2018 IL App (2d) 151083-U
No. 2-15-1083
Order filed February 15, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Kane County.
Plaintiff-Appellee,	)	
v.	)	No. 13-CF-476
PAUL JOHNSON,	)	Honorable Susan Clancy Boles
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices McLaren and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: At trial, where defendant accused his deceased half-brother of murdering the victim, the trial court did not err in excluding testimony that the half-brother admitted ingesting cocaine on the night of the offense.

¶ 2 A jury found defendant, Paul Johnson, guilty of the first-degree murder of his neighbor, Lisa Koziol-Ellis (see 720 ILCS 5/9-1(a)(1) (West 2012)). Defendant's theory is that the offense was committed by his half-brother, Harry Dobrowolski, who died of an accidental cocaine overdose before trial. Defendant argues on direct appeal that he is entitled to a new trial because the trial court should have admitted, as an admission against penal interest, testimony that Harry

admitted using cocaine on the night of the murder. The State responds that, although defendant previously argued the admissibility of the testimony, he has forfeited his admission-against-penal-interest theory by presenting it for the first time on appeal. The State also contends that the court did not abuse its discretion in excluding the evidence. We conclude that defendant adequately preserved the issue for review, but the court did not abuse its discretion in excluding the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The victim, Lisa Koziol-Ellis, and her husband, Dashiell Ellis, moved into a townhouse at 1 Garden Crescent Court in Elgin in late February 2013. At the time, defendant resided with his stepfather, William Fisher, three doors down in a townhouse at 4 Garden Crescent Court. Barbara Fisher, the mother of defendant and Harry, had recently died on January 31, 2013. Harry resided in Chicago but would occasionally stay at 4 Garden Crescent Court when he was in Elgin visiting his children. Harry died from an accidental cocaine overdose before trial, on May 2, 2014.

¶ 5 In the early morning of March 2, 2013, Lisa was murdered while Dashiell was at work in Chicago. The parties stipulated to evidence from Dashiell's I-Pass transponder and CTA transit card history that showed he left home around 3 p.m. and returned around 2:30 a.m.

¶ 6 Dashiell testified that he found Lisa lying face down on the floor, unresponsive. The State introduced testimony from multiple witnesses to show that the front door and latch were damaged while Dashiell was away that night. Dashiell saw blood everywhere in the foyer and on the walls. He called 9-1-1 and reported that his wife was unresponsive.

¶ 7 Sergeant Matt Udelhoven and Officer Anthony Rigano of the Elgin police department were dispatched to the victim's townhouse, and Udelhoven spoke to Dashiell. Udelhoven and

Rigano each testified that the front door would not open all the way because Lisa's body was pushed against it. Rigano managed to squeeze into the townhouse and stand near the landing to the stairs. Each officer smelled a strong odor of bleach and saw blood and a clear liquid on the floor inside the door. Lisa's body was pushed up against the door with a path of bloody footprints in the hallway behind the body leading to the kitchen. The rear door and all the windows were locked.

¶ 8 Officer Rigano testified that he canvassed the area and found bloody footprints in the snow in front of a dumpster near the townhouse. On the top of that dumpster was a bottle of bleach. There were more bloody footprints behind the parking spot for the townhouse and on the sidewalk in front of the townhouse. An imprint in the snow was found near defendant's residence. The imprint appeared to be from a body and there was some blood in it.

¶ 9 William testified that, on the night of the murder, he was upstairs in his bedroom watching television. Defendant and Harry were both downstairs. William stayed in his room until 2 a.m. or 3 a.m., when he was awakened by police lights. William went downstairs and saw Harry sleeping on the couch. William went back upstairs and saw defendant in his bedroom.

¶ 10 Officer Justin Brown of the Elgin police department testified that he went to the victim's home and photographed the crime scene. Brown composed a crime scene log that included the contact information of the people he encountered, including defendant and Harry.

¶ 11 Salvador Santoyo and his girlfriend, Maria Mora, lived at 2 Garden Crescent Court. They each testified that, at 11:00 p.m. on March 1, 2013, Salvador picked up Maria at work in Carol Stream and returned home. Salvador and Maria went to bed between 12 a.m. and 1 a.m. After they had fallen asleep, Maria was awakened by a sound, elbowed Salvador, and asked him

what he could hear. They each described hearing two knocks on the wall and a groan that sounded like a cry from a small child.

¶ 12 Officer James Bailey, who was trained in evidence collection, went to the victim's residence on March 2, 2013, and collected Dashiell's shoes. Bailey noticed and photographed damage to the locking mechanism on the door frame. Bailey collected swabs of blood stains from that door and the trim. Bailey also collected the door itself. Swabs were taken from the wall in the foyer. Bailey collected a stuffed animal that was near Lisa's body and appeared to have a bloody footprint on it. He also collected two latent fingerprint molds from blood on the newel post at the base of the stairs, as well as the post itself. Finally, Bailey collected footwear impressions from inside the townhouse.

¶ 13 Officer Jeff Wiltberger, who was also trained as an evidence technician, responded to the victim's home and collected Dashiell's clothing and a buccal swab. Wiltberger made a cast of the marks on the door frame and a mold of a footprint on the sidewalk.

¶ 14 Mike Gough, a retired officer with the Elgin police, testified that he was an evidence technician in March 2013. Gough took responsibility for the collection of evidence from Unit 1 and Unit 4 of Garden Crescent Court, plus the area around those townhouses. Gough identified the evidence from the scene, including swabs of possible bloodstains.

¶ 15 A surveillance video from the Walgreens located at McLean Boulevard and Wing Street in Elgin taken at 8:28 p.m. on March 1, 2013, was played for the jury. The video shows the defendant and Harry entering the Walgreens. A Nike shoe expert identified defendant's shoes as Nike Air Max 90s, which have a unique tread pattern.

¶ 16 Detective Christopher Hughes interviewed defendant on March 5, 2013, at the Elgin police department. Hughes noticed a small cut that was beginning to scab on defendant's hand.

Defendant said he was home with Harry and William on the evening of March 1, 2013. Defendant explained that he returned home from work about 4 or 5 p.m., felt ill, and went to his room to sleep for the rest of the night. He slept until about 4 a.m., when he woke up because of the commotion outside. On March 15, 2013, Hughes interviewed Harry, who agreed to participate in an overhear on defendant.

¶ 17 Patrick Powers, a forensic scientist with the Illinois state crime lab, testified as an expert in latent print examination and footwear analysis. Powers examined the newel post, the door, and the doorknob from the victim's home and fingerprint molds collected from those items by police. One fingerprint, from the underside of the door handle, matched Dashiell. The other fingerprint suitable for comparison, which was on the back of the door near the peephole, was consistent with the victim, but Powers could not describe it as a match because of the print's poor quality. Powers was given a pair of Nike Air Max 90s that the police purchased and a pair of Brown Brahma Boots that were obtained from Harry. Powers compared those items to various shoe impressions collected from inside and outside the victim's home. Powers examined the stuffed animal, which had a bloody footprint on it, and he concluded that an impression on the stuffed animal was consistent with the Nike Air Max 90s. Powers also examined a piece of the flooring collected from Unit 1 and determined that an impression on it was consistent with the Nike Air Max 90s. None of the impressions that Powers examined were consistent with Harry's boots.

¶ 18 Laura Dobrowolski testified that she had been married to Harry and had three children with him. Harry had lived in Chicago, but came to Elgin often to visit his children. According to Laura, Harry had epilepsy and was unable to drive, so she often drove Harry to Elgin. On March 15, 2013, Harry called and asked her to pick him up at the Elgin police department.

¶ 19 Sharon Mansour, the sister of defendant and Harry, testified that she lived with Harry in Chicago. Defendant came to her home looking for Harry on March 15, 2013, but left because Harry was not there. After Harry passed away, she gave his cell phone to the Elgin police department.

¶ 20 Barbara Kasprysk, the victim's mother, testified that she last spoke to Lisa at 10 p.m. on March 1, 2013. About a week before Lisa moved to the townhouse, Kasprysk and Lisa went there to drop off some paint and supplies. While they were at the townhouse, defendant pounded on the front door and told Kasprysk to move her car because she was parked in his spot.

¶ 21 Jennifer Thomsen testified that she was dating defendant in March 2013. She was supposed to have dinner with him on March 1, 2013, but he called to say he was not feeling well. Thomsen spoke to defendant at 8:30 p.m. that evening. At 2:30 a.m. on March 2, 2013, Thomsen sent a text to defendant, and he responded a half hour later. Thomsen spoke to defendant again at 7 a.m. and he came to her place of work on his way to the gym. Thomsen did not notice anything unusual about defendant that morning. She saw that he was wearing work boots.

¶ 22 Dr. Larry Blum testified that he performed the autopsy on the victim. Dr. Blum, an expert in forensic pathology, noted multiple blunt force injuries to Lisa's head and scalp. Her nose was fractured and there were 24 stab wounds to her head and face. One stab wound penetrated her brain through her eye socket, but Dr. Blum did not believe that wound alone would have been fatal. The wounds to Lisa's jaw were caused by a knife. There was a large stab wound on Lisa's neck, but it did not hit any major arteries. Dr. Blum identified 12 stab wounds on Lisa's arms and hands, and several defensive wounds on her wrist. The wounds on the back of Lisa's hands were consistent with a blunt flat object similar to a flathead screwdriver. Dr.

Blum also identified three stab wounds to the trunk of Lisa's body. A wound between Lisa's fourth and fifth right ribs punctured her right lung, sliced through her aorta and her esophagus, and struck her left lung. Lisa would have died very soon after receiving that wound.

¶ 23 Detective Clancy testified that he is assigned to the technical support division. On March 15, 2013, Clancy met with Harry to set up an overhear. Clancy recorded a phone call that Harry made to defendant while Harry was at the Elgin police department. After the phone call was completed, Clancy fixed a listening device over Harry's shoulder. Harry was then driven to another location, where he met defendant. When Harry and defendant returned to defendant's residence, defendant was taken into custody. Clancy testified that the listening device was designed to prevent the person wearing it from deleting anything. The person wearing the device could only turn it on or off and, if he did that, a date and time would be imprinted on the tape.

¶ 24 Detective Robinson, who assisted in the overhear, dialed defendant's number for Harry and identified both the recording and a transcript. The jury heard the recording and received the transcript. On the recording, defendant asked Harry what he told the police and expressed concern that Harry had offered different details about the night of March 1, 2013. When Harry told defendant that he was hoping the police would not "lean on" him, defendant replied, "if they think it's fuckin' you, I swear to Christ dude I will turn myself in dude." Harry said that he was nervous, and defendant stated, "Well don't, don't. You didn't do nothing." Harry responded, "I know I didn't do nothing." Defendant then told Harry that he had nothing to worry about, and Harry replied that he was worried he was going to lose his brother. When Harry expressed later in the conversation that he was worried about being arrested, defendant stated, "72 hours bro, is the most you'll do without me doin' anything is three days, dude. And that will be in the Kane

County Police Station." Defendant continued, "Do you see what I am sayin? Three fuckin days, dude. After three days if we don't hear from you. I'm going there. I promise you that, dude."

¶ 25 Detective Carter testified as an expert in digital forensics. Carter extracted data from defendant's phone to make a timeline of the data for the period from March 1, 2013 through March 15, 2013. At 12:43 a.m. on March 2, 2013, defendant's phone received a text message from the contact labeled "Harry," which read, "Bro were you at?" At 9:27 a.m. on March 2, 2013, defendant's phone was used to search on Google for "how long does it take for fingerprint results," and, at 9:29 a.m., the phone was used to search for "how long does it take for dna results to come back." During the next few days there were several searches on the phone for newspaper articles about the murder and the police investigation.

¶ 26 Heather May, an expert in DNA analysis, testified that she examined swabs taken from various places in or near Unit 1 and Unit 4. May received DNA standards from the victim, Dashiell, William, Harry, and defendant and compared them to the DNA samples that she could identify. Eleven swabs taken from inside Unit 1 and from the snow and sidewalk contained a DNA profile that matched the victim. A swab of blood from the inside of the door in Unit 1 contained a major DNA profile matching defendant. She also identified a minor DNA profile. Lisa could have contributed to the minor DNA profile, but William, Harry, and Dashiell could not have contributed to it.

¶ 27 Detective Gorcowski was the lead investigator and interviewed Harry on April 3, 2013. Gorcowski told Harry that his statement about the murder sounded like a first-person account. Harry agreed to Gorcowski's request to take a lie detector test, but the test was never administered because Gorcowski ultimately decided that he believed Harry's explanations. On

September 9, 2013, Gorcowski went to Harry's house and collected his boots. After Harry died, Gorcowski received Harry's phone from his sister and placed it into evidence.

¶ 28 Michelle Dobrowolski testified that she is married to Rob Dobrowolski, the brother of defendant and Harry. Michelle had employed Harry, but she had to fire him because he was unreliable. According to Michelle, everyone in the family had to support Harry because he could not keep a job. On March 15, 2013, after defendant was arrested, the entire family gathered at Laura's house. Harry came to the home and gave the family an account of what happened. Michelle testified that Harry gave a detailed account, which sounded like a "play-by-play" of the murder. A week after defendant was arrested, Harry told Michelle he was sorry. When she asked if he was "sorry for Paul," Harry responded, "yeah." Harry told Michelle that he learned the details of the murder from defendant.

¶ 29 Rob Dobrowolski testified that, after March 15, 2013, he learned that Harry had worn a wire for the police. During a phone conversation, Harry told Rob that he wore the wire because "Paul could do the time and he couldn't."

¶ 30 Defendant testified that, on March 1, 2013, he picked up Harry in Chicago on his way back from work. He and Harry went to 4 Garden Crescent Court, where they played cards and watched television. Later that evening, defendant and Harry went to Walgreens to get beer. They returned home and resumed watching television. Defendant was sitting with his back to the door and Harry was sitting behind him near the kitchen. Defendant felt a breeze from the door opening and thought that Harry had gone outside to smoke. After a while, defendant realized that Harry had not returned and went to look for him. Defendant saw Harry outside lying in the snow. Defendant picked up Harry and helped him inside. Harry was all wet. When they got inside, defendant realized that Harry was covered in blood. Defendant ripped off

Harry's shirt to see if he was injured. Harry stated that he had "fucked up" and then told defendant what happened. Defendant got two pairs of latex gloves from his room and bottles of bleach from the laundry room.

¶ 31 Defendant and Harry went to Unit 1 where defendant attempted to open the door, but it would not open all the way. Defendant saw a woman lying on the floor inside the door. Defendant and Harry squeezed through the door and into the townhouse. When defendant realized what was going on, he grabbed Harry by the jacket and pushed him. He and Harry had some words, pushed each other back and forth, embraced, and started crying. Then defendant and Harry cleaned up with the bleach. Defendant realized he did not know what he was doing, so he started pouring bleach everywhere. He saw a knife and a screwdriver on the ground and picked them up. He and Harry returned to Unit 4, where defendant instructed Harry to give him his clothes. Defendant put Harry's clothes and his own clothes, including his Nike Air Max 90s, into a garbage bag. Defendant drove about a mile and a half away and put the garbage bag into a dumpster. Defendant returned home and took a shower. He went downstairs where Harry was sitting and saw his phone on a table next to the couch near Harry. Defendant testified that he had his phone with him at Walgreens and placed it on the kitchen table when he returned home. Harry often borrowed defendant's phone. When defendant saw his phone near Harry, he handed the phone to Harry and told him to find out information about the incident. Later, Harry went to defendant's room and returned the phone, saying that defendant had a message from Jenny.

¶ 32 Defendant admitted that he performed Google searches about fingerprints and DNA because he was worried for Harry. Defendant also explained that, during the overhear conversations, he told Harry that Harry had not done anything because he was trying to convince Harry to keep up that lie and stay strong. Defendant testified that, when he told Harry that he

would turn himself in if Harry was arrested, he did not mean that he would confess to murder. He only meant he would go to the jail to see what he could do to help his brother.

¶ 33 The jury found defendant guilty of first-degree murder and that the murder was accompanied by exceptionally brutal and heinous conduct. Defendant moved for a new trial on June 17, 2015. Among other things, the motion alleged that the trial court erred in granting the State's motion to bar evidence of Harry's drug use on the night of the murder.

¶ 34 Defendant filed an amended motion on August 14, 2015, which was denied after a hearing on September 21, 2015. On that same date, the defendant was sentenced to 50 years in prison. Defendant filed a timely motion to reconsider the sentence, which was denied on October 28, 2015. Defendant filed a notice of appeal on the same day.

¶ 35 II. ANALYSIS

¶ 36 Defendant argues on direct appeal that the trial court committed reversible error in excluding testimony that Harry admitted using cocaine on the night of the murder. Defendant asserts that the testimony supports his theory that Harry became intoxicated, broke into the victim's home, and ultimately murdered her.

¶ 37 Generally, evidence is admissible if it is relevant. Ill. R. Evid. 402 (eff. Jan. 1, 2011). Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Ill. R. Evid. 401 (eff. Jan. 1, 2011). Relevant evidence may be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice" or if another rule of evidence excludes the evidence. Ill. R. Evid. 403 (eff. Jan. 1, 2011).

¶ 38 A trial court has discretion to determine whether evidence is relevant and admissible, and therefore an evidentiary ruling will not be overturned unless it is arbitrary, fanciful, or unreasonable. *People v. Hanson*, 238 Ill. 2d 74, 101 (2010).

¶ 39 A criminal defendant is constitutionally guaranteed a meaningful opportunity to present a complete defense. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, §8; *Holmes v. South Carolina*, 547 U.S. 319, 324 (2006). An accused may, within certain limits, attempt to prove that someone else committed the crime with which he is charged. *People v. Ward*, 101 Ill. 2d 443, 455 (1984). The trial court has discretion to determine whether the evidence "fairly tends" to prove the particular offense with which the defendant is charged. *Ward*, 101 Ill. 2d at 455. The court may reject the offered evidence as irrelevant "if it has little probative value due to its remoteness, uncertainty or its possibly unfair prejudicial nature." *Ward*, 101 Ill. 2d at 455.

¶ 40 On May 7, 2015, the State filed a motion *in limine* seeking to exclude several statements by Harry. At issue in this appeal is Laura's potential testimony that Harry admitted to her that he had used cocaine on the night of the murder. The motion argued that this and other statements by Harry should be excluded because "[g]enerally, unsworn, out-of-court statements made by a deceased witness or a witness who is beyond the court's jurisdiction are inadmissible hearsay, even if the statement purportedly made by the deceased, or unavailable witness is against his penal interest."

¶ 41 In response, defense counsel argued at the hearing that Harry's character and credibility were at issue because Harry's statement to the police caused them to arrange the overhear of Harry and defendant with the goal of eliciting an inculpatory statement by defendant. Counsel argued that "there are multiple reasons that the character evidence that we seek to offer is

absolutely relevant. It is relevant as to issues of motive, intent, and design." Counsel did not mention the possibility that defendant made the statements against his penal interest.

¶ 42 In finding the testimony inadmissible, the trial court ruled that "[t]he character evidence the defense wishes to admit regarding [Harry's] use of pot and alcohol and cocaine on the night of the murder is not relevant, as [Harry] is not a witness in this trial, nor is the State or anyone relying on any statement made by Harry which is being offered into evidence in this case."

¶ 43 On June 17, 2015, defendant filed a posttrial motion for judgment notwithstanding the verdict (judgment *n.o.v.*) or for a new trial. Among other claims, the motion argued that the trial court erred in barring evidence of Harry's drug use, including on the night of the offense. Defendant claimed that the ruling improperly limited his ability to present his defense that Harry, in a mental state altered by the use of marijuana, alcohol, and cocaine, broke into the victim's home and ultimately killed her. In a related argument, defendant asserted that the court erred in excluding testimony regarding Harry's reputation for truthfulness. Conceding that Harry was not alive to testify at trial, defendant contended that Harry's statements to the police caused the investigation to focus on defendant, while the defense theory was that Harry committed the offense. According to defendant, barring the character and reputation evidence regarding Harry deprived defendant of the opportunity to present his defense. Counsel conceded at the hearing that Harry's statements would not be admissible as character evidence of a witness, because Harry did not testify at trial. Without elaborating, the trial court denied the posttrial motion based on the reasoning set forth on the record in the court's prior rulings.

¶ 44 A. Forfeiture

¶ 45 Defendant argues on direct appeal that Laura's testimony about Harry's alleged cocaine use is admissible as an admission against penal interest to show that he committed the offense.

Defendant previously argued the admissibility of the testimony in the trial court, but the State responds that he has forfeited his admission-against-penal-interest theory by presenting it for the first time on appeal. Defendant responds in his reply brief that if we deem his argument forfeited, we should review the issue as plain error.

¶ 46 Both an objection at trial and raising the issue in a posttrial motion are necessary to preserve the issue for appellate review. *People v. Herron*, 215 Ill. 2d 167, 175 (2005). "A specific objection at trial forfeits all grounds not specified." *People v. Lovejoy*, 235 Ill. 2d 97, 148 (2009). However, "[a]n issue raised by a litigant on appeal does not have to be identical to the objection raised at trial, and we will not find that a claim has been forfeited when it is clear that the trial court had the opportunity to review the same essential claim." *Lovejoy*, 235 Ill. 2d at 148.

¶ 47 In arguing forfeiture, the State relies primarily on *People v. Goble*, 41 Ill. App. 3d 491 (1976), where this court held that a posttrial motion containing only general allegations is insufficient to preserve matters for review and that inclusion of a statement purporting to preserve "any and all errors" does not do so. *Goble*, 41 Ill. App. 3d at 499.

¶ 48 *Goble* is factually distinguishable from this case. Although defendant has been imprecise in articulating his admissibility argument during the proceedings, he has consistently taken the position that Harry's alleged cocaine use is relevant to show that Harry committed the offense. In opposition to the State's motion *in limine*, defendant argued that Harry's statements are admissible "for multiple reasons" to show his character and credibility as they relate to his motive, intent, and design to divert the investigation away from him and toward defendant. At the hearing on the posttrial motion, defense counsel did not challenge the ruling that character evidence was not admissible because Harry was not a witness at trial. But counsel argued that

the evidentiary ruling had prevented defendant from presenting the defense that Harry, in a mental state altered by the use of marijuana, alcohol, and cocaine, broke into the victim's home and ultimately killed her.

¶ 49 On appeal, defendant restates his theory that Harry committed the offense and argues that the evidence is admissible on the ground that Harry made the statements against his penal interest, which is a distinct rationale for admitting the evidence. However, the record shows that the State anticipated defendant raising the against-penal-interest theory and addressed it in the pretrial motion *in limine*. The procedural default rule is based on the need to hold a party to the results of his or her conduct to avoid surprising or depriving the opponent of an opportunity to contest an issue in the tribunal that is supposed to decide it. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 212-13 (2008); see also *People v. Piatkowski*, 225 Ill. 2d 551, 564 (2007) (the purpose of the forfeiture rule is to encourage a party "to raise issues before the trial court, thereby allowing the court to correct its errors"). This goal is not undermined where, as in this case, the State preemptively addressed the theory that defendant advocates on appeal. We conclude that the trial court was able to consider the statement-against-penal-interest issue based on the State's filing and that defendant has adequately preserved his argument regarding the admissibility of Harry's alleged cocaine use on the night of the murder.

¶ 50 Our conclusion is supported by *People v. Ealy*, 2015 IL App (2d) 131106, cited by defendant, where the State was allowed to introduce evidence that the defendant refused to submit to DNA testing that had been agreed to by several other restaurant employees as part of an investigation of a murder at the restaurant. The defendant was not obligated to submit to the test, and at trial, he argued that he could not effectively cross-examine the State's witnesses

without disclosing his criminal history. On appeal he made the related argument that the testimony was unduly prejudicial because he had a right to refuse the testing. We held that the defendant had preserved the issue for review, "as he repeatedly and consistently challenged as unduly prejudicial the evidence that he refused to consent to DNA testing, arguing that its probative value was substantially outweighed by the danger of unfair prejudice." *Ealy*, 2015 IL App (2d) 131106, ¶ 42 (citing Ill. R. Evid. 403 (eff. Jan. 1, 2011)). At trial, in his posttrial motion, and on appeal, the defendant argued that the trial court erred in allowing the prosecution to give the false impression that he refused the testing because he knew he was guilty. *Ealy*, 2015 IL App (2d) 131106, ¶ 42. This case is similar in that defendant has consistently argued at trial, in his posttrial motion, and on direct appeal that Harry's cocaine use is relevant to showing that Harry committed the offense and that exclusion of the evidence prevented him from presenting his defense.

¶ 51 B. Admissibility

¶ 52 Regardless of procedural default, we conclude that defendant's underlying argument does not establish that the trial court committed reversible error. Defendant argues that Harry's statement regarding his cocaine use on the night of the murder is relevant to show that Harry committed the offense and is admissible as a statement against penal interest. " 'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Ill. R. Evid. 801(c) (eff. Jan.1, 2011). Hearsay is generally not admissible unless it falls within a recognized exception. Ill. R. Evid. 802 (eff. Jan. 1, 2011); *People v. Cloutier*, 178 Ill. 2d 141, 154 (1997).

¶ 53 A hearsay exception applies to declarations against penal interest. *People v. Tenney*, 205 Ill. 2d 411, 433 (2002). Defendant argues that Laura's testimony about Harry's admission about

cocaine use is admissible under *Chambers v. Mississippi*, 410 U.S. 284 (1973), which set forth four factors to evaluate the admissibility of a hearsay statement made against one's penal interest. The factors weighing in favor of admissibility are as follows: (1) the declaration was made spontaneously to a close acquaintance shortly after the crime occurred, (2) it was corroborated by other evidence, (3) it was self-incriminating and against the declarant's interest, and (4) there was adequate opportunity for cross-examination of the declarant. *Chambers*, 410 U.S. at 300-01. The *Chambers* factors are guidelines to admissibility, and a showing of all four factors is not required. *Tenney*, 205 Ill. 2d at 435.

¶ 54 The trial court's decision to exclude the hearsay statement is not inconsistent with the *Chambers* factors. Although an admission to using cocaine would have been against Harry's penal interest, the other factors weigh against admissibility. First, defendant concedes that the record does not indicate when Harry made his alleged admission to Laura. The victim was murdered on March 2, 2013, and Harry died on May 2, 2014, so it is possible that Harry made the statement several months after the offense. Second, other than defendant's self-serving testimony about Harry's behavior on the night of the murder and the death certificate showing an accidental cocaine overdose, there is no evidence to corroborate Harry's alleged cocaine use on the night of the murder. Third, there was no opportunity to cross-examine Harry about his alleged statement.

¶ 55 Moreover, any potential prejudice caused by the court's ruling was diminished by the dissimilarity between the charged offense of murder and Harry's alleged illegal drug use. The argument for the admissibility of an admission against penal interest is most compelling when the third party is admitting to the charged offense. But there is no allegation that Harry made an out-of-court declaration that he murdered the victim. Indeed, *Chambers* involved a third party's

direct statement of culpability for a crime, not collateral evidence such as the other-crimes evidence at issue here. While *Tenney* mandated the admission of evidence of an inculpatory statement by someone who was initially convicted of the murder at issue but whose conviction subsequently was vacated, it does not address the admission of collateral other-crimes evidence. *Tenney*, 205 Ill. 2d at 441-42; see also *People v. Whitfield*, 2017 IL App (2d) 140878, ¶ 115-116. Under these circumstances, the court's decision to exclude the testimony was not an abuse of discretion.

¶ 56 III. CONCLUSION

¶ 57 For the reasons stated, we affirm defendant's murder conviction. As part of our judgment, we grant the State's request that defendant be assessed the State's attorney fee of $50 under section 4-2002(a) of the Counties Code (55 ILCS 5/4-2002(a) (West 2016)) for the cost of this appeal. See *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 58 Affirmed.