2015 IL App (4th) 140814-U

NO. 4-14-0814

FILED
September 18, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from |
| Plaintiff-Appellee, | ) | Circuit Court of |
| v. | ) | Macon County |
| TRE M. McSPADDEN, | ) | No. 11CF594 |
| Defendant-Appellant. | ) | |
| | ) | Honorable |
| | ) | Thomas E. Griffith, Jr., |
| | ) | Judge Presiding. |

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Pope and Justice Knecht concurred in the judgment.

**ORDER**

¶ 1 *Held*: The State's evidence was sufficient for the jury to find beyond a reasonable doubt defendant fired the shot that resulted in the victim's death, defendant failed to establish the trial court's remarks were reversible error, and defendant's ineffective-assistance-of-counsel claims should be addressed in a postconviction petition.

¶ 2 In May 2011, the State charged defendant, Tre M. McSpadden, by information with six counts of first degree murder (720 ILCS 5/9-1(a)(1), (a)(2) (West 2010)), four counts of attempt (first degree murder) (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2010)), and two counts of aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2010)). After a spring 2014 trial, a jury found defendant guilty of first degree murder and two counts of attempt (first degree murder). In July 2014, defendant filed a posttrial motion. At a joint August 2014 hearing, the Macon County circuit court denied defendant's posttrial motion and sentenced him to 46 years' imprisonment for first degree murder, to run consecutive to two concurrent prison terms of 26

years for attempt (first degree murder). Defendant filed a motion to reconsider his sentence, which the court denied.

¶ 3 Defendant appeals, asserting (1) the State's evidence was insufficient to prove him guilty beyond a reasonable doubt, (2) the trial judge made improper comments during defendant's trial, and (3) he was denied effective assistance of trial counsel. We affirm.

¶ 4 I. BACKGROUND

¶ 5 The State's May 2011 charges related to the April 30, 2011, shooting death of Devin Kirk, who was with his two friends, Jamel Jelks and Deontae Hodges, at the time of the shooting. Before trial and on the State's motion, the trial court dismissed without prejudice three of the first-degree-murder charges, two of the attempt (first degree murder) charges, and both aggravated-discharge-of-a-firearm charges. On March 31, 2014, the trial court commenced a jury trial on the five remaining charges, three for first degree murder (counts I, II, and III) and two for attempt (first degree murder) (counts VII and VIII). At defendant's jury trial, the State presented the testimony of 27 witnesses, one of whom was recalled in rebuttal, and defense counsel presented 3 witnesses. Numerous exhibits were also admitted into evidence. We will only set forth the evidence necessary to address the issues on appeal.

¶ 6 Omar Matthews testified that, on the date of the shooting, he had resided with defendant and Tyler Madding for about six months at 980 West View Street in Decatur, Illinois. Matthews was also friends with Eric Cunningham and knew the victim, Kirk, and his friends Jelks, Hodges, and Kanoski Powell. Matthews testified an ongoing argument existed between his friends and Jelks's friends. Before the shooting took place, Matthews was heading into the Van Dyke Store, a local grocery store, when Jelks was exiting with two friends. Without any provocation, Matthews punched Jelks in the face. Defendant was present when Matthews

punched Jelks. After leaving the store, Matthews went home to 980 West View Street. Matthews did not stay home long and left in a white convertible. When Matthews heard gunshots, he turned around and went to look for his friends. Matthews picked defendant up on View Street in front of a vacant lot. Defendant said, "They are shooting." Matthews estimated less than an hour passed between the incident at the Van Dyke Store and the gunshots. Matthews admitted not cooperating with the police in the beginning, which led to an obstructing-justice charge. Matthews pleaded guilty to that charge. He did not receive any promises from the State in exchange for his testimony in this case.

¶ 7 A surveillance video from the Van Dyke Store was played during Jelks's testimony. Jelks identified Matthews as the one who punched him and defendant as the person following Matthews. Powell, Jelks's stepbrother, also testified defendant was present when Matthews punched Jelks. According to Jelks, a few punches were thrown after he was punched by Matthews. After that, Matthews, defendant, and Madding walked off toward View Street. Jelks met up with Kirk and Hodges. Jelks, Hodges, and Kirk walked into the alley near King Street. Jelks was going to get a haircut but planned to fight Matthews and his friends if they saw them. In the alley, Jelks saw defendant and Cunningham. Both defendant and Cunningham pulled out guns and started firing in Jelks's direction. Jelks testified Cunningham's gun was a .25- or .22-caliber one. Jelks, Kirk, and Hodges were standing side by side when the gunfire started. They all ran to different yards after the shots were fired. Jelks estimated seven shots were fired. Neither he nor his friends had guns that day. Decatur police detective David Pruitt testified he interviewed Jelks on May 4, 2011, and Jelks identified Cunningham and defendant in photographic lineups as being the shooters. Additionally, Jelks admitted having a burglary conviction and a pending armed-violence charge. He testified the State had not made him any

promises in exchange for his testimony.

¶ 8 Hodges also had criminal charges pending against him, and no promises had been made in exchange for his testimony. Hodges testified he met up with Jelks at the store, and Jelks told him he had been in an altercation with Matthews and "China Man." Jelks, Hodges, and Kirk saw China Man in the alley near the store. Jelks indicated he wanted to beat him up, and all three of them started walking in the alley toward China Man. When they were half way down the alley they saw defendant and Cunningham jump out. At that point, China Man had left the alley. Hodges heard Jelks yell "gun" and started running. Hodges heard between 5 to 10 gunshots but did not see the guns. Decatur police detective Jason Kuchelmeister testified he interviewed Hodges on the day of the shooting, and Hodges identified Cunningham and defendant in photographic lineups as being present at the scene of the shooting.

¶ 9 Cunningham testified that, on the day of the shooting, he got a call from defendant to come over to defendant's home. He went over to defendant's home with a .25-caliber gun, which had a two- or three-inch barrel. When he arrived, defendant told Cunningham about Matthews and Jelks's altercation earlier in the day. Cunningham left defendant's house and went for a haircut at his aunt's home, which was located at 988 West King Street and on the alley where the shooting occurred. Defendant called again and said Jelks and Gerald Leggions were in the area. Cunningham left his aunt's home to meet defendant. He saw defendant coming toward him and to his right he saw Jelks, Hodges, and a third man walking toward him in the alley. The trio was a couple houses away from Cunningham. Cunningham shot his .25-caliber gun twice up in the air to scare the three away and did not intend to hit any of them. Thereafter, he saw defendant holding a .357-caliber revolver straight out and shooting at the three men. Cunningham heard the gun fire twice. Cunningham acknowledged that, in exchange for his

testimony in this case, the State offered him a 20-year sentence (consecutive prison terms of 14 years for possession of a weapon by a felon and 6 years for obstructing justice) and dismissal of an unrelated aggravated-discharge-of-a-firearm charge.

¶ 10 James Killings testified he had a criminal record and had not received any promises regarding his pending theft case in exchange for his testimony in this case. On the day of the shooting, he lived in the house next to defendant's home and had drunk a pint of Wild Rose that morning. After walking his dog, Killings stood in his doorway. While standing there, he saw a black man and a Chinese/Mexican man leave defendant's home and walk across the vacant lot and into the alley, which was across from his home. Killings then observed the Chinese/Mexican man walk back into the vacant lot and defendant then left his front porch and met up with the Chinese/Mexican man in the empty lot. It appeared the Chinese/Mexican man passed something to defendant. Killings did not see the item that was given to defendant. Defendant then walked to the alley that runs between View and King Streets. Due to the vacant lot, Killings could see defendant standing in the alley. Killings saw defendant shoot a gun down the alley toward Van Dyke Street. The black man, who had been with the Chinese/Mexican man, was also in the alley shooting. Killings could see the fire from the guns when they discharged and estimated he heard eight gunshots. Defendant then ran to View Street, where he shot his gun in the air. A white convertible came down View Street from the west, picked up defendant, and drove toward Van Dyke Street. Detective Pruitt testified Killings identified defendant as the person, who fired the weapon on April 30, 2011.

¶ 11 Another neighbor, Anna Johnson, testified she lived at 968 West View Street and was in her car, waiting on her sons to get their dogs. While she was waiting she observed a man, whom she later identified in a photographic lineup as defendant, leave the porch at 980 West

View Street and go to the empty lot across the street. A couple of minutes later, she heard five gunshots. A couple of minutes after hearing the gunshots, she drove off from her house down West View Street and saw defendant with another man. They were walking away from the alley toward 980 West View Street. Defendant had a gun with a barrel of around 11 inches. Johnson observed defendant put the gun into his waistband. Decatur police detective James Atkinson testified he interviewed Johnson on the day of the shooting, and she identified defendant in a photographic lineup as being the person she saw with a gun earlier in the day. However, she noted his skin tone appeared darker in the photograph than in person.

¶ 12 Dr. Scott Denton, a forensic pathologist, testified he had reviewed the autopsy performed by Dr. John Ralston on Kirk. Dr. Denton stated Kirk died from multiple gunshot wounds to the back, one to the right buttock and one to the left upper back. Dr. Denton explained one bullet went through Kirk's left lung and tore the subclavian artery, which caused Kirk to bleed to death. The bullet that caused the lower-back injury remained in Kirk's body and was recovered during the autopsy. Dr. Denton testified the bullet removed from Kirk was consistent with a medium-caliber gun, such as .38 or .35. The bullet that caused the upper back injury exited the body in the neck region. Kirk's upper-back gunshot wound was not consistent with a .25 caliber-bullet because such bullets make very small holes and usually do not exit the body.

¶ 13 Decatur police detective Joe Patton testified he attended Dr. Ralston's autopsy and took custody of the bullet removed from Kirk's body. Based on his training and experience, he estimated the bullet was .9mm to .38-caliber. The bullet was inconsistent with a .22- or a .25-caliber bullet because those types of bullets are much smaller than the one recovered from Kirk. Carolyn Kersting, a tool-mark examiner with the Illinois State Police forensic science laboratory,

testified the bullet from Kirk's body could have been shot from a .357 caliber-revolver but not a .25 caliber-firearm.

¶ 14 Defendant presented the testimony of Bobby Boehme and Leonquis Morris, who were both in jail with Cunningham, and both testified Cunningham talked about this case with them and stated defendant had nothing to do with it. Defendant also presented Dereon Byons's stipulated statement that, on the day of the shooting, Cunningham denied being present at Kirk's shooting and having any knowledge of it.

¶ 15 At the conclusion of the trial, the jury found defendant guilty of the first degree murder of Kirk, attempt (first degree murder) of Hodges, and attempt (first degree murder) of Jelks. As to all three offenses, the jury found defendant personally discharged a firearm in committing the offense. On May 12, 2014, the trial court granted defendant additional time to file a posttrial motion. On July 1, 2014, defendant filed his posttrial motion, asserting, *inter alia*, (1) the State's evidence was insufficient to prove him guilty beyond a reasonable doubt, (2) the court erred by conducting an offer of proof to address defendant's witnesses' reluctance to testify, and (3) the verdict forms regarding the sentence enhancements were improper.

¶ 16 At a joint hearing on August 11, 2014, the trial court denied defendant's posttrial motion and sentenced defendant to 46 years' imprisonment for first degree murder (which included a 20-year sentence enhancement), to run consecutive to two concurrent prison terms of 26 years for the attempt (first degree murder) convictions (which included a 20-year sentence enhancement). On September 4, 2014, defendant filed a motion to reconsider his sentence, which the court denied on September 15, 2014.

¶ 17 On September 17, 2014, defendant filed a timely notice of appeal, which stated a judgment date of September 15, 2014, and the following: "If appeal is not from a conviction,

nature of order appealed from: Sentence." However, on appeal, defendant's issues all relate to his trial and guilty verdicts. On October 15, 2014, defendant filed a second notice of appeal. The second notice left blank the "If appeal is not from a conviction, nature of order appealed from" line and listed the date of the judgment appealed as August 11, 2014, the date the court denied defendant's posttrial motion and sentenced him. Illinois Supreme Court Rule 606(c) (eff. Feb. 6, 2013) allows for an amended notice of appeal as provided in Illinois Supreme Court Rule 303(b)(5) (eff. May 30, 2008). Rule 303(b)(5) allows a notice of appeal to be amended without leave of court within the 30-day period to file a notice of appeal. Here, the second notice of appeal was filed on the last day of the 30-day period. Moreover, the fact the second notice of appeal was not labeled as an *amended* notice of appeal does not prevent us from treating it as such. *Wabash County v. Illinois Municipal Retirement Fund*, 408 Ill. App. 3d 924, 932, 946 N.E.2d 907, 916 (2011) ("Illinois law is well settled that a pleading's substance and not its title determines its character"). Accordingly, we find the October 2015 notice of appeal was a properly filed amended notice of appeal, and thus this court has jurisdiction of both defendant's convictions and sentences under Illinois Supreme Court Rule 603 (eff. Feb. 6, 2013).

¶ 18 II. ANALYSIS

¶ 19 A. Motion To Strike

¶ 20 In its brief, the State asks us to strike defendant's brief for violating Illinois Supreme Court Rule 341(h)(6) (eff. Feb. 6, 2013) and dismiss the appeal. In his reply brief, defendant objects to the State's request and notes any improper statements should just be disregarded. We have reviewed the matter and deny the State's request to strike the brief and dismiss the appeal. However, we will disregard any improper comments in defendant's statement of facts.

¶ 21 B. Sufficiency of the Evidence

¶ 22 Defendant asserts the State failed to prove him guilty beyond a reasonable doubt of first degree murder. Specifically, he contends the evidence failed to show both he was the shooter and his guilt based on an accountability theory. Defendant also contends that, if this court finds the evidence was sufficient to find him guilty, the sentence enhancement for personally discharging a firearm should not have been applied because the State failed to prove that fact beyond a reasonable doubt. The State disagrees with defendant's contentions.

¶ 23 When presented with a challenge to the sufficiency of the evidence, a reviewing court's function is not to retry the defendant. *People v. Givens*, 237 Ill. 2d 311, 334, 934 N.E.2d 470, 484 (2010). Rather, we consider " 'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (Emphasis in original.) *People v. Davison*, 233 Ill. 2d 30, 43, 906 N.E.2d 545, 553 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). " 'Under this standard, the reviewing court does not retry the defendant, and the trier of fact remains responsible for making determinations regarding the credibility of witnesses, the weight to be given their testimony, and the reasonable inferences to be drawn from the evidence.' " *People v. Washington*, 2012 IL 107993, ¶ 33, 969 N.E.2d 349 (quoting *People v. Ross*, 229 Ill. 2d 255, 272, 891 N.E.2d 865, 876 (2008)). Further, we note a reviewing court will not overturn a criminal conviction "unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *Givens*, 237 Ill. 2d at 334, 934 N.E.2d at 484.

¶ 24 In this case, the State presented a great deal of evidence showing defendant's guilt. The evidence showed the victim died from two gunshot wounds to his back, which were not caused by a .25-caliber gun. Specifically, Dr. Scott Sherwood, the surgeon who treated the

victim, testified the victim died from a gunshot that caused a partial transection of the subclavian artery, which resulted in the victim bleeding to death. Dr. Sherwood noted the victim had two gunshot wounds. Dr. Denton, who testified about Dr. Ralston's autopsy, also testified the victim received two gunshot wounds to his back, which resulted in his death. Moreover, Dr. Ralston recovered the bullet that caused the lower gunshot wound, and that bullet came from a .38- or .35-caliber gun. Dr. Denton also testified the upper-back wound was inconsistent with a .25-caliber bullet because such bullets make very small holes and do not exit the body. Detective Patton, who attended Dr. Ralston's autopsy of the victim and took possession of the recovered bullet, opined the bullet was in the range of a .9 mm to .38 caliber. The bullet was inconsistent with the size of a .22- or .25-caliber bullet because those types of bullets are much smaller than the one he received. Kersting, the firearm tool-mark examiner, testified the bullet recovered from the victim's body could have been fired from a .357-caliber revolver, but not from a .25-caliber gun. Additionally, Decatur police officer Jason Hesse's stipulation noted he discovered a spent .38-caliber shell casing in a black garbage bag located in the kitchen of 980 West View Street in Decatur, Illinois. Matthews testified he, defendant, and Tyler Madding lived at 980 West View Street.

¶ 25 Jelks identified defendant and Cunningham as the shooters and testified Cunningham's gun was a .22- or. 25-caliber gun. Specifically, Jelks testified he was walking in the alley side by side with Hodges and Kirk, when he saw defendant and Cunningham were also in the alley. Jelks estimated defendant and Cunningham were about 30 feet away when he first saw them. Jelks then observed both defendant and Cunningham pull out guns and both men started to fire in the direction of him and his two friends. Jelks did not know which man fired first. Furthermore, Hodges testified he, Jelks, and Kirk were walking in the alley, and he saw

defendant and Cunningham jump out. Hodges heard Jelks yell "gun" and started running. Hodges heard between 5 to 10 gunshots but did not see the guns.

¶ 26 In addition to Jelks, Cunningham identified defendant as a shooter. Cunningham testified he was alone when he saw the trio of Jelks, Hodges, and a third man (he later learned was Kirk) walking toward him in the alley. Cunningham shot his .25-caliber gun twice up in the air to scare the trio away and did not intend to hit any of them. Thereafter, he saw defendant holding a .357-caliber revolver straight out and shooting at the trio. Cunningham heard the gun fire twice.

¶ 27 Additionally, Killings, who lived in the house right next to defendant's, witnessed defendant shooting a gun in the alley on the afternoon in question. He testified he saw a black man and a Chinese/Mexican man leave defendant's home and walk across the street to the vacant lot and then into the alley. Killings then observed the Chinese/Mexican man walk back into the vacant lot and defendant then left his front porch and met up with the Chinese/Mexican man in the empty lot. It appeared the Chinese/Mexican man passed something to defendant. Killings did not see the item that was given to defendant. Defendant then walked to the alley that runs between View and King Streets. Due to the vacant lot, Killings could see defendant standing in the alley. Killings saw defendant shoot a gun down the alley toward Van Dyke Street. The black man, who had earlier been with the Chinese/Mexican man, was also in the alley shooting. Killings could see the fire from the guns when they discharged and estimated he heard eight gunshots. Defendant then ran to View Street, where he shot his gun in the air. A white convertible came down View Street from the west, picked up defendant, and drove toward Van Dyke Street.

¶ 28 Another neighbor, Johnson, observed a man, whom she later identified in a photographic lineup as defendant, leave the porch at 980 West View Street and go to the vacant lot across the street. A couple of minutes later, she heard five gunshots. A couple of minutes after hearing the gunshots, she drove away from her house down West View Street and saw defendant again with another man. They were walking away from the alley toward 980 West View Street. Defendant had a gun with a barrel of around 11 inches. Johnson observed defendant put the gun into his waistband.

¶ 29 Defendant notes Cunningham, Matthews, Jelks, and Hodges were either personally involved in the shooting, had criminal records, or had something to gain from testifying against him. He also points out Killings was a "little buzzed" at the time of the incident and Johnson was driving away from the scene when she saw defendant with the gun. Defendant further claims major holes existed in the witnesses' testimony. Regardless, "[i]nconsistencies in the testimony of the witnesses, bias or interest affecting their credibility, and the weight to be given to the testimony of witnesses are for the trier of fact to determine." *People v. Hernandez*, 319 Ill. App. 3d 520, 533, 745 N.E.2d 673, 684-85 (2001). Here, the State's evidence was more than sufficient for the jury to find defendant was the one who fatally shot the victim, Kirk. Five witnesses saw defendant at the scene of the shooting or leaving the scene and four saw defendant with a gun. Moreover, evidence showed the fatal shots did not come from a .25-caliber weapon that Jelks stated the other shooter, Cunningham, possessed.

¶ 30 Since the State's evidence was sufficient to prove defendant guilty beyond a reasonable doubt of first degree murder as the actual shooter, we need not address defendant's arguments (1) the State failed to prove him guilty beyond a reasonable doubt on an

accountability theory and (2) the sentencing enhancement for personally discharging a firearm should not have been applied in his case.

¶ 31 C. Trial Court's Comments

¶ 32 Defendant also argues the trial court made improper comments during his trial that undermined his counsel's advocacy and improperly influenced the jury's credibility determinations. Defendant acknowledges he did not object at trial or raise the argument in a posttrial motion (see *People v. Enoch*, 122 Ill. 2d 176, 186, 522 N.E.2d 1124, 1130 (1988)) but argues the forfeiture doctrine should be relaxed since it involves a judge's conduct. In his reply brief, he seeks review under both the plain-error doctrine and the doctrine that arose from *People v. Sprinkle*, 27 Ill. 2d 398, 189 N.E.2d 295 (1963).

¶ 33 Our supreme court has explained that, "under the *Sprinkle* doctrine, the forfeiture rule may be relaxed when a trial judge oversteps his or her authority in the presence of the jury or when counsel has been effectively prevented from objecting because it would have fallen on deaf ears." (Internal quotation marks omitted.) *People v. Thompson*, 238 Ill. 2d 598, 612, 939 N.E.2d 403, 412 (2010) (quoting *People v. Hanson*, 238 Ill. 2d 74, 118, 939 N.E.2d 238, 263 (2010)). The *Thompson* court further stated the following about the *Sprinkle* doctrine:

> "The failure to preserve an error will be excused under the *Sprinkle* doctrine only in extraordinary circumstances, however, such as when a judge makes inappropriate remarks to a jury or relies on social commentary instead of evidence in imposing a death sentence. [Citations.] We have stressed the importance of applying the forfeiture rule uniformly except in compelling situations because failure to raise a claim properly denies the trial

> court an opportunity to correct an error or grant a new trial, thus wasting time and judicial resources." *Thompson*, 238 Ill. 2d at 612, 939 N.E.2d at 412-13.

¶ 34 The plain-error doctrine allows a reviewing court to consider unpreserved error under the following two scenarios:

> "(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. Sargent*, 239 Ill. 2d 166, 189, 940 N.E.2d 1045, 1058 (2010).

We begin our plain-error analysis by first determining whether any error occurred at all. *Sargent*, 239 Ill. 2d at 189, 940 N.E.2d at 1059. If an error did occur, this court then considers whether either of the two prongs of the plain-error doctrine has been satisfied. *Sargent*, 239 Ill. 2d at 189-90, 940 N.E.2d at 1059. Under both prongs, the defendant bears the burden of persuasion. *Sargent*, 239 Ill. 2d at 190, 940 N.E.2d at 1059.

¶ 35 As to improper judicial comments, defendant cites the First District's opinion in *People v. Tatum*, 389 Ill. App. 3d 656, 662, 906 N.E.2d 695, 703 (2009). The *Tatum* court stated the following:

> "Defendants are entitled to a trial that is free from improper and prejudicial comments by the trial judge. [Citation.] The trial

judge has wide discretion in presiding over a trial, but cannot make comments or insinuations indicating its opinion on the credibility of a witness or the argument of counsel. [Citation.] The trial judge must exercise a high degree of care to avoid influencing the jurors in any way, to remain impartial and to not display prejudice or favor toward any party, due to the judge's great influence over the jury. [Citation.] However, even when the trial judge does make improper comments, those comments will only constitute reversible error if the remarks were prejudicial and the defendant was harmed by the comments." *Tatum*, 389 Ill. App. 3d at 662, 906 N.E.2d at 703.

¶ 36 1. *Improper Opinion*

¶ 37 Defendant first asserts the trial court improperly interjected its opinion at three points during defendant's trial. However, he only notes the court's comments during Cunningham's testimony, which defendant asserts was the State's key witness. After asking Cunningham several questions about defendant firing his gun at Jelks, Kirk, and Hodges, the following dialogue took place:

"MRS. KRONCKE [Assistant State's Attorney]: Okay. So to be clear, he was facing those 3 men and he had his arm extended in front of him and you observed him fire a .357 magnum at them?

MR. PRICE [Defense Attorney]: I object to her testifying for him.

THE COURT: Well, she is, but I think she's trying to clarify his response. This is critical. Let's try not to lead too much.

MRS. KRONCKE: Okay."

The prosecutor did not ask the objected to question again.

¶ 38 Defendant contends the trial court's comment aligned it with the State's case and diminished his case in front of the jury. The State asserts the court's comment did not indicate it believed Cunningham's testimony was credible. We agree with the State.

¶ 39 The record indicates the trial court recognized the prosecutor was trying to clarify the witness's answer but did not want her to ask leading questions because the testimony was "critical" to defendant's guilt or lack thereof. In other words, the court's "critical" reference indicated the testimony at issue was not background information and went to the heart of the case. The court's comment in no way appears to be a comment on the credibility of Cunningham's testimony. Moreover, Cunningham's testimony about defendant shooting a gun at the victim and his two friends was clearly very important, and thus, the court's description of it as "critical" was simply stating the obvious. Additionally, we note Cunningham never answered the prosecutor's clarifying question. Thus, contrary to defendant's claim, the State did not clarify Cunningham's response. Accordingly, we do not find the court's "critical" comment was improper. Since no error occurred, defendant cannot establish plain error or reversible error under the *Sprinkle* doctrine.

¶ 40 2. *Reprimanding of Defense Counsel*

¶ 41 Defendant also contends he was denied a fair trial by the trial court's reprimanding of defense counsel. Specifically, he notes the court's (1) denial of defense counsel's recross-examination of Officer Scott Cline and (2) cessation of the direct examination of Dr. Sherwood to address defense counsel's talking with defendant during the State's case. The State argues the trial court did not err.

¶ 42 As to the denial of recross-examination of Officer Cline, this court applies the abuse-of-discretion standard of review to a trial court's evidentiary rulings. *People v. Graves*, 2012 IL App (4th) 110536, ¶ 16, 965 N.E.2d 546. The scope and extent of recross-examination lies within the trial court's discretion. *Graves*, 2012 IL App (4th) 110536, ¶ 16, 965 N.E.2d 546. A reviewing court will only interfere with the trial court's ruling on the scope and extent of recross-examination where there is a clear abuse of such discretion, resulting in manifest prejudice to the defendant. See *Graves*, 2012 IL App (4th) 110536, ¶ 16, 965 N.E.2d 546.

¶ 43 Here, defendant argues he was prejudiced by the denial of recross-examination of Officer Cline because he was deprived of a complete and thorough cross-examination. Specifically, defense counsel should have been allowed to ask a few follow-up questions. However, defendant did not properly preserve this question for review because defense counsel did not make an offer of proof after he was denied recross-examination. See *People v. Ferns*, 247 Ill. App. 3d 278, 286, 617 N.E.2d 209, 214 (1993); see also *People v. Tabb*, 374 Ill. App. 3d 680, 689, 870 N.E.2d 914, 923 (2007) (noting that, when the trial court denies a line of questioning, the defendant must set forth an offer of proof either to convince the trial court to allow the testimony or to establish on the record to what the evidence was directly and positively related). Thus, it is not possible to tell what information defense counsel was hoping to obtain. See *Ferns*, 247 Ill. App. 3d at 286, 617 N.E.2d at 214. "The purpose of an offer of proof is to inform the trial court and opposing counsel of the nature and substance of the evidence to be introduced and to 'preserv[e] that evidence for appellate review.' " *Ferns*, 247 Ill. App. 3d at 286, 617 N.E.2d at 214 (quoting *People v. Sanchez*, 131 Ill. 2d 417, 425, 546 N.E.2d 574, 579 (1989), *abrogated on other grounds in People v. Vincent*, 226 Ill. 2d 1, 871 N.E.2d 17 (2009)). Accordingly, defendant has not preserved this issue for appellate review.

¶ 44 Regarding the trial court's reprimanding of defense counsel for talking with defendant during the direct examination of Dr. Sherwood, defendant notes the following exchange:

> "THE COURT: Okay. Hang on. Hang on. Mr. Price [defense attorney]?
>
> MR. PRICE: Forgive me?
>
> THE COURT: What do I have to do?
>
> MR. PRICE: Just trying—there's nothing you have to do. I'm just trying to confer with my client regarding possibly some things that have happened here. I apologize.
>
> THE COURT: We've been through apologies once, Mr. Price.
>
> MR. PRICE: Okay. Well, this will be the last one.
>
> THE COURT: Okay. If it happens again, we're going to take a break and there's going to be trouble. Do you understand?
>
> MR. PRICE: Yes, sir."

Thereafter, the court called a recess and stated, "Counsel, you need to come back in my chambers."

¶ 45 Defendant argues that, when a judge reprimands or belittles a party, it can give the appearance the trial court has improperly aligned itself with a particular party. The State asserts the court's comments were entirely appropriate given the trial court had already addressed the issue with defense counsel earlier in the proceedings. We agree with the State.

¶ 46 Illinois Supreme Court Rule 63(A)(3) (eff. July 1, 2013), which is canon 3 of the Code of Judicial Conduct, provides the following: "A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control." Accordingly, a trial judge bears the duty of maintaining order and decorum in the courtroom. *People v. Bell*, 276 Ill. App. 3d 939, 947-48, 658 N.E.2d 1372, 1378 (1995); see also *People v. Ray*, 126 Ill. App. 3d 656, 664, 467 N.E.2d 1078, 1084 (1984) (recognizing a judge "is vested with power to compel courtroom decorum and must conduct proceedings in a manner such as will inspire respect for the law and administration of justice"). The record suggests defense counsel was communicating with defendant during the prosecutor's direct examination of witnesses in a manner that was disruptive to the proceedings. Before the aforementioned exchange, the trial court had stopped the State's direct examination of Johnson and stated, "Mr. Price [defense attorney], you're talking to your client consistently while the State is trying to question their [*sic*] witnesses. Please, Mr. Price." After the first warning, defense counsel continued to do so, which resulted in the court making the challenged comments. The record is clear the allegedly improper comments were to maintain decorum in the courtroom, not to show bias against defendant or express an opinion in the case. We find no impropriety with the trial court's aforementioned statements. Again, since no error occurred, defendant cannot establish plain error or reversible error under the *Sprinkle* doctrine.

¶ 47 D. Ineffective Assistance of Trial Counsel

¶ 48 Defendant last asserts he received ineffective assistance of counsel because his trial counsel (1) conceded his guilt during closing arguments and (2) failed to conduct

meaningful cross-examination of several of the State's witnesses. The State disagrees. We decline to address defendant's claims on direct appeal.

¶ 49 This court evaluates ineffective-assistance-of-counsel claims under the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). To succeed on such a claim, a defendant must demonstrate (1) his counsel's performance fell below an objective standard of reasonableness; and (2) there is a reasonable probability that, but for counsel's conduct, the results of the proceeding would have been different. *Strickland*, 466 U.S. at 687. However, our supreme court has recognized that, "[w]here counsel abandons even the pretense of defending his client, Federal constitutional standards or our own State Constitution may mandate reversal even in the absence of prejudice. It may be argued in such cases that counsel's effectiveness has fallen to such a low level as to amount not merely to incompetence, but to 'no representation at all.' " *People v. Caballero*, 126 Ill. 2d 248, 267, 533 N.E.2d 1089, 1095 (1989) (quoting *People v. De Simone*, 9 Ill. 2d 522, 531, 138 N.E.2d 556, 561 (1956)).

¶ 50 Here, defendant asserts his trial counsel conceded his guilt based on an accountability theory by arguing defendant was not the gunman who killed Kirk. Thus, he received no representation at all, or in the alternative, counsel's performance met both prongs of the *Strickland* test. However, trial counsel's arguments were not clear and thus it is difficult to tell what counsel was actually asserting. Moreover, counsel also argued defendant and Cunningham did not have an agreement or common design to shoot someone. Additionally, defendant argues trial counsel did not subject Killings's, Johnson's, and Detective Callaway's testimony to meaningful adversarial testing. Both ineffective-assistance arguments potentially touch upon counsel's trial strategy and tactics.

¶ 51 In *People v. Kunze*, 193 Ill. App. 3d 708, 726, 550 N.E.2d 284, 296 (1990), this court held the adjudication of an ineffective-assistance-of-counsel claim is often better made in postconviction proceedings, where a complete record can be made. For example, we have found that, without an explanation from trial counsel, this court could not properly determine whether the trial counsel's actions involved the exercise of judgment, discretion, or trial tactics, which are not reviewable matters; and thus, we recommended a postconviction petition was a better forum for adjudication of the ineffective-assistance claim. *People v. Flores*, 231 Ill. App. 3d 813, 827-28, 596 N.E.2d 1204, 1213-14 (1992). Additionally, we have explained the resolution of a criminal defendant's ineffective-assistance claim is usually more appropriate for postconviction proceedings because the record on direct appeal in a criminal case rarely contains anything explaining the trial counsel's tactics. *In re Carmody*, 274 Ill. App. 3d 46, 56, 653 N.E.2d 977, 984 (1995). "Thus, if 'those trial tactics are to be the subject of scrutiny, then a record should be developed in which they can be scrutinized.' " *Carmody*, 274 Ill. App. 3d at 56, 653 N.E.2d at 984 (quoting *People v. Fields*, 202 Ill. App. 3d 910, 917, 560 N.E.2d 1220, 1224 (1990) (Steigmann, J., specially concurring)).

¶ 52 Accordingly, we decline to address defendant's ineffective-assistance-of-counsel claims at this juncture. Rather, defendant may pursue his claims under the Post-Conviction Hearing Act (725 ILCS 5/art. 122 (West 2014)).

¶ 53 III. CONCLUSION

¶ 54 For the reasons stated, we affirm the judgment of the Macon County circuit court. As part of our judgment, we award the State its $75 statutory assessment against defendant as costs of this appeal.

¶ 55 Affirmed.