

deliver a controlled substance.

(8) Trial court did not err in denying both defendant's motions for directed verdict.

(9) Trial court did not err in admitting guns and ammunition and photographs of same into evidence.

(10) Trial court did not err in sending cutting agents and assorted paraphernalia as well as photographs of guns and ammunition to jury room.

(11) Defendant forfeited issue of whether State was allowed to make prejudicial, inflammatory and erroneous statements not supported by the evidence during closing argument.

(12) Trial court did not err in giving both paragraphs of the jury instruction I.P.I. 4.16 to the jury.

(13) Defendant forfeited issue of whether trial court failed to quash warrantless arrest and suppress statements and evidence from such arrest.

(14) Defendant forfeited issue of whether trial court failed to suppress guns and ammunition seized in execution of search warrant where items were not described in warrant.

¶ 2 Defendant appeals from his conviction for possession of a controlled substance with intent to deliver. Prior to trial, defendant filed motions (1) to hold an evidentiary hearing on the veracity of the undercover informant who provided the information upon which the search warrant was based; (2) for discharge pursuant to a speedy trial demand; and (3) *in limine* to exclude from evidence guns and ammunition and photographs of them. During his jury trial, defendant made a number of objections to evidence and testimony and to certain jury instructions. He was convicted and sentenced to 26 years in prison.

¶ 3 Defendant appeals alleging (1) the trial court erred in denying his pretrial motions for a *Franks* hearing on the veracity of a confidential informant who provided information upon which a search warrant was granted; (2) the trial court erred in denying his motion to suppress

evidence illegally seized based on the issuance of the search warrant without proven probable cause; (3) the trial court erred in denying his pretrial motion for discharge pursuant to a speedy trial demand; (4) trial court erred in denying his motion *in limine* to exclude from evidence guns and ammunition and photographs of same as they do not have probative value on issues charged; (5) he was not proved guilty beyond a reasonable doubt; (6) the trial court erred in overruling his objections to hearsay testimony and also in allowing the display of weapons to the jury; (7) the trial court erred in preventing him from inquiring as to proof of controlled buy; (8) the trial court erred in denying both of his motions for a directed verdict; (9) the trial court erred in admitting guns and ammunition and photographs of same into evidence; (10) the trial court erred in sending cutting agents and assorted paraphernalia and photographs of guns and ammunition to the jury room; (11) the trial court erred in allowing the State to make prejudicial, inflammatory, and erroneous statements not supported by the evidence in closing argument; (12) the trial court erred in giving both paragraphs of jury instruction No. 4.16 on possession; (13) the trial court should have *sua sponte* "quashed his warrantless arrest" and suppressed statements and evidence secured therefrom; and (14) the trial court should have *sua sponte* suppressed guns and ammunition seized in execution of the search warrant as they were not described as items to be seized in the warrant.

¶ 4 We find some of defendant's arguments have been forfeited and none of them to be persuasive and affirm his conviction.

¶ 5 I. BACKGROUND

¶ 6 On January 29, 2010, defendant, Antoine Carroll, was arrested. On February 1, 2010, defendant was charged with one count of unlawful possession with intent to deliver a

controlled substance (720 ILCS 570/401(a)(2)(A) (West 2010)) after his arrest and the search of his residence pursuant to a search warrant. At his arraignment that same day, defendant waived preliminary hearing, pleaded not guilty and asked for a jury trial. On March 3, 2010, he was released on bond.

¶ 7 On March 2, 2010, defendant filed a motion to suppress evidence on the grounds (1) the search warrant was an improper *ex parte* application where the complaint was based on uncorroborated hearsay evidence and contained unreliable statements; and (2) the complaint and affidavit for search warrant failed to state evidentiary facts supporting the informant's credibility or the reliability of his/her information. On May 3, 2010, defendant filed a motion for speedy trial.

¶ 8 On May 10, 2010, a hearing was held on defendant's motion to suppress evidence. The trial court found the motion failed to establish grounds for a hearing based on *Franks v. Delaware*, 438 U.S. 154 (1978). Because defense counsel had not received the affidavit for search warrant during the 35-day period for filing the motion challenging the search warrant, the court struck the motion and granted leave to file an amended motion.

¶ 9 On May 12, 2010, defendant filed a supplemental motion to suppress evidence under *Franks v. Delaware*, alleging in the affidavit for search warrant Officer Jack Turner made deliberate and material misrepresentations of fact as deliberate falsehoods or in reckless disregard of the truth. That same day he filed an alternative motion to suppress evidence based on a lack of probable cause to grant the search warrant. On June 25, 2010, the trial court denied both motions, stating defendant failed to establish the substantial preliminary showing required by *Franks* for the first motion and the totality of the circumstances described in the affidavit for

search warrant established overwhelming evidence of probable cause for issuance of the search warrant.

¶ 10 On November 2, 2010, defendant filed a motion for discharge pursuant to section 103-5(b) of the Code of Criminal Procedure of 1963 (Code of Criminal Procedure) (725 ILCS 5/103-5(b) (West 2010)) because more than 160 days had elapsed since he filed his motion for a speedy trial. On November 8, 2010, the trial court held a hearing on the motion. The trial court found defendant could not count the days he spent in custody as those occurred prior to the filing of the motion while other delays were incurred due to the filing of his motion for the *Franks* hearing, leading the court to deny the motion.

¶ 11 On November 15, 2010, defendant's trial began with jury selection. On November 16, 2010, prior to the start of testimony, defendant made an oral motion *in limine* to exclude evidence of guns and ammunition and photographs of same found during the execution of the search warrant and listed on the State's exhibit list provided to defense counsel that morning. Defendant argued these items had no probative value as no gun charges were made against defendant and their presence at trial would be highly prejudicial to him. The trial court denied the motion, finding the guns and ammunition were probative of intent to deliver a controlled substance rather than possession for personal use.

¶ 12 The evidence indicated on the morning of January 29, 2010, when the search warrant was executed, police conducting surveillance on the house located at 106 Scottswood, Urbana, Illinois, saw a large black man matching defendant's description leave the garage in a van later stopped by other officers who "received" the garage door opener to 106 Scottswood from the driver who turned out to be defendant. Sergeant Dennis Baltzell testified he had seen

defendant leave the house before. The police had information defendant resided there and they believed it was his current residence. They brought him back to the house after he was stopped where Officer Jack Turner testified he gave defendant *Miranda* warnings and defendant confessed. Turner testified, "[Defendant] said that he had a little less than an ounce of powder cocaine. That he had one illegal gun and one registered gun inside the residence. That he has sold both powder and crack cocaine from the residence. That he had approximately \$5,000 in cash inside the residence. That he sometimes mixes Inositol with the powder cocaine, to add weight to it. [Defendant] also stated the SKS assault rifle located in the master bedroom had been purchased from a couple of individuals from Villa Grove, Illinois, and he paid \$80 for that."

¶ 13 Upon executing the search warrant, the police found men's and women's clothing in the master bedroom, including a men's suit jacket, a sport jacket, a Harbor Bay men's coat, size 4X, and a Work Sport brand men's coat, in the pockets of which were, respectively, a clear bag of cocaine, a clear bag containing cocaine and a spoon, \$5,000 and \$540. Officer Jaceson Yandell found \$700 of the marked controlled-buy money used in a sale prior to the search. In the right top dresser drawer in the master bedroom police found an Illinois state identification card with defendant's name, photograph and the 106 Scottswood address and a piece of mail from the Illinois Secretary of State Driver's License Division addressed to defendant at 106 Scottswood. Police also found a bag of cocaine and a digital scale on top of kitchen cabinets. Cutting agents lidocaine and inositol were found in a dresser in the master bedroom. A dresser drawer contained two digital scales, a Hi-Point 9-millimeter Luger with a magazine of live rounds, a partial box of .380-caliber ammunition, four rounds of 9-millimeter ammunition, and a small bag containing two-tenths of a gram of what appeared to be cocaine, ready to sell. Found on the

master bedroom closet floor were a box of 1,000 rounds of 7.62 x 39 millimeter ammunition, a safe, and an SKS assault rifle loaded with a 20- to 30-round magazine. The safe yielded a bag containing 7.62 x 39-millimeter ammunition and a 9-millimeter magazine clip. A box of sandwich bags and a lockbox containing plastic Baggies with apparent cocaine residue were found on a closet shelf.

¶ 14 Officer Turner was qualified as an expert witness on drug sales and trafficking. Turner testified the spoon found in a bag of cocaine in a coat pocket was likely used, not for ingesting cocaine, but to transfer it and/or inositol or lidocaine into Baggies. Cocaine was packaged for sale in Baggies. Turner also stated inositol and lidocaine were added to cocaine to give it more weight. Those items, along with digital scales, were used in the drug trade and drug dealers often had weapons for protection and large amounts of cash. Of all the paraphernalia found, none would be used to consume cocaine. The total weight of cocaine found was 55.7 grams, an amount too excessive for mere personal use. Turner also testified he witnessed drug sales occur out of the house. What appeared to be cocaine seized from the home field-tested positive and then was positively identified as cocaine when tested in State laboratories.

¶ 15 Defendant's sole witness was Ashley Sanders. Sanders testified defendant's wife is her cousin and in January 2010 she lived with her two children and defendant, who was having marital problems and had moved out of the Scottswood home. He moved in with Sanders in February 2009 and moved out in March 2010 when he took his clothes and personal items. Every night, Sanders was home and defendant slept there on the couch. He shared bills and expenses with her. She never saw him with over \$1,000 or with drugs. He had no car. He was family. Sanders loved him. It was important to her to maintain a regular relationship with him.

She did not know what he did or whether he returned to 106 Scottswood when he was not at her home.

¶ 16 On November 17, 2010, defendant was convicted of unlawful possession with intent to deliver a controlled substance. On November 18, 2010, defendant filed a posttrial motion raising numerous allegations of error and asking for a new trial. On December 28, 2010, the posttrial motion was heard and denied. Defendant was sentenced to 26 years' imprisonment. On December 29, 2010, defendant filed a motion to reconsider sentence. On January 5, 2011, this motion was heard and denied. This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 A. Motion for *Franks* Hearing

¶ 19 Defendant argues the trial court should have granted his motion for an evidentiary *Franks* hearing to determine the veracity of the undercover informant who provided the basis for the search warrant issued for 106 Scottswood. He contends Officer Turner, who provided the affidavit for search warrant, engaged in reckless disregard of the truth in applying for the warrant because he did not corroborate the information provided by the nongovernmental informant known to be a drug user; he relied on stale information which was not verifiable; no actual transaction was averred to in the warrant affidavit; and the alleged transaction was not recorded. Defendant argues, on its face, probable cause was lacking to issue the search warrant.

¶ 20 The standard for granting a *Franks* hearing is not failure to establish probable cause. To obtain a *Franks* hearing, a defendant must make a substantial preliminary showing a false statement was either knowingly and intentionally made, or made with reckless disregard for the truth, and was included in the warrant affidavit and was necessary to the finding of probable

cause. *Franks*, 438 U.S. at 155-56.

¶ 21 Defendant's amended motion alleged Officer Turner made deliberate and material misrepresentations of fact as deliberate falsehoods or in reckless disregard for the truth because his affidavit stated (1) the police received information in October 2008 about defendant selling "kilogram amounts of cocaine" but were "unable to further the investigation at that time"; (2) the unnamed informant bought cocaine from defendant more than 15 times and knew he was "purchasing kilogram amounts"; (3) the police observed a controlled buy between January 25 and 27, 2010; and (4) the informant identified defendant from only one photograph. In addition, defendant stated in his motion he was aware (1) no charges were filed against the informant when he/she was arrested on January 26, 2010; (2) the informant had four prior drug convictions and was now in the Department of Corrections for 25 years for a drug case occurring "after this event"; and (3) the informant tried to give information about another person, which did not lead to charges being filed. Defendant provided his own affidavit in support of his *Franks* motion, stating (1) the October 2008 tip was uncorroborated, nonspecific and stale; (2) the informant was unreliable because he/she was a cocaine user and/or seller; (3) defendant did not sell cocaine between January 25 and 27, 2010, and there was no recording of the alleged transaction; (4) identification from only one photograph was suggestive; (5) he was aware of information described above in his motion; and (6) the police already had the search warrant when he was stopped.

¶ 22 The trial court denied the motion, stating defendant failed to establish the substantial preliminary showing required by *Franks* because he failed to (1) specify any portions of the affidavit or statements by the informant or affiant officer which he claimed to be false and

identify why they were deliberate falsehoods or a reckless disregard for the truth; (2) allege or demonstrate how matters complained of were material to a finding of probable cause; or (3) provide information or specifics as to the informant where he claimed the informant was known to him and, therefore, was required to present direct evidence the informant either did not make the alleged statement complained of or the statements were false. Instead, defendant (1) generally complained of the reliability of the allegations; (2) challenged the sufficiency of probable cause (which did not entitle him to a *Franks* hearing); and (3) made statements in his affidavit consisting "largely of arguments and conclusions based on speculation, surmising and hearsay."

¶ 23 A trial court's determination whether a defendant made the necessary showing to warrant a *Franks* hearing will not be disturbed absent an abuse of discretion. *People v. Caro*, 381 Ill. App. 3d 1056, 1062, 890 N.E.2d 526, 531 (2008). We see no abuse of discretion here where defendant did not identify the statements he alleged to be false and provided no information specific to the informant he claimed to know which would make his statements unreliable.

¶ 24 B. Search Warrant Obtained Without Probable Cause

¶ 25 Defendant also argued, in his alternative motion to suppress not based on a *Franks* argument, there was no probable cause for granting the search warrant. Defendant argued probable cause was not established where (1) the informant provided Officer Turner with hearsay information in regard to defendant dealing drugs out of 106 Scottswood over a four-month period; (2) the informant is a drug user, and therefore inherently unreliable; (3) the informant maintained defendant always sold to her from 106 Scottswood, not a public parking lot where the controlled buy was set up; (4) the controlled buy was meant to be recorded but was not, appar-

ently due to mechanical error; (5) the informant's alleged identification of defendant from a single photograph instead of photographic lineup was prejudicial; and (6) the complaint and affidavit mentioned no exchange of items seen by police officers between defendant and informant.

¶ 26 Mixed questions of law and fact are presented when reviewing a ruling on a motion to suppress evidence. *People v. Pitman*, 211 Ill. 2d 502, 512, 813 N.E.2d 93, 100 (2004). When the facts and credibility of witnesses are not contested, whether probable cause exists is a question of law which is reviewed *de novo*. This is particularly true where there are no witnesses, underlying facts are not in dispute and the only question is the adequacy of the affidavit attached to the complaint for search warrant. *People v. Cooke*, 299 Ill. App. 3d 273, 277-78, 701 N.E.2d 526, 529 (1998). At a probable cause hearing, the trial court's task is to make a practical, commonsense decision whether, given all the circumstances set forth in the affidavit, there is a fair probability contraband or evidence of a crime will be found in a particular place. The probable cause requirement is " 'rooted in principles of common sense.' " *People v. Petrenko*, 237 Ill. 2d 490, 500-01, 931 N.E.2d 1198, 1205 (2010) (quoting *People v. Hickey*, 178 Ill. 2d 356, 285, 687 N.E.2d 910, 924).

¶ 27 Officer Turner's affidavit contained the following information: (1) the informant provided detailed information on persons involved in narcotics sales consistent with information known to police through other informants and prior narcotics investigations; (2) the informant had completed, under police direction, two controlled buys of crack cocaine resulting in narcotics seizures and identification of persons pending delivery-of-controlled-substance charges; (3) in January 2010, the informant told Officer Matthew Henson a black male she/he knew as "Twan"

or "Big Mo" was selling large amounts of cocaine from his residence in the Scottswood area of Urbana; (4) the informant provided Officer Henson a physical description of that person and directions to his residence but could not provide the physical address; (5) the informant told Henson she had been buying cocaine from that person for the past four months and had seen him in possession of six ounces of cocaine at his Scottswood residence, bought cocaine from him in quarter-ounce to one-ounce quantities during the past four months and bought cocaine from him more than 15 times at his Scottswood residence; (6) the informant told Henson she knew he was buying kilograms of cocaine and distributing it in the Champaign-Urbana area and had bought an ounce of crack cocaine for about \$800 at his residence about two weeks ago.

¶ 28 Turner further stated in his affidavit: (1) based on his dealings with informant, he believed her to be reliable and accurate; (2) on learning information from the informant, he recognized her description of the residence at 106 Scottswood and of the person mentioned as possibly being defendant from information previously obtained in October 2008 when police received information defendant was involved in the sale of kilogram amounts of cocaine in Champaign-Urbana and confirmed defendant lived at 106 Scottswood Drive but were unable to go further in their investigation; (3) when furnished with a photograph of defendant, the informant identified him as "Twan" or "Big Mo"; (4) between January 25 and January 27, 2010, police met with the informant to conduct a controlled buy of one ounce of crack cocaine from defendant for \$800; (5) after searching the informant and her vehicle and finding no weapons, contraband, controlled substance or currency, Turner gave the informant \$800 in marked bills to use for the buy; (6) under police direction the informant placed a cell phone call to defendant, received no answer, then texted him and received a response telling her to meet in a public

parking lot; (7) the officer conducting surveillance at 106 Scottswood saw a van back out of the garage and depart and other officers conducted surveillance of it as it traveled to the public parking lot; (8) police maintained constant visual surveillance on the informant as she traveled to and from the lot where an officer saw defendant standing near the van when the informant met him, both entered the van, and the informant exited the van and drove away; (9) the informant provided a bag of crack cocaine to Turner, who again found no weapons, contraband or currency upon searching her vehicle; (10) the informant told Turner defendant had taken the bag of crack cocaine from his coat pocket and handed it to her and she then handed defendant \$800 and saw he possessed additional bags of cocaine; (11) Henson weighed and field-tested a portion of the substance provided by the informant and it weighed 28.3 grams and tested positive for cocaine; (12) officers conducting surveillance on defendant and the van saw it travel various places before returning to 106 Scottswood and parking inside the garage; (14) police discovered audio/video wires placed on the informant malfunctioned and did not record the buy; and (15) based on Turner's experience, 106 Scottswood was being used to store cocaine and cocaine sales proceeds.

¶ 29 A police officer's statement in his affidavit for search warrant may be based on hearsay, including an informant's tip. *People v. Johnson*, 237 Ill. App. 3d 860, 867, 605 N.E.2d 98, 104 (1992). That an informant bought drugs from defendant and is presumably a drug user does not make the information she provided unreliable, particularly when corroborated. *People v. Steidl*, 142 Ill. 2d 204, 227, 568 N.E.2d 837, 845 (1991) (addict's testimony must be viewed with caution but is enough to sustain conviction if credible in view of surrounding circumstances). The trial court's finding the totality of the circumstances described in Turner's affidavit established overwhelming probable cause was not erroneous.

¶ 30 C. Discharge Pursuant to Demand for Speedy Trial

¶ 31 Defendant contends this case should have been dismissed due to denial of his speedy trial rights pursuant to section 103-5(b) of the Code of Criminal Procedure. 725 ILCS 5/103-5(b) (West 2010). Section 130-5(b) provides any person not in custody shall be tried within 160 days from the date he demands trial unless the delay is occasioned by the defendant. 725 ILCS 5/103-5(b) (West 2010).

¶ 32 Defendant was arrested on January 29, 2010, and released on bond March 3, 2010, spending 34 days in jail. Defendant filed a motion for speedy trial on May 3, 2010. On July 19, 2010, trial was continued over his objection due to the unavailability of the State's witnesses. On September 13, 2010, trial was continued over his objection due to the prosecutor's involvement in trying another case. On November 2, 2010, defendant filed a motion for discharge based on failure to honor his speedy trial demand. On November 8, 2010, a hearing was held on the motion. Defendant claimed 176 days had elapsed from the filing of the speedy trial motion—when combined with time he spent in jail, which he claims he can count under section 103-5(b). The trial court found defendant filed his motion for speedy trial on May 10, 2010 (seven days after the record indicates the motion was actually filed), and did not count the 34 days defendant spent in jail, for a total of 143 days, short of the 160 days he needed to have the charge dismissed, and denied the motion for discharge.

¶ 33 Section 103-5(b) does not provide days in custody may be used in calculating days elapsed unless they occur after the demand for speedy trial is made. See 725 ILCS 5/103-5(b) (West 2010). That did not occur here.

¶ 34 A defendant bears the burden of establishing facts demonstrating violation of the

speedy trial statute. *People v. Hall*, 194 Ill. 2d 305, 327, 743 N.E.2d 521, 534-35 (2000). While the motion for speedy trial made on May 3, 2010, alleged defendant had demanded trial during the period of time he was in custody, it did not allege he was due credit under 103-5(b) for that time. Nor did it include the date of any such prior demand. Nor did he allege in a motion for discharge filed November 2, 2010, or during argument on that motion on November 8, 2010, that he made a prior demand or invoked either of 130-5(b)'s credit provisions. Further, section 103-5(b) states a defendant must demand trial while in custody to be entitled to "credit for time spent in custody following the making of the demand while in custody." 725 ILCS 103-5(b) (West 2010). Defense counsel's statement at arraignment, "we would waive preliminary hearing, plead not guilty and ask for jury trial," was not a demand for a speedy trial. *People v. Phipps*, 238 Ill. 2d 54, 66, 933 N.E.2d 1186, 1193 (2010) (statute requires some affirmative statement in the record requesting a *speedy* trial).

¶ 35

D. Motion *in Limine*

¶ 36 Defendant contends the trial court abused its discretion when it denied his motion *in limine* to exclude from evidence weapons and ammunition seized from 106 Scottswood and photographs of same. He argues the weapons and photographs demonstrated no probative value as to the offense charged, and even if they did, that value was offset by their prejudicial effect. Defendant further contends admission of these weapons was extraordinarily prejudicial because they should not have been seized in the execution of the search warrant. This argument will be discussed later under the issues he contends are plain error.

¶ 37 The trial court found the weapons were "highly relevant" to the issue of possession with intent to deliver versus simple possession. Their probative value was supported by

factual representations of the quantity and location of drugs found in the vicinity of the weapons.

¶ 38 Rulings on motions *in limine* are reviewed for an abuse of discretion. *People v. Pelo*, 404 Ill. App. 3d 839, 875, 942 N.E.2d 463, 493 (2010). "' "Abuse of discretion" means clearly against logic' "; the question is whether the trial court acted arbitrarily, without employing conscientious judgment, or whether the court acted unreasonably and ignored recognized principles of law. *Long v. Mathew*, 336 Ill. App. 3d 505, 600, 783 N.E.2d 1076, 1080 (2003) (quoting *State Farm Fire & Casualty Co. V. Levarton*, 314 Ill App 3d 1080, 1083, 732 N.E.2d 1094, 1096 (2000)). The proper consideration for the court is whether the probative value of the evidence is substantially outweighed by the danger of unfair prejudice. *People v. Walker*, 211 Ill. 2d 317, 337-38, 812 N.E.2d 339, 351 (2004).

¶ 39 The trial court's decision was not an abuse of discretion. A defendant's possession of guns and ammunition is probative of intent to deliver. *People v. Neylon*, 327 Ill. App. 3d 300, 310-11, 762 N.E.2d 1127, 1136-37 (2002). Guns and ammunition are inadmissible only if their prejudicial effect "*substantially outweigh[ed]* any probative value." (Emphasis in original.) *Pelo*, 404 Ill. App. 3d at 867, 942 N.E.2d at 487. "'Prejudicial effect' " means casting a negative light on a defendant for reasons having nothing to do with the case on trial, *i.e.*, sympathy, hatred, contempt or horror. *Id.* Guns found in defendant's residence were properly admitted as relevant to prove intent to deliver in light of their strong probative value as to the mental state element of the offense; thus, it is not an abuse of discretion in concluding their probative value outweighed their prejudicial effect. See *People v. DeCesare*, 190 Ill. App. 3d 934, 940-42, 547 N.E.2d 650, 654-55 (1989).

¶ 40 In addition, on review, this court may consider evidence presented at trial in

affirming a trial court's ruling because a pretrial ruling on a motion *in limine* is not final and may be changed or reversed any time prior to final judgment. *People v. Brooks*, 187 Ill. 2d 91, 127, 718 N.E.2d 88, 109 (1999). Evidence at trial indicated defendant told Officer Turner he had one illegal gun and one registered gun inside the house and the guns and ammunition were found near large quantities of cocaine and money.

¶ 41 E. Reasonable Doubt

¶ 42 Defendant argues the State failed to prove the required elements of possession and intent to distribute. As to possession, he argues the record demonstrates people other than defendant had access to and control over the drugs in question because his wife and adult children actually lived at 106 Scottswood when the search warrant was executed. Nothing was found on defendant at the time of his arrest and constructive possession could only be established by illegally arresting him and seizing the garage door opener from his car. As to intent, defendant contends no direct evidence of distribution by defendant was introduced at trial. Evidence of intent to distribute was entirely circumstantial and implied by the amount of drugs seized, the presence of paraphernalia, and the presence of weapons at the residence. Defendant argues no reasonable trier of fact could conclude beyond a reasonable doubt he possessed and intended to distribute drugs.

¶ 43 A reviewing court must view the evidence in the light most favorable to the prosecution to determine whether any rational trier of fact could have found the elements of the crime proven beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261, 478 N.E.2d 267, 277 (1985). The court will not reverse a conviction unless the evidence so improbable or unsatisfactory it leaves a reasonable doubt of a defendant's guilt. *People v. Jackson*, 232 Ill. 2d

246, 281, 903 N.E.2d 388, 407 (2009).

¶ 44 If two or more persons share the intention and power to exercise control over the premises where drugs are found, each has possession. *People v. Givens*, 237 Ill. 2d 311, 335, 934 N.E.2d 470, 484-85 (2010). Defendant's constructive possession of cocaine was not defeated by others sharing it with him. Despite defendant's arguments to the contrary, he had many ties to the residence. Upon executing the search warrant, police found both men's and women's clothing in the master bedroom, including a men's suit jacket, a sport jacket, a Harbor Bay men's coat, size 4X, and a Work Sport brand men's coat, in the pockets of which were, respectively, a clear bag of cocaine, a clear bag containing cocaine and a spoon, \$5,000 and \$540. Officer Yandell found \$700 of the marked controlled-buy money in this cash. In the right top dresser drawer in the master bedroom, they found an Illinois state identification card with defendant's name, photograph, and the 106 Scottswood address, and a piece of mail from the Illinois Secretary of State Driver's License Division addressed to defendant at 106 Scottswood. Constructive possession may be shown by large male clothing in the closet and several pieces of identification or mail found with drugs and paraphernalia in the bedroom. See *People v. McCoy*, 295 Ill. App. 3d 988, 994-95, 692 N.E.2d 1244, 1249 (1998).

¶ 45 Evidence of intent to deliver may be circumstantial. *People v. Robinson*, 167 Ill. 2d 397, 408, 657 N.E.2d 1020, 1026 (1995). Here, intent was implied by evidence found in the residence, including the amount of drugs seized, the presence of assorted paraphernalia, and the presence of weapons. Turner also testified he witnessed sales occurring out of the house. In executing the warrant, police found a bag of cocaine and a digital scale on top of kitchen cabinets. Cutting agents lidocaine and inositol were found in a dresser in the master bedroom. In

a drawer of the dresser were found two digital scales, a Hi-Point 9-millimeter Luger with a magazine of live rounds, a partial box of .380-caliber ammunition, four rounds of 9-millimeter ammunition, and a small bag containing two-tenths of a gram of what appeared to be cocaine, ready to sell. Found on the master bedroom closet floor were a box of 1,000 rounds of 7.62 x 39-millimeter ammunition, a safe and an SKS assault rifle loaded with a 20- to 30-round magazine. The safe contained 7.62 x 39-millimeter ammunition, and a 9-millimeter magazine clip. On a shelf in the closet were a box of sandwich bags and a lockbox containing plastic Baggies with apparent cocaine residue.

¶ 46 Officer Turner testified the spoon found in the bag of cocaine in a coat pocket was likely used, not for ingesting cocaine, but to transfer it and/or inositol or lidocaine into Baggies. Cocaine was packaged for sale in Baggies. Turner also stated inositol and lidocaine were used, along with digital scales in the drug trade and drug dealers often had weapons for protection and large amounts of cash. Of all paraphernalia found, none would be used to consume cocaine. Total weight of cocaine found was 55.7 grams, inferentially an amount in excess of that for mere personal use. The sheer quantity of drugs seized was sufficient to prove intent to deliver. See *Robinson*, 167 Ill. 2d at 410-11, 657 N.E.2d at 1028. Absence of drug paraphernalia associated with personal use supported a finding of intent to deliver. *People v. Williams*, 358 Ill. App. 3d 1098, 1103, 833 N.E.2d 10, 14 (2005). Intent to deliver may be inferred from numerous pieces of evidence. See *Robinson*, 167 Ill. 2d at 411-13, 657 N.E.2d at 1028-29.

¶ 47 Finally, defendant confessed to Officer Turner he had one ounce of powder cocaine and one illegal and one registered gun at 106 Scottswood. He admitted selling both powder and crack cocaine from the residence and he sometimes mixed inositol, found in the

home, with the powder cocaine to add weight to it. He stated he had \$5,000 in cash inside the house and he had purchased the SKS assault rifle in the master bedroom. It is clear the evidence supported a finding of guilt as to the charge of possession of a controlled substance with intent to deliver.

¶ 48 F. Alleged Hearsay Testimony and Display of Weapons to the Jury

¶ 49 Defendant argues the trial court erred in its evidentiary rulings when he objected to a police officer's testimony as to what other officers said to defendant and in allowing an officer to display the SKS assault rifle to the jury as well as some ammunition.

¶ 50 Evidentiary rulings are within the sound discretion of the trial court and will not be reversed unless the court has abused its discretion. *People v. Reid*, 179 Ill. 2d 297, 313, 688 N.E.2d 1156, 1164 (1997). Further, evidentiary errors are harmless if properly admitted evidence overwhelmingly supports a defendant's guilt. See *People v. Carlson*, 92 Ill. 2d 440, 449, 442 N.E.2d 504, 508 (1982).

¶ 51 Defendant argues Officer Nick Krippel was allowed to testify to what other officers said to defendant. He contends this is hearsay and, despite what the State said at the time of his objection to the testimony, was offered for the truth of the matter asserted as it referred to 106 Scottswood as defendant's residence, a fact at issue at trial. Defendant also contends the error was not harmless as evidence of guilt was not overwhelming but was closely balanced.

¶ 52 Officer Krippel's testimony was couched in terms of "we" (referring to another police officer and himself) as informing defendant he was being taken back to his residence where they were going to serve a search warrant. By also saying other police officers made the same statements to defendant, Krippel did not transform testimony into hearsay. He was

testifying to what he said to defendant also. In addition, this testimony explained the course of the police investigation and was not hearsay. See *People v. Hammonds*, 409 Ill. App. 3d 838, 854-55, 957 N.E.2d 386, 401-02 (2011). The officers Krippel referred to also testified, and defendant was not prevented from challenging the statements made by, or the veracity of, the other officers. The trial court's overruling of defendant's objection to this testimony as hearsay was not an abuse of discretion because it was not hearsay.

¶ 53 Officer Henson was allowed to display the SKS assault rifle to the jury. He was also allowed to open a sealed box of ammunition for the assault rifle and display it as well as a sealed box of 9-millimeter ammunition. Defendant contends the display of the weapon or the opening of the ammunition containers had no probative value. He contends they have no probative value in this case because defendant was not charged with any weapons offense. Even if there was probative value as to element of intent, their existence had already been confirmed via earlier testimony; therefore, there was no value in displaying them to the jury or opening the exhibits. These actions merely served to inflame the passions of the jury and prejudice defendant. Defendant asserts the evidence is closely balanced and, therefore, any errors are not harmless and constitute an abuse of discretion.

¶ 54 Prior to displaying the gun and ammunition to the jury, the prosecutor sought permission to allow him to open the exhibits from their packaging. Defense counsel made a continuing objection. The trial court overruled the objection, stating it found the probative value "far outweigh[ed]" any prejudicial impact given the elements of the offense the State had to prove. The court made a record on its ruling denying the objection. As to the ammunition, the court permitted the witness to open its box and examine the contents to be sure it was ammuni-

tion. Only the officer could view the contents of the box. As to showing the weapons to the jury, the officer had difficulty lifting the box to which the assault rifle was attached so it could be shown. He held it aloft for only a matter of seconds.

¶ 55 While exhibiting the weapons and ammunition to the jury may be considered overkill, as argued by defendant, given they had been testified to and photographs were also available, the exhibits were admissible to show intent and the trial court's decision to allow them to be shown to the jury was not an abuse of discretion. Any conceivable error was harmless due to other overwhelming evidence of guilt.

¶ 56 G. Proof of Controlled Buy

¶ 57 Defendant argues he was denied the opportunity to challenge the State's witnesses as to who conducted the alleged controlled buy and whether there was physical proof of the buy. Officer Petrilli testified defendant made a sale to an informant two days prior to the issuance of the search warrant. Officer Turner indicated a controlled buy had taken place at 106 Scottswood. Defendant contends the effect of the denial was to eliminate his ability to challenge (1) whether the controlled buy took place at all or (2) if someone other than defendant could have conducted the buy. He argues this prevented him from challenging the State's position on elements of both possession and intent, grossly prejudicing him.

¶ 58 A trial court is given substantial discretion to determine the manner and scope of cross-examination. *People v. Dortch*, 109 Ill. App. 3d 761, 767, 441 N.E.2d 100, 105 (1982). A trial court's decision regarding the scope of cross-examination will not be reversed absent abuse of discretion resulting in prejudice to a defendant. *People v. Sandoval*, 135 Ill. 2d 159, 194, 552 N.E.2d 726, 741-42 (1990).

¶ 59 Impeachment on collateral issues serves little or no purpose. *Collins*, 106 Ill. 2d at 269, 478 N.E.2d at 281. The circumstances of the controlled buy were collateral at this trial. The State did not rely on evidence of the controlled buy to prove defendant's guilt. The test to be applied if the matter is collateral is whether the matter could be introduced for any purpose other than to contradict. Application of the test, like the latitude allowed in cross-examination and rebuttal, is left to the control of the trial court and will only be reversed if there is an abuse of discretion resulting in manifest prejudice. *Id.*, 106 Ill. 2d at 269-70, 478 N.E.2d at 281.

¶ 60 Defendant asked Officer Petrilli on cross-examination whether he was involved with or informed of any previous drug-related incidents with regard to defendant. Petrilli said he was told of a controlled buy from defendant two days before the service of the search warrant. Based on that information, he made the traffic stop of defendant. On redirect, Petrilli was allowed to describe a controlled buy.

¶ 61 Officer Yandell was asked on direct examination what he did to assist Officer Henson and he stated he examined serial numbers of money Henson found during execution of the search warrant, "comparing it" to monies used previously in a controlled buy of cocaine from defendant. He found \$700 of money marked as the State's money. On cross-examination, Yandell answered "no" when asked if there was anything on the marked money to indicate how many hands or places through which it passed to get to the place it was found. Yandell stated he did not know who defendant got the money from. On redirect, Yandell stated when an informant used bills with recorded serial numbers, the police department knew where those bills initially went and he looked for particular numbers in money found because the police believed their marked money "may" be commingled with it.

¶ 62 On recross-examination, Yandell was asked, "Who was the individual who conducted this so-called buy?" and "Do you have any physical proof of this so-called controlled buy, any video, any photographs, anything that would indicate that it actually occurred?" The trial court sustained the prosecutor's beyond-the-scope objections. The trial court further stated this testimony was venturing into a minitrial on the controlled buy which was not the subject of this trial.

¶ 63 The State points out defendant initially elicited, on cross-examination of Officer Petrilli, testimony about the controlled buy. After Officer Yandell testified, defense counsel elicited on recross-examination from Turner that he witnessed "sales" out of "that house"; not a controlled buy. The defense, not the State, elicited testimony defendant participated in a controlled buy, after which the State briefly explored the issue on redirect. Yandell only referred to a controlled buy when referring to the marked money found during the search. He was answering a question on how he helped Henson in the search. The State did not elicit from Yandell or any other witness testimony that defendant had taken part in a controlled buy.

¶ 64 The trial court's ruling was not an abuse of discretion as it was meant to prevent a minitrial on a collateral issue and was beyond the scope of redirect.

¶ 65 H. Motions for Directed Verdict

¶ 66 Defendant contends it was error for the trial court to deny both motions for directed verdict. He contends it was clear people other than himself lived at 106 Scottswood and the bedroom where much of the contraband was found had clothes for both men and women in the closet. Nothing illegal was taken from his person at the time of his arrest nor did he have keys to the lockbox or safe and he argues the garage door opener taken from him was illegally

seized.

¶ 67 Motions for directed verdict at the close of the State's case assert, as a matter of law, the evidence is insufficient to support a verdict of guilty. The trial court need only consider whether reasonable minds could fairly conclude beyond a reasonable doubt defendant is guilty, considering the evidence most strongly in the State's favor. *People v. Withers*, 87 Ill. 2d 224, 230, 429 N.E.2d 853, 856 (1981). The trial court's decision is reviewed *de novo* as it deals solely with a question of law. *People v. Cazacu*, 373 Ill. App. 3d 465, 473, 869 N.E.2d 381, 389 (2007).

¶ 68 The evidence of defendant's guilt was overwhelming which, considered in the light most favorable to the State, allows reasonable minds to fairly conclude he was guilty beyond a reasonable doubt at the close of the State's case.

¶ 69 At the close of all the evidence, defendant argues the testimony of Ashley Sanders was uncontradicted. Ashley Sanders testified defendant was not living at 106 Scottswood at the time the search warrant was executed. The jury was not required to believe Sanders, especially given the bias she admitted in testifying she loved defendant. Even if the jury did believe her, it does not call into question the overwhelming evidence defendant constructively possessed with intent to deliver the cocaine found at 106 Scottswood. See *People v. Herron*, 218 Ill. App. 3d 561, 569-71, 578 N.E.2d 1310, 1316-17 (1991).

¶ 70 I. Admission of Guns and Ammunition and Photographs of Same

¶ 71 Defendant simply repeats his arguments raised above in discussing the denial of his motion *in limine*. He contends the photographs were introduced solely to inflame the jury and, thus, are not admissible. *People v. Rissley*, 165 Ill. 2d 364, 405, 651 N.E.2d 133, 152

(1995). He argues photographs of guns and ammunition had no probative value; they simply served to excite jurors' passions and prejudice defendant. Even if this evidence had probative value, defendant contends prior testimony and display of these items established their presence at 106 Scottswood at the time the search warrant was executed.

¶ 72 Evidentiary rulings are within the sound discretion of the trial court and will not be reversed absent an abuse of discretion. *Reid*, 179 Ill. 2d at 313, 688 N.E.2d at 1164. No abuse of discretion occurred as the guns and ammunition were probative of intent to distribute a controlled substance.

¶ 73 J. Sending Certain Physical Evidentiary Items to Jury Room

¶ 74 Defendant argues the trial court abused its discretion in allowing narcotics, paraphernalia, and photographs of guns and ammunition seized from 106 Scottswood to be published to the jury during deliberations. He contends publication served no purpose other than to inflame the passions of the jury so any verdict reached was tainted by emotion. Defendant asserts the exhibits had already been admitted into evidence and displayed to the jury over his objections, and testified to by expert witnesses as to their contents and purported purposes. No additional probative value was gained by sending the exhibits to the jury.

¶ 75 A decision to submit exhibits to the jury is within the discretion of the trial court and that decision will not be reversed absent an abuse of discretion. *People v. Cross*, 100 Ill. App. 3d 83, 87, 426 N.E.2d 623, 627 (1981).

¶ 76 Defendant's arguments do not show an abuse of discretion. The trial court ruled the bottle of inositol, the safe, cell phone and accessory pack, and guns and ammunition would not go back to the jury, but other physical exhibits would go back once their evidence labels were

redacted to omit certain information. It overruled defendant's objections to the photographs, stating they were corroborative of testimony and relevant to determining intent to deliver and the guns they depicted were not going back.

¶ 77 The trial court carefully considered which exhibits were and which were not appropriate to send back. Its decisions were not arbitrary, fanciful, unreasonable, or ones no reasonable person would adopt. See *People v. Ward*, 2011 IL 108690, ¶ 21. Further, any error was harmless in light of overwhelming evidence of guilt. See *People v. Williams*, 228 Ill. App. 3d 981, 995, 593 N.E.2d 968, 977 (1992).

¶ 78 K. Prosecutor's Remarks in Closing Statement

¶ 79 Defendant argues remarks made by the State in closing argument were so inflammatory, prejudicial, and erroneous in comparison to the actual evidence presented at trial, they called into question the fundamental fairness of the trial process itself.

¶ 80 In his closing argument, the prosecutor stated the police discovered \$700 they had marked which was used to buy drugs from defendant. This was objected to and sustained by the trial court. The State then asserted defendant admitted to Officer Turner the cocaine was his. This was objected to and the court responded by stating the jury should disregard any argument not based on evidence. The State then asserted Officer Turner was told by defendant he sold drugs out of 106 Scottswood, how much money he made doing so, and the weapons were his. Defendant objected on grounds of facts not in evidence. The objection was overruled.

¶ 81 Defendant contends none of these arguments were supported by evidence and when the court overruled the last objection, it gave the impression these facts were presented. He contends the evidence showed narcotics were present at 106 Scottswood but nothing legally

seized indicated the drugs were in defendant's possession.

¶ 82 Defendant forfeited this issue as he made only general allegations of unspecified wrongful closing arguments by the prosecutor in his posttrial motion. See *People v. Casillas*, 195 Ill. 2d 461, 484, 749 N.E.2d 864, 879 (2000). Improper remarks generally do not warrant reversal unless they are so prejudicial they constitute such a material factor in a conviction the jury would likely have reached a contrary verdict had the remarks not been made. *People v. Townsend*, 136 Ill. App. 3d 385, 394, 483 N.E.2d 340, 347 (1985). The evidence of guilt here was overwhelming and the remarks made by the prosecutor were not likely to have swayed the verdict.

¶ 83 L. Giving of IPI Criminal 4th No. 4.16

¶ 84 The trial court gave Illinois Pattern Jury Instruction, Criminal, No. 4.16 (4th ed. 2000) (hereinafter, IPI Criminal 4th No. 4.16) in its entirety, as offered by the State and rejected only the first paragraph of IPI Criminal 4th No. 4.16, as offered by defendant.

¶ 85 IPI No. 4.16 reads:

"4.16 Possession

[1] Possession may be actual or constructive. A person has actual possession when he has immediate and exclusive control over a thing. A person has constructive possession when he lacks actual possession of a thing but he has both the power and the intention to exercise control over a thing [either directly or through another person].

[2] If two or more persons share the immediate and exclu-

sive control or share the intention and the power to exercise control over a thing, then each person has possession." IPI Criminal 4th No. 4.16, at 131.

¶ 86 Defendant argues the facts demonstrated he did not have immediate and exclusive control over the drugs seized. He did not have a key to either the safe or the lockbox at the time of his arrest. Thus, he did not have the power to exercise control over the drugs seized from there. Defendant contends the drugs in the kitchen were hidden and defendant's intention to exercise control over them was not demonstrated by the State. The evidence of power to exercise control over the contraband in the kitchen and bedroom was defendant's access to the garage door opener, which he alleges was illegally seized. Thus, defendant contends the inclusion of the second paragraph of IPI No. 4.16 was improper. If only the first paragraph of No. IPI 4.16 was given, defendant argues, the State would have been unable to demonstrate constructive possession and could not prove all of the elements of the offense. Defendant contends the inclusion of the second paragraph altered the outcome of the case and was not harmless error.

¶ 87 Defendant argues he is entitled to an instruction on his theory of the case if there is some foundation for the instruction in the evidence and it is an abuse of discretion if the trial court refuses such instruction. *People v. Jones*, 175 Ill. 2d 126, 131-32, 676 N.E.2d 646, 649 (1997). Defendant asserts refusing his proffered instruction was error because evidence was presented suggesting he lacked actual or constructive possession of contraband seized and denial of his instruction eliminated the need for the State to prove that element of the offense.

¶ 88 A claim of giving an improper jury instruction is reviewed under a harmless error analysis. See *People v. Dennis*, 181 Ill. 2d 87, 95, 692 N.E.2d 325, 330 (1998). Under this

analysis, error in a jury instruction is deemed harmless where the result of the trial would not have been different if a proper jury instruction had been given. *People v. Johnson*, 146 Ill. 2d 109, 137, 585 N.E.2d 78, 90 (1991). A claim of refusing a specific jury instruction is reviewed under abuse of discretion standard. *People v. Simms*, 374 Ill. App. 3d 427, 431, 871 N.E.2d 153, 156 (2007).

¶ 89 The jury was properly instructed. In overruling defendant's objection and refusing his tendered instruction, the trial court stated the inclusion of the second paragraph in IPI No. 4.16 was appropriate under the evidence submitted. There was testimony another occupant, identified as defendant's wife, lived in the residence. Without paragraph 2, the jury could question if it must determine whether one or the other resident as opposed to both could have imputed, constructive, or actual possession. The Committee Note to IPI Criminal 4th No. 4.16 states the second paragraph should only be given where there is an issue of joint possession. IPI Criminal 4th No. 4.16, cmt. 6. Here, that was an issue. Defendant argued his wife and others lived in the house and had access to drugs. This was more than only the slight evidence needed to give the entire instruction. See *People v. Love*, 222 Ill. App. 3d 428, 434-35, 584 N.E.2d 189, 194-95 (1991).

¶ 90 M. Failure To "Quash Defendant's Warrantless Arrest" and Suppress Evidence

¶ 91 Defendant argues the trial court should have "quashed his arrest" and not allowed items seized and statements resulting from such arrest into evidence at trial. No arrest warrant had been issued when police officers stopped his vehicle. Nor did the officers indicate they personally had probable cause to believe a crime was being committed at the time of the stop. But they arrested him, secured him in the back of a squad car, and seized (without his consent)

the garage door opener and obtained statements from him introduced at trial. The record indicates he was under arrest when transported to 106 Scottswood.

¶ 92 A warrantless arrest is justified only given probable cause to believe a crime is occurring. A warrantless arrest cannot be justified by evidence found during the search following arrest. *People v. Lee*, 214 Ill. 2d 476, 484, 828 N.E.2d 237, 244 (2005). Absent a warrant, an officer must have probable cause to effect a seizure. Probable cause exists where facts available justify a person of reasonable caution to believe an item may be contraband, stolen property or evidence of a crime. *People v. Blair*, 321 Ill. App. 3d 373, 377, 748 N.E.2d 318, 323 (2001).

¶ 93 Nothing in the record indicates arresting officers believed defendant was committing a crime at the time of his arrest, nor does it show he consented to a search of his vehicle or to accompanying officers to 106 Scottswood. The garage door opener was neither contraband, stolen property, or evidence of a crime. Defendant argues the trial court erred in failing to his "quash arrest" and suppress evidence and statements resulting from the illegal arrest.

¶ 94 Defendant's argument is the trial court should have *sua sponte* "quashed his arrest" and suppressed evidence resulting from that arrest. He has forfeited this issue because he never challenged the validity of his arrest in the trial court by asking the court to either "quash his arrest" or suppress evidence. See *People v. Johnson*, 334 Ill. App. 3d 666, 672, 778 N.E.2d 772, 778 (2002). He concedes plain error analysis is necessary.

¶ 95 Errors not effecting substantial rights shall be disregarded but plain errors or defects affecting substantial rights may be noticed. 134 Ill. 2d R. 615(a). First, under the plain error doctrine, where evidence is so closely balanced a jury's guilty verdict may have resulted

from error, the court may consider a forfeited error to protect against the possibility an innocent person was wrongly convicted. *People v. Mullen*, 141 Ill. 2d 394, 402, 566 N.E.2d 222, 226 (1990). Second, where an error is so serious a defendant was denied a substantial right, the court may consider forfeited error to preserve the integrity of the judicial process. See *People v. Vargas*, 174 Ill. 2d 355, 363, 673 N.E.2d 1037, 1041 (1996).

¶ 96 Defendant did not establish plain error. No first-prong error occurred because the evidence of defendant's guilt was overwhelming separate and apart from any supposed illegally obtained garage door opener and statements to Officer Turner. No second-prong error occurred because the error defendant asserts, a *sua sponte* ruling by the trial court, is not structural but may be harmless. See *People v. Thomson*, 238 Ill. 2d 598, 613-14, 939 N.E.2d 403, 413 (2010); *People v. Kliner*, 185 Ill. 2d 81, 157, 705 N.E.2d 850, 888 (1998). This issue is forfeited.

¶ 97 In closing, we note this court has stated defendants should stop titling such motions as "motions to quash arrest," when no assertion is made that the arrest is void, and simply title the motions as a "motion to suppress evidence," to properly denominate the appropriate relief. *People v. Hansen*, 2012 IL App (4th) 60-64, 968 N.E.2d 164, 173-74.

¶ 98 N. Failure To Suppress Guns and Ammunition as not Named in Search Warrant

¶ 99 Defendant argues plain error again as the trial court failed to suppress items seized that were not described in the search warrant. Nowhere in the search warrant were guns or ammunition referenced as items to be seized. A search warrant must describe "things to be seized" so nothing is left to the discretion of the officer executing the warrant. See *Stanford v. Texas*, 379 U.S. 476, 486 (1965). A search warrant must describe items to be seized with sufficient particularity the officer making the search will seize only specified property. See

People v. McCarty, 223 Ill. 2d 109, 151, 858 N.E.2d 15, 41 (2006).

Guns and ammunition were not mentioned in the search warrant in this case, so defendant argues they were illegally seized. He failed to make this argument in the trial court. It is forfeited and the issue then becomes whether plain error has been satisfied under either prong of the analysis. Defendant maintains both prongs are satisfied.

¶ 100 No plain error occurred under the first prong because the evidence of guilt leaving aside the guns and ammunition was overwhelming. The second prong has not been met either as any error is not structural and may be harmless. No error occurred. The guns and ammunition were found during a search of the area which could contain or conceal articles listed on the face of the search warrant, which authorized seizure of any substance appearing to be a controlled substance, and packaging materials such as plastic bags and twist ties. They were properly seized under plain-view doctrine. See *People v. Edwards*, 144 Ill. 2d 108, 134-35, 579 N.E.2d 336, 345-46 (1991).

¶ 101 III. CONCLUSION

¶ 102 We affirm the trial court's judgment against defendant. As part of our judgment, we grant the State its statutory assessment of \$50 against defendant as costs of this appeal. 55 ILCS 5/4-2002(a) (West 2010).

¶ 103 Affirmed.