2019 IL App (5th) 160407-U

NO. 5-16-0407

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Madison County.
	)	
v.	)	No. 14-CF-397
	)	
CHARLES D. THOMAS,	)	Honorable
	)	Neil T. Schroeder,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Presiding Justice Overstreet and Justice Moore concurred in the judgment.

ORDER

¶ 1 *Held*: The defendant's conviction for aggravated discharge of a firearm within 1000 feet of a school is affirmed where (1) the trial court did not abuse its discretion in denying his motion *in limine* regarding evidence that the school was placed on lockdown in response to the report of the shooting; (2) his conviction was not against the manifest weight of the evidence where any rational trier of fact could have determined that he knowingly or intentionally fired a shot in the direction of another person; (3) the court did not abuse its discretion in denying his motion for change of venue where he failed to meet his burden of making a *prima facie* showing of a systematic exclusion of African Americans in the venire; and (4) he forfeited his argument that his sentence was excessive by not filing a written postsentencing motion and by not arguing plain error.

¶ 2 At a jury trial in the circuit court of Madison County, the defendant, Charles D. Thomas, was convicted of one count of aggravated discharge of a firearm within 1000

feet of a school (720 ILCS 5/24-1.2(a)(2), (b) (West 2012)) in that he knowingly discharged a firearm in the direction of Trevonte Caldwell, while located within 1000 feet of Lovejoy Elementary School (Lovejoy School). He was sentenced to 22 years' imprisonment. On appeal, the defendant contends that (1) the trial court erred in denying his motion *in limine* to exclude evidence referring to Lovejoy School being placed on lockdown after it was reported that a shooting had taken place outside of the school; (2) his conviction was against the manifest weight of the evidence; (3) the court erred in denying his motion for a change of venue; (4) the court erred in denying his motion to discharge the jury panel; and (5) his sentence was excessive. For the following reasons, we affirm.

¶ 3 On March 6, 2014, the defendant was charged by indictment with aggravated discharge of a firearm within 1000 feet of a school (*id.*), a Class X felony, in that he knowingly discharged a firearm in the direction of Trevonte Caldwell, while located within 1000 feet of Lovejoy School, and a second count of aggravated discharge of a firearm within 1000 feet of a school (*id.* § 24-1.2(a)(1), (b)), in that he knowingly discharged a firearm at a building on the Lovejoy School campus where he reasonably should have known that the school was occupied and while located within 1000 feet of a school.

¶ 4 On June 6, 2016, the defendant filed a motion for change of place of trial in which he argued that he would be unable to receive a fair trial in Madison County because he had been successful in a previous lawsuit against the county for injuries that he received while being held in jail and had received a settlement. He contended that he had been

deprived of plea offers normally received by defendants who were facing similar (if not more severe) criminal charges and people with criminal backgrounds similar to his. He argued that this disparity was due, in part, to his previous lawsuit against the county. He further argued that Judge Kyle Napp *sua sponte* reassigned his case to Judge Neil Schroeder less than one week before trial and after the conference pursuant to Illinois Supreme Court 402(d) (eff. July 1, 2012) was held; and the reassignment, which he contended was unexpected and highly unusual, had provided uncertainty and impacted his decision on whether to plead guilty to such a degree that he had been prejudiced.

¶ 5 On June 10, 2016, the trial court held a hearing on the defendant's motion for change of place of trial. At the hearing, the State expressed confusion as to the defendant's prayer for relief because a change of venue would only result in a different jury; the prosecutor and the judge would remain the same, and there had been no allegations that the defendant could not receive a fair trial from a Madison County jury.

¶ 6 After hearing arguments, the trial court instructed that just because a judge conducted a Rule 402(d) conference did not mean that the judge was bound to the case and must try the case. Thus, the court found that the fact that a judge participated in a Rule 402(d) conference was not a basis under which a defendant could argue prejudice if that judge does not try the case. In addition, the court noted that a judge cannot use the facts heard at the Rule 402(d) conference in making rulings on the law at the trial. Instead, the court was required to rule on the law as it heard the facts during trial through the presented evidence. Responding to the defendant's argument that a *sua sponte* reassignment mere days before trial was highly unusual, the court stated as follows:

"But more importantly to this Court, statements were made in that motion that give the impression that there was some nefarious reason for this Court reassigning this case. And I would note that I am a senior circuit judge in this building. I carry a full caseload, hundreds of cases on my caseload, as does the other two judges in this building who hear jury trials ***. *** I also have an Alternative Court that—I'm the supervising judge of two alternative Courts. So as a senior circuit judge, it is absolutely within my power and my right to reassign a case to a junior judge, an associate judge in this particular matter to hear motions, to try cases.

I've done it. [Defense counsel] leads, by his pleadings, leads one to believe that that just doesn't happen here. And that's simply not the case. It happens often. *** When I was an associate judge in this building, I was assigned motions to hear. I was also assigned trials to hear. After Judge Romani had heard many motions on a case, he then reassigned it to me for trial and disposition.

There are many reasons why a judge reassigns a case at different times, because of their dockets, because of other cases they have going out. Next week I actually had a setting on Wednesday to go to Mt. Vernon for an Administrative Office of Illinois Courts, a mandatory meeting about certification for the specialty Courts. That was one of the things I was supposed to go to next week. I was actually really juggling trying to get this trial in and also go to that and I was going to make it work.

But ultimately what it came down to *** and I'm putting this on the record because I don't want there to be any question about why this case was reassigned. It wasn't reassigned because of any lawsuit, which truly I know nothing about. I know there's pleadings about it that it was filed. I wasn't a participant in that lawsuit. I don't know anything about it. I hadn't read about it. And I truly didn't care [about] it. And I don't care about that lawsuit. That's irrelevant to this Court.

What I care about is ensuring that you are given a fair trial and that you are given the opportunity to present a defense, if you wish to; that you're allowed to cross examine witnesses; that you have a jury who's fair and impartial and will listen to the facts and decide the case on the facts. That is what I care about as a judge."

¶ 7 The trial court then went on to state that the reassignment was due to her being diagnosed with a medical condition with an indeterminate outcome, which necessitated surgery. She explained that she was not going to delay the case any further because it

had already been delayed on multiple occasions. The court then reiterated that changing the venue would not change the judge as a Madison County judge would travel to the new venue to hear the case and that a change of venue would only change the prospective jurors. Accordingly, the court denied the defendant's motion, finding that there was nothing legally cited in the motion that would support a change of venue and that there was no evidence presented that the defendant could not receive a fair trial in Madison County. After announcing the ruling, the court stated as follows:

> "The final thing that I would note is there was a brief comment made about your belief that you are being treated disparagingly from other defendants. And I would note for you that every case is different. Every defendant is different. And every state's attorney is different. And [your attorney] pointed to [another defendant], who pled to a Class X felony. The same charge as was in this particular case. And was sentenced to ten years on a negotiated plea. I would note a couple things about that. An offer made to you, and this was put on the record last time, so that's where I am getting this from, but an offer was made to you at one point in this particular case to plead you to the charge for 12 years, which is only two years above what [the other defendant] pled to.
>
> And I would also note that as I look at your criminal history ***, and we've talked about this before, but I make this point because it's a change in who the defendants are, you have a prior felony from 2006 that was reduced to misdemeanor for unlawful sale or use of a blackjack. You have a 2006 case armed robbery, robbery, and residential burglary. You pled to the robbery and were given probation. You have a 2008 case where you were convicted of being a felon in possession of a firearm. You had a 2011 manufacture delivery of cocaine charge that was amended to a possession of cannabis charge, and you were given time in the Department of Corrections. You have pending before this Court the case that's proceeding to trial ***. All the other cases I listed, but there is also a new felony case that was not pulled that you are charged with as well. And I want to say that was the charge of aggravated fleeing but *** I don't have that in front of me. So you have a whole bunch of pending charges. You've been to prison. And you have convictions for felonies.
>
> I had the clerk pull out [the other defendant's] *** criminal history. *** [He] had one felony ever and that was the charge that he just pled for 10 years in the Department of Corrections on. So it would seem that the offer to you of 12

> years, when it was made initially, given all of your criminal history, if anybody was complaining, my guess it would be [the other defendant] about the sentence that he's taking for having no priors, no charges other than misdemeanors. *** So I don't think that the offer, the one time offer that was made to you and you turned it down and then in the plea negotiations and discussion about where you were at and what you wanted versus what the State was offering, you wanted single digits and day for day. State said no. We want 85 percent. And they were asking for up to 20. *** Those numbers don't seem that far away when you look at what [the other defendant] pled to and what your criminal history is. *** If you think you're being treated unfairly, I don't know that factually you are."

¶ 8 On June 13, 2016, the defendant's case was called for jury trial and *voir dire* was conducted. During *voir dire*, the defendant's counsel filed a motion to discharge the jury panel, contending that the representation of African Americans in the jury pool was not a fair and reasonable representation of African Americans in the community. Defense counsel noted that out of the 36 potential jurors, only 4 of them were African American, and he contended that the underrepresentation was due to a systematic exclusion of African Americans in the jury selection process. He further argued that the city of Alton, which was where the defendant was from and had the largest concentration of African Americans in Madison County, was inadequately represented by the jury pool and that the techniques for gathering jury candidates were not sufficient to ensure that African Americans were adequately represented on potential juror compilations in Madison County. After hearing defense counsel's and the State's arguments on the motion, the trial court stated as follows:

> "[The defendant] is obviously as suggested clearly of African American [descent]. There are four jurors on the venire today that I would say are clearly of African American descent. Whether there are additional ones is unclear and certainly there may be that; we just don't know. That is not something that is often sometimes easily determined.

Regardless, your affidavit is conclusory with regard to how you believe that the selection process was not fairly conducted in this case. It seems to me you are challenging the selection process as a whole, that you think it should go beyond what the statute requires.

And unfortunately until such time as the statute is changed I think I am bound by the statute. I have no reason—and your affidavit sets forth no reason to believe why the venire in this particular case was not selected according to the statute using the statutory guidelines.

With regard to the other issue you bring up is the percentage. The apparent percentage of the distinctive group being African Americans that are represented in this panel as compared to those in the community or more particular those in particular communities.

As you indicated in your affidavit, assuming it is correct, the population of Madison County has a 7.9 percent representation of African Americans. As you indicated and I previously indicated on its face it appears there are 11 percent. That 11 percent of the venire or 4 out of 36 is of African American descent which well exceeds the county census that you are citing.

Additionally, I believe there is case law that indicates that *** the Defendant does not have a right to a cross sectional representation of the entire county, and that is *People v. Peeples*, 1993 Illinois Supreme Court Case, 155 Ill. 2d 422. That case involved a Cook County practice of drawing jurors from a region of the county rather than the county as a whole.

So based on that I think the indication of, you know, that certain communities you believe are under-represented and therefore that leads to an under-representation of African Americans in the venire is not true. There are more African Americans in the pool today percentage-wise than there are in the county.

* * *

So the bottom line is, I do not find that you made a *prima facie* case with regard to discharging the jury panel pursuant to 725, 5/114-3(c)."

Thus, the trial court denied the defendant's motion to discharge the jury panel, and the case proceeded to *voir dire.*

¶ 9 That same day, the State moved to nol-pros count II and expressed its intent to proceed to trial only on count I. On June 14, the following day at trial, the defendant filed a motion *in limine* asking the court to exclude any evidence that Lovejoy School was placed on lockdown on the day of the shooting because the probative value of that evidence was outweighed by its tendency to unduly influence and prejudice the jury. The trial court denied the defendant's motion, finding that the evidence is relevant as the charge alleged a shooting within 1000 feet of a school. The attorneys then presented their opening statements and presented their witnesses.

¶ 10 Patrick Kirby Thompson, a 9-1-1 dispatcher for the Alton Police Department, testified that on February 19, 2014, at approximately 8:30 a.m., he received a report of shots fired on Tremont Street. The 9-1-1 call was then admitted into evidence.

¶ 11 Mike O'Neill, a detective with the Alton Police Department, testified that he has been the school liaison officer for Lovejoy School in Alton for nine years; a school liaison officer assists the schools with any incidents that occur at the school or happen in the community and are brought to the school. On February 19, 2014, he received a call from the principal of Lovejoy School because approximately two or three shots had been fired in close proximity to the school. A person who was outside the school dropping off a child heard the shots. The principal told him that the school was currently on lockdown and that an African American male wearing a green neon shirt was pacing back and forth just across the street from the school. After talking to the principal, Detective O'Neill went to the school and walked through to make sure that there was no emergency situation inside the school. He did not find any evidence of a direct threat within the

school or on the grounds and had learned through radio traffic that the threat had moved away from the area. Based on that information, he instructed the principal to scale back the lockdown to a soft lockdown so that classes could resume as normal. He testified that the shots were fired approximately 367 feet from the school.

¶ 12 Trevonte Caldwell testified that he was walking on Tremont Street in Alton. He was near the intersection of Tremont and Marilla when he observed a red SUV driving slowly and heard the people inside talking. He then noticed that the SUV had completely stopped at an intersection and stayed there. He stopped walking and tried to see who was inside. The SUV then slowly moved forward, and Trevonte heard voices inside the vehicle but could not hear what was said. The driver then reached in the back of the vehicle, grabbed a backpack, yelled to him out of the window "take yo ass home," reached over the passenger, pointed the gun directly at him, and started shooting. After Trevonte saw the gun pointed at him, he turned around and started running. There were three or four shots, and he did not see the first shot because he was running, but the second shot hit the ground near his foot. He jumped behind a bush between the SUV and Lovejoy School and stayed there until the SUV left. He did not call 9-1-1, but he did talk to the officers at the scene. He believed that the driver was shooting at him, and he did not see another person or vehicle near him when the shooting started.

¶ 13 Trevonte believed that there were three people in the vehicle. He thought the front passenger looked like Derrick Hubbard but was not sure, and he did not see the driver's face. He admitted telling a detective that Derrick was the driver that day. As the driver

was looking in the backpack, Trevonte just stood there watching the SUV; he did not move until the driver started shooting.

¶ 14 Leon English Jr. testified that he was the third passenger in the red Ford Escape; he was sitting in the backseat, Derrick was sitting in the passenger seat, and the defendant was driving. There was a backpack in the seat next to him. They were riding around, smoking marijuana, when they saw Trevonte walking by himself. The defendant stopped at the intersection and yelled at Trevonte to go home. The defendant then reached into the backpack, pulled a gun out, and fired three shots out the passenger window toward the ground. Leon observed the bullets hit the ground. When asked in which direction the gun was pointed in relation to Trevonte, Leon stated, "Yeah, I would think it was pointed directly at him." When pressed whether he saw the gun being pointed in Trevonte's direction, he stated that the gun was pointed directly at Trevonte. One of the shells from the gun landed in the back of the SUV.

¶ 15 After firing the gun, the defendant drove off, and they went to a house on Booker Street in Alton. They got out of the car, and the defendant began cleaning the shell casings out of it. Leon thought there were approximately two shell casings in the car, and he did not see what the defendant did with them. Leon was inside the house when the police arrived. He attempted to run but was apprehended. Before this incident, Leon had never seen the defendant before and had not known who he was when he got into the vehicle with him and Derrick.

¶ 16 Ashley Morales-Sanders, who was the defendant's friend, testified that on February 19, 2014, she let him borrow her red Ford Escape. He was supposed to pick up

Derrick Hubbard and then bring the vehicle right back to her. He did not bring it back to her, and she had to get it from the police.

¶ 17 Derrick Hubbard testified that he was close friends with the defendant. On February 19, 2014, he called the defendant to pick him up. As they were driving, they saw Leon and also picked him up. Derrick was sitting in the passenger seat, and Leon sat in the back seat behind him. They were driving down Pleasant Street when they saw Trevonte walking down the street; Derrick had played basketball with Trevonte in the past but did not really know him. They stopped at the intersection, and the defendant told Trevonte to go home. The defendant then started shooting out of the passenger side window. Derrick explained that he was initially looking at Trevonte, but when he heard the gunshots, he turned around and saw the gun near his face. He could not tell whether the defendant was shooting in Trevonte's direction, and he did not see where the bullets landed. He clarified that the defendant was not shooting directly toward Trevonte but was instead shooting on the side of him. He guessed that the defendant pulled the gun from the back of the vehicle but did not see this happen. The defendant fired the gun approximately three times and then drove off. They eventually went to the house on Booker Street, which is where the police apprehended them. Derrick thought that the defendant threw the shell casings in the bushes outside the house. He acknowledged that when he was interviewed by the police, he told the interviewing officer that the defendant was shooting in the air and that the defendant was just trying to scare Trevonte. However, he explained that the defendant was not shooting "literally in the air" as the SUV was not a convertible, and the defendant did not shoot through the vehicle's roof.

The defendant instead fired the gun out of the passenger side window, and the gun was inside the vehicle near Derrick's face when the defendant shot it. Derrick also acknowledged that the defendant never told him why he shot the gun out of the window, and he was just guessing that the defendant was trying to scare Trevonte.

¶ 18 Douglas Schaefer, an officer with the Alton Police Department, testified that he responded to the call of shots fired near the Lovejoy School. He was told that the suspect's vehicle was a small red SUV occupied by three African American males, and as he was driving to the area, he observed a vehicle meeting that description traveling west. As the vehicle passed him, he observed that there were three black males inside and that the vehicle had turned down a street in which there was no outlet. He informed dispatch that he had possibly located the suspect, and he waited at the intersection for other units to arrive in the area and to see if the vehicle left the area; he knew that the vehicle would have to pass him again to leave the area. After other officers arrived in the area, Officer Schaefer then drove in the direction that the vehicle had traveled and found it parked in front of a residence on Booker Street. He stopped to observe the front of the residence while another officer observed the rear of the residence. While watching the house, he observed an African American male wearing a gray hooded sweatshirt exit the house through the front porch area, walk on to the porch, turn and look at him while he was getting out of his squad car, and then turn around and reenter the residence. The man was later identified as Leon. He heard over the radio that there was another African American male exiting the rear of the residence; the man was later identified as Derrick. Officer Siatos assisted Officer Cole in detaining that suspect. Leon then came outside again and

started walking down the sidewalk in a northerly direction. Officer Schaefer detained him for investigation. They had not detained the third man at this time. Officer Schaefer then waited outside the residence to make sure that no one else exited the house or messed with the red SUV until other officers arrived on the scene. His police vehicle was visible from the front of the house. Once other officers arrived, he left the area, and he did not have any further involvement with the investigation.

¶ 19 James Hunter, a sergeant with the Alton Police Department, testified that he also responded to the report of the shooting near Lovejoy School. He went to the Booker Street house because he knew that Officer Schaefer was waiting for assistance before attempting to apprehend the armed suspect. When he arrived at the house, there were several officers already at the scene, and they had two suspects in police custody. He eventually entered the residence to apprehend the third suspect, whom he found hiding behind a bedroom door. He identified the suspect as the defendant. The defendant was arrested, and the officers continued to search the residence for any evidence related to the case. While searching, they found a key belonging to a Ford vehicle located underneath a bed. He acknowledged that the defendant did not attempt to flee or resist arrest when he was found in the house.

¶ 20 Tony Bumpers, an officer for the Alton Police Department, testified that he was a detective with the investigations bureau at the time of the shooting. His role in the investigation was to search for shell casings near the Booker Street residence. The Ford Escape was still parked near the residence when he arrived there. He discovered two shell casings in a wooded area about 10 to 15 feet from the Ford Escape. The wooded

area was on the passenger side of the vehicle. The defendant had told Lieutenant Golike to search near the wooded area, and Lieutenant Golike relayed that information to him.

¶ 21 Detective O'Neill was recalled as a witness. After checking on the school, he received information that assistance was needed at the Booker Street house. When he arrived, the residence was secure and ready to be searched. He was with Sergeant Hunter when the Ford key was found. He took the key outside and discovered that it unlocked the Ford Escape parked outside the house. After checking the vehicle, he went back inside and returned to the bedroom to continue searching. He then discovered a black backpack, which contained a black semiautomatic 9-millimeter handgun with a brown handle, underneath the bed. There were no bullets in the magazine, but there was a live round of ammunition in the chamber. The defendant's wallet was also found inside the backpack. There were also two other live ammunition rounds found inside one of the backpack's pockets.

¶ 22 Scott Golike, a lieutenant with the Alton Police Department, testified that he was acting chief of detectives at the time of the shooting, which occurred at approximately 8:30 a.m. He went to the Booker Street residence to negotiate consent to search from Candies Wade, a resident of the house. After they received permission to search the house, they located the defendant hiding behind a door in a bedroom. The defendant was taken to the Alton Police Department, and Lieutenant Golike interviewed him. During the course of the interview, the defendant admitted to driving the Ford Escape, to shooting out of the vehicle's window in Trevonte's direction and near him to make him run, and to throwing the spent shell casings across the street from the Booker Street

residence. Lieutenant Golike told Detective Sergeant Cooley and Detective Bumpers where the spent shell casings were located and had them search the area to recover them. Two shell casings were subsequently recovered from that area.

¶ 23 An edited video of the defendant's interview was played for the jury. In the interview, the defendant admitted that, on the day in question, he was driving the Ford Escape that he had borrowed from Ashley to pick up Derrick. While driving, Derrick saw his cousin, Leon, and asked the defendant to pick him up; the defendant did not know Leon. Derrick was sitting in the passenger seat, and Leon was in the backseat.

¶ 24 They were stopped at an intersection on Pleasant Street, when the defendant observed a man, who was walking in his direction, looking at him. He did not know the man's name but described the man's shirt as bright green. He noticed the man had stopped in the middle of the street and was looking at him. The defendant explained that the man was mad about something, was gesturing at him, and was trying to see who was inside the vehicle. The defendant then traveled through the intersection, stopped the vehicle, and asked the man what was up. The man did not respond, so the defendant got his 9-millimeter gun from the backseat and pointed it in his direction; the gun was black with a brown handle. The man did not move and was still looking at him so he fired the gun one time, and the shot went to the left of the man. The man then ran, the defendant fired another shot in the air to scare him, and then he drove off. He did not think that he fired the gun a third time. He did not say anything to the passengers before pulling the gun out. He explained that he was not trying to shoot the man or hurt him; he was just

trying to get him to move. He further explained that the shots did not land close to the man. He did not see anyone else outside when he fired the gun.

¶ 25 After the shooting, he was driving to his mother's house when he passed a squad car. He saw the police car stop, and he continued around a corner and parked the car in front of a friend's house on Booker Street. They got out of the car, the defendant grabbed his backpack, he went inside the house when he saw the squad cars approaching, and he closed the door and locked it. He then went to a back bedroom and hid the backpack. He left the car keys in that room and then crawled into another room where he hid behind the door. The officer found him behind that bedroom door.

¶ 26 Aaron Horn, a firearm specialist for the Illinois State Police forensic laboratory, testified that the two shell casings recovered at the Booker Street address were fired from the 9-millimeter pistol found in the defendant's backpack.

¶ 27 At the conclusion of argument, and after deliberations, the jury found the defendant guilty of aggravated discharge of a firearm within 1000 feet of a school.

¶ 28 On July 15, 2016, the defendant filed a posttrial motion for judgment of acquittal notwithstanding the jury's verdict, arguing, in pertinent parts, that the evidence was insufficient to find him guilty beyond a reasonable doubt, that he was prejudiced by the court's *sua sponte* reassignment of the case to another judge "mere days before trial" and following the Rule 402(d) conference because it negatively impacted his decision-making capacity as to whether to plead guilty, that the trial court erred in failing to hold an evidentiary hearing in regard to his challenge to the racial composition of the jury, and

that the court erred in denying his motion *in limine* to exclude evidence that the school was placed on lockdown as a result of the shooting.

¶ 29 On August 26, 2016, the trial court held a hearing on the posttrial motion and a sentencing hearing. After hearing counsels' arguments on the motion, the court denied it in its entirety. The court then proceeded to the sentencing hearing. The State presented testimony from Captain David Joseph, the jail administrator at the Madison County Sheriff's Office, who testified that the defendant was identified as being involved, along with several other inmates, in battering another inmate and inflicting injuries. The defendant then made a statement in which he expressed remorse for his conduct.

¶ 30 The State recommended that the defendant be sentenced to 30 years' imprisonment. In making this recommendation, the State argued that the defendant's conduct was a senseless act of gun violence in that he fired the gun in Trevonte's direction without any provocation while Trevonte was unarmed, and he fired the gun 367 feet from a school. In aggravation, the State argued (1) that the conduct threatened serious harm to Trevonte and anyone else who was outside on that day; (2) that the defendant had a history of prior delinquency and criminal activity in that he had a long history of admitted substance-abuse issues, had previous misdemeanor convictions for disorderly conduct, criminal trespass, and fleeing and attempting to elude, had at least two different misdemeanor convictions for resisting arrest, assault, and unlawful use of a weapon, had a 2007 robbery conviction, had a 2008 felon in possession of a weapon conviction, had a 2011 possession of cannabis conviction, and currently had four other cases pending in Madison County court, which included the incident in jail; (3) that a

high sentence was necessary to deter others from committing the same crime as this was an unprovoked act of gun violence; and (4) that he was out on bond on two felonies at the time that he committed the offense.

¶ 31 In response, defense counsel recommended that the defendant be sentenced to 10, 11, or 12 years' imprisonment. Counsel argued that the defendant accepted responsibility for his actions; that he gave an honest, straightforward statement to the Alton Police Department about what happened that day; that he did not intend to hurt anyone; and that that the incident had nothing to do with the school. In mitigation, counsel argued that the defendant's conduct neither caused nor threatened serious harm as Trevonte was not injured that day; that the defendant did not contemplate that his conduct would cause or threaten serious physical harm to another; that the defendant's prior record included sentences for much smaller amounts, that the defendant was still relatively young and could be rehabilitated, that he had substance-abuse issues, and that he had suffered a severe head injury from an incident that occurred at the jail.

¶ 32 After hearing counsels' recommendations and the defendant's statement, the trial court sentenced the defendant to 22 years' imprisonment to be followed by 3 years of mandatory supervised release. In making the decision, the court considered the evidence adduced at trial; the presentence investigation; the defendant's history, character, and attitude; the evidence and arguments presented at sentencing; the financial impact of incarceration; and the statutory factors in aggravation and mitigation. Regarding the aggravating factors, the court considered the defendant's history of prior delinquency and criminal activity and that the sentence was necessary to deter others. The court

concluded that the threat of serious harm was not an appropriate aggravating factor to consider because it was a factor inherent in the offense and that there was insufficient evidence to consider the allegation that the defendant was on bond when he committed this offense. The court did not find that any of the mitigating factors applied. The defendant appeals his conviction and sentence.

¶ 33 The defendant's first argument on appeal is that the trial court abused its discretion in denying his motion *in limine*. In general, a trial court's ruling on a motion *in limine* will not be reversed absent a clear abuse of discretion. *People v. Gliniewicz*, 2018 IL App (2d) 170490, ¶ 32. A trial court abuses its discretion where its decision is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the court. *Id.*

¶ 34 Specifically, the defendant contends that Detective O'Neill's testimony regarding Lovejoy School being on lockdown was cumulative in that the State could have simply used Google maps to show the proximity to the school to the shooting, and it was unduly prejudicial in that the jury "was treated to a dissertation concerning elementary-age school children taking precautionary measures which were largely unnecessary under the circumstances." We disagree and find that the trial court did not abuse its discretion in denying the defendant's motion *in limine*. The defendant was charged with aggravated discharge of a firearm in Trevonte's direction, while located within 1000 feet of Lovejoy School. To prove the defendant guilty of this offense, the State must prove, among other things, that a firearm was actually discharged within 1000 feet of a school. Evidence that the school authorities reported, and acted in accordance with, the occurrence of the firing

of a firearm in proximity to Lovejoy School is relevant to show that both a firearm was discharged and that the discharge occurred near the school. Moreover, we find that the details of the lockdown presented by Detective O'Neill's testimony did not provide any further information than necessary to explain the lockdown and to establish that this procedure was conducted precisely because gunshots were reported near the school; there was not any testimony about the reactions of the school staff or students to the lockdown. Accordingly, we conclude that the trial court did not abuse its discretion in denying the defendant's motion *in limine.*

¶ 35 The defendant next argues that his conviction was against the manifest weight of the evidence. When presented with a challenge to the sufficiency of the evidence, it is not the function of the reviewing court to retry a defendant. *People v. Collins,* 106 Ill. 2d 237, 261 (1985). Instead, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Id.* Under this standard, it is the trier of fact's responsibility to determine witness credibility, the weight to be given to their testimony, and the reasonable inferences to be drawn from the evidence. *People v. Emerson,* 189 Ill. 2d 436, 475 (2000).

¶ 36 A person commits the offense of aggravated discharge of a firearm when he knowingly or intentionally discharges a firearm in the direction of another person. 720 ILCS 5/24-1.2(a)(2) (West 2012). Under subsection (b), aggravated discharge of a firearm is a Class X felony where it is committed within 1000 feet of a school. *Id.* § 24-1.2(b). The defendant here argues that the State did not present any evidence that the

defendant knowingly or intentionally discharged a firearm in Trevonte's direction. We disagree. Trevonte testified that the driver of the Ford Escape pointed the gun directly at him and then fired three or four shots near him, one of which hit the concrete near his feet. Leon testified that the defendant fired three shots out of the passenger window toward the ground, that he observed the bullets hit the ground, and that the gun was near his face when it was fired. When pressed as to whether the gun was pointed at Trevonte, he replied, "Yeah, I would think it was pointed directly at him." Derrick testified that the defendant was not shooting directly toward Trevonte but admitted that the defendant was shooting to the side of him. During his interview, the defendant admitted that he had pointed the gun in Trevonte's direction and fired to the left of him. The defendant admitted that he was trying to scare Trevonte.

¶ 37 The defendant contends that the evidence reveals that he was firing the gun in the air and thus was merely acting recklessly. However, we conclude that, based on the evidence presented at trial, any rational trier of fact could have reasonably found that the defendant, who was admittedly sitting in the driver's seat of a vehicle with his foot on the brake when he fired the gun through the passenger window, was not firing in the air and was instead firing in Trevonte's direction. Accordingly, we find that, when considering the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the defendant guilty of aggravated discharge of a weapon in the direction of another while within 1000 feet of a school beyond a reasonable doubt.

¶ 38 The defendant's third contention on appeal is that the trial court erred in denying his motion for a change of venue because he could not receive a fair trial in Madison

County. As evidence that he could not receive a fair trial there, he cites to various events, such as the court's ruling on the motion *in limine* in regard to the school lockdown and the sudden reassignment of his case, as evidence of the prejudice against him.

¶ 39 Section 114-6(a) of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/114-6(a) (West 2014)) allows a defendant to move for a change of place of trial on the ground that there exists in the county in which the charge is pending such prejudice against him on the part of the inhabitants that he cannot receive a fair trial in that county. A motion for change of place of trial must be supported by an affidavit stating the nature of the prejudice. *Id.* § 114-6(b). The decision whether to grant a change of venue is within the trial court's discretion and will not be disturbed absent an abuse of that discretion. *People v. McPherson*, 306 Ill. App. 3d 758, 765 (1999).

¶ 40 Here, there is nothing in the record that shows that the inhabitants of Madison County were so prejudiced against the defendant that he could not receive a fair trial there. In fact, there is nothing in the record to suggest that the events cited by the defendant were even known to the jury at the time of the trial. With regard to his argument that the reassignment of a different judge to his case prior to trial was evidence of such prejudice, we find that argument has no merit. After being accused of wrongdoing in reassigning the case for trial, which is something that is within her authority as circuit judge of Madison County, Judge Knapp revealed highly personal details about her medical health to explain the sudden reassignment; there is absolutely no indication in the record that such reassignment was the result of bias against the

defendant. Accordingly, we find that the trial court did not abuse its discretion in denying the defendant's motion for change of place of trial.

¶ 41 The defendant's fourth contention on appeal is that the trial court erred in denying his motion to discharge the jury panel as the venire did not contain a fair cross-section of the community, namely, that the African American community was disproportionately underrepresented. Specifically, the defendant notes that out of the first 36 people called for *voir dire*, only 4 were of African American descent; that Madison County has an African American population of approximately 8-9%; and that Alton, the community where the defendant was from, has a 26% African American population.

¶ 42 Section 114-3(a) of the Code (725 ILCS 5/114-3(a) (West 2014)) provides that any objection to the manner in which a jury panel has been selected or drawn shall be raised in a motion to discharge the jury panel prior to the *voir dire* examination. The movant has the burden of proving that the jury panel was improperly selected or drawn. *Id.* § 114-3(c).

¶ 43 " '[T]he American concept of the jury trial contemplates a jury drawn from a fair cross section of the community.' " *People v. Hobley*, 159 Ill. 2d 272, 304 (1994) (quoting *Taylor v. Louisiana*, 419 U.S. 522, 527 (1975)). To establish a *prima facie* violation of the fair cross-section of the community requirement, a defendant must show (1) that the group alleged to be excluded is a distinctive group in the community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that the

underrepresentation is due to systematic exclusion of the group in the jury selection process. *Id.* at 304-05.

¶ 44 In this case, nothing in the record establishes that the alleged low number of African American venire members was the result of a systematic exclusion of the group in the jury selection process; the defendant has not shown that this resulted from anything other than pure chance. Moreover, as noted by the trial court, the defendant's own statistics failed to support a *prima facie* case of systematic jury exclusion. Taking it as true that 4 out of the 36 panel members were African American, the percentage of African Americans in the jury pool (11.1%) was higher than the percentage of the African American population in Madison County (8-9%) as a whole as stated in the defendant's own statistics. Accordingly, the defendant has failed to meet his burden of showing a *prima facie* violation of the fair cross-section of the community requirement.

¶ 45 Last, the defendant argues that his sentence was excessive. To preserve a claim of sentencing error for appellate review, a defendant is required to file a written postsentencing motion raising the issue. *People v. Reed*, 177 Ill. 2d 389, 394 (1997). Here, the defendant did not file a written motion to reconsider the imposed sentence even after the trial court provided sufficient admonishments. Moreover, although forfeited arguments related to sentencing issues may be properly reviewed for plain error, we note that the defendant has failed to argue either prong of the plain-error doctrine and, thus, he has forfeited plain-error review. See *People v. Hillier*, 237 Ill. 2d 539, 545-46 (2010).

¶ 46 For the foregoing reasons, we affirm the judgment of the circuit court of Madison County.

¶ 47 Affirmed.