

NOTICE  
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2014 IL App (5th) 120166-U

NO. 5-12-0166

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Madison County.
	)	
v.	)	No. 09-CF-1779
	)	
SCOTT MOORE,	)	Honorable
	)	James Hackett,
Defendant-Appellant.	)	Judge, presiding.

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JUSTICE CATES delivered the judgment of the court.  
Justices Chapman and Spomer concurred in the judgment.

**ORDER**

¶ 1 *Held:* The State laid an adequate foundation for the admission of the surveillance video, and any alleged error in the admission of the videos did not rise to the level of plain error. The judgment is affirmed, but the cause is remanded to correct the mittimus to reflect a single conviction for intentional murder.

¶ 2 Following a jury trial in Madison County, the defendant, Scott Moore, was found guilty of three counts of first-degree murder and one count of armed robbery. He was sentenced to a term of 37 years in prison for murder and a consecutive term of 10 years for armed robbery. The defendant filed a motion for a new trial, which was denied. The defendant then filed a motion to reconsider his sentence and sought a reduction in the

length of the sentence and concurrent rather than consecutive terms. The court reduced the defendant's sentence to 35 years for murder, but rejected the request for concurrent terms. On appeal, the defendant contends that it was error to admit two surveillance videos where the State failed to lay an adequate foundation for admission under the silent witness theory, and that the error, though unpreserved, rises to the level of plain error because the evidence was closely balanced and because the error was of such magnitude that it deprived him of a fair trial. The defendant also contends that the mittimus must be corrected to reflect a single conviction for first-degree murder where there was only one victim and a single act that resulted in her death. We affirm the convictions, but remand the case to correct an error in the mittimus.

¶ 3 The defendant was charged by indictment with four counts of first-degree murder, two counts of home invasion, and one count of armed robbery. The first-degree murder counts were charged as intentional (count I), knowing (count II), felony murder with a home invasion predicate (count III), and felony murder with an armed robbery predicate (count IV). Prior to trial, the State dismissed both home invasion counts and the count for felony murder with a home invasion predicate. The defendant went to trial on the remaining counts. A summary of the evidence follows.

¶ 4 On July 27, 2009, at approximately 11:30 a.m., Nathan McFarland was walking on 25th Street, approaching State Street, in Granite City, when he noticed a white male, later identified as the defendant, sitting on the concrete ledge of an apartment complex, rummaging through a purse. He watched the defendant take money out of the purse and count it. Concerned by this activity, McFarland phoned the police. While McFarland

awaited the arrival of a police officer, he continued to monitor the defendant's actions. He saw the defendant put the purse into a white Save-A-Lot grocery bag and toss the bag into a dumpster. He then saw the defendant ride away on a bicycle.

¶ 5 A Granite City police officer named David Atchison arrived within a few minutes of the defendant's departure, and McFarland related what he had witnessed. Officer Atchison walked over and looked inside the dumpster, but he did not see the grocery bag or the purse. McFarland went over to see if he could help. He spotted the grocery bag containing the purse inside the dumpster, pulled it out, and handed it to the officer. Officer Atchison opened the purse and looked inside, hoping to find something that would identify its owner. He found two billing statements. He noted that both statements were addressed to Catherine Fowler, but one bore an address on Iowa Street and the other bore an address on Missouri Avenue, both in Granite City. Officer Atchison left McFarland and headed off to see if he could locate Ms. Fowler.

¶ 6 Atchison went to the address on Iowa Street and learned that Ms. Fowler no longer lived there. He was driving to the Missouri Avenue address when McFarland flagged him down. McFarland reported that he was walking to his sister's house when he saw the defendant getting into the passenger seat of a white truck. McFarland said that he ran behind the truck as it pulled away and headed south on Madison Avenue, but he was unable to get its license plate number. Officer Atchison drove around the area, but he could not find the truck or the defendant. He then drove on to Missouri Avenue to see if he could locate Ms. Fowler.

¶ 7 A few minutes later, Officer Atchison pulled up outside an apartment building bearing the address on Missouri Avenue. He entered the apartment building through the front door and approached the door to apartment No. 1. He knocked on the door, but no one responded. Officer Atchison decided to check with some residents on Ms. Fowler's floor. He verified that Ms. Fowler lived in apartment No. 1, and he learned that she had some health issues. He also learned that a man wearing a hooded jacket was seen leaving Ms. Fowler's apartment earlier that day.

¶ 8 Officer Atchison became concerned about Ms. Fowler's well-being. He knocked on her door again. No response. Officer Atchison was still in possession of Ms. Fowler's purse, so he pulled out a credit card and used it to unlock the deadbolt that secured her door. He opened the door and stepped inside the unit. Once inside, he observed red spatter on the walls and furniture, and a woman lying still on the couch with a pillow covering her head. Officer Atchison set the purse on a sofa and drew his service weapon. He quickly looked around and determined that no one else was in the unit. He then approached the woman on the sofa. Officer Atchison lifted the pillow from the woman's head and observed that she had massive injuries to her head and face. He also observed a large amount of blood and what appeared to be brain matter on the couch. Officer Atchison observed that the woman had no signs of life. He placed the pillow back in the same position he had found it and called for emergency medical responders and the supervisor of detectives. He stepped outside the apartment and secured the scene. He noted no signs of a forced entry.

¶ 9 The woman was identified as Catherine Fowler. An autopsy established that the cause of death was cranial cerebral blunt trauma. Toxicology tests revealed that Ms. Fowler had cocaine and antidepressants in her system at the time of her death.

¶ 10 Shortly after noon on July 27, 2009, the Granite City police department requested assistance from the Major Case Squad in investigating Ms. Fowler's death. A team of officers was assembled to gather evidence and interview witnesses.

¶ 11 One of the witnesses who came forward was Cynthia McCoy. McCoy reported that she had seen a white male riding a bicycle near 25th Street and State Street when she was driving to her business on the morning of July 27, 2009. She noted that the man was carrying a Save-A-Lot bag with a baseball bat sticking out of it.

¶ 12 Another witness, albeit a reluctant one, was discovered as investigators were searching the dumpster where Ms. Fowler's purse had been found. Thomas Hutchinson and another resident of a nearby apartment were standing outside watching the police activity when one of the detectives approached Hutchinson and struck up a conversation. He asked Hutchinson whether he had any visitors that day. Hutchinson stated that a friend had stopped by earlier that day. Hutchison identified his friend as "Johnny Johnson." Hutchinson said that he had called his friend about doing some work, and that when his friend showed up, they went in Hutchison's white truck to get a soda. Hutchinson drove. Hutchison recalled that during the drive, some guy began running behind his truck. The guy was yelling about someone stealing a bike. Hutchinson noted that his friend's cell phone began ringing at that point, and that after taking the call, his

friend said that he had to go home because his wife was angry. Hutchinson dropped his friend off outside his house, purchased a soda, and returned home.

¶ 13 The detective asked Hutchinson if he would call his friend. Hutchinson agreed and called his friend. Hutchinson told his friend that a police officer was standing nearby and wanted to speak with him. Hutchison handed his phone to the detective. The detective asked the person to state his name. The person identified himself as Scott Moore, the defendant. Hutchinson would later explain that he referred to the defendant as Johnny Johnson because the defendant reminded him of a piano player called Johnny Johnson who had worked with Chuck Berry back in the day. The detective asked the defendant to come to the Granite City police station. The defendant initially stated he would not be able to get to the station until around 6 p.m. When the detective advised that this was a serious matter, the defendant stated he would be there in an hour. The defendant did not appear. He was picked up later that evening and transported to the Granite City police station for an interview.

¶ 14 Meanwhile, investigators searched the dumpster and the surrounding area. Two white Save-A-Lot bags that appeared to have blood on them, a blue hooded sweatshirt, a white t-shirt, two gloves, and a letter addressed to Catherine Fowler, were pulled from the dumpster and seized as evidence. A baseball bat was discovered in a cubbyhole near the steps of an adjacent building. The bat, which appeared to have blood on it, was also seized as evidence. A t-shirt and black sweatpants were discovered in the public restroom at a nearby park. All of these items were sent to the Illinois State Police crime lab for analysis. Tests revealed that the blood found on the bat and on the hoodie

matched Ms. Fowler's DNA profile. Blood found on the white t-shirt and the sweatpants also matched her DNA profile. Skin cell scrapings collected from the white t-shirt and the sweatpants were analyzed and found to match the defendant's DNA profile.

¶ 15 Investigators created a photo array containing six photographs, including a photo of the defendant. The two eyewitnesses, Cynthia McCoy and Nathan McFarland, were separately shown the photo array. Cynthia McCoy pointed to the defendant's photo and identified the defendant as the man she had seen riding the bicycle and carrying a baseball bat on the morning of July 27, 2009. Nathan McFarland pointed to the defendant's photograph and identified him as the man who had been rooting through the purse on July 27, 2009.

¶ 16 The crime scene inside Ms. Fowler's apartment was processed. Investigators searched the purse which Officer Atchison had left on the sofa. Inside the purse, they found several personal items. They also discovered a baggy containing a green leafy substance that appeared to be marijuana, and a coin purse which held 17 small packets, each containing a white powdery substance that appeared to be cocaine. Investigators also searched inside the apartment and found prescription bottles containing a variety of pills. According to the labels on the bottles, the prescriptions had been written for persons other than the victim. Investigators also discovered drug paraphernalia, including a one-hitter box, a silver spoon, and a small weight scale in a Crown Royal bag inside the apartment. These items were inventoried. The pills and substances were not submitted to the lab for analysis.

¶ 17 While processing the scene, investigators confirmed that there were surveillance cameras in the building. Cameras were trained on the front foyer, the hall, and the laundry room. The front foyer camera was angled in such a way that it also showed the door to apartment No. 1. Ken Wojtowicz, a sergeant employed by the Granite City police department, was assigned to seize the digital video recording (DVR) equipment and review the surveillance video recordings. He contacted the owners of the building, and they gave him permission to take the DVR equipment and to review the surveillance video. They also provided the operations manual for the equipment.

¶ 18 Sergeant Wojtowicz testified that he seized the DVR equipment and brought it back to the station to examine it. He noted that a digital clock was displayed in the upper left-hand corner in the video recordings. He consulted the operations manual and learned that the DVR system has a clock and the clock is to be set when the DVR equipment is installed. Sergeant Wojtowicz compared the time on the DVR with the time on his own cellular phone. He noted that the time on the DVR clock was five minutes behind the actual time. He also noted that the DVR contained software which allowed one to back up the images and save images to a video format, such as a compact disc. Sergeant Wojtowicz testified that he viewed several hours of surveillance video from July 26, 2009, and July 27, 2009. He then backed up the hard drive and copied the video recordings to compact discs. Sergeant Wojtowicz stated that he compared the images on the compact discs with the original recordings and determined that the images on the compact discs accurately reflected the original recordings.

¶ 19 Selected portions of the surveillance videos from July 26, 2009, and July 27, 2009, were played during the trial. Initially, the videos were played at real-time speed. Then, at the direction of the prosecution, the video operator replayed certain portions in slow motion. The video from July 27, 2009, was played first. It showed that a man entered the foyer of the victim's apartment building at 10:53:39 a.m. He was wearing a dark hooded sweatshirt, dark sweatpants with a stripe down the side of each leg, and white tennis shoes. The man's face was not turned toward the camera, so the camera caught only a partial view of his face, and that view was shadowed. The man walked with a slight, yet detectable stiffness or limp to his gait. He knocked on the victim's door, and after a few seconds, the door opened. The man entered quickly and the door closed behind him. The same man exited the victim's unit at 11:01:53 a.m. He was carrying a white bag. The handle of a baseball bat was protruding from the bag. The man walked out the front door of the building at 11:02:05 a.m. The recording shows that Officer Atchison was the next person to enter the victim's unit on July 27, 2009.

¶ 20 A portion of the surveillance video from July 26, 2009, was played next. It showed someone entering the back entrance to the complex at 8:38:40 p.m. The subject, a male, walked through the hall into the main foyer. He looked out the front window and then stood in front of the victim's apartment door for a few minutes. He then walked down the hall way at 8:40:37 p.m. and left the building through the rear exit at 8:41:09 p.m. The man had some type of white material partially covering his face. Except for the face covering, the man was dressed in the same type of clothing as the man shown in the video on July 27, 2009.

¶ 21 The defendant was taken into custody about 9 p.m. on July 27, 2009, and placed in an interview room where he received *Miranda* warnings, signed a waiver, and agreed to an interview. The interview was videotaped. It was a lengthy interview. The record indicates that the defendant met with the detectives for more than three hours.

¶ 22 The defendant readily acknowledged that he knew Catherine Fowler. He said that he had been to her apartment several times in the past to fix her cable connection. He noted that he had been intermittently employed as a cable installer for a number of cable television providers in the area. The defendant told the detectives that he had gone to Ms. Fowler's apartment building on the evening of July 26, 2009, to fix her cable connection. He said that he had not visited her or been inside her apartment on July 27, 2009. Eventually, the defendant admitted that he went to Ms. Fowler's apartment on the morning of July 27, 2009. After viewing the surveillance video from that morning, the defendant acknowledged that he was the man seen in the video.

¶ 23 As the interview progressed and the detectives advised the defendant of some of the evidence that had been gathered that day, the defendant amended his account of what had occurred during that morning in the apartment. The defendant acknowledged that he hit Ms. Fowler in the head with a baseball bat two times, but he insisted that he did so in self-defense. He explained that Ms. Fowler had occasionally supplied him with drugs, that he owed her some money, and that she became very angry that day because he could not pay his debt. The defendant stated that Ms. Fowler picked up a baseball bat and attacked him, repeatedly swinging the bat at his head and prodding him in the groin. He stated that he grabbed the bat after she hit him in the groin a second time. He swung the

bat and hit her in the head. He said that she continued to come at him, so he swung and hit her in the head again. He then panicked and left the apartment.

¶ 24 The defendant did not testify or present evidence. The defense tendered instructions on second-degree murder. During closing argument, the defendant's attorney told jurors that the State failed to prove beyond a reasonable doubt that the defendant went to Ms. Fowler's apartment with the intent to murder her and that the defendant's own statements to the police showed that he had tried to defend himself. The jury returned guilty verdicts on all three counts of murder and one count of armed robbery.

¶ 25 On appeal, the defendant contends that it was error to admit the surveillance videos where the State failed to lay an adequate foundation for admission of the evidence under the silent witness theory. The defendant acknowledges that the defense neither challenged the admissibility of the recordings during the trial nor raised the issue in a posttrial motion. He asks this court to consider his arguments under the plain-error doctrine because the evidence was closely balanced and because the error was of such magnitude that it deprived him of a fair trial.

¶ 26 The admission of a surveillance video is within the sound discretion of the trial court and its decision will not be disturbed absent an abuse of discretion. *People v. Taylor*, 2011 IL 110067, ¶ 27, 956 N.E.2d 431. An abuse of discretion occurs when the trial court's ruling is fanciful, unreasonable, or when no reasonable person would adopt the trial court's view. *Taylor*, 2011 IL 110067, ¶ 27, 956 N.E.2d 431. In a case, such as this, where the defendant's claim of error is not preserved for review, we may review the

unpreserved claim under the plain-error doctrine. *People v. Herron*, 215 Ill. 2d 167, 177, 830 N.E.2d 467, 474 (2005).

¶ 27 The plain-error doctrine permits a reviewing court to consider an unpreserved error when either (1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone severely threatened to tip the scales of justice against the defendant or (2) a clear or obvious error occurred and the error is so fundamental and of such a magnitude that it affected the fairness of the defendant's trial and the integrity of the judicial process, regardless of the closeness of the evidence. *Taylor*, 2011 IL 110067, ¶ 30, 956 N.E.2d 431; *Herron*, 215 Ill. 2d at 187, 830 N.E.2d at 479-80. Under the plain-error doctrine, we must first determine whether an error occurred. *Taylor*, 2011 IL 110067, ¶ 30, 956 N.E.2d 431.

¶ 28 In this case, the defendant contends that the surveillance videos should not have been admitted because the State failed to lay a proper foundation under the silent witness theory. Under the silent witness theory, a surveillance recording may be admissible in absence of authentication by an eyewitness with personal knowledge of the content if there is adequate proof of the reliability of the process that produced the recording. *Taylor*, 2011 IL 110067, ¶ 35, 956 N.E.2d 431. The following list of factors may be considered in determining the reliability of the production process: (1) the device's capability for recording and general reliability; (2) the competency of the operator; (3) the proper operation of the device; (4) showing the manner in which the recording was preserved (chain of custody); (5) identification of the persons, locale, or objects depicted; and (6) explanation of any copying or duplication process. *Taylor*, 2011 IL 110067, ¶ 35,

956 N.E.2d 431. This list of factors is nonexclusive. Each case must be evaluated individually, and depending on the facts, some of the factors may not be relevant, or additional factors may need to be considered. *Taylor*, 2011 IL 110067, ¶ 35, 956 N.E.2d 431. In each and every case, the accuracy and reliability of the process that produced the recording is the dispositive issue regarding foundation. *Taylor*, 2011 IL 110067, ¶ 35, 956 N.E.2d 431.

¶ 29 In this case, there is no evidence regarding the general reliability of the DVR device and no evidence regarding the competency of the person who installed it. Sergeant Wojtowicz offered testimony regarding the location of the surveillance equipment, the operation of the equipment, the manner in which the original recordings were preserved, and the manner in which copies were made and preserved. Sergeant Wojtowicz testified that three cameras had been installed on the main floor of the victim's apartment building. One camera was trained on the foyer, including the victim's apartment door, a second on the hallway, and a third on the area near the laundry room. Sergeant Wojtowicz seized and secured the surveillance equipment. He reviewed the video footage from July 26, 2009, and July 27, 2009, and found that the cameras were working and that the equipment had recorded those three locations during that two-day period. Sergeant Wojtowicz found that the DVR was recording in real time and at actual speed, but that the time clock on the DVR was five minutes behind the actual time. He viewed the original video on the hard drive, and then used the system's internal software programs to back up the original digital content and to copy the original content to compact discs. Sergeant Wojtowicz testified that the copies were recorded at real-time

speed. He also testified that he compared the images on the compact discs with the original recordings and determined that the images on the compact discs accurately reflected the images on the original recordings. During cross-examination, Sergeant Wojtowicz was asked whether some parts of the video had been recorded in slow motion. He testified that the recordings were initially played at real-time speed, and then, at the direction of the prosecution, the video operator replayed certain portions in slow motion.

¶ 30 After reviewing the record, we find that an adequate foundation was laid for the admission of the surveillance videos and we find no abuse of discretion in admitting them. In this case, the existence of the video recordings constitutes sufficient proof that the DVR equipment was capable of recording and that it was properly functioning on July 26, 2009, and July 27, 2009. The testimony of Sergeant Wojtowicz was adequate to establish that the original content had been preserved and that the copies were true and accurate, without changes, additions, or deletions. There is no evidence that the recordings were tampered with or otherwise fabricated. The defendant has not made a colorable claim that the recordings are not authentic or accurate, or that they have been fabricated, tampered with, or otherwise contaminated. In fact, as the State has noted, during the videotaped interview with police, the defendant was shown the surveillance footage from July 27, 2009, and he admitted that he was the person depicted in the footage. Thus, the defendant, himself, authenticated the relevant portions of the July 27, 2009, video. It bears repeating that the dispositive issue in every case is the accuracy and reliability of the process that produced the recordings. In our view, the accuracy and

reliability of the process has been established, and there was an adequate foundation for admission of the surveillance videos under the silent witness doctrine.

¶ 31 Even if the admission of the videos was error, the defendant has not established the alleged error rises to the level of plain error. The evidence in this case was not so closely balanced that the alleged erroneous admission of the videos alone severely threatened to tip the scales of justice against the defendant. Nor do we believe that the alleged error was of such magnitude that it affected the fairness of the trial or the integrity of the judicial process.

¶ 32 In his next point, the defendant contends that the mittimus must be corrected to reflect a single conviction for first-degree murder where there was only one victim and a single act that resulted in her death. The defendant notes that at sentencing the trial court merged the convictions for first-degree murder into one judgment for intentional murder (count I), but this was not reflected on the mittimus. The State agrees that the mittimus should be corrected to reflect a single conviction for intentional murder.

¶ 33 Accordingly, the judgment is affirmed. The cause is remanded to correct the mittimus to reflect a single conviction for murder under count I, intentional murder.

¶ 34 Judgment affirmed; cause remanded.