2014 IL App (5th) 110549-U

NO. 5-11-0549

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Jefferson County.
	)	
v.	)	No. 06-CF-428
	)	
CHRISTOPHER WATKINS,	)	Honorable
	)	Terry H. Gamber,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Justices Spomer and Cates concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not deny the defendant a fair trial by counsel's failure to impeach the State's primary witness, by a State witness testifying to speculative and hearsay evidence, or by the State's closing argument. The jury instructions denied by the court did not deny the defendant a fair trial. The defendant's sentence was not excessive.

¶ 2 The defendant, Christopher Watkins, appeals from his convictions of first-degree murder and robbery. Three people were charged with crimes associated with the murder of Randall Farrar of Mt. Vernon. Brothers Christopher Watkins and Demetrius Cole, and Cole's girlfriend, Krysta Donoho, were charged with murder. All three defendants were tried separately and convicted. Donoho and Cole appealed their verdicts to this court.

We affirmed both of those judgments. See *People v. Donoho*, 2011 IL App (5th) 080354-U (Nov. 18, 2011); *People v. Cole*, 2012 IL App (5th) 100542-U (Aug. 15, 2012).

¶ 3 On appeal, the defendant claims that he was denied a fair trial: because his defense attorney was not allowed to impeach the State's main witness, Chandra Jones, as thoroughly as he wanted; because the chief detective was allowed to give speculative and hearsay testimony; and because the prosecutor's closing argument was unduly prejudicial. Additionally, the defendant argues that he did not receive a fair trial because the jury was not properly instructed on hearsay evidence, and on the definition of the word "knowing." Finally, the defendant argues that his 45-year sentence was excessive in light of the nature of the offense and his lack of a prior criminal history. For the reasons that follow, we affirm.

¶ 4 FACTS

¶ 5 Randy Farrar was a Mt. Vernon businessman and philanthropist. He was killed on July 1, 2006. Farrar's business manager, Kelly Tinsley, discovered his body on July 5, 2006.

¶ 6 Mark LeVaughn performed the autopsy. He testified that the decedent had two fractured ribs, bloody eyes, and scratches on his knees and shins. The body had bruises on the back of the neck and on the left forearm. The decedent sustained two bullet wounds to his head. LeVaughn concluded that Farrar's death was a homicide.

¶ 7 The chief detective with the Jefferson County sheriff's department was John Kemp. Kemp testified that he found a partial box of .380-caliber ammunition outside of

the decedent's home. A drawer in the bedroom was overturned and contained items related to a .380-caliber Walther PPK-S pistol. He found a note on the nightstand that read, "Susan 244-0536." He testified that through the department's investigation, he determined that the telephone number listed on that note belonged to Gwen Jones, the defendant's mother. The sheriff's department found two spent .380-casings in the basement near the body. Farrar's cell phone was in his car in the garage. The person named "Susan" left a voicemail on July 1, 2006. No fingerprints or any other DNA evidence matching the defendant's profile were found at the scene of the crime. The defendant was not connected to any physical evidence at the scene.

¶ 8 Glenn Schubert, a forensic scientist employed by the Illinois State Police, testified that there was no hair discovered at the scene consistent with the defendant's hair. Michael Cooper, a forensic scientist employed by the Illinois State Police who specializes in the area of firearm and tool mark examination, testified that the spent shell casings found near Farrar's body were .380-caliber, and were therefore consistent with the labeling on an empty box of bullets found at Farrar's home.

¶ 9 On July 11, 2006, police got a major break in the case when Gwen Jones called Detective Kemp. Jones is the mother of both the defendant and codefendant Demetrius Cole. According to Jones, the defendant told her that he and Cole were at Farrar's house and that Cole shot Farrar. Jones brought the defendant to Detective Kemp's office. Detective Kemp recorded a portion of the defendant's interview. After the interview, Detective Kemp released the defendant.

¶ 10 The court played this recorded statement for the jury. The defendant claimed that his brother offered him $40 to drive him and his girlfriend, Donoho, to a house. Donoho was going there to get money from a man who lived there. Donoho went into the house alone.

¶ 11 After 10 minutes, the defendant stated that his brother got out of the car to get Donoho. When his brother did not immediately return, the defendant went up to the front door of the home and looked inside. He told the officer that he did not go into the house, but contradicted this statement later in the interview. Through a picture window, the defendant saw Donoho running around and crying. He said that he heard a man yell, and that a man and his brother were involved in a scuffle in the kitchen. Cole, Donoho, and the man went to the basement. Donoho came back upstairs to tell the defendant that Cole was going to kill the man. After he heard gunshots, the defendant ran back outside. Cole then ran outside of the house carrying a gun and a pair of shorts.

¶ 12 The defendant said that his brother told him that if he "snitched," he would kill him too. The defendant dropped Cole and Donoho off at the Mt. Vernon Wal-Mart. Later that night, Cole called the defendant to tell him that he was going to go back to the man's house. Throughout the interview, the defendant spoke of his fear of Cole and of what Cole said he would do to him.

¶ 13 On July 14, 2006, Detective Kemp interviewed Chandra Jones. She acknowledged that she was at Farrar's house when he was killed. Her version of the events was substantially different from what the defendant said in his recorded statement. Chandra agreed that the defendant, Cole, and Donoho were there. Chandra told Detective

Kemp that after Farrar was killed the group went to a Circle K gas station, to a McDonald's restaurant, and then to a Wal-Mart.

¶ 14 Curtis Anselment, a Jefferson County sheriff's deputy, went to the businesses mentioned in Chandra's factual recitation, and secured surveillance tapes. The Circle K surveillance video showed that the defendant had a large amount of cash on hand when he paid for gasoline. The McDonald's restaurant was next to the Circle K. That video showed Cole entering the restaurant at approximately 10:45 p.m. In talking to the cashier, Cole appears to show the worker a large amount of money. The defendant then walked into the McDonald's. Both men depart at about 10:50 p.m.

¶ 15 Detective Kemp again questioned the defendant after his interview with Chandra Jones and his review of the surveillance tapes. Detective Kemp advised the defendant of his constitutional rights and recorded the interview. During the interview, Detective Kemp confronted the defendant with numerous statements made by Chandra in her interview that were in conflict with the claims made by the defendant in his first interview. Later in the day, the defendant was arrested.

¶ 16 Numerous times during this second recorded interview, the defendant would at first stick to his original version of the events, but when confronted by Chandra's alternate version, he would recant his earlier statement. The defendant claimed that his fear of his brother caused him to be less than truthful during the first interview.

¶ 17 The defendant said that his brother took $1,700 from Farrar's home and from that total gave him $100 plus the originally promised $40. He said that the large number of bills he was seen holding on the video surveillance tape were $1 bills and not larger

denominations taken from Farrar's home. Later in the interview, he acknowledged that he really had taken $400 to $700 from Farrar's home.

¶ 18 During the interview, the defendant stated that the gun belonged to Farrar. He stated that when his brother saw the gun in the bedroom, he pushed Farrar on the bed and grabbed the gun. The defendant claimed that his brother held the gun on him. He stated that he was standing at the foot of the stairs when his brother shot Farrar.

¶ 19 The defendant admitted that he, Cole, Donoho, and Chandra returned to the house later that evening to remove an item that they thought could contain fingerprints. The defendant continued to claim that everything about his involvement in the crime stemmed from his great fear of his brother. The defendant told Kemp that he wanted to tell the truth and accept responsibility for his part of the events; however, he reiterated that he was not the person who shot Farrar.

¶ 20 Gwen Jones testified that she was with Donoho when Donoho first met Farrar at a liquor store in Mt. Vernon. Farrar gave Donoho his card listing his name and telephone number. After this initial meeting, Farrar called Jones's home and asked to speak to "Susan," the name Donoho provided him.

¶ 21 Chandra Jones[1] testified at trial to the events of the day of the crime. She was 16 years old at the time. As part of a juvenile sentence of supervision on another case, Chandra agreed to cooperate in this case. Chandra said that she had never met Cole, Donoho, or the defendant, prior to July 1, 2006. On that day, she saw the three standing

[1]Chandra Jones is not related to Gwen Jones.

outside of Jones's home. She walked over to speak with them. Chandra said that Cole offered the defendant $40 if he would drive Cole and Donoho to Farrar's home. Chandra said that in the past Donoho had spent time with Farrar and that he provided her with money. Chandra went with the group in a white sport utility vehicle that evening. The first stop was a Casey's General Store. Donoho exited the vehicle in order to use a pay phone. She returned to the vehicle, and they drove to a man's home.

¶ 22 At this home, Donoho and Chandra went to the front door. A man answered the door. At trial, Chandra identified this man, from a photo exhibit, as Farrar. He told Donoho that she could come inside, but that Chandra could not. Chandra returned to the vehicle.

¶ 23 The defendant pulled out of Farrar's driveway and into a driveway across the street. Cole and the defendant left the vehicle for a few minutes, climbing out of the opened windows rather than using the doors, so that the interior lights would not come on. Upon their return, they backed the vehicle into Farrar's driveway. Cole and the defendant again left the vehicle. This time, Chandra said that they entered the home through the front door. Despite the fact that there were no streetlights and it was dark at the time, Chandra said that she was able to see into the home through a window because a light was on inside the home. She claimed that she witnessed two men, who she believed to be the defendant and Cole, fighting with Farrar.

¶ 24 Chandra said that minutes later, the defendant came back outside to the vehicle and showed her a roll of money. Cole did not come out of the house. The defendant then went back inside the house. Chandra said that she next heard a gunshot. She said that

Donoho, who was then standing in the doorway of the house, screamed. Then, Chandra heard a second gunshot. Donoho, the defendant, and Cole returned to the vehicle. Donoho and Cole were carrying various objects removed from the house. She could not recall if the defendant was carrying anything.

¶ 25 On the drive back to Mt. Vernon, Cole threatened that if anything was said about what happened at the house, "he would do to us what he did to that man." In town, the group stopped at Sonic, Wal-Mart, Circle K, and McDonald's. They discarded items at Sonic and Wal-Mart. Thereafter, the group returned to the defendant's home. The defendant gave Chandra $200. She said that she could not remember whether the defendant said anything to her about the reason he gave her the money, but that he did not threaten her. She acknowledged that in a prior interview she contended that the money was to keep her quiet.

¶ 26 Two other women, Amanda (Morales) Jamison and Tanya (Long) Melton, testified at trial that they spoke with the defendant, Cole, and Donoho on July 1-2, 2006. Melton said that she and the defendant were friends and had a casual sexual relationship.

¶ 27 On the morning of July 2, 2006, the defendant, Cole, and Donoho went to Jamison's apartment and asked for a ride. Melton and Jamison testified that they stopped at Casey's General Store for Donoho to use the payphone. Detective Kemp testified that Farrar's home phone records and the Casey's surveillance tape also reflect that Donoho made this call. Melton and Jamison testified that they drove the group to a house. Cole, the defendant, and Donoho exited the van and walked to the back of the house. Upon

their return, Donoho was carrying something. Cole gave Jamison $40 for driving them to the house.

¶ 28 The defendant did not testify at trial.

¶ 29 At the conclusion of the trial, the court denied the defendant's motion for a directed verdict. The trial court instructed the jurors that in order to find the defendant guilty of first-degree murder, they needed to find him guilty of robbery. To find the defendant guilty of robbery, the trial court instructed the jurors that they needed to conclude that he did not act under compulsion–that the defendant did not act under threat of imminent death or harm in committing the acts with which the State charged him. After deliberations, the jury convicted the defendant of robbery and first-degree murder.

¶ 30 The court held a sentencing hearing on August 4, 2011. Two Jefferson County correctional officers testified that the defendant had been in their jail since July 26, 2006, and that he had been respectful and was passive. However, during his years in jail awaiting trial and sentencing, jail personnel wrote him up for 31 violations. Jail personnel disciplined the defendant for disobeying a lock-down, fighting, passing contraband, and tattooing.

¶ 31 A fellow inmate at the Jefferson County jail, Michael Goldman, testified that when he went to jail, the defendant protected him from the other inmates. Goldman's mother, Cheryl Ann Wehrheim, also testified to the good deeds of the defendant in jail.

¶ 32 The defendant personally apologized to the Farrar family, saying that the fact that he was "under the influence" at the time of the murder was not an excuse. He asked for forgiveness.

¶ 33 The trial court vacated the robbery conviction. The court considered one factor in mitigation–that the defendant had no prior convictions. In determining that a lengthy sentence was necessary, the court noted that Farrar's murder had been planned, and that at any time before the murder, the defendant could have backed out of the plan. The court noted that the defendant's actions on the McDonald's restaurant surveillance video did not demonstrate remorseful behavior. The court sentenced the defendant to 45 years.

¶ 34 The defendant's attorney filed a motion for a new trial on September 2, 2011. He also filed a separate motion to reduce the defendant's sentence. The trial court held a hearing and denied the motions.

¶ 35 LAW AND ANALYSIS

¶ 36 Errors in Evidentiary Rulings

¶ 37 The defendant claims that the trial court committed error in not allowing him to ask Chandra Jones about a juvenile shelter located near Farrar's home. He also claimed that Detective Kemp's testimony was improper in several respects. The defendant raised none of these issues in his posttrial motion.

¶ 38 When a defendant raises issues for the first time on appeal, the appellate court may consider the arguments waived. *People v. Johnson*, 238 Ill. 2d 478, 484, 939 N.E.2d 475, 479 (2010). To obtain relief in this scenario, the defendant must satisfy the plain error standard, which requires the defendant to demonstrate the commission of error. *Id.*, 939 N.E.2d at 479-80. The defendant must also show that either "the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant" or "[the] error is so serious that it affected the fairness of the defendant's trial and

challenged the integrity of the judicial process." (Internal quotation marks omitted.) *Id.* The defendant bears the burden to prove these elements. *People v. Hillier*, 237 Ill. 2d 539, 545, 931 N.E.2d 1184, 1187-88 (2010).

¶ 39 Impeachment of Chandra Jones. During Chandra's testimony, she named a juvenile residential facility, Southern 30, as a landmark they passed on the way to Farrar's home. The defendant's attorney asked her to tell the jury what Southern 30 was. The State objected on relevancy grounds. The trial judge agreed, concluding that her familiarity with Southern 30 was a collateral issue and irrelevant. The defendant argues on appeal that because Chandra lived in the juvenile facility at one time, the testimony sought at trial about Southern 30 was relevant to Chandra's bias or motive to provide false testimony. The defendant also claims that Chandra's testimony was not consistent with her testimony in the other two trials.

¶ 40 The defendant argues that his attorney wanted to impeach Chandra with the shelter evidence to establish that she was familiar with the area, and yet she did not seek to run away from the defendant, Cole, and Donoho when she witnessed the crime. Defense counsel initially wanted to confirm that Chandra was afraid of the defendant. If she said that she was afraid, her familiarity with the neighborhood of Farrar's house could have become relevant. However, at trial, Chandra said that she was not afraid of the defendant, Cole, and Donoho.

¶ 41 The defendant correctly states that a showing of bias or motive to give false testimony is an acceptable method of impeaching a witness. *People v. Lenard*, 79 Ill. App. 3d 1046, 1050-51, 398 N.E.2d 1054, 1057 (1979). Courts must give defense

counsel wide latitude in these matters. *People v. Barr*, 51 Ill. 2d 50, 51, 280 N.E.2d 708, 710 (1972). In this case, we find that the connection the defendant sought was too tenuous–that Chandra chose not to flee the crime scene even though she was familiar with the geographical area because she may have been involved in the crime. Even if past residence in the shelter was relevant as a means to establish that Chandra was biased or had a motive to lie, the defendant does not argue that the evidence in his case was closely balanced. The defendant must establish both elements in order for this court to review this issue under plain error. *People v. Nieves*, 192 Ill. 2d 487, 503, 737 N.E.2d 150, 158 (2000); *Hillier*, 237 Ill. 2d at 545-46, 931 N.E.2d at 1187-88. We find that the defendant's contention that the issue is reviewable under plain error lacks merit. Therefore, we do not find that the trial court's grant of the objection to the area of questioning about Chandra's experience with the juvenile shelter amounted to plain error.

¶ 42 Detective Kemp's Testimony and Comments. The defendant next contends that the trial court erred with respect to rulings on Detective Kemp's testimony at trial. We address each of the defendant's arguments.

¶ 43 1. Testimony About Donoho's Motivation for Making a Phone Call

¶ 44 The defendant argues that his attorney should have objected to the prosecutor's question to Detective Kemp calling for speculation on Donoho's motive for making a telephone call from Casey's General Store to Farrar's house at 11:30 a.m. the day after the murder. Defense counsel did not object. Detective Kemp replied, "I suppose that they were checking to see if anybody was alive or the police were there."

¶ 45 Defendant correctly cites law that courts typically construe testimony grounded in conjecture to be irrelevant. *Petraski v. Thedos*, 382 Ill. App. 3d 22, 27, 887 N.E.2d 24, 30 (2008). While this may be the law, defense counsel did not object to this question and did not raise the matter in his posttrial motion. Thus, the defendant forfeited the issue. *Johnson*, 238 Ill. 2d at 484, 939 N.E.2d at 479. The defendant asks us to consider this under plain error. We agree that the question about Donoho's phone call to Farrar's home, as phrased by the prosecution, could be improper. However even if this court concluded that error occurred, the defendant still must establish the second prong of the plain error analysis, that the evidence is so closely balanced that this error alone could result in a faulty verdict or that the error was of significant severity to affect the integrity of the trial–and this he has not done. *Id.* The defendant makes no argument on either possibility, and thus we consider the issue forfeited.

¶ 46 2. Testimony That Two Witnesses Changed Their Last Names

¶ 47 The defendant argues that it was inappropriate for Detective Kemp to imply that two prosecution witnesses changed their last names as a direct result of their involvement in this case. Defense counsel did not object to the line of questioning. Having reviewed the transcript, we do not agree that Detective Kemp's testimony implied that they changed their names because of fear or otherwise due to their involvement in this case. The prosecutor began to ask Detective Kemp about his work regarding these two witnesses, and then stopped and started a new question, asking Detective Kemp if the two witnesses had different names at the present. Both women testified at trial. One witness never mentioned that her name was changed, while the other did, but without

explanation. Even if an improper insinuation occurred, defense counsel did not object or raise the issue in his posttrial motion, and the defendant makes no effort to satisfy the plain error requirements for our consideration of the issue.

¶ 48 3. Testimony About Omissions From the Defendant's Second Statement

¶ 49 The defendant's second recorded interview was lengthy. At its conclusion, the prosecutor asked Detective Kemp what, if anything, the defendant said in the statement that was incomplete based upon other evidence. Detective Kemp responded as follows:

> "At that point in time, he had left out the phone call, which we found out about earlier–or later, which had been placed at Casey's by Krysta Donoho going up. He also had left out the trip where he was–he and Demetrius were transported back to Randy Farrar's house on Sunday morning, the 2nd at about 11:00 by Tanya Long and Amanda Morales."

The defendant argues that Detective Kemp's testimony effectively took away the jury's opportunity to judge the evidence for themselves. Defense counsel did not object to the question and did not raise the issue in a posttrial motion. Thus we find the issue forfeited. Furthermore, the defendant makes no argument to establish that we have any basis to review the issue as plain error.

¶ 50 4. Hearsay Testimony About What Gwen Jones Told Him by Phone

¶ 51 Detective Kemp testified that one week after Farrar's murder, Gwen Jones called him by phone to tell him that her son (the defendant) told her that he was present when Farrar was killed. Defense counsel objected based on hearsay. The State countered that the statement was not being offered for the truth of what Jones told him by phone, but for

an explanation of how the defendant became the focus of the investigation. On that basis, the trial court overruled the objection and allowed Detective Kemp to provide the answer.

¶ 52 Hearsay evidence offered to establish an investigative course requires a two-part analysis. *People v. Peoples*, 377 Ill. App. 3d 978, 984, 880 N.E.2d 598, 603 (2007). First, the court must determine whether the hearsay evidence is necessary to explain the officer's actions. *Id.* If the answer to the first question is yes, then the trial judge must weigh the State's need for the hearsay evidence against the risk that the jury could consider that hearsay for the truth of the matter asserted. *Id.* "[A] police officer may testify about his conversations with others, such as victims or witnesses, when such testimony is not offered to prove the truth of the matter asserted by the other, but is used to show the investigative steps taken by the officer." *People v. Simms*, 143 Ill. 2d 154, 174, 572 N.E.2d 947, 955 (1991).

¶ 53 The defendant argues that the statement placing him at the scene of the crime clearly goes to the essence of the dispute and is, therefore, improper and prejudicial. The problem with this argument is that the defendant admitted in both statements that he was at the scene of the crime. The trial court played the recorded statements for the jury. While the statement by Detective Kemp amounted to hearsay, we agree with the State's contention that without some testimony about receiving the phone call, there was no logical reason for the sheriff's department to turn its attention to the defendant. Given the length of the two recorded statements during which the defendant never denies being at the scene of the crime, we find that this statement by Detective Kemp was not prejudicial and did not deny the defendant a fair trial.

¶ 54 Prosecutorial Misconduct in Closing Argument

¶ 55 The defendant next contends that the State's Attorney committed plain error in arguing to the jury in his closing remarks that the defendant was "cocky." The prosecutor specifically argued:

> "Now, the defendant is driving the vehicle belonging to Jamie Pas. It's not his own vehicle. It's an SUV that's owned by one of his girlfriends. He's driving that around this entire evening, and then, in the course of that, he goes out and he's going to meet up with another girlfriend or former girlfriend, or I guess the way she phrased it was a friend with benefits, Tanya Long, and while he's in Tanya Long's vehicle, he's going to start making out with a 16-year old. He's got three different girls lined up.
>
> Now that's not a crime. I'm not even remotely suggesting that, but that is emblematic of the defendant's supreme confidence that he has in his ability to talk his way out of anything. He has supreme confidence.
>
> * * *
>
> That supreme cockiness, that confidence that he has in his verbal skills is what would eventually lead him to go and talk to Detective Kemp on *** July 14. *** He was going to go and take the initiative and try to frame the investigation in terms that kept him out of the loop, kept him on the–on the minimized sidelines."

Defense counsel did not object to this argument. The defendant claims that the State misstated the evidence, argued facts not in evidence, and otherwise presented the prosecutor's own testimony to the jury.

¶ 56 Courts give prosecutors wide latitude in closing arguments, but prosecutors cannot present improper and/or prejudicial arguments. *People v. Williams*, 181 Ill. 2d 297, 330, 692 N.E.2d 1109, 1126-27 (1998); *People v. Hudson*, 157 Ill. 2d 401, 441, 626 N.E.2d 161, 178 (1993). The State must limit its arguments to the reasonable inferences related to the evidence introduced at trial. *Id.* Prosecutors may not make arguments that could incite the jury to act from the standpoint of passion rather than from reason and deliberation. *People v. Liner*, 356 Ill. App. 3d 284, 297, 826 N.E.2d 1274, 1287 (2005). If the closing arguments go beyond the fairness and impartiality required of our judicial system, then the appellate court must reverse the verdict. *People v. Clark*, 114 Ill. App. 3d 252, 255-56, 448 N.E.2d 926, 928-29 (1983).

¶ 57 The defendant takes issue with an argument made by the prosecutor that he had multiple girlfriends. He contends that the argument is inflammatory, but he does not explain how the argument contradicted evidence adduced at trial or was otherwise improper. He does not argue in what way the argument actually prejudiced him. He states that there was no specific evidence that he had three girlfriends as of the date of the murder. Specifically, he claims that no one identified Jamie Pas as the defendant's girlfriend; that Tanya Long identified herself as a "friend with benefits," which would be less than girlfriend status; and that having only met Chandra that night, she could hardly qualify as his girlfriend. Essentially, the defendant bases his argument on semantics.

The jury heard the testimony from witnesses about his relationship to Tanya Long and Chandra, and watched and listened to his recorded statements where he talked about Jamie Pas. Jurors were therefore aware of the status of these three women. We do not agree that the statement that the defendant had three different women "lined up" was prejudicial in light of the evidence to that effect at trial.

¶ 58 The defendant also takes issue with the State's description of him as cocky. He claims that there was nothing in the evidence to support this assessment of his character. Again, the defendant does not argue how this statement was specifically contradictory to the evidence heard and seen by the jury at trial. He makes no argument that the characterization was prejudicial. The characterization related to the fact that he was driving one woman's car, met a brand new girl, Chandra, that he began making out soon after meeting for the first time, and asking a third woman with whom he maintained a more casual relationship if she would provide the four of them with a ride. The jury heard testimony about and from this third woman, Tanya, who took offense to the defendant's actions with Chandra, and left without providing him the requested ride. From this evidence, the prosecutor argued that the defendant maintained an attitude that he could talk to Detective Kemp, take blame, and yet not get in as much trouble as his brother. We disagree that this statement was not a fair commentary on the evidence heard and seen by the jury.

¶ 59 Ineffective Assistance of Counsel

¶ 60 Alternatively, the defendant claims that his attorney was ineffective for not objecting to the introduction of evidence and to the State's closing argument. He argues

that we should grant him a new trial.

¶ 61 Courts measure constitutionally competent assistance by whether the defendant received "reasonably effective assistance." *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Courts presume that defense attorneys pursue sound trial strategies. See *Strickland*, 466 U.S. at 689. Trial strategies are unsound only if a reasonably effective criminal defense attorney in a similar situation would not pursue the same strategy. *People v. Faulkner*, 292 Ill. App. 3d 391, 394, 686 N.E.2d 379, 382 (1997).

¶ 62 To prevail on an ineffective-assistance-of-counsel claim, the defendant must establish, within a reasonable probability, that the court would not have convicted him of the crime if defense counsel had not made the alleged errors. *People v. Lefler*, 294 Ill. App. 3d 305, 311, 689 N.E.2d 1209, 1214 (1998) (citing *Strickland*, 466 U.S. at 694). Just because the defense attorney made an error does not automatically mean that the defendant did not receive a fair trial. We must consider the issue from the perspective of whether the defendant received a fair trial, despite an attorney's shortcomings. *Lefler*, 294 Ill. App. 3d at 312, 689 N.E.2d at 1214.

¶ 63 Without any analysis or authority, the defendant simply restates the issues he raised regarding evidence and the State's closing arguments and says that defense counsel's performance was "clearly unreasonable and ineffective." Even if we proceeded under an assumption that counsel's performance was unreasonable and ineffective, there is absolutely no probability that the jury would have acquitted him but for these "errors." The defendant acknowledged his direct involvement in the crime. He also acknowledged his participation in the follow-up visits to Farrar's home to remove any physical evidence

linking him, Cole, and Donoho to the crime scene. Whatever the motives were on the night of the crime, the night ended with the murder of a man. The defendant's involvement clearly met the elements of the crimes charged. We conclude that the defendant has failed to meet the standards required in *Strickland* and therefore has not established that his attorney provided him ineffective assistance.

¶ 64 Jury Instructions

¶ 65 The defendant next argues that he did not receive a fair trial because the court did not properly instruct the jury on hearsay evidence and did not provide a definition of the word "knowing."

¶ 66 The determination of proper jury instruction lies within the trial court's sound discretion. *Rowe v. State Bank of Lombard*, 247 Ill. App. 3d 686, 690, 617 N.E.2d 520, 523-24 (1993); *People v. Castillo*, 188 Ill. 2d 536, 540, 723 N.E.2d 274, 276-77 (1999). A court of review will hold that the trial court abused its discretion if after considering all of the instructions provided, the instructions were unclear and did not correctly state the law. *Dillon v. Evanston Hospital*, 199 Ill. 2d 483, 505, 771 N.E.2d 357, 371 (2002). We will not reverse a judgment because the trial court gave an improper jury instruction unless we have reason to conclude that the instruction clearly misled the jury. *Phelps v. Chicago Transit Authority*, 224 Ill. App. 3d 229, 234, 586 N.E.2d 352, 355 (1991).

¶ 67 The defendant first claims that the trial judge erred in not giving a limiting instruction to the jury before the court played the defendant's recorded statements. Throughout the recording, when questioning the defendant, Detective Kemp made hearsay references to statements made by Chandra Jones. The defendant's attorney

wanted the court to instruct the jury that it should not consider Chandra's "statements" to Detective Kemp as substantive evidence. The trial court denied this request, indicating that defense counsel would have the opportunity to cross-examine Chandra about the differences in her recollections of the events of that night. The defendant did not reassert his request for the limiting instruction at the end of the trial.

¶ 68 The defendant did not raise this issue in his posttrial motion, and therefore we may consider the issue forfeited. *People v. Mulvey*, 366 Ill. App. 3d 701, 714, 853 N.E.2d 68, 79 (2006). In order to obtain relief, the defendant must establish that denial of his request for this limiting instruction amounted to plain error. *Id.*

¶ 69 Courts generally hold that hearsay evidence is inadmissible because hearsay is unreliable. *People v. Olinger*, 176 Ill. 2d 326, 357, 680 N.E.2d 321, 336 (1997). "To qualify as hearsay, an out-of-court statement must be offered to establish the truth of the matter asserted." *Simms*, 143 Ill. 2d at 173, 572 N.E.2d at 954. Courts give limiting instructions to a jury to limit the purpose of evidence heard or about to be heard. See 11 W. Shroeder, Illinois Practice § 105:2(a), (b) (2013). While there is no mandatory requirement that the court give a limiting instruction when a defendant requests one, courts may do so to ensure that the jury is not considering evidence for the wrong purpose. The court typically gives a limiting instruction to the jury before the evidence at issue is accepted, but the court could also give the instruction along with the other instructions at the end of the case. *Id.* Often, the court gives the instruction at both stages of the trial. *Id.*

¶ 70 With a plain error analysis, the defendant must first establish that the trial court committed error by failing to give the limiting instruction to the jury. The defendant argues that Illinois law supports this type of limiting instruction before a jury hears hearsay evidence. He cites to the Illinois Supreme Court's opinion in *People v. Simms* in support of his argument. In *People v. Simms*, during a death penalty sentencing hearing before a jury, the State sought testimony of an officer who planned to testify that the defendant's brother told the officer that defendant confessed the murder to him. *Simms*, 143 Ill. 2d at 173, 572 N.E.2d at 944. The Illinois Supreme Court found that the challenged testimony was not hearsay because it was offered for the truth of the officer's testimony. *Id.* at 173-74, 572 N.E.2d at 944. The court noted that the trial court gave the jury a limiting instruction that the testimony was only to explain what caused the police to take certain actions. *Id.* at 174, 572 N.E.2d at 955. Although the court referenced the fact that the trial court gave a limiting instruction in this case, the court's opinion does not require that trial courts instruct juries with a limiting instruction in this type of situation. The defendant cites no other authority for his position that the trial court must give a limiting instruction, when requested, before the jury hears the hearsay evidence.

¶ 71 We also find that the defendant is not able to establish the second part of the plain error test–that there was a probability that the jury would have acquitted him in absence of this "error." This is not a criminal prosecution where the evidence was closely balanced. The defendant failed to identify any specific incriminating statement or statements allegedly made by Chandra and repeated by Detective Kemp, that the defendant did not confirm in the recorded statement. When Detective Kemp pointed out

conflicts between the defendant and Chandra's versions of the facts, the defendant reframed his story in keeping with Chandra's version. The defendant only disagreed with Chandra's claim that he was involved in beating Farrar. When Chandra testified at trial, she confirmed that she witnessed the defendant hitting Farrar. Defense counsel cross-examined Chandra thoroughly about her ability to see the defendant beating Farrar from her vantage point of looking out the back window of the sport utility vehicle.

¶ 72 The defendant bears the burden to prove both elements in order to obtain relief under the plain error doctrine. *Hillier*, 237 Ill. 2d at 545-46, 931 N.E.2d at 1187-88. Having failed to establish that his trial was unfairly compromised by the lack of a limiting instruction, the defendant is not entitled to relief.

¶ 73 We next turn to the defendant's argument that the court should have provided an instruction to the jury defining the term "knowing." The defendant did not raise this issue in his posttrial motion, and so we could consider the issue forfeited. We will determine whether the defendant has met the requirements of plain error.

¶ 74 The defendant was charged with first-degree murder while committing a forcible felony–robbery. The State also charged him with the offense of robbery. The trial court instructed the jury on the issue of accountability, as follows:

> "A person is legally responsible for the conduct of another person when either before or during the commission of an offense, with the intent to promote or facilitate the commission of an offense, he knowingly solicits, aids, abets, agreed to aid, or attempts to aid the other person in the planning or commission of the

offense." Illinois Pattern Jury Instructions, Criminal, No. 5.03 (4th ed. 2000) (hereinafter, IPI Criminal 4th).

The accountability instruction contained the word "knowingly." The defendant sought to have the word "knowing" defined for the jury. The instruction he tendered defined the term "knowledge," and not specifically the word "knowing." The trial court rejected the defendant's tendered definitional instruction: "Conduct performed knowingly or with knowledge is performed willfully." IPI Criminal 4th No. 5.01B. The trial court rejected this proposed instruction because the court determined that it would not aid the jury during deliberations.

¶ 75 The instruction sought by the defendant was added to the Illinois Pattern Jury Instructions, Criminal, in response to a case in which failure to give a definition of the term "knowingly" constituted reversible error. *People v. Brouder*, 168 Ill. App. 3d 938, 946-47, 523 N.E.2d 100, 105-06 (1988). In *Brouder*, the jury was confused about the term, and asked the court to define the word on two separate occasions. *Id.*

¶ 76 The instruction and the committee notes about the instruction contain no indication that the instruction is automatically required. The committee that drafted and included the definition in the IPI-Criminal noted, "The Committee takes no position as to whether this definition should be routinely given in the absence of a specific jury request." IPI Criminal 4th No. 5.01B, Committee Note. However, if the instruction is given, the Committee requires that the court also include one or two other paragraphs of No. 5.01B. The section proposed by the defendant should not be given in isolation. *Id.*

¶ 77 The appellate court in *People v. Powell* found that the terms "knowingly" and "intentionally" do not require definition because they are within common knowledge of jury members. In *People v. Powell*, the jury convicted the defendant of attempted murder. *People v. Powell*, 159 Ill. App. 3d 1005, 1013, 512 N.E.2d 1364, 1370 (1987). On appeal, the defendant claimed that the court should have instructed the jury on the meaning of "intentionally." *Id.* In *Powell*, the jury asked the court for clarification on whether intent and knowledge had the same meaning. *Id.* at 1013-14, 512 N.E.2d at 1370. The trial court told the jurors that Illinois law did not have distinct definitions of the terms. *Id.* at 1014, 512 N.E.2d at 1370. The appellate court noted that it did not need to instruct the jury on the terms "knowingly" or "intentionally," because the two terms have a plain meaning and should be within the jury's common knowledge. *Id.* The court found that the trial judge had not instructed the jury that the terms were indistinguishable, but allowed the jury to apply its own understanding of the plain meaning of the terms. *Id.*

¶ 78 The defendant argues that his tendered instruction defining "knowing" was relevant because the defendant's willful conduct was a key issue at trial. The defendant argues that his defense of coercion supported the giving of this instruction. He concludes that because the court refused to define the term in instructing the jury, he did not receive a fair trial.

¶ 79 The State claims that the trial court adequately instructed the jury on the defendant's coercion defense, and that there was no need for the court to instruct the jury in the definition of "knowing." The court instructed the jurors that if the defendant's

actions or inactions were the result of coercion by his brother, then the jury should not hold him responsible for the charges.

¶ 80 The defendant failed to demonstrate that in light of all of the other instructions, a definition of the term "knowing" would have aided the jury. The term is within the jurors' common knowledge.

¶ 81 Ultimately, jury instructions are a matter of discretion. *Castillo*, 188 Ill. 2d at 540, 723 N.E.2d at 276-77. Unlike the jury in *People v. Brouder*, the jury in this case did not ask for a definition of the term "knowing." The law does not mandate that the trial court give this instruction upon the defendant's request, without other factors like jury confusion at issue. We agree with the State that the court adequately instructed the jury.

¶ 82 The Defendant's Sentence

¶ 83 The defendant's final issue on appeal is his claim that the 45-year sentence is excessive. He claims that the sentence is excessive in light of the circumstances surrounding the commission of the offenses and because he had good rehabilitative potential because he had virtually no criminal history.

¶ 84 Our Illinois Constitution requires that "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11. Therefore, the sentencing court must balance the punishment and rehabilitative purposes of the sentence. *People v. Center*, 198 Ill. App. 3d 1025, 1032-33, 556 N.E.2d 724, 729 (1990). To reach the proper balance, the court must give "careful consideration of the nature and circumstances of the crime, the defendant's conduct in the commission of the crime, and

the defendant's personal history, including his age, demeanor, habits, mentality, credibility, criminal history, general moral character, social environment, and education." *People v. Maldonado*, 240 Ill. App. 3d 470, 485-86, 608 N.E.2d 499, 509 (1992).

¶ 85 The trial court has very broad discretion when imposing sentence. *People v. Stacey*, 193 Ill. 2d 203, 209, 737 N.E.2d 626, 629 (2000). However, the trial court's sentencing discretion has limits. *Id.* The punishment ordered by the trial court must be just and equitable. *People v. Blumstengel*, 61 Ill. App. 3d 1016, 1021, 378 N.E.2d 401, 404 (1978). If the sentence imposed is within the statutory limits, there is a rebuttable presumption that the sentence is appropriate. *People v. Chambers*, 258 Ill. App. 3d 73, 92, 629 N.E.2d 606, 620 (1994). That presumption is rebuttable if the sentence imposed varies greatly from the purpose and spirit of the law. *Id.* On appeal, we will not overturn a sentence unless we conclude after examining the record that the sentence is excessive and not justified under any reasonable review. *People v. Smith*, 214 Ill. App. 3d 327, 338, 574 N.E.2d 784, 791-92 (1991).

¶ 86 The applicable sentencing range for first-degree murder is 20 to 60 years. 730 ILCS 5/5-8-1 (West 2008). The defendant's brother was sentenced to 45 years on his first-degree murder conviction and 7 years on his robbery conviction. The trial court sentenced Donoho to 45 years for felony murder. The defendant's sentence was within the applicable range and was proportionate to the sentences received by Cole and Donoho.

¶ 87 The defendant argues that the sentence is too great because he was not involved in planning the crime. Based upon what he stated in the recordings, Cole and Donoho only

asked him to provide transportation to Farrar's home. However, Chandra's testimony provided evidence of the defendant's considerable involvement once the participants arrived at Farrar's home. Chandra testified that the defendant parked away from Farrar's house and exited the vehicle through the opened car windows in order to eliminate any lights from turning on from the interior of the car. The defendant followed Cole into the home. Chandra testified that she saw the defendant and Cole beating and stomping on Farrar. The defendant did not admit to beating Farrar, but did acknowledge that he blocked an exit path that Farrar could have taken. The defendant admitted taking money from the drawer from under Farrar's bed.

¶ 88 The defendant argues that because there was no evidence that the three brought a weapon to Farrar's home, they could not have planned to kill Farrar. The defendant's argument is flawed. The mere failure to bring a gun to Farrar's house does not mean that they had no plans to kill Farrar that evening. According to the defendant's own statements, before Farrar was shot and killed, Farrar was beaten. The defendant claimed that his brother wanted no witnesses that evening. While the defendant may not have planned to kill Farrar with Farrar's own gun, the defendant was involved in the planning of the robbery and in subduing Farrar, which ultimately resulted in Farrar's murder. As the State argued in closing, at any point when the defendant saw what his brother was doing, he had the ability to leave Farrar's home. The defendant chose to stay. Afterwards, the security cameras at the Circle K and at the McDonald's showed that he was seemingly upbeat. The defendant was seen talking with employees and his brother

and was seen displaying a large bundle of bills. These actions belie the defendant's suggestion that he was frightened and remorseful.

¶ 89 The defendant claims that his lack of a criminal history gives him great rehabilitative potential. He further claims that the trial judge seemingly did not consider this fact in entering the sentence. The defendant is correct that he only has only four misdemeanor charges in his past. Three of the charges involved obstructing a peace officer, and the fourth was retail theft. In mitigation, the sentencing court noted that the defendant had no prior felonies. He found no other factors applicable. Thus, it is clear that the court did consider the defendant's lack of a significant criminal history.

¶ 90 In reviewing this record on appeal, the sentencing hearing transcript, as well as the defendant's presentence investigation report, we cannot say that the trial court's sentence is excessive in light of all relevant circumstances. Accordingly, we affirm the sentence of 45 years.

¶ 91 CONCLUSION

¶ 92 For the foregoing reasons, we hereby affirm the judgment of the circuit court of Jefferson County.

¶ 93 Affirmed.