2017 IL App (4th) 141098-U

NO. 4-14-1098

FILED
February 17, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Morgan County
CHRISTOPHER B. SMITH,	)	No. 14CF22
Defendant-Appellant.	)	
	)	Honorable
	)	Jeffery E. Tobin,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Harris and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The State presented sufficient evidence to sustain defendant's convictions of unlawful delivery of methamphetamine.

(2) Defendant forfeited challenges to evidence establishing the chain of custody of the methamphetamine because defendant failed to object at trial and raise it in a posttrial motion.

(3) Defendant forfeited his argument the State improperly shifted the burden of proof, bolstered its witnesses' credibility, and offered its own opinion as to the credibility of the evidence because he failed to object at trial and raise it in a posttrial motion.

(4) Defendant failed to establish plain error, as the evidence was neither closely balanced nor did the purported error affect the fairness of defendant's trial or challenge the integrity of the judicial process.

(5) Defendant was not denied the effective assistance of counsel, as any error was not prejudicial.

¶ 2 In February 2014, the State charged defendant, Christopher B. Smith, by information with three counts of unlawful delivery of less than five grams of methamphetamine based on three controlled buys by a confidential informant (720 ILCS 646/55(a)(2)(A) (West 2012)).

¶ 3 In October 2014, a jury found defendant guilty on all three counts. In December 2014, the trial court sentenced defendant to 10 years' imprisonment for each of the three counts, with all sentences to be served concurrently.

¶ 4 Defendant appeals, arguing (1) the State failed to present sufficient evidence to prove him guilty beyond a reasonable doubt of delivery of methamphetamine; (2) the State committed plain error by shifting the burden of proof and expressing its own opinions of the credibility of the evidence in its opening and closing arguments; and (3) he was denied effective assistance of counsel when trial counsel neither objected to the State's improper remarks during argument nor raised the issue in a posttrial motion. We disagree and affirm.

¶ 5 I. BACKGROUND

¶ 6 In February 2014, the State charged defendant by information with three counts of unlawful delivery of less than five grams of methamphetamine (720 ILCS 646/55(a)(2)(A) (West 2012)). All three counts were based upon allegations defendant delivered less than five grams of methamphetamine to a confidential informant on December 27, 2013, January 9, 2014, and January 16, 2014.

¶ 7 The following testimony was presented at defendant's October 2014 trial.

¶ 8 A. Confidential Informant

¶ 9 The confidential informant testified about his history of methamphetamine addiction and criminal record, including a 2011 conviction for the possession of a

methamphetamine precursor and a 2012 conviction for possession of methamphetamine. He agreed to be a criminal informant for the Jacksonville police department after he was charged with possession of methamphetamine in December 2013. By participating in controlled buys of methamphetamine with defendant and testifying against him, the confidential informant hoped to receive leniency in regard to the 2013 possession charge. He did not receive any compensation for his testimony, but he did receive rides from Beardstown, Illinois, to Jacksonville on the dates of the trial.

¶ 10 The confidential informant testified he assisted the Jacksonville police department with three controlled purchases from defendant. He purchased methamphetamine from defendant on December 27, 2013, January 9, 2014, and January 16, 2014, and returned the methamphetamine he purchased to police officer Zach Weishaar of the Jacksonville police department. Prior to each controlled purchase, Weisharr patted the confidential informant down and felt within his shoes to ensure the confidential informant did not have money or drugs on his person before the buy.

¶ 11 B. Zach Weishaar

¶ 12 On December 27, 2013, Weishaar drove with Detective Scott Erthal and met the confidential informant at a parking lot. Weishaar searched the confidential informant's person. He had him place his hands on top of his head, spread his feet apart, and then patted him down from head to toe. Weishaar and the confidential informant got into Weishaar's vehicle. He gave the confidential informant $100 in prerecorded cash and a bicycle to ride to defendant's residence in a nearby trailer park. Approximately 10 minutes after leaving Weishaar, the confidential informant rode back to Weishaar's car. Back in the parking lot, Weishaar conducted another

search of the confidential informant's person. Weishaar found the prerecorded cash was gone and took the purported methamphetamine from the confidential informant.

¶ 13 Weishaar weighed the packaged substance and found it weighed 1.5 grams. When defense counsel asked Weishaar to explain how the lab-tested weight of the methamphetamine was only 0.8 grams, Weishaar testified he weighed it in its packaging, a plastic sack, but he did not know how much the sack itself weighed. He also stated a small portion of the substance is removed for field testing prior to sending it to the lab.

¶ 14 On January 9, 2014, Weishaar testified he met with the confidential informant again, but this time inside the police department. Patrolman Reilly O'Brien, Erthal, Inspector Sean Haefeli, and Inspector Mansfield were present. Weishaar had the confidential informant put on a shirt with a video camera in one of its buttons. Weishaar then searched the confidential informant's jacket and searched the confidential informant's person in the same manner as he had during the first controlled purchase.

¶ 15 Weishaar and the confidential informant rode in one vehicle, while O'Brien and Mansfield rode in another. The vehicle was a police vehicle, so Weishaar did not search it for contraband. Weishaar drove the confidential informant to a trailer park, where the confidential informant picked up paint he planned to give defendant when they met. They then drove to the Westwinds subdivision, near the arranged meeting place with defendant at 3 Ventura Court.

¶ 16 At the time, the residence was owned by defendant's stepfather, but a moving truck was present and being loaded during the controlled purchase. Officers conducting surveillance parked around the corner from the entrance to Ventura Court, which was a cul-de-sac. The confidential informant met defendant on the front porch of the residence, and they both moved to the garage. Movers were walking in and out of the garage as the confidential

informant and defendant met. The confidential informant left the house, walked down the street, and met Weishaar.

¶ 17 Weishaar testified he drove the confidential informant back to the police department. The confidential informant gave Weishaar the purported methamphetamine. Weishaar had the confidential informant remove the shirt with the video camera in it and put his original shirt back on. Weishaar searched the confidential informant's person and discovered the prerecorded money was gone, and he did not find any other contraband.

¶ 18 Weishaar weighed the purported methamphetamine in its foil packaging and found it to be around 0.9 grams. When asked why the lab's weight was 0.8 grams less than the 0.9 grams he found, Weishaar stated the lab might weigh it without its packaging. After weighing it, Weishaar bagged the purported methamphetamine for evidence.

¶ 19 On January 16, 2014, Weishaar testified he met with the confidential informant a third time, again meeting inside the police department. As Weishaar did during second controlled purchase, he had the confidential informant remove his shirt and jacket and put on the shirt with the video camera in it. Weishaar conducted a search of the confidential informant's person in the same manner as prior to the two previous controlled buys.

¶ 20 Weishaar drove the confidential informant and Erthal in his personal vehicle to the same position adjacent to the trailer park as he did for the first controlled purchase. Weishaar had not searched his vehicle for contraband. This time, Weishaar dropped the confidential informant off at the end of a row of trailers, which was within walking distance of defendant's trailer. Weishaar lost sight of the confidential informant when he walked around a corner, but O'Brien was parked near the target location and confirmed he had a visual of the confidential informant. When asked to explain a pause in the video recording where the confidential

informant appears to stop before reaching the trailer, Weishaar stated he did not know for sure, but the confidential informant had provided a reason for the delay. The battery for the video camera also died, cutting off the recording sometime before the controlled purchase was completed.

¶ 21 After approximately 10 minutes, the confidential informant left defendant's trailer and returned to where Weishaar and Erthal were waiting in the vehicle. The confidential informant got in the car and handed Weishaar the purported methamphetamine, which was contained in a plastic bag. They drove back to the police department, where they had the confidential informant take off the video-camera shirt and Weishaar conducted another search of the confidential informant's person. Weishaar weighed the purported methamphetamine and found it to be approximately one gram. Weishaar placed the bag into evidence that day.

¶ 22 C. Reilly O'Brien

¶ 23 Patrolman O'Brien of the Jacksonville police department was involved in the controlled purchases involving defendant.

¶ 24 O'Brien testified he ran surveillance for the December 27 controlled purchase. He drove an unmarked vehicle and parked it 100 feet away from the prearranged location within the trailer park where the confidential informant and defendant were to meet. Weishaar and O'Brien maintained radio communications throughout the process. Prior to Weishaar reporting he lost sight of the confidential informant, O'Brien saw the confidential informant approaching the meeting location on a bicycle. The confidential informant parked his bicycle at the edge of the trailer and walked to the entrance of the trailer. O'Brien lost sight of the confidential informant when he entered the mobile home but observed him leave by bicycle until Weishaar radioed he had regained a visual of the confidential informant.

¶ 25 O'Brien testified he also provided surveillance for the January 9 controlled purchase. He was parked at the entrance to Ventura Court, approximately 150 feet away from the meeting location. O'Brien noted a moving truck was in the driveway of the prearranged meeting location, defendant's stepfather's home. He saw the confidential informant and defendant meet on the porch of the residence. Defendant then went inside the residence and the confidential informant entered the garage, at which point O'Brien lost sight of both defendant and the confidential informant.

¶ 26 O'Brien testified he was provided surveillance during the third controlled purchase on January 27. As he did the first time, O'Brien parked 100 feet away from the trailer where the confidential informant and defendant had arranged to meet. As the confidential informant approached the trailer by foot, O'Brien gained sight of the confidential informant before Weishaar radioed he had lost a visual from his vantage point. O'Brien lost sight of the confidential informant once he entered the trailer but reacquired it when the confidential informant exited the trailer.

¶ 27 D. Joshua Stern

¶ 28 Joshua Stern testified he was a forensic scientist with a specialty in drug chemistry for the Illinois State Police forensic science laboratory in Springfield, Illinois. The State presented Stern with two exhibits of methamphetamine.

¶ 29 Stern testified the Jacksonville police department delivered a sample from the January 9 controlled purchase for analysis. He received the sealed evidence and placed it in the vault. When Stern performed his analysis, he first weighed the substance without packaging and found it to weigh 0.1 grams. Stern further analyzed the substance and found it contained methamphetamine. Stern resealed the substance in an evidence bag, marked the seal with his

initials and other identifying information, and placed it back into the vault. Presented with the evidence bag at trial, Stern stated the evidence appeared to have only been opened by him.

¶ 30 Stern also testified the Jacksonville police department delivered a sample from the January 16 controlled purchase. He received the sealed evidence and deposited it into the laboratory's vault until he had an opportunity to analyze it. When Stern began his analysis, he weighed the substance without packaging and found it to weigh 0.8 grams. Stern performed further testing and found the substance contained methamphetamine. Stern then resealed the substance in an evidence bag and marked the seal with his initials and other identifying information. He placed the sealed bag into the evidence vault for the Jacksonville police department to retrieve. When presented with the evidence bag at trial, Stern stated the evidence appeared to have only been opened one time, by him, which he deduced from the appearance of the seal on the bag.

¶ 31 E. Kristin Stiefvater

¶ 32 Kristin Stiefvater testified she was a drug chemist with the Illinois State Police crime lab in Springfield. She testified the Jacksonville police provided her with a substance to test for illegal substances from the third controlled purchase. She placed the substance in the laboratory's vault until she was prepared to analyze it. She weighed the powder and found it weighed 0.6 grams. Her analysis of the substance confirmed it contained methamphetamine. After testing, Stiefvater put the substance back into the evidence bag, sealed and marked it with identifying information, and then returned it to the vault for the Jacksonville police department to collect. Presented with the evidence bag at trial, Stiefvater testified the bag appeared to have only been opened one time, which would have been when she needed to open it to perform her analysis of the substance.

¶ 33 F. Closing Arguments

¶ 34 Following closing arguments, the jury found defendant guilty on all three counts. In November 2014, defendant filed a motion for a mistrial because Weishaar had provided the confidential informant transportation to and from defendant's trial and discussed defendant's case during the car ride, but the trial court denied defendant's motion. In December 2014, the court sentenced defendant to 10 years' imprisonment for each of the three counts, ordering all sentences to be served concurrently.

¶ 35 This appeal followed.

¶ 36 II. ANALYSIS

¶ 37 On appeal, defendant argues the State (1) failed to present sufficient evidence to prove him guilty beyond a reasonable doubt of delivery of methamphetamine, and (2) deprived him of a fair trial when it shifted the burden of proof to him and expressed its own opinions as to the credibility of the evidence in its opening and closing arguments. We disagree.

¶ 38 A. Sufficiency of the Evidence

¶ 39 " 'When reviewing a challenge to the sufficiency of the evidence in a criminal case, the relevant inquiry is whether, when viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " *People v. Ngo*, 388 Ill. App. 3d 1048, 1052, 904 N.E.2d 98, 102 (2008) (quoting *People v. Singleton*, 367 Ill. App. 3d 182, 187, 854 N.E.2d 326, 331 (2006)). The trier of fact has the responsibility to determine the credibility of witnesses and the weight given to their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from the evidence. *People v. Jackson*, 232 Ill. 2d 246, 281, 903 N.E.2d 388, 406 (2009). "[A] reviewing court will not reverse a criminal conviction unless the evidence is so unreasonable,

improbable[,] or unsatisfactory as to create a reasonable doubt of the defendant's guilt." *People v. Rowell*, 229 Ill. 2d 82, 98, 890 N.E.2d 487, 496-97 (2008).

¶ 40 The State charged defendant with three counts of unlawful delivery of less than less than five grams of methamphetamine (720 ILCS 646/55(a)(2)(A) (West 2012)) based on controlled purchases conducted on December 27, 2013, January 9, 2014, and January 16, 2014. According to the evidence presented by the State at trial, the confidential informant agreed to act as an informant in hopes of leniency with respect to a prior charge for possession of methamphetamine. The confidential informant had a preexisting relationship with defendant. Weishaar searched the confidential informant and gave him marked buy money before all three transactions. During the first and third transactions, officers observed the confidential informant entering defendant's trailer and returning minutes later with purported methamphetamine and without the prerecorded money. A similar series of events occurred during the second controlled purchase, but that transaction took place at defendant's stepfather's home. The confidential informant wore a shirt-button camera during the second and third transactions, which yielded recordings in which defendant is clearly interacting with the confidential informant in some fashion. All three substances provided by the confidential informant after the controlled buys tested positive for methamphetamine.

¶ 41 1. *Evidence of Transactions*

¶ 42 Defendant argues the State presented insufficient evidence because it failed to "present any first-hand testimony about the details of the drug transactions." Specifically, he argues the confidential informant did not testify, "[f]or instance, whether there were other people around when these alleged buys occurred or that [defendant] handed the drugs to [the confidential informant] in exchange for money." Defendant also argues the confidential

informant's testimony is suspect because he was an admitted methamphetamine addict and had a motive to please the prosecution by fabricating testimony in support of the State's case. The State responds the confidential informant's testimony was sufficient evidence defendant sold the confidential informant methamphetamine. We agree with the State.

¶ 43 We acknowledge the "testimony by an informant who himself abuses unlawful substances and who participates in an undercover operation to minimize punishment for his own illegal activity should be closely scrutinized." *People v. Anders*, 228 Ill. App. 3d 456, 464, 592 N.E.2d 652, 657 (1992). An informant's pending criminal charges and motive of gaining leniency bear upon his credibility but do not "render his testimony unworthy of belief." *People v. Pittman*, 100 Ill. App. 3d 838, 842, 427 N.E.2d 276, 279 (1981); see also *People v. Pittman*, 93 Ill. 2d 169, 174-75, 442 N.E.2d 836, 838-39 (1982).

¶ 44 Although the confidential informant had a criminal history and addiction issues, his testimony defendant gave him methamphetamine on all three dates was corroborated by the testimony of the officers involved and the information available from the video recordings. While the police did not record the first transaction and the informant's testimony could have been more thorough, the search of the confidential informant before the controlled purchases, police surveillance, and the return of methamphetamine corroborate the confidential informant's testimony defendant sold methamphetamine on the three occasions at issue. A rational trier of fact could have found that all the required elements of the crime of unlawful delivery of less than five grams of methamphetamine on December 27, 2013, January 9, 2014, and January 16, 2014, were met.

¶ 45 2. *Chain of Custody*

¶ 46 Defendant also argues the State failed to present sufficient evidence because (1) it failed to establish the chain of custody of the methamphetamine from the police station to the laboratory was complete where no testimony identified the inventory of the State's exhibits or stated how they were transported from the lab to the State and (2) the discrepancies between the weights of the purported methamphetamine recorded by Weishaar and those calculated by the state laboratory were unexplained. The State responds these issues are forfeited because they are questions of admissibility of evidence and defendant failed to object at trial. We agree.

¶ 47 A challenge to a chain of custody is an evidentiary issue generally subject to forfeiture if not preserved by making a specific objection at trial and including a specific claim in a posttrial motion. *People v. Woods*, 214 Ill. 2d 455, 470, 828 N.E.2d 247, 256-57 (2005). The forfeiture rule applies on appeal where a defendant argues the State failed to lay a proper technical foundation for admission of evidence, as the defendant's lack of a timely and specific objection deprives the State of the opportunity to correct any deficiency at the trial level. *Id.* at 470, 828 N.E.2d at 257.

¶ 48 Here, as in *Woods*, defendant forfeited his chain-of-custody challenge because he did not make any objection to admission of the evidence at trial, nor did he raise it in a posttrial motion. *Id.* at 469-70, 828 N.E.2d at 256. Even if defendant had not forfeited his chain-of-custody claim, it would fail as meritless.

¶ 49 To introduce test results showing the substance on which the charge is based is in fact a controlled substance, the State must provide a foundation for their admission by showing "the police took reasonable protective measures to ensure that the substance recovered from the defendant was the same substance tested by the forensic chemist." *Id.* at 467, 828 N.E.2d at 255. The State's burden is to show the chain of custody for the substance from the time the police

seized it to the time the lab tested it. *Id.* This court set forth the standard for challenges to the chain of custody to be as follows:

> "Unless a defendant produces evidence of actual tampering, substitution, or contamination, a sufficiently complete chain of custody does not require every person in the chain to testify. [Citation.] Deficiencies in a chain of custody go to the weight and not the admissibility of evidence. Even where a link is missing in a chain of custody, the evidence is properly admitted where testimony sufficiently described the condition of the evidence when delivered which matched the description of the evidence when examined. [Citation.]" *People v. Echavarria*, 362 Ill. App. 3d 599, 605, 840 N.E.2d 815, 821 (2005).

¶ 50 Here, Weishaar testified the confidential informant provided him with the purported methamphetamine immediately after returning from the transactions. Weishaar secured the purported methamphetamine into evidence upon returning to the police station. The state chemists testified the evidence was transported to the state laboratory, where it was stored in a secure vault and only removed for analysis. Additionally, the chemists testified they recognized the identifying information on the seals of the packaging containing the evidence and testified the evidence appeared to have only been opened once, which was for their analyses. Defendant produces no evidence of actual tampering beyond mere speculation about the weight discrepancies between the weight recorded by Weishaar and the state chemists.

¶ 51 Defendant argues these weight discrepancies were unexplained, causing the State's case to fail. We disagree. Even if forfeiture did not apply, the weight discrepancies were

not unexplained. The police field tested the evidence, which included weighing the substances, and the December 27 evidence weighed 1.4 grams, the January 8 evidence weighed 0.9 grams, and the January 16 evidence weighed 0.1 grams. When the lab tested the evidence, the weights were 0.8, 0.9, and 0.1 grams, respectively. Weishaar testified he weighed the purported methamphetamine while each of the three substances was still in its packaging, and then field tested a sample after weighing the substances. The chemists testified they weighed the three samples without packaging, and these weights would have necessarily been taken after the sample for field testing had been removed.

¶ 52 This case differs from *People v. Terry*, 211 Ill. App. 3d 968, 570 N.E.2d 786 (1991), and *People v. Gibson*, 287 Ill. App. 3d 878, 679 N.E.2d 419 (1997), where the discrepancies between the police officers' testimony as to the weight and/or number of packages seized were substantially different than the testimony of the chemists on the same subject, and no testimony was offered to explain these substantial differences. Here, a slight difference in weight was explained by the fact Weishaar weighed the substance in its packaging and prior to removing samples for field testing, while the state chemists weighed the substance without its packaging and after the samples for field testing had been removed. Common sense tells us the weight recorded by Weishaar could be slightly more than the weight recorded by the state chemists, which is exactly what occurred here. Despite the fact defendant forfeited the arguments, we conclude the State presented sufficient evidence to lay a proper foundation.

¶ 53 In sum, we conclude the State presented sufficient evidence for a rational trier of fact to determine defendant committed the crime of unlawful delivery of methamphetamine.

¶ 54 B. Burden-Shifting and Bolstering Credibility During Argument

¶ 55 Defendant argues the State shifted the burden of proof during its opening and closing arguments and bolstered the credibility of the State's witnesses in its closing argument. Specifically, defendant was deprived of a fair trial because, "in both opening and rebuttal closing argument, the [State] told the jury that in order to find [defendant] guilty, [it] would have to find that the [confidential] informant 'fooled' police officers three times, which, in the [State's] opinion, was inherently unreasonable." Defendant concedes the issues have been forfeited, as he failed to object at the time of the alleged misconduct and did not raise the issues in a posttrial motion. Defendant argues the issues constitute plain error and ineffective assistance of counsel. The State responds the plain-error doctrine does not apply to its remarks during argument and defendant's trial counsel was not ineffective.

¶ 56 1. *Forfeiture*

¶ 57 We agree by failing to object at trial or preserve his claim in his posttrial motion, defendant has forfeited this argument on appeal. *People v. Beard*, 356 Ill. App. 3d 236, 241, 825 N.E.2d 353, 359 (2005).

¶ 58 2. *Plain Error*

¶ 59 Defendant contends the propriety of the prosecutor's opening and closing arguments is reviewable under the plain-error doctrine of Illinois Supreme Court Rule 615(a) (eff. Jan. 1, 1967). Alternatively, he argues ineffective assistance of trial counsel. The State responds its remarks in argument were proper and, therefore, no error occurred. In the alternative, it argues neither prong of the plain-error doctrine applies. We agree with the State.

¶ 60 Under the plain-error doctrine, a reviewing court is allowed to 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. Herron*,

215 Ill. 2d 167, 186-87, 830 N.E.2d 467, 479 (2005). Reviewing courts typically begin plain-error analysis by first determining whether error occurred at all. *People v. Sargent*, 239 Ill. 2d 166, 189, 940 N.E.2d 1045, 1059 (2010). However, we conclude even if an error existed, neither prong of the plain-error doctrine applies.

¶ 61 Under the closely-balanced-evidence prong, defendant "must show *both* that there was plain error and that the evidence was so closely balanced that the error alone severely threatened to tip the scales of justice against him." (Emphasis added.) *Herron*, 215 Ill. 2d at 187, 830 N.E.2d at 479. Where the evidence against a defendant is overwhelming, a primary inquiry into whether error occurred is unnecessary. See, *e.g.*, *People v. White*, 2011 IL 109689, ¶ 134, 956 N.E.2d 379 (finding the plain-error analysis "evidence-dependent and result-oriented" and refusing to consider whether error occurred because defendant could not show prejudice); *People v. Sims*, 192 Ill. 2d 592, 628-29, 736 N.E.2d 1048, 1067-68 (2000) ("[a]ssuming, without deciding" there was error, the court found no plain error because there was "no reasonable probability that the jury would have acquitted the defendant" (internal quotation marks omitted)); *People v. Davis*, 233 Ill. 2d 244, 273-75, 909 N.E.2d 766, 782-83 (2009) ("assuming *arguendo*," there was error, defendant could not establish prejudice for purposes of plain-error review); *People v. Bowens*, 407 Ill. App. 3d 1094, 1108, 943 N.E.2d 1249, 1264 (2011) ("When, as here, the record clearly shows that plain error did not occur, we will reject it without further analysis.").

¶ 62 In reviewing defendant's claim under the closely-balanced-evidence prong, we need not consider whether an error occurred because the evidence against defendant is overwhelming. Defendant alleges the evidence was closely balanced because "there was no direct testimony about the transactions and there was a vast[,] unexplained discrepancy in the

weight of the substance recovered from the weight of the drugs tested at the crime lab." We disagree.

¶ 63 The confidential informant offered direct testimony for the State, testifying he purchased methamphetamine from defendant on the three occasions at issue. As noted above, the differences in the weights of the methamphetamine were explained by the fact Weishaar weighed the methamphetamine in the packaging prior to removing samples of the substance for field testing, while the state chemists weighed the substance without the packaging and after the samples for field testing had been removed.

¶ 64 The State also presented extensive evidence corroborating the confidential informant's testimony. Officers identified defendant as the man they were surveilling during the three controlled purchases. Weishaar testified he searched the confidential informant's person and vehicle for money and contraband before and after each buy. Finally, the state chemists reported receiving the purported methamphetamine from the police and found it to contain methamphetamine. The State's case for the sale of methamphetamine was overwhelming, and therefore, defendant cannot satisfy the first prong of the plain-error analysis as the evidence was not closely balanced. Our review is thus limited to the second prong of the plain-error analysis.

¶ 65 Our supreme court has compared the second prong of plain-error review to a structural error and has concluded that " 'automatic reversal is only required where an error is deemed "structural," *i.e.*, a systemic error which serves to "erode the integrity of the judicial process and undermine the fairness of the defendant's trial." ' " *People v. Thompson*, 238 Ill. 2d 598, 613-14, 939 N.E.2d 403, 413 (2010) (quoting *People v. Glasper*, 234 Ill. 2d 173, 197-98, 917 N.E.2d 401, 416 (2009) (quoting *Herron*, 215 Ill. 2d at 186, 830 N.E.2d at 479). Structural errors include, but are not necessarily limited to, "a complete denial of counsel, trial before a

biased judge, racial discrimination in the selection of a grand jury, denial of self-representation at trial, denial of a public trial, and a defective reasonable doubt instruction." *Id.* at 609, 939 N.E.2d at 411. The State's opening, closing, and rebuttal arguments here do not fit within the limited class of cases where structural error has been found, nor did the arguments affect the fairness of defendant's trial or challenge the integrity of the judicial process. See *People v. Adams*, 2012 IL 111168, ¶ 24, 962 N.E.2d 410 (although the prosecutor's comments were improper, the comments did not amount to plain error under the second prong). Further, we note the impact of the prosecutor's comments in this case were minimized by the trial court's instruction to the jury that arguments are not evidence, and any statement or argument not based on the evidence should be disregarded. We find the prosecutor's comments, even if improper, were not so serious as to affect the fairness of defendant's trial or challenge the integrity of the judicial process.

¶ 66 We conclude the plain-error doctrine does not warrant reversal on the basis the State made allegedly improper comments in this case.

¶ 67 3. *Ineffective Assistance of Counsel*

¶ 68 Defendant claims his counsel was ineffective for neither objecting to, nor raising in a posttrial motion, the State's purportedly improper remarks during argument. The State contends defense counsel chose not to object as a matter of trial strategy. Specifically, "rather than objecting to the prosecutor's remarks about the credibility of the theory that the drugs were hidden on [the confidential informant] prior to the sales, defense counsel decided to instead respond to those remarks in his own argument."

¶ 69 "To show ineffective assistance of counsel, a defendant must demonstrate that 'his attorney's representation fell below an objective standard of reasonableness and that there is a

reasonable probability that, but for counsel's errors, the result of the proceeding would have been different.' " *People v. Simpson*, 2015 IL 116512, ¶ 35, 925 N.E.3d 601 (quoting *People v. Patterson*, 192 Ill. 2d 93, 107, 735 N.E.2d 616, 626 (2000), citing *Strickland v. Washington*, 466 U.S. 668, 687, 694 (1984)). "Further, in order to establish deficient performance, the defendant must overcome the strong presumption that the challenged action or inaction may have been the product of sound trial strategy." *People v. Smith*, 195 Ill. 2d 179, 188, 745 N.E.2d 1194, 1200 (2000).

¶ 70 Even if the defense counsel's failure to object was not the product of sound trial strategy, we conclude the outcome would not have changed had defense counsel objected. The State's evidence was overwhelming, and defendant cannot show he was prejudiced by the failure to object in this instance. We conclude defendant's counsel was not ineffective in this respect.

¶ 71 III. CONCLUSION

¶ 72 We affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2014).

¶ 73 Affirmed.