2016 IL App (1st) 132940-U

FIFTH DIVISION
March 4, 2016

No. 1-13-2940

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

	)	Appeal from the
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
	)	Cook County
Plaintiff-Appellee,	)	
	)	
v.	)	No. 12 CR 807
	)	
SHAWAN JOLLY,	)	
	)	Honorable
Defendant-Appellant.	)	Noreen Valeria Love,
	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: Defendant's convictions for attempted first degree murder, aggravated battery, and being an armed habitual criminal are affirmed where: (1) the trial court did not improperly rely on matters outside the trial record; (2) the trial court did not improperly restrict cross-examination of the State's key witness; (3) defendant forfeited his argument regarding the impeachment of the witness who identified defendant as the offender; (4) a rational trier of fact could find defendant guilty beyond a reasonable doubt; and (5) there was no cumulative effect of the claimed trial errors in this case.

¶ 2 Following a bench trial in the circuit court of Cook County, defendant Shawan Jolly was

found guilty of attempted first degree murder, aggravated battery, and being an armed habitual criminal. On appeal, defendant argues the trial court erred by: (1) relying on matters outside the trial record; (2) restricting the cross-examination of the State's key witness; (3) refusing to consider the impeachment of the State's witness who identified defendant as the offender; and (4) finding defendant guilty beyond a reasonable doubt. Defendant also argues the cumulative effect of these errors requires reversal in this case. For the following reasons, we affirm the judgment of the trial court.

¶ 3 I. BACKGROUND

¶ 4 On January 13, 2012, defendant was charged by indictment with attempted first degree murder (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2010)), aggravated battery (720 ILCS 5/12-3.05(e)(1) (West 2010)), and being an armed habitual criminal (720 ILCS 5/24-1.7(a) (West 2010)). The charges arose out of the December 6, 2011, shooting of Brandon Williams (Williams) and Michael Wells (Wells).

¶ 5 Williams testified that at the time of trial, he was incarcerated for aggravated fleeing and eluding, as well as possession of a controlled substance with intent to deliver. He also acknowledged two additional prior convictions in 2011 and 2012 for aggravated fleeing and eluding, as well as a 2005 conviction for possession of a controlled substance.

¶ 6 Williams testified to the following facts. On December 6, 2011, he was driving a friend's vehicle to pick up Wells and have him work on Williams' vehicle. Shortly before 11 a.m., he observed defendant driving a vehicle in an adjacent lane on Mannheim and I-290. Williams recognized defendant because he had seen him around in Maywood, Illinois, during the past few years and the defendant "had an incident with [his] brother." Williams was able to observe defendant for "a minute or two until the [traffic] light turned green." At approximately 11 a.m.,

Williams arrived at AutoZone, picked up Wells, and headed eastbound onto I-290 at the 9th Avenue entrance.

¶ 7 At approximately 11:30 a.m., Williams heard a "boom" sound. He initially believed some object had fallen from a truck. When he realized they were gunshots, he and Wells ducked down. Williams observed defendant in a two-door gray automobile in the lane to his left, hanging out of the window from the stomach upward and firing a black handgun at Williams' vehicle approximately six and one-half feet away. He heard close to 10 gunshots.

¶ 8 Williams further testified he was in stop-and-go traffic, and that the shooting was "very brief," lasting "seconds." Williams' vehicle was "rolling" or stopped at the moment of the shooting. After the gunfire ceased, Williams felt his shoulder locking up and he experienced a burning sensation in his leg and his left index finger. Williams realized he had sustained gunshot wounds to his left shoulder, thigh, and index finger. He drove to Loyola Hospital. When he arrived, Williams observed the bullet holes in his vehicle's window and door.

¶ 9 Williams was interviewed by the police about the incident at the hospital. Although he did not inform the police he knew the shooter during his first interview, Williams later informed them he knew the shooter and identified defendant as the shooter from an array of photographs. The next day, on December 7, 2011, Williams identified defendant as the shooter from a lineup. At trial, Williams identified defendant in court as the individual who shot him.

¶ 10 On cross-examination, Williams acknowledged he was not looking directly at defendant nor staring at him while they were stopped in traffic prior to the shooting. Williams acknowledged he was using his cell phone immediately prior to the shooting. During the shooting, Williams ducked down and did not know how many gunshots were fired before the driver's side window shattered. Williams observed defendant through the driver's side window

and front windshield of his vehicle for a "couple of seconds."

¶ 11 Williams further acknowledged his personal items were inventoried during his first interview with the police. Defense counsel sought to question Williams regarding whether the police discovered he was in possession of cocaine. The trial court sustained the State's objections, ruling that defense counsel had not made a sufficient offer of proof that Williams was provided any benefit in return for cooperating with the investigation. Williams did not recall informing the police he was 80% sure of the shooter's identity. Williams also did not recall whether the window of his vehicle was shattered after one gunshot, but acknowledged providing a written statement to the police that the window was shattered after a single shot.

¶ 12 The trial court admitted into evidence photographs of (1) the photograph array shown to Williams, (2) the lineup Williams observed, and (3) Williams' vehicle depicting bullet holes in the door and window.

¶ 13 Wells testified he had a prior felony conviction for possession of a controlled substance in 2008. Regarding the events of December 6, 2011, Wells testified that he and Williams met at an AutoZone store and proceeded eastbound on I-290 in Williams' vehicle. Wells was in the passenger seat. At around 11:30 a.m., Williams' automobile was traveling on the highway at approximately 50 to 55 miles per hour between the 1st Avenue and Des Plaines Avenue exits when Wells heard what he thought were rocks being thrown at the vehicle. Wells began to duck down when he noticed a bullet hole in the driver's side window. He heard 10 to 15 gunshots. Wells felt pain in his right forearm and realized he was shot. Wells noticed Williams was bleeding. Williams drove them to Loyola Hospital. Wells was treated at Loyola Hospital and released the same day.

¶ 14 Defense counsel moved for a directed finding, arguing Wells was more credible than

Williams. Defense counsel noted Williams did not initially inform the police he knew the shooter and he was only 80% sure of his identification from the photograph array. Defense counsel further asserted there was no traffic signal that lasted for two minutes, to which the trial court responded, "I-290 and Mannheim Road, yes." Defense counsel also argued that if the driver's side window shattered after one shot, Williams had only seconds to view the shooter. The State responded Williams recognized defendant from his neighborhood and that he made positive identifications from the photograph array and the lineup. The State further argued the bullet holes on the side of Williams' vehicle corroborated his testimony that the vehicle was stopped or rolling at the time of the shooting because the bullet holes were concentrated and not angled. The trial court denied the motion for a directed finding.

¶ 15 Defendant introduced a stipulation by the parties that if called as a witness, an Illinois State Police officer named Parker would testify that Williams stated he was 80% sure of his identification from the photograph array. The parties presented closing arguments, which were substantially similar to the arguments presented on the motion for a directed finding.

¶ 16 The trial court found defendant guilty of attempted first degree murder, aggravated battery, and being an armed habitual criminal. The trial court indicated it found Williams credible in part because "east bound traffic never moves" on I-290, "virtually any time of day." The trial court found that at the time of the shooting, it was unlikely Williams' vehicle was traveling at 50 to 55 miles per hour "at the stretch between 9th and Des Plaines [Avenues] because traffic is always at a crawl ever since they straightened out the Hillside strangler." The trial court also found that the photographs of Williams' vehicle indicated it was likely the vehicle was stationary or moving very slowly because "the grouping of bullets, for the most part, is all on the driver's side door." The trial court stated:

> "[I]f a vehicle is traveling, it is more likely that the bullets are going to be sprayed all the way down the vehicle, and that the strikes on the vehicle are not going to be pretty much dead on like these are. They are going to be more on an angle."

The trial court further ruled it was not taking the attempted impeachment of Williams into account regarding whether his window shattered after one shot, because Williams did not recall when the window shattered.

¶ 17 On June 21, 2013, defendant filed a posttrial motion for a new trial or, in the alternative, to reconsider the verdict. Defendant argued: (1) the differences between the testimony of Wells and Williams; (2) the lack of evidence regarding traffic patterns on I-290; (3) the evidence demonstrated the bullets were sprayed "across the entire vehicle," and "if the vehicle had been in a stationary position, the bullet holes would have been in a condensed area of the vehicle and not spread across the entire car"; (4) Williams did not have a clear view of the shooter, whom he could have observed for only a few seconds; (5) Williams could not recall whether his view was obstructed by the shattered window; and (6) Williams did not immediately identify defendant as the shooter and was only 80% sure of the identification.

¶ 18 On August 6, 2013, the trial court conducted a hearing on defendant's posttrial motion. Defendant was represented by new counsel, who argued "I don't think that in this particular case it really matters whether the car was in stop and go traffic or whether they were moving." Rather, defense counsel argued Williams could not observe the shooter through a shattered, tinted window after the first gunshot and thus he did not adequately view the shooter through the front windshield. Defense counsel also emphasized the failure by Williams to immediately identify defendant as the shooter, particularly after observing him in traffic earlier on the date of the incident. Defense counsel asserted Williams identified defendant only after the police

inventoried his belongings at the hospital. Defense counsel also noted there was no motive for the shooting. The State responded: (1) the trial court had heard the evidence and weighed the credibility of the witnesses; (2) the bullet holes were all centered on the driver's side door of Williams' vehicle; (3) Williams could observe defendant through the windshield of his vehicle; (4) Williams positively identified defendant in the lineup; and (5) the State was not required to prove motive.

¶ 19 The trial court denied defendant's posttrial motion. The trial court stated in part it did not know why—aside from viewing television—people expected victims would immediately identify the shooter. The trial court stated, "We have gangbangers out there on the street who know the guy who shot him and will never say that's the guy who shot him. It's the code of the street." The trial court added, "there could be a lot of reasons why" a victim might not immediately identify a shooter.

¶ 20 The trial court sentenced defendant to 31 years each for the attempted first degree murders of Williams and Wells, 10 years each for the aggravated battery of Williams and Wells, and 10 years for being an armed habitual criminal, with all sentences to be served concurrently in the Illinois Department of Corrections. This appeal followed.

¶ 21 II. ANALYSIS

¶ 22 On appeal, defendant argues the trial court erred by: (1) relying on matters outside the trial record; (2) restricting the cross-examination of Williams; (3) refusing to consider the impeachment of Williams; and (4) finding defendant guilty beyond a reasonable doubt. Defendant also argues the cumulative effect of these errors requires reversal in this case. We address defendant's contentions in turn.

¶ 23 A. Matters Outside the Trial Record

¶ 24 1. The *Sprinkle* Doctrine

¶ 25 Defendant initially argues the trial judge found him guilty based on personal beliefs, rather than confining herself to the evidence adduced at trial. The State responds defendant forfeited the issue by failing to raise it during trial or in his posttrial motion. Generally, to preserve an issue for review, defendant must both object at trial and in a written posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Defendant does not argue he raised the issue at trial, but maintains the issue was preserved in his posttrial motion. Defendant cites to *People v. Tyner*, 30 Ill. 2d 101, 105 (1964) and *People v. Sprinkle*, 27 Ill. 2d 398, 399, 401 (1963) and asks this court to relax the forfeiture rule under the *Sprinkle* doctrine because "the Illinois Supreme Court previously has held that a less rigid application of the [forfeiture] rule must prevail where misconduct of the circuit judge is involved."

¶ 26 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.' " *People v. Thompson*, 238 Ill. 2d 598, 612 (2010). That doctrine, however, relaxes the forfeiture rule only in the most compelling of situations "when a judge makes inappropriate remarks to a jury or relies on social commentary instead of evidence in imposing a death sentence." *Id.*

¶ 27 We find the narrow principle relied on in *Sprinkle* is inapplicable here. In this case, there was no jury present and defendant does not claim his counsel was practically prevented from objecting to the trial judge's findings. *People v. Bailey*, 409 Ill. App. 3d 574, 587. In fact, the record indicates counsel was present during the entire trial proceeding and it suggests no basis on

which we could conclude counsel's objection would have " ' fallen on deaf ears.' " *Id*. Further, defendant has not presented any "extraordinary or compelling reason to relax the forfeiture rule in this case," and we decline to do so. *Id.*

¶ 28 2. Plain Error

¶ 29 Because we find no reason to relax the forfeiture rule in this case, we now turn to address defendant's argument that we should consider this issue under the plain-error doctrine. Ill. S. Ct. R. 615(a) (eff. January 1, 2016); *Thompson,* 238 Ill. 2d at 612-13. Illinois Supreme Court Rule 615(a) allows courts of review to by-pass the rules of forfeiture to note "[p]lain errors or defects affecting substantial rights[.]" *People v. Eppinger*, 2013 IL 114121, ¶ 18. Under Illinois' 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." *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). The plain-error doctrine is intended to ensure a defendant receives a fair trial, but it does not guarantee every defendant a perfect trial. *People v. Johnson*, 238 Ill. 2d 478, 484 (2010). Rather than operating as a general savings clause, it provides a narrow and limited exception to the general rule of procedural default. *Id*. The burden of persuasion remains with the defendant under both prongs of the plain-error test. *People v. Lewis*, 234 Ill. 2d 32, 43 (2009). If the defendant fails to meet his burden, the procedural default will be honored. *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). The ultimate question of whether a forfeited claim is reviewable as plain error is a question of law reviewed *de novo*. *Johnson*, 238 Ill. 2d at 485.

¶ 30 Generally, the first step of plain-error review is to determine whether a clear or obvious error occurred. *In re M.W.*, 232 Ill. 2d 408, 431 (2009) (unpreserved error will not be "noticed" under Rule 615(a) unless it is "clear or obvious"). The burden of establishing a clear or obvious

error rests with defendant. *People v. Ramirez*, 2013 IL App (4th) 121153, ¶ 73.

¶ 31 Defendant argues the trial judge found him guilty based on personal beliefs, rather than confining herself to the evidence adduced at trial. "In a bench trial a judge is presumed to have considered only competent evidence in making her finding." *People v. Davilla*, 236 Ill. App. 3d 367, 382 (1992) (citing *People v. Tye*, 141 Ill. 2d 1, 26 (1990)). "This assumption will be overcome only if the record affirmatively demonstrates the contrary, as where it is established the court's finding rests on a private investigation of the evidence, or on other private knowledge about the facts in the case." *Tye*, 141 Ill. 2d at 26. Due process does not permit the trial judge to go outside the record, except for matters of which a court may take judicial notice. *People v. Yarbrough*, 93 Ill. 2d 421, 429 (1982). Not every circumstance in which extraneous or unauthorized information reaches the court requires reversal or a new trial. *People v. Banks*, 102 Ill. App. 3d 877, 882 (1981). Rather, "[s]uch a disposition rests upon whether or not the defendant may have been prejudiced." *Id*. Moreover, a trial judge's brief or rhetorical comments about the judicial or penal system will not overcome the presumption that the judge considered only competent and reliable evidence. See *Dameron*, 196 Ill. 2d at 174-75 (discussing *People v. Griffith*, 158 Ill. 2d 476 (1994)).

¶ 32 Defendant first claims that in denying his motion for a directed finding, the trial court relied upon its personal belief regarding (1) the length of a traffic signal at I-290 and Mannheim Road and (2) the general traffic conditions on I-290 during the time of day when the shooting occurred. *Supra* ¶¶ 14,16. This court has recognized, however, that traffic conditions in certain parts of the city during certain hours of the day are common knowledge and may be the subject of judicial notice. *People v. Cain*, 14 Ill. App. 3d 1003, 1007 (1973); see *City of Chicago v. Rhine*, 363 Ill. 619, 622 (1936). In addition, although the deliberations of the court are limited to

the record, this includes not only the evidence actually adduced, but also the reasonable inferences which may be drawn from it. *Cain*, 14 Ill. App. 3d at 1006 (not improper for trial court to conclude eyewitness had three or four minutes to observe the perpetrator where the eyewitness provided detailed and uncontradicted testimony that was adequate to support this reasonable inference).

¶ 33 Defendant relies on *People v. Wallenberg*, 24 Ill. 2d 350 (1962), for the proposition that a court cannot use its personal knowledge to contradict important testimony offered by the defense. *Id*. at 354. In *Wallenberg*, the defendant testified his alibi for the time of a robbery was that he had a soft tire and was looking for a gas station on a certain route in the City of Chicago. *Id*. at 353. The trial court, in finding the defendant guilty, stated: "He told me there were no gas stations on that stretch of the street where he could get air. I happen to know different. I don't believe his story." *Id*. at 353-54. Our supreme court reversed the conviction, holding that it was error for the trial court to make a determination based on his personal knowledge. *Id*. at 354-55.

¶ 34 *Wallenberg*, however, is distinguishable from this case. In *Wallenberg*, the trial court's comments were not based on any evidence introduced to rebut the defendant's testimony. In this case, the trial court's remark regarding the duration of the traffic signal may have been no more than an inference from Williams' testimony that he was able to observe defendant for one or two minutes until the traffic signal turned green. *Cain*, 14 Ill. App. 3d at 1006. Further, the trial court's remark regarding the general traffic conditions on I-290 during the time of day when the shooting occurred is not wholly unsupported by the evidence where Williams testified that he was in stop-and-go traffic at the time of the shooting. Given the facts and circumstances of this case, defendant has failed to demonstrate the trial court committed a clear or obvious error on this point. *Hillier*, 237 Ill. 2d at 545.

¶ 35 Defendant next claims the trial court erred in relying on its personal opinion regarding bullet trajectories to make findings regarding the speed of Williams' vehicle at the time of the shooting. The State responds defendant used the same common sense and logic used by the trial court to argue in his posttrial motion that "if the vehicle had been in a stationary position, the bullet holes would have been in a condensed area of the vehicle."

¶ 36 The record demonstrates the bullet holes were concentrated on the driver's side door of Williams' vehicle. We find the trial court made a reasonable inference to make findings regarding the speed of Williams' vehicle at the time of the shooting based on the pattern of the bullet holes in Williams' vehicle. A trier of fact may use common sense and general knowledge in considering evidence and drawing the proper inference from it. *People v. Toliver*, 60 Ill. App. 3d 650, 652 (1978). Accordingly, defendant has failed to demonstrate the trial court committed a clear or obvious error on this point as well. *Hillier*, 237 Ill. 2d at 545.

¶ 37 Defendant further claims the trial court erred in relying upon personal opinions of gangs and "the code of the street" in finding him guilty. Defendant notes, "[e]vidence of gang related activity is only admissible where there is sufficient proof that such activity is related to the crime charged." *People v. Maldonado*, 398 Ill. App. 3d 401, 420 (2010) (citing *People v. Smith*, 141 Ill. 2d 40, 58 (1993)). Defendant also observes that a defendant cannot automatically be assumed to be guilty based on his membership in an undesirable group. *Maldonado*, 398 Ill. App. 3d at 420 (citing *People v. Terry, 312 Ill.* App. 3d 984, 992 (2000)).

¶ 38 A review of the record, however, does not support the claim that the trial court believed Williams or defendant was a gang member, or that such a belief was a basis of the guilty verdict in this case. In response to defense's assertion that Williams should have immediately identified defendant as the shooter, the trial court observed it did not know why people assumed victims

immediately identify offenders. The trial court stated, "in today's world, *** [w]e have gangbangers out there on the street who know the guy who shot him and will never say that's the guy who shot him. It's the code of the street." The trial court added, "there could be a lot of reasons why" a victim might not identify a shooter. When read in context, the trial court's reference to cases involving gang members was the sort of brief, rhetorical comment that will not overcome the presumption that the judge considered only competent and reliable evidence. See *Dameron*, 196 Ill. 2d at 174-75.

¶ 39 In sum, defendant has failed to demonstrate the trial court committed clear or obvious error by having improperly considered matters outside the record. Because no clear or obvious error occurred, we must honor defendant's forfeiture of this issue and proceed no further in our plain error analysis. *Hillier*, 237 Ill. 2d at 545.

¶ 40 B. Limitation on Cross-Examination

¶ 41 Defendant next contends the trial court improperly precluded cross-examination of Williams as to whether he cooperated with the police only after he was discovered to be in possession of cocaine. A defendant has a federal and state constitutional right to confront the witnesses against him. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § 8. This right includes cross-examining witnesses to show any interest, bias, prejudice or motive to testify falsely. *People v. Klepper*, 234 Ill. 2d 337, 355 (2009); see *People v. Averhart*, 311 Ill. App. 3d 492, 496-97 (1999). "A defendant states a violation of the Confrontation Clause by 'showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias' and thereby exposing the jury to facts from which [it] could reasonably draw inferences about the witness' reliability." *People v. Ciavirelli*, 262 Ill. App. 3d 966, 976 (1994) (quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 680 (1986)). Indeed, " 'the exposure of

a witness' motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination.' " *Delaware*, 475 U.S. 673 at 678-79 (quoting *Davis v. Alaska*, 415 U.S. 308, 316-17 (1974)).

¶ 42 Of course, "the Confrontation Clause guarantees an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish." (Emphasis in original.) *Delaware v. Fernsterer*, 474 U.S. 15, 20 (1985). "To determine the constitutional sufficiency of cross-examination, a court looks not to what a defendant has been prohibited from doing, but to what he has been allowed to do." *Averhart*, 311 Ill. App. 3d at 497. Once the trial court has permitted, as a matter of right, sufficient cross-examination to satisfy the constitutional guarantee, the court enjoys broad discretion to impose reasonable limits on cross-examination. See *People v. Arroyo*, 328 Ill. App. 3d 277, 289 (2002). This includes excluding evidence of bias that is too remote or uncertain. See *People v. Frieberg*, 147 Ill. 2d 326, 357 (1992). Thus, where a defendant seeks to "impeach a witness by showing that the witness has been arrested or charged with a crime[,] *** the arrest(s) or charge(s), to be used against the witness must give rise to the inference that the witness has something to gain or lose by his testimony." *People v. Triplett*, 108 Ill. 2d 463, 481 (1985).

¶ 43 Moreover, while a defendant is allowed wide latitude in cross-examination to establish the interest and bias of a witness, such latitude has not been extended to cross-examination about uncharged crimes. *People v. Lawson*, 193 Ill. App. 3d 396, 400 (1990); *People v. O'Dell*, 84 Ill. App. 3d 359, 370 (1980) (citing *People v. Olmos*, 67 Ill. App. 3d 281, 292 (1978)); see *People v. George*, 49 Ill. 2d 372, 380-81 (1971)). For example, in *People v. Foster*, 322 Ill. App. 3d 780 (2000), a murder case, the defendant sought to cross-examine a witness regarding an unrelated robbery about which she was merely questioned. *Id*. at 785. The appellate court observed:

> "No charges were ever filed against her and she was never arrested. There were no pending criminal charges that would bias or influence her testimony. There was also no evidence presented by defendant in the offer of proof that Belinda had been promised any leniency by the State in exchange for her testimony at defendant's trial. Further, there was no evidence offered to support an inference that the witness had something to gain or lose by her testimony." *Id*.

Given these circumstances, the appellate court ruled the trial court did not abuse its discretion in precluding cross-examination regarding the robbery. *Id*. The *Foster* court also rejected the defendant's contention that, because the statute of limitations had not yet expired, the witness had a motive to lie at trial. *Id*.

¶ 44 Defendant relies primarily on *Triplett* and *People v. Wilkerson*, 87 Ill. 2d 151, 156 (1981). The *Triplett* court held the trial court erred in precluding cross-examination of the State's witness to show the witness was in custody at the time he was testifying against the defendant. *Triplett*, 108 Ill. 2d at 481. The *Triplett* court also held the trial court erred in precluding cross-examination of the same witness regarding juvenile delinquency petitions which had been filed against him and were stricken, but which could have been reinstated against the witness. *Id*. at 482-83. Similarly, *Wilkerson* involved attempted cross-examination of a witness regarding pending charges of felony theft and welfare fraud. See *Wilkerson*, 87 Ill. 2d at 155-56.

¶ 45 *Triplett* and *Wilkerson* are distinguishable from this case. The witnesses in the aforementioned cases were incarcerated, had criminal charges pending against them, or had criminal charges that could be reinstated against them at the time they testified. In this case, defendant did not establish there were criminal charges pending against Williams when he testified for the State. Defendant also failed to produce evidence that any prior criminal charges

against Williams could be reinstated at the time he testified. Williams was incarcerated when he testified in this matter, but the State elicited testimony regarding his incarceration and prior convictions during direct examination. Defense counsel was able to extensively cross-examine Williams about his observation of defendant prior to and during the shooting incident. Defense counsel also cross-examined Williams regarding his failure to immediately identify defendant to the police. Given this record, we conclude the trial court permitted sufficient cross-examination to satisfy the constitutional guarantee. See *Arroyo*, 328 Ill. App. 3d at 289. We also conclude the trial court did not abuse its discretion in precluding cross-examination regarding an uncharged drug offense. See *Lawson*, 193 Ill. App. 3d at 400.

¶ 46 C. Restriction on Impeachment

¶ 47 Defendant further contends the trial court abused its discretion by refusing to treat Williams as impeached on the question of whether he informed the police the driver's side window was shattered after one gunshot. The State initially responds defendant forfeited the issue, not only by failing to raise the issue in his posttrial motion, but also by failing to seek plain-error review. As previously noted, a defendant's failure to both object at trial and in a written posttrial motion operates as forfeiture to that issue on appeal. *Vesey*, 2011 IL App (3d) 090570, ¶ 14. Under the narrow and limited plain-error exception to the general forfeiture rule, a reviewing court may consider forfeited errors where the evidence was closely balanced or where the error was so egregious that the defendant was deprived of a substantial right and thus a fair trial. *People v. Herron*, 215 Ill. 2d 167, 178-79 (2005). In the absence of a plain-error argument by a defendant, however, a reviewing court will generally honor the defendant's procedural default. *People v. Ramsey*, 239 Ill. 2d 342, 412 (2010). The inclusion of a plain-error discussion in a defendant's reply brief, however, is sufficient to trigger such review. *Id.*

¶ 48 In this case, defendant mentioned the shattering of the driver's side window of his vehicle in his posttrial motion, but he did not raise the impeachment issue. Defendant also failed to seek plain-error review of the impeachment issue in his initial or reply briefs on appeal. Accordingly, we will honor the procedural default. *Id*.

¶ 49 D. Reasonable Doubt

¶ 50 Lastly, defendant challenges the sufficiency of the evidence. In resolving such a challenge we must determine whether, when viewing the evidence in the light most favorable to the prosecution, "any rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime." *People v. Brown*, 2013 IL 114196, ¶ 48 (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). In doing so, we will not substitute our judgment for that of the trier of fact on issues involving the weight of the evidence or the credibility of witnesses. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009). Rather, our duty is to carefully examine the evidence while bearing in mind it was the fact finder who saw and heard the witnesses. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). We will reverse only "where the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt." *Brown*, 2013 IL 114196, ¶ 48.

¶ 51 Defendant argues the identification testimony from Williams is insufficient to convict in this case. In addition to the elements of a crime, the State bears the burden of proving beyond a reasonable doubt the identity of the person who committed it. *People v. Slim*, 127 Ill. 2d 302, 307 (1989). Vague or doubtful identification testimony is insufficient to sustain a criminal conviction. *People v. Lewis*, 165 Ill. 2d 305, 356 (1995). The identification testimony of a single witness, however, is sufficient to sustain a conviction if the witness viewed the accused under circumstances that allowed for a positive identification. *Id*. (citing *Slim*, 127 Ill. 2d at

307). Ultimately, the reliability of a witness' identification testimony is a question for the trier of fact. *In re Keith C.*, 378 Ill. App. 3d 252, 258 (2007).

¶ 52 In assessing the reliability of identification testimony, courts employ the factors set forth by the United States Supreme Court in *Neil v. Biggers*, 409 U.S. 188 (1972), which include: (1) the opportunity the witness had to view the perpetrator at the time of the offense; (2) the witness' degree of attention; (3) the accuracy of the witness' prior description of the offender; (4) the certainty of the witness' identification; and (5) the length of time between the offense and the witness' identification. *Lewis*, 165 Ill. 2d at 356 (citing *Slim*, 127 Ill. 2d at 307-08). No single factor is dispositive and the trier of fact should consider all five factors in assessing the reliability of identification testimony. *People v. Smith*, 2012 IL App (4th) 100901, ¶ 87.

¶ 53 With respect to the first factor, defendant argues Williams "had almost no opportunity to view the shooter at the time of the offense." A short length of observation does not necessarily undermine a witness' identification testimony. See, *e.g.*, *People v. Herrett*, 137 Ill. 2d 195, 200, 204 (1990) (eyewitness had sufficient opportunity to view the offender when he observed him for "several seconds" under dim lighting before his eyes were covered with duct tape); *People v. Negron*, 297 Ill. App. 3d 519, 530 (1998) (identification testimony sufficient even though the witnesses "did not have more than several seconds to identify their attackers"). In this case, Williams testified he observed the other vehicle for a "couple of seconds." He also observed defendant through the driver's side window and front windshield of his vehicle. Moreover, the shooting occurred during the day and defendant does not claim the lighting conditions were poor. Thus, defendant has not established the first *Biggers* factor weighs against the reliability of the identification.

¶ 54 Defendant asserts the second factor—the witness' degree of attention—also weighs

against the reliability of the identification. Defendant observes that Williams was using a cell phone immediately prior to the shooting and he did not immediately recognize the sounds as gunfire. Defendant also reiterates that upon recognizing the situation, Williams ducked down. Thus, defendant concludes, Williams "was paying attention to saving his life, not identifying the shooter." The fact that Williams was using his cell phone is not sufficient to discredit the identification, particularly where Williams had an opportunity to observe the defendant prior to the shooting. See *People v. Jaimes*, 2014 IL App (2d) 121368, ¶ 32. Defendant also argues Williams did not continue to observe the shooter during the incident. The reliability of the identification, however, is not negated where Williams testified he knew defendant from around the neighborhood and he did not waver from his identification of defendant as the shooter. See *People v. Temple*, 2014 IL App (1st) 111653, ¶ 87 (eyewitness' identification of defendant was sufficiently reliable where eyewitness did not continue looking at defendant after the first shot, but eyewitness testified he knew defendant from around the neighborhood and did not waver from his identification of defendant as the shooter).

¶ 55 Regarding the third factor—the accuracy of the witness' prior description of the offender—defendant notes Williams did not provide any prior description of the shooter. Accordingly, this factor is inapplicable here as it does not favor either the State or defendant.

¶ 56 With respect to the fourth factor—the certainty of the witness' identification—defendant argues the identification cannot be certain where Williams informed Officer Parker he was 80% sure of his identification after viewing the array of photographs. This level of certainty is not necessarily fatal to the reliability of the identification. See *People v. Mister*, 2015 IL App (4th) 130180, ¶ 102 (witness was 80% to 85% certain of identification from photographs). This court has accepted less than 100% certainty in an identification from photographs where the witness

positively identified an offender in a physical lineup and recognized the offender from a previous occasion. See *People v. Daniel*, 2014 IL App (1st) 121171, ¶ 22. In this case, Williams recognized defendant from occasions prior to the shooting. Williams also identified defendant by name to the police prior to viewing the array of photographs, identified defendant in a lineup, and identified defendant in court. Thus, this factor weighs in favor of the reliability of the identification.

¶ 57 Considering the fifth factor—the length of time between the offense and the witness' identification—defendant concedes the period of time between the shooting and the identification was not long. Defendant, however, asserts this factor does not add credibility to the identification because Williams failed to immediately name defendant and did not identify defendant until the police caught Williams committing a crime. For the reasons previously stated, however, defendant failed to establish the trial court should have considered whether Williams was in possession of cocaine at the time of his initial police interview. *Supra* ¶¶ 40-45. Accordingly, the fifth *Biggers* factor favors the reliability of the identification.

¶ 58 In sum, after weighing all of the *Biggers* factors, and viewing the evidence in the light most favorable to the prosecution, we conclude a rational trier of fact could conclude the State proved beyond a reasonable doubt that defendant was the shooter. *Brown*, 2013 IL 114196, ¶ 48.

¶ 59 E. Cumulative Error

¶ 60 Lastly, defendant contends the cumulative effect of the alleged trial errors deprived him of a fair trial. "While individual trial errors may have the cumulative effect of denying a defendant that right, no such accumulated error occurs where none of the separate claims amounts to reversible error." *People v. Everhart*, 405 Ill. App. 3d 687, 705-06 (2010). Given that defendant has failed to establish trial errors in this case, as set out above, his cumulative

error argument necessarily fails as well.

¶ 61 III. CONCLUSION

¶ 62 For all of the aforementioned reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 63 Affirmed.