

No. 1-14-2013

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County
)	
v.)	No. 09 CR 6853
)	
JAMES JACKSON,)	Honorable
)	Thomas V. Gainer, Jr.,
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Rochford and Delort concurred in the judgment.

ORDER

¶ 1 *Held:* The defendant's conviction and sentence are affirmed where: (1) the State presented sufficient evidence to prove him guilty of first-degree murder beyond a reasonable doubt; (2) the trial court did not abuse its discretion in allowing the State to present evidence regarding the circumstances of his arrest; and (3) the imposition of a 15-year firearm enhancement did not render the defendant's sentence void and did not rise to the level of plain error.

¶ 2 Following a jury trial, the defendant, James Jackson, was found guilty of first-degree murder (720 ILCS 5/9-1(a)(1) (West 2008)) and sentenced to 35 years' imprisonment. On appeal, he argues that: (1) the State failed to prove him guilty beyond a reasonable doubt; (2) the

trial court abused its discretion in allowing the State to present evidence of other crimes; and (3) the court erred in imposing a 15-year firearm enhancement. For the reasons that follow, we affirm.

¶ 3 In March 2009, the State charged the defendant and his codefendants, Tremaine Mason, Pierre Manning, and Demetrius Hudson, with the first-degree murder of Sharron Wilkins. In June 2013, the defendant, Manning, and Hudson were tried before the same jury. That trial resulted in an acquittal for Hudson and a hung jury for the defendant and Manning.¹ Thereafter, the trial court severed the defendant's case from Manning's case and the defendant's case proceeded to a second jury trial in September 2013.

¶ 4 Prior to trial, the State filed a motion seeking to introduce evidence regarding the circumstances of the defendant's arrest. Specifically, the State sought to call four Chicago police officers who would testify that, in February 2009, four months after the shooting death of Wilkins, officers engaged in a high-speed pursuit of a red SUV after one of its occupants fired shots at a gas station. The officers would further testify that the defendant and Manning fled on foot after the SUV crashed, but were subsequently arrested. Finally, the State sought to present evidence that the officers recovered a handgun from the SUV. The defendant objected, arguing that the circumstances leading to his arrest were inadmissible "other-crimes evidence" and its probative value was outweighed by its prejudicial effect. Following a hearing, the trial court allowed the State to present evidence regarding the high-speed car chase that led to the defendant's arrest, but barred it from presenting evidence that shots were fired at a gas station or that a handgun was recovered from the SUV.

¹ Codefendant Mason was tried separately before a different jury and was found guilty of first-degree murder. His conviction was recently affirmed by this court on direct appeal. See *People v. Mason*, 2017 IL App (1st) 141199-U.

¶ 5 At trial, the State presented evidence establishing that, at approximately 4 p.m. on October 5, 2008, the defendant was sitting in the front passenger seat of a gray Mazda when he and Manning, who was sitting in the back passenger-side seat, started shooting at a group of individuals standing near 15th Street and Christiana Avenue. One of those individuals, Wilkins, was struck in the head and thigh and died as a result of the gunshot wounds.

¶ 6 Sharron Winters, the victim's father, testified that he was sitting in his car waiting for his son when he heard gunshots "ringing out" behind him. He observed a gray Mazda stopped in the middle of the street, approximately three car lengths behind him, with the front and backseat passengers firing multiple shots towards his son. Winters explained that he looked "directly at" the driver through his rearview mirror and saw "all four" occupants as the Mazda drove slowly past him after the shooting. He further testified that, as he exited his vehicle to check on his son, the back driver-side passenger fired shots at him, but missed. After the Mazda "sped off," Winters ran to his son who was lying on the ground unresponsive. Shortly thereafter, an ambulance arrived and transported his son to the hospital.

¶ 7 Winters acknowledged that he did not speak to the police about the shooting until January 6, 2009, when two detectives came to his house. He told the detectives what happened and provided a description of the four men in the Mazda, including the front passenger whom he described as an "African American male." In February 2009, detectives presented Winters with a six-person photo array, from which he positively identified the defendant as the front passenger who was shooting a gun at his son. Later that same month, he identified the defendant in a lineup at the police station and again identified him in open court as the front-seat passenger of the gray Mazda. On cross-examination, Winters admitted that he previously testified that the

Mazda was green and that the backseat passenger had a “long gun” that looked like an “AK-47.” He clarified, however, that he is not familiar with guns.

¶ 8 Christina Cole testified that, on October 5, 2008, she was sitting on her front porch near 15th Street and Christiana Avenue when she noticed a gray Mazda circling her block at a high rate of speed. When the Mazda returned a third time, she observed it slow down near a fire hydrant and noticed the occupants shooting at a group of individuals. She heard people screaming and saw glass falling from the rear window of the Mazda. Cole testified that she ran inside her home and remained there until the police arrived and questioned her and her brother about the shooting. Cole told the detectives what happened and described the front passenger as a light-skinned African-American male. After Cole and her brother answered the detectives’ questions, the detectives drove them to another location where they identified a gray Mazda with a “busted out” rear window as the vehicle that was used in the shooting.

¶ 9 Cole further testified that, on February 9, 2009, detectives came to her house and showed her a photo array of possible suspects. She viewed the photo array and positively identified the defendant as one of the shooters. Thereafter, on February 25, 2009, Cole went to the police station, viewed a lineup, and identified the defendant as the front passenger who was shooting a gun. During her testimony, Cole initially stated that she did not recognize anyone in court as one of the shooters, but upon further questioning by the prosecutor, she eventually identified the defendant in open court as one of the shooters.

¶ 10 On cross-examination, Cole acknowledged that she testified in a prior proceeding that the detectives showed her photos on the day of the shooting and that she went to the police station with her brother two days later and identified “a boy with braids” and “the haircut.” Cole was also questioned about her previous testimony that she viewed photos with her brother who “was

pointing out pictures” and that none of the photos she identified depicted the defendant. Cole’s responses to defense counsel’s questions, however, were conflicting and ambiguous. Cole additionally testified that, when she viewed the physical lineup in February 2009, she did not identify anyone upon her first viewing; rather, it was only after the detectives told her to “go back in there” that she identified the defendant and Manning as the shooters. Finally, Cole recanted her prior testimony that the detectives threatened to take her kids away if she failed to identify someone in the lineup, and recanted her testimony that the detectives circled the defendant’s photograph in a photo array.

¶ 11 On redirect, Cole reiterated that she positively identified the defendant in a photo array and again in a physical lineup. Finally, Cole testified that this is the second time that she was arrested for failing to testify in this case.

¶ 12 The State next presented the testimony of Lavonzell Coleman, a friend and former girlfriend of Mason. According to Coleman, Mason called her on October 4, 2008, and asked her to rent a car for him. Although Coleman knew that Mason owned a vehicle, she nevertheless agreed to rent a gray Mazda from Enterprise Rent-A-Car in exchange for \$600. When she gave the rental vehicle to Mason, she told him to “not do anything stupid.” The next day, Mason called Coleman and instructed her to report the car stolen. After the phone call, Coleman drove to 16th Street and Hamlin Avenue where she observed police officers standing next to the Mazda, which had bullet holes and “shot out” windows. Coleman stated that she went to the police station and reported the Mazda stolen, even though she knew it had not been stolen.

¶ 13 Detective Thomas Crain of the Chicago police department testified that he and his partner, Detective Wayne Raschke, were assigned to investigate the shooting that occurred on October 5, 2008. He stated that he went to the scene of the shooting and gathered information

from witnesses, the responding police officers, and an assisting detective. Based upon that information, Detectives Crain and Raschke drove to 3645 West Polk Street where they located a gray four-door vehicle, which matched the description of the vehicle used in the shooting. Detective Crain stated that the crime lab was contacted to process the scene and that various items, including an orange juice bottle, a plastic cup, a sweatshirt, and a spent shell casing, were recovered from the vehicle, inventoried, and sent to the Illinois State Police (ISP) crime lab for forensic testing. Although Detective Crain agreed with Cole's testimony that he interviewed her and her brother, and drove them to view the gray Mazda, he disputed her testimony that he showed her photographs of possible suspects in the months following the shooting. He explained that he did not have any suspects during this time period and was waiting to hear back from the ISP crime lab.

¶ 14 In December 2008, Detective Crain received information from the victim's mother, Gail Wilkins, that the victim's father, Winters, witnessed the shooting and that Manning, also known as "Wee Wee," might have been involved in the shooting. In January 2009, Detectives Crain and Raschke interviewed Winters about the shooting and returned two days later with a photo array. Winters viewed the photo array and identified Manning as the man shooting a gun at his son from the backseat of the Mazda.

¶ 15 On February 5, 2009, the detectives received information from the ISP crime lab that the defendant's and Mason's DNA had been found on some of the items recovered from the gray Mazda. Based upon this information, Detective Crain created two photo arrays, which he presented to Winters on February 8, 2009. Winters positively identified the defendant as the front seat passenger and identified Mason as the driver of the vehicle. The following day, Detectives Crain and Raschke went to Cole's house and showed her the photo arrays. Cole

identified the defendant as the front-seat passenger who was shooting a gun. Cole, however, was not able to identify Manning or Mason. Detective Crain denied circling the defendant's photograph and he stated that Cole's brother was not present when she was viewing the photo arrays.

¶ 16 Thereafter, on February 25, 2009, Detective Crain learned that the defendant and Manning were arrested on an unrelated matter. Detective Crain arranged a physical lineup containing the defendant, Manning, and four fillers. Winters and Cole viewed the lineup separately and both identified the defendant as the front-seat passenger who was shooting a gun, and Manning as the backseat passenger who was shooting a gun. Detective Crain testified that he never threatened Cole or told her that he was going to take her children away. On February 26, 2008, Mason was arrested and the detectives conducted another lineup in which Winters positively identified Mason as the driver of the gray Mazda.

¶ 17 On cross-examination, Detective Crain stated that, within an hour of the shooting, Cole described the front passenger as a light-skinned black male, 18 to 20 years old, wearing braids and a brown "Buck 50" hat. He also stated that he was informed by Detective Stewart that two boys who were playing ball near the abandoned Mazda described one of the occupants as a light-skinned black male, between the age of 18 and 20, with braids in his hair, and wearing a "Buck 50" hat. Detective Crane confirmed that during his initial interview with Winters, Winters described the driver as a black male, 18 to 20 years old, with braids.

¶ 18 Detective Raschke testified and corroborated Detective Crain's testimony. He added, however, that he did not find it unusual that Winters did not approach the police about the shooting. He explained that he has investigated hundreds of cases where witnesses did not come

forward right away and, in fact, when he met Winters on January 6, 2009, Winters was angry that he had not been interviewed sooner.

¶ 19 During the investigation, the police recovered nine spent nine-millimeter cartridge casings, eight spent .45 automatic cartridge casings, and a fired bullet from the scene of the shooting. Officers also recovered a spent casing from the abandoned Mazda and a bullet from Wilkins' body. Forensic testing revealed that three firearms were used during the shooting.

¶ 20 Gregory DiDomenic, a forensic DNA analyst with the ISP, testified that he obtained a buccal standard swab containing the defendant's DNA, which he compared to the DNA found on a sweatshirt and glass bottle recovered from the gray Mazda. He stated that there were similarities between the defendant's DNA profile and the major profile on the sweatshirt and glass bottle and thus, the defendant could not be excluded as a potential contributor.

¶ 21 Finally, during its case-in-chief, the State presented the testimony of Officers Andrew Camarillo, Nicholas Lesch, and Jason Edwards, who testified to the circumstances of the defendant's arrest. Their testimony established that, around 10:45 p.m. on February 24, 2009, they were on patrol when they received a radio call regarding a high speed chase. Officer Camarillo testified that they proceeded to Hamlin Avenue and Augusta Boulevard where they observed "a red SUV speeding past [them] on Augusta." The officers pursued the SUV for two and a half blocks when it lost control and crashed into some parked cars. The defendant, Manning, and two other occupants jumped out of the vehicle, fled on foot, and were subsequently arrested.

¶ 22 After the State rested, the defense called Hudson as its first witness. Hudson testified that, in the afternoon of October 4, 2008, Mason and another individual picked him up in a gray Mazda. Hudson stated that they drove to a liquor store, purchased marijuana, and returned to

“their neighborhood.” Later that same day, they picked up the defendant, drove around the neighborhood for several hours drinking Hennessy and orange juice, and then dropped him off at a house in the western suburbs of Chicago. Hudson also recalled that the defendant left his sweatshirt in the car, but Mason continued to drive into the city without returning the sweater.

¶ 23 The defendant’s 17-year-old daughter, Diamond Jackson, testified that she lived with her mother and two sisters. According to Jackson, the defendant arrived at her house around 1 p.m. on October 5, 2008, to watch her and her sisters while her mother attended a wedding. She stated that she specifically remembered that day because that was the first time the defendant slept at her house.

¶ 24 Shanika Rambus corroborated her daughter, Diamond Jackson’s, testimony that the defendant was at her house on October 5, 2008, watching her children as she hosted her cousin’s wedding. Rambus stated that, when she returned home after midnight, the defendant was still at her house and that he left the following morning.

¶ 25 After closing arguments, the jury found the defendant guilty of first-degree murder. The trial court denied the defendant’s motion for a new trial and sentenced him to 35 years’ imprisonment, which included a 15-year firearm enhancement.

¶ 26 The defendant’s first contention on appeal is that the State failed to prove him guilty beyond a reasonable doubt. His argument in this regard rests on the assertion that the State’s case relies almost exclusively on the identification testimony of two eyewitnesses, Winters and Cole, which he asserts was vague, doubtful, and insufficient to establish guilt.

¶ 27 When reviewing the sufficiency of the evidence, the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v.*

Washington, 2012 IL 107993, ¶ 33. The credibility of the witnesses, the weight to be given their testimony, and the resolution of any conflicts in the evidence, are within the province of the trier of fact, and a reviewing court will not substitute its judgment for that of the trier of fact on these issues. *People v. Jackson*, 232 Ill. 2d 246, 280 (2009). We will not reverse a conviction unless “ ‘the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of [the] defendant’s guilt.’ [Citation].” *Washington*, 2012 IL 107993, ¶ 33.

¶ 28 The State bears the burden of proving beyond a reasonable doubt the identity of the person who committed the charged offense. *People v. Lewis*, 165 Ill. 2d 305, 356 (1995). Identification evidence which is vague or doubtful is insufficient to support a conviction. *People v. Slim*, 127 Ill. 2d 302, 307 (1989). However, a single witness’s identification of the accused is sufficient to sustain a conviction if the witness viewed the accused under circumstances permitting a positive identification. *Id.* In assessing identification testimony, we consider the following five factors set forth in *Neil v. Biggers*, 409 U.S. 188 (1972): (1) the witness’s opportunity to view the defendant during the offense; (2) the witness’s degree of attention at the time of the offense; (3) the accuracy of the witness’s prior description of the defendant; (4) the witness’s level of certainty at the subsequent identification; and (5) the length of time between the crime and the identification. *Slim*, 127 Ill. 2d at 307-08. None of these factors, standing alone, conclusively establishes the reliability of identification testimony; rather, the trier of fact is to take all of the factors into consideration. *Biggers*, 409 U.S. at 199-200.

¶ 29 With respect to the first *Slim-Biggers* factor, the defendant argues that Winters did not have a good opportunity to view him because he observed the shooting through his rearview mirror. We disagree. This court has previously held that a positive identification need not be based upon perfect conditions for observation, nor does the observation have to be of a

prolonged nature. *People v. Williams*, 143 Ill. App. 3d 658, 662 (1986). Here, Winters testified that he saw the driver of the vehicle through his rearview mirror and, after the shooting, he saw “all four” occupants as the Mazda drove slowly past him. There is no evidence that the defendant was wearing anything to cover his face or that Winters’ opportunity to view the defendant was hindered. Based upon these facts, a rational trier of fact could have found that Winters had ample opportunity to view the defendant at the time of the shooting.

¶ 30 We also disagree with the defendant’s claim that Cole did not have a good opportunity to view him based upon her contradictory testimony as to where she was at the time of the shooting. Viewing Cole’s testimony in a light most favorable to the State, as we must, Cole stated that she was sitting on her front porch when she noticed a gray Mazda circle the block three times. She then observed the vehicle slow down near a fire hydrant where some of the occupants started shooting. She observed glass falling out of the vehicle and was able to view the defendant’s face long enough so that she could later describe his complexion, hairstyle, and clothing. Although the defendant observes that Cole testified that she was “still in the house” when the ambulance arrived, her testimony could easily mean that she ran inside after the shooting and did not come back outside until she felt safe. *Washington*, 2012 IL 107993, ¶ 33 (noting that the evidence must be viewed in a light most favorable to the State).

¶ 31 With respect to the second factor, the defendant claims that Winters’ and Cole’s degree of attention could have been affected by the high-stress situation of the shooting, which he argues weighs against a finding of reliable identification. We disagree. Although the shooting was no doubt a stressful situation, there was no evidence presented to suggest that the stress of the situation affected Winters’ or Cole’s degree of attention or ability to observe the offenders. Winters’ attention was drawn to the vehicle when two of its passengers started shooting at his

son who was standing across the street. Likewise, Cole testified that her attention was drawn to the vehicle when she observed it circling her block at a high rate of speed immediately before the shooting took place. Winters' and Cole's high degree of attention was demonstrated by their ability to describe the vehicle and its passengers, as well as the events that took place before, during, and after the shooting. Accordingly, a rational trier of fact could have found that the second factor weighs in the State's favor.

¶ 32 With respect to the third factor, the accuracy of the witness's prior description of the offender, the defendant argues that Winters' prior description—namely, that the offender was an African-American male—was generic and vague and undermines the reliability of his subsequent identification. As to Cole, the defendant argues that her prior description of the defendant—a light-skinned black male, about 18 to 20 years old—did not match the defendant's appearance at trial. Our supreme court has generally rejected this line of argument, noting that “discrepancies and omissions as to facial and other physical characteristics are not fatal, but simply affect the weight to be given the identification testimony.” *Slim*, 127 Ill. 2d at 308; *People v. Calhoun*, 132 Ill. App. 3d 665, 668 (1971) (finding that a six-inch difference between the witness's description and the actual height of the defendant was not fatal to the witness's credibility). We also disagree with the defendant's assertion that Cole was not able to identify him in court. While Cole initially failed or refused to identify the defendant in court, she later identified him as one of the individuals she saw shooting a gun from the gray Mazda. The jury heard these inconsistencies, weighed them accordingly, and found that a positive identification was made. We will not substitute our judgment for the jury's on these matters. *People v. Brooks*, 187 Ill. 2d 91, 131 (1999).

¶ 33 Regarding the fourth factor, the witness's level of certainty, Winters and Cole each identified the defendant's photograph from a six-person photo array, identified him in a physical lineup, and again identified him in open court. Nothing in the record suggests that the photo-array identifications, lineup identifications, or the in-court identifications were less than certain. The defendant asserts that, in light of social science research, a "legion of cases" have discredited the fourth factor. We note, however, that all five *Slim-Biggers* factors are the law in Illinois for the purpose of assessing the reliability of an identification. *People v. Polk*, 407 Ill. App. 3d 80, 109 (2010).

¶ 34 As to the fifth factor, the defendant attacks the reliability of Winters' and Cole's identifications, arguing that they were made almost four months after the shooting. We do not agree that a four-month gap is a "substantial" amount of time. See *Slim*, 127 Ill. 2d at 313-14 (citing *People v. Rogers*, 53 Ill. 2d 207, 214 (1972) (two-year gap)); *People v. Dean*, 156 Ill. App. 3d 344, 352 (1987) (two-and-a-half-year gap). Thus, the four-month gap in this case does not undercut the sufficiency of Winters' or Cole's identification as evidence in support of the defendant's conviction.

¶ 35 In addition to the five *Slim-Biggers* factors, the defendant argues that Winters and Cole were not previously acquainted with him. We note, however, there is no evidence in the record supporting the proposition that either Winters or Cole had difficulty identifying the defendant because they were not previously acquainted with him. The defendant also asserts that Cole's youthfulness and inconsistent testimony "may undermine the reliability of her identification." He cites *Bryant v. Commonwealth*, 393 S.E. 2d 216, 218 (Va. App. Ct. 1990), and *Haliym v. Mitchell*, 492 F.3d 680, 706 (6th Cir. 2007), in support of his contention. Unlike in *Bryant* and *Haliym*, where the eyewitnesses were 8 and 7 years old, respectively, Cole testified that she was

16 years old at the time she witnessed the shooting. In any case, the reliability of Cole's identification and the inconsistencies in her testimony were matters for the trier of fact to resolve. See *People v. Tomei*, 2013 IL App (1st) 112632, ¶ 47. We also reject the defendant's remaining contentions that Winters and Cole were not credible witnesses as those arguments are directed against the weight that Winters' and Cole's testimony should be afforded by the trier of fact, and it is not the place of this court to substitute our judgment for that of the jury.

¶ 36 After reviewing the *Slim-Biggers* factors, we cannot say that Winters' or Cole's testimony was so deficient that no rational juror could accept their identification of the defendant. Therefore, we find that Winters' and Cole's testimony was sufficient to prove beyond a reasonable doubt that the defendant was the man who was shooting a gun from the front passenger seat of the Mazda on October 5, 2008.

¶ 37 We next consider the defendant's contention that he was denied a fair trial where the State was allowed to introduce evidence of other crimes. More specifically, the defendant asserts that the trial court abused its discretion in allowing evidence of the high-speed car chase and subsequent arrest because it was admitted to show he had a propensity to commit other crimes.

¶ 38 The State responds by arguing that the trial court did not err in admitting the other-crimes evidence because the events surrounding his flight from the police were relevant to show the circumstances of his arrest and to explain the course of the police investigation leading to the defendant's lineup identification.

¶ 39 Evidence of other crimes is admissible if it is relevant for any purpose other than to show a defendant's propensity to commit crimes. *People v. Wilson*, 214 Ill. 127, 135 (2005). Other crimes evidence may be admitted to show *modus operandi*, intent, motive, identity, or the absence of mistake. *People v. Pike*, 2013 IL 115171, ¶ 11; see also Ill. R. Evid. 404(b) (eff. Jan.

1, 2011). In addition, other crimes evidence may be used to explain police course of conduct and the investigation leading to the defendant's arrest. *People v. Hayes*, 139 Ill. 2d 89, 130-32 (1990) (a continuous narrative of the arrest is admissible including connected crimes as part of the *res gestae*). Nevertheless, even if other-crimes evidence is admissible for such a purpose, the trial court may exclude it if the prejudicial effect of the evidence substantially outweighs its probative value. *People v. Donoho*, 204 Ill. 2d 159, 170 (2003). A trial court's decision to admit other-crimes evidence will not be reversed unless the court abused its discretion. *Wilson*, 214 Ill. 2d at 136. An abuse of discretion "occurs when the court's decision is arbitrary, fanciful, or unreasonable." *People v. Gwinn*, 366 Ill. App. 3d 501, 515 (2006).

¶ 40 In this case, the trial court properly found that the events pertaining to the defendant's arrest, following a high-speed car chase, were relevant and admissible to provide details about the circumstances of his arrest. See *Hayes*, 139 Ill. 2d at 130-32 (evidence regarding the circumstances of a defendant's arrest is admissible as part of a continuing narrative). It was not, as the defendant contends on appeal, admitted or used to establish his propensity to commit crimes. Indeed, after a hearing on the issue, the trial court exercised its discretion and partially granted the defendant's request to exclude other-crimes evidence by barring the State from presenting evidence that an occupant of the red SUV fired shots at a gas station and that a handgun was recovered from the red SUV. As such, the State was only permitted to present evidence demonstrating that: a red SUV led the police on a car chase; the passengers fled on foot; and the defendant and Manning were subsequently arrested. While the defendant is correct that multiple police officers testified regarding the high-speed chase, we disagree that the evidence, overall, became a mini-trial or that the probative value of this evidence was substantially outweighed by the prejudicial effect. The police officers who testified to the high-

speed car chase did so in a relatively succinct fashion, were brief, and moreover, their testimony was relevant to show the circumstances of the defendant's arrest. We conclude, therefore, that the trial court did not abuse its discretion in allowing the evidence regarding the circumstances of the defendant's arrest.

¶ 41 We next address the defendant's claim that his sentence, which included a 15-year firearm enhancement, is void because it was not authorized by statute. More specifically, he maintains that the imposition of the firearm enhancement did not comply with section 111-3(c-5) of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/111-3(c-5) (West 2008)) because the jury was never instructed to make any findings as to whether he possessed or discharged a firearm.

¶ 42 We begin by noting that our supreme court has consistently held that a judgment is void if and only if the court that entered it lacked jurisdiction. *People v. Davis*, 156 Ill. 2d 149, 155 (1993). In *Davis*, our supreme court explained Illinois's voidness doctrine as follows:

“Whether a judgment is void or voidable presents a question of jurisdiction. [Citation.] Jurisdiction is a fundamental prerequisite to a valid prosecution and conviction. Where jurisdiction is lacking, any resulting judgment rendered is void and may be attacked either directly or indirectly at any time. [Citation.] By contrast, a voidable judgment is one entered erroneously by a court having jurisdiction and is not subject to collateral attack.” *Id.* at 155-56.

¶ 43 Jurisdiction consists of two elements: subject matter jurisdiction and personal jurisdiction. *In re M.W.*, 232 Ill. 2d 408, 414 (2009). Subject matter jurisdiction refers to the power of a court “ ‘to hear and determine cases of the general class to which the proceeding in question belongs.’ ” *Id.* at 415 (quoting *Belleville Toyota, Inc. v. Toyota Motor Sales U.S.A.*,

Inc., 199 Ill. 2d 325, 334 (2002)). Personal jurisdiction refers to the court's power “ ‘to bring a person into its adjudicative process.’ ” *Id.* at 415 (quoting Black's Law Dictionary 870 (8th ed. 2004)).

¶ 44 In this case, the defendant does not challenge the trial court's subject-matter or personal jurisdiction. Rather, he maintains that the trial court lacked statutory authority to add the 15-year firearm enhancement to his 20-year sentence for first-degree murder, thereby rendering that portion of his sentence void. In support of his assertion, he cites *People v. Thompson*, 209 Ill. 2d 19 (2004), which stated that “a sentence which does not conform to a statutory requirement is void.” *Id.* at 23 (citing *People v. Arna*, 168 Ill. 2d 107, 113 (1995)).

¶ 45 Our supreme court in *People v. Castleberry*, 2015 IL 116916, ¶ 19 abolished the void sentence rule, abrogating *Arna*. The court explained that “ ‘the failure to comply with a statutory requirement or prerequisite does not negate the circuit court's subject matter jurisdiction or constitute a nonwaivable condition precedent to the circuit court's jurisdiction.’ ” *Id.* at ¶ 15 (quoting *LVNV Funding, LLC v. Trice*, 2015 IL 116129, ¶ 37). Thus, where the trial court has jurisdiction and enters an erroneous judgment, that judgment is voidable and not subject to collateral attack. *Id.* ¶ 11. Only the most fundamental defects, such as a lack of personal or subject matter jurisdiction, render a judgment void. *Id.* ¶ 15.

¶ 46 Applying the aforementioned principles to this case, we conclude that the trial court's order was voidable, not void. As noted above, the court had jurisdiction over the defendant as well as the subject matter. The court, therefore, had authority to enter a conviction and sentence on the charged offense, and any alleged failure to comply with section 111-3(c-5) of the Code did not divest the court of its jurisdiction. See *Davis*, 156 Ill. 2d at 156 (“jurisdiction or power to

render a particular judgment *** carries with it the power to decide wrong as well as to decide right”).

¶ 47 Having found that the defendant’s sentence is voidable, we address his final contention that the trial court erred in imposing the 15-year firearm enhancement where the jury was never instructed to make any findings as to whether he possessed or discharged a firearm.

¶ 48 Initially, the defendant acknowledges that he failed to preserve this issue for review by not raising it before the trial court. *In re R.A.B.*, 197 Ill. 2d 358, 362 (2001). However, he asks this court to review this issue for plain error. The plain-error doctrine permits a reviewing court to consider unpreserved claims of error where the defendant establishes that a “clear or obvious” error occurred, and either (1) “the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error,” or (2) “that 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. Piatkowski*, 225 Ill. 2d 551, 564 (2007). The first inquiry in determining whether plain error exists is to determine whether a clear and obvious error occurred. *People v. Eppinger*, 2013 IL 114121, ¶ 19. Absent an error, there can be no plain error and the defendant’s forfeiture will not be excused. *Id.*

¶ 49 In this case, the trial court imposed a 15-year firearm enhancement on the defendant’s sentence in accordance with section 5-8-1(a)(1)(d)(i) of the Unified Code of Corrections, which provides that if, during the commission of a first-degree murder, the defendant was “armed with a firearm,” then “15 years shall be added to the term of imprisonment imposed by the court ***.” 730 ILCS 5/5-8-1(a)(1)(d)(i) (West 2008). However, section 111-3(c-5) of the Code of Criminal Procedure of 1963 also provides:

“[I]f an alleged fact (other than the fact of a prior conviction) is not an element of an offense but is sought to be used to increase the range of penalties for the offense beyond the statutory maximum that could otherwise be imposed for the offense, the alleged fact must be included in the charging instrument or otherwise provided to the defendant through a written notification before trial, submitted to a trier of fact as an aggravating factor, and proved beyond a reasonable doubt.”

725 ILCS 5/111-3(c-5) (West 2012).

See also *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000) (“Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.”).

¶ 50 In this case, the fact at issue—whether the defendant was armed with a firearm—was not submitted to the jury as an aggravating factor for first-degree murder. Although the trial court failed to instruct the jury as to whether the defendant possessed or discharged a firearm, this does not end our inquiry as *Apprendi* violations are subject to harmless-error review. In *Neder v. United States*, 527 U.S. 1, 9 (1999), the Supreme Court held that the omission of an element of the charged offense from a jury instruction falls into the category of error amenable to harmless-error review. The Court observed:

“Unlike such defects as the complete deprivation of counsel or trial before a biased judge, an instruction that omits an element of the offense does not *necessarily* render a criminal trial fundamentally unfair or an unreliable vehicle for determining guilt or innocence.” (Emphasis in original.) *Id.*

The Court went on to enunciate the test for determining whether a constitutional error is harmless: “Is it clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error?” *Id.* at 18.

¶ 51 In *People v. Thurow*, 203 Ill. 2d 352 (2003), the Illinois Supreme Court relied upon *Neder* and held that *Apprendi* violations are subject to harmless-error analysis. In *Thurow*, the defendant was charged with involuntary manslaughter with the enhancement that the victim was a family or household member. After the defendant was convicted of involuntary manslaughter, the trial court imposed an enhanced sentence based upon its finding that the victim was a household member of the defendant. Despite the trial court’s failure to instruct the jury regarding the proposition that the victim was a family or household member of the defendant, our supreme court found the *Apprendi* violation harmless, stating:

“Given the evidence in support of this element, it is clear beyond a reasonable doubt that a properly instructed, rational jury would have found [the] defendant guilty of involuntary manslaughter against a household member. We therefore conclude that the failure to instruct the jury as to this element was harmless error.” *Id.* at 369; see also *People v. Rivera*, 227 Ill. 2d 1, 27 (2007) (*Apprendi* violations are subject to harmless-error analysis).

¶ 52 Here, the evidence at trial that the defendant was armed with a firearm at the time of the shooting was overwhelming. The defendant stipulated to the testimony of the State’s firearm expert who opined that three firearms were used during the commission of the shooting and there is no dispute that the victim died from gunshot wounds to his head and thigh. The State also presented the testimony of two eyewitnesses who testified that they observed the defendant shooting a gun from the front passenger seat of the Mazda. Although the defendant denied being

present in the Mazda at the time of the shooting, the jury rejected that defense. If the jury had been properly instructed to decide whether the defendant was armed with a firearm, it would have found beyond a reasonable doubt that the defendant possessed or discharged a firearm during the shooting. Accordingly, any error in the trial court's failure to instruct the jury on whether the defendant was armed with a firearm during the commission of the charged offense was harmless.

¶ 53 For the reasons stated herein, we affirm the defendant's first-degree murder conviction and his 35-year prison sentence.

¶ 54 Affirmed.