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2018 IL App (4th) 160005-U

NO. 4-16-0005

FILED
April 10, 2018
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
GAVIN MASTERS,	)	No. 15CF362
Defendant-Appellant.	)	
	)	Honorable
	)	Robert K. Adrian,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Knecht and Turner concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed concluding the defendant could not demonstrate plain error regarding the admission of other-crimes evidence.

¶ 2 In July 2015, the State charged defendant, Gavin Masters, with (1) two counts of first degree murder, alleging he shot and killed Randy Bowser-Smith and (2) one count of attempted first degree murder, alleging he shot Skylar L. Osborne and caused great bodily harm. Following a jury trial, defendant was found guilty of first degree murder and attempted first degree murder. The trial court sentenced defendant to consecutive terms of 70 years' and 45 years' imprisonment.

¶ 3 Defendant appeals, arguing the trial court erred by allowing the State to introduce other-crimes evidence that defendant unsuccessfully attempted to steal a gun from a United

Parcel Service (UPS) package to sell it to someone 10 days before the shooting. For the following reasons, we affirm the trial court's judgment.

¶ 4 I. BACKGROUND

¶ 5 On July 5, 2015, the State charged defendant with (1) two counts of first degree murder, alleging he shot and killed Randy Bowser-Smith (720 ILCS 5/9-1(a)(1) (West 2014)); and (2) one count of attempted first degree murder, alleging he shot Skylar L. Osborne and caused great bodily harm (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2014)). The charges arose from a shooting that occurred after a suspected failed drug deal on July 4, 2015.

¶ 6 A. Motion To Admit Other-Crimes Evidence

¶ 7 On September 3, 2015, the State filed a motion to admit other-crimes evidence. In pertinent part, the motion stated as follows: "That prior to the shooting in question *** the defendant was employed by [UPS] in Quincy, Illinois, to load trucks at the Quincy facility, and further, that as summarized in Supplemental Report #21 attached hereto, on [June 23, 2015], the defendant was caught attempting to steal a handgun from a package the defendant had opened, and was terminated at that time." The supplemental report, written by Officer Adam Gibson, stated he contacted UPS after receiving information that defendant had been fired for attempting to steal a handgun from a package. A security specialist with UPS told Officer Gibson that defendant had been hired to load trucks on June 15, 2015.

¶ 8 On June 24, 2015, another UPS employee discovered that defendant had opened a package shipped by Williams Shooters Supply while he was loading packages into a trailer. This was reported to a supervisor, who went to the trailer and observed defendant attempting to take a handgun from the package. Defendant was immediately terminated and walked off the facility grounds. The handgun was recovered, shipped, and delivered.

¶ 9 On September 10, 2015, the trial court held a hearing on the State's motion to admit other-crimes evidence. The State advised the court that it had yet to locate the former UPS employee with the most direct knowledge of the incident. However, the State asked the court to assume, for purposes of ruling on the motion, the witness would be found and would testify consistently with the report. The court allowed the parties to argue whether such a situation should come into evidence and, if the witness was found and served, the court could revisit its ruling based on the witness's testimony. The State asked the court to assume that defendant was seen pulling a gun out of a UPS package 10 days before the charged crime and argued the evidence was "sufficiently relevant to identifying him as the person who shot the two individuals in question." Defense counsel argued the anticipated testimony was irrelevant and unduly prejudicial.

¶ 10 The trial court noted the difficulty in ruling on the motion given it did not know exactly what the evidence was going to be without the witness present. The court indicated it was not inclined to admit the evidence to show identity, but it stated "trying to acquire a gun goes directly to whether or not there's intent for him to kill." The court noted the State and defendant both said they were ready for trial even though the specific testimony was still unknown. The court ruled as follows:

> "So long as you both keep that position, then the way we're going to have to do this is, generally, the court's going to say that evidence will come in as to intent. And then once [the witness] gets served, then, before trial or during trial, or whatever, we'll have to take a recess; we'll have to have a hearing to find out exactly what that witness is going to say. The defense is going to

> have to get that information, and we're going to have to go through all those procedures because both of you are demanding a trial on this docket.
>
> So, generally, the court would allow that evidence in, but the court can't specifically finally rule until we actually have that witness in front of the court and we know exactly what that witness is going to say."

Defense counsel stated, "if [the evidence is] now being offered for intent, we have to have a hearing on this because, based upon the evidence that I have received and the evidence that was given at preliminary hearing, there is no evidence that this was in any way, shape, or form planned two weeks earlier or that it was planned at any time." Defense counsel further stated his intention to continue to demand a speedy trial. Finally, counsel for defendant said, "I will not agree to a continuance, but I will tell the court that the defendant will be unduly prejudiced if this evidence is placed in front of a jury without me having an opportunity to examine the witness and argue those points to Your Honor for Your Honor to fully consider its ruling. I can't do it half[-]baked."

¶ 11 In response, the State argued the case should move forward and the issue would just have to be addressed outside of the presence of the jury. The trial court questioned how defendant could defend his case without knowing what evidence the State was going to present. The court asked, "Why are we announcing ready for trial when clearly we've got a key piece of evidence that isn't—isn't ready to go to trial?" The State noted this issue was known to the defense because the report had been turned over in discovery. The State went on to say, "I think the defense has an election to make. Either you move to continue or we proceed forward with

the procedure the court has outlined, and that is that we have a hearing at that point and we abide by the court's ruling, whatever that may be." Defense counsel reiterated his refusal to agree to a continuance, and he noted defendant had been in custody for 68 days. Ultimately, the court continued the case to the October 2015 docket to determine whether or not the case would be ready to be tried, and it noted "that takes care of the defendant's problem with not agreeing to the continuance and the speedy trial would still be running."

¶ 12 At a hearing the day before trial on October 28, 2015, the State advised the trial court and defense counsel that the UPS driver, Brandon Head, had been served with a subpoena and would be returning to Quincy that day from Colorado, where he now lived. The State planned to meet with Head that afternoon and would advise defense counsel as to Head's testimony.

¶ 13 On October 29, 2015, just before jury selection began, defense counsel informed the trial court that the State sent him a report regarding Head's testimony shortly after 5:30 p.m. the previous evening. Counsel arrived at his office at approximately 6:30 a.m. and discovered the report, which he described as "significant" and helpful to the State. Counsel stated, "given this report and the inability to actually investigate what's in there, I would ask that Mr. Head be barred from testifying. We can't get a report less than two hours prior to trial and expect to be ready to do something with it." The State claimed Head's testimony was consistent with the original report attached to the motion to admit other-crimes evidence.

¶ 14 The trial court noted that barring a witness was an extraordinary remedy and the State had not violated any discovery rules. The court asked defendant what other remedy, short of barring the witness, he sought. Counsel stated a continuance was "not even on the table," detailed the difficulties the parties had in getting information from UPS, and expressed his

concern that new information might come out during the course of the trial. The court then stated,

> "So you can't have it both ways, Mr. Schnack. Either you are asking the Court to continue the case, or you are taking the choice of going into the case unprepared, which was, in fact, why the Court continued the case last time, because it was obvious that this was a key witness, that the evidence was material evidence, and you had to know to be prepared in order to try this case, and now we're in the same situation, and we're at the speedy trial limits, and so we have to do something, and it's not the People's problem, and it's not really the Court's problem, although it is in a way because the Court has to ensure that each side has a fair trial.
>
> So the choice is yours, Mr. Schnack. I'll give you a continuance. If you want to interview or do some research, we can do that; still pick a jury; start evidence on Monday. But in one way or the other, unless you are making a motion to continue the trial, we're picking a jury either today or tomorrow, because we're at the limit for speedy trial."

Defense counsel was told by a UPS employee there were no reports regarding this incident and, based upon that, he believed there were no reports. Counsel stated he was prepared to go to trial and if something turned up that the parties were unaware of, it would be addressed at that time.

¶ 15 On October 30, 2015, following opening argument, the parties were on the record in chambers at defendant's request. Counsel sought permission to impeach Brandon Head with

two prior plenary orders of protection and a misdemeanor conviction of illegal possession of ammunition and a firearm owner's identification (FOID) card. The court denied the request to use these matters for impeachment purposes. Counsel also sought permission to ask whether Head had a valid FOID card, seeking to create the inference that Head attempted to steal the gun from the UPS package rather than defendant. The court denied this request as well, explaining as follows.

> "Then it's not relevant. Right now the evidence *** is that the People say that they are going to present Mr. Head, who said he came in, he saw the defendant opening or had opened the box with the gun in it, and then there were statements made by the defendant, and he went and told the supervisor. Mr. Head went and told the supervisor.
>
> That's my understanding of what the evidence is. If that's not what the evidence is, then we can argue that point, but that's why the court is allowing the evidence because that evidence is relevant, is relevant to the intent of the defendant because it happened approximately 10 days before this event, which shows that he was trying to obtain a gun, because it's a specific intent case, so they have to—so the People have to prove the intent. So all of that is relevant in this case to the issue of intent, and if that's not what the evidence is, then we've got a problem, but if that's what the evidence is, based on the proffer of the State, then it's all relevant and it comes in."

¶ 16 Defense counsel again raised the problem of only having received the report of Head's testimony the day before trial. The court responded, "The problem is, is that you don't want to take the time to be totally prepared for this case because you won't make the motion to continue it." Counsel insisted he was prepared to try the case and would have time over the weekend to conduct any further investigation necessary.

¶ 17 B. Jury Trial

¶ 18 We summarize the testimony necessary for the resolution of the issues raised on appeal.

¶ 19 The charges arose from a shooting that took place at Linda Boehm's house on July 4, 2015. Linda Boehm was the mother of defendant's girlfriend, Elayna Boehm. The State's theory of the case was that Bowser-Smith and Osborne went to the Boehm house, ostensibly to purchase marijuana from defendant. Defendant obtained a gun from Collin Linder's backpack and placed it in his waistband before entering the house after Bowser-Smith and Osborne. Once inside, Bowser-Smith grabbed a bag of marijuana and ran, in an attempt to steal the drugs from defendant. Defendant pulled the gun from his waistband and shot Bowser-Smith three times, killing him. Defendant then turned to Osborne and shot him twice, causing him severe bodily injury.

¶ 20 1. *Brandon Head*

¶ 21 Brandon Head testified he worked for UPS for approximately three or four months, including the month of June 2015. On June 24, 2015, Head and defendant were working to load trailers with packages. According to Head, one worker would take a package off of a conveyor belt and toss it to defendant inside the trailer to be scanned and stacked. Head noticed the stack of boxes to be loaded into the trailer had gotten high, and he went to help defendant

catch up. When Head looked into the trailer to find defendant, he saw "a tear of a box" and defendant told Head the box contained a gun. Head testified, "He said, [']you should help me get rid of the package[], like I'm a dummy. Well, basically I'm going to take the box and I know somebody, he said, [']I know somebody—I know some people who will buy it and I'll give you some money[']." According to Head, the box contained a black gun but defendant never got the gun completely out of the package.

¶ 22 After Head observed this, he told defendant he had to use the bathroom and left to contact his supervisor. The supervisor confronted defendant and then called Head over. Head testified, "we taped the package back up because it was like a damaged package, because we didn't want nothing to happen to him. So, we was like [']oh, he's just going to get fired, whatever[']." Head confirmed the gun was repackaged and sent out, and defendant did not have a gun when he left UPS that night. According to Head, that was defendant's last day working at UPS.

¶ 23 2. *Skylar L. Osborne*

¶ 24 The evidence showed nine people were at the Boehm house that evening, including defendant and the two victims. Osborne testified that, on July 4, 2015, he and Bowser-Smith went to the Boehm house to purchase a quarter pound of marijuana. Osborne observed the person they were going to purchase marijuana from, later identified as defendant, sitting on the front steps. Osborne followed Bowser-Smith into the house, looked back, and observed defendant pulling something out of Collin Linder's backpack. Defendant then stuffed an object into the front waistband of his pants. Defendant followed Bowser-Smith and Osborne into the house. According to Osborne, Bowser-Smith began discussing the price of the marijuana and the situation was calm and normal. Osborne testified he then heard someone scream "No!" and he

heard three shots fired. Osborne turned toward the sound of gunfire and observed defendant shooting a gun. According to Osborne, he turned to the door and tried to run, but he fell before he could take a step and later learned he had been shot. Osborne testified he had been unable to walk since the shooting, but he had some motor function in his arms.

¶ 25 Osborne testified an older male came into the house and tried to help him. The man asked Osborne several times who had shot him, and Osborne eventually told the man "some blond kid" with glasses shot him. Shortly after the shooting, Osborne told officers he did not know who had shot him. Osborne testified he was not aware of any news coverage of the shooting, he did not know defendant's name, and he later identified defendant in a photograph lineup shown to him by Officer Gibson.

¶ 26 3. *Stevie Watt*

¶ 27 Stevie Watt testified that, on July 4, 2015, he ran into Bowser-Smith and Osborne at the Quincy Market. Watt gave Bowser-Smith and Osborne a ride and parked his car in front of a house. Bowser-Smith and Osborne exited the vehicle and Bowser-Smith said something to a young man on the front porch, then he and Osborne went inside the house. Watt saw another young man come to the porch with a black bag. Watt saw the first young man take something from the bag, lift his shirt, and place the object in his waistband. Watt assumed the object was fireworks, because he saw fireworks scattered on the ground and the young men were putting the fireworks back into the backpack.

¶ 28 4. *Alec Gilday*

¶ 29 Alec Gilday, a 15-year-old boy present at the time of the shooting, testified he observed Bowser-Smith and Osborne enter the house, and Osborne stood in the living room, while Bowser-Smith walked toward the dining room. According to Gilday, defendant was

standing in the dining room with Bowser-Smith and there was a bag of marijuana on the table. Gilday testified Bowser-Smith tried to grab a bag of marijuana from defendant's arms, but the bag ripped. Bowser-Smith then grabbed a bag of marijuana from the table and ran for the front door. According to Gilday, defendant yelled "stop," raised his right arm, and fired three gunshots. Bowser-Smith fell out the front door and defendant then shot Osborne in the right shoulder.

¶ 30 5. *Collin Linder*

¶ 31 Collin Linder testified he was present at the time of the shooting. Linder denied bringing his backpack to defendant after Bowser-Smith and Osborne arrived. Linder also denied putting his backpack down on the front porch, but he testified he was on the front stoop when he heard what sounded like gunfire. After hearing gunfire, Linder looked in the front door and testified, "I see [Bowser-Smith] fell [*sic*] down on the ground. He fell down and [Osborne] is falling down. And that's it. And everybody is taking off. So I grabbed the strap on my book bag and I took off." According to Linder, defendant shot Bowser-Smith and Osborne.

¶ 32 Linder later agreed he brought his backpack to the front porch but denied defendant took a firearm from it. Linder acknowledged he told police in an August 2015 interview that defendant asked him to go get the gun just before Bowser-Smith and Osborne arrived. Linder also told police he put the gun in his backpack and brought the backpack to the front porch, where defendant retrieved the gun and put it in his waistband. Linder acknowledged he gave differing statements about his knowledge of the gun. When asked if he lied during the August 2015 interview, Linder responded, "I don't know. Maybe, yeah. I don't know." Linder also testified his August 2015 statements were accurate.

¶ 33 6. *Officer Gibson*

¶ 34 The murder weapon was never recovered, but shell casings were recovered from the scene. No fingerprint testing was performed on the shell casings recovered from the scene. A gunshot-residue test was performed on defendant's hands, but no evidence was introduced regarding the results of the test. Police did not perform a gunshot-residue test on any of the others who were in the house that evening. According to Officer Gibson, he did not administer a gunshot-residue test on anyone else because "[t]he information that everyone provided indicated to [him] that [defendant] was the one that had committed the shooting that night."

¶ 35 C. Verdict and Sentence

¶ 36 Following deliberation, the jury found defendant guilty of first degree murder and attempted first degree murder. The trial court sentenced defendant to a term of 70 years' imprisonment on the first-degree-murder conviction and a term of 45 years' imprisonment on the attempted-first-degree-murder conviction.

¶ 37 This appeal followed.

¶ 38 II. ANALYSIS

¶ 39 On appeal, defendant argues the trial court erred by allowing the State to introduce other-crimes evidence that defendant unsuccessfully attempted to steal a gun from a UPS package to sell it to someone 10 days before the shooting.

¶ 40 A. Forfeiture

¶ 41 As an initial matter, we address the State's argument that defendant has forfeited review of his claim that other-crimes evidence was inadmissible to show his intent.

¶ 42 Defendant contends his claim was properly preserved in his response and argument regarding the State's motion to admit other-crimes evidence and in his posttrial motion. Specifically, defendant contends his arguments—that the evidence of his attempt to steal a gun

from a UPS package was (1) inadmissible to show identity and (2) unduly prejudicial—were sufficient to preserve his claim, now raised on appeal, that the evidence was inadmissible to show intent. In support of his argument, defendant relies on *People v. Denson*, 2014 IL 116231, 21 N.E.3d 398.

¶ 43 In *Denson*, the supreme court reviewed a case in which the appellate court found the defendant had forfeited review of his claims because he failed to (1) file a motion *in limine* to exclude statements that were the subject of the State's motion *in limine*, and (2) raise a contemporaneous objection when the State introduced the statements during trial. *Id.* ¶ 4. The supreme court noted, "In criminal cases, this court has held consistently that a defendant preserves an issue for review by (1) raising it in either a motion *in limine* or a contemporaneous trial objection, and (2) including it in the posttrial motion." *Id.* ¶ 11. The appellate court found the defendant's response to the State's motion *in limine* to admit statements was insufficient to preserve review because "it is a motion *in limine* that preserves an issue for review, not a *response to* a motion *in limine*." (Emphasis in original.) *Id.* ¶ 12. The supreme court disagreed with the appellate court's analysis because it elevated form over substance. *Id.* ¶ 13. In so holding, the supreme court stated as follows:

> "This court's forfeiture rules exist to encourage defendants to raise issues in the trial court, thereby ensuring both that the trial court has an opportunity to correct any errors prior to appeal and that the defendant does not obtain a reversal through his or her own inaction. [Citations.] In light of this, the critical consideration in a case such as this is not which party initiated the *in limine* litigation, but rather whether the issue being raised was litigated *in limine*.

> This is because, irrespective of which party initiates the *in limine* proceeding, as long as it occurs, the interests served are exactly the same. Here, for example, the trial court was asked before trial to rule upon the admissibility of certain statements. The State fully briefed the arguments for their admissibility, and defendant fully briefed the arguments for their *in*admissibility. A hearing then was held at which both sides again presented their best arguments to the trial court, and based upon all it had read and heard, the trial court ruled. Under these circumstances, requiring defendant to recaption and refile his response to the State's motion as a motion *in limine* of his own would accomplish precisely nothing, other than to clutter the record with duplicative pleadings. The arguments raised in defendant's motion would be exactly the same as those raised in his response to the State's motion, and the arguments advanced at the hearing on defendant's motion would be exactly the same as those advanced at the hearing on the State's motion." (Emphasis in original.) *Id.*

The supreme court went on to note the point was to ensure that, through either a contemporaneous objection at trial or *in limine* litigation, the trial court has a full and fair opportunity to consider and rule on an issue. *Id.*

¶ 44 The supreme court also considered the appellate court's other basis for finding the defendant forfeited his claims—the defendant's failure to make a contemporaneous trial objection to the statements included in the State's motion *in limine*. *Id.* ¶ 15. The appellate court

relied on civil cases where the denial of a motion *in limine* was insufficient to preserve an objection and a contemporaneous trial objection was also required to preserve the issue. *Id.* ¶ 19. The supreme court distinguished these cases, pointing out "it is *only* in civil cases that a contemporaneous trial objection is required; this court has never required it in the criminal context." (Emphasis in original.) *Id.* The State argued there was uncertainty as to when a contemporaneous trial objection was necessary to preserve an issue and pointed to cases holding one *is* required, and other cases holding one is *not* required. *Id.* ¶ 20. The supreme court pointed out the case law was entirely consistent where (1) the cases holding a contemporaneous trial objection *was not* required all involved issues that were or could have been raised in a motion *in limine*; and (2) the cases holding a contemporaneous trial objection *was* required all involved "routine trial errors that were not raised and could not have been raised in a motion *in limine*." *Id.* ¶ 21.

¶ 45 We find *Denson* unhelpful to defendant's argument that his claim of error was properly preserved. At the hearing on the State's motion to admit other-crimes evidence, counsel argued that the evidence was irrelevant to the issue of defendant's identity and was unduly prejudicial. The trial court stated it was not inclined to admit the evidence to show identity but ruled it was relevant to the issue of intent. In response, counsel stated "if [the evidence is] now being offered for intent, we have to have a hearing on this because, based upon the evidence that I have received and the evidence that was given at preliminary hearing, there is no evidence that this was in any way, shape, or form planned two weeks earlier or that it was planned at any time." Counsel for defendant said "the defendant will be unduly prejudiced if this evidence is placed in front of a jury without me having an opportunity to examine the witness and argue those points to Your Honor for Your Honor to fully consider its ruling. I can't do it half[-]

baked." Once the witness was finally located and served a subpoena, counsel never requested a hearing on intent or for the opportunity to examine the witness. Therefore, during pretrial proceedings, defendant's specific claim that the evidence was inadmissible to show his intent because he wanted to steal the gun to sell to someone else, rather than to use for his own purposes, was never raised. Thus, the trial court never had the opportunity during pretrial proceedings to fully and fairly consider this claim.

¶ 46 Moreover, counsel for defendant did not object when Head testified that defendant told him he wanted to steal the gun to sell it, rather than to keep it for his own use. This testimony was the point at which the argument regarding intent arose, because this was the first suggestion of *why* defendant wanted to steal the gun. Even though counsel declined the opportunity to interview Head and did not request further hearing on this evidence prior to trial, counsel could have objected at this point in Head's testimony and raised the argument that the testimony did not show defendant's intent. However, counsel did not raise this argument and, thus, failed to preserve this claim for review.

¶ 47 B. Plain Error

¶ 48 Where a defendant fails to preserve an issue, appellate review "will be limited to constitutional issues which have properly been raised at trial and which can be raised later in a post-conviction hearing petition [citation], sufficiency of the evidence, and plain error." *People v. Enoch*, 122 Ill. 2d 176, 190, 522 N.E.2d 1124, 1132 (1988).

> "[T]he plain-error doctrine allows a reviewing court to consider unpreserved error when (1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the

> seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Piatkowski*, 225 Ill. 2d 551, 565, 870 N.E.2d 403, 410-11 (2007).

To obtain relief under the plain-error doctrine, the burden of persuasion is on the defendant to show one of the two prongs set forth above applies. *People v. Hillier*, 237 Ill. 2d 539, 545, 931 N.E.2d 1184, 1187 (2010).

¶ 49 Even assuming the trial court erred by admitting the other-crimes evidence, we conclude defendant cannot demonstrate plain error occurred in this case. We turn first to whether the evidence was closely balanced.

¶ 50 In determining whether the first prong applies, "a reviewing court must decide whether the defendant has shown that the evidence was so closely balanced the error alone severely threatened to tip the scales of justice." *People v. Sebby*, 2017 IL 119445, ¶ 51, 89 N.E.3d 675. In evaluating the closeness of the evidence, this court looks to the totality of the evidence and conducts "a qualitative, commonsense assessment of it within the context of the case." *Id.* ¶ 53.

¶ 51 Here, defendant points to the inconsistencies in certain statements witnesses made to the police and at trial to show the evidence was closely balanced. Specifically, defendant highlights that only two of the seven people in the Boehm house—Gilday and Linder—identified him as the shooter. Defendant asserts these two witnesses lied to police in initial interviews, had inconsistent statements, and were biased. Defendant also asserts Osborne first told a neighbor he had been shot by "some blond kid," but later told police officers he did not know who shot him.

Osborne told officers at the hospital that he had been shot by "a white kid with blond hair." Defendant argues Osborne only identified defendant as the shooter a month later, after defendant had appeared in court, the media published his mugshot, and Osborne had been visited by his family and friends. Defendant ignores Osborne's testimony that he had no awareness of news coverage of the case at the time he identified defendant in a photographic lineup. Finally, defendant argues there was no scientific evidence that proved he was the shooter.

¶ 52 The problem with defendant's argument is that there is no evidence of an alternative series of events. The evidence in this case only supports the State's theory that defendant was the shooter where the testimony shows defendant was the only person ever identified as the shooter. Although witnesses made arguably inconsistent statements, defense counsel did an excellent job of cross-examining these witnesses and allowing the jury to hear the inconsistent statements, lies told to police, and possible biases. We note that Osborne's prior statements are not necessarily inconsistent—he consistently stated a "blond kid" was the shooter to the neighbor and to the police. That he also stated he did not know who the shooter was makes sense in light of his testimony that he did not know defendant's name. Regardless, Osborne testified at trial that defendant was the person who shot him, and Gilday's testimony was the same. There was no evidence presented directly countering this. See *People v. Keene*, 169 Ill. 2d 1, 19, 660 N.E.2d 901, 910 (1995) (finding the evidence was not closely balanced where "virtually no evidence counter[ed], directly," a witness's testimony that the defendant participated in the robbery and that the defendant had slit the victim's throat).

¶ 53 Additionally, testimony from multiple witnesses corroborated other details. Osborne and Watt both testified they saw defendant reach into Linder's backpack and then put an object in his waistband. Gilday further testified defendant pulled the gun from his waistband,

yelled "stop," and began to fire the gun. Although Linder testified at trial that defendant did not retrieve a gun from his backpack, that alone does not make the evidence closely balanced. First, Linder acknowledged he previously told police he put the gun in his backpack and brought the backpack to the front porch, where defendant retrieved the gun and put it in his waistband. At trial Linder was asked whether he lied to police, and he responded, "I don't know. Maybe, yeah. I don't know." He also testified his statement to police was accurate. Linder's prevarication certainly detracts from the weight of this evidence and, clearly, the jury rejected his testimony. Moreover, Linder did not testify that someone other than defendant was the shooter.

¶ 54 Accordingly, we conclude "the evidence was not closely balanced and thus the first prong of plain-error analysis is unavailing." *People v. Wilmington*, 2013 IL 112938, ¶ 34, 983 N.E.2d 1015.

¶ 55 To demonstrate second-prong plain error, the defendant must show a structural error. *People v. Thompson*, 238 Ill. 2d 598, 608, 939 N.E.2d 403, 410 (2010). "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." *Id.* at 609. Structural error has been recognized in a limited class of cases, including "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.* Although our supreme court has previously equated second-prong plain error with structural error, it has not restricted it to the six types of structural error recognized by the United States Supreme Court. *People v. Clark*, 2016 IL 118845, ¶ 46, 50 N.E.3d 1120. Yet, as the Second District of this court has recognized, "it does mean that the error nevertheless must be of a similar kind: an error affecting the framework within which the trial proceeds, rather than simply an error in the trial

process itself." (Internal quotation marks omitted.) *People v. Johnson*, 2017 IL App (2d) 141241, ¶ 51, 80 N.E.3d 114.

¶ 56 The allegedly erroneous admission of other-crimes evidence in this case does not amount to a structural error so serious it affected the fairness of the proceeding or challenged the integrity of the judicial process. *Piatkowski*, 225 Ill. 2d at 565. We conclude the alleged error here, which resulted—at most—in the introduction of improper evidence, does not rise to the level of an error so serious it affected the framework within which the trial proceeds. *Johnson*, 2017 IL App (2d) 141241, ¶ 51.

¶ 57 III. CONCLUSION

¶ 58 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $75 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2016).

¶ 59 Affirmed.