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2017 IL App (5th) 140391-U

NOTICE  
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

NO. 5-14-0391

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

v.

JONATHAN R. WATSON,

Defendant-Appellant.

) Appeal from the  
) Circuit Court of  
) Christian County.  
)  
) No. 13-CF-13  
)  
) Honorable  
) Allen F. Bennett,  
) Judge, presiding.

PRESIDING JUSTICE MOORE delivered the judgment of the court.  
Justices Welch and Goldenhersh concurred in the judgment.

**ORDER**

¶ 1 *Held:* The defendant's conviction and sentence are affirmed because review of the alleged error is barred by the plain-error doctrine and the defendant cannot demonstrate prejudice sufficient to prevail on a claim of ineffective assistance of counsel.

¶ 2 The defendant, Jonathan R. Watson, appeals his conviction, following a trial by jury in the circuit court of Christian County, for the offense of attempted murder. For the following reasons, we affirm.

¶ 3 **FACTS**

¶ 4 The facts necessary to our disposition of this appeal follow. On May 21, 2013, the defendant was charged, in a second amended information, with one count of attempted

first-degree murder, a Class X felony. The second amended information alleged, *inter alia*, that on January 28, 2013, the defendant intended to commit first-degree murder, and "performed a substantial step toward the commission of that offense, in that he with the intent to kill William P. Shride, drove a 2009 Honda automobile at William P. Shride and struck William P. Shride with that automobile." During a preliminary hearing held on May 21, 2013, the judge and the parties agreed that intent was "really the issue" in this case. On May 23, 2013, the State filed its list of witnesses in the case. The list included Dr. Christopher W. Maender of the Orthopedic Center of Illinois, in Springfield.

¶ 5 On May 24, 2013, the State filed its first motion *in limine*, in which it moved to bar the defendant from mentioning a pending aggravated DUI case, from October 2012, against the victim in this case, Shride. A hearing on the motion was held the same day. Therein, the parties agreed that the pending 2012 charge could not be used for impeachment purposes at the defendant's trial. The State's Attorney added, "the only way the [defendant] would try to get into it is some allegation that there was an injury to [Shride's] shoulder caused from this 2012 incident." He subsequently asked for a "ruling" regarding the incident. When the trial judge asked what the State's Attorney was specifically asking for a ruling on, counsel for the defendant interjected, "[h]e didn't say anything in his motion *in limine* about the injury." Thereafter, the judge stated that "we're premature on this," and told the parties to bring it to his attention if it "might be an issue at some point." The State's Attorney continued, stating he was concerned defense counsel would try to get the charge "in with this injury" and subsequently stating "[t]he

injury was caused by an accident and that's all that would need to be said." Ultimately, the trial judge granted the State's motion.

¶ 6 On May 28, 2013, the defendant's jury trial began. The first witness to testify at the trial was Jessica Tyson-Ragan. She testified that she was previously in a romantic relationship with the defendant, and that they had a daughter together, Holly. On January 28, 2013, the defendant returned Holly to the house where Jessica was living, which was owned by the victim, Shride, who was the fiancé of Jessica's mother. The defendant asked to speak to Jessica alone. Jessica agreed, and she, the defendant, and Holly (who was approximately 12 months old at the time) went to the bedroom Jessica and Holly shared. The defendant asked to borrow money. Jessica gave him \$50. She testified that they began to talk about their relationship, and that the defendant "was trying to have sexual relations with me at the time, and I had disagreed with him." She testified that an argument ensued, and that the defendant tried to "smash" her cell phone. When Shride and Jessica's mother then entered the bedroom, the defendant declared he was leaving. Jessica testified that as everyone left the room, the defendant "kind of pulled me aside, whispered to me he had my wallet and he was going to take it if I didn't come outside to talk to him." She testified that the wallet still contained approximately \$150 to \$200.

¶ 7 Outside, she and the defendant continued to argue. Jessica testified that the defendant eventually "threatened to come at me," and that she retreated to the porch, and stepped "half way in the house." She testified that the defendant threatened to "kick the door in" if she went inside. She testified she was also concerned because moments before, the defendant had said "he would crash the car into the house," which scared

Jessica, because Holly was inside. She testified that her fear was based on her knowledge of the defendant during their relationship, and that "he was not the most controlled person with his anger." The defendant then threw her wallet onto the roof of the house.

¶ 8 Jessica testified that she went inside and asked Shride if he could help her get her wallet off the roof. By the time she got back outside, the defendant had used a wood plank to get the wallet from the roof. She testified that he put her wallet into "his back pocket and started to walk back to the vehicle." Shride came out of the house. Jessica testified that the defendant continued to try to get her to get in the car with him, and that when he would not leave, she asked Shride to call the police. When Shride approached the car, the defendant rolled his window up and locked his door. Shride told the defendant that he could not leave with Jessica's wallet, then stood behind the defendant's car and began to call the police on his cell phone. As he did so, the defendant began to back the car up. Jessica testified that Shride began to pound on the back trunk, but the defendant backed up again, at which point Shride fell into the car and shattered the back window. She testified that at this point, she and the defendant "had been arguing for a good hour and a half, maybe even two hours." She testified that after the back window was shattered, the defendant yelled "you stupid mother fucker," then drove the car forward, through their yard and a neighbor's yard, and back onto the street.

¶ 9 Jessica testified that after driving some distance away, the defendant turned his car around and came back toward the house. She testified that the defendant accelerated, and in her opinion was going over the speed limit. The defendant then left the roadway, entered their driveway, and struck Shride. He then drove through the yard again,

reentered the roadway, and drove away. She did not believe the defendant ever applied his brakes, either before or after striking Shride, except perhaps to avoid hitting the house. She testified that Shride had his back to the defendant as the defendant approached, but turned to face the car when she warned him. When the car hit Shride, Shride "flipped up and did a complete cartwheel in mid air and landed on his back behind the car." She testified that the car, which belonged to a mutual friend of hers and the defendant's, was a gray or silver 2009 Honda Civic. She identified the defendant in court. When asked what went through her mind when she saw the defendant drive the car into Shride, she testified that she thought Shride "was dead or dying."

¶ 10 On cross-examination, Jessica agreed that because the defendant was returning Holly from a visitation with him, he had a reason to be at Shride's home on the day in question. She testified that she did not know if the defendant intended to steal her money when he took her wallet. She also agreed that the defendant did not attack or "fight" Shride prior to hitting him with the car, and that Shride tried to prevent the defendant from leaving with Jessica's wallet. She agreed that the defendant first nudged Shride with the car, then backed into him a little, at which point the back window was shattered. She denied telling the police that Shride "punched the rear window and shattered it." She testified that she thought Shride was trying to "pound on the trunk" but broke the window when he fell when the defendant backed into him, and that breaking the rear window was "accidental." She conceded that, "to an extent," Shride punched the rear window. She agreed that the defendant did not threaten to kill Shride or otherwise threaten Shride after the rear window was broken, but instead drove away. She also agreed that the defendant

did not "cry out or scream anything or do anything" at the time he drove the car into Shride. She testified that Shride got up, stumbled, and fell "right back down" after being hit by the car. She agreed that the defendant "didn't come back and finish any job."

¶ 11 The next witness to testify was Shride. He testified that at the time of trial he was 37 years old and employed at Design Corrugating in Taylorville, but was presently unable to work because of injuries to his shoulder. He testified that he was engaged to Jessica's mother and that he still lived in the house where the incident in question occurred. He testified that he had previously allowed the defendant to live with Jessica in the house, because the defendant and Jessica were having financial difficulties and he wanted "to kind of help them get on their feet after they had their baby." He did not require them to pay rent, and the defendant moved out several months before the incident occurred.

¶ 12 Shride testified that on January 28, 2013, he finished work at 7 a.m., and was at home when the defendant came to the house later that morning to drop off Holly. He testified that the defendant, Holly, and Jessica were in Jessica's bedroom when he heard "a loud bang." He went into the room and the defendant stated that the defendant was leaving. Shride testified that the defendant and Jessica went outside. Eventually, Jessica came back inside and asked Shride to help her get her wallet back. Shride went outside to help, and saw the defendant sitting in the car. The defendant rolled up his windows and locked the doors before Shride "even approached the vehicle." Shride testified that he calmly asked the defendant to give Jessica her wallet back, and when the defendant

refused, he asked again and the defendant again refused. He testified that he then said he was going to call the police.

¶ 13 Shride testified that when he was asking the defendant to return the wallet, he was standing by the driver's side of the car, but that he walked to the rear of the car as he called the police. He testified that the defendant then started the car and backed it up. He testified that the defendant "backed into me and I banged on the trunk once." Thereafter, when Shride "went to bang on the trunk a second time," the defendant was already backing up a second time, so Shride "banged on the window and it busted the window."

¶ 14 Shride testified that the defendant then called him "a stupid MF" and drove the car forward through Shride's yard and eventually back onto the street. He testified that the defendant then turned around and drove back in the direction of the house. He testified that he knew the defendant "was driving towards [him]," but that he "thought he was just going to keep driving." When Jessica yelled Shride's name, Shride turned and saw the defendant "coming up through the driveway." He testified he made a "split second decision" to jump upwards. When asked what he remembered next, Shride testified that he remembered the pain in his shin "from the contact from the bumper," and then the "impact," which he described as "just like a flash of like a white light." He saw "everything kind of start spinning" and then he hit the ground.

¶ 15 Shride testified that he "stood up and kind of walked around a little bit," but "then sat down in the driveway and that's when all the pain kind of set in." He saw "a ton of blood" coming out of his shin, felt pain in his shoulder, and could not breathe. He testified that the reason he stood up was "to see if anybody was coming back, if he had

stopped or if he was still there." He then testified in more depth about his injuries, which included a "gash" on his "right shin that needed to be stitched approximately 6 to 8 inches long," a laceration on his left shin, and "several lacerations on the underside" of his left arm, which he described as being "blown out from the impact." He testified that there was "a hole" in his left elbow that had to be packed with gauze, that his "left humerus and shoulder socket were shattered," and that he had "some lacerations" on the forearm underneath. He testified that he had to have surgery on his arm, and when asked if he knew "what they did to it," he answered, "[s]teel plate and 16 screws."

¶ 16 Shride explained that the screws held the plate to his humerus, and testified, "when the muscles heal and start functioning—because I have nerve damage, the muscles, the deltoid and the biceps don't work right now." He continued that he had very limited use of his arm, "but when the muscles eventually heal, if they do heal, then it will pull everything together." He demonstrated for the jury the range of motion with his arm, then testified that he could not pick up anything over eight pounds. When asked what doctors told him about his back, Shride testified that "[o]riginally there were three cracks in the vertebrae, in the lower spine." He verified that "a day or two" after the incident, after he had been released from the hospital, police officers came to his house and talked to him about the incident, and also took pictures of his injuries. Shride authenticated that 14 photos that were shown to him were in fact the pictures the officers took of Shride's injuries. The photos were styled as People's Exhibits 5 through 18. Each photo was printed on a sheet of 8.5 x 11 inch white paper, with each photo taking up almost the entire 8.5 x 11 inches. The 14 photos consisted of both long shots and close up shots of



Shride's injuries to his left arm and to both legs. Shride also authenticated a photo of the car that the defendant drove into him. When asked what he thought when he saw the defendant driving the car toward him, Shride testified, "I can't believe he's going to hit me."

¶ 17 The next witness to testify was Kellie Schaal, who testified that she was engaged to Shride and was Jessica's mother. She testified that on January 28, 2013, she heard the defendant and Jessica arguing in the bedroom, then heard "a stomp," which led her to believe someone had fallen. She and Shride rushed into the room. She testified that she learned that the "stomp" she had heard was the sound made when the defendant "stomped on Jessica's phone." After Jessica and the defendant went outside, Schaal continued to hear "[a] lot of yelling," and at one point heard the defendant say he was going to hit Jessica. Later, she heard the defendant tell Jessica that he planned to kill himself. Schaal testified that she saw the defendant take Jessica's wallet with him when he entered the car and locked it. She described Shride "very kindly, calmly" asking the defendant to give Jessica the wallet back, the defendant refusing, and Shride walking behind the car and holding his phone to his ear, as if calling the police. Schaal testified that when the defendant started to back up, Shride "hit the trunk and said, 'dude, I'm back here.' " She testified that the defendant backed up again, and that Shride hit the car again, breaking the back window. She described the defendant calling Shride a "stupid mother fucker" and then driving forward, through the yards, and onto the street.

¶ 18 Schaal testified that once the defendant was facing the house again, she "heard the engine—you could tell he was gunning it. He was flooring it." She testified that the

defendant "took off as fast as he possibly could." Counsel for the defendant objected to this statement, but the judge overruled the objection, on the basis of the State's position that Schaal was giving "an opinion based on what she observed." Schaal testified that the defendant left the roadway, drove into the driveway, and then the yard where Shride was standing, striking Shride and sending him flying "up over the car." She testified that she did not see the defendant apply the brakes after striking Shride. She described watching what happened when Shride was hit, and testified that it "was like a rag doll being thrown around." With regard to the defendant leaving the scene, Schaal testified that the defendant "didn't stop, didn't slow down, nothing, just kept going."

¶ 19 The next witness to testify was Shannon Heberling, who testified that she was Shride's neighbor and that on January 28, 2013, she was home from work because she was sick. She testified that she was on her couch doing paperwork when she heard "some commotion outside," which she elaborated was Jessica and the defendant arguing. She subsequently saw the defendant sitting in the car, with Shride "trying to talk to him." She went back to her paperwork, then looked up to see the defendant start to back into Shride "two different times." She testified that Shride put his hand up, which she believed he was doing "to stop the car from backing into him." After the rear window was shattered by Shride, the car the defendant was operating "went into drive," turned through the yard, and "shot off out of my view." She remained on her couch, believing the car had left. She could see that Shride was looking down the road, and she wondered what he was looking at. She testified that she got up, looked out the window, and saw "the car come flying down the road." When asked, she testified that she believed the car was traveling

"above the speed limit," which she described as "above 35, faster than a residential neighborhood." She testified that she saw the car hit Shride, and that Shride landed "about three feet" from her front porch. She did not observe the defendant apply the brakes either before or after hitting Shride. She testified that the defendant was going so fast that she thought he was going to hit her house. When asked what she thought had happened to Shride, based upon the speed of the car and the impact, Heberling testified, "I thought he was done. I'd never seen anything like that before." On cross-examination, Heberling maintained that the defendant was going faster than 35 miles per hour, although she conceded that in her police statement she had stated that the defendant "came down the road at a higher speed" without specifying exactly what speed.

¶ 20 The next witness to testify was Daniel Nolen, who testified that on January 28, 2013, he was working for a plumbing company and had just finished "rodding out a sewer" not far from Shride's house. Although he heard "a bunch of cursing and screaming," he kept working on putting his tools into his pickup truck, thinking "it was just another, you know, regular dispute." He then heard "squealing tires" and saw that "the car that was there had taken off." He continued putting his tools away, then "heard an extremely loud noise." He testified that his "first reaction was the house had been hit by a car," and that "this car had just came back and ran through this house." He testified that he looked up and saw a man "rolling off the vehicle and then kind of through the air and then he stood up and tried to catch his balance and wobbled around, and the women that were there at the same house caught him as he fell back to the ground." When asked his opinion of how fast the car was going, Nolen testified "probably 40 plus miles an

hour," which to him, "seemed kind of irregular." He testified that he did not see the brakes of the vehicle applied either before or after the impact. When asked what he thought had happened to the man who was hit by the car, Nolen testified, "I thought there was probably internal damage and he was messed up pretty bad to where parts of his leg were showing and things like that." On cross-examination, Nolen clarified that his estimate of "40 plus miles an hour" referred to how fast the car was going after it struck Shride and continued through the yard, and that he did not observe how fast it was going before it hit Shride because he was still looking down at that time.

¶ 21 The next witness to testify was Phillip Miller, who testified that he worked with Nolen, and that on January 28, 2013, he did not see the vehicle strike Shride, only heard "a motor revving up, coming down the road," then heard what he thought was a vehicle hitting a house. Following Miller's testimony, the trial recessed for the day. The first witness to testify the next morning was Officer Richard Bryan of the Taylorville police department. Bryan testified that on January 28, 2013, he was called to a vehicle-pedestrian accident. He testified that he took photos of Shride's injuries after Shride was released from the hospital. He authenticated two of the photos he took, People's Exhibits 4 and 5, which were then admitted into evidence without objection. Bryan testified that when Decatur police took the defendant into custody, they recovered Jessica's wallet. The wallet was subsequently admitted into evidence without objection as well. Bryan testified that two days after the incident, he interviewed the defendant, who admitted that he "nudged" or "backed into" Shride in the driveway and then left and turned around to return, but told Bryan he could not remember striking Shride with the car. The defendant

told Bryan "when he gets angry he has blackouts." On cross-examination, Bryan testified that the defendant told Bryan that although the defendant could not remember striking Shride, the defendant must have done so, based upon the damage sustained by the car. Bryan reiterated, however, that the defendant "at no time told me he struck him," and agreed that the defendant never told him that the defendant intended to kill Shride.

¶ 22 The next witness to testify was Officer Amanda Olsta of the Taylorville police department, who testified that she took many photos of the scene of the incident and of the car. She authenticated approximately 30 photos of, *inter alia*, the car and the tire tracks and skid marks through the sidewalks and yards in question. Some of the photos showed dents on the car purportedly caused when the defendant drove the car into Shride, as well as blood stains on the car and human hair on the bolt on the license plate. One photo showed "multiple blood stains" on the driveway. On cross-examination, Olsta conceded that her job was to take photos and that it was not her job to determine if the damage to the car was caused by striking Shride.

¶ 23 The next witness to testify was Officer James Knierim of the Decatur police department, who testified that he arrested the defendant. Following his testimony, the jury walked to the nearby Taylorville police department, where the jury was permitted to view the car. No testimony was adduced in conjunction with the viewing, and no transcription of the viewing was created.

¶ 24 The final witness to testify for the State was William O'Sullivan, who testified that he was a forensic investigator with the Federal Bureau of Investigation (FBI). He testified that, pursuant to a search warrant, he assisted the Taylorville police department

with a "data recovery" of the defendant's cell phone. O'Sullivan testified that he created a report that included text messages sent by the defendant after the incident. On cross-examination, he agreed that in the messages, the defendant admitted to striking Shride with the car, and agreed that although the defendant mentioned being charged with attempted murder, the defendant never stated that "he committed attempted murder." O'Sullivan also agreed that the defendant texted Jessica, "I didn't mean for that to happen." He later agreed that in no text did the defendant state that he "wanted to kill" Shride or that he "intended to hit him and kill him." Following O'Sullivan's testimony, the parties stipulated to the chain of custody for the car used by the defendant to hit Shride, and stipulated to the admission of the car as a piece of evidence. The State then moved to enter all other remaining exhibits, including the 14 photos Shride had authenticated of his injuries, into evidence. The exhibits were admitted without objection. The State then rested. The defendant moved for a directed verdict. The motion was denied.

¶ 25 The defendant then testified. He testified to a prior felony conviction for residential burglary which led to a stint in the Illinois Department of Corrections. He testified that he previously lived with Jessica in Shride's home, and that he "never, ever once had a problem" with Shride. He testified that he never threatened Shride, he enjoyed Shride's company, and he considered Shride a friend. He testified that on January 28, 2013, he returned Holly from visitation with him. He and Jessica argued, and he took Jessica's wallet "and held it hostage." He testified that he did not intend to steal Jessica's money, but had to hold her possessions "hostage" to get her to talk to him. He

took the wallet outside, because "the argument was getting heated" and he "did try to stomp her phone," and he believed that going outside would keep Shride and Schaal out of the argument. He testified that he subsequently threw the wallet onto the roof because he "was just getting upset at the situation" and "didn't know what else to do." He felt bad about throwing it onto the roof, so he climbed up and retrieved it. He took the wallet and got into the car. When Shride came outside, the defendant "rolled up the window and locked the door to prevent anything from happening." He testified that he started the car when Shride told him he was calling the police, and that when Shride went behind the car, the defendant "put it in reverse" then "backed up six inches." He testified that Shride "didn't swing and hit the trunk, he only swung one time and it hit the back window and shattered it." He testified that when he backed up, he "just wanted out of the situation" so he planned to back up enough to create space to then drive forward and out through the yard. He testified that he did not intend to hit Shride or harm him "at all."

¶ 26 The defendant testified that once he was stopped on the street, he inadvertently revved his engine, because he thought the car was in gear, but it was actually in park. He testified that he was not revving the engine to gain speed. As he began to head toward Shride's house, he "was going at a normal rate of speed." He testified he "was accelerating to the speed limit," but not "flooring it" or "smashing on the gas pedal." He denied he was accelerating with the intent to hit anybody. He testified that he was very upset and wanted to get out of the situation, but that he saw Shride and "[a]t the last second I swerved towards him." He explained that he did not know what he was thinking, because he was "just kind of going off impulse at that moment," but that he did

not intend "to kill or murder" Shride. He conceded that hitting Shride was not accidental, but reiterated that he had no intent to kill Shride. He testified that he thought Shride "would probably get hurt," but that he did not intend to kill Shride and that the thought of murdering Shride "never crossed my mind." He conceded that hitting Shride caused the multiple dents to the car. He testified that when he saw Shride stand back up after he struck him with the car, he thought Shride "couldn't be that seriously hurt." He testified that he did not stop to check on Shride because he "knew he was okay." He was worried because his driver's license was revoked, so he left the scene. He testified that he was "going at a steady speed" when he hit Shride, but accelerated to leave the scene. The defendant testified that he lied to Bryan about blacking out because he was "intimidated by the charge" of attempted murder. Although his friends tried to get him to "make up a story" about what happened, he did not do so. He testified that he was "deeply" sorry for what he did.

¶ 27 Following the defendant's testimony, the defense rested. The jury was instructed that to find the defendant guilty of attempted first-degree murder, the jury, *inter alia*, had to find beyond a reasonable doubt that the defendant had acted "with the intent to kill" Shride. The jury was also instructed that to find the defendant guilty of aggravated battery, the jury, *inter alia*, had to find beyond a reasonable doubt that the defendant had "intentionally caused great bodily harm" to Shride. The jury was further instructed that "[a] person intends to accomplish a result or engage in conduct when his conscious objective or purpose is to accomplish that result or engage in that conduct." After deliberating for approximately 45 minutes, the jury found the defendant guilty of



attempted first-degree murder, and not guilty of aggravated battery. He was subsequently sentenced to 15 years in the Illinois Department of Corrections, followed by a 3-year term of mandatory supervised release. This timely appeal followed.

¶ 28

#### ANALYSIS

¶ 29 On appeal, the defendant contends he did not receive a fair trial because the State presented to the jury Shride's testimony regarding his medical diagnoses and prognoses, which, according to the defendant, "was both hearsay and lay witness opinion evidence requiring testimony from a medical expert." He acknowledges that his trial counsel did not object to the testimony, and did not raise the contention of error in a posttrial motion, and that therefore the contention of error is subject to principles of forfeiture. However, he alleges that the error is preserved under the plain-error doctrine, and that in any case, the failure to object to Shride's testimony constituted ineffective assistance of counsel. The State, on the other hand, contends that the plain-error doctrine cannot save the defendant in this case, and that the defendant cannot demonstrate ineffective assistance of counsel. We agree with the State.

¶ 30 The plain-error doctrine is a mechanism that allows a defendant, in certain cases, to avoid forfeiture and thereby allows a reviewing court to consider an unpreserved contention of error if "the evidence is close, regardless of the seriousness of the error," or if "the error is serious, regardless of the closeness of the evidence." *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005). Where, as in this case, the defendant urges review because the defendant alleges that the evidence is close, regardless of the seriousness of the error, "the defendant must prove 'prejudicial error.'" *Id.* at 187. To do so, "the

defendant must show both that there was plain error and that the evidence was so closely balanced that the error alone severely threatened to tip the scales of justice against" the defendant. *Id.* When the defendant fails to meet his or her burden to establish plain error, a reviewing court must honor the procedural default and the principles of forfeiture. *People v. Bannister*, 232 Ill. 2d 52, 65 (2008). When a defendant raises plain error, it is appropriate for the reviewing court to determine whether an error occurred at all. *Id.*

¶ 31 In the case at bar, we agree with the State that there was no error with regard to Shride's testimony about his personal knowledge of his injuries, how they occurred, and how the injuries affected his ability to function, as well as about the pain he experienced at the time the defendant struck him with the car, and thereafter. He clearly had the right to testify about things of which he had firsthand knowledge, and his testimony was un rebutted. The State contends that even if this court were to assume, *arguendo*, that a small amount of the testimony complained of—in particular, his testimony that he had small cracks in his vertebrae, that his arm might or might not heal fully, and that he had a certain number of screws and a plate in his shoulder—"might possibly have infringed into expert testimony," the defendant's argument still fails. We agree. Indeed, even if we were to assume, *arguendo*, that all the testimony complained of by the defendant was erroneously admitted, we would still conclude that the defendant cannot show that this testimony amounted to prejudicial error, because the defendant cannot show that the evidence was so closely balanced that the testimony alone severely threatened to tip the scales of justice against him. See, e.g., *People v. Herron*, 215 Ill. 2d 167, 187 (2005).

¶ 32 The evidence adduced in this case is described in great detail above. Although it is true, as the defendant contends, that he testified that he did not intend to kill Shride (and in fact considered Shride a friend), and that others testified that the defendant never told them that he intended to kill Shride, for the following reasons we nevertheless conclude that in this case, the evidence of the defendant's intent to kill Shride was not closely balanced. "The offense of attempted murder is shown when the State proves, beyond a reasonable doubt, that the defendant, with the specific intent to kill, commits *any act* which constitutes a substantial step toward the commission of murder." (Emphasis in original.) *People v. Valentin*, 347 Ill. App. 3d 946, 951 (2004). A defendant's intent is a question of fact, and is to be determined by the trier of fact. *Id.* Intent may be inferred by the trier of fact from the circumstances that surround the attack in question, "such as the character of the attack, use of a deadly weapon, and the severity of injury." *Id.* Intent may also be inferred by the trier of fact "from an act, 'the direct and natural tendency of which is to destroy another's life.' " *Id.* (quoting *People v. Hill*, 276 Ill. App. 3d 683, 688 (1995)). For that reason, "a deadly weapon is not necessarily one manufactured for the special purpose of taking a life—a deadly weapon is defined as any instrument that is used or may be used for the purpose of an offense and that is capable of producing death." *Id.* A car may be a deadly weapon for purposes of an attempted murder conviction. *Id.* at 951-52. With regard to the severity of injury, it is but one factor, and a conviction for attempted murder may be sustained even if there is no serious injury at all. See, e.g., *People v. Smith*, 402 Ill. App. 3d 538, 547 (2010) (evidence sufficient to convict a defendant of attempted murder exists where jury could infer intent

to kill based upon fact that defendant drove his car, a deadly weapon, toward police officer, even though police officer was not seriously injured, because natural consequence of defendant's act would have been to harm officer or destroy his life had officer not dived out of the way); *People v. Owens*, 372 Ill. App. 3d 616, 618, 624-25 (2007) (attempted murder conviction affirmed where defendant choked the victim and doused her in gasoline, even though defendant tried, but failed, to successfully ignite the gasoline and victim therefore did not receive serious injuries).

¶ 33 In this case, there was un rebutted evidence, from multiple witnesses (including the defendant), that the defendant used a deadly weapon—the car he was driving that day—to strike the victim, Shride. The direct and natural tendency of driving a car into an individual is to destroy that individual's life, and the jury, from this fact, could have inferred the intent to kill Shride. There was also substantial evidence about the character of the attack: that the defendant was agitated with Shride and had just called him a "stupid mother fucker," that he approached Shride at a high rate of speed before striking him, and that he did not attempt to brake the car either before or after striking Shride. The jury viewed the car, which allowed them to see firsthand the substantial damage the car sustained from the impact with Shride, and also had the opportunity to view approximately 30 properly-admitted photos of, *inter alia*, the car and the tire tracks and skid marks through the sidewalks and yards in question. From this evidence about the circumstances surrounding the attack, and the character of the attack, the jury certainly could have inferred the intent to kill Shride. Accordingly, we cannot agree with the

defendant's contention that "Shride's testimony regarding the extent of his injuries was critical."

¶ 34 Moreover, even without the testimony of Shride to which the defendant objects, there was abundant other evidence—all clearly admissible—that attested to the serious nature of Shride's injuries. As explained above, Shride authenticated 14 photos that police officers took of his injuries shortly after the attack. The photos were styled as People's Exhibits 5 through 18. Each photo was printed on a sheet of 8.5 x 11 inch white paper, with each photo taking up almost the entire 8.5 x 11 inches. The 14 photos consisted of both long shots and close up shots of Shride's injuries to his left arm and to both legs. People's Exhibit 5 shows a cut, presumably from surgery, running down Shride's left shoulder toward his left bicep. The cut is at least 6 inches long and 29 stitches or staples can clearly be seen in the photo. The other photos depict serious injuries as well.

¶ 35 In addition, as explained above, the severity of a victim's injury is but one factor a jury may consider, and a conviction for attempted murder may be sustained even if there is no serious injury at all. See, e.g., *People v. Smith*, 402 Ill. App. 3d 538, 547 (2010) (evidence sufficient to convict a defendant of attempted murder exists where jury could infer intent to kill based upon fact that defendant drove his car, a deadly weapon, toward police officer, even though police officer was not seriously injured, because natural consequence of defendant's act would have been to harm officer or destroy his life had officer not dived out of the way); *People v. Owens*, 372 Ill. App. 3d 616, 618, 624-25 (2007) (attempted murder conviction affirmed where defendant choked the victim and

doused her in gasoline, even though defendant did not successfully ignite the gasoline and victim therefore did not receive serious injuries).

¶ 36 In light of the evidence and principles of law discussed above, no reasonable court could conclude that the defendant has shown that the evidence of the defendant's intent to kill Shride was so closely balanced that Shride's testimony about the extent of his injuries alone severely threatened to tip the scales of justice against the defendant. See, *e.g.*, *People v. Herron*, 215 Ill. 2d 167, 187 (2005). Accordingly, the defendant's attempt to invoke the plain-error doctrine fails, and we must honor the procedural default and find the alleged error to be forfeited, even when we assume, *arguendo*, that error occurred. See, *e.g.*, *People v. Bannister*, 232 Ill. 2d 52, 65 (2008).

¶ 37 We turn now to the defendant's claim of ineffective assistance of counsel. To prevail on a claim of ineffective assistance of counsel, a defendant must prove both that defense counsel's performance at trial fell below an objective standard of reasonableness, and that the defendant was prejudiced by counsel's deficient performance. *People v. Lemke*, 349 Ill. App. 3d 391, 398 (2004). "Prejudice is established when there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 398-99. In this case, as explained in detail above, the evidence of the defendant's intent to kill Shride was not closely balanced. Accordingly, there is no reasonable probability that but for counsel's alleged error in this case—his failure to object to some of Shride's testimony about the cause and extent of his injuries—the result of the proceeding would have been different. As a result, the defendant's ineffective assistance of counsel claim fails.

¶ 38 Moreover, when a reviewing court analyzes a claim of ineffective assistance of counsel, "[a] strong presumption exists that trial counsel's conduct, if it involves strategy, falls within reasonable, professional judgment." *Id.* at 399. The defendant claims that trial counsel should have realized Shride's testimony was improper when the State decided it did not need to call Dr. Christopher W. Maender of the Orthopedic Center of Illinois in Springfield, who, as described above, was on the list of witnesses the State intended to call. We note, however, that trial counsel might have failed to object to Shride's testimony for that very reason: because trial counsel thought that Shride's testimony about his injuries and his prospects for a complete recovery was weaker, and therefore less convincing, than the testimony of Dr. Maender would have been, and that accordingly trial counsel preferred that any testimony about the cause and extent of Shride's injuries comes from Shride, rather than from a medical professional such as Dr. Maender. Had counsel successfully objected to some of Shride's testimony, the State could have brought in its medical witness, Dr. Maender, who it reasonably can be presumed—because it was the State that was calling him, rather than the defendant—would have strengthened the State's case and weakened the position of the defendant. Given the strong legal presumption discussed above, we cannot say a trial strategy of avoiding testimony from Dr. Maender would have been unreasonable or unprofessional.

¶ 39 CONCLUSION

¶ 40 For the foregoing reasons, we affirm the defendant's conviction and sentence.

¶ 41 Affirmed.