2016 IL App (2d) 140625-U
No. 2-14-0625
Order filed September 15, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Lee County.
Plaintiff-Appellee,	)	
v.	)	No. 12-CF-129
MATTHEW WELLING,	)	Honorable Ronald M. Jacobson,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices McLaren and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: Evidence of defendant's threats to third parties unrelated to the victim was properly admitted and trial counsel's failure to object was not ineffective; there was sufficient evidence to support defendant's guilt beyond a reasonable doubt of the offense of home invasion. Defendant forfeited claimed sentencing error.

¶ 2 Following a jury trial in the circuit court of Lee County, defendant, Matthew Welling, was convicted of first degree murder (720 ILCS 5/9-1(a)(1) (West 2012)) and home invasion (720 ILCS 5/12-11 (West 2012)) for which he was sentenced to a 60-year term of imprisonment for the murder and a consecutive 30-year term of imprisonment for the home invasion. Defendant argues that the trial court erroneously admitted evidence that he threatened third

parties unrelated to the victim before the offenses, and his trial counsel was ineffective for failing to object. Defendant also contends that there was insufficient evidence to prove him guilty beyond a reasonable doubt of home invasion because the State failed to prove that he entered the victim's residence without authority. Last, defendant contends that his sentencing hearing was unfair due to the admission of uncorroborated and multiple-level hearsay testimony upon which the trial court relied in passing sentence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 We begin by summarizing the pertinent facts developed at defendant's trial and sentencing. In 2012, James McCallister was living at 116 South Davis Avenue in Amboy. The victim, Delmar Leroy Daniels, along with his wife, Betty, lived at 105 W. Main Street, also in Amboy, up the street and less than 300 yards from McCallister's house. Both houses were very nearly the same color. The fronts of both houses were also very similar, with white doors and the same number of concrete steps leading up to the porch area. McCallister was generally familiar with Daniels from the community, but did not know him and was not otherwise related or involved with him.

¶ 5 During the evening of July 17-18, 2012, McCallister decided to celebrate his upcoming departure for military service by going out for some drinks. He arrived at the Last Alarm Bar in Amboy, where he met James Prather, a high school friend, Lindsey Glenn, a high school classmate. At the bar, he met defendant for the first time. McCallister bought at least two shots for defendant during the course of the evening. The bartender testified that, during that evening, defendant drank a total of 11 beers and 4 shots, becoming very intoxicated. At some point, the bartender cautioned defendant about drinking so quickly and heavily; defendant replied that he always drank that way. McCallister, according to Prather, was intoxicated, as was Glenn.

Prather believed that he was not intoxicated. Just before the bar closed at 1 a.m., one member of the group had selected a song on the jukebox. They left the bar, but were allowed to remain in front of the bar listening to the song. While they were outside, they conversed. During the conversation, defendant showed McCallister a vial of his deceased brother's cremains which he kept on a necklace around his neck.

¶ 6 The group departed, with Glenn driving McCallister the few blocks to his house. McCallister admitted that Glenn was very intoxicated, but she insisted on driving. Prather followed with defendant. While on the way, Prather and defendant stopped at the pavilion, next to the bars in Amboy. Prather testified that he was speaking to someone he knew at the pavilion, and defendant began trying to pick a fight, acting very aggressively. Prather told defendant to knock it off, and he then drove with defendant to McCallister's house. As Glenn exited her car at McCallister's house, she began to vomit and passed out.

¶ 7 Once Glenn had passed out, Prather and McCallister put her in the back seat of her car, planning to take her back to the bar, because they did not know her address at that time. Prather and McCallister smoked cigarettes before taking Glenn back to the bar. As they smoked, defendant started to get into the driver's seat of Glenn's car, apparently planning to leave with the vehicle while Glenn remained passed out in the back seat. McCallister objected, and Prather asked defendant what he thought he was doing. Defendant replied that Glenn was his girl and his responsibility, so Prather and McCallister should leave him alone. Prather and McCallister refused to allow defendant to leave with Glenn; Prather further told defendant to leave the property. Defendant appeared to be angry, but he remained silent and tried to stare down Prather and McCallister. According to Prather, defendant then began to threaten them.

¶ 8 McCallister was concerned about defendant's actions. McCallister drove Glenn's car to

the bar and parked it behind the bar, opening the windows and placing Glenn's cell phone and keys on the center console of her car. Prather followed in his car. They attempted to rouse Glenn and tell her what they were doing and advising her to sleep it off. Glenn remained passed out. Prather and McCallister then returned to McCallister's house.

¶ 9 Glenn testified that she had been extremely intoxicated that night, and had little memory of the events. She had gone to high school with both Prather and McCallister, but had not met defendant until that night. Glenn denied that she had any relationship with defendant or that she entered into one with defendant that evening, so far as she could recall. Glenn admitted that she was confused when she awoke in the morning in the backseat of her car. She noted that it was parked behind the bar.

¶ 10 Prather and McCallister were confused and concerned about defendant's behavior before they drove Glenn to the bar. After they left her behind the bar, they drove around looking for defendant out of concern for Glenn's safety as well as their own safety. They returned to McCallister's house without encountering defendant; however, within a few minutes of their return, they spotted defendant walking along the street in front of McCallister's house. Defendant again threatened Prather and McCallister, saying, "When you go home tonight and go to sleep[,] I am going to come back and kill you." McCallister responded by telling defendant to get off of his property, otherwise McCallister would beat up defendant. Prather did not hear defendant's exact words, but understood that defendant was threatening them. McCallister described defendant at that time as severely intoxicated, belligerent, arrogant, and full of himself. The next morning, McCallister found defendant's identification on the ground across the street from his driveway, where defendant had been standing the night before. Later, the police retrieved defendant's identification.

¶ 11 At about 7:30 a.m. on July 18, 2012, the victim's daughter, Lisa, was driving to work. Her route took her past her parents' home, about 270 yards up the street from McCallister's house. As she drove past, she noticed that the blinds were drawn and the porch light was on. She thought that this was unusual, because the victim usually was up by that time and had opened the blinds and turned off the light. She did not stop, but continued driving to work.

¶ 12 At about 6 p.m., on her way home, she again drove past her parents' home, and she noticed that the light was still on and the blinds remained drawn. Lisa returned home, where she called her parents on the phone, but received no answer. She then drove with her daughter over to the house. When she arrived, at her parents' home, she observed what appeared to be a bloody footprint on the front stoop and a bloody swipe mark on the frame of the screen door. When she entered the home, she found her mother, Betty, on the floor next to her overturned scooter. Betty had multiple sclerosis and could only get around in a motorized scooter. The victim was on his back in a large pool of blood and Lisa could tell he was dead. Lisa had her daughter call 911.

¶ 13 A responding officer described the scene as extremely bloody. Near the front door, the door mat had blood and glass on it. A closet behind the front door had a hole in it which appeared to be caused by the doorknob being forced through the closet door. The officer did not notice whether there was a door stop to prevent the front doorknob from breaking through the closet door; the officer was unable to testify as to when the closet door had been damaged.

¶ 14 Angie Mathews, a crime scene investigator, testified that she took pictures of the scene. The photos showed blood on the front concrete stoop and the victim lying in the hallway near the front door. The photos also showed blood on the floor and walls of the hallway, and a visible footprint in the blood on the floor. The photos showed broken glass that apparently came from

the neck of a broken glass vase. A black T-shirt and a flip-flop were recovered on the floor of the victim's home. Additionally, a red umbrella, stained with blood, and a broken denture were also found on the floor.

¶ 15 Near the victim's shoulder was a pair of scissors, a bloody towel, and a cord from a necklace. Near the entryway, a small vial of cremains was recovered; the vial bore the name, "Alan Welling," and the dates, "1977-2002." The police found blood in the kitchen, the bathroom, and near the front entry. The front entry had a handprint of the victim. The police removed a number of items from the victim's home, including a broken glass vase, a piece of floor tile, and a portion of the wall in the front entryway. On the sidewalk outside the front of the victim's home, police observed four bloody footprints showing a bare foot.

¶ 16 The medical examiner testified that the victim bled to death due to a number of sharp-force injuries. He testified that the incised wounds were not made by a knife, but were made by something that tore open the flesh. Based on the pattern of the injuries, the medical examiner believed that the broken glass vase had been stabbed into the victim's face and neck, causing the incised wounds. The medical examiner also observed that the victim had a fractured jaw and nose, and had fractured ribs on both the right and left sides of his chest. He also observed apparent defensive wounds on both of his hands.

¶ 17 Samples of blood at the scene were subjected to DNA testing. One sample, taken from the west end of the victim's home, matched defendant's DNA profile. That profile would be found in only 1 in 2.4 quintillion white people. A sample of blood taken from defendant's right toe had a mixture of two DNA profiles. One profile matched defendant, and the other matched the victim. The victim's profile would be found in only 1 in 170 quintillion white people. A sample from the swimsuit defendant had been wearing was tested, and the victim could not be

excluded.

¶ 18 In addition to the DNA tests, patent and latent finger- and toe-prints were developed from the scene. Comparisons showed that the toe print on the floor was made by defendant's toe. Defendant's fingerprints from two of his fingers were found on the wall in the victim's home.

¶ 19 As the police investigated, they learned that defendant was staying in Amboy with Jake Hvarre. Defendant and Hvarre were arrested at Hvarre's house the day after the murder. A bloody pair of defendant's swim shorts was recovered from Hvarre's house.

¶ 20 On July 19, 2012, Detectives Shane Miller and David Glessner interviewed defendant. Detective Miller observed that defendant had a large cut on his forehead and smaller cuts on his fingers, feet, and lower legs. Additionally, defendant had dried blood on his face and ear. Defendant's wounds were photographed.

¶ 21 During his interview, defendant told police that, on July 18, he awoke at Hvarre's house, covered in blood, but he did not know why. Upon waking, he picked a piece of glass out of his forehead, and he noticed cuts on his hands, legs, and feet.

¶ 22 Defendant stated that he had attended high school near Amboy, but had moved away. Recently, he had returned to spend time with his friend, Hvarre. Defendant was 32 years old. He believed he had consumed about 10 beers and 2 or 3 shots of liquor at the Last Alarm bar during the evening of July 17-18. Defendant recalled that some younger guys bought him a shot, but defendant maintained that he could not remember anything after 12:34 a.m. Defendant related that, after he awoke at Hvarre's house, Hvarre read a newspaper article about a bloody crime, but defendant thought that he could not have been involved. Defendant asserted that, nevertheless, he was going to turn himself in, but he did not know how to. He admitted that he was scared by the newspaper article.

¶ 23 Defendant also admitted that he lost his flip-flops, his black T-shirt, and a necklace that he wore. Defendant related that hanging from the necklace a small urn containing a small amount of his brother's cremains. The urn had his brother's name on it. Defendant told police that he had texted his friend, Vickie, about waking up covered in blood; he had told his mother the same thing. Defendant had borrowed Vickie's phone, and was texting her at another of her numbers. Defendant thought that, around 4 a.m. on July 18, 2012, he had texted Vickie.

¶ 24 Defendant admitted that he had a bad temper, and nearly anything was liable to make him angry. Defendant also admitted that he would get "mouthy" and make "smart-ass comments."

¶ 25 As the interview continued, defendant added details to his recollection of the events during the night of July 17-18. Defendant remembered waking up somewhere to see blood everywhere and he took off running. He recalled that he was drinking with two white guys and a white girl at the bar; he believed they were no older than 25 years old. The girl had blond hair and glasses. Defendant told police that he did not return to the bar to look for his lost identification or necklace because he was scared. Defendant stated that he was wearing a red, black, and white swimsuit during the evening of July 17-18, and the swimsuit was at Hvarre's house.

¶ 26 Victoria Maloney testified that, sometime before July 18, 2012, she had loaned defendant a phone. Maloney testified that defendant was like a member of her family. She testified that, at 3:50 a.m. on July 18, 2012, she received a text from the phone she had loaned defendant. The text stated, "I fucked up." Defendant later told Maloney that he woke up with blood on him, and defendant thought he must have gotten into a bar fight. Defendant also told her that he remembered standing over a person who was knocked out, and he remembered running past the junior high school. Defendant told Maloney that he was in trouble and he was going to prison.

Defendant also told Maloney that he lost his identification. Maloney testified that defendant always wore a necklace with his brother, Alan's, cremains.

¶ 27 The jury returned guilty verdicts on all counts. Defendant did not file a motion for a new trial.

¶ 28 The matter proceeded to sentencing. At sentencing, Detective Miller testified about an incident in which police had been called to a fight in progress. Detective Miller admitted that he had not been present, and that his only knowledge of the incident came from reading the police report. Defendant did not further object to Detective Miller's testimony. According to Detective Miller's testimony, the police were called to a trailer. When they arrived, they heard a commotion, and a female asking someone to stop. The police knocked on the door and defendant, visibly intoxicated, answered the door. The officer observed a visibly upset female leaning over a male who was lying on the floor. The male had scratches on his face and blood on his shirt. Defendant would not identify himself, and he tried to prevent the officer from entering the trailer. Eventually, defendant was handcuffed and removed from the trailer. The officer described defendant as "very confrontational," and defendant tried to pick a fight with the police, even stating that he wanted to kill the responding officer.

¶ 29 Jeff Nessan was identified as the male, and Perry Page was identified as the female. Page informed the responding officer that defendant and Nessan got into a fight. Defendant punched Nessan and choked him to the point where Page did not know whether Nessan was still alive. Page intervened, but defendant punched her in the face and choked her.

¶ 30 Detective Glessner testified at sentencing that, on July 18, 2012, he interviewed Betty Daniels at the hospital. Detective Glessner related that Betty told him the person who killed the victim used foul language, and she described the killer as about 35 years old with dirty blond

hair, and about the same size as the victim. Detective Glessner testified that he believed Betty had seen the victim killed in front of her.

¶ 31 Detective Glessner also testified about another officer's interview with Betty. According to the report, Betty stated that the killer had told her, "Can you hear it, can you hear it, Jesus is coming; can you feel it, Jesus is coming[?]" Defendant did not object to Detective Glessner's testimony about the other officer's interview.

¶ 32 The trial court sentenced defendant to a 60-year term of imprisonment to be served at 100% for the murder, and it imposed a consecutive 30-year term of imprisonment to be served at 85% for the home invasion. Defendant filed a motion to reconsider sentence, arguing that his sentence was excessive and the court did not properly consider his rehabilitative potential. The trial court denied the motion to reconsider. Defendant timely appeals.

¶ 33 II. ANALYSIS

¶ 34 On appeal, defendant contends that the trial court erred by admitting evidence concerning his aggressive behavior at the pavilion and his subsequent threats to harm Prather and McCallister. Defendant also argues that the State failed to prove the necessary elements of home invasion beyond a reasonable doubt, contending that there was no evidence to show his entry was without authority or that he forced his entry into the victim's house. Finally, defendant contends that he did not receive a fair sentencing hearing because the trial court erroneously admitted hearsay evidence about statements made to the victim's wife and concerning an unrelated incident in which he beat and choked a man and a woman before threatening to kill a police officer. We consider each contention in turn.

¶ 35 A. Threats and Behavior Towards Third Parties Unrelated to the Victim

¶ 36 We first address defendant's contention that the trial court erroneously admitted evidence concerning his aggressive actions at the pavilion as Prather drove him from the Last Alarm to McCallister's house, and the threats he leveled at Prather and McCallister when he was prevented from driving off with the unconscious Glenn. The admissibility of evidence is within the trial court's sound discretion, and we will not reverse the trial court's decision absent an abuse of that discretion. *People v. Nixon*, 2016 IL App (2d) 130514, ¶ 36.

¶ 37 Before discussing defendant's contention, we note that, in order to preserve an error for purposes of appeal, a defendant must make a contemporaneous objection during trial and must also raise the issue in a posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Defendant did not file a posttrial motion. Additionally, defendant did not object at trial concerning the testimony about his aggressive actions at the pavilion. As a result, the issues of the threats to third parties unrelated to the victim and the aggressive behavior at the pavilion have been forfeited. *Id.* Defendant, however, invokes the plain-error doctrine and, alternatively, contends that the failure to preserve these errors for appeal constituted ineffective assistance of counsel.

¶ 38 The plain-error doctrine consists of two pathways under which the defendant may have the reviewing court consider unpreserved error: (1) when a clear or obvious error occurred and the evidence is so closely balanced, the error by itself threatened to change the outcome of the case, regardless of the seriousness of the error; or (2) when a clear or obvious error occurred and the error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence. *People v. Walker*, 232 Ill. 2d 113, 124 (2009). The defendant bears the burden of persuasion on either pathway, and the defendant's failure to persuade will require us to honor the procedural default. *Id.* The

first step in a plain-error analysis is to determine if any error occurred, which requires us to consider the defendant's substantive contentions. *Id.*

¶ 39 Similarly, a claim of ineffective assistance of counsel requires the defendant to demonstrate that counsel's performance fell below an objective standard of reasonableness and that counsel's error prejudiced the defendant. *People v. Rodriguez*, 2014 IL App (2d) 130148, ¶ 86. The defendant's failure to establish either element will be fatal to his claim of ineffective assistance. *Id.*

¶ 40 What this means for our analysis, then, is an initial focus on defendant's substantive contentions. If defendant cannot show that the trial court erred concerning the admission of evidence about his aggressive behavior at the pavilion and his threats to Prather and McCallister, then we honor the procedural default. *Walker*, 232 Ill. 2d at 124. Likewise, if defendant cannot show that the evidence was admitted erroneously, then there can be no prejudice, under an ineffective-assistance analysis, accruing from the admission of that evidence. *Rodriguez*, 2014 IL App (2d) 130148, ¶ 86. Accordingly, we turn to defendant's contentions regarding the threat evidence and the aggressive-behavior evidence.

¶ 41 Before trial, defendant moved *in limine* to bar the threat and aggressive-behavior evidence. The trial court initially granted the motion and barred the evidence. The State moved to reconsider, and, upon reconsideration, the trial court admitted the evidence. The trial court held:

> "Although the testimony of the two other people—or the testimony about threats made to two other people, at least in my first opinion, did not show the sufficient relation to the charges against [defendant] to justify it being part of this case, upon further reflection with the evidence presented what's clear to me is that those statements of the

> Defendant provide a context to the incident that occurred on the night in question that's part of the charges that we have here today, and that without those statements it would be difficult for the State to show elements of the charge that it needs to show. I am not—and any prejudice to the Defendant, although there would be some, [is] far outweighed by the value of those statements. More particularly, the fact that the Defendant was familiar with at least one of the residences of one of the parties of the people that the statements pertain to and that it was in close geographic proximity to the house where the incident that—where the charges occurred, as well as at least it was expressed to me by testimony similar in description that clearly shows sufficient connection in my mind to justify the State's ability to include that testimony in its case in chief should it decide to do that."

¶ 42 Defendant criticizes the trial court's ruling on the motion to reconsider. According to defendant, the trial court clearly abused its discretion when it changed its mind and reversed its earlier preclusion of the threat evidence because "it would be difficult for the State to show [what] it need[ed] to show" without the threat evidence. Defendant contends that the trial court was simply facilitating the State's case, thereby abandoning its neutral position and adopting a position as advocate. We disagree.

¶ 43 Rather than advocating, the trial court explained that the threat evidence along with the similarity between the victim's and McCallister's houses showed a sufficient connection between the threats to Prather and McCallister and the ultimate consummation of the charged offense. Thus, we do not accept defendant's contention that the trial court abandoned its neutrality and ventured into forbidden advocacy. In any event, it is not the trial court's rationale that we review on appeal but its ruling. *People v. Reed*, 361 Ill. App. 3d 995, 1000 (2005).

¶ 44 Defendant substantively argues that the threat evidence is nothing more than other-crimes/extrinsic-conduct evidence offered to show nothing more than his propensity for criminal conduct. According to defendant, there is no connection between Prather and McCallister and the victim so that his threats to kill Prather and McCallister cannot be viewed as evidence of his intent to harm the victim, and it therefore becomes irrelevant. Defendant argues that, based on this, it was an abuse of discretion to admit the threat evidence at the trial.

¶ 45 As an initial matter, we cannot say that the threat evidence is properly viewed as "other crimes" evidence. Defendant threatened Prather and McCallister that he would "come back, break into [McCallister's] house, and kill [them]." About an hour later, he attacked and killed the victim. Under defendant's own theory, the threats against Prather and McCallister are divorced from the action of attacking and killing the victim, so they should be examined simply as evidence.

¶ 46 Evidence is admissible if it is relevant. Ill. R. Evid. 402 (eff. Jan. 1, 2011); *People v. Ealy*, 2015 IL App (2d) 131106, ¶ 32. Evidence is relevant if has any tendency to make the existence of any fact of consequence to the action more or less probable. Ill. R. Evid. 401 (eff. Jan. 1, 2011); *Ealy*, 2015 IL App (2d) 131106, ¶ 32. Finally, even if relevant, evidence may be excluded if its probative value is substantially outweighed by its prejudicial effect, its potential to confuse or mislead the jury, or will cause undue delay, wastage of time, or is needlessly cumulative. Ill. R. Evid. 403 (eff. Jan. 1, 2011); *Ealy*, 2015 IL App (2d) 131106, ¶ 32.

¶ 47 Here, the threat evidence is undeniably relevant, because it draws several disparate occurrences into a single and understandable context. First, defendant's identification was found directly across the street from McCallister's house. This showed that defendant was at that location, only 270 yards from the victim's house. While it is unknown when defendant's

identification was dropped in that location, it is reasonable to infer it was at the time he was making the threats against Prather and McCallister because they testified that he was across the street when he made the threats. About an hour after he made the threats, defendant entered the victim's house and proceeded to commit the offense of murder. Defendant was also considerably intoxicated. The victim's house and McCallister's house looked very similar: they were nearly exactly the same color and both had the same type of three-step concrete stairway leading to a white door. Additionally, defendant told Maloney that he thought must have been in a bar fight, from which the reasonable inference arises that the event that left defendant injured was something he intentionally participated in. Taken together, these facts, established by evidence at trial, explain how defendant came to kill the victim, whom defendant had never met and did not know. Accordingly, we hold the evidence was relevant.

¶ 48 The threat evidence is not unduly prejudicial. Moreover, without this evidence, defendant's actions would appear to be completely random. While the State is not required to prove a motive or motivation, the evidence informs the jury of a possible motivation that defendant had to attack and kill someone he did not know and had never met, namely, confusion. From this evidence arises the clear inference that defendant acted upon his threats against Prather and McCallister, and he entered the victim's house and killed the victim. However, in defendant's highly inebriated state, he was unable to return to McCallister's house, because he had never previously visited it before the evening in question. Instead, defendant apparently waited, and while waiting, wandered away from McCallister's house. When he decided that enough time had passed so that Prather and McCallister were asleep, he tried to return to McCallister's house. Not knowing where the house was, defendant approached its look-alike, the victim's home. There, he entered and attacked and killed the victim. Indeed, without the

admission of the threat evidence, there is a greater risk that the jury would be confused and misled than with the threat evidence properly before it. Accordingly, we discern no substantial and undue prejudice and no potential to confuse or mislead.

¶ 49 Thus, the threat evidence was relevant, and there was no other reason why it should have been precluded. Accordingly, we hold that the trial court did not abuse its discretion in admitting the threat evidence at trial.

¶ 50 Even if the threat evidence is viewed as other-crimes evidence, the trial court did not abuse its discretion in admitting it. Other-crimes evidence is admissible if it is relevant for any purpose other than to show the defendant's propensity to engage in criminal behavior, such as motive, intent, identity, absence of mistake or accident, *modus operandi*, or the existence of a common plan. Ill. R. Evid. 404(b) (eff. Jan. 1, 2011); *People v. Morris*, 2013 IL App (1st) 111251, ¶ 108. However, other-crimes evidence is inadmissible if it is only relevant to show the defendant's propensity to engage in criminal behavior. *Id.* If the prior conduct is intrinsic to the matter being charged as a continuing course of conduct, other-crimes evidence may be admitted if it is relevant to establish a material issue, and the general principles of relevance will apply. *Id.*

¶ 51 Generally, threats made by a defendant against a third party are inadmissible unless there is a connection to the victim that would suggest hostility toward the victim. *Id.* In other words, the threat against the third party must in some way be linked to the victim. *Id.*

¶ 52 Here, as we described above, the threats against Prather and McCallister are linked to the victim, not by a preexisting relationship between Prather, McCallister, the victim, and defendant, but by defendant's belligerence and inebriation and the nearly identical appearance of McCallister's and the victim's homes. Defendant progressed, during the evening of July 17-18,

2012, from a new acquaintance of Prather, McCallister, and Glenn, to an angry and inebriated individual trying to pick a fight, to trying to drive away with an unconscious Glenn, to threatening to kill Prather and McCallister as they slept. At this stage, Prather and McCallister ignored defendant and transported Glenn to apparent safety themselves, and they made sure that defendant was no longer around. Defendant, after threatening Prather and McCallister, apparently wandered off to allow them to fall asleep. After about an hour, he then attempted to return to McCallister's house, but, apparently owing to his significant intoxication, was unable to return to McCallister's house. Instead, he found what he must have believed to be McCallister's house, the nearly identical-looking house of the victim.

¶ 53 In our view, the threat evidence fulfills the continuing course of conduct in defendant's progression from acquaintance to offender during the evening of July 17-18, and it provides context for the jury to explain what defendant was doing at McCallister's house as evidenced by his dropped identification, and the otherwise random killing of the victim, whom defendant had never met or otherwise interacted with. Thus, contrary to defendant's contentions, the evidence was not admitted for the purpose of demonstrating his propensity for violence or criminal behavior, but to provide context and motive for defendant's actions. Accordingly, even viewed as other-crimes evidence, the trial court did not abuse its discretion in admitting the threat evidence.

¶ 54 Defendant argues that we should follow *People v. Szudy*, 262 Ill. App. 3d 695 (1994), and *People v. Williams*, 85 Ill. App. 3d 850 (1980). *Szudy* noted that "[t]hreats made by a defendant against a victim prior to a criminal act against that victim are admissible to show malice and criminal intent." *Szudy*, 262 Ill. App. 3d at 706. However, "threats by a defendant against a third party are not admissible" unless the threat is linked in some way to the victim. *Id.* In

Szudy, the defendant extended an offer to kill the victim about a month before the victim disappeared, and this was deemed to be a direct threat against the victim. *Id.* at 707. Here, according to defendant, there was no link between the threats against Prather and McCallister and the victim's killing. Defendant reasons that, under *Szudy*, the threat evidence must be precluded. We disagree.

¶ 55 *Szudy* correctly lays out the applicable framework: a direct threat against the victim is admissible while a threat against a third party is generally inadmissible. *Id.* at 706. However, the threat against the third party may be admissible if the threat can be linked to the victim in some way. *Id.* However, the circumstances in *Szudy* are distinguishable. There, the defendant offered to kill the victim about a month before the victim disappeared. This is a direct threat against the victim, even if it was uttered to a third party. Here, by contrast, defendant did not threaten the victim; rather he threatened third parties, namely Prather and McCallister. Thus, *Szudy* is factually distinct from the circumstances of this case.

¶ 56 Nevertheless, the framework discussed in *Szudy* is applicable. Defendant's threats against Prather and McCallister can be linked to the victim by considering, as discussed above, defendant's activities during the evening of July 17-18, 2012. As he consumed about a dozen beers and between two and four shots of liquor in the course of about two or three hours, defendant grew extremely intoxicated. As defendant became intoxicated, he became aggressive, as evidenced by his attempts to induce a fight at the pavilion, and especially when his desire to drive away with the unconscious Glenn was thwarted. After Prather and McCallister's refusal to allow defendant to take Glenn away, defendant threatened them with murder. The linking facts to the victim under the other-crimes-evidence analysis are the close proximity between the victim's home and McCallister's home, and the nearly identical appearances of the two homes.

Defendant apparently waited about an hour for Prather and McCallister to fall asleep. During that time, he was not waiting near McCallister's house and, when defendant tried to return, he ended up at the victim's nearly identical-looking house. At that point, defendant entered and killed the victim. Thus, even under *Szudy*'s other-crimes-evidence analysis, the threat evidence is admissible. Accordingly, while *Szudy* is factually distinct, we can nevertheless follow its principles, although they lead us to a conclusion opposite of what defendant urges.

¶ 57 Likewise, *Williams* sets forth the same principles: a direct threat against the victim is admissible while a threat against a third party or a general threat must be linked to the victim. *Williams*, 85 Ill. App. 3d at 856. In *Williams*, the victim had stabbed the defendant in the stomach producing injuries that required the defendant to receive a colostomy and to spend three months in the hospital recovering. *Id.* The defendant made a threat about two years before the offense directly against the victim about seeking revenge for the burning in his stomach. *Id.* The court held that the threat, while spoken to a third party, was directly against the victim and was therefore admissible. *Id.* at 856-57.

¶ 58 Defendant advances the same argument with respect to *Williams* as he did with respect to *Szudy*: the threats against Prather and McCallister were unconnected to the victim and were therefore inadmissible. We disagree. The threats against Prather and McCallister are linked to the victim by the proximity of their houses and the nearly identical appearances of the houses. Accordingly, we reject defendant's interpretation; we note that *Williams* is factually distinct because the defendant there directly threatened the victim, albeit the threat was spoken to a third party; and we follow the applicable framework because the threats here can be linked to the victim. Accordingly, under *Williams*, the threat evidence was properly admissible in this case.

¶ 59 Instead of *Szudy* and *Williams*, we agree with the State that this case is more similar to *Morris*, 2013 IL App (1st) 111251. In *Morris*, the defendant threatened to cut the throats of two third parties before beating the victim to death with a shovel. The defendant argued that the threats should have been inadmissible because they were not directed toward the victim and bore no connection to his death. *Id.* ¶ 109. The court held that the threats were part of the course of conduct, specifically, as defendant engaged in alcohol and cocaine use during the course of the evening before and the morning of the murder, the threats illustrated the defendant's increasing agitation and escalating hostility culminating in the murder of the victim, with whom defendant was already irritated because he would not leave his girlfriend's home and of whom, defendant was perhaps jealous because his girlfriend had asked that the victim watch her home while she went on a brief trip. *Id.* ¶¶ 110-112.

¶ 60 As in *Morris*, the threat evidence is part of defendant's continuing course of conduct, as we have explained above (*supra* ¶¶ 52-53), and it also demonstrates defendant's increasing and escalating hostility and aggressiveness. As the evening progressed, defendant tried to pick fights at the pavilion, threatened to kill Prather and McCallister, and attacked and killed the victim. Thus, the threat evidence was admissible under the other-crimes-evidence analysis as a continuing course conduct, as well as being linked to the victim by the proximity of the victim's house to McCallister's and the nearly identical appearance of the two houses. Accordingly, *Morris* is factually similar to this case, and it provides substantial guidance in the application of the continuing-course-of-conduct analysis as well as in linking the other-crimes evidence to the victim. As a result, we will follow *Morris*.

¶ 61 Defendant attempts to distinguish *Morris*, arguing that, unlike in *Morris*, there was no relation between the parties threatened and the victim. According to defendant, because the

victim did not live with Prather or McCallister, and because the victim was not present when the threats were made, *Morris* is distinguishable and should not be followed. We disagree.

¶ 62 As we have noted, as in *Morris*, the threats were part of a continuing course of conduct. It is true that, unlike in *Morris*, where the victim lived in the girlfriend's house, the victim here was totally unconnected to Prather, McCallister, Glenn, and defendant. However, the connection between the other-crimes evidence and the victim need not necessarily be a relationship to the offender or living arrangements. Instead, here, the connection is the proximity of the two houses and their nearly identical appearance. As a result, the State proved a connection between the threats and the victim sufficient to link the victim to the defendant. Accordingly, *Morris* is on point and provides substantial guidance. We therefore reject defendant's attempt to distinguish *Morris*.

¶ 63 The same analysis applies to the evidence of defendant's aggression at the pavilion. There defendant attempted to provoke a fight, but Prather told him to cut it out and get back into Prather's car. While the aggression evidence is also simply admissible as relevant evidence, it also is admissible under the other-crimes-evidence analysis for the same reasons the threat evidence was admissible. Accordingly, we hold that the trial court did not abuse its discretion in admitting the aggression evidence.

¶ 64 Because the aggression evidence and the threat evidence were properly admissible, defendant cannot show that the admission of this evidence was error. Because there was no error, there also can be no prejudice arising from the admission of the aggression and threat evidence. Accordingly, for purposes of the plain-error analysis, defendant has failed to show that the trial court erred, and we honor forfeiture of the issue. *Walker*, 232 Ill. 2d at 124. Likewise, because he cannot demonstrate prejudice from the properly admitted aggression and

threat evidence, defendant cannot sustain a claim of ineffective assistance to avoid the effect of forfeiture. *Rodriguez*, 2014 IL App (2d) 130148, ¶ 86.

¶ 65 B. Sufficiency of the Evidence of Home Invasion

¶ 66 Defendant next argues that the State's evidence concerning the charge of home invasion was insufficient to convict him beyond a reasonable doubt. When reviewing a challenge to the sufficiency of the evidence, the reviewing court must consider whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the required elements of the offense beyond a reasonable doubt. *People v. Bradford*, 2016 IL 118674, ¶ 12. The trier of fact is tasked with resolving conflicts in the testimony, weighing the evidence and drawing reasonable inferences from the facts; accordingly, the reviewing court will not substitute its judgment for the trier of fact's regarding evidentiary weight or witness credibility. *Id.* A reviewing court will not reverse the trial court's judgment unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt. *Id.*

¶ 67 Defendant argues specifically that the State failed to prove the element of lack of authorization in the offense of home invasion. As charged here, the State was required to prove beyond a reasonable doubt that, among other things, defendant entered the dwelling place of another without authority. 720 ILCS 5/12-11(a)(2) (West 2012). Defendant argues that the evidence regarding his authorization to enter the victim's house was lacking because there was no direct evidence regarding his entry into the victim's home and the circumstantial evidence was insufficient to prove a lack of authority. Defendant relies upon the rule that there must be some evidence adduced that allows a reasonable inference of the defendant's guilt, and the State may not leave to conjecture or assumption an essential element of the crime. *People v.*

Laubscher, 183 Ill. 2d 330, 335-36 (1998). Defendant argues that whether he entered the victim's home without authority is completely speculative because the only circumstantial evidence was a hole in the closet door of the entryway made at an unknown time and the improperly admitted aggression and threat evidence. Defendant concludes that he could just as well have entered the home with an innocent purpose and that to conclude his entry was without authority is simply conjecture or assumption.

¶ 68 It is true that the defendant's intent upon entry is key in determining whether the defendant's entry was without authorization when parsing the essential elements of home invasion. In *People v. Bush*, 157 Ill. 2d 248, 253-54 (1993), the court analyzed the problem by considering the defendant's intent before entering. The court reasoned that an individual who intends to commit criminal acts upon entrance to a dwelling cannot be deemed to be an authorized entrant because, if those intentions had been communicated to the owner, the individual would have not been allowed to enter. *Id.* If the individual dissembles or enters through trickery or deceit, the individual's entry is still unauthorized because the individual's true purpose exceeds the limited authorization granted. *Id.* at 254. Finally, if the individual enters with innocent intent, his entry is authorized, and any criminal actions engaged in after the entry will not change the status of the entry. *Id.* Defendant relies on this reasoning to support his argument that his entry could have been authorized. According to defendant, it is entirely possible that he entered the victim's dwelling with innocent intent and, only after the entry, conceived and began the fatal attack. We disagree.

¶ 69 The aggression and attempts to pick fights earlier in defendant's evening coupled with his threats against Prather and McCallister give rise to the reasonable inference that defendant intended to commit a crime upon entering the victim's dwelling, perhaps thinking he was

entering McCallister's house. Defendant's entry into the victim's home occurred around 2 a.m., in the middle of the night. The attack of the victim was brutal. Defendant broke a nearby vase, either during his entry and initial brawl or purposely to use as a weapon, and then repeatedly jammed the sharp ends of the broken vase into the victim's face and neck. This fact accords with defendant's increasing agitation and escalating hostility throughout the evening. Additionally, the hole in the closet door suggests that the front door was flung open. We acknowledge that there was no evidence offered by the victim's daughter or granddaughter that the hole was in the closet before the date of the offense. We also acknowledge that the responding officers did not notice or photograph a doorstop to prevent the front door's doorknob from crashing through the closet door. Finally, we acknowledge that there is no evidence to show whether the hole in the closet door was fresh or if it had existed for years. Despite these facts, it is still a reasonable inference that the hole was made at the time of the offense.

¶ 70 First, the victim was a handyman who was visited by many in the community to fix things or to provide quick solutions for their problems. This suggests that the victim would have been well able to repair and prevent a hole in his closet door. Additionally, and importantly, the victim's house appeared to be well kempt and otherwise well maintained. These facts suggest that the victim would likely not have tolerated a hole in the closet door for a long period of time and, if the front doorknob kept banging into the closet door and damaging it, he would have done something to remedy the problem. Second, the violence of the attack suggests that defendant entered aggressively, which would be consistent with pushing the door open forcibly enough to push the doorknob through the closet door. Thus, while it is unclear when the hole in the closet door was created, it is a reasonable inference to conclude that it was created at the time of the attack.

¶ 71 Even without the hole, the evidence still leads to the inference that defendant entered without authority. The evidence admitted during the trial chronicles defendant's increasing agitation and escalating hostility during the evening. It is not at all inconsistent to infer that defendant intended to wreak murder upon entering the victim's house because, a scant hour before, he had promised to return and murder Prather and McCallister in their sleep. Accordingly, we hold that there was ample properly admitted evidence to prove beyond a reasonable doubt that defendant entered the victim's home without authorization.

¶ 72 We further note that, on appeal, defendant raises no other challenges to any of the other essential elements of home invasion and has, accordingly forfeited those bases to challenge the sufficiency of the evidence. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). Because there is sufficient evidence to prove defendant guilty of home invasion beyond a reasonable doubt, we reject defendant's challenge and affirm the trial court's judgment.

¶ 73 C. Unfair Sentencing Hearing

¶ 74 Defendant argues that he received an unfair sentencing hearing. Defendant specifically points to the hearsay nature of testimony concerning an incident in which he beat and choked a man and a woman, and the hearsay testimony concerning remarks he made to the victim's wife while he was attacking and killing the victim. Defendant contends that, by considering this evidence in his sentencing, the trial court considered improper sentencing factors and, as a result, he should receive a new sentencing hearing.

¶ 75 As an initial matter, we note that defendant did not object at the sentencing hearing to the evidence he now believes to be improper, and he did not raise the admission and reliance upon the hearsay evidence in his motion to reconsider sentence. In order to preserve an issue for appeal, the defendant must make a contemporaneous objection during the hearing and raise the

issue in a written motion to reconsider sentence. *Enoch*, 122 Ill. 2d at 186; *People v. Walsh*, 2016 IL App (2d) 140357, ¶ 16. Defendant contends that we may nevertheless consider the sentencing issue as plain error. We have discussed plain error above, and the general principles are applicable to procedurally defaulted sentencing issues. See *supra*, ¶¶ 38-40. In the sentencing context, the defendant must show that a clear or obvious error occurred, and (1) the evidence at sentencing was closely balanced, or (2) the error was so egregious as to deny the defendant a fair sentencing hearing. *Walsh*, 2016 IL App (2d) 140357, ¶ 16. The defendant bears the burden of persuasion in advancing a plain-error argument; if the defendant fails to persuade, then the procedural default will be honored. *Id.* Moreover, if the defendant fails to argue how either pathway of the plain-error doctrine is satisfied, then the defendant will be deemed to have forfeited this court's plain-error review. *Id.*

¶ 76 Defendant's entire argument of how either pathway of the plain-error doctrine applies consists of a single sentence: "The second prong of the plain error doctrine applies when a trial court considers an improper factor at sentencing." Defendant supports this single sentence of argument by citing *People v. Abdelhadi*, 2012 IL App (2d) 111053, ¶ 7, which states that, "when a trial court considers erroneous aggravating factors in determining the appropriate sentence of imprisonment, the defendant's 'fundamental right to liberty' is unjustly affected, which is seen as a serious error," allowing the reviewing court to consider the second, egregious-error pathway of the plain-error doctrine.

¶ 77 Defendant's argument would likely suffice if the trial court had considered improper sentencing factors. However, defendant does not discuss what constitutes an improper sentencing factor and his argument refers solely to purportedly improper hearsay evidence

adduced during the sentencing hearing. Thus, the question is whether improper evidence is the same as an improper factor for purposes of a plain-error review.

¶ 78 In *Abdelhadi*, the defendant objected to the trial court's use of an element implicit in the offense as an aggravating factor in his sentencing. *Id.* ¶ 9. This court held that the trial court relied on the risk of harm to others as an aggravating factor even though the risk of harm to others was implicit in the crime of aggravated arson. *Id.* ¶ 12. This court also noted the presence of other, legitimate aggravating factors, like the defendant's status of being on probation at the time of the offense and the defendant's criminal history. *Id.* Thus, *Abdelhadi* suggests that testimony adduced at the sentencing hearing is not a factor in the sense of factors in mitigation and aggravation or for the purposes of evaluating whether an improper sentencing factor was used by the trial court in a plain-error analysis.

¶ 79 Instead, the purportedly improper testimony refers to defendant's criminal history and the nature and circumstances of defendant's offense. The testimony that defendant choked two people and threatened to kill the responding officer, while hearsay, referred to 2008 offenses of battery and resisting a peace officer for which defendant was convicted. A defendant's criminal history is a proper factor to consider. 730 ILCS 5/5-5-3.2(a)(3) (West 2012). The testimony that defendant taunted the victim's wife while murdering the victim goes to the nature and circumstances of the offense (and, we note, the taunts defendant made are not elements of or inherent in the offenses and thus do not run afoul of the prohibition against double enhancement described in *Abdelhadi*, 2012 IL App (2d) 111053, ¶ 9). The nature and circumstances of the offense is a proper sentencing factor for the trial court to consider. *People v. Sanders*, 2016 IL App (3d) 130511, ¶ 13.

¶ 80 Thus, while labeling his argument as attacking the trial court's use of improper sentencing factors, the substance of defendant's argument actually deals with proper sentencing factors. Because defendant has not argued how the substance of his argument may be considered under a plain-error analysis, we hold that defendant has forfeited our plain-error review of his claimed sentencing issues. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013); *Walsh*, 2016 IL App (2d) 140357, ¶ 16.

¶ 81 Because defendant has forfeited plain-error review, and because defendant failed to properly preserve the errors he now raises on appeal, we hold that defendant has forfeited the sentencing issues, and, accordingly, we must honor the procedural default. *Id.*

¶ 82 III. CONCLUSION

¶ 83 For the foregoing reasons, the judgment of the circuit court of Lee County is affirmed.

¶ 84 Affirmed.