2017 IL App (1st) 151442-U
No. 1-15-1442
Order Filed December 22, 2017
Modified Upon Denial of Rehearing
Order Dated March 16, 2018

Fifth Division

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 15434
	)	
MORRIS JOHNSON,	)	Honorable
	)	Charles P. Burns,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Reyes and Justice Rochford concurred in the judgment.

ORDER

¶ 1 *Held*: The admission of hearsay testimony relaying the substance of an informant's statement to police was erroneous but was not reversible as plain error. The prosecutor's challenged remarks were not prejudicial and did not warrant a new trial.

¶ 2 Following a jury trial, defendant Morris Johnson appeals from his conviction for possession of a controlled substance with intent to deliver. We affirm the judgment of the circuit court of Cook County.

¶ 3 BACKGROUND

¶ 4 In March 2015, defendant was tried by a jury on the charge of possession of a controlled substance with intent to deliver. The prosecutor's opening argument began by stating:

> "When you wake up in the morning, just like everybody, people go to work. They have a job. They have something to do that day that must get done. On July 27, 2014, the defendant had a job. His job, the thing he had to get done that day, was sell drugs.
>
> *** On July 27, 2014, two officers, Marvin Bonnstetter and Kevin Garcia with the Chicago Police had a job. And their job was to look for a short male black selling drugs on the corner of Chicago and Holman.[1]"

The prosecutor's opening argument told the jury that it would "hear that [the officers] observed somebody, the defendant, who matched the description that they had, a short male black wearing a white shirt and a tan baseball cap."

¶ 5 The State's first witness was Chicago Police officer Kevin Garcia. Officer Garcia testified that, on July 27, 2014, he was working on a narcotics team with his partner, Officer Marvin Bonnstetter. Officer Garcia testified that the officers "received information from a confidential informant that a short male black wearing a white shirt and tan hat was selling heroin on the corner of Chicago and Holman." Based on that information, Officer Garcia began surveillance at that location, where he observed defendant, who matched the informant's physical description, standing in front of a store.

¶ 6 During his surveillance, Officer Garcia observed a white male arrive on a bicycle and approach defendant. The two men spoke, and the white male handed cash to defendant. Defendant accepted the money and handed a "small item" to the white male, who then left.

[1] The record repeatedly refers to "Holman" Avenue, although the correct spelling is "Homan."

Officer Garcia continued to watch defendant. A short time later, a Hispanic male arrived on a bicycle and handed cash to defendant, who accepted the cash and handed a small item to the man.

¶ 7 Officer Garcia testified that, in his nine years as a police officer, he has been involved in similar surveillance and has made "hundreds" of narcotics-related arrests. He testified that, based on his experience, he believed he had witnessed a narcotics transaction. Officer Garcia "broke surveillance" and rejoined Officer Bonnstetter. The two officers approached defendant, "advised [the defendant] of our narcotics investigation, and [Officer Garcia] ordered him to open up his left hand." Officer Garcia testified that in defendant's hand were "two black-tinted Ziploc bags containing a white powder[y] substance, suspected to be heroin." The bags were inventoried by Officer Bonnstetter.

¶ 8 The State also called Officer Bonnstetter, who similarly testified that defendant was holding "[t]wo Ziplocs of suspect heroin" when he was apprehended. Officer Bonnstetter testified that, based on his 12 years' experience as a police officer, he believed these items were "dime bags," meaning "$10 bags of heroin" individually packaged for sale. Officer Bonnstetter inventoried the bags to be sent to the Illinois State Police Crime Lab. He further testified that he performed a custodial search of defendant, during which he discovered that defendant was carrying $71 in cash.

¶ 9 Following Officer Bonnstetter's testimony, the jury heard a stipulation that a forensic chemist at the Illinois State Police Crime Lab, if called to testify, would testify that the substance in the bags recovered from defendant tested positive for the presence of heroin. After the State rested, defendant's motion for directed verdict was denied.

¶ 10 Defendant elected to testify. He recalled that around lunchtime on the day of his arrest, he was near the intersection of 5th Avenue and Madison Street, as he had an appointment at a facility for public aid recipients that provided "job employment, training and so forth." After that appointment, he proceeded to a "park area" at Madison and Homan for "a little meditation, me time." He then went to a friend's house, where he stayed until about 4:15 or 4:30 p.m. After he left his friend's house, defendant took a bus along Homan and got off the bus at Chicago Avenue. He then approached a Family Dollar store at the intersection of Chicago and Homan, where he saw a "crowd" of people arguing in front of the store.

¶ 11 Defendant recalled that a police car approached: "At that time, I guess the police car or so, had pulled up in traffic, got out. I don't know *** if a couple of officers may have went to chase the individuals that were on the corner or so, but I know the crowd had dispersed. And it was only an officer which was approaching me at the time." Defendant stated that he did not know why the officer approached him. Defendant testified that he "asked [the officer] questions *** about whatever was going on, which I had no idea of" and was then arrested. Defendant specifically denied that he had any narcotics, that he had been standing at the intersection, that he spoke to anyone on a bicycle, or that he gave anything to anyone.

¶ 12 On cross-examination, defendant testified that he was arrested at around 5:00 or 5:30 p.m. He acknowledged that this timeframe contradicted the police officers' testimony that he was observed on the corner after 7 p.m. Defendant stated that he was wearing a beige or cream-colored shirt and a khaki-colored hat when he was "accosted" by police. According to defendant, when he asked the police why he was being arrested, the police officers told him: "Don't worry about it. We'll allow you to know that sometime – sometime on your ride." He denied that the police took anything from his hands, but recalled that the police "went on my

person and pulled out some items which was revenue." Asked what he meant by "revenue," defendant testified that he had "$70 in American tender" in the pockets of his shirt and shorts.

¶ 13 On redirect examination, defendant's counsel asked him where he received the cash. Defendant answered that it was "from maybe a couple of checks that was withheld back from the temp service in which I dealt with off and on." He specifically denied that the money was from selling narcotics. Defense counsel called no other witnesses.

¶ 14 In closing argument, the assistant State's attorney (who was not the same prosecutor who gave the State's opening statement) told the jury: "At the beginning of this case, my partner told you that everybody has a job. *** This defendant's job is selling drugs. That's what his job is, making money, or revenue as the defendant calls it, from selling heroin." The State's closing argument included the following comments regarding the informant:

> "[Officer Garcia] told you that *** he got information that there was somebody outside at the corner of Chicago and Holman, and that that person, he had a description of the person. It wasn't a general description, it was a specific description. It gave a height. It gave a gender. It gave a race. It gave a clothing description. And it gave the exact location of the defendant.
>
> Officer Garcia took that information and he went out to that corner and he set up a surveillance. *** When [Officer Garcia] went out there, what did he see? He saw this defendant right there. *** He was wearing a white shirt. He was wearing that tan hat. He was standing at the exact same corner. He matched the height. He was short. He matched the race. He was black. He matched

> the gender. He was male. He matched everything of the information Officer Garcia had been given, and he was standing at that exact same corner."

Elsewhere, in arguing that the State had proved defendant's intent to deliver heroin, the prosecutor stated:

> "How do you know that he had the intent to deliver? Well, first we can start with the information Officer Garcia had received from the informant. The informant told the officer that there's a person who matched the exact description of the defendant on that day. He matched height. He matched race. He matched gender. He matched his hat. He matched the color of his shirt. *** The officer already has information that there's somebody out there selling drugs. He goes out there, this defendant exactly matched that description. That's number one of how we know that he intended to sell drugs on that day."

¶ 15 The prosecutor additionally argued that defendant's intent was evidenced by Officer Garcia's testimony that he saw defendant participate in two narcotics transactions, Officer Bonnstetter's testimony that the drugs in defendant's hand were packaged in a manner indicating they were for sale, and the fact that $71 in cash was found on defendant. With respect to that money, the prosecutor emphasized: "[The defendant] said it was revenue. Revenue is money that you make from selling something. Revenue. That's what he had in his pocket. $71 of revenue from selling drugs." The prosecutor later repeated that "[r]evenue is money that you get for selling something. He was selling heroin, and he had the money in his pocket to prove it."

¶ 16 Defense counsel's closing argument urged the jury that it could not "rely on information from a confidential informant" who was not in court or subject to cross-examination. Defense counsel argued that the officers' testimony was otherwise based on "assumptions" and was insufficient proof of intent. With respect to defendant's use of the term "revenue" to describe the money on his person, defense counsel argued that "he told you where he got [the cash] from. He was working. It was money that came from a paycheck."

¶ 17 In rebuttal, the prosecutor again referred to Officer Garcia's testimony about the informant: "You heard the officer testify that they received information that there was a gentleman selling drugs on the corner of Chicago and Holman in a white shirt, khaki or tan-colored hat. *** When they got there – even the defendant admitted, he had a white shirt on and a baseball cap and that he was at that area. You heard Officer Garcia say he set up and he watched him. This guy fits exactly what we're looking for."

¶ 18 Following deliberations, the jury found defendant guilty of possession of a controlled substance with intent to deliver. On April 20, 2015, defendant was sentenced to 42 months in the Illinois Department of Corrections. On the same date, defendant filed a notice of appeal. Accordingly, this court has jurisdiction.

¶ 19 ANALYSIS

¶ 20 Defendant asserts two bases to challenge his conviction and seek a new trial: (1) the admission of hearsay testimony; and (2) improper comments by the State's attorneys in arguments to the jury.

¶ 21 Defendant's first claim of error stems from Officer Garcia's testimony referencing an informant's statement to police, including the physical description of a person selling drugs. Defendant claims that this testimony was inadmissible hearsay, and that this error was

compounded by the repeated references to it in the State's arguments to the jury. Defendant acknowledges that his trial counsel did not preserve the issue, but contends that it is reviewable under the plain-error doctrine or, alternatively, that his trial counsel was ineffective for failing to object to the hearsay. The State responds that the testimony referring to the informant was admissible because Officer Garcia "merely testified regarding his investigation" and that "the prosecutor did not argue this evidence substantively."

¶ 22 We first recognize that defendant's trial counsel did not object to Officer Garcia's testimony referring to the informant, or to the prosecutor's arguments referring to such testimony. Thus, the issue was not preserved. *People v. Thompson*, 238 Ill. 2d 598, 611 (2010) ("To preserve a claim for review, a defendant must both object at trial and include the alleged error in a written posttrial motion. [Citation.]"). Nevertheless, defendant urges that we should review the hearsay issue under the plain-error doctrine, which "bypasses normal forfeiture principles and allows a reviewing court to consider unpreserved claims of error in specific circumstances." *Id.* at 613. "We will apply the plain-error doctrine when (1) a clear or obvious error occurred and 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) a clear or obvious error occurred and 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." (Internal quotation marks omitted.) *Id.* "The first step of plain-error review is determining whether any error occurred. [Citation.]" *Id.* Thus, we first consider whether the testimony concerning the informant was inadmissible hearsay.

¶ 23 "A defendant is guaranteed the right to confront the witnesses against him by the confrontation clauses of both the United States and Illinois Constitutions. [Citations.] Hearsay

is an out-of court statement offered to prove the truth of the matter asserted. [Citation.] The fundamental reason for excluding hearsay is the lack of an opportunity to cross-examine the declarant." *People v. Jura*, 352 Ill. App. 3d 1080, 1084-85 (2004). " '[U]nless it falls within an exception to the hearsay rule, this type of evidence is generally inadmissible due to its lack of reliability and the inability of the opposing party to confront the declarant. [Citations.]" (Internal quotation marks omitted.) *People v. Munoz*, 398 Ill. App. 3d 455, 485 (2010).

¶ 24 Our courts have recognized an exception permitting certain statements related to police investigative procedures. "Statements are not inadmissible hearsay when offered for the limited purpose of showing the course of a police investigation where such testimony is necessary to fully explain the State's case to the trier of fact." *Jura*, 352 Ill. App. 3d at 1085. "A police officer may testify about conversations with others to show the steps in his investigation so long as this testimony is not used to prove the truth of the matter asserted by these other persons." *People v. Williams*, 289 Ill. App. 3d 24, 31-32 (1997) (officer's testimony that conversation with witness led police to stop the defendant's vehicle was properly admitted "to explain the reason for the officers' actions").

¶ 25 However, the scope of the exception is limited. "The police officer may not testify to information beyond what was necessary to explain the officer's actions. [Citation.] The State may not use the limited investigatory procedure exception to place into evidence the substance of any out-of-court statement that the officer hears during his investigation, but may only elicit the substance of a conversation to establish the police investigative process." *People v. Edgecombe*, 317 Ill. App. 3d 615, 627 (2000) (testimony that a radio call stated that vehicle stopped by police matched robbery victim's description "went beyond what was necessary to show steps in the police investigation"); *People v. Singletary*, 273 Ill. App. 3d 1076, 1084 (1995) (testimony that

an informant described a person named Marvel who would be picking up cocaine at a specific address "went beyond what was necessary to explain the officer's conduct and presented the substance of his conversation with the informant").

¶ 26 Furthermore, it is improper for the prosecution to rely on such hearsay beyond the limited purpose of the exception in arguments to the jury. *Jura*, 352 Ill. App. 3d at 1091 ("The error in repetition of the hearsay by the police witnesses was exacerbated by the State's use of the hearsay in opening and closing argument"); *Singletary*, 273 Ill. App. 3d at 1085 (prosecutor's references, in opening statement and closing argument, to informant's description of suspect "went beyond what was necessary to explain investigatory procedure and was used to establish defendant's guilt").

¶ 27 Applying these authorities, we find that there was error in this case. Officer Garcia's testimony regarding the informant exceeded the scope of the hearsay exception. That is, the State elicited hearsay beyond what was necessary to explain the investigatory steps taken by the police. The State could have elicited much more limited testimony to explain why the officers were conducting surveillance at the street intersection where defendant was observed. Officer Garcia could have simply testified that he received a report of a person selling drugs at that location. That would have adequately explained why he conducted surveillance, without need for his additional testimony that the informant also described the subject's height, race, and clothing. Especially in light of the prosecution's references to the informant in closing arguments, it appears that the State elicited such details not just to explain police procedure, but to emphasize that defendant matched the informant's description. To the extent Officer Garcia's testimony revealed unnecessary substantive details of the informant's statements to police, that testimony violated the hearsay rule.

¶ 28 Further, we agree with defendant that the State improperly argued to the jury that the informant's description was substantive evidence of his guilt. The prosecutor's remarks repeatedly emphasized that defendant "exactly" matched the description provided by the informant with respect to gender, race, height, and clothing. Indeed, the State's closing argument explicitly urged the jury that defendant's similarities to that description supported a finding of defendant's intent to sell narcotics.

¶ 29 Nevertheless, the admission of improper hearsay does not necessarily warrant reversal. We note that, had the hearsay issue been properly preserved, it would be subject to harmless error review. See *People v. Shorty*, 408 Ill. App. 3d 504, 512 (2011) ("The admission of hearsay evidence is harmless error where there is no reasonable probability that the jury would have acquitted defendant absent the hearsay testimony."). However, as defendant admittedly forfeited his challenge to the hearsay, we review the issue under the plain-error analysis. *Thompson*, 238 Ill. 2d at 611 (explaining that "[h]armless-error analysis is conducted when a defendant has preserved an issue for review" but "[w]hen a defendant has forfeited appellate review of an issue, the reviewing court will consider only plain error"). We thus consider whether the error in this case falls within either prong of the plain-error doctrine, keeping in mind that "the burden of persuasion rests with the defendant." *Id.* at 613.

¶ 30 Under the first prong, reversal is warranted if "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." *Id.* That is, the first prong "requir[es] a finding that the evidence is so closely balanced that the guilty verdict may have resulted from the error." *Id.*

¶ 31 The determination of whether the evidence adduced at trial was closely balanced requires the reviewing court to evaluate the totality of the evidence and conduct a qualitative,

commonsense assessment of it within the context of the case. *People v. Sebby*, 2017 IL 119445, ¶ 53. The court assesses the evidence on the elements of the offense and any evidence regarding the witnesses' credibility. *Sebby*, 2017 IL 119445, ¶ 53. In *Sebby*, the supreme court found the evidence was closely balanced where the accounts of the defendant's witnesses were "no less plausible than the deputies' account, and neither version is supported by the corroborating evidence." *Sebby*, 2017 IL 119445, ¶ 62.

¶ 32 Apart from his references to the informant, Officer Garcia testified that on two separate occasions, he observed defendant accept cash from an individual while handing over a small item. Officer Garcia testified that, based on his experience, he believed these were narcotics transactions. Further, both Officer Garcia and Officer Bonnstetter testified that defendant held bags of a powdery substance. Officer Bonnsetter testified that, based on his experience, he suspected that this was heroin packaged in "dime bags" for sale. In addition, the parties stipulated to testimony that the substance tested positive for heroin. Finally, Officer Bonnstetter testified, and defendant conceded, that he was carrying $71 in cash at the time of his arrest.

¶ 33 Defendant's case consisted entirely of his testimony, in which he gave a completely different account of his activities prior to the arrest. In short, he testified that he had just arrived at the location when the police accosted him for no apparent reason. Defendant characterized the cash he was found with as "revenue." While he specifically denied possessing any narcotics, the officers' testimony was supported by extrinsic evidence, *i.e.*, defendant was found with bags containing a substance that tested positive for heroin. Unlike *Sebby*, in this case, extrinsic evidence supported the officers' version of the defendant's arrest over that of the defendant.

¶ 34 Applying a commonsense assessment of the evidence, we conclude that the evidence was not closely balanced in this case. Thus, we reject defendant's argument for reversal under the first prong of plain-error review.

¶ 35 Defendant alternatively contends that reversal is warranted under the second prong of the plain-error doctrine, which applies when " ' "a clear or obvious error occurred and that error is so serious that it affected the fairness of defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Clark*, 2016 IL 118845, ¶ 42 (quoting *Thompson*, 238 Ill. 2d at 613, quoting *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007)).

¶ 36 Defendant relies largely on *Jura*, In that case, defendant failed to object to testimony by three police officers regarding a radio call of a "person with a gun," who was described by the caller as a six-foot tall white male with a tattoo of a teardrop on his face. *Id.* at 1082-84. Defendant also failed to object when in closing argument, the prosecutor reminded the jury that the defendant matched the description the officers had been given, testimony that the trial court had ordered stricken. *Id.* at 1090.

¶ 37 After determining that the admission of the hearsay testimony was error, the reviewing court further determined that error was not harmless since the hearsay testimony was repeated through three police officers, and the prosecution referred to that testimony in opening and closing argument "to prove that defendant matched the hearsay description of the man with a gun." *Id.* at 1088. From defense counsel's failure to object to repeated hearsay from the police officers as to the type of crime reported and the description of the person committing the crime and never sought a limiting instruction, the court concluded that defendant was denied the effective assistance of counsel. *Id.* at 1092.

¶ 38 The reviewing court rejected the State's forfeiture argument, finding plain error under the second prong of the plain error analysis. The court stated as follows:

> "Plain error marked by fundamental unfairness occurs in cases that reflect a breakdown in the adversary system, as distinguished from typical trial mistakes. [Citation.] *** [T]he repeated use by the State of the hearsay in the instant case, which went to the very essence of the dispute, together with defense counsel's failure to limit the use of the hearsay, caused a breakdown in the adversary system that was fundamentally defective and deprived defendant of a fair trial." *Id.* at 1094.

¶ 39 Although the hearsay testimony in this case is factually similar to that in *Jura*, as it includes the physical description of a suspect provided by an informant, *Jura* is otherwise distinguishable. In *Jura*, the police officers testified that they witnessed defendant with a gun. According to the officers' testimony, defendant was standing in an alley with several other men when he saw the officers. He ran, discarding the gun in a garbage can. Following a foot chase, defendant was apprehended and returned to the scene. The officers' testimony was not corroborated by any civilian witnesses who were present. While a gun was recovered from a garbage can in the alley, no physical evidence connected defendant to the gun. *Id.* at 1091. Moreover, the State elicited the hearsay repeatedly through the testimony of the three police officers and referred to it in opening and closing argument. Finally, in closing argument, the prosecutor repeated the "fact" that the description matched defendant even though that "fact" was not in evidence. *Jura*, 352 Ill. App. 3d at 1088-89.

¶ 40 Like *Jura*, in the present case, the prosecutor referred to the hearsay evidence in both opening and closing argument. Unlike *Jura*, the hearsay identification was presented through only one witness, Officer Garcia. Upon arriving on the scene, Officer Garcia did not immediately approach defendant but began a surveillance of the area. Defendant was not arrested until after Officer Garcia watched defendant engage in two transactions, exchanging a "small item," for cash. Unlike the defendant in *Jura*, who could not be physically connected to the gun, in this case, when arrested, defendant was in possession of cash and bags containing a substance which proved to contain heroin. Significantly, in *Jura*, the substance of the hearsay statements directly impacted the "very essence of the dispute, namely, whether defendant was the man with the gun. *Jura*, 352 Ill. App. 3d at 1088. In the present case, the "essence of the dispute," was whether defendant was selling narcotics.

¶ 41 We conclude that defendant failed to carry his burden to establish that the error in the admission and use of the hearsay evidence "caused a breakdown in the adversary system that was fundamentally defective and deprived defendant of a fair trial, as was the case in *Jura*. *Id.* at 1094. Therefore, defendant is not entitled to reversal under the second prong of plain-error review.

¶ 42 In the alternative to plain-error review, defendant asserts an ineffective assistance of counsel claim, premised upon his trial counsel's failure to object to the hearsay testimony, or to the portions of the State's arguments referring to it. "Claims of ineffective assistance of counsel are reviewed under the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). Under *Strickland*, a defendant must prove that (1) counsel's performance was deficient in that it fell below an objective standard of reasonableness and (2) the deficient performance prejudiced the defense in that absent counsel's defective performance there is a reasonable

probability that the result of the proceeding would have been different." *People v. Evans*, 209 Ill. 2d 194, 220 (2004). With respect to the second prong, "a reasonable probability that the result would have been different is a probability sufficient to undermine confidence in the outcome—or put another way, that counsel's deficient performance rendered the result of the trial unreliable or fundamentally unfair. [Citations.] A reasonable probability of a different result is not merely a possibility of a different result. [Citations.]" *Id.* at 220. "The failure to satisfy either the deficiency prong or the prejudice prong of the *Strickland* test precludes a finding of ineffective assistance of counsel. [Citations.]" *People v. Enis*, 194 Ill. 2d 361, 377 (2000).

¶ 43 For the same reasons that we have concluded that the evidence was not closely balanced for purposes of the plain-error doctrine, we also conclude that defendant cannot satisfy the prejudice prong of the *Strickland* test. Given the State's evidence, we cannot say there is a reasonable probability that the jury verdict would be different, had defendant's trial counsel objected to the admission of the hearsay testimony or the State's references to it. Accordingly, the prejudice prong of the *Strickland* standard is not met, and there is no viable ineffective assistance of counsel claim.

¶ 44 We now turn to defendant's second asserted basis for reversal: that the State's opening and closing arguments were "littered with improper remarks" that deprived him of a fair trial. In addition to the prosecution's references to the hearsay testimony discussed above, defendant cites the prosecutor's repeated statements that it was defendant's "job" to sell drugs. He argues that there was no evidence to support a suggestion that he "made a career out of selling drugs." He asserts that these comments distracted the jury, such that it "could have concluded that [the defendant] sold drugs on a regular basis and may have convicted him on that ground." Finally,

defendant also challenges the prosecutor's comments on defendant's use of the word "revenue" to describe the cash found on his person. He argues that there was no basis for the prosecution to suggest that the term "revenue" indicated that the money came from the sale of drugs, and that the State improperly characterized his use of that word as "an admission to the offense."

¶ 45 We first note that defendant's trial counsel did not object to any of these challenged comments. Prosecutorial remarks not properly objected to at trial will not be considered absent plain error. *People v. Pasch*, 152 Ill. 2d 133, 184 (1992). Defendant argues that the prosecution's comments constituted a "pattern of prosecutorial misconduct" reviewable under either prong of the plain-error doctrine. As the first step of plain-error review is determining whether any error occurred, *Thompson*, 238 Ill. 2d at 613, we first consider whether the comments would constitute reversible error, regardless of forfeiture. We conclude that they do not.

¶ 46 "Whether a prosecutor's comments or arguments constitute prejudicial error is evaluated according to the language used, its relation to the evidence, and the effect of the argument on the defendant's right to a fair and impartial trial." *Pasch*, 152 Ill. 2d at 184. "Closing arguments must be viewed in their entirety, and the challenged remarks must be viewed in context." *People v. Wheeler*, 226 Ill. 2d 92, 122 (2007).

¶ 47 "The prosecution is afforded wide latitude in making closing arguments so long as the comments made are based on the evidence or reasonable inferences therefrom. [Citation.]" *People v. Gonzalez*, 388 Ill. App. 3d 566, 587 (2008). The prosecutor's comments may "draw all legitimate inferences deducible" from the evidence, "even if they are unfavorable to the defendant. [Citation.]" *Pasch*, 152 Ill. 2d at 184. Reversal is not warranted "unless the

comments were of such magnitude that they resulted in substantial prejudice to defendant and constituted a material factor in his conviction. [Citation.]" *Gonzalez*, 388 Ill. App. 3d at 587.

¶ 48 Reviewing the challenged comments in the context of the entire trial, we cannot say that the challenged remarks, individually or cumulatively, constituted a material factor in defendant's conviction. First, with respect to the prosecution's references to the informant, we acknowledge that the State relied upon improper hearsay. Most troubling, the prosecution specifically urged that defendant's similarities to the informant's description should be considered as substantive evidence of guilt. This was clearly improper, and we emphasize that we do not condone this practice. In a closer case, the reliance on such hearsay could warrant reversal. Nonetheless, under the facts of this case, there was ample independent evidence of guilt that the jury could, and apparently did, rely upon. Since the evidence was far from closely balanced, we cannot say that the State's improper references to hearsay were a material factor in the conviction.

¶ 49 We also do not perceive any basis for reversal stemming from the prosecutor's comments that defendant's "job" was to sell drugs. Defendant is correct in that the State did not present evidence that defendant sold drugs at any time prior to the day of his arrest. Nonetheless, the State did present evidence that defendant engaged in at least two narcotics transactions on the day of his arrest, and that he was arrested in possession of heroin that was packaged in "dime bags" for sale. Keeping in mind the prosecutor's wide latitude to comment on reasonable inferences from the evidence, we do not find that the prosecutor's references to defendant's "job" exceeded the bounds of permissible argument. In any event, even if these references were improper, we are not persuaded by defendant's speculation that the prosecutor's use of the term "job" would mislead the jury to convict him for "s[elling] drugs on a regular basis," rather than

basing its verdict on the properly admitted evidence of guilt. Thus, we cannot say that the "job" references caused any substantial prejudice.

¶ 50 We reach the same conclusion with respect to the prosecutor's comments on defendant's use of the term "revenue." The prosecutor argued to the jury that "revenue" is money made from "selling something," and that the money found on defendant was "$71 of revenue from selling drugs." We acknowledge that the term "revenue" is not limited to money from "selling something." It was up to the jury to assess the credibility of defendant's testimony regarding the source of the money he described as "revenue." Nonetheless, the prosecutor was entitled to comment on "all legitimate inferences deducible" from the evidence, even if unfavorable to defendant. *People v. Hampton*, 387 Ill. App. 3d 206, 220 (2008). A reasonable person could infer that, in light of the other evidence offered by the State, defendant's description of his money as "revenue" was consistent with the State's theory that the money was derived from selling drugs in the transactions witnessed by Officer Garcia. Thus, the prosecution's references to "revenue" did not exceed the scope of permissible argument. Moreover, given the strength of the State's evidence, we could not conclude that these comments were a material factor in the jury's verdict. As we cannot say that any of the challenged comments caused substantial prejudice to defendant, they do not constitute grounds for reversal.

¶ 51 CONCLUSION

¶ 52 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 53 Affirmed.