



Defendant now appeals, arguing appellate counsel rendered ineffective assistance of counsel for failing to raise the issue of whether defendant was denied a fair trial by the admission of improper hearsay evidence that violated his sixth amendment right to confrontation (U.S. Const., amend. VI). We affirm.

¶ 3 To prevail on a claim of ineffective assistance of counsel, a defendant must establish that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that but for counsel's unprofessional errors the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668; *People v. Albanese*, 104 Ill. 2d 504, 473 N.E.2d 1246 (1984). Here, defendant argues that appellate counsel was ineffective because he failed to raise the issue of whether defendant was denied a fair trial by the admission of improper hearsay evidence. Defendant specifically objects to the State's use of a nontestifying codefendant's statement.

¶ 4 At trial, over defense counsel's objection, Officer Simmons was allowed to testify on cross-examination by the State to hearsay from Officer Golike's report that one of the codefendants, Phillip McCrady, informed Officer Golike that defendant "received word that Patrick [Thomas] was holding \$10,000.00 in a glove compartment of his vehicle. And [defendant] suggested that the three of them do a lick, do a rip [slang terms for robbery] on Mr. Thomas." Defendant insists this was hearsay that violated the confrontation clause of the sixth amendment.

¶ 5 The sixth amendment's confrontation clause applies to both federal and state prosecutions (*Crawford v. Washington*, 541 U.S. 36, 42 (2004)) and provides, "In all criminal prosecutions, the accused shall enjoy the right \*\*\* to be confronted with the witnesses against him \*\*\*." U.S. Const., amend. VI. In *Crawford*, the Supreme Court reinterpreted the confrontation clause, holding that the testimonial hearsay statements of a witness who is not available at trial may not be admitted against a criminal defendant unless the defendant

had a prior opportunity to cross-examine him or her. *Crawford*, 541 U.S. at 68. The State concedes that codefendant McCrady's statement was hearsay that violated the confrontation clause, but asserts that its introduction was harmless.

¶ 6 *Crawford* violations are subject to harmless error review. *People v. Patterson*, 217 Ill. 2d 407, 428, 841 N.E.2d 889, 901 (2005). In order to determine whether a constitutional error is harmless, we must decide whether it appears beyond a reasonable doubt that the error in issue did not contribute to the verdict obtained. *Patterson*, 217 Ill. 2d at 428, 841 N.E.2d at 901. Here, there was overwhelming evidence outside of the improperly admitted hearsay from Officer Golike's report to support defendant's convictions.

¶ 7 First, there was eyewitness testimony against defendant. Four Alton police officers responded to a 9-1-1 call about a home invasion in progress made from the scene. Upon his arrival at the scene, Officer Bertschi observed defendant outside the house and armed with a gun. When Bertschi ordered defendant to halt, defendant continued to flee and fired four rounds at Bertschi. Officer Gibbs was standing near defendant's route of flight with his weapon drawn. Gibbs ordered defendant to drop his gun. Defendant started to point his gun in Gibbs's direction, so Gibbs fired off two rounds at defendant. Gibbs missed, but defendant tossed his gun and fell to the ground, where he was immediately arrested. Defendant's gun was retrieved at the scene, as were spent cartridges fired from the gun.

¶ 8 Second, there was evidence from the victim of the home invasion. Robert Mike testified that he lived at the house where the home invasion took place. Earlier in the evening, he had been at a club, CTW, where he was involved in an "argument" or "confrontation" with defendant, whom he had known since "childhood." After Robert returned home sometime after 3 a.m., he heard a vibration, and he went to the back door where he found defendant. Robert thought defendant was coming to his house to apologize about the earlier incident, so he let him in. Patrick Thomas, defendant's cousin, was at the

house in the kitchen. Once inside, it became clear that defendant was there for money. After about four or five minutes, defendant showed a gun and told Robert to go upstairs and get some money. Robert testified he went upstairs where he told another occupant of the house to call 9-1-1.

¶ 9 While Robert was upstairs, defendant shot Patrick Thomas. While Robert did not see defendant shoot Patrick, he said that earlier in the evening Patrick was fine, but after he went back downstairs, Patrick had been shot in the leg. Forensic evidence indicated that defendant was approximately four feet away from Patrick when he shot him.

¶ 10 Finally, defendant's own statement is damaging to his claims. In his statement, defendant admits that he was at the victim's house with the hope of extracting money. Defendant specifically stated, "I guess I figured since I was with this other dude doing a lick, I might as well go along for the ride and get something out of it." Defendant argues that this statement is not an admission that he went to the residence intending to commit a robbery, but was rather a statement about what he was thinking once he was inside Robert's house; however, earlier in the statement, defendant admitted that he went to the house knowing "something might be up" because his codefendant had been asking him "questions about how to do licks." Defendant's contention that he was an innocent bystander lacks credibility in light of his statement to police.

¶ 11 On direct review, we refused to consider defendant's arguments under the plain error doctrine "because the evidence adduced at the trial did not present a close call." *Stewart*, 342 Ill. App. 3d at 354, 795 N.E.2d at 339. We went on to find:

"The defendant did not tender much of a defense, with good reason. He had tried to escape the scene of a home invasion. His effort was so desperate that he actually fired upon policemen who demanded his surrender. The police found a smoking gun that the defendant tossed away in the process of capitulating to return gunfire. The gun

discharged the shell casings later found along the path of the defendant's flight. The evidence of guilt was indisputably strong." *Stewart*, 342 Ill. App. 3d at 354-55, 795 N.E.2d at 339-40.

The same logic applies here to defendant's contentions in this postconviction appeal.

¶ 12 The constitutional error presented here was not a structural defect, but a trial error which can be assessed in the context of the other evidence presented. See *Patterson*, 217 Ill. 2d at 424, 841 N.E.2d at 899. After again carefully analyzing the evidence in this case, we agree with the State that the *Crawford* violation was harmless. Even without the use of the nontestifying codefendant's statement, the verdict would have been the same. Appellate counsel was not ineffective for failing to raise the issue on appeal because the evidence against defendant was overwhelming.

¶ 13 For the foregoing reasons, we hereby affirm the order of the circuit court dismissing defendant's petition for postconviction relief.

¶ 14 Affirmed.