

2019 IL App (1st) 170752-U

No. 1-17-0752

Order filed March 29, 2019

Fourth Division

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

| | | |
|--------------------------------------|---|-------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the |
| |) | Circuit Court of |
| Plaintiff-Appellee, |) | Cook County. |
| |) | |
| v. |) | No. 14 CR 3629 |
| |) | |
| JALAL MALONE, |) | Honorable |
| |) | Thomas J. Byrne, |
| Defendant-Appellant. |) | Judge, presiding. |

PRESIDING JUSTICE McBRIDE delivered the judgment of the court.
Justices Reyes and Burke concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's convictions affirmed over his challenges to the sufficiency of the evidence. Defendant did not preserve his claim of error involving a witness's alleged false testimony at trial, and therefore, it is forfeited.

¶ 2 Following a bench trial, defendant Jalal Malone was found guilty of three counts of home invasion while armed with a firearm (720 ILCS 5/19-6(a)(3) (West 2012)), one count of attempted armed robbery (720 ILCS 5/18-2(a)(2) (West 2012); 720 ILCS 5/8-4(a) (West 2012)), one count of aggravated unlawful restraint (720 ILCS 5/10-3.1(a) (West 2012)), and two counts

of aggravated battery with a deadly weapon (720 ILCS 5/12-3.05(f)(1) (West 2012)). He was sentenced to three 25-year prison terms for home invasion, consisting of 10 years for home invasion and a 15-year enhancement because a firearm was used. He was also sentenced to eight years' imprisonment for attempted armed robbery, four years for aggravated unlawful restraint, and four years for aggravated battery. All sentences were to run concurrently. On appeal, defendant contends that he was not proven guilty beyond a reasonable doubt when the State's witnesses were incredible. Defendant further contends that he was denied a fair trial when the State allowed a witness to testify "falsely and contrary" to her testimony at a preliminary hearing. We affirm.

¶ 3 Defendant was charged with three counts of home invasion, two counts of attempted armed robbery, three counts of aggravated unlawful restraint, and two counts of aggravated battery with a deadly weapon following his January 26, 2014 arrest.

¶ 4 Kathy Ward, who was 19 years old at the time of trial and had a speech disorder, testified that on January 26, 2014, she lived with her parents, Martha Avila and Lee Ward, in Chicago.¹ Around 12:40 p.m., she was in the kitchen when someone knocked on the back door and asked to speak to Ward. Kathy identified defendant in court as this person. She left the door "cracked" and went toward the living room to get Ward. Defendant came inside and put a gun to the back of Kathy's head. Defendant then "bowed" Kathy to her knees in front of Ward. At this point, Kathy saw a small black gun in defendant's hand. Defendant asked how many family members were in the house, and Ward replied that Avila was home. Defendant then hit Ward on the head with the gun, and Ward responded by hitting defendant. Kathy got a knife from underneath a

¹ Because Kathy Ward and Lee Ward share the same last name, we will refer to them as Kathy and Ward, respectively.

table and passed it to Ward. Ward stabbed defendant. At this point, a person with a big silver gun entered the room and pointed the gun at Ward, so Ward used defendant's body as a shield. Kathy left the room to call the police. Later, at a police station, she identified defendant in a photographic array.

¶ 5 During cross-examination, Kathy testified that she spoke to an assistant state's attorney and her parents prior to trial. The following exchange then took place:

“Q. And is it fair to say that you and your parents discussed what you were going to say in court, right?

A. I'm confused.

Q. Did you and your parents talk about—together about what you were going to say in court?

A. Yes.

Q. And did you want to make sure that you and your parents all told the same story when you came in?

A. Yes.

Q. Did you check with your parents to make sure that what you were saying was okay?

A. Yes.

Q. Did they give you any suggestions about what you should be saying when you come in?

A. Yes.

Q. And your parents did that—Did you see your parents doing that with each other?

A. I don't know.”

¶ 6 Kathy then testified that her parents only told her to be calm in court. She agreed with defense counsel that she and Ward discussed her testimony, but stated that Avila did not “know before what happen[ed].” Kathy also agreed that she and Ward discussed what she was going to say so that their testimony would match, but she did not know if he gave her suggestions as to what to say. In response to further questioning, she denied that she practiced what she was going to say with Ward or that she discussed what she was going to say with him. Kathy then testified that she did talk to Ward about her testimony. When defense counsel asked whether Kathy was now saying that she did not talk to Ward about her testimony, the State objected. The trial court overruled the objection and asked Kathy if she understood the question. Kathy answered no, and the court told counsel to ask another question.

¶ 7 Defense counsel next asked Kathy about her testimony at a preliminary hearing. Counsel asked Kathy whether she testified that defendant “put” a gun to her neck. Kathy answered that she said “head” and “[t]hey must have misheard because I was quiet.” When counsel asked whether she answered “yes” to the question did defendant “point” a gun at her neck, Kathy testified that she was confused because “it was like many people [were] like talking.” Counsel then asked Kathy whether she testified at the preliminary hearing that, after Ward indicated that Avila was in the house, a second man went to Avila’s bedroom. Kathy answered “no.” The State objected, arguing that Kathy had not been impeached as the question was not what she saw, but rather, what had happened, and that she could have been told what happened by a family

member. The trial court overruled the State's objection. The State then agreed to stipulate that the transcript stated, "What happened after your dad answered my wife?" and that Kathy answered, "a second offender went over to the bed where my mom was."

¶ 8 Kathy then testified that she grabbed a "big" knife that was hidden under the table. The record reflects that when Kathy was asked how big the knife was, she made a gesture that the trial court interpreted as 18 inches. She handed the knife to Ward and he began to stab defendant. After she handed Ward the knife, Kathy got up and went to her room. She then testified that Ward tried to grab a chair, but fell, and that defendant was "on top of him trying to tackle him on the couch." It was as Ward got off the couch that Kathy handed him the knife. Ward stabbed defendant and defendant said "help me." At this point, a second person entered the room and shot a gun. She testified that she heard the gunshot when she was in her bedroom off the living room. She came out and saw the second person pointing a gun at Ward. She "turned right back" to look for her phone, but did not call 911 from her room because she could not find her phone.

¶ 9 Ward testified that, at the start of the incident, Kathy entered the room crying with a man in a blue jacket holding a black revolver to the back of her head. After Kathy got on her knees, the man put the gun to Ward's head and asked whether anyone else was in the house and where the money was. Ward answered that his wife was in the bedroom, and that they did not have any money except \$11 on the table. The man became agitated and hit him "upside the head" with the gun. Ward "immediately" got up and attacked him. Kathy passed him a knife and he began "sticking" the man. As the man said "help me" and "he's sticking me," a second man came from the bedroom area. The second man had a gun that he fired at Ward. Ward flipped the man in the

blue jacket in front of him and pushed him toward the shooter. Both the man in the blue jacket and the second man left through the back door.

¶ 10 During cross-examination, Ward acknowledged that he did not identify defendant as the man in the blue jacket and did not recognize defendant in court. He explained that he suffered from “crippling arthritis,” and had been previously “scanned” to see if his “brain [was] working right.” He did not remember “too much” immediately “after it happened.” When the man in the blue jacket hit him with the gun, Ward leaned forward and they “fell back on the couch.” Ward was on top of the man, who shot his gun on the floor. Kathy then handed him a knife and he stabbed the man more than once. As the men “tussl[ed],” they got off the couch and turned around. Ward then saw a second man. He saw this man “click the gun,” but did not hear a gunshot. During re-direct examination, Ward testified that he never got a good look at the face of the man in the blue jacket.

¶ 11 Martha Avila testified that at 12:40 p.m. on January 26, 2014, she was awoken by someone holding a pistol to her head. The person holding the gun “dashed out” of her bedroom when there was yelling and screaming in another room. Avila grabbed a knife from next to her bed, “stormed” out of her room, and went to her “door frame, which is not too far from the living room.” She tried to stab two men she had never seen before. At trial, she identified defendant as one of those men. When she first saw defendant, who was wearing a blue jacket, he was “slumped” against a wall. The State then asked whether she “left the room with a knife” and was “standing in the doorway” when she “tried to stab the two guys,” and Avila answered yes. At this point, the second man left defendant “behind.” Defendant then screamed to the second man that “if he didn’t come back and get him, he was going to snitch and tell the whole story.” The

second man came back, picked up defendant, and dragged him out. Avila started to follow the men, but saw “more individuals” trying to enter the house, so she closed the door. She later saw defendant “four houses down” on the street “all stabbed up.”

¶ 12 During cross-examination, Avila testified that Ward’s medical issues included high blood pressure, a prior heart attack, and a “mild stroke.” After she stabbed the second man, defendant told the man to shoot Kathy and Ward. Defendant did not shoot his gun because “he was all stabbed up.” Although Avila initially agreed that she was in living room, she later denied that she was in the living room and stated that she stabbed defendant and the other man “in the hallway leading to the kitchen” and that she could see the living room from a different room. Avila remembered testifying at a preliminary hearing on February 18, 2014. The following exchange then took place:

“Q. Now, is it true that you didn’t leave your bedroom at all during this entire event that day that you described?

A. No.

Q. Isn’t it true that you were asked at the proceeding: Question: And after you took the knife what did you do, your answer was I waited by my bedroom door for him and two suspects were—and they were leaving out?

A. That is correct.

Q. And then you were asked did you first leave your room though and your answer was no?

A. That is correct.

Q. You were asked did you leave your room at one point and your answer was no?

A. I could not understand that question.

Q. You were asked did you leave your room at one point and your answer was no?

A. I don't remember that day.

Q. You don't remember that?

A. No.

Q. You remember the other questions and that what you said, but you don't remember that one?"

¶ 13 The State objected, arguing that this question was argumentative. The trial court sustained the objection.

¶ 14 Chicago police officer Margaret Wolanski, who responded to a radio call of "home invasion in progress," testified that as she spoke to a woman outside the residence, she saw someone fall in her peripheral vision. She went to the person, who was about 20 feet away, observed blood, and asked what happened. She identified defendant in court as this person. Defendant stated that he had been stabbed. Wolanski radioed for an ambulance and returned to the house to speak to Kathy, Ward, and Avila. After learning that the men left the house through the rear door, Wolanski walked out that door and observed a trail of blood that went to the sidewalk. She followed the blood trail, finding a pair of gloves and a blue jacket along the way. Photographs also showed that cash was observed in the snow. The blood trail led to the address where Wolanski encountered defendant. She obtained a surveillance video from one of the

residents of the house, and that video was played for the court. The video, which is included in the record on appeal, depicts a man covered in blood walking to a porch. He collapses on the steps and is later carried away by paramedics. Wolanski conducted a show-up, and Avila identified defendant as the man wearing a blue jacket.

¶ 15 The State then presented testimony and stipulations from an evidence technician and scientists from the Illinois State Police Crime lab establishing, in pertinent part, that the DNA in certain blood swabs taken from a knife recovered from the Ward-Avila home matched defendant's DNA profile.

¶ 16 After the State rested, the defense made a motion for a directed finding. The trial court granted the motion as to two of the three counts of unlawful restraint. The defense then moved to perfect its impeachment of Kathy and Avila with their testimony at the preliminary hearing. The State stipulated that the transcript of the preliminary hearing showed that Kathy testified that the gun was at her "neck" and that Kathy's answers at trial "stand as to the explanation for it." With regard to Avila, the defense argued that she was impeached regarding where she was during the incident, that is, whether she left the bedroom. Defense counsel noted that Avila testified that her answer "no" at the preliminary hearing "was the one that she all of a sudden couldn't remember." The State stipulated to what was in the transcript. The defense then rested.

¶ 17 When announcing its findings, the trial court stated that it was "clear" that there was a home invasion and there was "no question that the defendant was in on" it. The court acknowledged that the "stories" told by the witnesses differed "in certain regards" and that Kathy, who was difficult to understand and follow, had a perception which was different from Ward. The court noted that the witnesses' testimony was "characterized as outlandishly different

stories,” but that the testimony told a story of a home invasion and that the witnesses were “credible in their testimony, even in spite of the impeachment *** [and] the differences based on where they were when they observed and experienced the home invasion.” The court stated that defendant and his accomplice thought the family was “a fairly easy target,” but were “caught off guard.” The court further stated that defendant discarded “his clothes to make good his escape,” and was “successful in concealing the weapon that he did have” as it was not recovered. The trial court found defendant guilty of three counts of home invasion, the attempted armed robbery of Ward, the aggravated unlawful restraint of Kathy, and two counts of aggravated battery of Ward. The court found defendant not guilty of one count of attempted armed robbery. Defendant filed a motion for a new trial, which was denied.

¶ 18 The court sentenced defendant to three 25-year prison terms for home invasion consisting of 10 years for home invasion and a 15-year enhancement because a firearm was used. The court also sentenced defendant to eight years in prison for attempted armed robbery and four years for aggravated unlawful restraint, and merged the aggravated battery counts to sentence defendant to one four-year prison term. All sentences were to run concurrently.

¶ 19 On appeal, defendant first contends that he was not proven guilty of each offense beyond a reasonable doubt when the State’s witnesses provided contradictory and “inherently unbelievable” testimony. Defendant argues that Kathy admitted “that her parents coached her,” and that Avila was “completely impeached” by her testimony at a preliminary hearing. We note that defendant does not challenge the elements of any of the offenses; rather, he solely argues that the witnesses at trial were incredible.

¶ 20 When a defendant challenges his conviction based upon the sufficiency of the evidence presented against him, we must ask whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48. All reasonable inferences from the record must be allowed in favor of the State. *People v. Lloyd*, 2013 IL 113510, ¶ 42. It is the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh evidence, and to draw reasonable inferences from the facts. *Brown*, 2013 IL 114196, ¶ 48. A reviewing court will not substitute its judgment for that of the trier of fact on issues involving the weight of the evidence or the credibility of the witnesses. *Id.* A defendant's conviction will not be overturned unless the evidence is so unreasonable, improbable, or unsatisfactory that there remains a reasonable doubt of his guilt. *Id.*

¶ 21 Here, defendant was found guilty of home invasion, attempted armed robbery, aggravated unlawful restraint, and aggravated battery. To prove defendant guilty of home invasion, the State was required to prove that defendant "without authority" knowingly entered the dwelling place of another when he knew or had reason to know that one or more persons was present, and while armed with a firearm used force or threatened the imminent use of force upon anyone inside the dwelling whether or not injury occurred. 720 ILCS 5/19-6(a)(3) (West 2012). A person commits armed robbery when he or she knowingly takes property from a person or in the presence of another by the use of force or threatening the imminent use of force while "he or she carries on or about his or her person or is otherwise armed with a firearm." 720 ILCS 5/18-2(a)(2) (West 2012). Therefore, to prove defendant guilty of the offense of attempted armed robbery, the State was required to establish that defendant did an act that constituted a substantial step toward the

commission of an armed robbery. 720 ILCS 5/8-4(a) (West 2012). To prove defendant guilty of aggravated unlawful restraint, the State had to prove defendant knowingly, without legal authority, detained Kathy, while using a deadly weapon. 720 ILCS 5/10-3.1(a) (West 2012). Finally, to prove defendant committed aggravated battery, the State had to prove that defendant battered Ward with a deadly weapon. 720 ILCS 5/12-3.05(f)(1) (West 2012).

¶ 22 Viewing the evidence in the light most favorable to the State, the testimony of the State's four witnesses and the physical evidence placed defendant inside the Ward-Avila home with a gun. We therefore conclude that a rational trier of fact could have found that the State proved beyond a reasonable doubt that defendant committed a home invasion when Kathy testified that she left the door "cracked" and went to get Ward, but that defendant entered the house, put a gun to her head, made her kneel in front of Ward, and then hit Ward on the head with a firearm. Ward also testified that the man in the blue jacket hit him with the gun. There was also evidence from which a rational trier of fact could conclude that defendant committed the offense of armed robbery when defendant, while pointing a gun at Ward, asked where the money was, and Ward responded by pointing to a table that held \$11. The evidence also established that police found cash in the snow.

¶ 23 Moreover, the State proved defendant guilty of aggravated unlawful restraint when the evidence at trial established that defendant put a gun to the back of Kathy's head and "bowed" her to her knees in front of Ward. Similarly, the evidence at trial established that defendant committed aggravated battery when Kathy testified that defendant hit Ward on the head with a gun, and Ward testified that the man in the blue jacket became agitated and hit him "upside the head" with a gun. Additionally, Officer Wolanski testified that she followed a trail of blood from

the Ward-Avila home to the address where she encountered defendant, and that she observed a blue jacket along the way. Physical evidence also established that defendant's DNA was on a knife recovered from the home, and Avila testified that defendant was present in the home with a gun. Given this evidence, we cannot say that no rational trier of fact could have found that defendant committed the offenses of home invasion, attempted armed robbery, aggravated unlawful restraint, and aggravated battery when the evidence established that defendant entered the Ward-Avila house armed with a firearm, put a gun to Kathy's head and "bowed" her to her knees, asked where the money was, and struck Ward with a gun. *Brown*, 2013 IL 114196, ¶ 48.

¶ 24 Defendant, however, contends that he was not proven guilty beyond a reasonable doubt because the witnesses at trial were unbelievable. He argues that Kathy, Ward, and Avila gave contradictory testimony, Kathy was coached by her parents, and Avila's testimony at trial was "contrary" to her testimony at a preliminary hearing. Defendant also notes the absence of any shells or physical evidence of guns and argues that this is further support for his argument that the State's witnesses were not worthy of belief.

¶ 25 Initially, we note that a "trier of fact is best equipped to judge the credibility of witnesses, and due consideration must be given to the fact that it was the trial court *** that saw and heard the witnesses." *People v. Wheeler*, 226 Ill. 2d 92, 114-15 (2007). "[E]ven contradictory testimony does not necessarily destroy the credibility of a witness, and it is the task of the trier of fact to determine when, if at all, [the witness] testified truthfully." *People v. Gray*, 2017 IL 120958, ¶ 47.

¶ 26 In finding defendant guilty, the trial court recognized that the witnesses' testimony had "differences based on where they were when they observed and experienced the home invasion."

Thus, the record reveals that the trial court considered the fact that the witnesses were in different places during the events in making its findings. Although defendant contends that it is “contrary to human experience” that Ward, who suffered from several health issues, could have “subdue[d]” him in a physical encounter, Ward did not testify that he subdued defendant. Rather, Ward’s testimony was that he attacked the man in the blue jacket, that they fell onto the couch, and that he stabbed the man with a knife handed to him by Kathy. We cannot agree with defendant that it is contrary to human experience that a man with a knife, even one with health issues, could wrestle with and stab another person. Although defendant is correct that (1) Kathy testified both that she spoke to her parents about her testimony and that she did not discuss her testimony with Ward, and that (2) Avila testified at trial that she left her room and went by the “door frame” and testified at the preliminary hearing that she did not leave her bedroom and waited by her bedroom door, the trial court recognized that there was “impeachment” and considered that when making its findings. We also note that Avila’s testimony corroborated that of Kathy and Ward, that is, she placed defendant in the house with a gun. To the extent that defendant notes that no guns or shells were recovered in this case, it was for the trial court to weigh the evidence presented at trial and to draw reasonable inferences from the facts. *Brown*, 2013 IL 114196, ¶ 48.

¶ 27 Although defendant argues that the version of events described by the State’s witnesses was unbelievable, the testimony regarding the offenses was not incredible on its face. See *People v. Cunningham*, 212 Ill. 2d 274, 284 (2004) (unless flaws in the testimony at trial are such that the only inference reasonably drawn is disbelief in the whole, a reviewing court must bear in mind that the trier of fact had the benefit of observing the witnesses’ demeanor). Witness

credibility is a matter for the trier of fact, and, therefore, the trier of fact may accept or reject as much or as little of a witness's testimony as it chooses. *People v. Peoples*, 2015 IL App (1st) 121717, ¶ 67. Moreover, the fact that there are contradictions or conflicts between the accounts of the State's witnesses does not necessarily render their testimony incredible as long as the evidence taken as a whole satisfies the trier of fact as to the defendant's guilt beyond a reasonable doubt. *Id.* ¶ 67 (the fact that the testimony of one of the State's witnesses contradicts the testimony of another does not render each one's testimony beyond belief).

¶ 28 Ultimately, the trial court was not required to disregard inferences that flow normally from the evidence, seek all possible explanations consistent with defendant's innocence and elevate them to reasonable doubt, or find a witness incredible merely because defendant says so. See *In re Jonathon C.B.*, 2011 IL 107750, ¶ 60. In other words, the court was not required to accept defendant's assertion that the witnesses were incredible or assume there was an innocent explanation for the fact that defendant was stabbed while inside the Ward-Avila home. This court reverses a defendant's conviction only where the evidence is so improbable or unsatisfactory that a reasonable doubt of his guilt remains. This is not one of those cases. See *People v. Bradford*, 2016 IL 118674, ¶ 12. Accordingly, we affirm defendant's convictions.

¶ 29 Defendant next contends that he was denied a fair trial when the State failed to correct Avila's testimony at trial, which was contrary to her testimony at a preliminary hearing. Defendant acknowledges that this issue is forfeited on appeal as he failed to raise it in the trial court. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). He asks this court to review it pursuant to the plain error rule. Under the plain error doctrine, this court may consider issues that have been forfeited "when either (1) the evidence is close, regardless of the seriousness of the error, or (2)

the error is serious, regardless of the closeness of the evidence.” *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005). “The first step of plain-error review is determining whether any error occurred.” *People v. Thompson*, 238 Ill. 2d 598, 613 (2010). “Absent reversible error, there can be no plain error.” *People v. Naylor*, 229 Ill. 2d 584, 602 (2008).

¶ 30 Here, defendant contends that Avila testified falsely at trial, and contrary to her testimony at the preliminary hearing, that she left her bedroom during the incident. Defendant argues that although defense counsel impeached Avila, the State was nonetheless “obligated” to correct Avila’s testimony at trial.

¶ 31 The State’s knowing use of perjured testimony to obtain a criminal conviction constitutes a violation of due process. *People v. Jimerson*, 166 Ill. 2d 211, 223 (1995). “A conviction obtained by the knowing use of perjured testimony must be set aside if there is any reasonable likelihood that the false testimony could have affected the jury’s verdict.” *People v. Olinger*, 176 Ill. 2d 326, 345 (1997). The same principles apply when the State, while not soliciting the false testimony, permits it to go uncorrected when it occurs. *People v. Barrow*, 195 Ill. 2d 506, 530 (2001). This is the case even when the witness’s false testimony goes only to her credibility. *Id.*

¶ 32 Initially, we note that defendant has not persuaded us, based upon the record, that the State knowingly used false testimony. See *People v. Redmond*, 265 Ill. App. 3d 292, 309 (1994) (defendant bears the burden to show that the State knowingly used perjured testimony). Here, the record reveals that Avila testified at trial that she “stormed” out of her bedroom and went to her “door frame.” She admitted that she testified at the preliminary hearing that she did not leave her room and that she waited by her bedroom door but then testified that she did not understand the question that she was asked at the preliminary hearing and did not remember “that day.” We are

persuaded by the State's argument that this issue is one of semantics, that is, whether Avila considered standing in the doorway to her bedroom to qualify as "leaving" that room. Considering that Avila's testimony at both proceedings ultimately placed her at the same location, that is, at or near the doorway to her bedroom, defendant has failed to "establish by clear, convincing and satisfactory evidence, not only that the testimony was false, but that the testimony was 'willfully and purposefully falsely given.'" (Emphasis in original.) *Id.* (quoting *People v. Trimble*, 220 Ill. App. 3d 338, 346 (1991)). Without error, there can be no plain error (*Naylor*, 229 Ill. 2d at 602), and defendant's forfeiture of this issue must be honored.

¶ 33 However, even if we were to assume that an error occurred, defendant cannot meet his burden under the plain error doctrine. Defendant first argues that plain error review is appropriate because the evidence at trial was closely balanced. It is the defendant's burden to persuade this court that the evidence is close enough to warrant plain error review. *Thompson*, 238 Ill. 2d at 613. To make that showing, defendant must demonstrate that the evidence at trial was so closely balanced that "the error alone severely threatened to tip the scales of justice." *People v. Seby*, 2017 IL 119445, ¶ 51. We do not agree with the defendant that the evidence in this case was close enough that the State's failure to correct Avila's allegedly false testimony threatened to tip the scales of justice against defendant.

¶ 34 In support of his contention that the evidence in this case was closely balanced, defendant essentially repeats much of his argument concerning the sufficiency of the evidence. Although we have already rejected that claim, we must stress that the question of whether evidence is closely balanced is "a separate question from whether the evidence is sufficient to sustain a conviction on review against a reasonable doubt challenge." *People v. Piatkowski*, 225 Ill. 2d

551, 566 (2007). In this case, however, we do not find the evidence to be closely balanced. As we discussed above, Kathy testified that defendant entered the house, put a gun to the back of her head, and bowed her to her knees in front of her father. Moreover, Ward testified that the man in the blue jacket asked him where the money was, and hit him “upside the head” with a firearm. We conclude that the evidence was not so closely balanced that Avila’s testimony alone threatened to tip the scales against the defendant, and, as such, defendant has failed to meet his burden under the first prong of the plain error doctrine.

¶ 35 Moreover, defendant cannot meet his burden under the second prong of the plain error doctrine. Under the second prong of plain error review, the “question is whether the error is so serious that it affected the fairness of the defendant’s trial and challenged the integrity of the judicial process.” *People v. Clark*, 2016 IL 118845, ¶ 44. A conviction obtained by the knowing use of perjured testimony violates due process and must be set aside if there is “any reasonable likelihood that the false testimony could have affected the jury’s verdict.” *Olinger*, 176 Ill. 2d at 345.

¶ 36 Here, defendant has not persuaded us that the alleged error affected the fairness of his trial. As discussed above, the challenged portion of Avila’s testimony did not touch upon how defendant entered the house, or whether he restrained Kathy and struck Ward with a gun. Rather, the challenged portion of her testimony related to her location during the incident, specifically, whether she stayed in her bedroom or left it. Avila’s testimony, as it related to the charged offenses, placed defendant in the house while armed with a firearm, just as the testimony of Kathy and Ward did. In other words, it corroborated the testimony of two other witnesses and the physical evidence. Accordingly, as defendant has not established that Avila’s allegedly false

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testimony at trial reasonably affected the trial court's findings of guilt, he has not met his burden under the second prong of plain error review and his forfeiture must be honored.

¶ 37 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 38 Affirmed.