2013 IL App (2d) 111078-U
No. 2-11-1078
Order filed September 4, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ANTHONY L. McFERN, Defendant-Appellant.	))))))))))))	Appeal from the Circuit Court of Winnebago County. Nos. 07-CF-829 07-CM-1487 07-TR-9609 07-TR-9610 07-TR-9611 Honorable Patrick L. Heaslip, Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Hutchinson and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in refusing to allow defendant to represent himself where defendant did not make a clear and unequivocal request to represent himself and where it could have delayed defendant's trial. The categorical denial of recross-examination, while error, was harmless beyond a reasonable doubt.

¶ 2 Following a jury trial, defendant, Anthony L. McFern, was convicted of aggravated fleeing and eluding a police officer (625 ILCS 5/11-204.1(a)(4) (West 2006)), resisting or obstructing a

police officer (720 ILCS 5/31-1 (West 2006)), driving with a revoked license (625 ILCS 6/6-303(a) (West 2006)), operating an uninsured motor vehicle (625 ILCS 5/3-707 (West 2006)), and driving a vehicle without a working rear registration light (625 ILCS 5/12-201(c) (West 2006)). Defendant was sentenced on his aggravated fleeing conviction to a four-year term of imprisonment and was ordered to pay fines and costs totaling $1,000; for the other offenses, defendant received jail sentences of 180 days that were to run concurrently with the four-year prison sentence, along with more fines and costs. Defendant appeals, challenging the trial court's refusal to allow defendant to represent himself at trial and the trial court's policy of allowing only direct, cross-, and redirect examinations and categorically forbidding recross-examination. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant does not challenge the sufficiency of the evidence supporting his conviction. Accordingly, we summarize the evidence pertinent to the issues raised on appeal and briefly summarize the evidence adduced at trial.

¶ 5 On March 1, 2007, defendant was arrested and charged with aggravated fleeing (case No. 07-CF-0829). He was also charged with resisting or obstructing a police officer (case No. 07-CM-1487), operating a motor vehicle without proof of insurance, driving with a revoked license, and driving a vehicle without a working rear registration light (case Nos. 07-TR-9609-11). For various reasons not relevant here, the matter was delayed until finally, on June 27, 2011, the case proceeded to jury trial. On that date, defendant was represented by the Winnebago County public defender, in the persons of two assistant public defenders, one who had been assigned to the case for about a year, and the other who had previously represented defendant, but who was making one of his first appearances in the case that day.

¶ 6 As the proceedings commenced on June 27, 2011, defendant stated, "I would like to speak to you, if possible, your Honor." The trial court replied, "That's not possible. You have an attorney. I'd suggest you speak to them." One of defendant's attorney's informed the trial court that defendant "doesn't feel like he's being represented effectively by counsel," and that defendant had prepared a *pro se* motion to dismiss the charges. An off-the-record discussion was held between defendant and his attorneys, following which the attorney informed the trial court, "We can move efficiently on this matter, Judge. We're ready to go today." Shortly later, the attorney indicated that defendant's *pro se* motion to dismiss the charges was based on a claim of "insufficient evidence." The trial court replied, "Well, he's not representing himself. He has an attorney."

¶ 7 Defendant then asked the trial court for permission to speak. The trial court inquired, "Sir, do you want to represent yourself, is that what you want to do?" Defendant stated, "It seems like I'm representing myself anyway." Defendant complained that he was on his fifth attorney in this matter, criticized his attorneys' trial strategy, and expressed frustration that the case had not been resolved more quickly. The trial court responded to defendant's concerns, noting that defendant had "two good lawyers" representing him, and it was unlikely that defendant would "get any better legal representation than what" he already had. The trial court stated, "If you want to go alone, that's entirely up to you, but you've got good lawyers–." Defendant interrupted, stating, "I'd rather go alone." The trial court stated, "[I]f I were you, I would follow [your attorneys'] advice." Defendant again stated, "I would rather go alone."

¶ 8 Defendant assured the trial court that he understood that, if he represented himself, he would be held to the same standards as an attorney, and he could not use his own incompetence as grounds

for an appeal. Defendant also claimed that he had completed 11th grade[1] and he was "[v]ery intelligent."

¶ 9 The trial court asked defendant if he had the jury instructions ready and had his witnesses "lined up and ready to go." Defendant replied that he had "some" instructions ready, and that he would be the only defense witness. Defendant then added that he wanted to call some police officers to testify that, "when I am pulled over, that I do not run." Defendant asked the trial court to subpoena the officers. The trial court stated that the case "was set for trial today," and indicated that it might be a problem if defendant had not already subpoenaed the officers.

¶ 10 The trial court told defendant, "Sir, I think you would be making a huge mistake. Do you understand that if you get convicted on these charges there's a very, very good likelihood you're gonna go to the Department of Corrections, do you understand that?" Defendant replied, "Yes, I do." The trial court asked, "And you're willing to roll the dice on someone with an eleventh grade education to represent yourself, and you think that's best for you?" Defendant agreed, "I think I'm best for me."

¶ 11 The trial court asked if counsel had anything to add. The attorney stated that, if defendant were allowed to represent himself, he needed to be admonished about the consequences of self-representation "to make sure that the waiver [of counsel] is freely [and] voluntarily done without any threats or coercion." The attorney also stated that the police officers defendant wished to call (and

[1]The presentence investigation report showed that defendant finished only the eighth grade. This fact was unknown to the trial court at the time of trial. In any event, no issue is raised concerning this discrepancy and it obviously could not have influenced the trial court's decision.

needed to subpoena) would offer testimony that was only "collateral" and "not relevant to the case at hand."

¶ 12 Following the attorney's remarks, the trial court concluded, "Here's what I think. I think we are sitting here getting ready to pick a jury, and I'm not inclined to allow you to represent yourself. I'm not gonna do that. Your request is denied. I'm not gonna do that." The matter then proceeded to the consideration of pretrial motions and the selection of the jury.

¶ 13 The next day, the trial began. One of the defenders remarked to the court, "I know this [(defendant representing himself)] was discussed prior to jury selection, but [I] verified [if] he did want our office to continue representation of him ***." The attorney further stated that defendant told him that he wanted to hire another attorney. The trial court informed defendant that the case had begun with the selection of the jury, and there was no way the case would be continued to allow defendant to hire replacement counsel. Defendant made no further requests either to obtain replacement counsel or to represent himself. We note that defendant did not say or request to say anything during this exchange before the jury entered the courtroom. Trial before the jury then commenced.

¶ 14 After the examination of the first witness, the following colloquy occurred:

"[Defender 1]: Judge.

THE COURT: Yes.

[Defender 2]: I am sorry Judge.

THE COURT: Okay; thank you. Your next witness.

[Prosecutor]: The State would call Officer Lesmeister.

THE COURT: Counsel, some of you haven't tried cases in front of me before. Just so you understand, I don't go beyond a redirect. There is a direct, a cross, and a redirect, and that's it.

[Defender 1]: Yes, Judge.

THE COURT: There is no recrosses [*sic*]. There is no reredirects [*sic*]. There is none of that; okay.

[Defender 1]: Yes, Judge."

¶ 15 During the trial, the State presented evidence that defendant was driving a car that had its rear registration light out. Police initiated a traffic stop. As the officer approached the vehicle, defendant "sped off." The officer gave chase, but quickly realized that defendant's vehicle was not going to stop. In accordance with the police department's no-chase policy applicable to minor traffic stops, the officer discontinued pursuit.

¶ 16 A short time later, defendant's car apparently ran into a snowbank. Defendant left the scene, but, due to a single set of footprints in the snow leading behind a house, defendant was found. When police ordered him to the ground, defendant refused and struggled with the police, sustaining a cut under his eye. Eventually, defendant was handcuffed and brought back to the vehicle, and he was identified as the driver of the vehicle by the police and the civilian witness who resided in the house behind which defendant was found. Defendant was unable to produce proof of insurance for the vehicle and was further discovered to have had his driver's license revoked.

¶ 17 Defendant testified on his own behalf. Defendant testified that he was hanging out when "Johnny B. Jones," a "so-called" friend, invited him into the vehicle for a ride. The vehicle was

stopped by the police, and, as the officer approached, Jones drove away. The police gave chase, and Jones tried to elude them, telling defendant to "lay back and chill and ride."

¶ 18 The vehicle eventually stopped, at which point Jones and the woman jumped out and ran away. Defendant followed, but soon realized that he had done nothing wrong, so he began to return to the vehicle. As he was walking back, the police officers jumped on him, punching and kicking him. Defendant did not give any information about the driver to the police because, according to defendant, the police did not ask him to.

¶ 19 Defendant was convicted on all charges. On July 15, 2011, defendant filed a motion for a new trial. Additionally, defendant filed a *pro se* motion alleging ineffective assistance of counsel. Both motions were heard and denied, and defendant was sentenced on the aggravated fleeing conviction to a four-year term of imprisonment, $1,000 in fines and costs, and, on the other offenses, 180 days in jail to run concurrently with the prison term plus further fines and costs. Defendant filed, then withdrew, a motion to reconsider sentence. Defendant timely appeals.

¶ 20 II. ANALYSIS

¶ 21 On appeal, defendant contends that the trial court erroneously deprived him of his right to represent himself at trial. Defendant also contends that the trial court erred by categorically denying him the opportunity to recross-examine witnesses. We consider each contention in turn.[2]

¶ 22 A. Right of Self-Representation

[2]Defendant also argued that he was entitled to 219 days of sentencing credit, and the State conceded the point in its response brief on appeal. During the pendency of this appeal, defendant filed an unopposed motion to modify his sentencing credit, and we granted the motion. The sentencing-credit issue thus drops out of this appeal.

¶ 23 Defendant initially contends that he was deprived of the right to represent himself by the trial court's refusal of his request to represent himself on the date this matter was scheduled for trial. A defendant has a constitutional right to represent himself at trial. *People v. Baez*, 241 Ill. 2d 44, 115 (2011). In order to invoke this right, a defendant must knowingly and intelligently relinquish his right to counsel, and the request must be clear and unequivocal and not ambiguous. *Id.* at 115-16. The determination of whether a defendant's demand is clear and unequivocal requires the court to consider whether the defendant truly wants to represent himself and has definitively invoked his right to represent himself while indulging in every reasonable presumption against self-representation. *Id.* at 116. The determination of whether a defendant has invoked his right to self-representation depends on the particular facts and circumstances of the case, including the background, experience, and conduct of the defendant. *Id.* We review the trial court's determination for an abuse of discretion. *Id.*

¶ 24 Defendant argues that he "definitively" invoked his right to represent himself at trial. Defendant points first to his claim before the trial court that he was not being "represented effectively." Defendant next points to his response to the trial court's question, "[D]o you want to represent yourself," with the response, "It seems like I'm representing myself anyway." The trial court explained the advantage of retaining his representation, and defendant interrupted with, "I'd rather go alone." The trial court next urged defendant to follow the advice of his lawyers, and defendant again replied, "I would rather go alone." The trial court admonished defendant that he was making a "huge mistake," and questioned whether self-representation would be "the best for you." Defendant replied, "I think I'm the best for me." Defendant characterizes this exchange as a repeated and unequivocal insistence that defendant be allowed to represent himself. We disagree.

¶ 25 Defendant stated that, "It seems like I'm representing myself anyway." When viewed through the lens of every reasonable presumption against self-representation (see *id.*), this statement is not a clear and unequivocal demand for self-representation, but a comment on the perceived quality of his attorneys' representation. This view is confirmed by noting that it was in response to an exchange in which the topic of the effectiveness of counsels' representation was being questioned. Standing alone and appropriately considered, it appears to be a sarcastic response to the question of whether he wanted to represent himself, and we cannot construe it as a clear and unequivocal demand. (We also consider this statement and the other statements identified by defendant in light of the totality of the entire exchange between the trial court and defendant.)

¶ 26 Next, defendant twice stated that he would "rather go alone" when the trial court asked if that were what defendant was asking. Defendant's response is diluted by his statement that he would "rather," which almost implies a "but," and defendant did not close the loop with a request to discharge his attorneys or to represent himself without their assistance. The two responses came after the trial court had asked if defendant wanted to "go alone" even though he had quality representation and was unlikely to do better.

¶ 27 Defendant's final response, "I think I'm best for me," is reminiscent of his first statement, "It seems like I'm representing myself anyway." It echoes the trial court's statements, and appears to be a sarcastic comment on his attorneys' performance.

¶ 28 In each of the statements defendant points to, defendant did not make a direct and clear request to represent himself. Rather, each reply echoed the phrase the trial court had just employed in questioning defendant. The context of the entire exchange suggests that defendant was expressing frustration about his attorneys' representation, and this is borne out by the apparent sarcasm of the

replies. Further, the first and last statements are not even weak statements of an intent to represent himself during trial; rather, they are denigrations of the perceived level of representation and responsiveness from his attorneys. The closest statements to a clear request are defendant's claims that he "would rather go alone," but these statements again echo the trial court's phrasing during questioning. Indeed, even if defendant "would rather go alone," he did not follow those statements up, as might be expected, with a flat refusal to further accept the assistance of his assigned attorneys or a clear demand to proceed without the assistance of his assigned attorneys. Moreover, when the issue was again raised by one of his attorneys on the second day of trial, defendant stood mute and did not request either to obtain replacement counsel or to represent himself. We hold, therefore, based on a reading of the entire exchange, that defendant did not clearly and unequivocally waive his right to counsel and invoke his right to represent himself at trial.

¶ 29 Secondarily, we note that, among the limited reasons to refuse a defendant's attempt to invoke his right to represent himself at trial is when the request comes so late in the proceedings, that granting it would disrupt the orderly schedule of the proceedings. *People v. Woodson*, 2011 IL App (4th) 100223, ¶ 24 (quoting *People v. Ward*, 208 Ill. App. 3d 1073, 1084 (1991)). Here, defendant broached the subject of self-representation immediately before the jury selection was to begin in a four-year old case. He had no witnesses lined up, but he wanted to subpoena some police officers. Defendant represents that he did not require any delay for the trial and was willing to proceed. The trial court, nevertheless, was not unjustified in being concerned that a four-year old case would be further delayed. Defendant's defense, as he planned it, required testimony from unsubpoenaed officers, and in order to allow defendant to mount his defense, the trial court would have had to delay the case again to allow the subpoenas to be served. As to defendant's claim that he was ready to

proceed even without his witnesses, there is nothing in the transcripts that indicates defendant ever made such a statement. Defendant argues only that, after the trial court indicated it would not delay the trial, defendant "persisted" in his request to represent himself. As noted above, defendant did not make a clear request to represent himself, and his persistence was in the form of another ambiguous statement, "I think I'm best for me," and not a clear request to represent himself. Thus, the trial court had a reasonable and legitimate concern that the trial of this matter would once again be delayed resulting from defendant's literally last-minute investigation into representing himself, and this concern posed a sufficient justification to deny defendant's exploration into self-representation. See *id.*

¶ 30 Defendant cites to *People v. Sheley*, 2012 IL App (3d) 090933, to support his argument that the trial court erred in refusing to allow him to represent himself. *Sheley* was concerned with the defendant's mental competency to represent himself, and the request appeared to have been made far in advance of trial. *Id.*, ¶ 23. Here, we do not perceive that the trial court was concerned with defendant's mental competency so much as it was concerned with further delaying a four-year old case. While defendant highlights *Sheley*, because there was no issue of mental competency in this case, thus leading to the inference that the trial court's decision here had even less of a basis than in *Sheley*, the argument is unavailing. Because *Sheley* did not involve a near-trial request for self-representation, it is inapposite and does not support defendant's position here.

¶ 31 Defendant also cites to both *People v. Woodson*, 2011 IL App (4th) 100223, ¶ 25, and *People v. Fisher*, 407 Ill. App. 3d 585, 589 (2011), for the proposition that the defendant's lack of legal skill does not provide a sufficient reason to deny a request to represent himself. Again, the two cases are distinguishable because this case was concerned with delay of a four-year old case, and those cases

involved the trial court using the wrong standard, lack of legal ability, to deny a request for self-representation. There is nothing in the record here to suggest that the trial court based its decision on anything related to a concern that defendant was being unwise in his suggestion that he represent himself; rather, the record demonstrates that the trial court did not get a clear and unequivocal request for self-representation and that it was concerned with further delaying the trial in this case. Accordingly, we do not accept defendant's arguments.

¶ 32 By contrast, *People v. Span*, 2011 IL App (1st) 0803037, ¶¶ 55-69, illustrates acceptable reasoning to deny a defendant's request to represent himself. In that case, the defendant made a request and the trial court questioned the timeliness of the request. The defendant represented that he would find supporting authority to justify his request but he did not provide the promised authority. The defendant then reasserted his request, but the trial court properly realized that the defendant was only trying to prevent further delay, and he was not actually interested in representing himself. *Id.*, ¶ 68. While the rationale here is different, *Span* is still instructive. Here, the trial court did not get a clear and unequivocal request. Also, defendant acquiesced in his representation by the assistant public defenders because he did not further press the issue of self-representation when the topic was again raised. Further, there were legitimate concerns over further delay occasioned by allowing defendant to represent himself. Accordingly, we hold that the trial court did not abuse its discretion in refusing to allow defendant to represent himself at trial.

¶ 33 B. Denial of Recross-Examination

¶ 34 Defendant contends that the trial court abused its discretion in reciting a blanket rule against any party engaging in recross-examination. Evidentiary rulings, including those regarding the scope of cross-examination, are within the trial court's discretion, and they will be disturbed only if there

is a clear abuse of discretion resulting in prejudice to the defendant. *People v. Graves*, 2012 IL App (4th) 110536, ¶ 16.

¶ 35 Immediately after the redirect examination of the State's first witness, defendant appeared to balk at the trial court releasing the first witness. The trial court, apparently in open court and in front of the jury, then explained that it only allowed direct, cross-, and redirect examinations, and that recross- and reredirect examinations were not allowed. Defendant argues that this blanket policy against recross-examination was arbitrary and interfered with his ability to fully present his case.

¶ 36 As an initial matter, the State notes that defendant did not make any objections to being precluded from conducting a recross-examination on any witness at trial. It is abundantly well settled that, in order to preserve a claim of error for review, a defendant must object to the error at trial and raise the error in a motion for a new trial before the trial court. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Where a defendant fails to fulfill one or both of these prerequisites, he forfeits appellate review of the claimed error. *People v. McLaurin*, 235 Ill. 2d 478, 485 (2009). Here, defendant did not raise a contemporaneous objection at trial, so he has forfeited this claim of error.

¶ 37 Defendant notes, however, that the rule of forfeiture may be relaxed in certain extraordinary circumstances. The forfeiture rule is relaxed when the judge oversteps his or her authority in the presence of the jury or when counsel has been effectively prevented from objecting because the objection would have fallen on deaf ears. *Id.* at 488. *McLaurin*, however, emphasizes that the circumstances must be extraordinary, such as the trial court relying on social commentary and not evidence in a death penalty hearing. *Id.* This line of the exception, however, appears to be distinct from the "falls-on-deaf-ears" line of the exception. Under the "deaf-ears" line of the exception, a defendant must specifically invoke that exception and demonstrate that, indeed, the trial court would

not have been interested in considering an objection. See *People v. Freeman*, 404 Ill. App. 3d 978, 995 (2010) (a defendant need not interrupt a trial court in a sentencing hearing where the trial court is using incorrect factors in aggravation, as an example, but a defendant must specifically raise the "deaf-ears" line in order to obtain a relaxation of the forfeiture rule).

¶ 38 Here, the trial court, in open court and apparently in front of the jury, explained its blanket rule against allowing recross- and reredirect examinations of witnesses. While, arguably, defendant could have requested a side-bar conference to object to being precluded from recross-examining any particular witness or, after the jury had been taken out, objected (see *McLaurin*, 235 Ill. 2d at 488 (emphasizing that a defendant must object if at all remotely possible in order to avoid forfeiture)), the trial court had made the categorical decision to forbid recross-examination and offered no possibility of exceptions to its blanket rule, clearly suggesting that any such objections would truly fall on deaf ears. We believe such an express and blanket prohibition is sufficient to invoke the "deaf-ears" line of the exception to the rule of forfeiture.

¶ 39 This conclusion is supported by *Graves*. In that case, the defendant had sought to recross-examine a witness, but the trial court refused. On appeal, the defendant characterized the trial court's refusal to allow recross-examination as a blanket preclusion, but the appellate court noted that the trial court indicated that, although it generally did not allow recross-examinations, it was willing to do so on a witness-by-witness basis if the redirect examination had opened up new ground thereby necessitating a recross-examination. *Graves*, 2012 IL App (4th) 110536, ¶ 19. The appellate court found the trial court's willingness to entertain the prospect of a recross-examination if circumstances warranted to be key in determining that the preclusion of recross-examination of a specific witness did not constitute an abuse of discretion. *Id.*

¶ 40 We believe that *Graves* provides guidance to the issue of relaxing the forfeiture rule here. In *Graves*, the trial court expressed its willingness to consider allowing recross-examination if it was warranted; here the trial court stated only that direct, cross-, and redirect examinations were allowed, and that it never allowed recross-examinations or reredirect examinations. This statement supports defendant's contention that the trial court's mind was closed on the option of recross-examination and suggests that any objection to not being allowed to recross-examine a witness would have been futile and fallen on deaf ears. Accordingly, we hold that defendant has made a sufficient showing to allow the rule of forfeiture to be relaxed, and we will consider the merits of defendant's contention.

¶ 41 Defendant argues that the trial court's blanket prohibition on recross-examination was an abuse of discretion. We agree. The general rule for cross-examination (and, by extension, recross-examination) is that a defendant has a constitutional right to confront witnesses, and this includes a right to reasonable cross-examination. *People v. Whalum*, 2012 IL App (1st) 110959, ¶ 22 (quoting *People v. Davis*, 185 Ill. 2d 317, 337 (1998)). The defendant has the right to cross-examine witnesses about their biases, prejudices, and ulterior motives, but the right is not unfettered; the trial court may impose reasonable limitations on cross-examination based on concerns about harassment, prejudice, confusion of the issues, safety of the witness, or questioning that is repetitive or irrelevant. *Id.* Further, when reviewing a trial court's decisions to limit cross-examination, we must consider the entirety of the record, not only the specific instances of which the defendant complains, with an eye toward whether the defendant was able to adequately avoid the prejudice of being unable to sufficiently test the truth of the witness's direct testimony by ascertaining whether the record shows that the jury was informed of the factors concerning the relevant areas of impeachment of the witness

even if the defendant had been prohibited from pursuing specific areas of inquiry on cross-examination. *Id.*, ¶ 23 (quoting *People v. Harris*, 123 Ill. 2d 113, 144-45 (1988)). Finally, cross-examination may be limited if the defendant is venturing into uncertain or remote theories, and we review the trial court's rulings on cross-examination for an abuse of discretion. *Id.*

¶ 42 The general rules governing cross-examination also apply to recross-examination. *People v. Johnson*, 2013 IL App (1st) 111317, ¶ 37. Here, there was no individualized determination of whether recross-examination might have been appropriate for a particular witness; rather, the trial court laid down a blanket prohibition of all recross-examinations. Thus, we cannot discern that the trial court undertook any of the necessary considerations of harassment, prejudice, confusion, witness safety, relevance, and the like. See *Whalum*, 2012 IL App (1st) 110959, ¶ 22. In the absence of any indication that the trial court applied conscientious judgment regarding the recross-examination of any particular witness, we must conclude that the trial court abused its discretion in setting forth the blanket prohibition on recross-examination. See *People v. Melton*, 2013 IL App (1st) 060039, ¶ 18 (a trial court abuses its discretion when, among other things, it acts without employing conscientious judgment).

¶ 43 Defendant next argues that the trial court's error was prejudicial requiring at least a new trial. In support of this contention, defendant asserts that we should treat the trial court's error as something akin to structural error, if not as actual structural error. The reference to structural error comes from plain-error jurisprudence. Under the plain-error doctrine, the normal rules of forfeiture are bypassed allowing a reviewing court to review an unpreserved claim of error under either of two circumstances: (1) when a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the outcome against defendant regardless of the seriousness of

the error; and (2) when a clear or obvious error occurred and the error was so serious that it affected the fairness of the defendant's trial and undermined the integrity of the judicial process, regardless of the closeness of the evidence. *People v. Eppinger*, 2013 IL 114121, ¶ 18. The second prong of plain-error review is concerned with structural error. *Id.*, ¶ 19. The classification of structural errors has been closely circumscribed, and only a few types of errors are deemed "structural." *People v. Thompson*, 238 Ill. 2d 598, 609 (2010). Structural errors include 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.* Defendant acknowledges that a blanket prohibition against recross-examination is probably foreclosed from being deemed structural error because *People v. Patterson*, 217 Ill. 2d 407, 428 (2005), held that confrontation-clause violations did not amount to structural error, but nevertheless urges us to consider the error here to be structural. We cannot ignore the decision of the supreme court and we hold, in reliance on *Patterson*, that the trial court's error here is not a structural error. *Id.*

¶ 44 The implication of structural error is whether a harmless-error analysis applies to it. Because we have held that the error here is not structural, harmless-error analysis may be used to determine whether defendant may be entitled to a new trial. See *id.* (because a confrontation-clause error is not structural, harmless-error analysis applies).

¶ 45 Defendant argues that the State has failed to prove that the trial court's blanket prohibition on recross-examination was harmless beyond a reasonable doubt because, effectively, the State did not sufficiently make the argument in its response brief. While defendant's point about the State's

argument may have significant merit,[3] nevertheless, on appeal, we review the trial court's judgment, not the merits of the State's argument or the trial court's rationale, and we may affirm the trial court's judgment on any basis supported by the record. *People v. Brannon*, 2013 IL App (2d) 111084, ¶ 19.

¶ 46 A confrontation clause violation, such as the blanket denial of recross-examination, is subject to harmless error analysis. *Patterson*, 217 Ill. 2d at 428. In turn, the test of harmless constitutional error is whether the error was harmless beyond a reasonable doubt. *People v. Wallace*, 331 Ill. App. 3d 822, 834 (2002). There are three approaches for measuring constitutional error: (1) focusing on the error to determine if it contributed to the conviction; (2) examining the other evidence in the case to see if the conviction is supported by overwhelming evidence; and (3) determining whether the evidence is cumulative or duplicates properly admitted evidence. *Id.* (citing *People v. Wilkerson*, 87 Ill. 2d 151, 157 (1981)).

¶ 47 Looking at the record as a whole in this matter, we conclude that the evidence against defendant was overwhelming. Three police officers and one civilian witness testified consistently that a car was curbed in a traffic stop. As the officer approached, the car drove off quickly. The same car apparently lost control and ended up stopped against a snowbank. Defendant was identified as the only occupant of the car; he was observed as he got out and went into the back yard of the house before which he had stopped. The police followed a single track of footprints in the snow to the back yard and discovered defendant there. Defendant was not cooperative, was taken to the

[3]While defendant is decrying the paucity of the State's harmless-error argument, defendant is not arguing that the State has forfeited the harmless-error issue. We determine that the State has placed harmless-error analysis sufficiently in play to allow our consideration of it.

ground, and flailed about as the police tried to place him in handcuffs. Defendant admitted that he flailed about, but denied that he had any disobedient motivation in doing so. Defendant was identified as the sole occupant of the car. The evidence was further uncontroverted that defendant's license had been revoked at the time of the incident, the rear registration light was out, and he was unable to provide proof of insurance for the car he had been driving. We consider this evidence to be overwhelming support for each of defendant's convictions in this case. We note that defendant testified in his own behalf and stated that he was only a passenger in the car and that he was attacked by the police. This contrary evidence does not diminish the consistent testimony of the State's witnesses as outlined above, and is not sufficient to make the evidence in this case closely balanced. Accordingly, we deem that any error caused by the blanket prohibition of recross-examination to be harmless beyond a reasonable doubt.

¶ 48 We note that defendant's contention on appeal might appear to raise a sort of Catch-22 situation, requiring that he show a negative, in that defendant was precluded from further cross-examinations, yet we cannot consider the prejudicial effect of this because there is nothing in the record of the precluded recross-examinations for us to consider. Such a claim, however, is meritless. Defendant was allowed a full opportunity to cross-examine each witness. He was able to delve into their biases, perceptions, and their motivations, if he desired. He was freely able to impeach any of the witnesses in any appropriate manner. Thus, defendant clearly received his full rights of cross-examination. Yet, defendant identifies none of the witnesses for whom the State improperly expanded the scope of redirect examination and broached new ground during that redirect examination that might have justified recross-examination. After carefully reviewing the record, we also are unable to perceive such errors or improper expansions of the redirect examinations and

testimony. In the absence of any identified or discernable improper expansions of redirect examination and testimony, defendant cannot complain that our harmless-error analysis places him in an untenable Catch-22 situation.

¶ 49 Defendant further does not address harmless error other than to point out the deficiency of the State's argument. Defendant does not address how the reviewing court is to address harmless error or its power and responsibility to do so. Defendant also does not contend that, because the State's argument on harmless error was so deficient, it should be deemed forfeited (and we above determined that the State had placed harmless error sufficiently in play to allow us to consider it). Accordingly, we hold that any error accruing from the trial court's blanket prohibition of recross-examination was harmless beyond a reasonable doubt because there was overwhelming evidence of defendant's guilt, and we therefore affirm the trial court's judgment.

¶ 50 III. CONCLUSION

¶ 51 For the foregoing reasons, the judgment of the circuit court of Winnebago County is affirmed.

¶ 52 Affirmed.