FIRST DIVISION
April 24, 2017

No. 1-14-3330

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 CR 17927
	)	
LARRY YOUNG,	)	Honorable
	)	James Michael Obbish,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE MIKVA delivered the judgment of the court.
Justices Harris and Simon concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant affirmatively waived any challenge to chain of custody with respect to some of the physical firearms evidence admitted at trial by agreeing to a stipulation by which the parties clearly intended to remove any question about the chain of custody. Moreover, defendant made no objection to any of the firearms evidence and cannot show that the admission of the evidence he challenges on appeal rose to the level of plain error. Finally, defendant cannot show that he received ineffective assistance of counsel based on his trial counsel's failure to object to the admission of the challenged evidence because he cannot show a reasonable probability that the outcome would have been different but for counsel's actions.

¶ 2 After a bench trial, defendant Larry Young was convicted of unlawful use of a weapon by a felon and sentenced to 10 years in prison. On appeal, Mr. Young contends that he was denied a

fair trial because (1) the trial court abused its discretion in admitting the physical firearms evidence without an adequate foundation as to the chain of custody, and (2) his trial counsel was ineffective for failing to object to the improper admission of that firearms evidence. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 On August 23, 2013, Mr. Young was a passenger in a vehicle that was pulled over by two University of Chicago police officers. According to the trial testimony, a loaded gun was recovered from the floorboard of the passenger side of the vehicle and an additional loaded magazine and narcotics were recovered from the vehicle's back seat.

¶ 5 Based on these events, Mr. Young was charged with multiple offenses, including armed violence, unlawful possession of a weapon by a felon, aggravated unlawful use of a weapon, possession of a controlled substance with intent to deliver, and possession of a controlled substance.

¶ 6 A. The Trial

¶ 7 At the bench trial, the State presented the testimony of the two officers that pulled over the vehicle. Mr. Young presented no witnesses.

¶ 8 i. Testimony of Officer Antonio Delacruz

¶ 9 University of Chicago police officer Antonio Delacruz testified that, at approximately 11:45 or 11:50 a.m. on August 23, 2014, he and his partner, Officer Victor Vazquez, were in an unmarked police vehicle when they received a police dispatch. Based on the information in that dispatch, the officers proceeded to the 5500 block of south Dorchester Avenue in Chicago, Illinois. Officer Delacruz testified that when they arrived, his attention was drawn to a burgundy, older-model, four-door Buick. Officer Delacruz activated his "emergency equipment" and pulled over the Buick within about "three or four blocks" of where he first saw the vehicle. Officer

Delacruz stated that, as he was pulling over the Buick, he could see two individuals inside of it: a female in the driver seat and a male he later identified as Mr. Young in the front passenger seat. Officer Delacruz testified: "While the car was in movement and after [the officers] curbed the vehicle," he observed Mr. Young "reaching down several times right below the area like of the floorboard under the seat." He also stated that he saw Mr. Young "hunch over" and "could see shoulders going down, back down as reaching." The officers curbed their vehicle behind the Buick and, upon exiting their car, the officers ordered the two occupants to step out of the Buick. The driver stepped out of the Buick as Officer Delacruz was approaching it, but Mr. Young remained in the front passenger seat for two or three minutes. Officer Delacruz testified that he gave Mr. Young "several direct orders and he wasn't complying" but, after the third order, Mr. Young exited the Buick. Another University of Chicago police officer who had just arrived at the scene handcuffed Mr. Young.

¶ 10 Officer Delacruz stated that the front passenger-side door of the Buick was still ajar as Mr. Young was being handcuffed. Once Mr. Young was detained, Officer Delacruz walked to the front passenger-side door "and at the floorboard in plain view [he] saw a blue steel handgun, semiautomatic." The officer testified that the gun was located "[p]retty much where your feet would be sitting. Like right next to the feet area" of the front passenger seat. Officer Delacruz stated that once he saw the weapon, he called the City of Chicago police department and also informed Officer Vazquez that a gun was present in the Buick. He did not recover the weapon—he "just secured the scene." Officer Delacruz stated that, eventually, a City of Chicago police officer arrived and recovered the weapon and that no one "came near or touched" the weapon or the Buick before that officer arrived. After the weapon was recovered, Officers Delacruz and Vazquez searched the Buick. Officer Delacruz testified that he saw a shoebox and a purse in the vehicle's back seat.

¶ 11 Officer Delacruz identified State's exhibit 1(A) as a "Ruger nine millimeter" and agreed it was the weapon that he saw in the vehicle on August 23, 2013, and identified exhibit 1(B) as the magazine that was inside exhibit 1(A) on that same night. Officer Delacruz also agreed that exhibit 1(A) was in substantially the same condition as when he saw it lying on the vehicle's floorboard.

¶ 12 On cross-examination, Officer Delacruz agreed that during the time he was following the Buick, as well as after it had stopped, he saw Mr. Young making "some kind of movement." Officer Delacruz agreed that his observations were made from behind the Buick and that he could see "the neck or maybe possibly the top part of the shoulders" of the Buick's occupants, but could not see Mr. Young's hands. Officer Delacruz further testified that the offense incident report for that event was completed by Officer Vazquez, but that his own name was also on the report and that he had told Officer Vazquez what he saw. Officer Delacruz admitted that the report includes no indication that he saw suspicious movements from Mr. Young. Officer Delacruz stated that he never saw Mr. Young in physical possession of the recovered weapon.

¶ 13 ii. Testimony of Officer Victor Vazquez

¶ 14 University of Chicago police officer Vazquez testified that he was driving the police car alongside Officer Delacruz when he observed the vehicle with the female driver and Mr. Young sitting in the front passenger seat, which the officers then pulled over. Officer Vazquez testified that, as that vehicle was being curbed, he saw Mr. Young "kind of like rocking in the chair. [He] could see [Mr. Young] kind of like leaning back and then leaning forward."

¶ 15 Officer Vazquez agreed that, after Mr. Young exited the pulled-over vehicle, Officer Delacruz alerted Officer Vazquez to "[some]thing unusual" on the passenger side of the vehicle. Officer Vazquez walked to the passenger side and observed a handgun on the floorboard of the front passenger seat. According to Officer Vazquez, the City of Chicago police department was

then called and the weapon was left in its natural state until those officers arrived and recovered it. After the weapon was recovered from the vehicle, Officer Vazquez searched the rest of the vehicle and recovered from the back seat a "woman's purse that was like white with blue objects on the outside," inside of which was "another black—I guess kind of like a handbag that had like plastic bags, two bottles of Dormin, a scale and some narcotics." He also observed a shoebox in the back seat that contained "a magazine that belongs to a Ruger handgun" and was "fully loaded with 17 live rounds of [nine-millimeter] ammunition." The shoebox also contained "miscellaneous paperwork, some of which identified [Mr. Young], his name." Officer Vazquez stated that once those items were recovered from the vehicle, they were turned over to the City of Chicago police department to be inventoried.

¶ 16 Officer Vazquez identified State's exhibit 1(A) as "the firearm that was laying [*sic*] on the floorboard of the front passenger's seat" and exhibit 1(B) as the magazine that was in the weapon itself. He also identified the objects in group exhibit 2 as the white and blue purse that was found in the back seat of the vehicle and the narcotics that were contained therein. Officer Vazquez identified State's exhibit 3(A) as the "shoebox that was in the back seat of the vehicle [Mr. Young] was riding in." Officer Vazquez agreed that the shoebox contained several miscellaneous documents and a pair of shoes. He identified State's exhibit 3(B) as the magazine and ammunition that were found inside the shoebox and stated that they were "in substantially the same condition" as they were when he saw them the day of the incident.

¶ 17 On cross-examination, Officer Vazquez agreed that he observed Mr. Young's movement as he followed the vehicle for approximately a half-block before the vehicle's driver pulled over and, although he completed a report on the incident, he did not put this particular observation into the report. Officer Vazquez also testified that he observed Mr. Young moving while "[t]he vehicle was stopped and we were actually standing outside of the car already speaking with the

occupants of the vehicle." Officer Vazquez agreed that, up until the time the vehicle was stopped, Mr. Young had not been rocking, "not that [he] could observe." Officer Vazquez stated that he could not see Mr. Young from the shoulders down but that "[y]ou can see if somebody is rocking." He never saw Mr. Young in possession of a handgun, the purse, narcotics, or the shoebox.

¶ 18 iii. Stipulations

¶ 19 The parties stipulated to a certification from the Illinois State Police that Mr. Young had never been issued a Firearm Owners Identification card. The parties also stipulated that Mr. Young had a prior felony offense and a prior adjudication as a delinquent "to show the status" of Mr. Young at the time of his arrest.

¶ 20 The parties further stipulated that the items found inside the white and blue purse were recovered by City of Chicago police officers, kept "in their care, custody and control" until the items were inventoried, given inventory numbers from the City of Chicago police department, and then "were heat-sealed and sent to the Illinois State Crime Lab for testing and analysis." It was also stipulated that those items tested positive for heroin and "all chains of custody were maintained at all times."

¶ 21 At the end of entering its exhibits into evidence, the State presented a final stipulation, which is at the heart of this appeal:

> "[THE STATE]: And there would be one last stipulation, Your Honor. It would be identified as People's Exhibit Number 1(C) which is ammunition from the magazine of 1(B) and that a [City of] Chicago police officer recovered that weapon from inside the vehicle previously testified by two other witnesses and found that ammunition being inside the black bag. So stipulated?
>
> [DEFENSE COUNSEL]: So stipulated.

> [THE COURT]: There's a stipulation that this exhibit—this is what was contained within the magazine of the weapon that was testified to was recovered on the floorboard of the car?
>
> [THE STATE]: Right. That's 1(C), being these bullets."

¶ 22 The State rested and the trial court granted defense counsel's motion for a directed finding with respect to the charges of armed violence, drug possession with intent to deliver, and drug possession. Mr. Young elected not to testify in his own defense.

¶ 23 B. Trial Court Finding and Sentencing

¶ 24 During closing argument, defense counsel focused on the inconsistencies in the testimony of the two police officers, their omission of their observations of Mr. Young's movements from the police report, and the fact that neither officer saw the gun in Mr. Young's hands. The State did not make a closing argument.

¶ 25 In making its ruling, the trial court specifically found both University of Chicago police officers to be "extraordinarily credible" witnesses, despite their failure to include their observations of Mr. Young's movements in the police report. The court believed that the officers "observe[d] [Mr. Young] bending forward at the waist after the car had been ordered to stop and [Mr. Young] had been ordered out of the car." The court also found that the gun's location under Mr. Young's feet "corroborat[ed] the fact that this is his gun" and not the driver's gun. Finally, the court found that Mr. Young had been sufficiently linked to the shoebox because it contained his birth certificate and his papers from the Illinois Department of Corrections. The court stated that, based on the trial evidence, the "rational and reasonable" conclusion was that Mr. Young was in possession of the gun, both magazines, and all of the bullets. In light of Mr. Young's prior felony conviction, the trial court found him guilty of possession of a weapon by a felon and merged into that conviction all of the remaining counts.

¶ 26 Defense counsel filed a motion for a new trial, arguing in pertinent part that the trial evidence was insufficient to sustain the conviction against Mr. Young. On September 18, 2014, the trial court denied the motion. That same day, after a hearing, the court sentenced Mr. Young to 10 years in prison.

¶ 27 JURISDICTION

¶ 28 This court granted Mr. Young's *pro se* motion for leave to file a late notice of appeal on November 18, 2014. Accordingly, this court has jurisdiction pursuant to article VI, section 6, of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6), and Illinois Supreme Court Rules 603 and 606, governing appeals from a final judgment of conviction in a criminal case. (Ill. S. Ct. Rs. 603, 606 (eff. Feb. 6, 2013)).

¶ 29 ANALYSIS

¶ 30 On appeal, Mr. Young contends that he was denied a fair trial because the trial court abused its discretion in admitting the firearms evidence without an adequate foundation through showing either the chain of custody or that the evidence was identifiable. Mr. Young also claims that his trial counsel was ineffective for failing to object to the improper admission of the firearms evidence. We consider these two arguments in turn.

¶ 31 A. Admission of Firearms Evidence

¶ 32 Mr. Young first argues that the trial court erroneously admitted the State's firearms evidence because it lacked an adequate foundation, challenging the admission of group exhibit 1—which included the handgun recovered from the Buick, the magazine that was in the handgun when the handgun was recovered, and the ammunition contained inside that magazine—and exhibit 3(B), the additional magazine that was recovered from the shoebox found in the back seat of the Buick.

¶ 33 Initially, the State claims, and Mr. Young concedes, that Mr. Young did not object to the admission of the evidence at trial or include the issue in his posttrial motion. See *People v. Johnson*, 238 Ill. 2d 478, 484 (2010) (failure to object to an error or include the issue in a posttrial motion forfeits review of that claim on appeal). Mr. Young argues that his claim can nonetheless be reviewed under the plain error doctrine.

¶ 34 The State further argues that, beyond simply failing to object, Mr. Young actually affirmatively waived this issue "by stipulating to the veracity of Exhibit Group 1 at trial." Mr. Young responds that exhibit 3(B) was not mentioned in and therefore not covered by the stipulation. To the extent that the stipulation referred to group exhibit 1, he argues that the stipulation was "unintelligible" and was "wholly inadequate" to suggest that there was an sufficient chain of custody. For the following reasons, we find that Mr. Young did affirmatively waive review of this issue with respect to group exhibit 1 and that, by failing to object, he forfeited review of the issue with respect to both group exhibit 1 and exhibit 3(B) because the admission of the challenged evidence did not rise to the level of plain error.

¶ 35 i. Foundation Requirement

¶ 36 "When the State seeks to introduce an object into evidence, the State must lay an adequate foundation either through its identification by witnesses or through a chain of possession." (Internal quotation marks omitted.) *People v. Woods*, 214 Ill. 2d 455, 466 (2005). "The character of the item sought to be introduced into evidence determines which method of establishing a foundation must be employed." *Id.* If an item has "readily identifiable and unique characteristics, an adequate foundation is laid by testimony that the item sought to be admitted is the same item recovered and is in substantially the same condition as when it was recovered." *Id.* In contrast, if the physical evidence is not readily identifiable and susceptible to tampering, "the State is required to establish a chain of custody." *Id.* at 466-67.

¶ 37 Mr. Young argues that the officers' testimony failed to reveal any readily identifiable or unique characteristics of the challenged firearms evidence and that the State was thus required to establish a chain of custody for those items. The State does not rebut this argument. In their trial testimony, neither officer offered any details about the recovered handgun that would suggest it was easily identifiable, such as a registration number or a unique, identifying mark. The record similarly lacks evidence that the recovered magazine and ammunition had any identifying characteristics. See *People v. Smith*, 2014 IL App (1st) 103436, ¶ 46 ("Bullets and cartridge cases are not readily identifiable or unique items.").

¶ 38 Where the State must establish a chain of custody for evidence it seeks to introduce, it has the burden to show that the chain "is sufficiently complete to make it improbable that the evidence has been subject to tampering or accidental substitution." *Woods*, 214 Ill. 2d at 467. The State therefore must show "that the police took 'reasonable protective measures' to ensure that the piece of evidence is the same item that the police recovered." *Smith*, 2014 IL App (1st) 103436, ¶ 47 (quoting *Woods*, 214 Ill. 2d at 467).

¶ 39 ii. Affirmative Waiver

¶ 40 Our supreme court has recognized that a defendant may waive the necessity of the State laying a foundation for physical evidence by entering into a stipulation with respect to that evidence. *Woods*, 214 Ill. 2d at 468. As our supreme court in *Woods* explained:

> "A stipulation is an agreement between parties or their attorneys with respect to an issue before the court [citations], and courts look with favor upon stipulations because they tend to promote disposition of cases, simplification of issues[,] and saving of expense to litigants. [Citation.] The primary rule in construction of stipulations is that the court must ascertain and give effect to the intent of the parties. [Citation.] A stipulation is conclusive as to all matters

> necessarily included in it, [citation] and [n]o proof of stipulated facts is necessary, since the stipulation is substituted for proof and dispenses with the need for evidence [citation]. Generally speaking, a defendant is precluded from attacking or otherwise contradicting any facts to which he or she stipulated." (Internal quotation marks omitted.) *Id.* at 468-69.

¶ 41 In *Woods*, our supreme court held that the defendant "affirmatively waived his challenge to the sufficiency of the State's chain of custody" based on his agreement to a stipulation which, like the one in this case, did not specifically stipulate to the chain of custody. *Id.* at 473. The court noted that the defendant "failed to challenge the sufficiency of the custody chain at trial" and "also took part in its offering into evidence, by agreeing to stipulate to the testimony of [the forensic chemist]." *Id.* at 473. The court found that "the intention of the parties' agreement to stipulate to the chemist's testimony in a summary and brief manner served to remove from this case any dispute with respect to the chain of custody ***." *Id.* at 474. In coming to this conclusion, the court noted the unlikelihood of the State agreeing to stipulate to the chemist's testimony if the stipulation was not so intended, since it resulted in the State forfeiting the ability to call the chemist to testify to facts that would support the chain of custody. *Id.* The court concluded that, "by stipulating to the chemist's report and not raising the chain of custody issue at trial, defense counsel placed the State in a position of believing that the sufficiency of the chain of custody was not at issue in this case." *Id.* at 474-75.

¶ 42 In a manner very similar to *Woods*, the record here shows that Mr. Young affirmatively waived his right to challenge on appeal the admission of group exhibit 1 for lack of a showing of sufficient chain of custody. Defense counsel agreed to stipulate that "People's Exhibit Number 1(C) which is ammunition from the magazine of 1(B) and that a City of Chicago police officer recovered that weapon from inside the vehicle previously testified by two other witnesses and

found that ammunition being inside the black bag." The court then clarified that the stipulation was that exhibit 1(C) "was contained within the magazine of the weapon that was testified to was recovered on the floorboard of the car[.]"

¶ 43 As noted above, this stipulation refers only to exhibit 1. Mr. Young maintains that, as to exhibit 1, the stipulation did not establish that "reasonable protective measures were taken with regard to the firearms evidence" and it was therefore insufficient to establish an adequate chain of custody. He also argues that the stipulation is confusing and that, moreover, it was "unclear what 'black bag' the State [wa]s referring to in the stipulation" because neither officer testified about any firearms evidence being found in a black bag.

¶ 44 We agree that the wording of the stipulation is somewhat unclear and that it says nothing about chain of custody. But it is clear, from both the stipulation and the court's clarification of the stipulation, that the parties agreed to stipulate that exhibit 1(C) contained the ammunition found in exhibit 1(B), the magazine, which was recovered from the "weapon that was testified to was recovered on the floorboard of the car." Considering that agreement in light of the officers' testimony that exhibit 1(A) was the weapon that they saw on the front passenger-side floorboard of the vehicle they pulled over on August 23, 2013, and that exhibit 1(B) was the magazine from that weapon, we find that the stipulation was sufficient to remove chain of custody as an issue from the case as to exhibit 1. As in *Woods*, this stipulation must be viewed in conjunction with the fact that Mr. Young did not challenge the chain of custody during trial and that defense counsel's theory at trial did not involve any chain of custody issues. As our supreme court noted in *Woods*, the stipulation "placed the State in a position of believing that the sufficiency of chain of custody was not at issue in this case." *Woods*, 214 Ill. 2d at 475. We agree with the State that Mr. Young has affirmatively waived any objection to the admission of exhibit 1.

¶ 45 iii. Plain-Error Review

¶ 46 As noted above, Mr. Young did not object to the admission of the firearms evidence either at trial or in a posttrial motion. Thus, even if he had not affirmatively waived his right to challenge on appeal the admission of group exhibit 1, any error in the admission of group exhibit 1 at trial, as well as in the admission of exhibit 3(B), would only be a basis for reversal if the admission was "plain error." See *Woods*, 214 Ill. 2d at 471 (rejecting "the notion that a challenge to the State's chain of custody is a question of the sufficiency of the evidence" and thus not subject to the forfeiture rule).

¶ 47 Under the plain error doctrine, an otherwise forfeited claim may be considered on appeal if either "(1) the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant; or (2) the error was so fundamental and of such magnitude that it affected the fairness of the trial and challenged the integrity of the judicial process ***." *People v. Wilmington*, 2013 IL 112938, ¶ 31.

¶ 48 In *Woods*, our supreme court articulated a specific test for "plain error" in the context of foundation of physical evidence:

> "[I]n those rare instances where a complete breakdown in the chain of custody occurs—*e.g.*, the inventory number or description of the recovered and tested items do not match—raising the probability that the evidence sought to be introduced at trial was not the same substance recovered from defendant, a challenge to the chain of custody may be brought under the plain error doctrine." *Woods*, 214 Ill. 2d at 471-72.

Under either prong, the defendant bears the burden of persuasion. *People v. Lewis*, 234 Ill. 2d 32, 43 (2009).

¶ 49 Mr. Young claims that his argument may be reviewed under both prongs of the plain error doctrine because the evidence at his trial was closely balanced and there was a "complete breakdown" in the chain of custody. We disagree with Mr. Young on both points.

¶ 50 a. The Closely-Balanced Prong

¶ 51 First, the evidence presented at trial was not closely balanced. "In determining whether the closely balanced prong has been met, we must take a commonsense assessment of the evidence." (Internal quotation marks omitted.) *People v. Adams*, 2012 IL 111168, ¶ 22. "When it is clear that the alleged error would not have affected the outcome of the case, a court of review need not engage in the meaningless endeavor of determining whether error occurred." *People v. White*, 2011 IL 109689, ¶ 148.

¶ 52 A defendant is guilty of unlawful use of a weapon by a felon when that defendant "knowingly possess[es] on or about his person *** any firearm or any firearm ammunition if the person has been convicted of a felony under the laws of this State." 720 ILCS 5/24-1.1(a) (West 2012). Because neither officer saw Mr. Young in actual possession of the gun or of the magazine in the shoebox, the State needed to show he constructively possessed both items. *People v. Spencer*, 2012 IL App (1st) 102094, ¶ 17. To prove constructive possession, the State must show that the defendant knew the item was present and that he "exercised immediate and exclusive control over the area when the [item] was found." *People v. Ross*, 407 Ill. App. 3d 931, 935 (2011). Knowledge of the item's presence may be proved by circumstantial evidence. *People v. Bailey*, 333 Ill. App. 3d 888, 891 (2002). And although "[a] defendant's mere presence in a car, without more, is not evidence that he knows a weapon is in the car," knowledge can be inferred from factors such as "the visibility of the [item] from [the] defendant's position in the car" and "any gestures by the defendant indicating an effort to retrieve or hide the [item]." *Id.* at 891-92.

¶ 53 Here, the officers' trial testimony was more than sufficient to show that Mr. Young constructively possessed a gun, even without considering the physical firearms evidence. Both officers testified that they followed the vehicle in which Mr. Young was a passenger for about three or four blocks before its driver pulled over. Although discrepancies existed between the testimonies of the two officers as to the timing of when they each observed Mr. Young making suspicious movements, the trial court here heard these discrepancies and nonetheless found both officers to be "extraordinarily credible" witnesses. Moreover, both officers were consistent in that they saw Mr. Young moving by reaching down or rocking and that, after they pulled over the Buick, they observed a gun on the floorboard of the front passenger side where Mr. Young had been sitting.

¶ 54 We similarly find that the trial evidence was not closely balanced as to whether Mr. Young constructively possessed the magazine found inside the shoebox. The shoebox itself was admitted at trial as exhibit 3(A) and Officer Vazquez identified it as the shoebox that he saw in the back seat of the Buick. Mr. Young does not challenge on appeal the admission of this shoebox into evidence. The trial court noted in its findings that the shoebox contained both Mr. Young's birth certificate and his papers from the Illinois Department of Corrections, along with papers that may have belonged to other people who were not present in the Buick. In addition, Officer Delacruz testified that the handgun found in the Buick was a "Ruger nine millimeter" and Officer Vazquez testified that the magazine from the shoebox contained nine-millimeter ammunition for a "Ruger handgun."

¶ 55 We also note that the admission of the physical evidence was somewhat peripheral to the case against Mr. Young since, even if the physical firearms evidence had been excluded, the officers still could have testified about seeing Mr. Young's actions and his presence in the Buick in close proximity to a handgun and the shoebox. The two cases on which Mr. Young relies to

support his proposition that group exhibit 1 and exhibit 3(B) "were crucial components of the charges" against him are very different.

¶ 56 In *People v. Moore*, 307 Ill. App. 3d 107, 113-14 (1999), defense counsel failed to file a motion to quash the defendant's arrest and suppress the evidence and his statements to the police resulting from his arguably illegal arrest, which the appellate court found "deprived defendant of an opportunity to challenge the police officers' actions and of the *only* defense available to defendant given the evidence presented at trial." (Emphasis in original.) But, in *Moore*, a successful motion to suppress would have resulted in the suppression of any and all evidence stemming from that arrest, which would have encompassed any testimony from the arresting officers. See *People v. Sutherland*, 223 Ill. 2d 187, 227 (2006) ("Under the exclusionary rule, *** courts are precluded from admitting evidence that is gathered by government officers in violation of the fourth amendment." (Internal quotation marks omitted.)) That is not true here, where Mr. Young is only arguing that the physical firearms evidence was not supported by sufficient foundation, and the exclusion of this evidence would not have impacted the officers' testimony.

¶ 57 In *People v. Slaughter*, 149 Ill. App. 3d 183, 185 (1986), the trial court revoked the defendant's probation based on its finding that he had been in possession of cannabis in violation of his conditions for work release. The appellate court reversed the revocation of probation, finding that the State did not establish a proper chain of custody for the cannabis evidence that it introduced at the hearing. *Id.* at 187. The court concluded that, "[b]ecause [that] evidence was crucial to the State's petition to revoke [the] defendant's probation," the State failed to prove the defendant had been in possession of cannabis. *Id.* at 187.

¶ 58 Unlike the defendant in *Slaughter*, however, Mr. Young's conviction was not based on his possession of drugs. This distinction is important because, in general, when the State seeks to

prove possession of a controlled substance, it must "prove that the material recovered from the defendant and which forms the basis of the charge is, in fact, a controlled substance." *Woods*, 214 Ill. 2d at 466. To do so, the State must introduce into evidence the substance that the defendant was found in possession of and testimony that the same evidence was tested and proved to be a controlled substance. In contrast, generally the testimony of a single witness unequivocally stating that the defendant possessed a gun is sufficient to show that the item possessed was, in fact, a gun, even where no gun is recovered or put into evidence. *People v. Washington*, 2012 IL 107993, ¶ 35-36. See also *People v. Fields*, 2014 IL App (1st) 110311, ¶ 36 ("[U]nequivocal testimony of a witness that the defendant held a gun is circumstantial evidence sufficient to establish that a defendant is armed."). Thus neither *Moore* nor *Slaughter* is persuasive authority in this case.

¶ 59 b. The Fundamental-Error Prong

¶ 60 Mr. Young also contends that the admission of the firearms evidence may be reviewed pursuant to the second prong of the plain error doctrine as defined by our supreme court in *Woods*, 214 Ill. 2d at 471-72. Our supreme court stated in *Woods* that a forfeited challenge to chain of custody could be reviewed as plain error "in those rare instances where a complete breakdown in the chain of custody occurs" because such circumstances raise "the probability that the evidence sought to be introduced at trial was not the same substance recovered from defendant." *Woods*, 214 Ill. 2d at 471-72. Mr. Young argues that such a complete breakdown occurred here because there was "no link between the firearms evidence recovered from the Buick at the time of [his] arrest and the firearms evidence offered at [his] trial."

¶ 61 We note that, in *Woods*, as in *Slaughter,* the defendant was charged with possession of a controlled substance which, as we noted above, requires the State to prove that the substance recovered from the defendant is actually a controlled substance. *Id.* at 466, 472. As the *Woods*

court explained, if there is a mismatch between the inventory number of the substance recovered from the defendant and the inventory number of the substance tested by the chemist to prove the substance is a controlled substance, "a failure to present a sufficient chain of custody would lead to the conclusion that the State could not prove an element of the offense: the element of possession." *Id.* at 471-72.

¶ 62 In contrast, here Mr. Young was convicted of unlawful use of a weapon by a felon, not possession of a controlled substance. Accordingly, the State only needed to prove that he was in possession of a firearm or ammunition which, as discussed above, could be sufficiently proved by the officers' testimony. See *Washington*, 2012 IL 107993, ¶ 35. Even if the physical firearms evidence had not been admitted, the State would not have failed to "prove an element of the offense" with which Mr. Young was charged. Thus, the "plain error" exception noted in *Woods* is simply inapplicable.

¶ 63 B. Ineffective Assistance of Counsel

¶ 64 Mr. Young contends that his counsel was ineffective for failing to object to the admission of the firearms evidence: group exhibit 1 and exhibit 3(B). We disagree.

¶ 65 To succeed on a claim of ineffective assistance of counsel, a defendant must show both that (1) his counsel's performance was deficient and (2) he was prejudiced by that deficient performance. *People v. Banks*, 2016 IL App (1st) 131009, ¶ 123 (citing *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984)). "Failure to make the requisite showing of either deficient performance or sufficient prejudice defeats the claim." *Id.* "To establish prejudice, a defendant must show there is a reasonable probability that, but for counsel's insufficient performance, the result of the proceeding would have been different." *Id.* More specifically, "the defendant must show that the probability that counsel's errors changed the outcome of the case is

sufficient to undermine confidence in the outcome." (Internal quotation marks omitted.) *People v. McCarter*, 385 Ill. App. 3d 919, 935 (2008).

¶ 66 Our supreme court has observed that our analysis for a claim of ineffective assistance of counsel based on an evidentiary error is similar to the closely-balanced prong analysis of plain-error review:

> "[A] defendant in either case must show he was prejudiced: that the evidence is so closely balanced that the alleged error alone would tip the scales of justice against him, *i.e.*, that the verdict may have resulted from the error and not the evidence properly adduced at trial [citation]; or that there was a reasonable probability of a different result had the evidence in question been excluded [citation]." (Internal quotation marks omitted.) *White*, 2011 IL 109689, ¶ 133.

¶ 67 As noted above, even without the physical firearms evidence, the evidence against Mr. Young at trial was not closely balanced because of the testimony of the two police officers who saw Mr. Young in proximity to both a gun and the shoebox with a magazine of ammunition inside. In light of this evidence, Mr. Young cannot show a reasonable probability that the result of the trial would have been different but for counsel's failure to challenge the firearms evidence or that any such probability is sufficient to undermine the outcome of his trial. Accordingly, Mr. Young cannot show that he was prejudiced by trial counsel's allegedly deficient performance or, consequently, that he received ineffective assistance of counsel.

¶ 68 CONCLUSION

¶ 69 For the foregoing reasons, we affirm the judgment of the trial court.

¶ 70 Affirmed.