2012 IL App (2d) 101234-U
No. 2-10-1234
Order filed May 23, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. LEOPOLDO CANTU, JR., Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Kane County. No. 09-CF-874 Honorable Allen M. Anderson, Judge, Presiding.

PRESIDING JUSTICE JORGENSEN delivered the judgment of the court.
Justices McLaren and Schostok concurred in the judgment.

ORDER

Held: Defendant forfeited his contentions by failing to specifically raise them both in objections at trial and in his posttrial motion, and he did not satisfy the plain-error rule, as the evidence was not close and the alleged error was not serious.

¶ 1 After a jury trial, defendant, Leopoldo Cantu, Jr., was convicted of armed violence based on personally discharging a firearm while committing a felony (720 ILCS 5/33A-2(b) (West 2008)). He was sentenced to 22 years' imprisonment. On appeal, defendant argues that the trial court erred prejudicially by admitting irrelevant gang-related evidence. We affirm.

¶ 2 Defendant was charged with one count of armed violence, two counts of aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(1), (a)(2) (West 2008)); and three counts of aggravated unlawful use of a weapon (720 ILCS 5/24-1.6(a)(1), (a)(3)(A), (a)(3)(C), (a)(3)(F) (West 2008)). The armed violence count alleged that defendant personally discharged a firearm and thereby committed criminal damage to property (720 ILCS 5/21-1(1)(a) (West 2008)) by causing more than $300 in damage to a motor vehicle. The third count of aggravated unlawful use of a weapon alleged that defendant knowingly possessed a firearm in a motor vehicle when he was not on his own property and was a member of a street gang. Before trial, defendant moved *in limine* to bar evidence of defendant's alleged membership in the Spanish Cobras, a street gang. As pertinent here, the one-page motion asserted that introducing any evidence of defendant's gang membership would be "highly prejudicial to the defendant, serving only to inflame the trier of fact and serve as evidence of a propensity to commit offenses, thereby tending to sway the mind of the trier of fact as to defendant's guilt in this case." The trial court denied the motion and allowed the State to introduce evidence of defendant's gang membership and more general testimony related to street gangs.

¶ 3 At trial, the State first called Deicy Olivera, who testified on direct examination as follows. On March 20, 2009, she lived at 720 Southwind in Carpentersville with her boyfriend, Rodrigo Rodriguez, and his family. At about 5 p.m., she and Rodrigo drove to the bank but headed back to pick up some paperwork. On Southwind, they saw directly in front of them a vehicle belonging to Miguel Munoz. The vehicle was heading toward Munoz's home at 703 Southwind, but it stopped in front of 720 Southwind. Munoz (the driver), Julio Chavez, (the backseat passenger), and defendant (the front-seat passenger), whom Olivera did not recognize, exited. Rodrigo exited his

car. The three men reentered Munoz's vehicle and drove toward 703 Southwind. Rodrigo reentered his car. Soon, he and Olivera exited, and Olivera went inside the house at 720 Southwind.

¶ 4 Olivera testified that, looking out the front window, she saw Munoz, Chavez, and the other man ride by again. Munoz's vehicle drove by a third time; Olivera saw that Munoz had a gun, so she called 911. She was directly behind the front window. Munoz drove by one more time. This time, Olivera saw defendant fire a gun three times toward Rodrigo's brother Sergio and their stepfather, Valentin Flores, who were standing outside the house. At that point, Rodrigo and his mother, Alejandra Nunez, were standing just inside the open front door.

¶ 5 Olivera testified that, later that day, police officers arrived at 720 Southwind, bringing along Munoz, Chavez, and defendant. Olivera told the police that defendant had been the shooter. In court, she identified him as the shooter, and the 911 tape was played for the jury.

¶ 6 In the remainder of her testimony, Olivera stated that, when she first saw Munoz's vehicle in front of the car in which she was riding, she did not see a gray car. When Munoz drove by 720 Southwind for the second time, she saw a gray car following him. An acquaintance named Tiffany and three or four other people were in the gray car. Olivera did not see any shots fired from the gray car. A passenger stuck his head out the window and said something that Olivera did not understand.

¶ 7 Rodrigo Rodriguez testified that, on March 20, 2009, he belonged to the Nortenos, a street gang. His brother Sergio and several of Sergio's friends were also Nortenos. Before Rodrigo left for the bank, he saw Munoz's Suburban drive by his house. Munoz was driving; Chavez was in the backseat; and defendant, nicknamed "Scooby," was in the front passenger seat. Chavez started "throwing gang signs" by making his fingers form a "C." He was directing the signs at Sergio and

his friends, who were standing in front of the house. Chavez belonged to a gang that was a rival of the Nortenos. Sergio did not respond to Chavez but headed toward the back yard.

¶ 8 Rodrigo testified that, on his way back to 720 Southwind, he saw Munoz's Suburban pull up to his right at a four-way intersection before he did. The men were seated as previously. They saw Rodrigo and drove straight ahead to Munoz's house. Rodrigo turned left and followed them on Southwind. Munoz stopped in front of Rodrigo's house, and the three men exited the Suburban. Flores and Rodrigo's little brother Alejandro exited the house. Munoz, Chavez, and defendant saw Rodrigo pull up. They reentered the Suburban and drove toward Munoz's house. Rodrigo exited his car, put his son inside the house, went back outside, and, from behind a fence, saw Munoz drive slowly past his house. At the end of the street, Munoz turned around and drove toward Rodrigo's house. A gray car was right behind. "Tiffany" and an unidentified man were in the gray car. As the Suburban slowly passed the house, Munoz pulled out a gun and yelled, "What are you guys going to do?"

¶ 9 Rodrigo testified that, a few houses down, the Suburban turned around again. By this time, Rodrigo was standing in the front doorway, having opened the door so that he could get his infant son and other people inside down to the basement. Nunez was right behind him; Flores was on the front porch; and Sergio was behind the fence. Munoz drove by again. Defendant, still in the front passenger seat, stuck out a gun and started firing. He fired four times, although only three bullets came out. The Suburban left the area.

¶ 10 Rodrigo identified defendant in court as the shooter. Over a defense objection, he testified that, before that date, he had "hung around" with defendant, Munoz, and Chavez, and Munoz had told him that he belonged to the Insane Spanish Cobras gang.

¶ 11 Valentin Flores testified that, at about 5 p.m. on March 20, 2009, he and Nunez exited their front door. Munoz, Chavez, and defendant were outside their vehicle, "saying bad words" to Sergio, who was standing in the driveway near the fence. The three men reentered the vehicle and drove to Munoz's house, where Munoz stopped, got out, entered his house, came back with his hand inside his jacket, and reentered the vehicle. He drove back toward 720 Southwind, with defendant in the front passenger seat and Chavez in back. Passing 720 Southwind, defendant gave a "very strong look" out the window. At the end of the street, the vehicle turned around and drove by 720 Southwind. This time, Munoz took out a gun and said "what are [you] going to do." The vehicle continued on and turned around once more. This time, as it passed 720 Southwind, defendant took out a gun, "made a click," and fired three shots. Flores was right in front of his house; Nunez and Rodrigo were near the open front door; and Sergio was behind the fence. Flores got down but saw the Suburban leave the area. He did not recall seeing a gray car at any time, as he had been concentrating on Munoz's vehicle.

¶ 12 Flores testified that, directly after the shooting, he saw that bullets had damaged his van, which was behind the fence; Nunez's van, which was in the driveway; and the sidewalk.

¶ 13 Nunez testified that, at about 5 p.m. on March 20, 2009, Sergio and his friends were standing outside her house when a truck passed by. The three men in the truck shouted "swear words" at Sergio and his friends, then drove on. Nunez went inside. Standing behind the open front door, with Rodrigo in front of her, she heard three shots. She went outside and saw the truck go by again; defendant was one of the men in the truck. Nunez noticed damage to her van and the sidewalk.

¶ 14 Nathan Hartley, a Carpentersville police officer, testified that, on March 20, 2009, he drove to 720 Southwind and spoke to Rodrigo, Sergio, Olivera, and Flores. Joseph Pilarski, an evidence

technician, arrived soon. Later, at the police station, Hartley performed a "presumptive" gunshot residue (GSR) test on both of defendant's hands. The result was positive. Hartley did not perform a GSR test on either Munoz or Chavez, because defendant had been identified as the shooter.

¶ 15 Pilarski testified that, when he arrived at 720 Southwind, he located a bullet hole in the fence that was attached to the house; another bullet hole in a minivan in the driveway; and ricochet marks on the sidewalk. There was also a bullet inside a Dodge Caravan behind the fence.

¶ 16 James Marsolais, a Carpentersville police officer, testified that, on March 20, 2009, he heard that a blue SUV with Munoz driving had been involved in the shooting. Driving east on Miller Road, Marsolais saw Munoz driving a blue SUV west. He turned around and stopped Munoz for a traffic offense. Marsolais and backup officers placed the three occupants of the SUV into squad cars. Marsolais searched the area for a handgun but did not find one.

¶ 17 John Spencer, a Carpentersville police detective, testified that, on March 20, 2009, he was dispatched to find the "offending vehicle" in the shooting but could not. Returning to the station, he spoke to defendant. Shortly after midnight, Spencer and two officers went to an area off Miller Road, searched it, and found a green bandanna and a .357 Taurus handgun. At the station, Spencer inspected the gun. He found that four bullets had already been fired and two were still intact.

¶ 18 Spencer testified that, on March 20, 2009, he spoke to defendant in the police station interview room. Defendant said that he belonged to the Spanish Cobras. He had "Scooby" tattoos on his neck and three dots tattooed beneath his eye. Defendant told Spencer that, on March 20, 2009, Munoz picked him up in Elgin; drove to Carpentersville to pick up Munoz's brother; dropped off Munoz's brother at 703 Southwind; then left the house. Defendant said that the next thing that happened was that they were stopped by police.

¶ 19 Spencer testified that, at this point in the interview, he said that he would talk to Munoz and Chavez and that defendant should come clean. He told defendant that all the eyewitnesses had identified him as the shooter and that the presumptive GSR test had come back positive. Defendant did not respond, and the interview ended. Spencer then talked to Munoz and Chavez, but neither told him anything. After speaking with eyewitnesses, Spencer received authorization to file charges against defendant, Munoz, and Chavez. He told each of them that charges had been authorized.

¶ 20 Spencer testified that, as defendant was being booked, he asked to speak to Spencer. After all three suspects had been booked, defendant said the following to Spencer. As he and his friends were driving on Southwind to drop off Munoz's brother, they saw somebody outside 720 Southwind "throw up the crown," a sign of disrespect to the Cobras. The three exited the Suburban and walked up to the front yard. Seeing people exiting from the house and from the car that had stopped behind them, they reentered the Suburban and drove toward Munoz's home. There, they dropped off Munoz's brother, turned, and headed back down Southwind. Passing 720 Southwind, they looked "real hard" at the people outside but did not stop. Soon, Munoz turned around and drove past 720 Southwind. Defendant was in the front passenger seat and Chavez was in back.

¶ 21 Spencer testified that defendant's statement continued as follows. Munoz again drove to 703 Southwind, turned around, and drove toward 720 Southwind. Just before the Suburban came up opposite 720 Southwind, defendant heard Chavez fire a gun once, then three more times. Defendant reached back and took the gun from him. Once the Suburban was on Route 31, defendant wiped the gun with his green bandanna. Seeing police cars at a stop sign, he threw the gun out the window.

¶ 22 The State next called Jim Lalley, an Elgin police detective. The trial court qualified Lalley as an expert on street gangs. As defendant claims error in the admission of many of his statements, we recount his testimony in depth.

¶ 23 Lalley testified on direct examination that the Insane Spanish Cobras, also known as the Spanish Cobras and the Cobras, are a street gang. Lalley had had personal contact with Cobras, as well as with members of the Latin Kings and the Nortenos, both street gangs also. In March 2009, the Cobras were small; the police had identified only 40 or 50 members. At that time, the gang was centered in Elgin, and its leader was Jose Munoz. The Cobras' colors were green and black. Identifying tattoos included a snake, a diamond, and three dots in a row. Their identifying hand signals were a snake or a pitchfork. Their mission, "[j]ust like any other street gang, [could] be drug related, weapons related, and then protection of that drug turf also." By "protection" of "drug turf," Lalley meant "[p]rotection of their business, their sales. They bring in obviously money by drug sales, and they will do anything to protect it." Defendant did not object to any of the foregoing.

¶ 24 Lalley testified that the Latin Kings' tattoos were a crown, a tiger, and a lion; that their colors were black and gold; and that their main hand signal was a crown. Rival gangs who wanted to show disrespect for them would display the crown upside-down. The Nortenos' color was red; their tattoos included an "N" and four dots; and their hand signals included four fingers pointed up. Rivals wishing to display disrespect would point four fingers down. Lalley explained that most gangs belong to one of two rival units, the Folk Nation and the People Nation. As of March 2009, the Cobras were in the Folk Nation; the Latin Kings belonged to the People Nation. The Nortenos were "[not] necessarily a People Nation gang," but were "allies" with the Latin Kings and generally got along with the People Nation. Gangs choose affiliations in part so that, "when they go to prison,

they may not have members of their own gang there, but they may have gangs from the same nation. So those gang members would be protected." Defendant did not object to any of the foregoing.

¶ 25 The State asked Lalley whether, in March 2009, the Cobras and the Latin Kings were "at war with each other." Defendant objected "[t]o the classification as war," which had not "been established." The trial court overruled the objection. Lalley then answered, "Yes." He explained that the two gangs had been in conflict "for years," starting when they were formed in Chicago, and, "It's believed that the original conflict started over Latin Kings killing the Spanish Cobras' leader." He added that the two gangs' conflict over drug sales and turf was "a day to day thing with them right now out in the suburbs." Defendant did not object to any of the foregoing.

¶ 26 Lalley testified that "several reasons" can motivate a person to join a gang, such as family members who are in gangs, schoolmates who belong to gangs, and intimidation or promises of protection from a gang. Once people join a gang, they do not usually quit. If they want to quit, they can be "beat [*sic*] out" just as they had been "beat [*sic*] in." At this point, the trial court sustained a defense objection to Lalley's explanation of the specific methods used to "beat in" or "beat out" a person. Otherwise, defendant did not object to any of the foregoing.

¶ 27 Lalley testified without objection that gangs' weapons of choice are firearms. He then stated that, in March 2009, he had known defendant for seven years and that, about 2000, the gang-crime unit had identified defendant as a gang member, based on his tattoos, his "associations," and the "gang documents" that he had created and that the police school-liaison officer had confiscated.

¶ 28 The prosecutor asked Lalley what he had meant by "associations with other people" and whether that meant "individuals or other gang members." Defendant objected. At a sidebar, defendant argued that, before trial, the court had barred evidence of defendant's prior gang-related

criminal activity. The prosecutor responded that she just wanted to lay a foundation for the criteria the police had used "to place him in the gang" and that she did not intend to go into specifics. Defendant replied that the evidence of defendant's "handwriting and books and things like that" were "fairly specific." The judge overruled the objection but cautioned the prosecutor to avoid "specific acts or circumstances" and to "reach a conclusion" and "get to it."

¶ 29 Lalley testified that, in his opinion, defendant belonged to the Spanish Cobras. He based his conclusion on "[defendant's] statements, intelligence information that the Carpentersville police department had documented and [defendant's] gang related tattoos." Defendant's objection, based on foundation, was overruled. In Lalley's opinion, Munoz and Chavez were also members of a street gang, and Rodrigo and Sergio Rodriguez were both members of the Latin Kings. The prosecutor asked Lalley his expert opinion on the motivation for the shooting of March 20, 2009. Defendant objected that the question was beyond Lalley's expertise. The court sustained the objection. After ascertaining from Lalley that he had reviewed the evidence in the case, the prosecutor asked the question again. Defendant's objection was sustained. The prosecutor attempted to ask the question several different ways, but, each time, the court sustained defendant's objection.

¶ 30 Lalley then testified over objection that, when a gang member shoots at a rival gang member's house, that is gang-related. When a gang member throws down the hand signal of a rival gang, that shows disrespect, as does driving by the rival gang member's house while either staring at him slowly or flashing one's own gang sign. "Dumping the C" means turning the Spanish Cobras' sign upside-down to show disrespect.

¶ 31 Lalley testified on cross-examination that, to decide whether to classify a person as a gang member, the police rely on various sources of information, including officers, gang members, and

people who claim to be gang members. It was only because of the shooting that the police learned that Munoz and Chavez were gang members.

¶ 32 Lalley testified on redirect examination that, although gang membership itself is not a crime, "[o]bviously if they're working in conjunction as an organization, you know, participating in criminal acts, we charged three gangs with RICO before." He added, "We defined the organization as a corrupt organization in a pattern of criminal activity; and under the federal statutes, you can charge it similarly as you charge a mob." Defendant did not object to this testimony. Lalley then testified that the identification of Munoz and Chavez as Spanish Cobras was based on their tattoos; the events that occurred just before the shooting; and their admissions to being in the gang. Defendant did not object to any of this testimony.

¶ 33 Christine Aper, a forensic scientist at a state police crime laboratory, testified that she inspected the gun used in the shooting, and several casings and cartridges, for latent prints but found none that were suitable for comparison. Aper explained that there are many reasons why fingerprints might not be found on an item, such as the ease with which latent prints can be wiped away.

¶ 34 Mary Wong, a state police forensic scientist qualified as an expert in GSR analysis, testified as follows. On April 30, 2009, she received three GSR kits from the Carpentersville police department. The first kit contained three swabs from defendant's hands and face. After testing, Wong concluded that defendant "may not have discharged a firearm with either hand. If he did, then particles were removed by activity, were not deposited or not detected by the procedure." Removal by activity could result from one surface coming into contact with another. There were many reasons why particles might not be deposited, and particles might remain undetected because Wong's

procedure would find only relatively large particles. The other two GSR kits were administered to Munoz and Chavez, and Wong's tests produced parallel results to her testing of defendant's kit.

¶ 35 Wong testified that, after testing the bandanna for GSR, she concluded that it had been either in contact with a discharged firearm or in the area of a discharged firearm. She did not look at Hartley's presumptive test.

¶ 36 The State called Munoz, who testified on direct examination as follows. On March 20, 2009, Munoz knew Sergio Rodriguez and knew that he was a Norteno. Munoz also saw Sergio hanging out with members of the Latin Kings. On March 20, 2009, Munoz belonged to the Spanish Cobras, a rival of both the Nortenos and the Latin Kings. He knew defendant and Chavez and knew that they were Cobras also. That day, Munoz, driving his blue Suburban, picked up defendant and Chavez at their homes, then picked up his little brother from work. He drove to his home at 703 Southwind. Defendant was in the front passenger seat, Chavez was in back, and Munoz's brother was behind defendant. As the Suburban passed 720 Southwind, Sergio and "another Latin King" "dumped a C," showing disrespect for the Cobras. Rodrigo was also standing outside 720 Southwind. The three occupants of the Suburban exited and had words with their rivals, but as Flores exited the house, they reentered the Suburban and drove to 703 Southwind, where Munoz dropped off his brother.

¶ 37 Munoz testified that, after dropping off his brother, he reentered the Suburban and, with defendant still in the front passenger seat and Chavez still in back, drove slowly past 720 Southwind again. All three men shouted words of disrespect to Sergio's friend. More words were exchanged between the men in the Suburban and Sergio's friend. At the end of the street, Munoz turned around and drove back, with the driver's side now facing 720 Southwind. He took the gun from Chavez, pointed it at the Latin King, and said "[What you wanna do?" Munoz handed the gun back to

Chavez, drove down the street, turned around again, and drove toward 720 Southwind. Chavez handed the gun to defendant. Defendant stuck the gun out the window and fired it. Munoz heard a "click," followed by three shots. He drove out of the area.

¶ 38 Munoz testified that, on Miller Road, he saw a police car pass him. Defendant handed the gun to Chavez, who wiped it with the bandanna. Marsolais then passed and made eye contact with Munoz. Defendant threw the gun and the bandanna out the window. Marsolais stopped the Suburban, and Munoz, Chavez, and defendant were taken to the police station. There, Munoz initially refused to talk about the incident. However, in February 2010, he and the State agreed that, if he testified truthfully at defendant's trial, the State would recommend a six-year sentence.

¶ 39 Munoz testified on cross-examination as follows. The first time that he stopped the Suburban, he saw no cars behind him. He had told Spencer that, when he, Chavez, and defendant exited that time, the people in front of 720 Southwind "popped the trunk," meaning that they displayed crowbars or similar weapons, and that was why he left. The proposed six-year sentence would require the State to reduce the charge, armed violence, to a Class 1 felony.

¶ 40 The State rested. For defendant, Chavez testified that he could not own firearms legally, as he had a conviction of burglary. On March 20, 2009, he owned a .357 handgun.

¶ 41 In closing argument, the prosecutor emphasized that, both shortly after the shooting and in court, the eyewitnesses had stated uniformly that defendant had been the shooter. Also, the presumptive GSR test indicated that he had been the shooter. The prosecutor mentioned Lalley's testimony only once, briefly noting that he had stated that defendant was a known member of the Cobras. She observed that defendant had admitted as much to Spencer.

¶ 42 In closing argument, defendant asserted that, for various reasons, the State's witnesses were not credible; that the fingerprint and crime-laboratory GSR tests had been inconclusive; and that the gun had belonged to Chavez.

¶ 43 In rebuttal, the prosecutor argued that the State's witnesses had been essentially consistent; that the fingerprint evidence had been inconclusive because the gun had been wiped off; and that only defendant had stated that someone else had been the shooter, and he had done so only after Spencer said that he would talk to the other suspects. The prosecutor mentioned Lalley's testimony only once, noting that he had stated that Rodrigo was on the police department's gang-member list.

¶ 44 The jury convicted defendant. He moved for a new trial. His amended motion's sole reference to Lalley's testimony was in paragraph six, which read, in full, "The Court erred in allowing the testimony of Officer Lalley as a gang expert. Detective Lalley's qualification as a gang expert was in error, and his testimony served to solely [*sic*] prejudice the jury against the Defendant, denying the Defendant his right to a fair trial." At the hearing on the motion, defendant's attorney did not elaborate on this claim but stated, "I am standing on my motion allowing [*sic*] Officer Lalley to testify as a gang expert." The trial court denied the motion and sentenced defendant to 22 years' imprisonment for armed violence, finding that the remaining convictions merged into that one. After his motion to reconsider his sentence was denied, defendant timely appealed.

¶ 45 On appeal, defendant argues that the trial court erred prejudicially by admitting irrelevant and excessive gang-related testimony by Lalley. Defendant does not challenge the admission of evidence that he, Munoz, and Chavez were members of the Cobras; evidence that Rodrigo and Sergio Rodriguez were members of the Nortenos; or evidence that, as the Suburban passed 720 Southwind, someone outside the house flashed a signal of disrespect for the Cobras. However, he contends that

much of the rest of Lalley's testimony was irrelevant to the issue of defendant's guilt and served only to inflame the jury against him as a gang member.

¶ 46 Specifically, defendant challenges the admission of the following portions of Lalley's testimony: (1) that the Cobras' mission could be "[j]ust like any other gang *** protection of drug turf also"; (2) that "gangs will protect their business *** they will do anything to protect it"; (3) testimony about the Latin Kings; (4) that gangs align with either the People Nation or the Folk Nation and that membership in one nation may provide security to a gang member in prison; (5) that the Nortenos were not necessarily a People Nation gang but were allied with the Latin Kings and that the Cobras and the Latin Kings were at war with each other in March 2009; (6) that the Cobras and Latin Kings had a long history of conflict and that they were fighting for turf "right now out in the suburbs"; (7) that there can be various reasons why a person might join a gang; (8) that people who join a gang usually do not quit and that there are various methods of allowing someone to leave; (9) that gangs' weapons of choice are firearms; (10) that Lalley had known defendant since 2002, defendant had been identified as a gang member since 2002, documents evidenced defendant's gang membership, Munoz and Chavez were Cobras, and, in March 2009, Rodrigo and Sergio Rodriguez were Latin Kings; (11) that the gang documents confiscated from defendant showed that he was in the Cobras; (12) that information from the Carpentersville police identified Chavez as a Cobra and Rodrigo and Sergio as Latin Kings; (13) that when a gang member shoots at the house of a rival gang member, it is gang related; (14) that "if they're working in conjunction as an organization, participating in criminal acts, we charged three gangs with RICO before" and that, if a gang operates as a corrupt organization in a pattern of criminal activity, it can be charged under RICO.

¶ 47 Defendant has forfeited all of his claims of error. To preserve an objection to given evidence, a defendant must (1) either file a motion *in limine* to bar admission of the evidence or object contemporaneously when the evidence is offered at trial; and (2) raise the issue in his posttrial motion. *People v. Hudson*, 157 Ill. 2d 401, 433-5 (1993). Of the 14 comments (or sets of comments) that defendant now contends were erroneously admitted, defendant raised no objection at all to (1) through (7); only a partial and belated objection that was *sustained* to (8); no objection at all to (9) and (10); a foundational objection, but no objection based on relevance, to (11); and no objection at all to (12) and (14). The foundational objection to (11) did not preserve the argument that the evidence should have been barred as legally irrelevant. See *People v. Lovejoy*, 235 Ill. 2d 97, 148 (2009) (objection on one ground to admission of evidence forfeits all grounds not specified). Thus, the only now-challenged comments to which defendant did object, on the ground that he now raises, were the last part of (8), about methods gangs use to allow members to quit, and (13), the statement that, when a gang member shoots at a gang member's house, it is gang-related. The objection to (8) was sustained, so defendant may not complain on appeal of prejudice. See *People v. Phillips*, 383 Ill. App. 3d 521, 547 (2008) (sustaining objection normally cures prejudice from attempted introduction of challenged evidence).

¶ 48 Thus, only comment (13) was the subject of a timely objection on the ground now raised. Defendant does not contend otherwise, but he asserts that, under *Hudson*, the objections were unnecessary because his motion *in limine* raised the same issues. This assertion is debatable: the motion *in limine* sought to bar evidence only that defendant belonged to a gang, a position much narrower than the one that defendant asserts now. Of course, it could be argued that, by asserting that evidence of his gang membership was inadmissible, defendant was necessarily arguing *a fortiori*

that general testimony about gangs and their operation was also inadmissible. Nonetheless, the motion did not specifically contend that, if the trial court should admit evidence that defendant belonged to a gang, it should not also admit more general evidence relating to his gang, the rival gangs, and gang methods.

¶ 49 Although it is indeed a nice question whether defendant's motion *in limine* sufficiently raised the issue that he now puts forth for review, we need not decide the question. Even assuming that the motion *in limine* was sufficient, defendant's posttrial motion plainly was not. Defendant was required to " 'raise the *specific* [issues] again' " in his posttrial motion. (Emphasis added.) *People v. Simon*, 2011 IL App (1st) 091197, ¶ 65 (quoting *People v. Woods*, 214 Ill. 2d 455, 470 (2005)). The purposes of the specificity requirement are (1) to save the delay and expense inherent in an appeal in a case in which the motion is meritorious; and (2) to focus the attention of the trial judge on those aspects of the proceeding of which the defendant now complains and thus to give the reviewing court the benefit of the trial judge's observations on the issue. *People v. Young*, 128 Ill. 2d 1, 39 (1989).

¶ 50 Here, the pertinent part of defendant's posttrial motion asserted only that the trial court erred in "allowing the testimony of Officer Lalley as a gang expert," because (1) he was improperly qualified (a contention not renewed here) and (2) "his testimony served to solely [*sic*] prejudice the jury against the Defendant, denying the Defendant a fair trial." It is practically impossible to construct a less specific, less informative claim of error. Because defendant's motion *in limine* did not address the breadth of evidence of which he now complains *and* he failed to object effectively to all but one of the comments that he now challenges, his posttrial motion had to be specific in order

to give the trial court any hint of the arguments that he now makes. It did not do so. At the hearing on the motion, defendant did not fill in the void.

¶ 51 Defendant did not give the trial judge a realistic opportunity to address the issues that he now seeks to raise, thus frustrating both purposes of the specificity requirement, as set out in *Young*. *People v. Heider*, 231 Ill. 2d 1, 17-18 (2008), and *People v. Golds berry*, 259 Ill. App. 3d 11, 18-19 (1994), on which defendant relies, are inapposite. In *Heider*, the court held that the defendant's posttrial motion *did* mention the issue that he sought to raise on appeal (*Heide*r, 231 Ill. 2d at 15) and that, insofar as the motion might have been insufficient, the defendant's extensive and specific argument on the issue at the hearing on the motion meant that the trial judge had had a full opportunity to consider the claim that the defendant raised on review (*id*. at 18). In *Golds berry*, the defendant's posttrial motion raised the specific allegation of error that the defendant raised on appeal. Even the one alleged error to which defendant effectively objected at trial was not raised specifically in the posttrial motion; the other claims were not raised with specificity at any point after the start of trial. Thus, defendant's claims of error are all forfeited.

¶ 52 We recognize that a reviewing court may consider unpreserved error when either (1) the evidence is close, regardless of the seriousness of the error, or (2) the error is serious, regardless of the closeness of the evidence. *People v. Hebron*, 215 Ill. 2d 167, 186-87 (2005). "As a matter of convention," a court of review applying the plain-error rule first decides whether there was error at all. *People v. Rinehart*, 2012 IL 111719, ¶ 15. However, this convention is not mandatory. We may dispose of a forfeited claim without reaching the merits of the claim, if we decide that, even if error did occur, the defendant has failed to show either that the evidence was close or that the error was serious. See, *e.g.*, *People v. White*, 2011 IL 109689, ¶¶ 134, 144; *People v. Davis*, 233 Ill. 2d 244,

273-75 (2009); *People v. Sims*, 192 Ill. 2d 592, 628 (2000). This approach reflects common practice and common sense. Courts routinely reject a *preserved* claim of error by concluding that, even if error occurred, there was no prejudice; courts routinely reject claims of ineffective assistance of counsel by concluding that, even if counsel performed deficiently, there was no prejudice. Here, we dispose of defendant's claim by holding that he cannot satisfy either prong of the plain-error rule.

¶ 53 First, we hold that the evidence that defendant was guilty of armed violence based on personally discharging a firearm was not closely balanced.[1] At trial, there was no dispute that, as Munoz drove the Suburban past 720 Southwind, one of the three men in the vehicle fired a gun, causing considerable damage to two vehicles (and a sidewalk). The only issue was identity. The eyewitnesses who identified the shooter to the police all named defendant. In court, Olivera, Rodrigo, and Flores all testified unequivocally that defendant had been the shooter. Moreover, the presumptive GSR test on defendant indicated that he had been the shooter. Although the fingerprint evidence and the laboratory GSR tests were inconclusive, they did not contradict the evidence pointing to defendant, and the expert witnesses explained that tests' inconclusiveness was unremarkable. The sole evidence that somebody else was the shooter came in defendant's unsworn, belated, and self-serving statement to Spencer that Chavez had fired the gun. Thus, the first prong of the plain-error rule does not apply.

¶ 54 Second, we hold that defendant has not shown that any error was "so fundamental, and of such magnitude, that the accused is denied the right to a fair trial and remedying the error is

[1]The trial court merged defendant's other convictions into the armed violence conviction. The effect of the alleged error on these other convictions is not before us, but we note that the evidence on these offenses was not closely balanced.

necessary to preserve the integrity of the judicial process." *People v. Hudson*, 228 Ill. 2d 181, 191 (2008). The introduction of legally irrelevant evidence, by itself, cannot satisfy this test—otherwise, it would mean nothing. Moreover, this is not a case in which the State introduced evidence that the defendant belonged to a gang even though gangs had no relation to the issues. Here, defendant concedes that the evidence that he, Munoz, Chavez, Sergio, and one of Sergio's companions were all in gangs was relevant, in order to establish motive and make the incident explicable.

¶ 55 For practical purposes, the only potential impropriety was the introduction of Lalley's testimony about gangs in general and about the deep history of the rivalry between the gangs that were involved in the shooting. That evidence may have helped to cast defendant in a worse light than otherwise, but it was equally likely to have done the same to Chavez and Munoz (the other people who may have been the shooter) and to Rodrigo, an important State witness. Lalley's allegedly improper testimony was only a small part of what the jury heard and, in closing and rebuttal closing argument, the prosecutor barely mentioned it. In sum, defendant has not satisfied the second prong of the plain-error rule. Any error was not reversible.

¶ 56 For the foregoing reasons, the judgment of the circuit court of Kane County is affirmed.

¶ 57 Affirmed.