SIXTH DIVISION
March 13, 2015

No. 1-13-0881

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 09 CR 2174
	)	
GEORGIO DUKES,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Hall concurred in the judgment.

ORDER

¶ 1 *Held*: We affirmed defendant's convictions of five counts of aggravated battery with a firearm finding defendant waived his claim of error with regard to the admission of certain allegedly irrelevant evidence and that the admission of this evidence did not constitute plain error. We also found that the trial court conducted an adequate *Krankel* hearing on defendant's *pro se* claims of ineffective assistance of counsel, and that any error in the failure to appoint independent counsel to represent defendant on his *pro se* claims was harmless given the overwhelming evidence against him.

¶ 2 Following a bench trial, defendant, Georgio Dukes, was convicted of five counts of aggravated battery with a firearm and sentenced to nine years' imprisonment on each count, with the sentences to run concurrently. On appeal, defendant contends: (1) the trial court admitted irrelevant and prejudicial testimony; (2) his trial counsel committed ineffective assistance; (3) the trial court erred by failing to appoint different counsel to represent him on his *pro se* claims

that his trial counsel was ineffective; and (4) the trial court failed to make an adequate inquiry into his ineffective assistance claims. We affirm.

¶ 3 Defendant was charged with five counts each of attempted murder, aggravated battery with a firearm, aggravated battery based on great bodily harm, aggravated battery based on permanent disfigurement, aggravated battery based on permanent disability, and aggravated battery based on committing a battery on a public way. The charges all stemmed from a shooting that occurred on January 9, 2009, in Chicago. The cause proceeded to a bench trial.

¶ 4 I. State's Witnesses

¶ 5 At trial, John Sharp testified he was 19-years old and had attended his freshman and sophomore years of high school in Hyde Park High School with defendant. About three years prior to trial, during his sophomore year of high school, John Sharp and defendant got into a fight. They did not talk to each other for a year or two after that. About a week prior to the January 9 shooting, they saw each other at a gas station and defendant punched John Sharp in the eye.

¶ 6 John Sharp testified that on January 9, 2009, he went to a basketball game at Dunbar High School with his brothers, Jerome and Dominique Sharp, and with his friends Shamari Smith, Raymond Jefferson, and Deric Balark. After the game, they all went outside near the front of the school. John Sharp saw defendant walking about 10 feet away. Defendant was wearing a black hoodie and a scarf around his face. John Sharp said to his brothers: "There goes Georgio."

¶ 7 Defendant started shooting at John Sharp and his companions. John Sharp did not actually see the gun; he saw defendant's "[a]rm in the sleeve and fire was coming from the sleeve." John Sharp did not see anyone else with a gun. He heard 7 to 10 gunshots and began to

run away. John Sharp was shot in the ankle. An ambulance arrived and transported him to a hospital, where he was treated for a fractured tibia. John Sharp identified defendant as the shooter from a photo array on January 13, 2009, and from a physical lineup on January 14.

¶ 8 Jerome Sharp testified he was 16-years old at the time of trial and had been sentenced to probation on a juvenile case for unlawful use of a weapon. On January 9, 2009, at about 8 or 8:30 p.m., he and his brothers, John and Dominique Sharp, and his friends, Ms. Smith, Mr. Jefferson, and Mr. Balark were standing outside Dunbar High School following a basketball game. One of his brothers said: "There goes Georgio." Jerome Sharp turned around and saw defendant standing about 10 feet away. He knew defendant "from the neighborhood and from [his] brothers." Defendant was wearing a black hoodie with a scarf around his face so that Jerome Sharp could only see defendant's eyes and part of his nose. He noticed a gun in defendant's hand, saw fire coming out of the gun, and heard about 10 to 12 shots. Jerome Sharp was struck in the foot. He did not notice anyone else with a gun that evening. An ambulance took him to the hospital and he later had surgery on his right foot. On January 14, 2009, Jerome Sharp identified defendant in a lineup as the shooter.

¶ 9 On cross-examination, Jerome Sharp testified he and his brother John Sharp saw defendant at a gas station at 75th Street and Yates Boulevard about a week before the shooting. Neither Jerome nor John Sharp talked with defendant at the gas station. Jerome Sharp testified on cross-examination that on January 9, he did not recognize the shooter as defendant, whom he had seen at the gas station the week before.

¶ 10 Prior to redirect-examination, the trial court informed the prosecutor that Jerome Sharp had testified inconsistently on direct and cross-examination as to whether he recognized the

shooter as defendant. The trial court stated: "He's sixteen. Make sure he understands what is being asked of him."

¶ 11 On redirect-examination, Jerome Sharp testified:

"Q. When you and your brothers came out of Dunbar, you were standing on the street in front of the school?

A. Yeah.

Q. And the defendant Georgio Dukes was standing behind you?

A. Yeah.

Q. He walked by you, is that correct?

A. Yeah, he walked in the street.

Q. And when you saw him there that night, it was the same person that you saw at the gas station a week before, is that right?

A. Yes.

Q. And as he was walking by you, your brother said, 'There goes Georgio'?

A. Yeah.

***

Q. Did you see his face as he walked by you?

A. Yeah, I seen the bags under his eyes.

***

Q. You recognized him as Georgio Dukes, is that right?

A. Yes."

¶ 12 On recross-examination, Jerome Sharp reiterated that he saw the shooter's eyes and "knew" the shooter was defendant.

¶ 13 Dominique Sharp, who was 18-years old at the time of trial, testified he attended the basketball game at Dunbar High School on January 9, 2009, with his brothers and some friends. After the game, Dominque Sharp and the rest of his group went outside, where Dominque Sharp saw defendant, who he knew from when they had both attended Hyde Park High School together. Defendant was standing on the same side of the street; about 10 feet away. Defendant was wearing a black hoodie and a black scarf; Dominque Sharp was able to see defendant's eyes. Defendant had a gun in his right hand and he fired about 10 shots at Dominque Sharp and his group. Dominque Sharp was not hit.

¶ 14 Dominque Sharp identified defendant as the shooter in a photo array on January 13, 2009. He identified defendant in a lineup on January 14, 2009. On cross-examination, Dominque Sharp testified he only recognized defendant after one of his brothers said: "There goes Georgio." On redirect-examination, Dominque Sharp testified he knew what defendant looked like and recognized him on January 9 by the way he looked.

¶ 15 Deric Balark, who was 18-years old at the time of trial, testified he went to the basketball game at Dunbar High School on January 9, 2009, with the Sharp brothers (John, Jerome, and Dominique). After leaving the game, he went outside in front of the school and was standing near Jerome and Dominque Sharp, as well as Mr. Jefferson and Ms. Smith, when John Sharp came over and said: "There go George." Mr. Balark looked over and saw defendant standing 25 to 30 feet away, wearing a scarf. Mr. Balark was able to see the top part of defendant's face, and he recognized defendant by his eyes. Mr. Balark did not know defendant personally, but had previously seen a photograph of him and noted the bags under his eyes.

¶ 16 Mr. Balark saw defendant put on his black hoodie, pull out a gun from "the right pocket of his hoodie," and start shooting. Mr. Balark heard more than 10 shots fired. Mr. Balark also

heard the sound of shots being fired from a second gun from the same direction as defendant. Mr. Balark did not see who was firing that second gun. Mr. Balark was shot four times on the left side of his body. An ambulance took him to a hospital, where two different "sets of officers" showed him photo arrays. In one of those photo arrays, Mr. Balark recognized defendant, the person who had shot him, but he did not tell the officers at the hospital that he recognized the shooter; instead, Mr. Balark told the officers he was in a lot of pain and he asked them to come back later. Mr. Balark subsequently viewed a lineup at the police station on January 14, 2009, and identified defendant as the person who had shot him. Mr. Balark also signed a statement on January 14, 2009, indicating he had been in pain while at the hospital and did not then want to view a photo array, and therefore he did not tell the officers at the hospital that he recognized the photograph of defendant as the shooter.

¶ 17 Timothy Jackson, who was 18-years old at the time of trial, testified he had a pending misdemeanor case for theft and that no one had made him any promises with respect to that case in exchange for his testimony. Mr. Jackson testified that on January 9, 2009, he watched the basketball game at Dunbar High School and then went outside in front of the school and stood about two or three feet from defendant, who he had known since 2006 and who he had seen earlier that day in his neighborhood. Defendant was wearing a black hoodie, a face mask, and purple and black gym shoes. Defendant had also been wearing the black hoodie and the purple and black gym shoes when Mr. Jackson saw him earlier in the day.

¶ 18 Mr. Jackson saw defendant raise his right arm and point a black gun at Mr. Jackson's friends. Mr. Jackson saw fire come from the gun, heard "a lot" of gunshots, and ran across the street. Mr. Jackson also heard shots fired from a second shooter behind defendant; Mr. Jackson did not see this shooter. Mr. Jackson was not struck by any of the gunfire.

¶ 19 On January 14, 2009, Mr. Jackson picked out defendant from a lineup and identified him as the person who had shot at his friends. Defendant was wearing the same purple and black shoes he had been wearing on the night of the shooting.

¶ 20 On cross-examination, Mr. Jackson stated that when the shooting occurred on January 9, he was high on marijuana and was also drunk, so he is not entirely certain that his memories of what occurred on that evening are accurate. However, elsewhere in his testimony on cross-examination, Mr. Jackson reiterated that although he was high and drunk on January 9, he was certain he saw defendant shoot the gun. Mr. Jackson also testified that on January 15, 2009, he stated to the police that while watching defendant fire his gun, he saw another gunman with light black skin, wearing a red and black hat. At trial, though, Mr. Jackson testified he "really don't know about the other [gunman]."

¶ 21 On redirect-examination, Mr. Jackson reiterated that on January 9, he saw defendant's face, saw his shoes, and saw that he had a gun in his hand which he was pointing at Mr. Jackson's friends, who had been shot.

¶ 22 Raymond Jefferson, who was 18-years old at the time of trial, testified he attended the basketball game at Dunbar High School on January 9, 2009, after which he went outside in front of the school and talked with Mr. Balark. Mr. Jefferson heard two guns being fired from behind him, and he was struck once in his leg. Mr. Jefferson did not see who shot him.

¶ 23 Shamari Smith, who was 16-years old at the time of trial, testified he attended the basketball game at Dunbar High School on January 9, 2009. After leaving the game, Ms. Smith stood outside the school next to John Sharp. Ms. Smith heard over 12 gunshots coming from two different guns behind Mr. Sharp and she was grazed on the back of her head. Ms. Smith ran across the street and laid down; Mr. Sharp did not see the shooters.

¶ 24 Evidence technician Alex Aranowski testified he arrived at Dunbar High School at about 8:40 p.m. on January 9, 2009, and, at that time, he observed blood spatter and droplets and recovered 18 expended shell casings. Nine of the casings were .45-caliber Winchester brand-shell casings, and the other nine casings were .40-caliber Winchester-brand shell casings.

¶ 25 II. Motive Evidence

¶ 26 The State's theory of the crime was that defendant committed the shooting to avenge the death of his twin brother, Sergio Dukes, which occurred on December 3, 2008. In support of this theory, the State called Detective David Cavazos and Deon Sanderson.

¶ 27 Detective Cavazos testified that on December 3, 2008, he was assigned to investigate a shooting near Harlan High School at 9654 South Indiana Avenue in Chicago. Detective Cavazos learned that shortly after a basketball game at Harlan High School, Sergio Dukes was shot multiple times and died at the hospital from his wounds. Detective Cavazos said the investigation into Mr. Duke's murder was ongoing.

¶ 28 On cross-examination, Detective Cavazos testified that witnesses to Mr. Duke's shooting described the shooter as having a bad case of acne. Witnesses also gave three different names of people who may have been involved in the shooting; the names were Kwan, Mike, and Manno.

¶ 29 Mr. Sanderson testified that in December 2008, he went to a party "in the Hyde Park area" with his friend Zak and some of Zak's friends. At the party, Mr. Sanderson heard defendant talking about how his brother had been shot and killed and that he intended to "[l]ay the other side down. Lay them down." Mr. Sanderson heard defendant say he was going to "lay everybody out from that block." Mr. Sanderson testified that he did not know what defendant meant when he said he was going to "lay everybody out on the block."

¶ 30 Mr. Sanderson testified to having a pending residential burglary case. No one had made him any promises with respect to his pending case in exchange for his testimony.

¶ 31 III. Defense Witnesses

¶ 32 Defendant's mom, Jacquelyn Dukes, testified that on January 9, 2009, she was at her apartment at 6144 South Kimbark Avenue in Chicago, watching television with defendant, as well as with her two other sons, her daughter, her sister, and some other visitors. Ms. Dukes testified that defendant was there all night, except for when he went to the apartment of their neighbor, Mary Smith, who lived two doors down, to get some medicine for a toothache. Defendant left at 6:15 p.m. and returned about two minutes later.

¶ 33 On cross-examination, Ms. Dukes admitted there were times during the evening of January 9, 2009, when she was watching television in the bedroom, and was not in the living room where defendant was watching television. Ms. Dukes went to bed at midnight on January 9, and defendant was home at that time. Ms. Dukes testified that she learned defendant was arrested on January 14, 2009, in connection with the January 9 shooting, but that she knew he was not the shooter because he was home with her on January 9 when the shooting occurred. Ms. Dukes did not go to the police department, to the State's Attorney's office, or to the media to tell them her son had an alibi for the shooting. She testified that the media contacted her and that she told a reporter that defendant was home with her at the time of the shooting. Ms. Dukes could not remember the reporter's name.

¶ 34 Mary Smith testified she lives at 6138 South Kimbark Avenue in Chicago. On May 9, 2009, defendant went to her apartment "about 6, maybe 6:05" in the evening and asked her for some medicine for a toothache. Ms. Smith gave defendant the medicine, they talked for "maybe about two or three minutes," and then he left.

¶ 35 Defendant's brother, Ferris Dukes, testified that on January 9, 2009, he was in the bedroom at Jacquelyn Dukes' house at 6144 South Kimbark Avenue in Chicago, from "5 o'clock on down," watching television. Defendant was also there during that time, watching television in the living room. Ferris Dukes saw defendant leave the house. Ferris Dukes went to bed at about 12 a.m., and defendant was still in the house at that time.

¶ 36 On cross-examination, Ferris Dukes admitted that from where he was sitting in the bedroom, he could not see defendant in the living room. He testified that although he learned defendant had been arrested on January 14 in connection with the January 9 shooting, he did not go to the police station, to the State's Attorney's office, or to the media to inform them that defendant was with him at the time of the shooting. On re-direct examination, Ferris Dukes testified he did not go to the police after defendant was arrested because he believed it was a case of mistaken identity and that defendant would be released in eight hours. On re-cross examination, Ferris Dukes testified he did not go to the police even after defendant was not released after eight hours.

¶ 37 Defendant's sister Theresa Dukes testified that at about 7 p.m. on January 9, 2009, she was at her house at 99053 South Lowe Avenue in Chicago. She received a phone call from her daughter, Taciana Wade, who had gone to the Dunbar High School basketball game. Ms. Wade told her she did not have a ride home from the game. Theresa Dukes then called her mother, Jacquelyn Dukes, at her house at about 7:30 p.m. to let Jacquelyn Dukes know she was going to pick up Ms. Wade. Defendant answered the phone and they spoke for about two minutes. Theresa Dukes never saw defendant in person on the evening of January 9, 2009.

¶ 38 Eric Wade, Ms. Wade's father, testified that at about 8 p.m. on January 9, 2009, he was watching television with some friends when he got a phone call telling him there had been a

shooting at the basketball game Ms. Wade had attended. Mr. Wade called Jacquelyn Dukes' land line to see if Ms. Wade was at her house and he eventually spoke on the phone with defendant. Mr. Wade testified he spoke with defendant on the phone "close to" 8 p.m. On cross-examination, Mr. Wade stated he was not sure exactly what time he talked to defendant on the phone.

¶ 39 Defendant testified that on January 9, 2009, he lived with his mother at 6144 South Kimbark Avenue in Chicago. On that day, he was home from about 5 p.m. until midnight. Defendant was watching a basketball game on television and hanging out with family and friends. The only time he left, all evening, was when he went to a neighbor's house to get medicine for a toothache. He returned to his house about five minutes later.

¶ 40 Defendant testified he was not at Dunbar High School between 7:40 p.m. and 8 p.m. on January 9, 2009, that he did not have a gun on January 9 and that he had never shot a gun. Defendant also testified he did not know who murdered his brother and that he had never sought revenge for his brother's death. Defendant admitted he knew John Sharp from Hyde Park High School and that he had a "small altercation" with him at a gas station two weeks prior to the January 9 shooting. Defendant explained that John Sharp had said something disrespectful to him at the gas station, and they got into "a little fist fight."

¶ 41 On cross-examination, defendant testified he could not remember what he was doing before 5 p.m. on January 9, 2009. Defendant testified that he was not wearing a black hoodie on the night of the shooting. Defendant stated that he owned a pair of black and purple gym shoes, but denied that he wore them on January 9, 2009.

¶ 42 IV. Closing Arguments

¶ 43 During closing arguments, the State argued that the eyewitnesses credibly testified to seeing defendant shoot toward them on January 9. The State also argued that Mr. Sanderson's testimony had established defendant's motive for the shooting; namely, that he wanted to avenge the murder of his brother, Sergio Dukes. Defense counsel argued that the eyewitness identification was suspect because the shooter's face was partially obscured. Defense counsel also argued that the alleged motive for the January 9 shootings was suspect because defendant admitted, on the stand, that he did not know who had shot Sergio Dukes. Defense counsel also pointed out that Detective Cavazos had testified that Sergio Dukes' shooter had "names like Mike or Quano," and that "none of those names sound familiar or even close to the names of the State's witnesses." Defense counsel also noted that Sergio Dukes' shooter was said to have a bad case of acne, but that "none of the State's witnesses [here] had a severe case of acne." Accordingly, defense counsel argued that the testimonies of Detective Cavazos and Mr. Sanderson failed to establish a motive for defendant to shoot the victims.

¶ 44 V. Verdict and Posttrial Proceedings

¶ 45 The trial court acquitted defendant of all the attempted murder counts and all the aggravated battery counts alleging permanent disability. The trial court convicted defendant of five counts each of aggravated battery with a firearm, aggravated battery based on great bodily harm, aggravated battery based on permanent disfigurement, and aggravated battery based on committing a battery on a public way. In so convicting defendant, the trial court expressly found the testimonies of the five eyewitnesses identifying him as the shooter "most compelling" and believable. The trial court merged all the aggravated battery counts into the five counts of aggravated battery with a firearm.

¶ 46 Defense counsel filed a motion for a new trial alleging that the State failed to prove him guilty beyond a reasonable doubt because the eyewitness testimony was not credible. Counsel also argued that witnesses said the shooter used his right hand to shoot, but defendant is left-handed. The trial court denied the motion for a new trial.

¶ 47 At the sentencing hearing which followed, the trial court allowed defendant to speak in allocution. Defendant stated that he is innocent, and that his attorney provided ineffective assistance by failing to point out at trial that he is left-handed while the shooter was right-handed. Defendant also complained that his trial counsel did not do enough to impeach the eyewitness testimony. The trial court stated that defense counsel's performance was adequate because he brought out at trial that the shooter's face was partially obscured. The trial court also noted in pertinent part: "Your lawyer worked with what he had to work with. The problem was that so many people identified you, they know you. *** You got identified by numerous people that I don't believe were framing you. They know you, and they saw you." The trial court sentenced defendant to nine years' imprisonment on each count, with the sentences to run concurrently. Defendant appeals.

¶ 48 VI. Analysis

¶ 49 First, defendant contends the trial court erred by admitting the testimonies of Detective Cavazos and Mr. Sanderson in support of the State's theory that defendant committed the shootings in this case in retaliation for the murder of his brother Sergio Dukes. As discussed, Detective Cavazos testified that Sergio Dukes was shot and killed on December 3, 2008; that witnesses indicated the shooter had bad acne; and that three possible suspects were named Kwan, Mike, and Manno. Mr. Sanderson testified that in December 2008, he attended a party at which he overheard defendant talk about the murder of Sergio Dukes and stated that he was going to

"lay everybody out from that block." Defendant contends the testimonies of Detective Cavazos and Mr. Sanderson were irrelevant and inadmissible because there was no evidence that the people who were shot in this case (none of whom were named Mike, Kwan, or Manno, or whom had bad acne), had anything to do with the murder of Sergio Dukes or, that defendant had any reason to believe that these people were connected to the death of Sergio Dukes. Defendant also contends the State erred, during opening statement and closing arguments, by arguing its theory that defendant's motive for the January 9 shooting was to avenge the murder of his brother, Sergio Dukes.

¶ 50 Defendant waived review by failing to object to the testimonies of Detective Cavazos and Mr. Sanderson, or to the State's opening statement or closing argument. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Defendant contends we should consider the issue under the plain-error rule. "The plain-error rule bypasses normal forfeiture principles and allows a reviewing court to consider unpreserved claims of error in specific circumstances." *People v. Thompson*, 238 Ill. 2d 598, 613 (2010). We apply the plain-error doctrine when a clear or obvious error occurred and, either: (1) "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) the "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 (2007). Defendant has the burden of persuasion in plain-error review. *Thompson*, 238 Ill. 2d at 613.

¶ 51 First, defendant argues for review under the first prong of the plain-error doctrine, contending that the evidence was so closely balanced that the motive evidence and the State's arguments based on this evidence threatened to tip the scales of justice against him.

¶ 52 Review of all the evidence at trial indicates that it was not closely balanced, as five eyewitnesses identified defendant as the shooter. In assessing the reliability of the identification evidence, we use the factors set forth by the Supreme Court in *Neil v. Biggers*, 409 U.S. 188 (1972): (1) the opportunity the witnesses had to view the criminal at the time of the crime; (2) the witnesses' degree of attention; (3) the accuracy of the witnesses' prior description of the criminal; (4) the level of certainty demonstrated by the witnesses at the identification confrontation; and (5) the length of time between the crime and the identification confrontation. *Biggers*, 409 U.S. at 199-200. No single factor is dispositive, and the trier of fact should consider all five factors in assessing the reliability of identification testimony. *People v. Smith*, 2012 IL App (4th) 100901, ¶ 87.

¶ 53 With respect to the first factor, the opportunity the five witnesses had to view defendant at the time of the crime, the first witness, John Sharp, saw defendant walking 10 feet away at the time of the shooting. Although defendant was wearing a black hoodie and scarf, John Sharp recognized him and said to his brothers: "There goes Georgio." John Sharp knew what defendant looked like because they had gone to high school together and had gotten into a fist fight about a week prior to the shooting. The second witness, Jerome Sharp, knew defendant from the neighborhood and from witnessing his fight with John Sharp and, also, saw him 10 feet away at the time of the shooting. After giving inconsistent testimony on direct and cross-examination as to whether he recognized defendant as the shooter, Jerome Sharp explained, on redirect and recross examination, that although the shooter was wearing a black hoodie and scarf, Jerome Sharp could see the distinctive bags under his eyes, and recognized him. The third witness, Dominique Sharp, knew defendant because they had attended high school together and saw him 10 feet away at the time of the shooting. Although defendant was wearing a hoodie and

scarf, Dominque Sharp saw his eyes and recognized him. The fourth witness, Mr. Balark, had previously seen a photograph of defendant and noted the distinctive bags under his eyes. At the time of the shooting, Mr. Balark saw defendant standing 25 to 30 feet away, wearing a scarf. Mr. Balark saw the top portion of defendant's face and recognized him by his eyes. The fifth witness, Timothy Jackson, saw defendant earlier on the day of the shooting wearing a black hoodie and purple and black gym shoes. At the time of the shooting, Mr. Jackson was standing two or three feet from defendant, and saw that he was wearing the same black hoodie and purple and black gym shoes. Mr. Jackson also recognized defendant from the visible portion of his face. All five witnesses testified to seeing defendant shooting toward them.

¶ 54 With respect to the second factor, the witnesses' degree of attention was high, as John Sharp saw defendant just prior to the shooting and pointed him out to Jerome and Dominique Sharp, and Mr. Balark, all of whom looked over at defendant, saw his distinctive eyes, and then witnessed the shooting. Mr. Jackson's degree of attention also was high, as he stood only two or three feet from defendant just prior to the shooting, noticed the visible portion of his face, as well as the clothes he was wearing, including his distinctive gym shoes, and witnessed the shooting.

¶ 55 The third factor, the accuracy of the witnesses' prior description of defendant, is not applicable here as the record does not contain any testimony about prior descriptions of the shooter.

¶ 56 With respect to the fourth factor, the level of certainty demonstrated by the witnesses at the identification confrontation, John and Dominique Sharp each identified defendant in a photo array, and all five witnesses identified defendant in a lineup. Mr. Balark did not identify defendant in a photo array shown to him while at the hospital, but he explained that he was in

pain at that time and did not want to view the photo array, so he told the officers to come back later. Mr. Balark subsequently identified defendant in a lineup.

¶ 57 With respect to the fifth factor, the length of time between the crime and the identification confrontation, there were only four days between the January 9 shooting and John and Dominique Sharp's identification of defendant from the photo array on January 13. There were only five days between the occurrence of the shooting on January 9, and the five witnesses' identifications of defendant in a lineup on January 14.

¶ 58 Our review of the *Biggers* factors indicates that all five witnesses had adequate opportunity at the time of the crime to view defendant, who they all knew either from their neighborhood, from going to school together, or by previously seeing his photograph. Even though defendant's face was partially obscured by a hoodie and scarf at the time they viewed him, John Sharp recognized him as the person he had gotten into a fist fight with a week earlier; Dominque Sharp saw defendant's eyes and recognized him; Jerome Sharp recognized him by his distinctive baggy eyes; and Mr. Jackson recognized him from the visible portion of his face and by the fact that he was wearing certain articles of clothing he had been wearing earlier in the day. Mr. Balark saw defendant wearing a scarf *before* his hoodie was up, saw the top portion of his face, and recognized him by his distinctive baggy eyes. Also, the degree of attention of all five witnesses was high, and they demonstrated certainty at the identification confrontations, which occurred less than one week after the shooting. Thus, the *Biggers* factors supports the trial court's finding here that the witnesses' identifications of defendant as the shooter were reliable. Given the reliable identification of defendant by five eyewitnesses, we cannot say defendant has met his burden of showing that the evidence was closely balanced under the first prong of the plain-error doctrine.

¶ 59 Defendant questions the credibility of the eyewitnesses, but the trial court found them credible and we will not substitute our judgment for the trial court's credibility determinations. *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001).

¶ 60 Defendant contends that, notwithstanding the eyewitness testimony, the evidence was closely balanced because his mother, Jacquelyn Dukes, and his brother, Ferris Dukes, corroborated his alibi that he was at his mother's house at the time of the shooting. However, both Jacquelyn and Ferris Dukes admitted at trial that on the night of the shooting, they spent part of their time in the bedroom watching television, away from defendant, who was in the living room. Ferris Dukes testified that from where he was sitting in the bedroom, he could not see defendant. In fact, Ferris Dukes testified he never saw defendant leave the apartment on January 9, even though the testimonies of defendant, Jacquelyn Dukes, and Mary Smith established that defendant left the apartment for a few minutes around 6 or 6:15 p.m. to get some medicine for a toothache. Thus, Jacquelyn and Ferris Dukes cannot provide an iron-clad alibi for defendant, as it is possible he could have left the house, committed the shooting, and then returned without their knowledge that he had ever gone. Defendant also points to the testimonies of Eric Wade and Theresa Dukes, that they each spoke on the phone with defendant on the night of the shooting; however, the evidence is unclear as to when exactly the phone calls were made and thus do not definitively show that defendant was at home at the time of the shooting. In sum, defendant's alibi evidence, which does not provide a clear picture of defendant's whereabouts at the time of the shooting, does not render this case closely balanced where five eyewitnesses affirmatively identified defendant as the shooter.

¶ 61 Defendant also contends that, notwithstanding the identification testimonies of the five eyewitnesses, we should review the admission of the motive evidence, and the State's arguments

based on this evidence, for plain error as the trial court "specifically relied" on the motive evidence when finding him guilty. Review of the trial court's findings after the bench trial indicate that the trial court noted that the motive evidence indicated defendant wanted to "lay some people out" as retaliation for the shooting of his brother; however, the trial court further noted that the motive evidence was "a little bit vague as to the circumstances of who was going to be laid out in particular." The trial court later stated it found "most compelling" that defendant had been identified by the five eyewitnesses; the court specifically noted that the witnesses had the opportunity to observe the shooter and that they all identified defendant "almost immediately." Based on the eyewitness testimony, the trial court stated: "I find [defendant] was indeed the shooter."

¶ 62 As discussed, given the testimonies of these five eyewitnesses identifying defendant as the shooter, defendant has failed to meet his burden of showing that the evidence at trial was closely balanced under the first prong of the plain-error doctrine.

¶ 63 In his reply brief, defendant argues we should review the admission of the motive evidence, and the State's arguments based on this evidence, under the second prong of the plain-error doctrine. Our supreme court recently has held that to obtain relief under the second prong of the plain-error doctrine, "defendant must demonstrate not only that a clear or obvious error occurred [citation], but that the error was a structural error." *People v. Eppinger*, 2013 IL 114121, ¶ 19. A structural error is "a systemic error which serves to erode the integrity of the judicial process and undermine the fairness of the defendant's trial." (Internal quotation marks omitted.) *People v. Thompson*, 238 Ill. 2d at 614. Our supreme court has recognized an error as structural in only a limited class of cases, including when there is a complete denial of counsel, trial before a biased judge, racial discrimination in the selection of a grand jury, denial of self-

representation at trial, denial of a public trial, and a defective reasonable doubt instruction. *Id*. at 609. Defendant makes no argument that the admission of the motive evidence, and the State's arguments based on this evidence, falls within the class of cases constituting a structural error; accordingly, defendant has failed to meet his burden of persuasion.

¶ 64 Defendant next contends his trial counsel was ineffective for failing to object to the admission of the motive testimony and to the State's arguments thereon. "To establish a claim of ineffective assistance of counsel, a defendant must show: (1) his attorney's representation fell below an objective standard of reasonableness; and (2) that he was prejudiced by this deficient performance." *People v. Sumler*, 2015 IL App (1st) 123381, ¶ 85 (citing *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984)). "Failure to make the requisite showing of either deficient performance or sufficient prejudice defeats the claim." *Sumler*, 2015 IL App (1st) 123381, ¶ 85. To satisfy the prejudice prong, defendant must show a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *People v. Simpson*, 2015 IL 116512, ¶ 37. As discussed, the evidence in this case was not closely balanced, where there was testimonies of five eyewitnesses identifying defendant as the shooter; the trial court relied on this eyewitness testimony when convicting defendant. Given this eyewitness testimony relied on by the trial court, defendant has not shown a reasonable probability that he would have been acquitted in the absence of the motive evidence and of the State's arguments thereon. Accordingly, defendant has failed to show he was prejudiced by his counsel's representation and therefore his claim of ineffective assistance fails.

¶ 65 Next, defendant contends the trial court erred by failing to conduct an adequate hearing and appoint new counsel to represent him on his posttrial, *pro se* claim of ineffective assistance of counsel pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984).

"Through *People v. Krankel* and its progeny, the Illinois Supreme Court has provided our trial courts with a clear blueprint for the handling of posttrial *pro se* claims of ineffective assistance of counsel. [Citations.] A trial court is not automatically required to appoint new counsel anytime a defendant claims ineffective assistance of counsel. [Citations.] Instead, the trial court must first conduct an inquiry to examine the factual basis underlying a defendant's claim. [Citations.]

A trial court may base its *Krankel* decision on: (1) the trial counsel's answers and explanations; (2) a 'brief discussion between the trial court and the defendant'; or (3) 'its knowledge of defense counsel's performance at trial and the insufficiency of the defendant's allegations on their face.' [Citations.] 'If a trial court determines that the claim lacks merit or pertains only to matters of trial strategy, then the court need not appoint new counsel and may deny the *pro se* motion.' [Citations.] ***

On review, even if an appellate court finds that a trial court made an error, it will not reverse if it finds that the error was harmless. [Citations.] Our supreme court has held that '[a] trial court's failure to appoint new counsel to argue a defendant's *pro se* posttrial motion claiming ineffective assistance of counsel can be harmless beyond a reasonable doubt.' [Citations.]

However, for the appellate court to be able to conduct a harmless error analysis, there must be enough of a record made concerning defendant's claims of ineffective assistance for the appellate court to evaluate the trial court's ruling. [Citation.] If the trial court conducted no inquiry and made no ruling, the appellate court may need to remand for 'the limited purpose' of allowing the trial court to make an inquiry and ruling. [Citations.]

> On appeal, the standard of review changes, depending on whether the trial court did or did not determine the merits of defendant's *pro se* posttrial claims of ineffective assistance of counsel. Our supreme court has held that if the trial court made no determination on the merits, then our standard of review is *de novo*. [Citation.] *** If a trial court has reached a determination on the merits of a defendant's ineffective assistance of counsel claim, we will reverse only if the trial court's action was manifestly erroneous." *People v. Tolefree*, 2011 IL App (1st) 100689, ¶¶ 21-25.

¶ 66 In this case, the trial court reached a determination on the merits of defendant's ineffective assistance of counsel claims. Therefore, we review the trial court's determination for manifest error.

¶ 67 As discussed, during the hearing on defendant's posttrial motion, defense counsel argued for a new trial based on defendant being left-handed while the shooter was right-handed; the evidence of defendant being left-handed had not been brought out at trial. The trial court denied the posttrial motion. The cause immediately proceeded to the sentencing hearing, during which defendant addressed the court and claimed his trial counsel was ineffective for failing to elicit evidence at trial that he was left-handed while the shooter was right-handed, and for failing to adequately impeach the eyewitness testimony. The trial court engaged in a discussion with defendant about his claims of ineffective assistance, noting that his counsel had brought out that the shooter's face was partially obscured and that the testimonies of the five eyewitnesses identifying defendant as the shooter was believable. The trial court, ultimately, determined that both of defendant's claims of ineffective assistance lacked merit and proceeded to sentence defendant to five concurrent terms of nine years' imprisonment.

¶ 68 The trial court's hearing on defendant's *pro se* claims of ineffective assistance of counsel was adequate under *Krankel* where the court discussed the claims with defendant directly and also based its decision on its knowledge of counsel's performance at trial and of the evidence presented. *Id.* ¶ 22. To the extent, if any, that the trial court's decision not to appoint counsel to represent defendant on his *pro se* claims of ineffective assistance was manifestly erroneous, the error was harmless given the overwhelming testimonies of the five eyewitnesses identifying defendant as the shooter, which the trial court found to be credible and reliable.

¶ 69 For the foregoing reasons, we affirm the circuit court.

¶ 70 Affirmed.