2019 IL App (1st) 162431-U

No. 1-16-2431

Order filed April 11, 2019

Fourth Division

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 13 CR 15153
	)	
WYNTON COLLINS,	)	Honorable
	)	Alfredo Maldonado,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice McBride and Justice Gordon concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the judgment of the circuit court over defendant's contentions that the court erred in precluding him from testifying about his relationship with Jasmine, that the court committed plain error in precluding him from impeaching Vincent Davis, and that the court erred in precluding defendant from cross-examining Octavia Mitchell as to other statements defendant made to her in their conversation after the shooting.

¶ 2 Following a bench trial, defendant Wynton Collins was found guilty of first degree murder for the July 8, 2013, shooting death of Georgina Randall. At trial, defendant did not contest the fact that he shot and killed Randall, but argued that he should be found guilty of

second degree murder because of the mitigating factor of provocation. The trial court found that defendant had failed to establish the mitigating factor of provocation by a preponderance of the evidence and sentenced defendant to a cumulative term of imprisonment of 55 years, 30 years for first degree murder (720 ILCS 5/9-1(a)(1) (West 2016)) and an additional 25 years for personally discharging a firearm that caused death (730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2016)). On appeal, defendant contends that the trial court committed reversible error where it precluded him from testifying that a woman he previously tried to date set him up to be the victim of an armed robbery. He further contends that the court committed plain error where it precluded him from impeaching the testimony of a witness, Vincent Davis, on the basis that defendant failed to establish a foundation for the impeachment. He finally contends that the court erred in precluding him cross-examining a witness, Octavia Mitchell, as to other statements defendant made to her under the doctrine of completeness. For the reasons that follow, we affirm the judgment of the circuit court.

¶ 3 I. BACKGROUND

¶ 4 At trial, Ebonie Eskridge, Meshayla Williams, Kelly Bradley, and Charish Johnson testified that on July 8, 2013, they were with Randall on a porch in front of a home located on South Drake Avenue (the "South Drake Property") in Chicago, Illinois. Each witness testified to a substantially similar version of events. Randall grew up in Chicago, but moved to Missouri when she was eight years old. A few months before the shooting, she returned to Chicago with her two minor children. Randall was unable to find housing in Chicago and would sometimes stay at hotels or with family. Shortly after she returned to Chicago, Randall started dating defendant who lived on the same street as Randall's family. At the beginning of their

relationship, Randall and defendant were "inseparable," but by July 8, 2013, they were not as close.

¶ 5 Bradley testified that throughout the day on July 8, 2013, Randall had been receiving text messages and phone calls from defendant, but she was ignoring them. At around 5 p.m. that day, Eskridge, Williams, Bradley, Johnson, and Randall were on the front porch at the South Drake Property. Defendant approached the house and stood near the wrought-iron fence that enclosed the yard. Defendant asked Randall to come with him, but Randall told him to "hold on" and to not rush her. Defendant then left and walked back toward his residence.

¶ 6 Shortly thereafter, Vincent Davis approached the women on the porch and asked to speak to Williams. Davis testified that he had been outside his home a few doors down from the South Drake Property when he heard defendant on the phone saying, "This b**** is gonna get it. She think [*sic*] I'm playing." He testified that he went to tell Williams what defendant had been saying because he did not know what was going to happen and he wanted Randall to stay away from defendant. Williams testified that Davis told her that "something was about to go down between [defendant] and [Randall], and I don't have nothing [*sic*] to do with it." After speaking with Davis, Williams returned to the porch at the South Drake Property.

¶ 7 Defendant then returned to the South Drake Property and stood near the wrought-iron fence. He again told Randall to "come on," but she told him to wait because she was trying to feed her children. After further discussion between defendant and Randall, defendant pulled a gun out of his waistband and shot at Randall. Randall fell to the ground in the yard and Williams, Eskridge, Johnson, and Bradley fled the scene. Defendant came inside the gate and stood over Randall while she was on the ground. Defendant pointed his gun at her and Randall put her hand up and asked him to not shoot her anymore because she had already been shot. Randall's minor

son, who standing near Randall, threw something at defendant and told him to not hurt his mother. Defendant fired two or three more shots at Randall while she was on the ground and then ran from the scene.

¶ 8 Kiaishi Green testified that on July 8, 2013, she was at a home a few doors down from the South Drake Property when she heard three "pops." She ran outside and saw a small child throw an object at defendant and say "don't hurt my mom" or "leave my mom alone." Green saw defendant standing over a woman lying on the ground while he was fidgeting with his gun. Defendant then fired two more shots at the woman lying on the ground and then ran from the scene. Wendolyn King testified that she lived at the South Drake Property and was inside cooking at around 5:15 p.m. when she heard gunshots. She looked out the window and saw Randall on the ground with her hand up. She heard Randall's son tell defendant to not hurt his mom. King went to call police when she heard two more shots and then saw defendant run from the scene.

¶ 9 Derrick Armstead testified he was parked across the street from the South Drake Property when he heard gunshots. He looked up and saw defendant shooting a "young lady." After shooting her, defendant walked outside of the gate surrounding the yard at the South Drake Property, reloaded his gun, turned around, walked back inside the gate and continued shooting the woman. He also saw a small child throw something at defendant and tell him that he was hurting his mom. Defendant then fled the scene. Lemetrius Dockett, who lived nearby at on South Drake Avenue, testified to a substantially similar version of events.

¶ 10 Chicago Police Lieutenant Ernesto Cato testified that on July 8, 2013, he reported to a shooting at the South Drake Property. When he arrived on the scene, someone told him that the shooter had fled into a nearby house. Lieutenant Cato approached the house where he met

defendant's mother, Paulette Sherrod (Paullette). Paulette refused to allow the officers to search the house. While the officers prepared a search warrant, the SWAT team arrived to secure the building. After about an hour, Paulette consented to the search and signed a search consent form. After searching defendant's room, officers recovered a bulletproof vest, two holsters, and a silver security star. Lieutenant Cato later learned that defendant worked as a security guard.

¶ 11 Terrell Mitchell (Terrell) testified that he and his mother Octavia Mitchell (Octavia) knew defendant and had previously been his neighbor when he lived on South Drake Avenue, but they now lived in Bellwood, Illinois. Terrell testified that defendant came to their home in Bellwood around 5 p.m. on July 8, 2013, and asked to speak with Octavia. Terrell testified that defendant and Octavia talked for a few hours outside of their home. After talking to defendant, Octavia came back inside and told Terrell what defendant had told her. Terrell then called the police.

¶ 12 Bellwood Police Detective John Setlak testified that he met with Octavia on July 8, 2013, and she gave him a description of defendant and told him which direction defendant was heading when he left their house. Detective Setlak relayed that information over the radio to Bellwood police officer Warren Hernandez. Octavia told Detective Setlak that defendant threw an item behind her house, and Detective Setlak recovered a semi-automatic handgun from the place she indicated. Officer Hernandez testified that after receiving the information about defendant, he went to the location indicated and arrested defendant without incident.

¶ 13 Paulette testified on defendant's behalf that defendant had a stutter, sucked his thumb, and had a growth on his head that was surgically removed, which created a sunken area on his skull. Paullette testified that, as a result, defendant was a "loner" and people made fun of him. Paulette testified on July 8, 2013, a police officer came to her home and searched the home

without her consent. Later, Lieutenant Cato arrived and asked if he could search her home. She told him that her home had already been searched, but she nevertheless signed the search consent form and gave consent to the search. On cross-examination, Paulette testified that she had never met Randall, but had met two of defendant's previous girlfriends.

¶ 14 Defendant testified that he worked for a few security companies and had a firearm owners identification (FOID) card. He testified that he was a "loner" growing up because of his stutter and the growth on his head. Defendant met Randall in May 2013 and learned she was living in her vehicle with her two children after she moved to Chicago from Missouri. Defendant paid for her to live in a hotel for two or three weeks and brought food and money for her and her children. Defendant testified that Randall got a tattoo of his name on her leg and he believed they were in a relationship.

¶ 15 In June 2013, defendant sold his vehicle for $14,000 and intended to buy a new vehicle with the proceeds plus an extra $2,000 that he had saved. Randall suggested that she could hold the money for him in a bank account. Defendant testified that Randall told him she would open the account and she would give him access to the account. Defendant went with Randall to the bank to open the account and she provided him with all of the information required to access the account. Defendant testified that after he deposited the $16,000 into the bank account, his relationship with Randall "changed." He testified that she stopped answering his phone calls and stopped seeing him. Defendant testified that after Randall stopped responding to his text messages and phone calls, he tried to access their joint bank account, but the bank told him that the account information that he had was incorrect. Defendant testified that Randall had changed the account information so that defendant could not access the account.

¶ 16 Defendant testified that at 5 p.m. on July 8, 2013, he was sitting on the porch of his home on South Drake Avenue talking to his brother on the phone. Defendant denied making any of the threatening statements Davis testified that he made. Defendant saw Randall at the South Drake Property and walked over there to speak with her. Defendant asked her about the money and asked her to accompany him to the bank, but she ignored him. Defendant testified that instead of responding to him she answered a phone call and laughed at him. Randall told defendant that the money in the account was not his money anymore, it was her money. The people sitting on the porch at the South Drake Property started laughing at him and Randall threw her purse at him and then ran at him in an "attacking manner." Defendant testified that he felt intimidated and humiliated.

¶ 17 The people on the porch stood up and defendant testified that he "just lost it. It was like a blur. It was like a blackout." Defendant testified that he did not realize he had shot Randall until he saw her on the ground. Defendant testified that he did not enter into the yard and did not stand over her body and shoot her again. After defendant realized that he shot Randall, he ran to Octavia's house in Bellwood. He talked to her for two or three hours about what happened and ultimately decided to turn himself in to the police. Defendant testified that he was arrested while looking for the police station.

¶ 18 On cross-examination, defendant testified that he discovered that he was not able to access the money in the account a few days before the shooting, but he was not upset about it. Defendant testified that he was more "disappointed" rather than upset, and despite Randall ignoring his phone calls and text messages for several days, he never became upset or angry. He further testified that after he shot Randall, she did not say anything to him while she was on the

ground, and he did not hear her son say anything to him, but acknowledged that her son may have thrown something at him.

¶ 19 In rebuttal, the State called Octavia to testify about her conversation with defendant on the night of the shooting. Octavia testified that she had previously lived in the same building as defendant and had a good relationship with him. Defendant told Octavia that he shot Randall because he gave her a check for $60,000, which Randall deposited into her bank account. He said that he shot Randall once in the stomach and then shot her again while she was on the ground asking him to not shoot her again. Octavia testified that defendant ultimately told her that he was going to turn himself in to the police.

¶ 20 Following closing argument, the court stated that there was no dispute that defendant shot and killed Randall and the only issue was whether defendant was guilty of first degree murder or second degree murder because of the mitigating factor of provocation. The court found that the State had satisfied its burden of proof of first degree murder on all counts and it was defendant's burden to prove by a preponderance of the evidence the mitigating factor.

¶ 21 The court found that there were some inconsistencies in the witnesses' testimony. The court found that Davis's testimony was particularly "inconsistent in many, many respects." The court determined, however, that the State's case did not "rise or fall" with Davis. The court observed that different witnesses saw different things from different vantage points, but they all saw defendant kill Randall. The court acknowledged that some of the witnesses did not want to say everything that occurred because of their relationship with either defendant or Randall.

¶ 22 The court further stated that it did not "buy" defendant's testimony and found "large chunks of it to be incredible." In particular, the court did not believe defendant when he said he was not upset about the money. The court determined that the evidence showed that defendant

was upset and that his anger built up over several days when Randall did not respond to his phone calls and text messages. The court indicated that it did not believe defendant's testimony that the people on the porch were laughing at him or that Randall told him that it was not his money anymore.

¶ 23 The court noted that based on the case law, in order for a defendant to establish provocation there must be a "sudden, intense passion," and not a slight provocation. The court stated that the test for whether the conduct is sufficient to insight a serious provocation is an objective test based on how a reasonable person would react to the circumstances. The court noted that words alone are not sufficient for provocation to be a mitigating factor. The court stated that even if it believed all of defendant's testimony, that the people on the porch were laughing at him and that Randall threw a purse at him, that would not be sufficient to meet his burden. Accordingly, the court found that defendant had not proven the mitigating factor by a preponderance of the evidence and found defendant guilty of first degree murder on all counts. Following a sentencing hearing, the court sentenced defendant to an aggregate term of imprisonment of 55 years. Defendant now appeals.

¶ 24 II. ANALYSIS

¶ 25 On appeal, defendant contends that the trial court erred in precluding him from testifying that a woman he tried to date before Randall set him up to be the victim on an armed robbery. Defendant further contends that the court erred in precluding him from impeaching Davis's testimony through Williams. Finally, defendant contends that the court erred in precluding him from cross-examining Octavia about other statements defendant made to her under the doctrine of completeness.

¶ 26 A. Trial Court Did Not Abuse its Discretion in

Finding that Defendant's Testimony Regarding
His Relationship with Jasmine was not Relevant
to His Second Degree Murder Defense

¶ 27 Defendant first contends that the court erred in precluding him from testifying about a woman he tried to date before meeting Randall. Defendant sought to testify that this woman, Jasmine, set him up to be the victim of an armed robbery a few months before the shooting. Defendant contends that this testimony was relevant to his state of mind at the time of the shooting because it showed that defendant had previously been victimized by a woman he was attempting to date. Defendant contends that the trial court's ruling precluding him from introducing this evidence constituted reversible error and violated his constitutional right to present a defense. At the outset, we recognize that the "admission of evidence is largely within the discretion of the trial court, and its rulings will not be disturbed absent an abuse of discretion." *Werner v. Nebal*, 377 Ill. App. 3d 447, 454 (2007).

¶ 28 At trial, defendant testified that he met Jasmine in April 2013 at a restaurant. After speaking with her, he made plans to meet her at another date. Defendant testified that Jasmine later called him and he went to meet her at a location in Chicago. At this point, the State's Attorney objected to defendant's testimony on the basis that it was not relevant to defendant shooting Randall in July 2013. Defense counsel responded that the testimony was relevant because it demonstrated how people take advantage of defendant. The court sustained the State's objection finding that defendant's relationship with Jasmine was not relevant to the instant case.

¶ 29 Defense counsel made an offer of proof in which he stated that if defendant were allowed to testify about the incident, he would testify that he met Jasmine at her request after she told him that she was having a problem with her vehicle. Defendant would testify that as he was attempting to fix her vehicle, three men arrived in a van and told defendant he was in a "stick

up." Two of the men were armed. Defendant ran and one of the men shot defendant. Defense counsel asserted this evidence would show that defendant was "a sucker, a target, a mark" and would help explain his conduct on July 8, 2013. Defendant properly preserved this issue by raising it in a posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988).

¶ 30 Defendant contends that this evidence was crucial to his second degree murder defense to establish the mitigating factor of provocation because it demonstrated defendant's state of mind at the time of the shooting. A person commits the offense of second degree murder where he commits the offense of first degree murder (720 ILCS 5/9-1(a)(1), (2) (West 2016)), and one of the enumerated mitigating factors is present. 720 ILCS 5/9-2(a) (West 2016). As relevant here, the statute provides that defendant shall be found guilty of second degree murder if "at the time of the killing he or she is acting under a sudden and intense passion resulting from serious provocation by the individual killed or another whom the offender endeavors to kill." 720 ILCS 5/9-2(a)(1) (West 2016). Under the statute, serious provocation is "conduct sufficient to excite an intense passion in a reasonable person." 720 ILCS 5/9-2(b) (West 2016). Our supreme court has recognized only four categories of provocation that are sufficient to mitigate a charge of first degree murder on the basis of serious provocation: "(1) substantial physical injury or assault, (2) mutual quarrel or combat, (3) illegal arrest, and (4) adultery with the offender's spouse." *People v. Randall*, 2016 IL App (1st) 143371, ¶ 45 (citing *People v. Sipp*, 378 Ill. App. 3d 157, 166 (2007) (citing *People v. Chevalier*, 131 Ill. 2d 66, 73 (1989))).

¶ 31 Defendant does not assert that any of these four circumstances are present here, but instead contends his subjective experiences were relevant to determining the reasonable person standard mandated by the statute. Defendant contends that his prior experience with Jasmine was relevant to show how his subjective experiences informed how he acted on the night of the

shooting, and the reasonable person standard in the statute should take into account the defendant's subjective circumstances. Generally, the reasonable person standard is an objective standard that does not take into account the subjective experiences of the defendant. *People v. Petrusel*, 238 Ill. App. 3d 683, 689 (1992). Defendant contends, however, that our courts have carved out exceptions to this general rule in certain circumstances. Defendant cites cases involving *Miranda* where the court may consider the defendant's age, intelligence, and mental capacity (*People v. Slater*, 228 Ill. 2d 137, 160-161 (2008)) or cases involving *Terry* stops, where the court may consider the experience of the police officer (*People v. Colyar*, 2013 IL 111835, ¶ 36). These cases, however, represent exceptions, not rules. Indeed, this court has found that in considering whether conduct was sufficient to excite an intense passion in a reasonable person, the test to be applied is an objective test, not a subjective test (*Petrusel*, 238 Ill. App. 3d at 689) and "any special traits of the particular defendant cannot be considered" (*People v. Pecora*, 107 Ill. App. 2d 283, 296 (1969)). See also *People v. Austin*, 133 Ill. 2d 118, 126 (1989) ("[T]he alleged provocation on the part of the victim must cause the same passionate state of mind in an ordinary person under the same circumstances."). As the trial court in this case found in entering its judgment, "It's an objective test. It's not a subjective test. It's an objective test as to the provocation." Thus, the court did not abuse its discretion in finding that defendant's prior relationship with Jasmine was not relevant to the case at bar.

¶ 32 Even ignoring these standards, defendant's contentions are not persuasive. Defendant's own testimony belies his contention that he acted under a "*sudden* and intense passion." There was nothing sudden about defendant's actions where he knew that Randall had changed the account information several days before he shot her. Defendant attempted to bolster his second degree murder defense by testifying that Randall and the people sitting on the porch laughed at

him and that Randall threw her purse at him and ran at him in an "attacking manner." The trial court, however, did not find this testimony credible (*People v. Sutherland*, 223 Ill. 2d 187, 242 (2006)) and this finding is supported by the numerous witnesses who contradicted defendant's account of what occurred.

¶ 33 Defendant's contentions on this subject obscure the real issue. As discussed, the supreme court has identified four circumstances that amount to serious provocation sufficient to mitigate first degree murder under the statute: "(1) substantial physical injury or assault, (2) mutual quarrel or combat, (3) illegal arrest, and (4) adultery with the offender's spouse." *Randall*, 2016 IL App (1st) 143371, ¶ 45. Defendant does not allege, and the record does not suggest, that any of those four circumstances are present here. Permitting defendant to testify regarding his relationship with Jasmine may have bolstered his argument that defendant was "a sucker, a target, a mark," but it would not have helped defendant establish any of the enumerated categories sufficient to mitigate his conviction for first degree murder.

¶ 34 In his reply brief, defendant makes the unsupported and somewhat spurious argument that the statute specifically excludes the victim's sexual orientation from qualifying as serious provocation, which "strongly supports the notion that any other conduct not specifically mentioned could rise to the level of serious provocation." Contrary to defendant's contentions, however, the supreme court has limited the application of serious provocation finding, for instance, that "[w]ords, in and of themselves, no matter how vile, can never constitute serious provocation such that second degree murder should be found instead of first degree murder." *People v. Garcia*, 165 Ill. 2d 409, 429-430 (1995). We therefore decline defendant's invitation to extend the application of second degree murder beyond what the statute and the supreme court have contemplated.

¶ 35 Here, the testimony defendant sought to introduce was not relevant to his defense because it would not help defendant establish that on the night of the shooting he acted in a sudden and intense passion as a result of serious provocation as those terms are defined in the statute and by the supreme court. The testimony was thus irrelevant to defendant's defense and the court did not abuse its discretion in precluding the testimony.

¶ 36 1. *Constitutional Right to Present a Defense*

¶ 37 For the same reasons, we find that the trial court's ruling did not infringe on defendant's constitutional right to present a defense. We recognize that "[d]efendant undeniably has the right to present a defense, but this right does not include the right to introduce irrelevant evidence" *People v. Lowitzki*, 285 Ill. App. 3d 770, 779 (1996). As discussed, the evidence defendant sought to introduce regarding his relationship with Jasmine was irrelevant to his defense. The court afforded defendant ample opportunity to present a defense both through his own testimony and through the cross-examination of the State's witnesses, but defendant was unable to satisfy his burden of establishing the mitigating factor of provocation by a preponderance of the evidence. Accordingly, we find that the trial court did not abuse its discretion in precluding defendant from testifying regarding his relationship with Jasmine. See *People v. McCullough*, 2015 IL App (2d) 121364, ¶ 104.

¶ 38 B. The Trial Court did not Commit Plain Error in Precluding Defendant from Impeaching Davis

¶ 39 Defendant next contends that the trial court committed plain error where it precluded him from impeaching Davis's testimony through Williams. Defendant asserts that defense counsel attempted to attack Davis's testimony that he heard defendant make threatening statements on the phone by eliciting testimony from Williams that Davis did not tell her about the threatening

statements. Defendant maintains the court erroneously prevented defense counsel from eliciting this testimony by finding that defendant had failed to lay a proper foundation for the impeachment. Defendant acknowledges that he failed to properly preserve this issue for review, but contends that we should nonetheless reverse the decision of the trial court because the court's ruling on this issue constituted plain error.

¶ 40 1. *Plain Error*

¶ 41 The plain error doctrine allows a reviewing court to examine a forfeited error affecting substantial rights in two circumstances. *People v. Herron*, 215 Ill. 2d 167, 178 (2005). We may consider a forfeited error where (1) the evidence is so closely balanced that the guilty verdict may have resulted from the error and not the evidence, or (2) where the error is so serious that the defendant was denied a fair trial. *People v. McLaurin*, 235 Ill. 2d 478, 489 (2009). In order to determine whether the purported error is "plain," we must first determine whether an error occurred, which requires a "substantive look" at the issue. (Internal quotation marks omitted.) *People v. Naylor*, 229 Ill. 2d 584, 593 (2008).

¶ 42 2. *Davis's Testimony*

¶ 43 At trial, Davis testified that he overheard defendant speaking on the phone saying, "[t]his b**** is gonna get it. She think [*sic*] I'm playing." He testified that he relayed what defendant had said to Williams. On cross-examination, defense counsel asked Davis what he remembered telling Williams.

> "Q. Well, when [Willaims] asked you, why [are you telling me what defendant said on the phone], did you say to her, gee, I just heard my cousin on the phone, he was talking about, the b**** gonna get it, and I'm afraid that might be [Randall]? Did you ever say that to her?

A. I told her, I don't know what's going on, just be careful and keep your cousin away from my cousin.

Q. Did you ever tell her that you heard a telephone conversation involving [defendant]? Did you ever tell her that?

A. I probably did.

Q. I'm asking you, sir, if you remember doing so?

A. Sir, I'm telling you. I'm telling you what I remember. I don't know the exact words that we talked about, because it happened so long ago, and I have been trying to forget it. Do you understand?"

***

Q. Did you ever tell [Williams] when she asked, why [are you telling me what defendant said on the phone], something is going to happen with my cousin and your cousin, and I have nothing to do with it? Did you ever say that to [Williams]?

***

A. No. that was not my exact words, and me saying, I don't have nothing to do with it, I did not say that at all."

On cross-examination of Williams, defense counsel asked her what Davis had said to her before the shooting. Williams testified that Davis did not tell her that "something may be going down." Williams then began to testify regarding what Davis told her and the State objected on the basis that the testimony was hearsay. The court sustained the State's objection and defense counsel responded that he was offering the testimony solely for the purpose of impeachment. After further colloquy, the court determined that Williams' testimony regarding what Davis told her

would be admitted solely for the purpose of impeachment by a prior inconsistent statement and was not hearsay.

¶ 44 Williams then testified that Davis told her that "something was about to go down between my cousin and your cousin, and I don't have nothing to do with it."

"Q. Vincent Davis never said anything to you about a phone call, did he?

A. No.

Q. He never said anything about overhearing somebody saying something that could jeopardize [Randall], did he?

[STATE'S ATTORNEY]: Objection, your honor.

THE COURT: I'm going to sustain that. That's different than what was set up as the impeachment, so objection sustained. Ask another question.

[DEFENSE ATTORNEY]: Well, if I can briefly respond to the Court, I think this clearly is impeachment of Vincent Davis as well. It impeaches his prior testimony.

Vincent Davis had this telephone—supposedly relayed this telephone overhear, and I simply want to ask and I did ask her whether or not he mentioned anything about the telephone. She said, no, I'll just leave it at that."

Despite this statement by defense counsel, he continued asking Williams what Davis told her.

"Q. Well, do you remember saying to Vincent Davis, what was about to happen?

A. Yeah.

***

Q. And do you remember [Davis] saying to you, I don't know, I can't tell you?

[STATE'S ATTORNEY]: Objection. It calls for hearsay.

> THE COURT: All right. If this is setup of a prior inconsistent statement, I don't remember him saying this."

Defense counsel responded that he had the right to impeach Davis through Williams by showing that he never told her about overhearing defendant on the phone. Defense counsel asserted that Davis telling Williams "I don't know what's going to happen" conflicted with Davis's testimony regarding what he heard defendant say on the phone. Defense counsel explained that he was attempting to impeach Davis by omission because Davis testified that he heard defendant on the phone saying "b**** think [*sic*] I'm playing," and thought it could be referring to Randall, but failed to mention any of this to Williams, and instead told her that he had nothing to do with it. After further discussion, the court stated:

> "Okay, the problem I'm seeing [here], at least from my recollection of my notes here, is in setting up the impeachment and the confrontation. You know, laying the foundation for the impeachment.
>
> Clearly, [Davis] testified that he told [Williams] that he went down the street to tell her something bad was going to happen. But about the phone call and those specifics, I don't remember those specific questions being asked of Mr. Davis.
>
> So, I am going to sustain the State's objection as to that."

¶ 45 3. *Impeachment by Omission*

¶ 46 Defendant contends that this ruling was in error because defense counsel adequately laid the foundation to impeach Davis on this subject. Defendant sought to impeach Davis by omission, *i.e.*, that Davis failed to inform Williams that he heard defendant on the phone saying, "This b**** is gonna get it. She think [*sic*] I'm playing." Impeachment by omission may be used where "it is shown that the witness had the opportunity to make a statement about the omitted

facts and, under the circumstances, a reasonable person ordinarily would have included the facts." *People v. McWhite*, 399 Ill. App. 3d 637, 642 (2010) (citing *People v. Bailey*, 374 Ill. App. 3d 1008, 1018-19 (2007)). Thus, defendant contends that he laid a foundation to impeach Davis by omission because Davis had the opportunity to tell Williams what he heard defendant say on the phone and a reasonable person would have told Williams about defendant's statements, but Davis failed to do so.

¶ 47 In its brief before this court, the State contends that the record is clear that Davis did not tell Williams about the phone call, and thus defendant's impeachment of Davis was perfected. Defendant, however, contends that State "incorrectly recasts" his argument and the issue is solely whether the court abused its discretion in refusing to allow defense counsel to establish that Davis never told Williams that he heard defendant state: "This b**** is gonna get it. She think [*sic*] I'm playing." Defendant contends that he clearly established the proper foundation for this impeachment when defense counsel asked Davis whether he told Williams about defendant's threatening statements and Davis "effectively avoided" the question.

¶ 48 A proper foundation for impeachment directs the witness's attention to the time, place, and person or persons to whom the statement was made. *People v. Lopez*, 2012 IL App (1st) 101395, ¶ 79 (citing *People v. Henry*, 47 Ill. 2d 312, 321 (1970)). In response to defense counsel's questions, Davis testified that he could not recall exactly what he said to Williams, but he "probably" told her about the phone call. Thus, defense counsel established foundation to impeach Davis regarding whether he told Williams about overhearing the phone call, but did not adequately establish a foundation to impeach Davis regarding what exactly he said to Williams. Williams testified that Davis did not tell her about the phone call, and, thus, defendant's impeachment on that issue was perfected. However, defense counsel never asked Davis if he said

to Williams "I don't know, I can't tell you," and when counsel asked Davis if he told Williams he heard defendant say "This b**** is gonna get it. She think [*sic*] I'm playing," Davis responded that he told her "I don't know what's going on, just be careful and keep your cousin away from my cousin." Thus, the trial court properly found that the specific questions defense counsel asked of Williams regarding what Davis said to her were not asked of Davis, and thus defense counsel failed to properly set the foundation for the impeachment. Accordingly, we find no error and honor defendant's forfeiture of this issue.

¶ 49 Even if we were to find that the court's ruling was erroneous, we would nonetheless find the trial court's ruling did not rise to the level of plain error because the evidence was not closely balanced and the error was not so serious that defendant was denied the right to a fair trial. In determining whether the evidence is closely balanced, defendant must show that the error was prejudicial, *i.e.*, that the error alone severely threatened to tip the scales of justice against him. *People v. Adams*, 2012 IL 111168, ¶ 21 (quoting Herron, 215 Ill. 2d at 187). In determining whether the evidence was closely balanced, a reviewing court must make a "commonsense assessment" of the evidence. *People v. Belknap*, 2014 IL 117094, ¶ 52. Here, it is clear that the evidence presented was not closely balanced and any error was not prejudicial. Eight witnesses testified that they saw defendant shoot Randall and each testified to a substantial similar series of events. Defendant contends that Davis's testimony was critical to the State's case because he provided evidence about defendant's state of mind prior to the shooting, but the record shows that regardless of any impeachment, the court did not find Davis to be a credible witness. Moreover, the court stated that the State's case did not "rise or fall" with Davis. Defendant points out that the record also shows that the court stated, "I disagree that [Davis's testimony is] not the centerpiece of the State's case." However, this is clearly either a misstatement by the court or a

clerical error by the court reporter. The court's statement about Davis's testimony was in response to defense counsel's contention during closing argument that Davis was the "centerpiece" of the State's case. The court obviously disagreed with sentiment both in finding that the State's case did not "rise or fall" with Davis and in finding defendant guilty of first degree murder despite finding that Davis was not a credible witness.

¶ 50 Nor does the error rise to the level of plain error under the fundamental fairness prong. "To meet that test, the error must be 'so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process.' " *Adams*, 2012 IL 111168, ¶ 24 (quoting *Herron*, 215 Ill. 2d at 187. Here, it cannot be said that the alleged error denied defendant the right to a fair trial. Accordingly, we find that defendant has failed to establish that any error committed by the court on this issue rose to the level of plain error.

¶ 51 C. The Court Did Not Abuse its Discretion in Precluding Defendant from Cross-Examining Octavia Regarding her Conversation with Defendant

¶ 52 Defendant finally contends that the court erred in precluding him from cross-examining Octavia regarding other statements he made to her under the doctrine of completeness. Defendant contends that during its direct examination of Octavia, the State asked her about her conversation with defendant on the night of the shooting. Defendant asserts that this opened the door for defendant to introduce other pertinent portions of the conversation to provide context for the portions of the conversation introduced by the State. Defendant contends that when defense counsel attempted to do so, however, the court improperly sustained the State's objections to the questions. At the outset, we observe that the trial court may, in its discretion, limit the scope of cross-examination (*People v. Terrell*, 185 Ill. 2d 467, 498 (1998)) and we will not reverse the trial court's ruling regarding the latitude allowed on cross-examination absent an abuse of that

discretion (*People v. Johnson*, 2014 IL App (2d) 121004, ¶ 78 (citing *People v. Hall*, 195 Ill. 2d 1, 23 (2000)).

¶ 53 A. Octavia's Rebuttal Testimony

¶ 54 The State called Octavia in rebuttal to testify about an hours-long conversation she had with defendant after the shooting. Octavia testified Defendant told her that he shot Randall because he gave her a check for $60,000, which Randall deposited into her bank account. On cross-examination, defense counsel asked Octavia about this testimony.

"Q. Now, [defendant] told you he had given a check to [Randall] because he didn't have [a bank account]; isn't that what he told you?

A. Yes.

Q. He told you that she gave him security information that would allow him to have access to the account; is that correct?

[STATE'S ATTORNEY]: Objection.

THE COURT: Sustained.

[DEFENSE COUNSEL]: Judge, I'm not exactly sure why there is an objection. It seems to me she went into this statement. I think I have a right under the doctrine of completeness to go into the complete statement.

THE COURT: She went in as a prior inconsistent statement by [defendant]. So what are you trying to get in in its entirety under the doctrine of completeness?

[DEFENSE COUNSEL]: I am trying to get out exactly what [defendant] said to her.

[STATE'S ATTORNEY]: It's a prior consistent statement by the defendant, Your Honor.

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[DEFENSE COUNSEL]: You know, she brings out the fact that there was a statement over a course of three or four hours. Obviously there was a lot of colloquy between [defendant] and [Octavia]. I believe that once she opens the door to that particular statement, whether it be for purposes of impeachment, —She just didn't go to the statement and say during the course of the conversation did he say this to you or say that to you. She developed the fact that this was a three or four hour conversation. I believe that I have the right, since she opened the door to this conversation, to go through exactly what [defendant] told her.

THE COURT: Respectfully that objection is sustained."

In his posttrial motion for a new trial, defendant contended that the State opened the door for defendant to offer his complete statements to Octavia through the doctrine of completeness. In denying defendant's motion, the court found that under the doctrine of completeness, the court may permit defendant to introduce the balance of a statement where the jury may have been misled about what the defendant was purported to have said based on the testimony presented by the State. The court found that this was not the situation with Octavia's testimony in this case and determined that "the parties did make a full record on this issue."

¶ 55 B. Doctrine of Completeness

¶ 56 "The completeness doctrine is an exception to the hearsay rule and provides that a party may introduce the balance of a writing or an oral statement which has been introduced by an opponent for the purpose of explaining, qualifying or otherwise shedding light on the statement."

People v. Brown, 249 Ill. App. 3d 986, 990 (1993). However, "a defendant has no right to introduce portions of a statement which are not necessary to enable the jury to properly evaluate the portions introduced by the State." (Internal quotation marks omitted.) *People v. Craigen*, 2013 IL App (2d) 111300, ¶ 45 (quoting *People v. Caffey*, 205 Ill. 2d 52, 91 (2001)). As such, the remainder of a writing, oral statement, or recording, is admissible if necessary to prevent the trier of fact from being misled, to place the admitted portion in the proper context, or to shed light on the meaning of evidence already received. *Craigen*, 2013 IL App (2d) 111300, ¶ 45.

¶ 57 Here, defendant contends that under the doctrine of completeness, he should have been permitted to cross-examine Octavia regarding what defendant told her about the bank account. In particular, defendant sought to cross-examine Octavia regarding whether defendant told Octavia that he had provided the security information for the account to Randall. Defendant asserts that the distorted version of defendant's conversation with Octavia that the State presented hindered defendant's credibility, particularly with regard to the amount of the money deposited into the bank account. Octavia testified that defendant told her that he deposited $60,000 into the shared bank account, while defendant testified it was only $16,000. During closing argument, the State used this discrepancy to attack defendant's credibility. Defense counsel sought to cross-examine Octavia to show that what defendant told her was consistent with his trial testimony and her belief that defendant deposited $60,000 into the account was likely the result of a misunderstanding on her part.

¶ 58 We initially observe that defendant failed to make an offer of proof on this issue. "When a defendant claims that he has not been given the opportunity to prove his case because the trial court improperly barred evidence, he 'must provide [the] reviewing court with an adequate offer of proof as to what the excluded evidence would have been.' " *People v. Pelo*, 404 Ill. App. 3d

839, 875 (2010) (quoting *In re Estate of Romanowski*, 329 Ill. App. 3d 769, 773 (2002)). An offer of proof serves two purposes: (1) it discloses to the court and opposing counsel the nature of the offered evidence, enabling the court to take action, and (2) it provides the reviewing court with an adequate record to determine whether the trial court's action was erroneous. *Pelo*, 404 Ill. App. 3d at 875 (citing *People v. Thompkins*, 181 Ill. 2d 1, 10 (1998)). Here, defendant contends that the testimony he would have elicited from Octavia would have been consistent with his own testimony. Without an offer of proof, however, defendant's contentions before this court amount to mere unpreserved speculation.

¶ 59 In addition, defendant's contention that the testimony he sought to elicit from Octavia was consistent with his own trial testimony supports the trial court's ruling. The court may properly limit defendant's cross-examination of where defendant was able to present the same evidence to the trier of fact that he claims he was precluded from presenting during his cross-examination of a State witness. *People v. Hudson*, 198 Ill. App. 3d 915, 925 (1990) (citing *People v. Houston*, 151 Ill. App. 3d 102, 113 (1986)) ("We also conclude that the trial court's limitation of defense counsel's cross-examination was not error where defendant was able to deny the charges in his own testimony and present the same evidence to the trier of fact that he claims he was precluded from presenting during his cross-examination of the State's witnesses.") Here, the court found that the parties had "made a full record on this issue," and this finding is supported by the testimony defendant presented and the testimony defendant contends that he would have elicited on cross-examination of Octavia. Accordingly, we find that the circuit court did not abuse its discretion in limiting defendant's cross-examination of Octavia because the evidence defendant sought to introduce was not necessary to prevent the trier of fact from being

misled, to place the admitted portion in the proper context, or to shed light on the meaning of evidence already received.

¶ 60 III. CONCLUSION

¶ 61 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 62 Affirmed.