2012 IL App (1st) 110229-U

FOURTH DIVISION
July 11, 2013

No. 1-11-0229

IN THE APPELLATE
COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 05CR401
	)	
MICHAEL TAYLOR,	)	The Honorable
	)	William H. Hooks,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Lavin and Justice Epstein concur in the judgment.

ORDER

¶ 1 *Held:* It was neither error, nor plain error, to allow cross-examination of defendant regarding previous sexual assault of a minor to which defendant had pled guilty. In addition, evidence against defendant was overwhelming, such that, even without the challenged testimony, a reasonable jury could have found defendant guilty of sexual assault.

¶ 2 Following a jury trial, defendant Michael Taylor was found guilty of four counts of criminal sexual assault and sentenced to four consecutive terms of six years' imprisonment. On appeal, defendant contends the trial court erred by allowing him to be subjected to cross-examination regarding other crimes, confirming, in the process, that he had previously committed

a sex crime similar to the one charged. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 In December 2004, defendant was charged with multiple counts of criminal sexual assault and aggravated criminal sexual abuse for misconduct with the 13-year old victim, W.T., between October 6, 2004, and November 11, 2004. During this time, defendant was a minister at the New Covenant Baptist Church and also worked as a case manager in the homeless shelter where the victim and his family had previously resided.

¶ 5 *Pre-Trial Motion and Interlocutory Appeal*

¶ 6 Prior to trial, the State filed a motion to present evidence of defendant's 1998 sexual offense as substantive evidence to show propensity pursuant to section 115-7.3 of the Code of Criminal Procedure (the Code) (725 ILCS 5/115-7.3 (West 2010)). In its motion, the State argued that defendant's 1998 sex offense stemmed from the commission of illegal sex acts with a 17-year old male victim. In that case, defendant, while acting as the chairman of the school board at the victim's high school, agreed to assist the victim with the college admissions process. Thereafter, defendant committed multiple sex acts with the victim, including: (1) rubbing the victim's penis with his hand; (2) performing oral sex on the victim; (3) licking the victim's anus; and (4) having the victim rub defendant's penis with the victim's hand. The State also alleged that defendant assaulted the victim at defendant's and the victim's residence, and that defendant gave money to the victim on several occasions. The State also alleged that, in the current charges, defendant was working at a shelter when he approached W.T. and this mother, encouraged W.T.'s mother to live with relatives, and offered to have W.T. live with him.

Thereafter, between October 6, 2004, and November 11, 2004, W.T. lived with defendant. During that time, defendant, while in his residence, performed oral sex on W.T., licked W.T.'s anus, inserted his finger into W.T.'s anus, and inserted the handle of a hairbrush into W.T.'s anus.

¶ 7 The State alleged that the crimes were factually similar in that both involved male teens; both involved sex offenses at defendant's residence; there was similarity in defendant's access to his victims, as defendant was a minister or counselor to the instant victim and the chair of the high school board of the other victim; and defendant committed the offenses within six years of one another.

¶ 8 Initially, the trial court denied the motion, and the State filed an interlocutory appeal. *People v. Taylor*, 383 Ill. App. 3d 591 (2008). This court reversed and remanded for further proceedings, finding that, pursuant to section 115-7.3 of the Code, evidence of defendant's 1998 sexual offense was admissible to demonstrate his propensity to commit a sexual offense. *Taylor*, 383 Ill. App. 3d at 595; 725 ILCS 5/115-7.3 (West 2010).

¶ 9 *Jury Trial*

¶ 10 At trial, the victim, W.T., testified that he lived with his mother and younger brother at the Oneness Center Shelter, a homeless shelter on the southside of Chicago, from June to October 2004. He was 13 years old at the time he lived in the shelter.[1] The victim identified defendant in open court as his case manager at the shelter. Defendant's job was to help the victim's mother, Beatrice, find a job and a place to live. The victim met defendant during one of Beatrice's meetings with him. Occasionally, defendant took the victim to the movies or to

[1] W.T. was 18 years old at the time of trial.

dinner, sometimes with another boy and other times alone.

¶ 11 In early October, Beatrice moved in with her friend Connie Wade on the north side of Chicago, but there was not enough room at Wade's home for W.T. Defendant invited the victim to live with him in his three-bedroom apartment on the southside of Chicago. Initially, defendant had two roommates, but one moved out within a week of W.T.'s arrival. The other roommate's name was Stan. During the first week in the apartment, W.T. slept in defendant's bed with defendant. At night, defendant "hugged up behind" W.T. in bed.

¶ 12 Shortly after moving in, defendant showed W.T. a pornographic video in which a man and woman were having intercourse. As the video played, defendant instructed W.T. to lay across the bed, close his eyes, and pull down his pants. W.T. complied. Defendant then put a condom on W.T.'s penis and masturbated W.T. with his hand until W.T. ejaculated.

¶ 13 Later, in October 2004, W.T. received a poor grade in math class. Defendant talked with him about the importance of education. Defendant asked W.T. if he wanted to masturbate together. W.T. said he did not. Then, as punishment, he took W.T. to defendant's bedroom, started a pornographic video tape, and instructed W.T. to take off his clothes and sit on a chair next to the bed. Defendant then pulled down his own pants and masturbated himself.

¶ 14 Also in October, defendant saw W.T. jumping on a bed. He instructed W.T. to stop jumping on the bed, and W.T. responded, "kiss my ass." Defendant responded "don't put your ass in the air or somebody will take your ass for granted." W.T. testified that he understood that to mean it would be "like having a penis in your ass." Defendant then put Vaseline on his fingers and swiped it across W.T.'s anus. Next, defendant inserted his finger into W.T.'s anus. Then,

defendant inserted the wooden handle of a hairbrush into W.T.'s anus for approximately 20 seconds. W.T. testified that he felt violated and did not tell anyone about these incidents.

¶ 15 In November 2004,W.T. was suspended from school. In response, defendant said he was going to give W.T. a "well-whipped ass." He put W.T. into a wrestler's hold and "tagged" W.T.'s bare buttocks with a belt. W.T. pulled up his pants and laughed. On cross-examination, W.T. admitted he did not tell police about this incident.

¶ 16 Another time, defendant instructed W.T. to lie on his bed, pull his pants down, and think of a girl W.T. liked. Defendant then kissed W.T.'s nipples and chest. He instructed W.T. to turn over. When W.T. did so, defendant held his arms down and kissed W.T.'s anus and legs. Defendant put his mouth on W.T.'s testicles and on his penis for approximately 20 seconds.

¶ 17 W.T. testified that he did not tell anybody about what had happened "[b]ecause I felt like this shouldn't happen, I was ashamed, that it wasn't supposed to happen." Although W.T. felt comfortable with Stan, defendant's roommate, he did not tell Stan what was happening. W.T. did not speak often with his brother, Cornelius. He spoke with his mother about once every three weeks, but did not tell her about the abuse.

¶ 18 W.T. testified that, while he lived with defendant, defendant fed him and bought him things such as shoes, clothes, and a radio.

¶ 19 Around Thanksgiving, W.T.'s older brother, Cornelius, returned from college with a friend named Chris. W.T. told Cornelius that defendant had "sucked" his penis. Cornelius immediately packed W.T.'s bags and they went to the police station. Police officers took W.T. to the hospital, where he was examined by a doctor.

¶ 20 W.T. testified he had been to juvenile court for a theft from person case, and that he was placed on probation for it.

¶ 21 On cross-examination, W.T. agreed that he did not run when defendant put on the pornographic video or pulled down his pants, and he did not call out to Stan for help, or call his mother or brother to tell them what defendant had done to him. W.T. testified that, although defendant had a telephone in his room, W.T. did not use it to call for help.

¶ 22 On re-direct, W.T. testified that he never told anyone about what defendant was doing to him because he was ashamed. He explained, "Why would I tell a bunch of kids my age I just got raped by a man?"

¶ 23 W.T.'s brother Cornelius testified that, at the time in question, he was a 19-year old college sophomore. During Thanksgiving break in 2004, he visited W.T. at defendant's apartment. He had previously met defendant at a church concert. Cornelius and a friend, Chris, arrived the day before Thanksgiving. They spent the day together and then slept in W.T.'s room. The next day, they watched television in defendant's room, as his room had the only working television in the apartment. Defendant was not at home. While there, Chris discovered pornographic videos near the television. Chris asked W.T. if defendant had made him watch the videos. W.T. told them what defendant had been doing to him. Cornelius was distraught. He immediately packed W.T.'s bags while Chris watched the door to see if defendant returned. They left the apartment and called their grandmother's house. Cornelius' aunt answered and instructed him to call the police. Cornelius did so. A detective picked the boys up and drove them to the police station and to the hospital.

¶ 24 On cross-examination, Cornelius admitted he did not see anything sexually inappropriate between defendant and W.T. at the apartment. He recalled, however, that one time he himself was lying on the bed and defendant put his hand on Cornelius' abdomen. Cornelius immediately got up because he thought it was odd. Cornelius did not report that incident to the detective, but did tell his friend Chris. Cornelius admitted his mother was homeless because she was a drug addict.

¶ 25 Dr. Christopher Asandra testified that he was working at Wyler Children's Hospital on November 26, 2004. He examined W.T., who reported he had been sexually assaulted by his preacher. The physical exam of W.T. was normal, with no anal bruises or injuries. Dr. Asandra testified that, because the hairbrush incident had reportedly occurred a month earlier, he was not surprised to find no physical signs of trauma. He explained that young males tend to heal "very quickly" from injuries.

¶ 26 W.T.'s mother, Beatrice, testified that she was a cocaine addict during 2004, when she lived with two of her sons, W.T. and D.T., at the Oneness homeless shelter. Defendant was the family's case manager at the shelter. Beatrice confirmed that she left the shelter to live with a friend, that W.T. went with her initially, but then went to stay with defendant. Beatrice testified that she received treatment for her cocaine addiction in 2005. She had stopped using when she was at the shelter, but began again when she moved in with her friend.

¶ 27 Beatrice testified that on December 1, 2004, a letter written by and signed by defendant was brought to her house. She recognized the handwriting as defendant's. Beatrice published the letter to the jury without objection. It read:

"Beatrice,

The Bible says 'if you have a fault with your brother, go to the Lord, so I am waiting to find out what happened. I love you all, your children; I tried to show that; I know we can work this whole thing out; Beatrice, I am begging you to stop the legal criminal proceedings; if I go to jail no one will be there to take care of my mother; I would rather work out something with you than pay attorney fees; I never ever wanted to hurt you or [W.T.]; please, let's work this out without the police; I guess you all being pressured by your family, but please listen to your heart, listen to what God wants; Bea, you have been to jail, why would you want to send anybody there if it could be avoided; you know in your heart your brother Bennie don't care about you; I have been there when nobody else was; at least I think I deserve forgiveness; I never thought you would let others come between me and you so I am begging you to stop the process; let's talk and work this out; whatever you need I'll work it out some way; thanks for listening; you can call my house and talk to Stan and whatever you decide I'll always love you and your children. Reverend Michael Taylor."

Beatrice called the police, who came and retrieved the letter.

¶ 28 Beatrice denied that she ever brought her children with her to meetings with defendant.

She denied ever having given defendant permission to take W.T. out of the shelter. Beatrice testified she worked at the shelter on Saturday nights, but knew defendant only as a case worker and not as a co-worker. She denied that W.T. lived with defendant, explaining that, once she moved in with her friend, W.T. spent weekends with defendant. Although she had never been to defendant's house, she allowed W.T. to go there because defendant was a reverend and she trusted him. Defendant never told her about his criminal background.

¶ 29 Lena Stubblefield testified that she was the executive director of the Oneness Shelter. She testified that, in October 2004, defendant had been working as a case manager at the shelter for four or five months. His primary responsibility was to find shelter and jobs for clients. He met with clients one time per week and never met with children. She said clients and case managers did not have social relationships with one another. She denied that employees were allowed to take clients into their homes. Beatrice and W.T. were shelter residents for approximately one and a half years. Stubblefield explained that she would give Beatrice money for helping at the shelter, but that Beatrice was not actually an employee of the shelter. She testified that Beatrice had a drug problem while a resident at the shelter and was referred for drug treatment.

¶ 30 Evidence was also presented at trial that a buccal swab was collected from both defendant and W.T. in April 2005 and submitted to the Illinois State Police crime lab. In addition, swabs were taken from the handle of the hairbrush and sent for testing at a DNA testing facility. Forensic DNA analysis expert Michael Cariola testified that the hairbrush handle swabs produced a mixed DNA profile that excluded defendant. Illinois State Police forensic scientist

Christine Prejean testified that she developed W.T.'s DNA standard and compared it to the results of the DNA testing on the hairbrush handle and found the major contributor on the hairbrush was W.T. She would expect to find these results in1 in 61 trillion blacks, 1 in 200 trillion whites, and 1 in 83 trillion Hispanics. On cross-examination, Prejean agreed that the tests completed do not reveal whether the DNA came from saliva, blood, or sweat.

¶ 31 C.T. testified that, when he was 17 years old in 1998, he was sexually abused by defendant. At the time, he was friends with defendant's son, Caleb. He knew defendant was a minister and defendant also served on the board of C.T.'s high school. C.T. testified that defendant had agreed to help him get a job and assist him with his college applications. Defendant picked up C.T. on December 15, 1998, and took him to defendant's house. Nobody else was there. Once inside, defendant asked C.T. to take a sex survey, and C.T. complied. Defendant then gave C.T. a package of new underwear and asked C.T. to model them. When C.T. did so, defendant massaged C.T.'s penis with his hands. C.T. did not tell anyone about this right away because he was confused and embarrassed, and because defendant was his friend's father.

¶ 32 Then, a week later, defendant came to C.T.'s house. Nobody else was present. Defendant asked C.T. to remove his clothes. C.T. complied after putting up some resistance. Defendant proceeded to give C.T. oral sex and licked C.T.'s anus. Defendant asked C.T. to give him oral sex, but C.T. refused. C.T. testified that defendant then "humped" C.T. until defendant ejaculated. C.T. told his mother what had happened and then spoke with the police.

¶ 33 At the time of W.T.'s trial, C.T. was 27 years old. He was on probation in Iowa for

possession of a controlled substance. He denied knowing W.T. After C.T.'s testimony, the court instructed the jury on the limited purpose for other crimes evidence, stating:

> "THE COURT: Evidence has been received that the defendant has been involved in an offense other than that charged in the indictment. This evidence has been received on the issues of the defendant's intent, motive, propensity to commit sex crimes. It may be considered by you only for that limited purpose. It is for you to determine whether the defendant has been involved in that offense; and, if so, what weight should be given to this evidence on the issues of intent, motive, propensity to commit sex crimes."

¶ 34 Defendant testified on his own behalf. He testified that he was a 53-year old widower with five grown children at the time of trial. He was a Baptist minister and, in 2004, worked at the homeless shelter in question. He was a project director at the shelter, meaning he worked in fund-raising and in assessing homeless clients to assist them towards independence. This included assessing their needs in regards to educational goals, housing assistance, employment assistance, and substance abuse counseling. He was also responsible for enforcing discipline in the shelter. He initiated drug testing of Beatrice, and, when tested, she tested positive.

¶ 35 Defendant testified that, before he brought W.T. into his house, he asked director Lena for permission to do so. He testified that Lena gave him permission and indicated that she and the cook also took clients into their homes.

¶ 36 Defendant testified he saw Beatrice daily and that they were friendly with one another.

Beatrice introduced defendant to W.T. after defendant loaned her money so that W.T. could go to a school dance. W.T. then became an "errand boy" at the shelter and helped defendant run errands a few times per week. Defendant also took W.T. to the movies and to dinner, always with Beatrice's permission. He characterized his interactions with W.T. as "social." Defendant testified he loaned Beatrice money on five or six occasions.

¶ 37 Defendant testified that he stopped giving Beatrice money in mid-October 2004. He said he "felt overwhelmed. Like I was taking care of her son for her. And taking care of her too. I thought that was unfair, so I stopped." He testified that Beatrice was "livid" when this happened.

¶ 38 Beatrice moved out of the shelter in late August or early September 2004. Defendant estimated that, after that point, W.T. spent about 80% of his time at defendant's house. Defendant testified he was W.T.'s "primary caretaker," supplying all of his needs while they lived together.

¶ 39 When W.T. first arrived at defendant's apartment, defendant had only one roommate, Stan. A third roommate had recently moved out, but the bedroom was not yet ready for W.T. For the first week, W.T. slept on the couch in his living room. Defendant recalled that one night during that week, he awoke to find W.T. sitting on the end of his bed watching television. Defendant went back to sleep and, when he awoke the next morning, W.T. was sleeping on the living room couch again. Other than that one incident, defendant testified, W.T. spent the week sleeping in the living room. Defendant denied having cuddled with W.T. in bed at night. After that week, defendant bought W.T. a bed and W.T. then had his own room.

¶ 40 Defendant denied he ever touched W.T.'s penis, kissed his nipples, touched his anus, or

performed oral sex on him. He testified that the extent of their physical contact was to hold hands in prayer and to hug good-bye in the morning.

¶ 41 Defendant admitted having written the letter to Beatrice out of frustration based on his understanding of a scripture from the Bible, but testified he did not deliver nor direct anyone else to deliver it to Beatrice.

¶ 42 Regarding C.T., defendant testified on cross-examination[2] that he was a member of the school board at C.T.'s school when C.T. asked him for help on his college applications and in finding employment. Defendant assisted C.T. by showing him how to write a resume. He also submitted C.T.'s name to business people in his church in 1998.

¶ 43 Defendant admitted to having met 17-year old C.T. alone, but denied having given him a sex survey or asking him to model underwear for him. Defendant, however, remembered C.T. removed his clothes during their second meeting. Defendant was unable to recall "the specific of how he got naked." In the end, though, defendant and C.T. were in C.T.'s house alone, defendant was clothed, and C.T. was naked. Defendant admitted on cross-examination that he touched C.T.:

"[ASSISTANT STATE'S ATTORNEY] Q: What part of your

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[2] Before C.T. was mentioned in cross-examination, the State asked, "And your son Kaleb attend Lindbloom High School?" Defense counsel objected, stating that the question was "[b]eyond the scope." The State responded, "Judge, the Defendant is subject to all of the evidence, to be cross examined on anything." The court overruled the objection. The State then continued in its line of questioning.

body, Mr. Taylor, made contact with [C.T.'s] body?

[WITNESS DEFENDANT] A: My hand to his chest. My hand to his behind. My hand to his penis."

Q: And this was while [C.T.] was nude?

A: Correct."

Defendant admitted that he was convicted of criminal sexual abuse in C.T.'s case and that he took responsibility for his actions in that case. He denied having inserted anything into C.T.'s anus.

¶ 44 The defense rested. It made a renewed motion for a directed verdict on various counts, which the court denied. The parties made closing arguments and the jury was instructed. Defendant was found guilty on all counts.

¶ 45 Defendant then filed a motion for a new trial. The parties agreed that a jury instruction was missing as to one count, and the court vacated the finding of guilt as to that count. The motion was denied as to the other issues raised. Defendant was sentenced to four consecutive terms of six years' imprisonment, holding that the remaining counts merged. Defendant filed a motion to reconsider the sentence, which the court denied.

¶ 46 Defendant appeals.

¶ 47 II. ANALYSIS

¶ 48 On appeal, defendant contends the trial court erred by allowing him to be subjected to cross-examination regarding other crimes, confirming, in the process, that he had committed a sex crime similar to the one charged. Specifically, defendant argues that the trial court violated his Fifth Amendment right against self-incrimination because the other crimes about which he

was cross-examined were outside the scope of his direct examination testimony.[3]

¶ 49 Other-crimes evidence encompasses misconduct or criminal acts that occurred either before or after the allegedly criminal conduct for which the defendant is standing trial. *People v. Spyres*, 359 Ill. App. 3d 1108, 1112 (2005). Generally, evidence of a defendant's other crimes is admissible if relevant for any purpose other than to show a defendant's propensity to commit crimes. *People v. Wilson*, 214 Ill. 2d 127, 135-36 (2005). However, our legislature has provided an exception to the general prohibition of other-crimes evidence. The statute, as related to this case, applies to various enumerated sex offenses. See 725 ILCS 5/115-7.3(a)(1) (the statute) (West 2010). Under the statute, evidence of another similar sex offense may be admissible, if otherwise admissible under the rules of evidence, and "may be considered for its bearing on any matter to which it is relevant." 725 ILCS 5/115-7.3(b) (West 2010). When weighing the probative value of the prior offense against undue prejudice to the defendant, the court may consider: (1) the proximity in time to the charged offense; (2) the degree of factual similarity to the charged offense; and (3) other relevant facts and circumstances." 725 ILCS 5/115-7.3 (West 2010); *People v. Donoho*, 204 Ill. 2d 159, 170 (2003).

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[3] Defendant does not argue on appeal that the other crimes evidence was improperly admitted as substantive evidence to show propensity pursuant to section 115-7.3 of the Code (725 ILCS 5/115-7.3 (West 2010)). Rather, defendant's argument focuses solely on the cross-examination of defendant, arguing "that the State had the general authority to offer evidence about [defendant's] abuse of C.T. [pursuant to section 115-7.3 of the Code] does not authorize it to compel that evidence to come from [defendant's] own mouth."

¶ 50 It is within the sound discretion of the trial court to determine the admissibility of other-crimes evidence, and its decision will not be disturbed absent a clear abuse of discretion. *Wilson*, 214 Ill. 2d at 136; *People v. Leak*, 398 Ill. App. 3d 798, 824 (2010). As a court of review, we will find an abuse of discretion "only where the trial court's decision is arbitrary, fanciful or unreasonable or where no reasonable man would take the view adopted by the trial court." *People v. Illgen*, 145 Ill. 2d 353, 364 (1991). A reviewing court "owes some deference to the trial court's ability to evaluate the impact of the evidence on the jury." *Donoho*, 204 Ill. 2d at 186.

Plain Error

¶ 51 As a threshold matter, we note that the State argues on appeal, and defendant apparently concedes,[4] that he has forfeited this matter for review. Defendant argues, however, that we should review his claims pursuant to the plain error doctrine, arguing that the evidence here was closely balanced. In order to preserve an issue for appeal, a party must first make an objection to the alleged error at trial, and then raise it in a posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186-87 (1988); see also *People v. Allen,* 222 Ill. 2d 340, 352 (2006) (noting that "even constitutional errors can be forfeited"). When he fails to meet these requirements, the issue is forfeited. *People v. Reddick*, 123 Ill. 2d 184, 198 (1988). The plain error doctrine "allows a reviewing court to consider unpreserved error when (1) a clear or obvious error occurred and the

[4] Although defendant does not specifically state that he failed to preserve this issue, he argues on appeal that we should review his complaint as plain error. He characterizes the evidence adduced at trial as closely balanced and requests that this court excuse his procedural default and address his complaint under the first prong of the plain error analysis.

evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *Sargent*, 239 Ill. 2d 166, 189 (2010); see also *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007) (citing *Herron*, 215 Ill.2d at186-87); see also Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967) ("[a]ny error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court").

¶ 52 Under the first prong, which is the prong defendant relies upon herein, a defendant must prove prejudicial error, namely, that there was plain error and that the evidence was so closely balanced that this error alone severely threatened to tip the scales of justice against him. *Herron*, 215 Ill. 2d at 187. Under either prong of the plain error doctrine, the burden of persuasion remains on the defendant. *People v. Bowman*, 2012 IL App (1st) 102010, ¶ 29 citing *People v. Lewis*, 234 Ill.2d 32, 43 (2009)). Based on the circumstances presented in the instant cause, defendant cannot meet his burden here.

¶ 53 "The first step of plain-error review is to determine whether any error occurred." *Lewis*, 234 Ill. 2d at 43; see also *Wilson*, 404 Ill. App. 3d at 247 ("There can be no plain error if there was no error at all."). This requires "a substantive look" at the issue raised." *People v. Johnson*, 208 Ill. 2d 53, 64 (2003). We will therefore first review defendant's claim to determine if there was any error before considering it under plain error.

¶ 54 We find no error in the cross-examination of defendant regarding the other crimes evidence. The fifth amendment to the United States Constitution states that "[n]o person * * * shall be compelled in any criminal case to be a witness against himself." U.S. Const., amend. V. The privilege against compulsory self-incrimination "protects against any disclosures that the witness reasonably believes could be used in a criminal prosecution or could lead to other evidence that might so be used." *Hiibel v. Sixth Judicial District Court of Nevada*, 542 U.S. 177, 189 (2004). Our supreme court has interpreted article I, section 10, of the Illinois Constitution in "lockstep" with the Supreme Court's construction of the fifth amendment. *People v. Caballes*, 221 Ill. 2d 282, 301 (2006).

¶ 55 Defendant, who previously pled guilty in 2000 for sexually assaulting C.T., waived his privilege against compulsory self-incrimination as to that conviction. " 'A defendant who pleads guilty waives several constitutional rights, including the privilege against compulsory self-incrimination, the right to trial by a jury, and the right to confront one's accusers.' " *People v. Williams*, 188 Ill. 2d 365, 370 (1999), citing *Boykin v. Alabama*, 395 U.S. 238, 243, n. 5 (1969), quoting *McCarthy v. United States*, 394 U.S. 459, 466 (1966); see also *People v. Dimitriyev*, 302 Ill. App. 3d 814, 817-18 (1998) (In guilty plea context, privilege against compulsory self-incrimination applies during the 30-day period following the entry of the plea during which the defendant can withdraw his guilty plea; after this period, the plea is final and the defendant is no longer shielded by the privilege against self-incrimination as to that crime.). Under the plain error analysis, then, which is the matrix through which we analyze the instant cause, there is no plain error here. See *People v. McGee*, 398 Ill. App. 3d 789, 794 (2010), citing *Herron*, 215 Ill.

2d at 187 (Absent error, there can be no plain error.).

¶ 56 Nevertheless, even if it were error to admit defendant's testimony regarding other crimes, for the reasons that follow, we hold that review under the plain error doctrine is unnecessary here, as the evidence presented at defendant's trial was far from closely balanced, but rather overwhelmingly established his guilt. In that respect, we reiterate that under the first prong of the plain error doctrine, pursuant to which defendant here seeks review,[5] the burden is on defendant to establish that "the evidence [presented at trial was] so closely balanced that the error alone threatened to tip the scales of justice against [him.]" *Piatkowski*, 225 Ill. 2d at 565 (citing *Herron*, 215 Ill.2d at 186-87).

¶ 57 Here, the evidence against defendant was far from closely balanced. Rather, evidence at trial overwhelmingly showed that defendant, a trusted case worker at the shelter at which W.T. had been a resident, sexually assaulted W.T. Even excluding the challenged cross-examination testimony, evidence included the following: W.T. testified regarding defendant's sexual assaults upon him; W.T.'s mother confirmed defendant's access to W.T.; W.T.'s brother, Cornelius, confirmed W.T.'s outcry; W.T.'s DNA was on the handle of the hairbrush used to assault W.T. anally; other crimes evidence regarding the previous assault against C.T. was properly admitted

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[5] We note that defendant here solely seeks review under the first prong of the plain error doctrine, contending that he was prejudiced by his cross-examination regarding a previous crime he committed and to which he voluntarily pled guilty, because the evidence in the instant case was closely balanced and those statements "tipped the scales of the jury's credibility determination."

pursuant to section 115-7.3 of the Code; and defendant corroborated his access to W.T.

¶ 58 At trial, W.T., who was 18 years old at trial, testified that, when he was 13 years old, defendant was his family's case manager at a homeless shelter at which they resided. Once W.T.'s mother moved out of the shelter, defendant invited W.T. to live with him. Once at defendant's house, defendant began a series of sexual assaults upon W.T. These assaults included incidents in which defendant masturbated W.T.; defendant instructed W.T. to strip naked and remain naked while defendant masturbated himself; defendant inserted his finger into W.T.'s anus; defendant inserted the handle of a hairbrush into W.T.'s anus; defendant held W.T.'s arms down while he kissed W.T.'s anus and legs; and defendant put his mouth on W.T.'s testicles and penis.

¶ 59 These sexual assaults took place over a two-month period. W.T. admitted at trial that he did not run away, call for help, or ask friends or teachers for help during this time. He explained he failed to ask for help because he was ashamed. He eventually told his brother, Cornelius, after Cornelius' friend found pornographic videocassettes in defendant's room and questioned W.T. about them.

¶ 60 Cornelius testified that he visited W.T. at defendant's apartment in November 2004. After he and his friend questioned W.T. about the pornographic videocassettes found in defendant's room, W.T. admitted to Cornelius that defendant had sexually abused him. Cornelius immediately packed W.T.'s bags and they left defendant's house. Cornelius called W.T.'s family and called the police. They then went to the hospital and the police station.

¶ 61 Dr. Asandra testified that he examined W.T., who told him he had been sexually

assaulted by his preacher. Dr. Asandra was not surprised that the exam of W.T. was normal, with no anal bruises or injuries, because the events had happened a month previous to the exam and young males tend to heal quickly.

¶ 62 W.T.'s mother, Beatrice, testified that she was addicted to crack cocaine in 2004 during the time she lived at the shelter. Beatrice introduced defendant, who was her case worker, to W.T. Beatrice authenticated a letter she received from defendant in December 2004 asking her to stop the legal proceedings against him and suggesting that he deserved forgiveness. Beatrice allowed W.T. to spend nights with defendant because he was a minister and she trusted him.

¶ 63 W.T.'s DNA was found on the handle of a hairbrush recovered from defendant's apartment.

¶ 64 C.T. testified that, in December 1998, he was a 17-year old high school senior who was assaulted by defendant. He recalled that defendant was a minister and was also on C.T.'s high school's board. Defendant's son was C.T.' s friend. C.T. asked defendant for help with his college applications and with finding a job, and defendant agreed to help. Subsequently, defendant assaulted C.T. by massaging C.T.'s penis with his hands. C.T. did not tell anyone about this at the time because he was confused and embarrassed. C.T. recalled that defendant again assaulted him sexually, performing oral sex on C.T., and licking C.T.'s anus. Defendant asked C.T. to perform oral sex on him, and C.T. refused. Defendant then "humped" C.T. until he ejaculated. After this incidence, C.T. told his mother what had happened and his mother called the police.

¶ 65 Defendant testified on his own behalf. He admitted having W.T. live with him and,

contrary to the shelter director's testimony, testified that he did so with the shelter's permission. Defendant testified that W.T. became an "errand boy" at the shelter and would help with errands a couple of times per week. He testified that he also took W.T. out to dinners and movies, also with the permission of Beatrice. Defendant said he gave Beatrice money a number of times, but eventually became "overwhelmed" and stopped giving her money. She was angry after that.

¶ 66 Defendant testified that, after Beatrice moved out of the shelter, W.T. spent 80 percent of his time at defendant's apartment and that defendant provided for W.T.'s basic needs. Defendant admitted that W.T. trusted him. He claimed he only touched W.T. when holding hands in prayer and in hugging him goodbye before W.T. left for school. He denied having cuddled with him in bed, performing oral sex on him, or sexually touching W.T. in any way. Defendant admitted to having written the letter to Beatrice, but denied having delivered it to her.

¶ 67 Even without defendant's testimony regarding his previous sexual assault on C.T., defendant is unable to establish plain error. The evidence against defendant was clear and was corroborated in large part by W.T.'s mother, W.T.'s brother, and by physical evidence. In addition, C.T.'s testimony regarding the defendant's sexual assault of him when C.T. was a teenager established a pattern showing that defendant used his position of trust to prey upon young boys. The jury heard this evidence, determined the credibility of witnesses and the weight to be given their testimony, resolved any conflicts in the evidence, and drew reasonable inferences from the evidence. See *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001) (it is the purview of the trier of fact to determine issues of credibility, resolve any conflicts in the evidence, and draw reasonable inferences from the evidence). Given the overwhelming evidence against

defendant, a rational jury could have found defendant guilty beyond a reasonable doubt–even without defendant's challenged testimony–of sexually assaulting W.T. The evidence was not so closely balanced such that the alleged error severely threatened to tip the scales of justice against defendant. See *Herron*, 215 Ill. 2d at 187. As such, defendant is unable to establish plain error.

¶ 68 Our decision today is narrowly tailored to the unique facts of this specific case, which include: a prior ruling by the court that the section 115-7.3 (725 ILCS 5/115-7.3 (West 2010)) information was admissible; testimony by the previous victim regarding the prior offense; and, after both the court's section 115-7.3 ruling and testimony presented by the previous victim, defendant chose to take the stand. By this ruling, we specifically do not reach the issue of whether cross-examination of a defendant regarding the details of a prior criminal act is permissible simply because that prior conviction has become admissible to impeach the defendant's credibility following his testimony.

¶ 69 CONCLUSION

¶ 70 For the aforementioned reasons, we affirm the judgment of the circuit court of Cook County.

¶ 71 Affirmed.