2016 IL App (4th) 140022-U

NO. 4-14-0022

FILED
May 26, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Adams County
CHRISTINA L. METZ,	)	No. 13CF195
Defendant-Appellant.	)	
	)	Honorable
	)	Scott H. Walden,
	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: (1) Defendant failed to establish reversible error regarding the admission of certain evidence or an alleged improper remark by the prosecutor during closing argument.

(2) Where the evidence was overwhelming, defendant could not show prejudice with regard to her ineffective-assistance-of-counsel claim.

(3) Where the evidence at defendant's sentencing hearing was not closely balanced, plain-error review regarding defendant's excessive-sentence claim was not appropriate.

¶ 2 I. BACKGROUND

¶ 3 On April 1, 2013, the State charged defendant by information with aggravated unlawful participation in methamphetamine production (count IV) (720 ILCS 646/15(b)(1)(D) (West 2012)), unlawful possession of methamphetamine manufacturing materials (count V) (720 ILCS 646/30(a) (West 2012)), and unlawful possession of methamphetamine (count VI) (720

ILCS 646/60(b)(1) (West 2012)). Counts I through III pertained to a codefendant whose case was later severed from defendant's case. Count IV alleged that defendant "knowingly participated in the manufacture [of] less than 15 grams of methamphetamine and that she did so in a structure equipped with an audio surveillance system." Count V alleged that defendant "knowingly possessed Coleman fuel, lithium batteries, fertilizer sticks and drain cleaner, methamphetamine manufacturing materials, with the intent that it [*sic*] be used to manufacture methamphetamine." Count VI alleged that defendant "knowingly possessed less than 5 grams of methamphetamine."

¶ 4 On November 12, 2013, defendant's jury trial commenced. Patrick Frazier, a master sergeant with the Illinois State Police and the supervisor of the West Central Illinois Task Force, testified first for the State as an expert in the manufacture of methamphetamine.

¶ 5 According to Master Sergeant Frazier, ingredients used in the "one-pot" or "shake and bake" method of methamphetamine manufacturing include pseudoephedrine, commonly found in cold or allergy medication; household lye; lithium, commonly found in batteries; camp fuel; sulfuric acid, commonly found in drain cleaner; salt; and a nitrogen source, commonly found in "tree spikes" or "ice pack material." Other items used in the "shake and bake" method include filters, such as coffee or paint filters, or paper towels; spatulas; bottles and/or glass dishes; and pliers. After explaining how methamphetamine is manufactured using the "shake and bake" method, Master Sergeant Frazier noted that methamphetamine can be eaten, snorted, or smoked. Items typically observed in an area where methamphetamine has been ingested include foil, syringes, spoons, straws, and pen tubes.

¶ 6 Master Sergeant Frazier testified that he participated in the execution of a search warrant at a mobile home located at 6 Kropp Court, Mendon, Illinois, at approximately 10:30

p.m. on March 28, 2013. Defendant and Charles Jenkins were inside the mobile home at the time the search warrant was executed. A small plastic bag of methamphetamine was found on defendant's person.

¶ 7 During the search, Master Sergeant Frazier recognized many items associated with the manufacture of methamphetamine scattered throughout the mobile home and in the trash outside. In particular, he observed "[o]ne-pot bottles in the kitchen, jars of liquid, peeled lithium batteries, coffee filters, [a hydrogen chloride gas (HCl)] generator, [and a] smoking pipe on the glass coffee table." He also observed a functioning "baby monitor that was mounted on a window. The outside portion of the trailer had a baby monitor hanging out of it, and there was an inside portion of the second half of the monitor on the floor by a couch inside." A Walmart receipt, for the purchase of pseudoephedrine pills dated March 6, 2013, was found in the trash. Master Sergeant Frazier testified the National Precursor Law Exchange (pseudoephedrine log), a database that tracks the name and address of all persons who purchase pseudoephedrine, revealed that defendant purchased pseudoephedrine pills from Walmart on March 6, 2013.

¶ 8 Master Sergeant Frazier further testified a County Market receipt for lithium batteries was found in the trash. The police also found empty blister packs and boxes that once contained pseudoephedrine in the trash; a two-pound container of lye and a container of Coleman camp fuel in a plastic tub on the bedroom floor; and "peelings" of lithium batteries in the trash. In the kitchen, the police found a sport bottle on the counter containing acid; a second sport bottle containing salt; an "HC[l] generator" containing a combination of acid and salt; and camp fuel and tree fertilizer spikes in the cabinet. Master Sergeant Frazier explained an HCl generator is "basically just another bottle" that has tubing inserted into the lid so that gas created in the bottle can be directed into a liquid. Master Sergeant Frazier also observed bottles; glass Pyrex

dishes, one of which contained a razor blade; spatulas; coffee filters; paper towels; burnt foil on a glass shelf; a glass pipe; and whole straws and cut straws. A one-pot bottle was in the top kitchen cupboard and another was in the kitchen trash. When asked whether he saw "anything that did not involve the ingestion of methamphetamine or the manufacture of methamphetamine but still was of legal consequence to [him]," Master Sergeant Frazier responded, "[s]hotgun shells."

¶ 9 Tom Pickett, an Adam's County police officer and an agent of the West Central Illinois Task Force, testified he obtained the search warrant for 6 Kropp Court, Mendon, Illinois, on March 28, 2013. He participated in the execution of the search warrant that evening. Officer Pickett was the case agent responsible for collecting and photographing evidence. Upon entry into the mobile home, he noticed a strong chemical odor which, based on his training and experience, he associated with a methamphetamine lab. Defendant and Jenkins were inside the mobile home at the time the search warrant was executed. According to Officer Pickett, the interior of the mobile home was unkempt, with boxes and "stuff" scattered throughout the interior, and trash was located inside and outside the mobile home.

¶ 10 Officer Pickett identified a number of photographs he took during the search, marked as People's exhibits Nos. 1 through 42 and 59. The items identified in the photographs included the following: a glass pipe that field tested positive for methamphetamine and burnt foil located on a living room shelf; a roll of aluminum foil found on the living room floor; defendant's bank statement book; a living room cabinet containing a plastic bag with a used filter, digital scales, and a "tooter" straw; a functioning baby monitor next to the couch; the other part of the baby monitor hanging out of a window; a one-pot bottle inside a black trash bag found in the kitchen; a one-pot bottle containing "material" located in a kitchen cabinet; a blue plastic

tote found in a bedroom closet that contained a Coleman fuel can, drain cleaner, and tree fertilizer spikes; a clothes basket in the kitchen that held a container of salt and a glass jar; an ashtray on the kitchen counter containing a filter and balled-up burnt foil next to the ashtray; a one-pot "shake and bake" bottle with pill material found inside a kitchen cabinet; a large plastic cup containing material from "shake and bake" bottles; burnt balled-up aluminum foil found on the kitchen floor; an "HC[l] generator or bubbler" used in the manufacture of methamphetamine; a plastic container containing crushed fertilizer spikes; a plastic bag with "tooter" straws and pieces of burnt foil found in the kitchen; a 15-pack of fertilizer spikes found in a lower kitchen cabinet; an electric grinder; a glass jar containing Coleman fuel found in a kitchen cabinet; two empty 12-hour boxes of pseudoephedrine, blister packs, pieces of burnt foil, a peeled lithium battery and filters; a plastic Gatorade bottle used as a "shake and bake" bottle that contained pill material, three or four pieces of burnt foil, filters, a receipt from Walmart for pseudoephedrine dated March 6, 2013, and a receipt from County Market for lithium batteries dated March 6, 2013, found in a trash bag inside the mobile home; two packages of coffee filters; a glass dish containing a spatula and a razor blade, items commonly used to scrape or cut dried methamphetamine from the dish; a glass Pyrex dish found in the living room containing white residue, a corner from a cut Baggie, and a "tooter" straw; a burnt piece of foil and a shotgun shell found in the living room; a box of pickling salt; two glass jars, one of which contained liquid and the other stuffed with one or two coffee filters; another glass dish containing white residue, three spatulas, and burnt foil next to a glass jar containing filters and a box of latex or vinyl gloves; paperwork containing defendant's name; a second electric grinder; foil, unused straws, and a burnt piece of foil; a glass jar containing liquid; three shotgun shells; and two plastic water bottles found in the kitchen, one of which contained acid and the other salt.

¶ 11 Officer Pickett also identified a number of exhibits introduced by the State, including a cut Baggie containing a white, powdery substance found in defendant's right front pants pocket which field tested positive for methamphetamine; a Coleman fuel can that was found in a blue tub inside the bedroom closet; a baby monitor found inside the mobile home; a glass pipe containing methamphetamine residue; "tooter" straws, foil, filters, and scrapers; and a grinder, digital scales, Baggies, receipts and gloves.

¶ 12 Officer Pickett noted numerous items found in the mobile home which were commonly used in the "shake and bake" method of methamphetamine manufacturing, including empty pseudoephedrine boxes and their blister packs, lye and camp fuel found inside a tub in defendant's bedroom closet; ribbons and cases from lithium batteries; sulfuric acid contained in a water bottle found in the kitchen; numerous salt containers throughout the mobile home; an HCl generator and tree fertilizer spikes in a kitchen cabinet; tools, containers and filters; foil; and straws.

¶ 13 On cross-examination, Officer Pickett testified he found defendant's lease agreement in the mobile home, which contained her name and the address of 6 Kropp Court. Officer Picket agreed with defense counsel that although shotgun shells were found, no gun was located during the search of the property.

¶ 14 Jake Vahle testified he was employed by the Illinois State Police and on March 28, 2013, he was assigned to the methamphetamine response team. He was responsible for cleaning up hazardous material found at methamphetamine labs. According to Vahle, Master Sergeant Frazier requested his assistance at 6 Kropp Court, Mendon, Illinois, in the early morning hours of March 29, 2013. By the time Vahle arrived on the scene, the officers had

completed their search and had placed materials on the lawn for clean up. Vahle collected 31 items associated with the manufacture and use of methamphetamine.

¶ 15 Nick Highland, a police officer for the City of Quincy temporarily assigned to the Illinois State Police Drug Task Force, testified he participated in the execution of the search warrant at 6 Kropp Court on March 28, 2013. Upon entering the mobile home, he noticed a chemical odor which, based on his experience and training, was consistent with the manufacture of methamphetamine. He also observed a glass pipe commonly used to smoke methamphetamine close to the chair where Charles Jenkins had been sitting. Officer Highland searched the kitchen and found numerous items associated with the manufacture of methamphetamine, including a large glass containing a chunky substance consistent with what would be left in a one-pot bottle; a glass jar containing an "off-greenish" substance that appeared to be Coleman camp fuel; another jar containing a coffee filter and white residue at the bottom; and a large glass jar containing a clear liquid and a white, chunky substance. Officer Highland took samples of the substances found in the containers, some of which later tested positive for methamphetamine.

¶ 16 James Brown, a police officer for the City of Quincy and a member of the West Central Illinois Task Force, testified he participated in the execution of the search warrant at 6 Kropp Court, Mendon, Illinois, on March 28, 2013. Officer Brown searched defendant's person after she was taken into custody. Inside defendant's right front pants pocket, Officer Brown found the corner of a plastic Baggie that contained a white powder. He also searched a trash bag found outside of the mobile home and a trash bag found in the kitchen of the mobile home. Inside the kitchen trash bag, Officer Brown found a one-pot "shake and bake" bottle, a Walmart receipt for the purchase of 12-hour Sudafed, and a receipt for the purchase of Energizer lithium

batteries. In the outside trash bag, Officer Brown found empty blister packages, pieces of burnt foil, one peeled Energizer lithium battery, and two 12-hour pseudoephedrine boxes.

¶ 17 On re-cross-examination, Officer Brown testified that the pseudoephedrine log indicated defendant purchased pseudoephedrine from Walmart on March 6, 2013, the same date as the Walmart receipt he found in the trash.

¶ 18 Kristin Stiefvater, a drug chemist for the Illinois State Police, testified that the residue in the clear plastic bag (People's exhibit No. 43)—the bag found in defendant's front pants pocket—and the substance contained in a glass jar (People's exhibit No. 44) both tested positive for methamphetamine.

¶ 19 Emily Pezzella, a crime scene technician for the Quincy police department, testified that she received eight pieces of evidence from Officer Pickett on April 3, 2013, including a Coleman fuel can; three glass jars; a glass smoking device; two cans of butane; and the bottom part of a metal tin. Pezzella collected several fingerprints from these items.

¶ 20 Gary Havey, a forensic scientist with the Illinois State Police, testified he examined 7 exhibits containing a total of 19 latent fingerprint lifts and 2 fingerprint cards containing the known fingerprints of defendant and Charles Jenkins. Of the 19 latent fingerprints collected, 5 were suitable for comparison. Havey concluded the latent fingerprint collected from the back a Coleman fuel can belonged to defendant. He also concluded that of the two prints lifted from a glass jar, one was unidentified and the other belonged to defendant.

¶ 21 Dennis Henderson testified first for the defense. Henderson stated that he was a "good friend" of defendant and had previously lived with her for 12 or 13 years. Henderson testified he had always known defendant to have cats and that she used a baby monitor to keep track of them when they were outside.

¶ 22 Vicky Rattliff, defendant's sister, testified she had been to defendant's mobile home on two occasions prior to March 28, 2013. According to Rattliff, during her two visits to the mobile home, defendant had not yet moved in. Rattliff was helping her clean up the mobile home which she described as "awful," "messy, stinky, [with] stuff everywhere." Ratliff stated she helped defendant dump "boxes of stuff" into the garbage. Rattliff testified defendant always had cats and that she used a monitor to keep track of the cats.

¶ 23 On cross-examination, Rattliff agreed that she did not notice much about the interior or exterior of the mobile home, only that it was "trashy."

¶ 24 Beverly Landis testified that she rented the mobile home located at 6 Kropp Court, Mendon, Illinois, to defendant in early March 2013. At the time she rented the mobile home to defendant, "[i]t was in really bad shape. The water had not been completely turned on, and there were some electrical problems." According to Landis, only half of the mobile home had electricity. She described the condition of the mobile home as "ha[ving] been trashed" by the last tenants and that "[i]t was filled with old furniture, old clothing, tubs, garbage bags of—I'm not sure what. It was just loaded with junk." Landis stated the kitchen sink and counters had been covered with "all kinds of things." She did not believe defendant had been living at the mobile home full-time.

¶ 25 On cross-examination, Landis testified she accepted rent from defendant for the mobile home "around March 3." Landis could not say for sure whether defendant had moved in. Landis was not familiar with methamphetamine manufacturing and did not know what was used in its production.

¶ 26 After the close of the evidence, the trial court, over defense counsel's objections, granted the State's request for a jury instruction on the lesser offense of participation in

methamphetamine manufacturing (720 ILCS 646/15(a)(2)(A) (West 2012)). Further, the parties stipulated that on April 1, 2013, defendant signed a statement under oath that identified her address as 6 Kropp Court, Mendon, Illinois.

¶ 27 During closing argument, the prosecutor stated as follows:

> "We do have the burden of proof, guilty beyond a reasonable doubt. No one can define what reasonable doubt is, but note that it's beyond a reasonable doubt; not beyond all doubt. There are cynics in this world that believe that Elvis never died or that we never landed on the moon. What you have to decide is what is a reasonable doubt. No one defines that for you."

In her closing argument, defense counsel argued the State failed to prove beyond a reasonable doubt that defendant possessed materials and participated in the manufacture of methamphetamine.

¶ 28 The jury found defendant guilty of unlawful participation of methamphetamine manufacturing, unlawful possession of methamphetamine materials, and unlawful possession of methamphetamine.

¶ 29 On November 22, 2013, defendant filed a motion for judgment notwithstanding the verdict or, in the alternative, a motion for a new trial. The trial court denied defendant's posttrial motion and conducted a sentencing hearing.

¶ 30 Defendant's presentence investigation report (PSI) noted she was 58 years old and had not worked since 2003 due to a disability. She had several traffic violations, two misdemeanor convictions, a 2009 felony conviction for unlawful disposal of methamphetamine manufacturing waste, and a 2011 felony conviction for unlawful possession of

methamphetamine. Defendant had been sentenced to probation in both methamphetamine cases; however, a petition to revoke was pending in the 2011 case at the time of the PSI. Attached to the PSI was a written statement from defendant in which she explained the mobile home was without a stove so she was using a Coleman stove and the Coleman fuel was for that purpose. Defendant wrote, "I honestly haven't used since Mar[ch] of this year."

¶ 31 Vicky Ratliff submitted a "character reference" letter in which she stated defendant was "a person of good moral character" and "a decent person at the core." She noted defendant had "dropped everything" to move into their mother's home and cared for her until their mother's death two years later. Ratliff urged the court to consider long-term treatment rather than prison. At the sentencing hearing, Ratliff testified that defendant was not a violent person and that defendant did more than anyone else to take care of their mother as well as a disabled neighbor.

¶ 32 Mandi Higgins Miller also provided a letter to the court, noting that defendant was a "great mother, grandmother, family oriented, and loyal friend." Miller recounted defendant's care for her disabled neighbor and urged the court to sentence her to counseling and treatment.

¶ 33 Defendant also submitted a written statement, noting the difficulties she had experienced during the past four years, including the deaths of her mother and two close friends. She asked that the trial court allow her to return to treatment rather than sentence her to prison, where she felt her physical and mental health would deteriorate.

¶ 34 The State requested a 15-year prison sentence, while defense counsel requested 4 years in prison, the minimum sentence available. The trial court noted defendant's criminal history was minimal, except for her involvement with methamphetamine. In particular, the court

noted her involvement "at least in a criminal sense, [started] with unlawful disposal of meth-manufacturing waste, a dangerous thing. While on probation for that, after indicating that [defendant] had no need for substance abuse treatment, [she] committed the offense of possession of methamphetamine." The court further noted that "it [did] not appear [defendant was] eligible for probation for [the possession] offense, but [she] received it, an opportunity to pull it all together. Unfortunately, while [defendant was] on probation for that offense, [she] commit[ted] this offense." The court continued:

> "So, this is not a minimal sentence anymore, [defendant]. I understand that you are eligible for a sentence of as low as four years in [prison], but given that you were involved with the unlawful disposal of meth manufacturing waste as recently as 2009; that you then, while on probation for that, committed the offense of possession of methamphetamine, and then while on probation for that, were involved in the manufacture of methamphetamine, that is a whole another [*sic*] thing.
>
> Nothing certainly to indicate that you were a mass producer of methamphetamine. You weren't getting rich from the sale of methamphetamine, obviously, but you were making the doggone stuff, and a significant sentence is appropriate with respect to that."

Thereafter, the court sentenced defendant to concurrent prison terms of eight years for unlawful participation in methamphetamine manufacturing, five years for unlawful possession of methamphetamine materials, and three years for unlawful possession of methamphetamine.

¶ 35 This appeal followed.

¶ 36 II. ANALYSIS

¶ 37 On appeal, defendant argues she should be granted a new trial due to the admission of "highly prejudicial" evidence as well as "improper argument by the State that denigrated its burden of proof." Defendant also asserts her eight-year prison sentence was excessive.

¶ 38 A. Propriety of Certain Evidence and the Prosecutor's Closing Argument

¶ 39 Defendant's first contention of error relates to what she alleges was the admission of irrelevant and "highly prejudicial" other-crimes evidence. Specifically, defendant takes issue with the admission of a photograph depicting a Brown County circuit court order indicating she had been ordered to pay a fine in a felony case and two photographs of shotgun shells and corresponding police testimony. In addition, defendant asserts the inadmissible evidence, when considered together, served as improper evidence of a third uncharged felony, *i.e.*, unlawful use of a weapon by a felon (see 720 ILCS 5/24-1.1(a) (West 2012)). Defendant's second contention of error relates to comments made by the prosecutor during closing argument. Specifically, defendant asserts the prosecutor's argument that the State had to prove her guilty "beyond a reasonable doubt[,] not beyond all doubt" improperly "denigrated [the State's] burden of proof." While defendant concedes these issues were not preserved for appeal and have been forfeited, she asserts this court can reach the merits of her claim under a plain-error analysis or, alternatively, by finding trial counsel was ineffective for failing to raise the issues below.

¶ 40 1. *The Doctrine of Plain Error*

¶ 41 Generally, a defendant forfeits an issue on appeal where she fails to object to the alleged error or include the issue within a posttrial motion. *People v. Belknap*, 2014 IL 117094, ¶ 47, 23 N.E.3d 325. However, "[t]he plain-error doctrine permits a reviewing court to by-pass

normal rules of forfeiture and consider '[p]lain errors or defects affecting substantial rights *** although they were not brought to the attention of the trial court.' " *People v. Eppinger*, 2013 IL 114121, ¶ 18, 984 N.E.2d 475 (quoting Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967)). "Plain-error review is appropriate under either of two circumstances: (1) when '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) when '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.' " *Id*. (quoting *People v. Piatkowski*, 225 Ill. 2d 551, 565, 870 N.E.2d 403, 410-11 (2007)).

¶ 42 To obtain relief under the plain-error rule, a defendant must first show both that error occurred and that the error constitutes reversible error. *People v. Hillier*, 237 Ill. 2d 539, 545, 931 N.E.2d 1184, 1187 (2010); see also *People v. Naylor*, 229 Ill. 2d 584, 602, 893 N.E.2d 653, 665 (2008) ("[a]bsent reversible error, there can be no plain error"). The burden of persuasion rests with the defendant. *People v. Curry*, 2013 IL App (4th) 120724, ¶ 62, 990 N.E.2d 1269. If reversible error is established, we then consider whether either of the two prongs of the plain-error doctrine has been satisfied. *People v. Sargent*, 239 Ill. 2d 166, 189-90, 940 N.E.2d 1045, 1059 (2010).

¶ 43 "The ultimate question of whether a forfeited claim is reviewable as plain error is a question of law that is reviewed *de novo*." *People v. Johnson*, 238 Ill. 2d 478, 485, 939 N.E.2d 475, 480 (2010).

¶ 44 a. The Admission of Other-Crimes Evidence

¶ 45 As noted, defendant asserts the evidence related to the Brown County court order and the shotgun shells separately amounted to inadmissible other-crimes evidence, and that cumulatively, this evidence served as improper evidence of a third uncharged felony, *i.e.*, unlawful use of a weapon by a felon (see 720 ILCS 5/24-1.1(a) (West 2012)). The State does not dispute defendant's contention that the admission of this evidence was error, but it contends its admission does not constitute reversible error because the evidence was not material to defendant's convictions. Accordingly, we will focus on whether the admission of the evidence at issue amounted to reversible error.

¶ 46 "Generally, evidence of other crimes is inadmissible if relevant only to establish the defendant's propensity to commit crime." *People v. Hall*, 194 Ill. 2d 305, 339, 743 N.E.2d 521, 541 (2000). "Such other-crimes evidence is objectionable because it carries the risk that a jury will convict a defendant merely because it believes the defendant is a bad person who deserves punishment." *Id*. "Although the erroneous admission of other-crimes evidence ordinarily calls for reversal, the evidence must have been a material factor in the defendant's conviction such that, without the evidence, the verdict likely would have been different. If it is unlikely that the error influenced the jury, reversal is not warranted." *Id*. Evidence is a material factor in a defendant's conviction if the verdict likely would have been different had the evidence not been admitted. *Id*. In other words, reversal is warranted only where the evidence is "so prejudicial that the defendant is denied a fair trial." *People v. Pelo*, 404 Ill. App. 3d 839, 865, 942 N.E.2d 463, 486 (2010); see also *People v. Patterson*, 2013 IL App (4th) 120287, ¶ 59, 2 N.E.3d 642.

¶ 47 Here, the other-crimes evidence at issue played such a negligible role in defendant's trial that the exclusion of the evidence would not have resulted in a different verdict.

During testimony, the photograph of the Brown County court order was referred to only as "[p]aperwork that had [defendant's] name on it," which was collected to show "[p]roof of residency." While the court order itself noted the case number as "11-CF-14" and was captioned "The People of the State of Illinois, Plaintiff, vs. Christina Metz," it did not indicate the offense of which defendant had been convicted and showed only that she was ordered to pay a fine. Further, the photographs depicting shotgun shells were variously described during testimony as depicting "a burnt foil and then a shotgun shell" and "three shotgun shells." The other evidence relating to the shotgun shells was limited to Master Sergeant Frazier's testimony he observed shotgun shells in the mobile home and Officer Pickett's testimony on cross-examination, agreeing with defense counsel that although shotgun shells were found in the mobile home, no gun was located during the search. While the three photographs at issue were admitted into evidence and viewed by the jury, no further attention was drawn to this evidence.

¶ 48 On the other hand, the evidence of defendant's guilt relating to the charged offenses was overwhelming. For example, the evidence showed that defendant rented the mobile home in early March 2013 and paid rent on March 3, 2013. On March 6, 2013, defendant purchased pseudoephedrine from Walmart. A receipt of that purchase was found in a garbage bag located in the kitchen of the mobile home along with a County Market receipt, also dated March 6, 2013, for the purchase of lithium batteries. Two empty pseudoephedrine boxes and their blister packages were found in the outside trash, along with a peeled lithium battery and filters. Various items commonly used in the "one-pot" or "shake and bake" methamphetamine manufacturing process, including "one-pot" bottles, tree fertilizer spikes, lye, Coleman fuel, discarded parts of lithium batteries, sulfuric acid, glass dishes, spatulas, razor blades, an "HC[l] generator," grinders, and salt were located throughout the mobile home, including on the kitchen

counter and in kitchen cabinets, in the living room, and in the bedroom. Additional items used to ingest methamphetamine were also found throughout the mobile home, including pieces of burnt foil, "tooter" straws, and a glass pipe. Further, a small Baggie of methamphetamine was found on defendant's person.

¶ 49 Although defendant acknowledges the above items were found during the search of her mobile home, she argues the evidence of her possession of methamphetamine-related materials was closely balanced based on the testimony of Landis and Rattliff, both of whom she asserts the jury "plainly credited" based on finding her not guilty of using the baby monitor as a methamphetamine-related audio surveillance system. According to defendant, the testimony of Landis and Rattliff indicated the methamphetamine-related items were left by the previous tenant. The record, however, does not support her contention. Although Landis testified that the mobile home had been "trashed" by the last tenant and was "loaded with junk," she was not familiar with methamphetamine manufacturing and was not familiar with items used to manufacture methamphetamine. Further, Rattliff noticed only that the mobile home was "trashy." Neither Landis nor Rattliff testified that the prior tenant left the items specifically related to methamphetamine manufacturing at the mobile home.

¶ 50 Due to the overwhelming evidence of defendant's guilt related to the methamphetamine-related offenses in this case, we find it unlikely the verdict would have been different had the above evidence been excluded. Accordingly, we find the other-crimes evidence was not material to defendant's convictions, and therefore, its admission was not reversible error.

¶ 51 Even assuming, *arguendo*, the admission of the other-crimes evidence was reversible error, defendant cannot meet her burden of persuasion under either prong of the plain-error doctrine. As noted, the evidence in this case was not so closely balanced that the admission

of the other-crimes evidence threatened to tip the scales of justice against her. Further, our supreme court has held under the second prong of the plain-error doctrine, a "defendant must demonstrate not only that a clear or obvious error occurred [citation], but that the error was a structural error [citation]." *Eppinger*, 2013 IL 114121, ¶ 19, 984 N.E.2d 475. "An error is typically designated as structural only if it necessarily renders a criminal trial fundamentally unfair or an unreliable means of determining guilt or innocence." *People v. Thompson*, 238 Ill. 2d 598, 609, 939 N.E.2d 403, 410 (2010). "The Supreme Court has recognized an error as structural only in a very limited class of cases. [Citations.] Those cases include a complete denial of counsel, trial before a biased judge, racial discrimination in the selection of a grand jury, denial of self-representation at trial, denial of a public trial, and a defective reasonable doubt instruction." *Id*. at 609, 939 N.E.2d at 411 (citing *Washington v. Recuenco*, 548 U.S.212, 218 n. 2 (2006)). We find the admission of other crimes evidence, which played a very minor role in the trial, did not affect the fairness of defendant's trial or challenge the integrity of the judicial process in such a way as to place it in the same category as the limited structural errors recognized above.

¶ 52 b. Prosecutor's Reasonable-Doubt Statements

¶ 53 Next, defendant argues the prosecutor's improper remarks during closing argument regarding reasonable doubt diminished the State's burden of proof. As noted, during the State's closing argument, the prosecutor remarked as follows:

> "We do have the burden of proof, guilty beyond a reasonable doubt. No one can define what reasonable doubt is, but note that it's beyond a reasonable doubt; not beyond all doubt. ***

> What you have to decide is what is a reasonable doubt. No one defines that for you."

¶ 54 According to defendant, the prosecutor's statement "flies in the face of Illinois law, which has consistently condemned virtually identical comment as an improper denigration of the State's burden of proof." For support, he cites *People v. Burman*, 2013 IL App (2d) 110807, ¶¶ 41-44, 986 N.E.2d 1249. In *Burman*, the defendant asserted the following statement by the prosecutor was plain error: " 'We have to prove [defendant's guilt] beyond a reasonable doubt. However, it's not beyond all doubt. It's not beyond an unreasonable doubt.' " (Internal quotation marks omitted.) *Id.* ¶ 40, 986 N.E.2d 1249. The Second District found the prosecutor's remark was error, but it determined the remark did not constitute plain error because it was not "so inflammatory that the defendant could not have received a fair trial or so flagrant as to threaten a deterioration of the judicial process." (Internal quotation marks omitted.) *Id.* ¶ 45. The court concluded "the prosecution's comments would not have been reversible error if defendant had preserved the claim and that therefore no plain error occurred where defendant forfeited the issue." *Id.* ¶ 47.

¶ 55 In *People v. Burney*, 2011 IL App (4th) 100343, ¶ 68, 963 N.E.2d 430, this court found no error in similar comments made by the prosecution. In *Burney*, the prosecutor stated as follows:

> "Let's talk a little bit about beyond a reasonable doubt. That's the standard we have to prove here. That's the State's burden of proof.
> *** Now what is [']beyond a reasonable doubt[?'] It's difficult. It's difficult to understand and comprehend. I have trouble with it myself. Okay. The only thing I can tell you with any certainty is

> that [']beyond a reasonable doubt['] does not mean [']beyond all doubt.['] That's not the standard. That's unrealistic and that's not the standard the State has to prove here today." *Id*. ¶ 66.

The prosecutor later stated: "And the State feels that we have proven those [counts] beyond a reasonable doubt. Beyond that standard. Don't raise that bar higher than it needs to be ladies and gentlemen for the State to prove. It's not beyond all doubt." *Id*. In finding no error, this court noted that while the prosecutor discussed the reasonable-doubt standard, he did not diminish the State's burden of proof or shift the burden to the defendant. *Id*. ¶ 68.

¶ 56 We find the prosecutor's comments here were similar to those made in *Burney*, and likewise we conclude they did not diminish the State's burden of proof. Thus, we find no error in the prosecutor's reasonable-doubt argument. Accordingly, we find no plain error.

¶ 57 2. *Ineffective Assistance of Counsel*

¶ 58 Next, defendant argues trial counsel was ineffective for failing to object to the admission of photographs of the Brown County circuit court order and the shotgun shells, the testimony related to the shotgun shells, and the prosecutor's statement regarding reasonable doubt.

¶ 59 To prevail on a claim of ineffective assistance of counsel, a defendant must satisfy the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). Specifically, "a defendant must prove that defense counsel's performance fell below an objective standard of reasonableness and that this substandard performance created a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different." *People v. Graham*, 206 Ill. 2d 465, 476, 795 N.E.2d 231, 238 (2003). "[I]f an ineffective-assistance claim can be

disposed of because the defendant suffered no prejudice, we need not determine whether counsel's performance was deficient." *Id*.

¶ 60 Initially, we note defendant cannot show trial counsel was ineffective for failing to object to the prosecutor's reasonable-doubt comments as we have found the prosecutor committed no error. Second, due to the overwhelming evidence in this case, defendant's ineffective-assistance-of-counsel claim fails as she cannot show prejudice.

¶ 61 B. Propriety of Prison Sentence

¶ 62 Last, defendant asserts the trial court abused its discretion in sentencing her to eight years in prison for her participation in methamphetamine manufacturing. In her reply brief, defendant concedes this issue has been forfeited as no written motion to reconsider her sentence was filed. See 730 ILCS 5/5-4.5-50(d) (West 2014) ("A defendant's challenge to the correctness of a sentence or to any aspect of the sentencing hearing shall be made by a written motion filed with the circuit court clerk within 30 days following the imposition of sentence."). However, she asserts this court may review the excessive-sentence issue for plain error.

¶ 63 " '[S]entencing errors raised for the first time on appeal are reviewable as plain error if (1) the evidence [at the sentencing hearing] was closely balanced or (2) the error was sufficiently grave that it deprived the defendant of a fair sentencing hearing.' " *People v. Hanson*, 2014 IL App (4th) 130330, ¶ 26, 25 N.E.3d 1 (quoting *People v. Ahlers*, 402 Ill. App. 3d 726, 734, 931 N.E.2d 1249, 1256 (2010)). The burden of persuasion under both prongs remains with the defendant. *Id*.

¶ 64 Here, defendant argues the trial court's imposition of an eight-year prison sentence was an abuse of discretion because "the aggravating and mitigating evidence presented at the sentencing hearing was closely balanced." After reviewing the record, we find that the

evidence at defendant's sentencing hearing was not closely balanced such that the doctrine of plain error applies.

¶ 65 Unlawful participation in methamphetamine manufacturing is a Class 1 felony subject to a sentencing range of 4 to 15 years in prison. See 720 ILCS 646/15(a)(2)(A) (West 2014; 730 ILCS 5/5-4.5-30 (West 2014). Due to defendant's two prior methamphetamine-related convictions, however, she was eligible for an extended-term prison sentence of up to 30 years. See 720 ILCS 646/100 (West 2014). While defense counsel sought the minimum four-year prison sentence, we note, as did the trial court, that defendant had been sentenced to probation on two methamphetamine-related offenses, and while on probation in both cases, she committed additional methamphetamine-related offenses. Although defendant presented mitigating evidence, including testimony and letters from witnesses who spoke of her good character, the mitigating evidence was juxtaposed with the fact defendant had been convicted of two prior methamphetamine-related offenses. Thus, we cannot say the evidence at sentencing was so closely balanced as to excuse defendant's forfeiture.

¶ 66 III. CONCLUSION

¶ 67 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal.

¶ 68 Affirmed.