

**NOTICE**  
This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2022 IL App (4th) 210544-U

NO. 4-21-0544

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

November 23, 2022  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macon County
MATTHEW A. ANDERSON,	)	No. 19CF93
Defendant-Appellant.	)	
	)	Honorable
	)	James R. Coryell,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.  
Justices DeArmond and Cavanagh concurred in the judgment.

**ORDER**

¶ 1 *Held:* (1) The State’s evidence was sufficient to prove defendant guilty of first degree murder beyond a reasonable doubt.

(2) Defendant forfeited his challenge to allegedly improper witness testimony and failed to otherwise establish either the occurrence of plain error or ineffective assistance of counsel.

¶ 2 Following a jury trial, defendant, Matthew A. Anderson, was found guilty of first degree murder and sentenced to 50 years in prison. He appeals, arguing (1) the State’s evidence was insufficient to prove him guilty beyond a reasonable doubt and (2) testimony from one of the State’s witnesses was improper. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In January 2019, the State charged defendant with four counts of first degree murder (720 ILCS 5/9-1(a)(1), (a)(2), (a)(3) (West 2018); 730 ILCS 5/5-8-1(a)(1)(d)(iii) (West

2018)). The charges were based on allegations that defendant personally discharged a firearm that proximately caused the death of the victim, Curtis Hairston.

¶ 5 In May 2021, defendant's jury trial was conducted. The State's evidence showed that on the evening of January 4, 2019, police officers responded to a call about a shooting at a Long John Silver's restaurant in Decatur, Illinois. At the scene, they found Hairston, who was wounded and slumped over the bench seat of a booth in the dining area nearest to the restaurant's restrooms. Hairston was wearing a gray hooded sweatshirt and blue jeans. Initially, he was unresponsive, but he later provided his name to the medical personnel who assisted him at the scene. Evidence showed Hairston was transported to the hospital where he died as a result of two gunshot injuries, one to his abdomen and a second to his right groin.

¶ 6 Evidence showed Long John Silver's had a surveillance system that included multiple cameras with views from both inside and outside of the restaurant. Video footage from those cameras was admitted into evidence and played during defendant's trial. Footage from a camera positioned above the front counter of the restaurant showed the restaurant's main lobby and two front entrances. It captured Hairston and a man who wore a black and white Nike jacket enter, exit, and then reenter the restaurant between 5:34 p.m. and 5:38 p.m. Each time they entered the restaurant, the men walked off camera and to the dining area closest to the restrooms. A surveillance camera positioned near the restrooms captured the men briefly entering the men's restroom. At 5:39:22 p.m., the camera above the front counter showed Hairston and the man in the black and white jacket walking to one of the two front entrances of the restaurant and peering through the door before returning to the dining area near the restrooms. At approximately 5:40:50 p.m., it showed a man in a red hooded sweatshirt entering the restaurant and walking to the same dining area. The restroom surveillance camera appeared to show the man in the red hooded

sweatshirt briefly conversing with Hairston and the man in the black and white jacket before he then exited the restaurant.

¶ 7 At 5:47:34 p.m., the camera above the front counter showed the man in the red hooded sweatshirt returning to the restaurant and walking directly to the dining area by the restrooms. Approximately 20 seconds later, at 5:47:54 p.m., a man wearing what appeared to be a down-filled jacket that was light in color and a light gray hoodie entered the restaurant. The man in the down jacket and gray hoodie approached the front counter of the restaurant without ordering food before also entering the dining area by the restrooms.

¶ 8 Surveillance video from the camera positioned outside the restrooms, which captured the area immediately outside of the men's restroom and a portion of the nearby dining area, showed that around 5:47:55 p.m. Hairston, the man in the red hooded sweatshirt, and the man in the black and white jacket entered the men's restroom. Approximately 30 seconds later at 5:48:25 p.m., the man in the down jacket and gray hoodie was captured on camera sitting down in a nearby booth. At 5:48:44 p.m., the man in the red hooded sweatshirt exited the restroom at the same time as the man in the down jacket and gray hoodie left the booth he was in and walked quickly toward the restroom. As the two men passed one another, the man in the down jacket and gray hoodie pulled a dark colored object from his pocket. He appeared to raise his arms in front of him as he entered the restroom. As he entered, the man in the red hooded sweatshirt looked back and then began running toward the front of the restaurant. Seconds later, a cloud of smoke appeared on camera. At 5:48:52, the man in the down jacket and gray hoodie exited the restroom. However, he briefly turned back, opened the restroom door, and bent down as if to retrieve something off the floor. He then walked quickly in the direction of the main lobby. As he moved away from the restroom with his back toward the camera, the man in the down jacket and gray hoodie made

movements with his arms toward the front of his body. Shortly thereafter, Hairston stumbled out of the restroom and collapsed to the ground in the dining area. The man in the black and white jacket followed Hairston out of the restroom, looked down at him lying on the floor, and then also walked toward the front of the restaurant.

¶ 9 Surveillance video from the camera above the front counter showed the man in the red hooded sweatshirt running through the main lobby and exiting the restaurant at approximately 5:48:50 p.m. Immediately thereafter, restaurant patrons began to hurriedly exit the restaurant. At 5:49 p.m., the man in the down jacket and gray hoodie ran through the lobby and exited the restaurant. At 5:49:17, the man in the black and white jacket walked through the lobby and also exited the building.

¶ 10 George Sisley testified he was at Long John Silver's with his wife at the time of the shooting. Evidence showed that when the shooting occurred, Sisley and his wife were standing near the restaurant's drink station, located just outside the dining area closest to the restrooms. Sisley testified he heard loud noises that he thought were "fireworks" or "something being knocked over." He then noticed someone "with their hood on" running from the back of the restaurant and saying "[ ' ]they're back there shooting.[ ' ]" Sisley testified his wife ran out the door closest to the drink station and he followed her out the door.

¶ 11 As Sisley was following his wife, he observed a young man with a "gun coming out of his pants." He described the man as wearing "a gray hoody" with the hood "pulled up." According to Sisley, the man "lifted the hoody up, pulled the gun out of the pants and started firing in the men's restroom." Sisley testified that as he left the restaurant, he "[k]ept [his] eyes through the windows to see where the gun fire was." He stated he got in his vehicle and saw that "the suspect ran out the same door" through which he and his wife had just exited.

¶ 12 On cross-examination, Sisley testified that following the shooting, he reported to the police that he “saw somebody that looked like [he was] coming out of the bathroom turn around and then fire into the bathroom.” He clarified that he did not see the person go into the restroom, but only saw him with a gun as he was exiting. To Sisley, it appeared that the person, who was wearing a gray “hoody” or hooded sweatshirt, then turned around and shot back into the restroom. Sisley described the first person he saw running from the direction of the restrooms as wearing a brown or navy colored hooded sweatshirt; however, he also asserted that he did not “remember the colors” and had “[a] lot of adrenaline rushing” through his body. After being shown a portion of the surveillance footage, Sisley agreed that the first man’s sweatshirt was not brown or navy.

¶ 13 Sisley further testified that he was taken to the hospital on the night of the shooting to see if he could “identify somebody.” However, he did not recognize the person as being involved in the incident at issue. Sisley agreed that he “had a negative identification.”

¶ 14 On redirect examination, Sisley indicated he saw the person in the gray “hoody,” who ran out of the restaurant after him and his wife, “tucking a gun back into their pocket.” He stated he made that observation while outside the restaurant and looking through a large window into the restaurant. Sisley testified his observations of the same person exiting the bathroom, turning around, and appearing to shoot back into the restroom were also made through the window after he had exited the restaurant.

¶ 15 Evidence further showed that at the scene, the police discovered “a Taurus PT111 9 mm pistol with [an] extended magazine” lying under the booth where Hairston collapsed. In the men’s restroom, they discovered a second firearm, “a Taurus PT111 Pro 9 mm pistol,” inside a restroom stall. Also inside the restroom, they found “small feathers,” which were described as being consistent with “down insulation” from “a heavy coat”; a black cell phone sitting on top of

a sink; four 9-millimeter cartridge casings; and three projectiles. The State presented testimony from a firearms identification expert, who determined that all of the cartridge casings and projectiles discovered at the scene were fired from the two Taurus pistols that were also found at the scene. Additionally, during an autopsy, two “large caliber copper jacketed” bullets were recovered from Hairston’s body. The State’s evidence showed that both of the recovered bullets were .44-caliber and that they were fired from the same firearm.

¶ 16 While the police were still at the scene of the shooting, they received a report about “an additional gunshot wound victim that had arrived at a local hospital.” The parties stipulated that on January 4, 2019, defendant arrived at the emergency room of St. Mary’s Hospital, seeking treatment for gunshot wounds. His clothing was removed and provided to the Decatur Police Department. Detective James Knierim testified he was the lead investigator in the case and photographed the clothing taken from defendant at the hospital. He stated the clothing included a “down filled jacket” and “a hooded sweatshirt inside the jacket.” The jacket had a tear in the left sleeve that exposed the down feathers inside the jacket. The photographs taken by Knierim were admitted into evidence and depicted a light gray hooded sweatshirt and a light-colored down jacket with a defect at the bottom of the left sleeve.

¶ 17 During his testimony, Knierim described the difference between a revolver and a semi-automatic pistol, noting that the former did not eject cartridge casings while the latter did. He noted that the two firearms recovered from Long John Silver’s after the shooting were both semi-automatic weapons. Additionally, Knierim testified that no .44-caliber cartridge casings consistent with the bullets recovered from Hairston’s body during the autopsy were found at the scene.

¶ 18 Knierim further testified that he reviewed information extracted from the cell phone

that was found in the men’s restroom after the shooting. He learned the phone belonged to Hairston and stated he discovered a Facebook Messenger “chat” between Hairston and an individual named Jaquarius West. In the “chat,” which began on December 30, 2018, and continued to the day of the shooting, Hairston and West discussed “trading guns.” Knierim identified West as “also a suspect in th[e] case” and one of the individuals in the Long John Silver’s restroom prior to the shooting. Knierim identified a DVD he created that contained a copy of the Facebook Messenger “chat.” Both the DVD and a printout of the “chat” conversation were admitted into evidence.

¶ 19 The record reflects the prosecutor played portions of the surveillance video during Knierim’s testimony and asked him the identity of individuals depicted in the video. The following colloquy occurred:

“Q. All right. And so when we—the two visitations [*sic*] that we see coming in, you later identify as whom?

A. That’s Curtis Hairston, the deceased, and Mekhi Flagg.

(10:34 a.m. Whereupon video was played.)

Q. (By MS. WAGONER [(ASSISTANT STATE’S ATTORNEY)]) The individual that we see entering in the red hooded sweatshirt is later identified as whom?

A. Jaquarius West.

(10:39 a.m. Whereupon video was played.)

Q. (By MS. WAGONER) And the individual entering in the gray is later identified as whom?

A. [Defendant].

(10:40 a.m. Whereupon video was played.)”

¶ 20 Knierim also identified still images taken from the surveillance video of the man in the down jacket and gray hoodie, whom he identified as defendant, removing an item from his right jacket pocket before walking into the restroom and standing at the entrance to the restroom. The photographs were admitted into evidence and showed the man in the down jacket and gray hoodie removing a black and silver object from his pocket.

¶ 21 On cross-examination, Knierim testified that defendant was not part of the Facebook Messenger conversation about trading guns, nor was his name referenced in the conversation. He also agreed that at or about the time of the shooting there were at least four people in the Long John Silver's restroom. Further, he testified the surveillance video depicted a black and silver object being removed from the suspected shooter's pocket. However, he agreed that he could not definitively tell whether the object was a firearm or a smart phone.

¶ 22 Finally, the record shows the State presented evidence of phone and video calls defendant made while in jail after the shooting. Recordings of the calls were admitted into evidence and played for the jury. On the calls, defendant indicated he was present in the restroom of Long John Silver's at the time of the shooting and that he was wounded. He also discussed that he needed to order an iPhone case that looked like a gun, specifically a revolver, before his trial, and he asked the recipient of the call to purchase such a case.

¶ 23 After the State rested, defendant also rested without presenting any evidence. The jury found him guilty of first degree murder and that the State proved he personally discharged a firearm that proximately caused death to another person.

¶ 24 In June 2021, defendant filed a motion for a new trial. He argued the State failed to prove his guilt beyond a reasonable doubt. The same month, the trial court denied defendant's motion and sentenced him to 50 years in prison. In July 2021, defendant filed a motion to



reconsider his sentence, which the court also denied.

¶ 25 This appeal followed.

## ¶ 26 II. ANALYSIS

### ¶ 27 A. Sufficiency of the Evidence

¶ 28 On appeal, defendant first argues the State's evidence was insufficient to prove his guilt beyond a reasonable doubt. In particular, he contends the evidence presented failed to establish that at the time of the shooting he (1) was present at Long John Silver's, (2) possessed or fired a handgun, or (3) personally discharged the firearm that proximately caused Hairston's death.

¶ 29 "The State has the burden of proving beyond a reasonable doubt each element of an offense." *People v. Gray*, 2017 IL 120958, ¶ 35, 91 N.E.3d 876. "When a defendant challenges the sufficiency of the evidence, a reviewing court must determine 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." *People v. Jackson*, 2020 IL 124112, ¶ 64, 162 N.E.3d 223. "All reasonable inferences are drawn in favor of a finding of guilt." *People v. Swenson*, 2020 IL 124688, ¶ 35, 181 N.E.3d 116.

¶ 30 The reasonable doubt standard of review "applies in all criminal cases, whether the evidence is direct or circumstantial." *Jackson*, 2020 IL 124112, ¶ 64. "Circumstantial evidence is proof of certain facts and circumstances from which the trier of fact may infer other connected facts that human experience dictates usually and reasonably follow." (Internal quotation marks omitted.) *People v. Day*, 2019 IL App (4th) 160217-B, ¶ 47, 147 N.E.3d 195.

¶ 31 Further, it is within the province of the trier of fact to determine the credibility of witnesses, decide what weight to give their testimony, resolve conflicts in the evidence, and draw reasonable inferences from the evidence. *Swenson*, 2020 IL 124688, ¶ 36. A reviewing court

should not retry the defendant or substitute its judgment for that of the trier of fact. *People v. McLaurin*, 2020 IL 124563, ¶ 22, 162 N.E.3d 252. On review, the defendant’s conviction will be set aside “only where the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant’s guilt.” *Swenson*, 2020 IL 124688, ¶ 35.

¶ 32 Here, the State charged defendant with several counts of first degree murder, alleging he personally discharged a firearm that proximately caused Hairston’s death. See 720 ILCS 5/9-1(a)(1), (a)(2), (a)(3) (West 2018); 730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2018). For the reasons that follow, we find the State presented sufficient evidence to establish defendant’s guilt beyond a reasonable doubt.

¶ 33 Initially, we find that, contrary to defendant’s assertions on appeal, the evidence establishing defendant’s presence at Long John Silver’s at the time of the shooting was overwhelming. Surveillance footage in the case indicated the time of the shooting, which occurred in the men’s restroom. It also depicted an individual dressed in the light-colored down jacket and gray hoodie entering the men’s restroom just prior to that time. Shortly following the shooting and while law enforcement was still at the scene, defendant arrived at a local hospital, seeking treatment for gunshot wounds. He was wearing clothing identical to clothing of one of the individuals depicted in the surveillance footage—a light-colored down jacket and gray hooded sweatshirt. The jacket had a defect in the sleeve that exposed down feathers inside the jacket. The same defect was observable on the surveillance footage after the shooting, and down feathers were located inside the men’s restroom.

¶ 34 Additionally, although defendant asserts the quality of the surveillance video was “not high enough to identify” the individuals depicted therein, we disagree. In particular, the video presented a clear, close-up, and unobstructed view of the face of the man in the down jacket and

gray hoodie as he entered the restaurant and stood at the front counter. The jury could easily have compared the image from the surveillance footage with defendant, who was present in the courtroom. The State's evidence also included communications defendant had with others while he was in jail. During those communications, defendant admitted his presence at the restaurant at time of the shooting. Accordingly, we find the State's evidence was sufficient to establish both that defendant was at Long John Silver's when the shooting occurred, and that he was the individual wearing the light-colored down jacket and gray hoodie.

¶ 35 Next, we find the State also presented strong and compelling evidence that defendant both possessed a firearm and discharged the firearm that proximately caused Hairston's death. It is undisputed that Hairston was shot in the men's restroom at Long John Silver's, and that he died as a result. Although there was no camera located inside the men's restroom, one was located outside the restroom door and showed defendant, *i.e.*, the man dressed in the light-colored down jacket and gray hoodie, enter the restroom just before the shooting. Defendant had been positioned in a booth in a nearby dining area. As the man in the red hooded sweatshirt exited the restroom, defendant walked swiftly toward the restroom, pulling a black and silver object from his pocket. From the surveillance footage, it appeared he entered the restroom with his arms raised in front of him. Within seconds, a cloud of smoke was shown on camera. Defendant quickly exited the bathroom and ran through the lobby. As he moved away from the surveillance camera, he made movements toward the front of his body that were consistent with tucking an object into his pants or a pocket. Shortly after defendant left the restroom, Hairston also exited the restroom and collapsed in the nearby dining area.

¶ 36 Significantly, Sisley's testimony indicated he observed defendant with a gun as defendant exited the men's restroom following the shooting. Sisley stated he heard loud noises and

noticed someone running from the back of the restaurant. He heard the individual say, “[‘T]hey’re back there shooting.[’]” Evidence showed Sisley quickly exited the restaurant. He testified that through a window, he then observed someone exit the men’s restroom with a firearm and observed that person tuck the firearm into his pocket. The surveillance video and photographs of the restaurant support Sisley’s testimony, establishing he had the opportunity to make such observations. Specifically, the evidence showed Sisley could have viewed the area outside of the men’s restroom and the adjacent dining room from a window near the door through which he exited the building. Time stamps on the surveillance video also support a finding that Sisley could have reached that window at the approximate time that defendant was exiting the men’s restroom.

¶ 37 Defendant notes Sisley described the person he observed with the gun as wearing a “gray hoody” that was “pulled up” and that he stated he observed the person “firing in the men’s restroom.” According to defendant, Sisley was actually describing Hairston, who wore a gray hooded sweatshirt, and not defendant. We disagree.

¶ 38 First, Sisley’s description of the person he saw as wearing a “gray hoody” was not necessarily inconsistent with the clothing worn by defendant, a light-colored down jacket and a gray hoodie. The down jacket could have plausibly been described as either white or gray and defendant clearly wore a gray hooded sweatshirt. Although the jacket would have covered most of the gray sweatshirt, the surveillance footage shows defendant wore the gray hood from the sweatshirt pulled up over his head. Second, Sisley testified the person he observed with the gun ran out of the restaurant shortly after him. It is clear from the surveillance footage that that person was defendant, wearing the light-colored down jacket and gray hoodie, and not Hairston, who collapsed inside the restaurant and never left. Third, Sisley described the person he saw with the gun as exiting the restroom before turning around and firing back inside. That description of events

was consistent with the actions of defendant, wearing the light-colored down jacket and gray hoodie, exiting the restroom, and then briefly turning back toward the restroom and opening the door. It was not consistent with Hairston's actions in exiting the bathroom, stumbling to the nearby dining area, and collapsing on the floor.

¶ 39 Further, evidence in the case also indicated Hairston was shot with .44-caliber bullets fired from the same gun. Only 9-millimeter firearms were found at the scene. As discussed above, both Sisley's testimony and defendant's actions captured by the surveillance video support reasonable inferences that defendant possessed a firearm at the time of the shooting, discharged a firearm inside the restroom, and left the scene with that firearm. Additionally, no .44-caliber cartridge casings were found at the scene, suggesting the weapon that fired them was a revolver. Notably, defendant was heard in recorded jail communications asking someone to purchase a cell phone case that looked like a revolver for his trial. Such statements create a reasonable inference that defendant had knowledge of the murder weapon.

¶ 40 On appeal, defendant emphasizes that what actually occurred in the restroom was not captured by surveillance cameras or testified to by any eyewitness. He argues that the person who shot Hairston and left with the murder weapon could have been any of the men present in the restroom around the time of the shooting, including the man in the red hooded sweatshirt or the man in the black and white jacket. We note, however, that "[a] trier of fact is not required to disregard inferences that flow normally from the evidence before it, nor must the trier of fact search out all possible explanations consistent with innocence and raise those explanations to a level of reasonable doubt." *People v. Eubanks*, 2019 IL 123525, ¶ 95, 160 N.E.3d 843. The most reasonable inferences to be drawn from the evidence in this case supported the conclusion that defendant was the shooter. Other possible scenarios for the shooting, which defendant presents on

appeal do not create a reasonable doubt as to his guilt.

¶ 41 In this instance, the State's evidence was sufficient to support the jury's finding of guilt. We find defendant's challenge to the sufficiency of the evidence is without merit.

¶ 42 B. Improper Witness Testimony

¶ 43 On appeal, defendant next argues that Knierim's testimony improperly included inadmissible hearsay statements and narration of the surveillance video. Defendant acknowledges that he forfeited his challenges to Knierim's testimony by not raising them with the trial court. See *People v. Reese*, 2017 IL 120011, ¶ 60, 102 N.E.3d 126 ("To preserve an issue for review, a defendant must object at trial and raise the alleged error in a written posttrial motion."). However, he contends we may nevertheless consider his arguments under the plain-error doctrine or because his counsel provided ineffective assistance by failing to raise objections to the allegedly improper portions of Knierim's testimony.

¶ 44 Under the plain-error doctrine, a reviewing court may consider unpreserved error when the defendant shows "a clear or obvious error occurred" and either (1) "the 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) the "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." *People v. Radford*, 2020 IL 123975, ¶ 23, 181 N.E.3d 78. "[T]he initial step under either prong of the plain error doctrine is to determine whether the claim presented on review actually amounts to a 'clear or obvious error' at all." *People v. Staake*, 2017 IL 121755, ¶ 33, 102 N.E.3d 217.

¶ 45 To establish a claim of ineffective assistance of counsel, a defendant must show that his attorney's performance (1) fell below an objective standard of reasonableness and

(2) caused him prejudice “in that, absent counsel’s deficient performance, there is a reasonable probability that the result of the proceeding would have been different.” *Jackson*, 2020 IL 124112, ¶ 90 (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). A defendant’s failure to establish either of the above prongs is fatal to his ineffective-assistance claim. *Id.*

¶ 46 In this appeal, defendant asserts only the occurrence of first-prong plain error.

“Plain-error review under the closely-balanced-evidence prong of plain error is similar to an analysis for ineffective assistance of counsel based on evidentiary error insofar as a defendant in either case must show he was prejudiced: that the evidence is so closely balanced that the alleged error alone would tip the scales of justice against him, *i.e.*, that the verdict ‘may have resulted from the error and not the evidence’ properly adduced at trial ([citation] (plain error)); or that there was a ‘reasonable probability’ of a different result had the evidence in question been excluded [citation].” *People v. White*, 2011 IL 109689, ¶ 133, 956 N.E.2d 379.

¶ 47 *1. Knierim’s Identification of Individuals  
on the Surveillance Video*

¶ 48 Initially, defendant argues Knierim was improperly permitted to identify the four men prominently featured on the surveillance video. He contends that because Knierim was not present at Long John Silver’s at the time of the shooting, his testimony identifying the men was unsubstantiated hearsay. Defendant also asserts that Knierim’s “use of the passive voice” when identifying defendant and West—testifying they were “later identified as”—suggested that an unnamed third party actually made the identifications. He further argues that Knierim’s identification of the four men, and particularly the identification of defendant, amounted to improper narration of the surveillance video because Knierim lacked personal knowledge of what occurred at the restaurant and was depicted in the video.

¶ 49 First, we disagree that Knierim’s testimony showed he necessarily relied on a third person’s identification of the men in the surveillance video rather than his own. Defendant points out that for two of the identifications, the State asked Knierim who specific individuals on the surveillance videos were “later identified as.” However, neither the phrasing utilized by the State nor Knierim’s responses, which consisted of only the name of the person being identified, necessarily excluded Knierim as the person who had made the identification.

¶ 50 Second, we note that in circumstances like the one at bar, lay opinion identification testimony may be “helpful where there is some basis for concluding the witness is more likely to correctly identify the defendant from the surveillance recording than the jury.” *People v. Thompson*, 2016 IL 118667, ¶ 50, 49 N.E.3d 393. “A showing of sustained contact, intimate familiarity, or special knowledge of the defendant is not required.” *Id.* Instead, “the witness must only have had contact with the defendant, that the jury would not possess, to achieve a level of familiarity that renders the opinion helpful.” *Id.*

¶ 51 Further, “[t]here is no *per se* rule against admission of a law enforcement officer’s identification testimony.” *Id.* ¶ 56. Generally, where the State seeks to introduce such testimony, “the circuit court should afford the defendant an opportunity to examine the officer outside the presence of the jury.” *Id.* ¶ 59. Such a procedure provides “the defendant with an opportunity to explore the level of the witness’s familiarity as well as any bias or prejudice” and allows “the circuit court to render a more informed decision as to whether the probative value of the testimony is substantially outweighed by the danger of unfair prejudice.” *Id.* Additionally, to lessen concerns that such testimony would invade the province of the jury or usurp its function, the trial court should instruct the jury “that it need not give any weight at all to such testimony and also that the jury is not to draw any adverse inference from the fact the witness is a law enforcement officer if



that fact is disclosed.” *Id.*

¶ 52 In this instance, Knierim did not have to be present at the scene of the shooting when it occurred to be able to identify individuals on the surveillance footage. Rather, he could have provided identification testimony if he possessed the requisite level of familiarity with the individuals depicted in the video and appropriate safeguards were followed. Although the trial record in this case does not reflect the basis for Knierim’s identification, we agree with the State that, at least with respect to Knierim’s identification of defendant, the identification process that occurred below was invited by defendant.

¶ 53 As the State points out, prior to trial, defendant filed a motion *in limine*, asking the trial court to bar the State “from introducing any reference to law enforcement officers referring to their knowledge of having contact with [defendant] or contacting him during previous contact with the police.” When addressing the motion before the court, the State represented that a law enforcement officer who watched the surveillance footage recognized defendant “from a prior contact.” In response, defendant’s counsel asserted that the “focus” of defendant’s motion *in limine* was to exclude references to other police investigations involving defendant, not to prevent a law enforcement officer from stating that he knew defendant and identifying him on the surveillance video. Defendant’s counsel maintained he did not “have any problem with [an officer] saying I know who he is.” Accordingly, not only does the record suggest defendant was identifiable because of his prior contacts with law enforcement, it also supports the State’s contention on appeal that defendant invited the alleged error of which he now complains.

¶ 54 “Under the doctrine of invited error, an accused may not request to proceed in one manner and then later contend on appeal that the course of action was in error.” *People v. Carter*, 208 Ill. 2d 309, 319, 802 N.E.2d 1185, 1190 (2003). When defense counsel asks the trial court to

proceed in a particular manner, “[t]he doctrine of invited error blocks [the] defendant from raising th[e] issue on appeal, absent ineffective assistance of counsel.” *People v. Henderson*, 2016 IL App (1st) 142259, ¶ 210, 77 N.E.3d 1046; see also *People v. Patrick*, 233 Ill. 2d 62, 77, 908 N.E.2d 1, 10 (2009) (declining to address the defendant’s plain-error claim because the defendant invited the error). Here, defendant cannot claim plain error occurred with respect to Knierim’s identification of him because he requested to proceed in the manner that he now alleges was error, *i.e.*, permitting a law enforcement officer to identify him on the surveillance footage without stating the basis of the officer’s identification.

¶ 55           However, even if we were to assume that error occurred with respect to all of the identifications Knierim made, either because Knierim lacked the requisite familiarity with the individuals on the video or because the necessary safeguards for such identifications were not present, defendant cannot establish prejudice. See *White*, 2011 IL 109689, ¶ 133 (“Plain-error review under the closely-balanced-evidence prong of plain error is similar to an analysis for ineffective assistance of counsel based on evidentiary error insofar as a defendant in either case must show he was prejudiced.”). As stated, we find evidence that defendant was present at Long John Silver’s at the time of the shooting was overwhelming. Not only did defendant seek medical treatment for gunshot wounds close in time to when the shooting occurred, he arrived at the hospital wearing clothing identical to the clothing of an individual depicted in the surveillance video. In recorded jail communications, defendant also admitted being present at the restaurant at the time of shooting. Additionally, eyewitness testimony and compelling circumstantial evidence established defendant’s possession of a gun and that he discharged the weapon and caused Hairston’s death. Thus, the evidence in the case was not closely balanced such that the jury’s verdict may have resulted from the alleged errors rather than the properly admitted evidence, nor

is there a reasonable probability that the result of defendant's trial would have been different had Knierim's identifications been excluded.

¶ 56 *2. Cell Phone Evidence*

¶ 57 Defendant further contends that Knierim was improperly permitted to testify regarding the substance of the "chat" conversation found on the cell phone that was discovered in the men's restroom. He argues that communication was hearsay and the record contains no basis for its admission pursuant to any relevant hearsay exception.

¶ 58 Here, we agree that the "chat" conversation testified to by Knierim constituted hearsay. Hearsay, which is generally not admissible (Ill. R. Evid. 802 (eff. Jan. 1, 2011)), is defined as "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 (eff. Oct. 15, 2015)). The "chat" conversation at issue involved out of court statements purportedly made by West and Hairston, two individuals who did not testify at trial. Additionally, the State utilized those statements to prove the truth of the matters asserted in the statements, *i.e.*, that West and Hairston were planning to trade firearms. On appeal, the State does not challenge defendant's characterization of the "chat" conversation or assert any applicable exception to the rule against hearsay.

¶ 59 Ultimately, however, as already discussed, we find the evidence presented at defendant's trial was not closely balanced but instead, strongly weighed against him. Additionally, as defendant was not a participant in the "chat" conversation, nor referenced in the conversation, we find it could not have played a significant role in the jury's guilty verdict and there is no reasonable probability that defendant would have been found not guilty absent the challenged evidence. Accordingly, defendant cannot establish either the occurrence of first-prong plain error

or ineffective assistance of counsel.

¶ 60

### 3. *Narration of the Surveillance Footage*

¶ 61

Finally, defendant contends Knierim was impermissibly permitted to narrate the surveillance video by “walking [the jury] through his interpretation of the conduct of the four men.” We note, however, that the portion of the record to which defendant cites to support his contention shows Knierim was actually identifying and describing three still images taken from the surveillance video. The record does not reflect that Knierim narrated the video as it was played for the jury. Thus, we find no clear or obvious error as alleged by defendant. Additionally, for the reasons already discussed, given the strength of the evidence against him, we find defendant cannot show prejudice from this alleged error.

¶ 62

### III. CONCLUSION

¶ 63

For the reasons stated, we affirm the trial court’s judgment.

¶ 64

Affirmed.