only reviewable if the error amounts to a systematic error that eroded the integrity of the judicial process and served to undermine the fairness of defendant's trial. *Id.* No such error occurred in this case. Nelson's out-of-court statements to Detective Smysor were merely cumulative in relation to other properly admitted evidence, and therefore they did not erode the integrity or undermine the fairness of the motion

in *limine* hearing. The trial court did not abuse its discretion in granting the State's motion *in limine*, and we need not further address defendant's sixth-amendment claim under the second prong of the plain-error doctrine.

¶ 58 Therefore, we find any alleged sixth-amendment error regarding Nelson's out-of-court statements fails to satisfy either prong of plain error analysis. Defendant's conviction is affirmed.

¶ 59 B. Defendant's Sentence

¶ 60 Defendant next argues the trial court abused its discretion in sentencing him to 30 years' imprisonment on the aggravated-battery-with-a-firearm conviction. He maintains the court did not adequately consider his age; limited, nonviolent criminal history; poor socioeconomic status; lack of education; familial support; and rehabilitative potential. We disagree.

¶ 61 The Illinois Constitution provides, "All penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11. " 'In determining an appropriate sentence, a defendant's history, character, and rehabilitative potential, along with the seriousness of the offense, the need to protect society, and the need for deterrence and punishment, must be equally weighed.' " *People v. Hestand*, 362 Ill. App. 3d 272, 281, 838 N.E.2d 318, 326 (2005) (quoting *People v. Hernandez*, 319 Ill. App. 3d 520, 529, 745 N.E.2d 673, 681 (2001)).

¶ 62 A sentence within the statutory limits will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense. *People v. Crenshaw*, 2011 IL App (4th) 090908, ¶ 22, 959 N.E.2d 703. In other words, "A trial court has wide latitude in sentencing a defendant, so long as it neither

ignores relevant mitigating factors nor considers improper factors in aggravation." *People v. Roberts*, 338 Ill. App. 3d 245, 251, 788 N.E.2d 782, 787 (2003). We review a trial court's sentencing determination for an abuse of discretion. *People v. Halerewicz*, 2013 IL App (4th) 120388, ¶ 40, 2 N.E.3d 333.

¶ 63 Defendant contends he had "only" three prior, nonviolent felony convictions and the trial court failed to consider his strong potential for rehabilitation. We disagree that three felony convictions by the age of 24—one of which resulted in him spending 18 months incarcerated—amounts to a strong potential for rehabilitation. Defendant was released from prison and thereafter attempted to rob two men by gunpoint in a residential neighborhood at a place of business. When the armed robbery went wrong, defendant "open[ed] fire on the fleeing victims." In fashioning its sentence, the trial court considered defendant's young age, noting, "One would hope that someone this young would have some rehabilitative potential." However, the court ultimately considered the deterrent factor above all others, explaining, "It was and is an outrageous crime." Given the serious nature of the offense, we conclude the court's decision to impose a sentence of 30 years' imprisonment was not an abuse of discretion.

¶ 64 C. Fines

¶ 65 Defendant's final argument concerns the improper assessment of fines by the Champaign County circuit clerk. The State concedes fines were improperly imposed, and we agree. Accordingly, we vacate all fines assessed by the circuit clerk and remand for the trial court to impose all mandatory fines as authorized by statute at the time of the offense. In addition, defendant is entitled to $1,395 in *per diem* credit for 279 days served in presentence custody. The court should apply this monetary credit to offset any creditable fines imposed on remand.

¶ 66 III. CONCLUSION

¶ 67 For the foregoing reasons, we (1) affirm defendant's conviction and sentence, and (2) vacate the improperly imposed fines and remand with directions for the trial court to impose all mandatory fines as authorized by statute at the time of the offense. We direct the parties to provide copies of their briefs on appeal to the trial court and the circuit clerk on remand. We further direct our clerk to provide an extra copy of our disposition directly to the attention of the clerk of the circuit court. As part of our judgment, we award the State its $75 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002(a) (West 2014).

¶ 68 Affirmed in part and vacated in part; cause remanded with directions.