

NOTICE

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2018 IL App (4th) 170143-U

NO. 4-17-0143

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

April 10, 2018

Carla Bender

4th District Appellate Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
SHATYRA N. HAWKINS,)	No. 14CF1742
Defendant-Appellant.)	
)	Honorable
)	Thomas J. Difanis,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court. Presiding Justice Harris and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding (1) defendant waived review of the juvenile-transfer proceedings by joining in the State’s motion to transfer the case to criminal court, (2) defendant cannot demonstrate her attorney provided ineffective assistance for failing to challenge an alleged deprivation of her right to a preliminary hearing, (3) other-crimes and consciousness-of-guilt evidence was properly admitted, and (4) the State presented sufficient evidence to sustain the convictions.

¶ 2 In November 2014, the State filed a petition to adjudicate defendant, Shatyra N. Hawkins, as a delinquent minor for her role in the armed robbery of Ashley M. In February 2015, at the request of both parties, the trial court transferred the juvenile case under the presumptive-transfer provision of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/5-805(2) (West 2014)). The case proceeded to trial, after which the jury found defendant guilty of aggravated battery and attempted armed robbery. The court subsequently sentenced defendant to an aggregate term of eight years in prison.

¶ 3 Defendant appeals, asserting (1) the trial court erred in transferring her juvenile case to criminal court, (2) the court lacked jurisdiction over defendant in criminal court because the State filed charges against defendant in criminal court prior to the transfer proceedings, (3) defense counsel provided ineffective assistance by failing to challenge the court's failure to provide a preliminary hearing on each count, (4) she was deprived of a fair trial due to the admission of unduly prejudicial evidence, and (5) the State presented insufficient evidence for a jury to find defendant guilty beyond a reasonable doubt. For the following reasons, we affirm.

¶ 4 I. BACKGROUND

¶ 5 A. Juvenile Transfer Proceedings

¶ 6 Defendant has provided us with only minimal portions of the record from the juvenile court proceedings. From what we can glean from the record provided, in November 2014, the State filed a petition to adjudicate defendant as a delinquent minor. Although we do not have a copy of the petition, it appears, at a minimum, defendant was charged with armed robbery (720 ILCS 5/18-2(a)(1) (West 2014)). No other charges were mentioned in the context of the juvenile court proceedings.

¶ 7 Later that month, the State filed a petition to transfer the proceedings from juvenile court to adult criminal court. Notably, the transfer petition was not provided as part of the record; rather, one of the transcripts of the transfer proceedings references the November 2014 petition.

¶ 8 During a February 2015 hearing on the transfer petition, defendant joined in the motion and requested the trial court transfer the case to criminal court. The court then engaged in a lengthy series of admonishments to ensure defendant understood her rights. The court asked defendant if she had enough time to discuss the matter with her attorney and her guardian *ad*

litem, to which defendant replied that she had sufficient time. The court also admonished defendant about the nature of the transfer hearing and the differences between juvenile court and criminal court, including the nature of the armed-robbery charges and the different sentencing ranges. The court noted, in juvenile court, defendant could receive a sentence of probation, whereas the minimum sentence in criminal court for an armed-robbery conviction would be six years' imprisonment. Defendant said she understood. The court further explained defendant would receive a bench trial in juvenile court but had a right to a jury trial in criminal court. Defendant indicated she understood, and she had no questions for court. Defendant then asked the court for the transfer to criminal court, which her attorney noted was against his advice.

¶ 9 The trial court noted defendant was subject to the presumptive-transfer provision outlined in section 5-805(2) of the Act (705 ILCS 405/5-805 (West 2014)). Prior to accepting the parties' agreement, the court considered the factual basis for the transfer. While defendant did not agree with all of the evidence contained in the factual basis, she conceded the evidence was sufficient to establish probable cause. The court found the State met its burden in establishing probable cause and then provided defendant an opportunity to present evidence that she could be rehabilitated through the juvenile court system.

¶ 10 Defendant declined to present any evidence to establish she was amenable to rehabilitation in the juvenile court system. In considering the seriousness of the allegations, defendant's age, and "other factors," the court granted the State's petition to transfer defendant's case from juvenile court to criminal court.

¶ 11 B. Criminal Court Proceedings

¶ 12 In December 2014, while the petition to transfer defendant's case to criminal court was still pending in juvenile court, the State charged defendant with one count of armed

robbery, a Class X felony (720 ILCS 5/18-2(a)(1) (West 2014)), and one count of aggravated battery, a Class 3 felony (720 ILCS 5/12-3.05(a)(1) (West 2014)). The trial court arraigned defendant on these charges immediately after granting the petition to transfer her case to adult court. Next, the court relied on the finding of probable cause at the transfer hearing in declining to conduct a preliminary hearing.

¶ 13 In March 2015, the State added a count of attempted armed robbery, a Class 1 felony (720 ILCS 5/8-4(a), 18-2(a), 8-4(c)(2) (West 2014)). Defendant did not receive a preliminary hearing on this count.

¶ 14 In April 2015, defendant filed a motion to dismiss the charges, arguing she had been deprived of a preliminary hearing on all three counts. However, when defendant obtained new counsel, that attorney moved to strike the motion to dismiss, asserting that due to the finding of probable cause at the transfer hearing and the fact that count III arose from the same conduct as counts I and II, defendant was not entitled to a preliminary hearing on count III.

¶ 15 C. Jury Trial

¶ 16 In December 2016, defendant's case proceeded to trial, at which time the jury heard the following evidence.

¶ 17 1. *Ashley M.*

¶ 18 Ashley M. testified that on November 12, 2014, around 10:35 p.m., she walked into the Circle K gas station to withdraw cash from the automated teller machine (ATM) and to buy snacks. She was carrying a cellular phone in her pocket. When she entered the store, Ashley noticed three girls standing near the clerk's counter. The girls made Ashley feel uncomfortable and one of the girls, whom Ashley identified as defendant, continued to stare at

Ashley while Ashley withdrew \$500 from the ATM. Ashley stated defendant was wearing a black coat with a hood.

¶ 19 After withdrawing cash from the ATM, Ashley placed the cash in her shirt pocket. As she purchased snacks and a drink, the three girls left the store. Still feeling uneasy, Ashley moved the money from her shirt pocket to her pants pocket.

¶ 20 Ashley left the Circle K and began walking home. She heard a noise behind her, and turned to see a girl with a baseball bat along with two others. The girl hit Ashley with the baseball bat until Ashley fell to the ground, at which time the girls demanded Ashley give them money and searched her shirt pocket to no avail. The girls then ran away, and Ashley crawled to a nearby house where the resident, Kiya Chapman, called police. Ashley said she told Chapman she had been hit by a baseball bat, and denied telling Chapman she had been hit with a firearm.

¶ 21 Ashley testified she did not notice anything missing from her person at first, but she later realized her cellular phone was missing. Ashley returned to the scene and recovered her phone approximately 10 to 15 feet from Chapman's house.

¶ 22 Ashley admitted numerous criminal convictions: (1) a 2004 burglary conviction, (2) a 2010 misdemeanor theft conviction, (3) a 2011 resisting-a-peace-officer conviction, and (4) a 2014 felony theft conviction. However, Ashley said she was now attempting to improve her life by looking for employment and supporting her two children.

¶ 23 *2. Rhonda Winston*

¶ 24 Rhonda Winston testified she was the Circle K clerk on duty on November 12, 2014. She recalled the three girls loitering in her store for about 40 minutes, talking with one another. She also remembered Ashley entering the store to use the ATM, then leaving sometime after the three girls. Winston provided police with surveillance footage from the store.

¶ 25

3. *Randy Beach*

¶ 26 Randy Beach, an officer with the Champaign police department, testified he interviewed Ashley at the hospital, where he observed her to have a large laceration on her scalp that was stapled shut, lacerations on her lip and head, and a black eye. Although Chapman told him Ashley had been hit by a firearm, Ashley told him she thought she had been hit in the head with a baseball bat. Officer Beach acknowledged that Ashley did not specifically identify defendant at the time of the offense.

¶ 27

4. *Kristina Haugen*

¶ 28 Kristina Haugen, a K9 officer with the Champaign police department, testified she responded to Chapman's emergency call and, upon arrival, she observed Ashley had sustained blunt-force trauma to the head and was bleeding profusely. Based on Ashley's account that she was attacked by three girls, one in a black hooded coat, Officer Haugen located three girls nearby who matched the description: Leondra H., Brittany E., and defendant. Officer Haugen retraced the path between the girls and Ashley, and on the path, she discovered a cellular phone belonging to Leondra.

¶ 29

5. *Timothy Atteberry*

¶ 30 Officer Timothy Atteberry testified he interviewed defendant regarding her role in the incident. During the interview, defendant admitted she was at the Circle K with Leondra and Brittany. Defendant said Leondra had a baseball bat, but she discarded it after the group left the Circle K. Defendant also recalled seeing Ashley at the Circle K.

¶ 31

6. *Thomas Petrilli*

¶ 32 Sergeant Thomas Petrilli also interviewed defendant. Defendant admitted to Sergeant Petrilli that the girls had been at the Circle K earlier that evening and that Leondra had

a baseball bat. A baseball bat was later recovered from Leondra's residence—located approximately four blocks from the Circle K—but no party submitted evidence stemming from any forensic testing on the bat.

¶ 33 When Chapman initially called the police to report Ashley's injuries, Chapman told the dispatcher Ashley had been struck by a firearm. However, when Sergeant Petrilli arrived on scene, he quickly learned Ashley had been struck by a baseball bat, not a firearm.

¶ 34 *7. Patrick Simons*

¶ 35 Detective Patrick Simons testified as an expert in digital evidence. He examined a cellular phone recovered from defendant upon her arrest and his investigation supported that the phone belonged to defendant.

¶ 36 *8. James Bednarz*

¶ 37 Detective James Bednarz testified, upon defendant's arrest, he collected her personal items, including a cellular phone. He then obtained a search warrant to review messages on defendant's phone. The messages were admitted into evidence without objection.

¶ 38 Detective Bednarz then highlighted several messages for the jury. At 8:43 p.m., defendant sent a message to Leondra asking, "Are you tryna hit this lick tonight?" Detective Bednarz explained that "hitting a lick" is slang for robbing someone. The message then went on to describe the target—an African-American male acquaintance—who they would rob for "loud" and money. According to Detective Bednarz, "loud" was slang for marijuana. Defendant and Leondra continued planning the robbery through the course of several messages. At one point, defendant wrote, "alls [*sic*] we need is a bat or stick and we can get him on our own."

¶ 39 At 9:14 p.m., defendant sent a message to Brittany, stating she was about to meet with the male acquaintance. The girls remarked that they could not locate their boyfriends, so they would be acting on their own. Brittany responded she had a Taser and knife.

¶ 40 At approximately 10:30 p.m., defendant sent a message stating she was at the Circle K, “tryna hit this stain.” Detective Bednarz testified that the phrase meant defendant was attempting to rob an easy target. He acknowledged the message did not mention Ashley by name. Detective Bednarz estimated Ashley was attacked around 10:35 p.m., as surveillance footage showed her leaving Circle K at 10:33 p.m. and the emergency call was made at 10:39 p.m. Detective Bednarz also acknowledged that he did not know whether defendant was sending the messages or if the messages were sent by someone else in possession of her phone.

¶ 41 *9. Meghan Nau*

¶ 42 Meghan Nau testified she was a juvenile detention officer in January 2015 when defendant was in custody. While searching defendant’s folder of belongings, Nau found several loose-leaf paper pages in defendant’s composition book. The pages contained a note imploring Leondra—who was also in the juvenile detention facility—to take the blame for the offense and tell police she acted alone. The note stated Leondra should take the blame because Leondra had already pleaded guilty and was the person who had the bat.

¶ 43 Nau acknowledged it was possible but unlikely that someone planted the note in defendant’s belongings due to the close monitoring procedures. Nau also stated inmates were prohibited from sharing composition books and passing notes.

¶ 44 *10. Motion for Mistrial*

¶ 45 Following the testimony of Detective Bednarz and Nau, defendant moved for a mistrial. Defendant asserted Detective Bednarz continually attempted to discuss parts of the

investigation with which he was not involved and improperly testified as to logical conclusions he drew from his investigation. Defendant also argued Nau improperly attempted to authenticate the note found in defendant's belongings as belonging to defendant. The trial court denied the motion for mistrial but noted Detective Bednarz's inappropriate testimony presented a close question.

¶ 46

11. *Verdict*

¶ 47

Following the presentation of evidence, the jury found defendant guilty of aggravated battery and attempted armed robbery. The jury found defendant not guilty of armed robbery.

¶ 48

D. Posttrial Proceedings

¶ 49

In January 2017, defendant filed a motion for an acquittal, or alternatively, for a new trial, asserting (1) the State failed to prove defendant guilty beyond a reasonable doubt, and (2) the trial court erred in denying her motion for a mistrial. The next month, the court denied the motion and sentenced defendant to concurrent sentences of eight years' imprisonment on the attempted armed-robbery conviction and five years' imprisonment on the aggravated-battery conviction.

¶ 50

This appeal followed.

¶ 51

II. ANALYSIS

¶ 52

On appeal, defendant argues (1) the trial court erred in transferring her juvenile case to criminal court, (2) the court lacked jurisdiction over defendant in criminal court because the State filed charges against defendant in criminal court prior to the transfer proceedings, (3) defense counsel provided ineffective assistance by failing to challenge the court's failure to provide a preliminary hearing on each count, (4) she was deprived of a fair trial due to the

admission of unduly prejudicial evidence, and (4) the State presented insufficient evidence for a jury to find defendant guilty beyond a reasonable doubt. We address these arguments in turn.

¶ 53 A. Transfer From Juvenile Court to Criminal Court

¶ 54 Defendant first asserts the trial court erred by transferring her case to criminal court. Specifically, defendant argues (1) the State failed to establish the requirements for a presumptive transfer (705 ILCS 405/5-805(2) (West 2014)), (2) the State failed to establish the requirements for a discretionary transfer (705 ILCS 405/5-805(3) (West 2014)), and (3) defendant's consent to the transfer was not knowingly and intelligently made because the court failed to admonish her regarding the allegations and potential penalties of the aggravated-battery charge in criminal court. Defendant did not challenge the transfer proceedings before the trial court; thus, the issue is forfeited. *People v. Kitch*, 239 Ill. 2d 452, 461, 942 N.E.2d 1235, 1240 (2011) (A defendant must make a timely objection and preserve the issue in a posttrial motion to avoid forfeiture). However, we may consider a forfeited claim where the defendant demonstrates plain error occurred. Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967). To prove plain error, a defendant must first demonstrate a clear or obvious error occurred. *People v. Piatkowski*, 225 Ill. 2d 551, 565, 870 N.E.2d 403, 411 (2007). To demonstrate error, defendant must demonstrate the trial court abused its discretion in transferring her case to criminal court. *People v. Fuller*, 292 Ill. App. 3d 651, 658, 686 N.E.2d 6, 11 (1997).

¶ 55 1. *Statutory Requirements*

¶ 56 Initially, we note at oral argument counsel for defendant conceded section 5-805(2) of the 2013 version of the Act applies to this case. Pub. Act 97-1150, § 600 (eff. Jan. 25, 2013) (amending 705 ILCS 405/5-805(2)). That section provides, in relevant part, that a minor is subject to a presumptive transfer to criminal court when the minor is 15 years of age or

older and commits a Class X felony other than armed violence. Pub. Act 97-1150, § 600 (eff. Jan. 25, 2013) (amending 705 ILCS 405/5-805(2)). Here, defendant was 16 years old and charged with the Class X felony of armed robbery, therefore making her eligible under the presumptive-transfer provision.

¶ 57

2. Rehabilitative Potential

¶ 58 Once the trial court makes a finding that the allegations are supported by probable cause, “there is a rebuttable presumption that the minor is not a fit and proper subject to be dealt with” under the Act. Pub. Act 97-1150, § 600 (eff. Jan. 25, 2013) (amending 705 ILCS 405/5-805(2)). The burden then shifts to the minor to demonstrate he or she would be amenable to the care, treatment, and training programs available through the juvenile court system. Pub. Act 97-1150, § 600 (eff. Jan. 25, 2013) (amending 705 ILCS 405/5-805(2)(b)). Following the presentation of evidence, the court must determine the rehabilitative potential of the minor based on:

“(i) the age of the minor;

(ii) the history of the minor, including:

(A) any previous delinquent or criminal history of the minor,

(B) any previous abuse or neglect history of the minor, and

(C) any mental health, physical or educational history of the minor or combination of these factors;

(iii) the circumstances of the offense, including:

(A) the seriousness of the offense,

(B) whether the minor is charged through
accountability,

(C) whether there is evidence the offense was
committed in an aggressive and premeditated manner,

(D) whether there is evidence the offense caused
serious bodily harm,

(E) whether there is evidence the minor possessed a
deadly weapon;

(iv) the advantages of treatment within the juvenile justice
system including whether there are facilities or programs, or both,
particularly available in the juvenile system;

(v) whether the security of the public requires sentencing
under Chapter V of the Unified Code of Corrections:

(A) the minor's history of services, including the
minor's willingness to participate meaningfully in available
services;

(B) whether there is a reasonable likelihood that the
minor can be rehabilitated before the expiration of the
juvenile court's jurisdiction;

(C) the adequacy of the punishment or services.

In considering these factors, the court shall give greater weight to
the seriousness of the alleged offense and the minor's prior record
of delinquency than to the other factors listed in this subsection.”

Pub. Act 97-1150, § 600 (eff. Jan. 25, 2013) (amending 705 ILCS 405/5-805(2)).

¶ 59 Defendant states the trial court failed to elaborate on the factors it considered in determining defendant lacked rehabilitative potential in the juvenile court system. See *People v. Clark*, 119 Ill. 2d 1, 21, 518 N.E.2d 138, 147 (1987) (reversing for a new discretionary transfer proceeding where the trial court failed to consider the minor’s age, lack of criminal history, the availability of rehabilitative services, and the minor’s amenability to those services). Initially, we point out that *Clark* involved a contested discretionary transfer hearing. Unlike in *Clark*, here, the court specifically indicated it did consider each statutory factor. While mere recitation on the record that all statutory factors have been considered is inadequate (*Clark*, 119 Ill. 2d at 18), the question is whether there is sufficient evidence in the record as to each statutory factor to support the transfer order (see *Clark*, 119 Ill. 2d at 14 (“Where the juvenile judge considers evidence on the various statutory factors and evidence on any other relevant matters as provided in section 2-7(3), the resulting decision is a product of sound judicial discretion which will not be disturbed on review. [Citations.]”). Thus, our role is not to reweigh the factors; rather, our role is to determine if sufficient evidence in the record supports each statutory factor. *People v. Morgan*, 197 Ill. 2d 404, 428, 758 N.E.2d 813, 827 (2001). Because defendant has not provided the necessary record—including the guardian *ad litem*’s report and a report from the youth detention center considered by the court—we must conclude the court properly applied the evidence to the factors. *People v. Johnson*, 285 Ill. App. 3d 307, 308, 674 N.E.2d 487, 488 (1996) (“The appellant has the duty to supply a sufficient record for review, and any doubts arising from the incompleteness of the record will be resolved against the appellant.”).

¶ 60 Moreover, defendant attempts to minimize the fact that she not only acquiesced to transferring the case to criminal court, she joined in the State’s motion and requested the transfer against her attorney’s advice. The doctrine of judicial estoppel precludes a defendant from taking one position before the trial court and a contrary position in a subsequent legal proceeding. *People v. Coffin*, 305 Ill. App. 3d 595, 598, 712 N.E.2d 909, 911 (1999). Here, defendant attempts to do just that. We therefore decline to consider her challenge to the court’s decision to transfer her case to criminal court when she joined the State’s petition to transfer the case to criminal court.

¶ 61 *3. Consent To Transfer*

¶ 62 To that end, defendant argues her consent to the transfer was not knowingly made because the trial court did not provide her with any admonishments contrasting the sentencing ranges of the aggravated-battery charges in juvenile court and criminal court. However, defendant has failed to provide us with the State’s petition for an adjudication of delinquency to demonstrate the petition included a count of aggravated battery. “The appellant has the duty to supply a sufficient record for review, and any doubts arising from the incompleteness of the record will be resolved against the appellant.” *Johnson*, 285 Ill. App. 3d at 308. Without a record demonstrating that the juvenile delinquency petition included an aggravated-battery charge, we decline to consider whether the trial court failed to properly admonish defendant.

¶ 63 *B. Criminal Court Jurisdiction*

¶ 64 Defendant next contends the criminal court lacked jurisdiction over her case because the State filed the charges prior to the trial court transferring the case from juvenile court in violation of the juvenile court’s exclusive jurisdiction. See 705 ILCS 405/5-120 (West 2014)). Because defendant did not raise this issue before the trial court, the issue is forfeited unless it

constitutes plain error. Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967). Defendant argues we should apply the second prong of plain-error review and conclude the clear or obvious error was so serious that it affected the fairness of the proceedings and undermined the integrity of the justice system. *Piatkowski*, 225 Ill. 2d at 565. In considering whether a clear or obvious error occurred regarding the trial court’s subject-matter jurisdiction, our review is *de novo*. *People v. Fiveash*, 2015 IL 117669, ¶ 10, 39 N.E.3d 924; *People v. Rios*, 2013 IL App (1st) 121072, 2 N.E.3d 368.

¶ 65 “The juvenile court is merely a division of the circuit court system, and it is the circuit court which is vested with jurisdiction over all criminal defendants.” *People v. Arnold*, 323 Ill. App. 3d 102, 108, 751 N.E.2d 573, 578 (2001). Thus, the transfer of a case from juvenile court to criminal court is procedural, not jurisdictional. *Id.* Even assuming the State improperly instituted criminal court proceedings against defendant prematurely under section 5-120 of the Act (705 ILCS 405/5-120 (West 2014)), the premature filing of charges does not require automatic reversal. See *People v. Jones*, 81 Ill. 2d 1, 6, 405 N.E.2d 343, 345 (1979).

¶ 66 In support of her argument that the State improperly and prematurely instituted criminal court proceedings against her when it filed the information prior to the transfer proceedings, defendant relies on *Jones*. In *Jones*, prior to the juvenile-transfer proceeding, the State convened a grand jury to indict the defendant on the same charges pending in juvenile court. *Id.* at 4. The supreme court found the State’s actions in obtaining an indictment prior to the transfer proceeding were error, but the error was harmless because the trial court made independent findings from that of the grand jury. *Id.* at 6. In reaching its decision, the trial court specified the statutory factors it relied upon in granting the transfer to criminal court. *Id.* at 7.

¶ 67 *Jones* is distinguishable. Here, the State merely filed the information and did not attempt to obtain a grand jury indictment. In fact, there were no proceedings in criminal court—

¶ 71 To the extent this issue has been forfeited for her failure to preserve it in a posttrial motion, defendant also argues for plain-error review. Defendant argues she was deprived of her right to counsel and her right to a preliminary hearing, which constitutes a clear or obvious error so serious that it affected the fairness of the proceedings and undermined the integrity of the justice system under the second prong of plain error. *Piatkowski*, 225 Ill. 2d at 565.

¶ 72 In reviewing the claims for ineffective assistance of counsel and plain-error review, we look first to whether defendant was deprived of her right to a preliminary hearing. We first address counts I and II, for which defendant was arraigned and the trial court found probable cause immediately following the transfer proceedings.

¶ 73 During the transfer proceedings, the trial court found probable cause to believe defendant committed the armed robbery. As part of the factual basis, the court heard evidence that defendant and two friends were at the Circle K when Ashley entered the store to withdraw \$500 from the ATM. Defendant's presence was corroborated by the surveillance video. While Ashley was walking home, three girls—one with a bat—attacked her. Ashley told police the girls stole her cellular phone during the attack. Police discovered three girls—including defendant—nearby who matched Ashley's description of her assailants. A baseball bat was later recovered from Leondra's residence.

¶ 74 At the end of the factual basis, defendant contested the factual basis to the extent the State alleged (1) defendant and her friends followed Ashley from the Circle K and (2) all three girls battered Ashley. Taking those points into consideration, the trial court found probable cause to support the charge. Defendant also stipulated that sufficient evidence supported the probable-cause finding.

¶ 75 Following the transfer hearing, the trial court immediately arraigned defendant on the criminal court charges. Although defendant requested a formal preliminary hearing, the court declined to conduct a preliminary hearing and instead found probable cause based on the factual basis and defendant's stipulation made during the transfer proceedings held mere minutes before.

¶ 76 The purpose of a preliminary hearing is to determine whether there is probable cause to believe the charged crime has been committed. *People v. Diestelhorst*, 344 Ill. App. 3d 1172, 1183, 801 N.E.2d 1146, 1154-55 (2003). Defendant received such a hearing where, at the transfer hearing, the trial court considered the factual basis, the contested facts, and defendant's stipulation as to probable cause. Accordingly, defendant was not denied her right to a preliminary hearing as to counts I and II.

¶ 77 The State filed count III—attempted armed robbery—in March 2015, meaning the charge was not filed when the trial court made its probable-cause finding as to counts I and II. Defendant argues the new charge requires a separate preliminary hearing. We disagree. After an initial preliminary hearing, a defendant may be prosecuted for any offenses “arising from the same transaction or conduct[.]” 725 ILCS 5/111-2(f) (West 2014)); *People v. Velez*, 2012 IL App (1st) 110801, ¶ 11, 983 N.E.2d 501. The attempted-armed-robbery charge clearly arises as part of the same transaction or conduct as count I, the armed-robbery charge. The only difference is that count I contemplated the completion of the robbery whereas count III alleged defendant attempted but failed to complete the robbery. Thus, defendant was not entitled to a preliminary hearing on count III.

¶ 78 Because the trial court did find probable cause as to counts I and II, defendant was not entitled to a preliminary hearing on count III. Logically then, (1) defense counsel was

objectively reasonable in withdrawing the motion to dismiss and (2) defendant failed to demonstrate a clear or obvious error requiring reversal under the second prong of plain-error review.

¶ 79 Even assuming, *arguendo*, defendant was improperly denied her right to a preliminary hearing on each count, she cannot demonstrate prejudice or that the error was so serious that it affected the fairness of the proceedings and undermined the integrity of the justice system. As a result of the transfer proceedings, defendant was aware of the evidence against her on all three counts—armed robbery, aggravated battery, and attempted armed robbery. She expressed no surprise at these charges and largely agreed during the transfer proceedings that the State had a sufficient factual basis to support the charges of armed robbery. At best, defendant’s challenge to the lack of preliminary hearing would have resulted in the case being dismissed without prejudice and the State would have simply refiled the charges. *People v. Roby*, 200 Ill. App. 3d 1063, 1067, 558 N.E.2d 729, 732 (1990). A dismissal without prejudice would not have affected the ultimate outcome of the case. See *People v. Washington*, 2012 IL App (2d) 101287, ¶ 24, 970 N.E.2d 43 (a defendant must show prejudice based on the outcome at trial, not just regarding the failure to obtain a temporary dismissal). Defendant has therefore failed to demonstrate the case should be reversed due to issues related to the preliminary hearing.

¶ 80 D. Prejudicial Evidence

¶ 81 Defendant contends she was denied her right to a fair trial due to the admission of unduly prejudicial evidence. Specifically, defendant challenges the admission of text messages recovered from her phone and a handwritten note found in her personal belongings at the juvenile detention center.

¶ 82 Although defendant requested a mistrial following Detective Bednarz’s testimony regarding the text messages and Nau’s testimony about the handwritten note, in neither instance did defendant challenge the admissibility of the evidence as prejudicial. Rather, with respect to Detective Bednarz, defendant alleged he improperly testified about the inferences he drew during his investigation. As to Nau, defendant argued Nau improperly attempted to authenticate the handwritten note as written by defendant. Thus, defendant has forfeited review of the text messages and handwritten note. *Kitch*, 239 Ill. 2d at 461 (A defendant must make a timely objection and preserve the issue in a posttrial motion to avoid forfeiture). However, we may consider a forfeited claim where the defendant demonstrates plain error occurred. Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967). To prove plain error, a defendant must first demonstrate a clear or obvious error occurred. *Piatkowski*, 225 Ill. 2d at 565. With respect to the admissibility of evidence, an error occurs where the trial court abused its discretion. *People v. Wilson*, 2015 IL App (4th) 130512, ¶ 75, 44 N.E.3d 632.

¶ 83 1. *Text Messages*

¶ 84 First, defendant argues the admission of her text messages was prejudicial, as the messages constituted other-crimes evidence. Evidence of other crimes is generally objectionable because it has “too much” probative value that demonstrates a propensity to commit the crime. *People v. Donoho*, 204 Ill. 2d 159, 170, 788 N.E.2d 707, 714 (2003). That being said, other-crimes evidence is admissible “to prove intent, *modus operandi*, identity, motive, absence of mistake, and any material fact other than propensity that is relevant to the case[.]” *Id.* “Even if other-crimes evidence falls under one of these exceptions, the court still can exclude it if the prejudicial effect of the evidence substantially outweighs its probative value.” *Id.*

¶ 85 Although the messages obtained from defendant’s phone outline a plan to rob another individual, the messages show more than propensity to commit a crime. Rather, the messages demonstrate the three girls (1) intended to commit a robbery for the purpose of obtaining either money or cannabis, therefore showing both motive and intent; (2) obtained the tools—including a baseball bat—with which to commit the robbery, thus demonstrating *modus operandi*; and (3) operated under the absence of any mistake in committing the offense, as demonstrated by messages pointing out a new target. The messages demonstrate the girls’ intent remained unchanged when their initial plan to rob a male associate failed; rather, they turned their sights toward a new target. The message identifying a new target went out just minutes before Ashley was attacked, which goes toward identifying defendant and her intent to commit a robbery. As defendant’s defense at trial was that she was not involved in the offense, the probative value of these messages far outweighed the prejudicial effect. The court did not abuse its discretion in admitting the messages and, therefore, defendant cannot demonstrate an error has been committed to support plain-error review.

¶ 86 *2. Handwritten Note*

¶ 87 Second, defendant argues the handwritten messages in her composition book recovered from her personal belongings in juvenile detention were unduly prejudicial and improperly admitted as evidence that a codefendant—Leondra—pleaded guilty in the case. Defendant relies on *People v. Callaway*, 185 Ill. App. 3d 136, 141, 540 N.E.2d 1153, 1156 (1989), which provides, “Evidence that a codefendant or accomplice has pleaded guilty or has been convicted of the same offense is inadmissible at trial for purposes of proving the guilt of a defendant” except for impeachment purposes.

¶ 88 The letter was not admitted for the purpose of showing Leondra pleaded guilty, and the State did not highlight Leondra's conviction during closing arguments. Rather, the messages implored Leondra to say she acted alone in attacking Ashley, thus exonerating both defendant and Brittany. Defendant's attempt to manipulate one of the codefendants into committing perjury demonstrates a consciousness of guilt appropriate for the jury to consider. See *People v. Gwinn*, 366 Ill. App. 3d 501, 516-17, 851 N.E.2d 902, 916 (2006) (evidence of witness tampering is probative and relevant to demonstrate intent and consciousness of guilt). The messages also go toward proving identity, as the letter mentions Ashley by name and asks Leondra to say defendant was not present during the attack. Accordingly, the trial court did not abuse its discretion in admitting the handwritten messages and, therefore, defendant cannot demonstrate an error has been committed to support plain-error review.

¶ 89 E. Sufficiency of the Evidence

¶ 90 Finally, defendant asserts the State presented insufficient evidence to support her convictions for aggravated battery and attempted armed robbery. Where a defendant challenges the sufficiency of the evidence, we must ask 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 a crime beyond a reasonable doubt." *People v. Mandic*, 325 Ill. App. 3d 544, 546, 759 N.E.2d 138, 141 (2001).

¶ 91 Defendant argues the case hinged upon the testimony of Ashley, a convicted felon who identified defendant for the first time from the witness stand, more than two years after the incident occurred. However, it is the role of the jury to determine the witnesses' credibility, weigh the evidence, draw inferences, and resolve any conflicts in the evidence. *People v. Kirchner*, 2012 IL App (2d) 110255, ¶ 11, 973 N.E.2d 444. It is not for this court to substitute

its judgment for that of the trier of fact. *Id.* The jury heard evidence regarding Ashley's prior convictions, the circumstances surrounding the robbery, and Ashley's identification of defendant, and the jury chose to believe her version of events regarding defendant's participation in the incident. Not only did Ashley testify, but surveillance video placed defendant in the Circle K with two other girls immediately prior to the incident, which corroborated Ashley's recollection of events. Further, Ashley testified defendant watched her place the money in her shirt pocket. After the three young women left Circle K, Ashley transferred the money to her pants pocket. However, during the robbery, the girls who attacked her were searching for money in her shirt pocket, which corroborates Ashley's testimony that defendant watched her withdraw money from the ATM. Ashley claimed to be hit with a baseball bat, and a bat was later found in Leondra's bedroom. Although no forensic evidence was collected from the bat, the jury could have reasonably inferred the bat was used in the attack.

¶ 92 This evidence is sufficient to support defendant's conviction. But additional evidence also supported the jury's finding. First, messages collected from defendant's phone indicated she and her friends intended to rob another individual that night using a baseball bat. When they did not complete the intended robbery, defendant's phone revealed messages that the group plotted another robbery. Ashley was attacked mere minutes after that message was sent. Second, while in detention, a note was discovered in defendant's belongings, imploring Leondra to take the blame because she (1) was the person with the bat and (2) had already entered a guilty plea. As noted above, this demonstrates a consciousness of guilt the jury might have considered compelling.

¶ 93 Accordingly, we conclude sufficient evidence supports defendant's conviction.

¶ 94 III. CONCLUSION

¶ 95 Based on the foregoing, we affirm the trial court's judgment. As part of our judgment, we grant the State its \$75 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2016).

¶ 96 Affirmed.