

THIRD DIVISION
April 20, 2016

Nos. 1-14-1210 and 1-14-1212
(CONSOLIDATED)

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	Nos. 12 CR 18981
)	12 CR 20992
)	
MAURICE HOLMES,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Mason and Justice Lavin concurred in the judgment.

O R D E R

- ¶ 1 *Held:* Defendant's convictions and sentences affirmed where his claim that he was prejudiced by the joinder of his two cases into one bench trial was forfeited, and the plain error doctrine did not apply where the trial court's decision to join the related cases was not erroneous.
- ¶ 2 Defendant Maurice Holmes appeals following a bench trial which joined together two of his separate, but related, criminal cases. In case number 12 CR 18981, defendant was convicted of unlawful use of a weapon by a felon (UUWF) and aggravated assault, and sentenced,

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respectively, to an extended term of 12 years' imprisonment and 364 days' in the Cook County Department of Corrections (CCDOC). In case number 12 CR 20992, defendant was convicted of UUWF, unlawful restraint and misdemeanor battery, and sentenced, respectively, to an extended term of 12 years' imprisonment, 3 years' imprisonment, and 364 days in the CCDOC, with all sentences in both cases running concurrently. On appeal, defendant solely contends that the trial court erred in joining these two cases together into one bench trial because there was no legal basis to do so, and he was greatly prejudiced by the joinder. We affirm.

¶ 3 In case number 12 CR 20992, regarding an incident that occurred with his ex-girlfriend on September 23, 2012, defendant was charged with three counts of UUWF, eight counts of aggravated UUW, two counts of aggravated battery, and one count each of armed violence, aggravated unlawful restraint and unlawful restraint.¹ In case number 12 CR 18981, regarding an incident that occurred with Chicago police four days later, on September 27, 2012, defendant was charged with three counts of UUWF, four counts of aggravated UUW, and three counts of aggravated assault.

¶ 4 On June 5, 2013, five months before trial, the State informed the court that it was considering joining cases 12 CR 20992 and 12 CR 18981. The prosecutor explained "[f]rom a factual standpoint, there is a domestic agg[ravated] assault that grows out of 20992. It is the officers putting him into custody knowing that he is wanted for that event that triggers the second case. And it's only three days later." Defense counsel objected to the joinder. The trial court

¹ Defendant was also initially charged with two counts of being an armed habitual criminal; however, the trial court granted defendant's pretrial motion to dismiss those counts.

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continued the case and stated that it would discuss the issue of joinder with the parties at length on the next court date.

¶ 5 On July 25, 2013, the State informed the court that it planned to file a motion to join the two cases. Defense counsel again objected to the joinder. The court then asked the State what the two cases had in common. The State explained that defendant was being arrested for the domestic incident in the first case when he committed aggravated assault of a police officer in the second case. The following colloquy then occurred:

"THE COURT: September 23rd you allege he had a gun, and the police went to arrest him on that case on September 27th, and on September 27th you are saying he pulled a gun on a police officer?

[PROSECUTOR]: Correct.

THE COURT: We are talking about the same gun on both cases?

[PROSECUTOR]: I believe so, Judge, but I do not know for sure.

[DEFENSE COUNSEL]: Judge, joinder is inappropriate. They are two different dates, two different sets of victims.

THE COURT: No, but he is being arrested for one case, and during the course of his arrest things happen. The State will be allowed to tell the jury about that, what happened during his arrest. That may well show consciousness of guilt if he is trying to avoid his arrest and does everything he can to get the police away from him. It is coming in.

[DEFENSE COUNSEL]: The victim in one case is Rasheeda Redmond.

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THE COURT: Something happened on one date. He was being arrested for whatever Rasheeda Redmond and the Government say happened to her. That happens on September 23rd, whatever, allegedly. Those allegations are investigated by law enforcement, and on September 27th they go to arrest him for that. While he is being arrested, I am told another course of criminal conduct took place during the arrest. Joined. They are joined. They are absolutely joined. It is coming in in any event, and we may as well let jeopardy attach. I will not have two trials. If we go to trial on September 23rd, the circumstances of the arrest would be relevant. If we are going to trial on September 27th, the jury would have a right to know why they are arresting him in the first place. They will be joined. Your objection is noted. Those two are joined. The marijuana cases are not."

¶ 6 At trial, Rashida Redmond testified that defendant was the father of her three-year-old son, and in September 2012, she and defendant were no longer dating and frequently argued. On September 23, 2012, Redmond went to church with her son, mother and several family members. The church was located at Madison Street and Parkside Avenue in Chicago. Shortly after arriving, she left the church and walked to the adjacent convenience store to purchase some soda pop, juice and candy. Redmond entered the store and was texting on her phone when she looked up and saw defendant. Defendant said "[l]et me talk to you" and grabbed her neck. Redmond initially thought that defendant was being playful, but then they started arguing.

¶ 7 During the argument, defendant drew a black gun from his pocket and held it to Redmond's chest, then pointed it at her foot, then again held it to her chest. Defendant then told her that he had already been shot and that he was not afraid to shoot her. Defendant repeatedly

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moved the gun, and Redmond repeatedly told him to stop playing. Redmond pushed away the gun and defendant then hit her in the eye, causing her head to go down. When she looked up, she and defendant began physically fighting. During the fight, Redmond sustained a black eye, a knot on the back of her head, and a bloody lip. Redmond left the store and got her mother, but when they returned to the store, defendant was gone.

¶ 8 A camera inside the store recorded the altercation, and while the video was played for the court, Redmond explained what was happening. She identified defendant entering the store before her, and her subsequent entry. While they argued off camera, the video showed two small children covering their ears and mouths. The video showed Redmond trying to exit the store, and defendant pushing her back in and hitting her. The video then showed defendant handing the gun that he had pointed at her to another man in the store. Redmond explained that she was hitting defendant in self-defense and because she was trying to get around him to exit the store, but he would not let her leave. Redmond eventually was able to leave the store.

¶ 9 Redmond testified that she called police immediately after the incident. About two weeks later, Redmond went to the police station and was shown a photograph of a gun. When shown the same photograph in court, Redmond began crying and identified the gun as the same gun that defendant pointed at her inside the store on September 23, 2012.

¶ 10 Edward Goss testified that about 3:45 p.m. on September 27, 2012, he and his wife were watching television on their enclosed front porch, which faced Parkside Avenue, when he saw a young man running down the street holding a gun in his right hand. Goss could only see the barrel of the gun, which was long. Goss then saw a uniformed police officer chasing the young man, followed by a second officer. Goss never saw the young man point the gun at the officers.

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Shortly after losing sight of the men, Goss heard four or five gunshots. Later that night, Goss and his wife viewed a lineup at the police station, but they were unable to identify the young man.

¶ 11 Chicago police officer Bartel testified that about 3:30 p.m. on September 27, 2012, he and his partner, Officer Sherman, were in uniform and on patrol in their marked police vehicle. Officer Bartel was aware of an investigative alert that had been issued for defendant for domestic battery and aggravated assault with a firearm against Rashida Redmond on September 23, 2012, and he had a photograph of defendant. Officer Bartel also knew defendant from prior contact and frequently saw him in the area.

¶ 12 Officer Bartel saw defendant walking at the corner of Parkside Avenue and Madison Street and called him over to the car. Defendant complied and immediately told the officers "[a]ll I have is a bag of weed," and showed them a bag of marijuana. The officers exited their vehicle, and defendant immediately fled down Parkside Avenue heading northbound towards Washington Boulevard. Officer Bartel ran after defendant while Officer Sherman returned to their vehicle. Over his radio, Officer Bartel notified other officers of the direction they were heading. As defendant was about to turn the corner onto Washington Boulevard, Officer Bartel heard Sergeant Swain yell "gun, drop the gun." Officer Bartel then heard a very close gunshot, which he thought that defendant had fired, but later learned that Sergeant Swain had fired.

¶ 13 As Officer Bartel turned the corner, he immediately saw defendant stumbling and holding in his right hand a blue steel handgun with a very long dark barrel pointed in Officer Bartel's direction. Officer Bartel testified that in fear for his life and for the safety of others, he immediately drew his handgun and fired at defendant. As the officer fired his last round,

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defendant entered an apartment building at 5647 West Washington Boulevard, still carrying his weapon.

¶ 14 Officer Bartel ran towards the doorway joined by Officers Watson and Sweeney.

Initially, the officers were unable to enter the building, and Officer Watson used an axe to break a glass window adjacent to the door. Officer Watson said that he could see defendant inside the building approaching a stairwell, and defendant stood on a landing for a couple of seconds, then returned to the door and let the officers in. Defendant was then placed under arrest. Thereafter, Officer Bartel searched the stairwell for the gun, but did not find it. In court, Officer Bartel was shown the same photograph of a gun that was shown to Redmond, and he identified it as the handgun defendant held in his hand.

¶ 15 Chicago police sergeant Matthew Swain testified that about 3:50 p.m. on September 27, 2012, he was in his marked police vehicle in front of the police station on Madison Street when he heard a police officer state over the radio that he was involved in a foot pursuit. He then saw defendant running northbound on Parkside Avenue from Madison Street followed by Officer Bartel. Defendant was holding the right side of his pants. Sergeant Swain drove parallel to defendant's right side, and as they approached Washington Boulevard, he pulled his car over at a 45-degree angle to the curb. Sergeant Swain then saw defendant remove a blue steel revolver from the right side of his waistband, and as defendant rounded the corner, he turned and pointed the gun towards Officer Bartel. Sergeant Swain shouted at defendant to drop the gun, but he did not comply and continued pointing the gun at Officer Bartel. Sergeant Swain then fired one round at defendant in an attempt to neutralize the threat. Defendant dropped to the ground still holding his gun, then got up and continued running on Washington Boulevard. Officer Bartel

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then fired five rounds at defendant. Defendant again fell to the ground, got up still holding his gun, continued running on Washington Boulevard and entered an apartment building. Shortly thereafter, defendant was arrested in the vestibule of that building.

¶ 16 Following defendant's arrest, Sergeant Swain entered the apartment building, learned that police had obtained consent to search the second-floor apartment, and entered the apartment with several other officers. Therein, he observed an officer recover a blue steel revolver with a long barrel from inside a laundry bag in one of the bedrooms. Based on the length of the barrel, Sergeant Swain was certain that it was the same gun held by defendant.

¶ 17 Chicago police officer Watson testified that he responded to a radio call of a foot chase in progress, and when he arrived at the location he saw defendant running northbound on Parkside Avenue being pursued by Officer Bartel. Officer Watson heard a gunshot, exited his vehicle, then saw Officer Bartel fire shots at defendant. Officer Watson ran onto Washington Boulevard, drew his weapon, and saw defendant enter an apartment building while holding a black or blue steel revolver in his right hand. The officer ran to the door of the building, but was unable to gain entry because the door was locked. He then used his asp baton to break a window adjacent to the door and repeatedly ordered defendant to drop his weapon and show his hands.

¶ 18 Officer Watson further testified that he then saw defendant ascend the stairwell, still holding the revolver in his hand. Defendant stopped before reaching the top of the stairs, and Officer Watson could still see him from the knees down. Five to ten seconds later, defendant descended the stairs with his hands in the air, walked to the front door, lay on the ground as ordered by Officer Watson, and reached up and unlocked the door, allowing the police to enter the building. Defendant was no longer in possession of the gun, and was placed under arrest in

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the vestibule. Following his arrest, police checked several doors inside the building and found that the only one that was unlocked was the door to the second floor apartment. Officer Watson spoke to a woman in that apartment and she gave police consent to search the apartment. The woman also told Officer Watson that at least four other men had run through her apartment after the shots had been fired. Officer Watson testified that he was not sure, but believed that those four men were brought to the police station for questioning. The officer further testified that he never lost sight of defendant when he was inside the apartment building.

¶ 19 The State presented for evidence a certification from the Illinois State Police stating that defendant was never issued a firearm owner's identification (FOID) card. The State also presented certified copies of defendant's 2008 felony conviction for aggravated battery of a police officer, and his 2010 conviction for UUWF.

¶ 20 Defendant testified that on September 24 [*sic*], 2012, he went to the store to buy cigars and chips, unexpectedly ran into Redmond, and began arguing with her about custody of their son. Defendant admitted that he was carrying a gun that day, but denied drawing his weapon during their argument and denied threatening Redmond. After they argued near the freezers, defendant backed up to the door, called his friend into the store, and gave him the gun to take home. He acknowledged that the video showed him handing the gun to his friend. Defendant explained that he gave the gun to his friend because he did not want any mistakes or mishaps to occur that he might regret. He further testified that after he got rid of the gun, he and Redmond became engaged in a physical altercation, and he admitted that he struck her in the face. Following their fight, defendant left the store.

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¶ 21 Defendant further testified that on September 27, 2012, he was walking on Madison Street with his girlfriend when the police stopped him and asked if he had any marijuana. He told them "no" and continued walking. He then told his girlfriend that he was going to run because there was a warrant out for his arrest for the domestic incident that had occurred in the store with Redmond, and because he failed to see his parole officer. Defendant then ran northbound on Parkside Avenue, and Officer Bartel exited his vehicle and chased after him. While running, defendant held his left hip with his right hand because he had pain going through his hip due to two bullets lodged therein. He denied being in possession of a gun that day.

¶ 22 Defendant ran westbound onto Washington Boulevard and heard several gunshots. He also heard the police yelling at him to stop, but he did not comply because the gunshots were very close to him and he feared for his life. He then saw that the door to 5647 West Washington Boulevard was cracked open, and he ran inside the building and slammed the door shut to take cover from the gunshots. As he approached the stairwell, he heard the police officers break the glass window and they ordered him to stop. Defendant stopped, turned around, got down on one knee and opened the door for the officers. He denied that he ascended the stairs and went to the second floor apartment, and again denied having a weapon on him that day.

¶ 23 The defense offered the stipulated testimony of Detective Martinez. Therein, the parties stipulated that Detective Martinez would testify that during his investigation of the incident on September 27, 2012, he spoke with Officer Watson, and the officer never told him that defendant had ascended the stairwell inside the apartment building, or that defendant had ascended the stairwell to the point where Officer Watson could only see him from the knees down.

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¶ 24 The trial court found that all of the State's witnesses were "by far more credible and compelling than Mr. Holmes." In case number 12 CR 20992, the altercation with Redmond, the court found that she did not suffer any injuries, and thus, defendant was guilty of the lesser-included offense of Class A misdemeanor battery rather than aggravated battery. The court also found defendant guilty of unlawful restraint, but not guilty of aggravated unlawful restraint and armed violence. As to all the remaining counts in both cases, which included several counts of UUWF, aggravated UUW and aggravated assault of a peace officer, the court found defendant guilty. In each case, the court merged all of the gun charges into one count of UUWF.

¶ 25 At sentencing, in case number 12 CR 18981, the altercation with police, the court sentenced defendant to an extended term of 12 years' imprisonment for UUWF, and 364 days in the county jail for aggravated assault. In case number 12 CR 20992, the court also sentenced defendant to an extended term of 12 years' imprisonment for UUWF, 3 years' imprisonment for unlawful restraint, and 364 days in the county jail for misdemeanor battery, and ordered that all sentences in both cases would run concurrently.

¶ 26 On appeal, defendant solely contends that the trial court erred in joining his two cases together into one bench trial because there was no legal basis to do so where the cases were not part of the same comprehensive transaction. Defendant also claims that he was greatly prejudiced by the joinder because the trier of fact heard otherwise inadmissible other crimes evidence for each case and likely relied on that evidence in finding him guilty. Defendant further asserts that the trial court's decision to join the cases was primarily based on judicial expediency, which cannot be the only factor considered. Defendant acknowledges that he failed to properly preserve

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this issue for appeal because he failed to raise it in his posttrial motion, but urges this court to consider his argument under both prongs of the plain error doctrine.

¶ 27 In response, the State argues that defendant forfeited this issue for appeal because he did not raise it in his posttrial motion. It further argues that the plain error doctrine does not apply in this case because there was no error where the trial court's decision to join the cases was not an abuse of discretion. The State notes that the trial court found that the cases were related because one case stemmed from the other. The State also argues that defendant was not prejudiced where the trial court was the trier of fact, and thus, even if the cases were tried separately, the court would have heard all of the evidence in both cases, and the result would not have been different.

¶ 28 Initially, the parties agree that defendant forfeited this issue for appeal because, although he objected to the joinder before trial, he failed to raise the issue in his posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Consequently, we consider defendant's contention that his claim should be reviewed as plain error. Ill. S. Ct. R. 615(a) (eff. Aug. 27, 1999).

¶ 29 The plain error doctrine is a limited and narrow exception to the forfeiture rule that exists to protect defendant's rights, and the reputation and integrity of the judicial process. *People v. Herron*, 215 Ill. 2d 167, 177 (2005). To obtain plain error relief, defendant must first demonstrate that a clear or obvious error occurred. *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). Thereafter, defendant must show either that the evidence at trial was so closely balanced that the guilty verdict may have resulted from the error, or that the error was so substantial that it deprived him of a fair trial. *People v. McLaurin*, 235 Ill. 2d 478, 489 (2009). The burden of persuasion is on defendant, and if he fails to meet his burden, his procedural default will be honored. *Hillier*, 237 Ill. 2d at 545.

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¶ 30 Section 114-7 of the Code of Criminal Procedure (Code) addresses when it is proper for the trial court to join related prosecutions. 725 ILCS 5/114-7 (West 2012). Under section 114-7, the court may order two or more charges to be tried together "if the offenses *** could have been joined in a single charge." *Id.* Section 111-4(a) of the Code addresses joinder of offenses and defendants, and provides that two or more offenses may be charged in the same charging instrument if the offenses are based on the same act or on multiple acts that are part of the same comprehensive transaction. 725 ILCS 5/111-4(a) (West 2012). If it appears that defendant may be prejudiced by a joinder of related prosecutions, the court may order separate trials. 725 ILCS 5/114-8(a) (West 2012).

¶ 31 The trial court has substantial discretion in determining whether joinder of prosecutions is proper, and its decision will not be reversed on review absent an abuse of that discretion. *People v. Marts*, 266 Ill. App. 3d 531, 542 (1994). An abuse of discretion will only be found where the trial court's decision is arbitrary, unreasonable, or fanciful, or where no reasonable person would agree with the trial court's view. *People v. Fleming*, 2014 IL App (1st) 113004, ¶ 38.

¶ 32 When determining whether defendant's acts were part of the same comprehensive transaction, the most important factors generally considered by the court include: (1) the proximity in time and location of the offenses; (2) the identity of evidence needed to establish a link between the offenses; (3) whether the offenses shared a common method; and (4) whether the same or similar evidence would prove the elements of the offenses. *Fleming*, 2014 IL App (1st) 113004, ¶ 36; *People v. Anderson*, 2013 IL App (2d) 111183, ¶ 69. The victims need not be the same to join offenses for trial, provided that the other factors for joinder have been satisfied. *People v. Harmon*, 194 Ill. App. 3d 135, 141 (1990).

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¶ 33 Applying the above factors here in the case at bar, the record shows that the trial court did not act unreasonably or arbitrarily when it determined that defendant's two cases were related and granted the State's motion for joinder. First, proximity in time and location of the offenses has been deemed one of the "most important factors" and "the most helpful factor by far" in determining whether the offenses are part of a comprehensive transaction. *Fleming*, 2014 IL App (1st) 113004, ¶ 41; *Anderson*, 2013 IL App (2d) 111183, ¶ 70. Here, the offenses involving Redmond occurred on September 23, 2012, and the offenses involving the police occurred four days later, on September 27, 2012. In addition, the offenses in both cases occurred in the same area. The offenses involving Redmond occurred inside a convenience store located at Madison Street and Parkside Avenue. The offenses involving the police began when Officer Bartel saw defendant walking at the corner of Madison Street and Parkside Avenue, and defendant then fled northbound on Parkside Avenue. Thus, the close proximity in time and location weighs in favor of joinder.

¶ 34 The second factor, evidence linking the offenses, " 'asks not whether evidence of the two crimes is similar or *identical* but rather whether the court can *identify* evidence linking the crimes.' (Emphases in original.)" *Fleming*, 2014 IL App (1st) 113004, ¶ 42, quoting *People v. Waltson*, 386 Ill. App. 3d 598, 605 (2008). Here, defendant's act of fleeing the police and pointing a gun at Officer Bartel was a criminal effort to avoid apprehension for the unlawful restraint and battery of Redmond four days earlier. Defendant testified that he fled from the police because he thought that there was a warrant out for his arrest, in part, because of the domestic incident that had occurred in the store with Redmond. The record shows that the trial court considered this factor when it noted that defendant was being arrested for the case with

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Redmond, and during the course of that arrest, the offenses in the second case occurred. The court stated that the trier of fact would be permitted to hear such evidence, and explained "[t]hat may well show consciousness of guilt if he is trying to avoid his arrest and does everything he can to get the police away from him."

¶ 35 Furthermore, the evidence showed that defendant used the same gun when he committed the UUWF offenses in both cases. Both Redmond and Officer Bartel identified the same photograph of the gun as the gun used by defendant during each offense. The record shows that when considering the joinder, the trial court specifically asked the prosecutor if the same gun was used in both cases, and she replied that she believed so. Consequently, we find that the trial court gave thorough consideration to this factor and properly determined that there was evidence linking the two cases, and therefore, this factor weighed heavily in favor of joinder.

¶ 36 The third factor, common method, considers whether the offenses were part of a common scheme such that each offense was a piece of a larger criminal endeavor. *Fleming*, 2014 IL App (1st) 113004, ¶ 44; *Anderson*, 2013 IL App (2d) 111183, ¶ 72. This court has previously found that where the last offense committed was an attempt to flee the scene or evade criminal responsibility for the first offense, the offenses are part of a common scheme. See *Fleming*, 2014 IL App (1st) 113004, ¶ 44; *People v. Quiroz*, 257 Ill. App. 3d 576, 586 (1993). As discussed above, here, defendant was attempting to evade apprehension for the offenses committed against Redmond in the first case when he committed the offenses in the second case. Accordingly, the offenses were part of a common scheme, and the record shows that the trial court gave proper consideration to this factor when it determined that joinder was appropriate.

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¶ 37 The fourth factor, whether the same or similar evidence would prove the elements of the offenses, also weighed heavily in favor of joinder in this case. In both cases, defendant was charged with multiple counts of UUWF and aggravated UUW, and was subsequently found guilty of all charges. In both cases, the State was required to show that defendant was in possession of a firearm and that he had prior felony convictions. Defendant used the same gun in both cases, and thus, the State used the same evidence to establish the elements of the offenses in both cases. Therefore, this factor also weighed heavily in favor of joinder.

¶ 38 We find no merit in defendant's contention that he was prejudiced by the joinder because it allowed the trier of fact to hear evidence of other crimes. Defendant waived his right to a jury trial and elected to have the trial court hear both of his cases. Sitting as the trier of fact, the trial court would have heard all of the evidence in both cases whether they were joined or not. Moreover, as the factors above show, the offenses in both cases were so strongly interrelated that joinder of the cases was clearly the correct decision.

¶ 39 Based on this record, we conclude that the trial court gave thorough consideration to the appropriate factors in determining that joinder of defendant's cases was proper, and thus, we find no abuse of discretion in joining the two cases. Accordingly, because there was no error in this case, the plain error doctrine cannot be applied and we honor defendant's procedural default of this issue. *Hillier*, 237 Ill. 2d at 545.

¶ 40 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 41 Affirmed.