No. 128805

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	On Appeal from the Appellate
	)	Court of Illinois, Second Judicial
Plaintiff-Appellant,	)	District, No. 2-20-0195
	)	
	)	There on Appeal from the
v.	)	Circuit Court of Nineteenth
	)	Judicial Circuit, Lake County,
	)	Illinois, No. 16 CF 1655
	)	
OLVAN QUEZADA,	)	The Honorable
	)	James K. Booras,
Defendant-Appellee.	)	Judge Presiding.

BRIEF AND APPENDIX OF PLAINTIFF-APPELLANT PEOPLE OF THE STATE OF ILLINOIS

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E-FILED
5/24/2023 12:50 PM
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NATURE OF THE ACTION

Following a jury trial in the Circuit Court of Lake County, defendant was convicted of attempted first degree murder of a police officer, aggravated discharge of a firearm, unlawful possession of a firearm by a street gang member, and possession of a defaced firearm, and sentenced to concurrent prison terms of 27, 19, 10, and 5 years, respectively. R951-52, 968-69; C363-64.[1] The appellate court reversed defendant's conviction for unlawful possession of a firearm after accepting the People's concession that the evidence was insufficient to prove that defendant was a member of a street gang, as that term is defined by statute. A37, ¶ 69. The appellate court also reversed defendant's remaining convictions and remanded for a new trial, holding that the admission of a witness's videorecorded statement to police and an expert's opinion that defendant was a member of a street gang, although individually unpreserved and not rising to the level of plain error, together established a meritorious due process claim of cumulative error. A38, ¶ 75. The People appeal the appellate court's judgment. No question is raised on the pleadings.

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[1] Citations to the common law record appear as "C__," to the supplemental common law record as "Sup2 C__," to the report of proceedings as "R__," to the exhibits as "E__," and to the appendix as "A__." The DVD exhibit is cited as "Peo. Exh. 89," with time stamps referring to the time stamp appearing in the upper left-hand side of the video. Citations to the thumb drive containing the two videos comprising People's Exhibit 90 appear as "Peo. Exh. 90 (Part 1)" and "Peo. Exh. 90 (Part 2)," with time stamps referring to the progress bar of the video player.

ISSUE PRESENTED FOR REVIEW

Whether the appellate court erred by granting relief on defendant's due process claim of cumulative error because the two component errors were unpreserved and did not rise to the level of plain error.

JURISDICTION

On November 30, 2022, this Court allowed the People's petition for leave to appeal. Accordingly, this Court has jurisdiction under Supreme Court Rules 315 and 612(b).

STATEMENT OF FACTS

In October 2019, defendant was tried by a jury on three counts of attempted first degree murder of a peace officer, 720 ILCS 5/8-4(a); three counts of aggravated discharge of a firearm, 720 ILCS 5/24-1.2(a)(3); and one count each of unlawful possession of a firearm by a street gang member, 720 ILCS 5/24-1.8, and possession of a defaced firearm, 720 ILCS 5/24-5(b), resulting from his shooting at Waukegan Police Officers Maschek, Lau, and Divirgilio in the early morning hours of June 17, 2018. C34-40, 42.

Defense counsel argued in opening statement that the prosecution's case would "all com[e] down to Dominic Longmire," R402, whom he characterized as the prosecution's only witness who would tie defendant to the shooting. R397-98. Counsel promised that a videorecording of Longmire's police interview would be presented, and impressed upon the jury that, although "lengthy and maybe a little bit boring," the videorecording was

"super important evidence" because it would show that Longmire's account was the product of police coercion. *See* R397-402. Counsel highlighted that the video would show that the detectives "talked to [Longmire] at length," "going back and forth" and threatening and pressuring him as he "ke[pt] telling a different story," until eventually they started feeding him what to say. R398-400. Counsel "thank[ed] God it's on video" because otherwise the jury "wouldn't . . . hear[]" the detectives "say [']look, here's what we think happened,[']" then "tell [Longmire] what they want him to say" and "fill in the gaps for him." R400-01.

The evidence at trial showed that on the night of June 17, 2018, an argument broke out at an apartment complex where Elise Salas shared an apartment with her fiancé, Jonathan Cardona, and his family. R531-35. The apartment complex consisted of several buildings, parking lots, and fields. *See* R411-12; A42. From the parking lot in front of the Cardonas' building, a path ran west past a swimming pool until it reached a maintenance shed just before the line of trees that marked the western edge of the complex. *See* R613; *see also* R415-16, 434-37, 456-57, 613; A42; E69. A security camera on the shed provided a view of the path where it rounded the swimming pool. R455-58; *see* E65; A42.

When Salas came home that night, she found Cardona with William Servin, Longmire, and defendant, passing a gun around. R533-34, 551. As the evening wore on, Cardona got into an argument with his sister about

defendant and somebody called the police; defendant left before the police arrived. R535-37. Salas denied seeing who brought the gun to the apartment or who left with it, R551, but she admitted that she told police in a handwritten statement that she saw "the wolverine man" — that is, defendant, whom she thought looked like "Wolverine," R544[2] — take the gun out of his waistband, and then later "r[u]n out the door taking the gun with him" when the police were called. R557-60.

Shortly before 2:00 a.m., Officer Szostak responded to the report of a domestic disturbance at the Cardonas' apartment. R509. Szostak spoke with Cardona for a while, and Cardona agreed to leave for the night. R511, 537. After Cardona left with Servin and Longmire, R512, 537, Szostak returned to his squad car to write his report of the domestic disturbance call, R512.

At around 2:25 a.m., while Szostak was sitting in his car, he heard two gunshots. R514-15. Surveillance footage from the maintenance shed showed that at around 2:25 a.m., a Hispanic man (defendant was Hispanic, R593) wearing white sneakers and a dark t-shirt with a white Nike swoosh on the chest approached the camera, then turned, raised the gun, and backed out of the frame. Peo. Exh. 89 at 2:09:10-9:58; *see id.* at 2:09:53-2:09:55 (Nike

[2] Presumably Salas was referring to the comic book character by the same name. *See Twentieth Century Fox Film Corp. v. Marvel Enters.*, 155 F. Supp. 2d 1, 39 (S.D.N.Y. 2001) (discussing character of Wolverine).

swoosh visible on front of shirt).[3] A few seconds later, a cloud of particles swirled down from above the camera, *id.* at 2:10:00-2:10:05, which, an officer explained, was consistent with dust being disturbed by the discharge of a firearm nearby, R462-63, 470-71. A spent shell casing was later recovered from the ground next to the shed. R435-36; *see* E66-68.

Szostak reported the shots over the radio and got out of his car to investigate. R515. As he was walking, he saw Cardona, Servin, and Longmire running toward him. R516. Szostak ordered them to stop and get on the ground; Cardona and Servin complied, but Longmire slipped between some parked cars and ran away. R517-19. As Cardona followed Szostak's orders, a spent shell casing fell from his t-shirt. R518, 529.

At that point, Officers Maschek, Lau, and Divigilio arrived. R406-07, 519-20, 704-05, 717-18. They put Cardona in the back of one squad car and Servin in the back of another, then Szostak left, and Maschek (an evidence technician, R406), Lau, and Divigilio gathered around the casing that had fallen out of Cardona's shirt. R407, 519-20, 705, 719; *see* A43.

The maintenance shed security footage showed that at around 2:40 a.m., shortly after Longmire (a black man, R485) ran away from Szostak, a black man joined the Hispanic man in the dark Nike shirt. Peo. Exh. 2:26:18-2:27:28. The two then walked out of view, heading east — *i.e.*, in the

[3] The time stamp on the footage was approximately 16 minutes behind the actual time, R455-56, such that a time stamp of 2:09 a.m. reflected events that actually occurred around 2:25 a.m.

direction of the parking lot where the three officers were standing. *See id.*; A43.

A few minutes later, Maschek reported shots fired. R474, 494, 585. He, Lau, and Divirgilio were standing around the shell casing when they heard shouting followed by several gunshots from the direction of the swimming pool to the west. R408-10, 412, 449, 709-11, 714, 720-22. Lau and Divirgilio could not tell what was shouted, R710, 720, but Maschek thought it was "Fuck the police," R408-09. The officers heard bullets passing overhead, and there was a loud ringing sound as one of the bullets struck a metal object. R409, 709, 722-23. The officers took cover behind parked cars. R409-10, 414, 709, 720. Maschek called for more officers, R414-15, then he and Lau ran in the direction of the shots while Divirgilio stayed with Cardona and Servin, R415, 713, 724.

Officers Llenza and Spiewak responded to Maschek's call of shots fired and took up a position at the fence that marked the northern boundary of the apartment complex, from which they had clear lines of sight to the south and west. R474, 476-78, 493-95, 499-500. While the officers stood by the fence, they heard what sounded like a male voice talking on the other side of the fence, then saw defendant's face appear over the top of the fence as he pulled himself up from the other side. R480-81, 501-02. Spiewak shone his flashlight in defendant's face and identified himself as a police officer, and defendant swore, dropped back down, and started running. R480-82, 501-02.

The officers gave chase through a wet field, but lost sight of defendant. R482-83, 502-05.

Meanwhile, Divirgilio took Cardona and Servin back to the station, R713, 726, and Maschek returned to the scene of the shooting to search for evidence, R417-18. In his search for the spot from which the shooter had fired at the officers, R418, Maschek first found marks where bullets had struck two cars — a Dodge and a Nissan — to the west of where the officers had been standing in the parking lot, R418-19. From the marks on the cars, Maschek determined that the bullets had been fired in a horizontal trajectory toward the officers, with two bullets skipping off the hood of the Dodge and one bullet penetrating the windshield of the Nissan, R418-19, 426-27, 450; *see* E24-30, 36; the mark were not consistent with a bullet falling from the sky after having been fired upward, R449-50. Maschek recovered a bullet fragment from the Nissan's interior. R429-30, 445; *see* E39-40, 91. Further west, Maschek found a mark where a bullet had struck a steel post on the building next to the parking lot. R419; *see* A43; E61. Finally, by a tree west of the pole, Maschek found two spent nine-millimeter shell casings. R421. When Maschek stood at that spot where he recovered the spent shell casings, he saw that the pole and two cars that had been struck with bullets lay directly between him and the spot where he, Lau, and Divirgilio had been standing when the shots were fired. R425-26; *see* E22; A43.

At around 6:00 p.m., detectives interviewing Cardona and Servin at the police station provided Longmire's name and address to officers in the field, along with the description of a Hispanic man wearing a black shirt. R677-78, 591-92. When officers went to the address and knocked on the door, Longmire answered and was arrested. R526-27, 592-93, 740-41. As Longmire left the apartment, officers saw defendant inside, wearing a black Nike shirt, R467, 593; *see* E97 — the same shirt the man with a gun was wearing in the maintenance shed security footage, R466-67, and defendant was wearing when Spiewak and Llenza had chased him through the wet field early that morning, R485-86, 506 — and jeans that were wet and covered in grass at the cuffs, R486. Defendant identified himself and said that he lived in Zion. R594.

Longmire's mother, Tara, invited the officers inside and consented to a search of the apartment. R569, 594-95, 742-43. During that search, officers recovered a pair of wet white sneakers that were covered in mud and grass, R439, 442; *see* E52-53, and a nine-millimeter handgun with the serial number scratched off that was hidden under the cushions of a loveseat, R438, 442-43, 595-96; *see* E45-49, 70-74. Tara testified that Longmire had come home with a Hispanic man at around 3:00 a.m. R565. She offered to give the man a ride home — he said he lived in Zion — asked them to let her know when they were ready, and went back to her room, leaving the men in the living room. R565-66. The Hispanic man was sitting on the loveseat where

the gun was later found. R566, 568. Tara was shocked when police showed her the gun, R569; not only had she never seen the gun before, she did not own any guns, had never seen a gun in her house, and had never seen Longmire with a gun, R568-69.

Firearms testing showed that the bullet fragment recovered from inside the Nissan, the spent shell casings recovered at the scene of the shooting, and the spent shell casing recovered near the maintenance shed were all fired from the gun recovered from the loveseat where defendant had been sitting. R697-98. Salas testified that the gun recovered from the loveseat appeared to be the same gun that she saw being passed around at the Cardonas' apartment before the police were called and defendant left, although she was not "100 percent sure." R543, 549; *see* E76. No DNA or fingerprints suitable for comparison were recovered from the gun, R765-67, and defendant's hands tested negative for gunshot residue, R579, although gunshot residue is "very easy to remove" from one's hands simply by rubbing them together, wiping them, or holding them under running water, R581.

Longmire testified that on the night of the shooting, he went to the Cardonas' apartment, where he saw Salas, Cardona, Servin, and defendant. R603. Eventually, an argument broke out at the Cardonas' apartment, neighbors called the police, and defendant left before police arrived. R603-04. After talking with the responding officer, Longmire left. R605. While he was

walking home, he heard a gunshot, R606, and went to the parking lot where he saw police arresting Cardona and Servin, R608, 610-11.

Longmire then went to the pool, where he met up with defendant, who had a gun. R607-08, 611-12, 624. The two started walking to Longmire's apartment. R612. As they walked along the path from the pool to the apartments, Longmire noticed that the gun was "pointed in the air" and had "gone off." R613-15, 630-31. Defendant fired only a single shot. R633. Longmire did not know whether defendant intended to fire the gun or whether it had discharged accidentally. R615. When asked what they were doing, Longmire volunteered that defendant "didn't say he was going to shoot that guy." R617. Longmire denied that police were visible from the spot where defendant fired the shot. R634-35.

After defendant fired the one shot into the air, they went straight to Longmire's apartment, where they fell asleep. R615-18. At some point, police arrived, arrested Longmire, and took him to the station. R619-20. He did not remember the names, races, or builds of the detectives who interviewed him or for how long he was interviewed; first he guessed three or four days, then offered that maybe it was two or three days. R620-21, 637. But when defense counsel asked him a series of leading questions about specific statements made during the interview, Longmire agreed that he or the officers had made the statements. *See* R637-55. Longmire agreed that the detectives had ignored his requests for an attorney, interrupted his

account of events, insisted that Longmire was not telling them the truth, shouted at him, threatened him with prosecution, said that his mother could lose her home, told him what they heard or thought happened, told him what to write on the photograph of the gun, and interviewed him for over an hour. *Id.* Longmire also agreed that when he first started talking to the detectives, he insisted that he never saw any gun or any shooting. R644.

The prosecution offered Longmire's videorecorded interview into evidence, and defense counsel stated, "No objection, Judge." R670. The videorecorded interview was then admitted into evidence and published to the jury. R670-71, 75. The videos showed that detectives interviewed Longmire at length, first for about an hour and ten minutes, *see* Peo. Exh. 90 (Part 1) at 0:18:46-1:30:03, and then again for about twenty minutes, *see* Peo. Exh. 90 (Part 2) at 0:24:20-0:45-26. The videos contradicted Longmire's testimony in some respects; for example, although he testified that he did not know defendant as "Hombre" and that only police had used that name, R602, the video showed that he was the first to refer to defendant as "Hombre." *See* Peo. Exh. 90 (Part 1) at 0:29:30-0:29:50. But the videos also corroborated some of his testimony. The videos showed that the interviewing detectives sometimes raised their voices, *see*, *e.g.*, *id.* at 0:54:44-0:55:44; accused Longmire of not being truthful, *see*, *e.g.*, *id.* at 0:35:00-0:36:57, 0:38:20-0:38:40, 0:44:30-0:45:15; told him that if he was not truthful, he could be charged with obstruction and whatever offenses were charged against the

people he was protecting, *id.* at 0:37:46-0:37:59, 0:51:10-0:51:22; and said that if he was charged, he could lose his job and his mom could lose her apartment, *id.* at 0:51:40-0:53:07. And over the course of the interview, Longmire's account of events did change. He first claimed that after he left the Cardonas', he went straight home by himself without encountering anyone or making any stops, *id.* at 0:31:37-0:32:29; then he admitted that he was with Cardona and Servin when they heard a gunshot and ran, *id.* at 0:39:08-0:39:18, 0:39:40-0:40:25; then he admitted that met up with defendant on the way home but denied seeing any gun or any shooting, *id.* at 0:32:32-0:34:30, 0:41:41-0:42:00; and eventually he admitted that defendant had fired the shots, *id.* at 1:13:35-1:16:05. Longmire also stated that before firing, defendant had said that he was going to shoot at the police. Peo. Exh. 90 (Part 2) at 0:36:38-0:37:28.

Finally, the prosecution presented Detective Amaro as an expert on gangs. Amaro was a detective in the gang intelligence unit, had been investigating gangs for over 11 years, had a proficient understanding of the gangs in and around Waukegan, and previously had been qualified as an expert in gangs and had opined regarding subjects' gang membership status. R747, 751-52. He was accepted as an expert on gangs without objection. R752.

Amaro testified that he interviewed Servin, reviewed the reports in the case, reviewed the videorecorded interviews of other people, and observed

defendant. R753. Based on his review of those materials, he opined that defendant was "affiliated with the Spanish Gangster Disciples street gang." R754.

On cross examination, when defense counsel asked Amaro if he had spoken with defendant himself, Amaro answered that defendant had not wished to speak to him. R754. When asked whether he was therefore basing his opinion on what other people had told him, Amaro noted that he had also observed that defendant had a cover-up tattoo on his right arm, which was covering an old street gang tattoo. R754. Amara further testified that he also based his opinion on his observation that defendant was with members of the Spanish Gangster Disciples gang and, during the course of the investigation, Servin had introduced defendant to others as "Shorty Folks." R756. Amaro explained that "shorty" is a young gang member, akin to a gang apprentice, R762, and "Folks" is a reference to "Folk nation," one of two associations of gangs in the Midwest, with the other being the "People nation." R761. The Spanish Gangster Disciples are part of the Folk nation, and are introduced as Folks to members of other Folk-affiliated gangs to indicate that affiliation. R761-62. Amaro explained that gangs do not introduce non-members of a gang as members of a gang. R758, 760.

The prosecution rested, and the court granted defendant's motion for directed verdict regarding the counts of attempted first degree murder and aggravated discharge of a firearm against Officer Divirgilio because the

indictment mistakenly named a different Officer Divirgilio than the officer who testified. R768-69. The defense then rested without presenting evidence, R771, the jury found defendant guilty on all remaining counts, R951-52, and the court sentenced him to a total of 27 years in prison, C363-64.

On appeal, defendant argued, *inter alia*, that the evidence was insufficient to prove that he was a member of a street gang, as required to sustain his conviction for unlawful possession of a firearm by a street gang member. A37, ¶ 69. Defendant further argued that it was plain error to admit the videorecording of Longmire's police interview and the gang evidence, A27, ¶ 54; A33, ¶ 63, and that trial counsel was ineffective for not objecting to the admission of those two pieces of evidence, A27, ¶ 54; A33, ¶ 63. Finally, defendant argued that the cumulative effect of the errors alleged denied him a fair trial. A38, ¶ 73.

The appellate court accepted the People's concession that the evidence was insufficient to convict defendant of unlawful possession of a firearm by a street gang member, A37, ¶ 69, held that the admission of neither the videorecorded police interview nor the gang evidence rose to the level of plain error, A30-31, ¶¶ 57-58; A35-36, ¶¶ 65-66, and held that trial counsel was not ineffective for failing to object to the admission of that evidence, A31-32, ¶ 59; A35-36, ¶ 65. But the appellate court reversed defendant's convictions and remanded for a new trial on the ground that the admission of Longmire's

police interview and the gang evidence cumulatively denied defendant a fair trial. A38-39, ¶¶ 73-76.

STANDARDS OF REVIEW

Whether errors had the cumulative effect of denying a defendant due process is a question of law that this Court reviews *de novo*. *See People v. Graham*, 206 Ill. 2d 465, 474 (2003) (due process claims reviewed *de novo*); *People v. Jackson*, 205 Ill. 2d 247, 283 (2001) (claim of cumulative error is due process claim). Similarly, the Court reviews *de novo* whether an unpreserved error rises to the level of plain error. *See People v. Schoonover*, 2021 IL 124832, ¶ 26.

ARGUMENT

The appellate court erred in granting relief on defendant's due process claim of cumulative error because the component errors from which it was comprised — the allegedly erroneous admission of Longmire's prior statement and Amaro's expert opinion — were unpreserved and did not rise to the level of plain error. Only preserved and plain errors may be considered as components of a due process claim of cumulative error. Because, as the appellate court correctly recognized, neither of defendant's unpreserved component errors rose to the level of plain error, defendant's claim of cumulative error was meritless and should have been denied.

I. An Unpreserved Error Cannot Be Considered as a Component of a Due Process Claim of Cumulative Error Unless It Rises to the Level of Plain Error.

A claim of cumulative error is a due process claim that affords a defendant relief when multiple trial errors, though not individually reversible, "ha[d] the cumulative effect of denying [the] defendant a fair trial." *People v. Speight*, 153 Ill. 2d 365, 376 (1992); *see Taylor v. Kentucky*, 436 U.S. 478, 487 n.15 (1978) (granting relief where "the cumulative effect" of multiple trial errors "violated the due process guarantee of fundamental fairness"). To prevail on a claim of cumulative error, a defendant first must establish more than one trial error; if there is only a single error (or no error at all), then there is no cumulative harm to weigh, and the claim of cumulative error necessarily fails. *See People v. Albanese*, 104 Ill. 2d 504, 524 (1984) ("Having concluded that none of the points relied upon by defendant constituted error, logic dictates that there is no possibility for cumulative error."); *People v. Graf*, 2021 IL App (2d) 200406-U, ¶ 95 (claim of cumulative error based on only one cognizable claim of error failed because "there [wa]s no cumulative error argument to be made");[4] *United States v. Moore*, 641 F.3d 812, 830 (7th Cir. 2011) (where defendant "did not identify more than one error, the cumulative error doctrine does not apply"). If a defendant establishes two or more component errors, then the People must show that the cumulative effect of those errors did not deny him a fair trial because the

[4] Copies of all nonprecedential orders cited in this brief are available at https://www.illinoiscourts.gov/top-level-opinions. *See* Ill. S. Ct. R. 23(e)(1).

errors were collectively harmless. *Speight*, 153 Ill. 2d at 377; *United States v. Groce*, 891 F.3d 260, 270-71 (7th Cir. 2018).

An alleged trial error cannot be considered as a component of a due process claim of cumulative error unless it is either preserved for review or, if unpreserved, rises to the level of plain error. *People v. Scott*, 148 Ill. 2d 479, 545-46 (1992) (considering unpreserved component errors offered in support of claim of cumulative error "only [to] consider whether they amounted to plain error"); *see People v. Caffey*, 205 Ill. 2d 52, 117 (2001) (rejecting claim of cumulative error because preserved component errors were harmless and unpreserved component errors "did not rise to the level of plain error"); *People v. Hall*, 194 Ill. 2d 305, 351 (2000) (rejecting claim of cumulative error where preserved errors were harmless and unpreserved errors "were not plain error"); *People v. Barnett*, 2023 IL App (4th) 220402-U, ¶ 66 (rejecting claim of cumulative error based on three unpreserved component errors where two were not clear and obvious and the third did not rise to the level of plain error).[5] This is because framing an error in terms of due process cannot

[5] Federal courts similarly restrict review of cumulative-error claims to only those component errors that are preserved or plain. *See, e.g.*, *Groce*, 891 F.3d at 270-71 ("On a claim of cumulative error, we consider both — but only — plain or preserved errors."); *United States v. Delgado*, 672 F.3d 320, 340 n.24 (5th Cir. 2012) (*en banc*) ("[U]npreserved errors that are not plain have no place in a cumulative error analysis."); *United States v. Ladson*, 643 F.3d 1335, 1342 (11th Cir. 2011) ("Assessing cumulative error, the court reviews all errors preserved for appeal and all plain errors."); *United States v. Necoechea*, 986 F.2d 1273, 1282 (9th Cir. 1993) ("In reviewing for cumulative error, the court must review all errors preserved for appeal and all plain errors.").

excuse forfeiture. Rather, under settled forfeiture principles, an unpreserved claim of error may be reviewed only if it rises to the level of plain error; if an unpreserved error does not rise to the level of plain error, then it is not subject to review, but may be considered only as the basis for a claim of ineffective assistance of counsel. *People v. Byron*, 164 Ill. 2d 279, 295 (1995) (when reviewing unpreserved error, "the threshold inquiry must rise to the level of plain error or ineffective assistance of counsel"); *People v. Denson*, 2013 IL App (2d) 110652, ¶ 10 ("Where an issue is forfeited, [the appellate court] may review it only for plain error or ineffective assistance.").[6] Accordingly, if a defendant wishes to argue that he is entitled to relief based on the cumulative prejudice from multiple unpreserved errors that do not rise to the level of plain error, he must do so by arguing that trial counsel's ineffectiveness in multiple respects cumulatively amounted to a failure to provide effective assistance. *See People v. Lewis*, 2022 IL 126705, ¶¶ 83-85 (considering whether multiple errors represented deficient performance and cumulatively prejudiced defendant); *People v. Foster*, 168 Ill. 2d 465, 488 (1995) (same). But a defendant cannot obtain *de novo* review of an

[6] Although older decisions sometimes use the terms "waiver" and "forfeiture" interchangeably in criminal cases, this Court has since clarified that "[w]hereas forfeiture is the failure to make the timely assertion of the right, waiver is the intentional relinquishment or abandonment of a known right." *People v. Blair*, 215 Ill. 2d 427, 444 n.2 (2005) (internal quotation marks omitted).

unpreserved error that does not rise to the level of plain error merely by presenting it as a due process claim.

The appellate court's contrary assumption — that unpreserved errors that do not rise to the level of plain error may nevertheless be considered as part of a due process claim of cumulative error — is inconsistent not only with the foregoing precedent, but also with the forfeiture doctrine itself. The forfeiture doctrine serves to "encourage[ ] the defendant to raise issues before the trial court, allowing the court to correct its own errors" and "disallowing the defendant to obtain a reversal through inaction." *People v. Herron*, 215 Ill. 2d 167, 175 (2005); *accord People v. Reid*, 136 Ill. 2d 27, 38 (1990); *see also People v. Williams*, 2022 IL 126918, ¶ 48 ("'An accused may not sit idly by and allow irregular proceedings to occur without objection and afterwards seek to reverse his conviction by reason of those same irregularities.'" (quoting *People v. Ford*, 19 Ill. 2d 466, 478-79 (1960)). Accordingly, this Court "ha[s] emphasized that the plain error rule is not 'a general saving clause preserving for review all errors affecting substantial rights whether or not they have been brought to the attention of the trial court.'" *People v. Moon*, 2022 IL 125959, ¶ 21 (quoting *People v. Precup*, 73 Ill. 2d 7, 16 (1978)). Rather, "it is a narrow exception to forfeiture principles designed to protect the defendant's rights and the reputation of the judicial process." *Id.*

"If [courts] reviewed the cumulation of preserved and unpreserved errors for harmless error," even though the unpreserved errors would be

reviewable only for plain error if raised alone, "[it] would undermine plain-error review." *United States v. Caraway*, 534 F.3d 1290, 1302 (10th Cir. 2008). "For one, reversal on harmless-error review is mandatory when the error is sufficiently prejudicial; in contrast, reversal for unpreserved error on plain-error review is discretionary." *Id.*; *see People v. Clark*, 2016 IL 118845, ¶ 42 ("As the language of [Illinois Supreme Court Rule 615(a)] indicates, remedial application of the plain error doctrine is discretionary."); Ill. S. Ct. R. 615(a) (providing that plain errors "*may* be noticed although they were not brought to the attention of the trial court" (emphasis added)).

In addition, allowing a defendant to obtain *de novo* review of unpreserved errors simply by bundling them with a single preserved error would shift the burden from the defendant to the People. "For example, under that procedure if there was one trivial preserved error that could not possibly have influenced the jury, the government would need to prove the cumulative harmlessness of the unpreserved errors; whereas without the trivial preserved error, the defendant would have to prove prejudice [under the plain-error standard]." *Caraway*, 534 F.3d at 1302; *see Herron*, 215 Ill. 2d at 181-82 (explaining that defendant bears burden of persuasion under plain-error review, whereas State bears burden under *de novo* review); *see also People v. Mohr*, 228 Ill. 2d 53, 70 (2008) (Thomas, J., dissenting) (cautioning that erroneous analysis for harmlessness rather than plain error shifts burden from defendant who failed to preserve his claim of error to State);

People v. Darr, 2018 IL App (3d) 150562, ¶ 46 (rejecting argument "that, by combining multiple unpreserved, forfeited errors, a defendant may transform his claim into one that is preserved or not forfeited"). By prohibiting reviewing courts from "notic[ing]" errors unless the errors are "plain," Rule 615(a) preserves the forfeiture doctrine by preventing a defendant from avoiding his burden to show plain error for an unpreserved claim merely by asserting an unrelated preserved claim. Ill. S. Ct. R. 615(a).

Thus, as Illinois courts have already recognized, *see supra*, p. 17 (collecting cases), and contrary to the appellate court's analysis below, an unpreserved error cannot be considered, whether alone or alongside other errors, unless it rises to the level of plain error.

II. Defendant's Due Process Claim of Cumulative Error Was Meritless Because It Contained No Cognizable Component Errors.

Once the error in the analytical framework applied by the appellate court is corrected, it is clear that defendant's claim of cumulative error is meritless because he failed to establish more than one cognizable component error — indeed, he failed to establish any cognizable component errors. As the appellate court recognized, neither of the two unpreserved errors that comprised defendant's claim of cumulative error — the admission of Longmire's prior statement or the admission of Amaro's expert opinion regarding defendant's gang membership — rose to the level of plain error. *See* A30-31, ¶¶ 57-58 (admission of Longmire's prior statement was not plain error); A35-36, ¶¶ 65-67 (same for admission of Amaro's opinion regarding

gang membership). Therefore, neither error could be considered as a component of defendant's claim of cumulative error, and, without at least two cognizable component errors, the claim failed.

To rise to the level of plain error, and thereby be considered as components of defendant's claim of cumulative error, *see supra* § I, the admission of each piece of evidence first had to be proven clearly or obviously erroneous. *See People v. Jackson*, 2022 IL 127256, ¶ 21 (first step of plain-error analysis "is to determine whether a clear or obvious error occurred"). An error is clear or obvious "when it is so obvious that the trial judge and prosecutor were derelict in countenancing it, even absent the defendant's timely assistance in detecting it." *United States v. Christian*, 673 F.3d 702, 708 (7th Cir. 2012) (internal quotation marks omitted); *see People v. Cross*, 2019 IL App (1st) 162108, ¶ 95 (finding no plain error in admitting testimony absent "a clear and obvious error such that the trial court should have *sua sponte* intervened to halt the testimony"); *People v. Koen*, 2014 IL App (1st) 113082, ¶ 46 (finding no plain error in jury instructions because "for there to have been a 'clear and obvious error' the court must necessarily have had a duty to *sua sponte* instruct the jury" differently and court had no such duty).

If a defendant establishes that a forfeited error was clear or obvious, then the forfeiture may be excused if he further shows that (1) "the evidence was so closely balanced the error alone severely threatened to tip the scales of justices" or (2) "the error was so serious it affected the fairness of the trial

and challenged the integrity of the judicial process" — so-called first- or second-prong plain error. *Moon*, 2022 IL 125959, ¶¶ 23-24 (internal quotation marks omitted).

Neither of the errors that defendant alleged as components of his claim of cumulative error rise to the level of plain error under either the first- or second-prong standard. The admission of neither Longmire's prior statement nor Amaro's expert opinion regarding defendant's gang membership was so clearly or obviously erroneous that the trial court was obligated to *sua sponte* exclude them, for defendant acquiesced in the admission of Longmire's statement as part of his defense strategy and his objections to Amaro's opinion went to weight rather than admissibility. Moreover, even if defendant could show clear or obvious errors, the appellate court correctly found that the evidence was not closely balanced and that neither evidentiary error undermined the integrity of the judicial process. A30-31, ¶¶ 57-58; A36, ¶¶ 65-66. Therefore, neither alleged error could be considered as components of defendant's due process claim of cumulative error, and without any component errors, the claim necessarily failed.

A. Defendant failed to show any clear or obvious error.

1. The trial court did not clearly or obviously err by not *sua sponte* excluding Longmire's prior statement.

The admission of Longmire's videorecorded statement to police was not clear or obvious error because defendant did not merely forfeit any objection to its admission, but he affirmatively acquiesced to it. Therefore, defendant

is estopped from challenging the admission of Longmire's prior statement, even as plain error.

Under the doctrine of invited error, a defendant is estopped from challenging the propriety of an action on appeal if he acquiesced to that action by requesting or agreeing to it. *People v. Harvey*, 211 Ill. 2d 368, 385-86 (2004). Accordingly, where a defendant acquiesces to the admission of a piece of evidence at trial, he cannot challenge the admission of that evidence as plain error on appeal. *Id.* at 86 (collecting cases); *see People v. Stewart*, 2018 IL App (3d) 160205, ¶¶ 19-21 ("[A]cquiescence is not subject to the plain-error doctrine."); *People v. McGuire*, 2017 IL App (4th) 150695, ¶ 29 ("Plain-error analysis applies to cases involving procedural default [*i.e.*, forfeiture], not affirmative acquiescence.").

Here, defendant affirmatively acquiesced to the admission of Longmire's entire videorecorded statement when, in response to the prosecution's offer of the statement into evidence, counsel stated, "No objection, Judge." R670; *see*, *e.g.*, *Caffey*, 205 Ill. 2d at 113-14 (when defendant was asked whether he objected to introduction of 911 recording and replied, "No objection, Judge," defendant "acquiesced in the admission of this evidence"); *People v. Cox*, 2017 IL App (1st) 151536, ¶ 74 (defendant acquiesced in admission of hearsay statement when "defense counsel asserted that defendant had no objection"); *see also*, *e.g.*, *People v. Parker*, 223 Ill. 2d 494, 508 (2006) (defendant waived objection to verdict form when he

affirmatively stated "No objection"); *People v. Aquisto*, 2022 IL App (4th) 200081, ¶¶ 53-54 (defendant invited any error in admitting exhibit by telling trial court that he had no objection to its admission). Accordingly, defendant cannot now challenge the admission of Longmire's statement, as plain error or otherwise.

Moreover, defendant could not establish that the trial court clearly or obviously erred by not *sua sponte* excluding the statement even if his acquiescence to its admission did not bar plain-error review, for it is apparent from the record that counsel declined to object to the statement as part of his defense strategy. It is well established that where it is apparent that counsel has declined to raise an available objection to a piece of evidence for strategic reasons, the trial court has no duty to thwart that strategy by *sua sponte* excluding evidence, and so does not plainly err by declining to do so. *See*, *e.g.*, *Precup*, 73 Ill. 2d at 17 (no plain error where "[i]t would have been entirely reasonable for a trial judge to assume that [counsel's lack of objection to admission of certain evidence] was part of the defense's strategy," for "[t]he interruption of this strategy may have, in itself, constituted error"); *People v. Ortega*, 2021 IL App (1st) 182396, ¶ 86 (allegedly erroneous admission of witness's testimony about prior statement "not subject to review for plain error but only properly reviewed under the rubric of ineffective assistance" because it was "plainly evident from th[e] record" that "defense counsel did not simply fail to object to this testimony, but affirmatively relied on it in

order to later impeach [the witness's] credibility"); *People v. Allen*, 2016 IL App (4th) 140137, ¶ 51 ("find[ing] it inappropriate to engage in plain-error review when the issue at hand may have been a strategic decision by counsel"); *People v. Robinson*, 20 Ill. App. 3d 777, 783 (1st Dist. 1974) (where "[i]t was evidently part of the trial strategy of defendant's counsel to use this testimony to attempt to weaken the State's case rather than object to its admission," admission of that evidence cannot have "deprive[d] defendant of a fair trial"); *see also People v. Barnard*, 104 Ill. 2d 218, 232 (1984) (refusing to notice alleged error in tendering jury instruction where trial court was "well aware" of defense counsel's strategy in not requesting instruction).

Here, counsel argued in his opening statement that the jury should discredit Longmire's testimony against defendant because the video of Longmire's police interrogation would show that his account was the product of coercion. *See* R397-402; A22, ¶ 45 (appellate court recognizing that "[c]ounsel emphasized that Longmire's story changed numerous times and was the product of coercive police interrogation tactics"). Counsel explained that the video was "lengthy and maybe a little bit boring, but still super important evidence" because it showed that the detectives "talked to [Longmire] at length," "going back and forth" and threatening and pressuring him as he "ke[pt] telling a different story," until eventually they started feeding him what to say. R398-400. In other words, the two characteristics of the video that the appellate court found objectionable — its length and the

statements of the detectives, *see* A38, ¶ 75 — were precisely the characteristics that counsel believed aided the defense in undermining Longmire's credibility. As counsel put it, "thank God it's on video" because otherwise the jury "wouldn't . . . hear[]" the detectives "say ['']look, here's what we think happened,['']" then "tell [Longmire] what they want him to say" and "fill in the gaps for him." R400-01. Counsel further relied upon inconsistencies among Longmire's various statements in the videorecorded interview as support for his argument that Longmire's testimony should not be credited. *See, e.g.*, R398 ("he keeps telling a different story"); R399-400 ("You count the amount of different stories that Dominic Longmire tells. There's at least seven of them."). Thus, counsel plainly made a strategic decision not to object to the admission of the entire videorecording because he determined that these inconsistencies, viewed in the context of the recording as a whole, were beneficial to the defense, even if, as the appellate court believed, they might not have been so inconsistent with Longmire's testimony to be admissible as prior inconsistent statements. *See* A28-30, ¶ 56. In sum, where the defense strategy depended on the admission of Longmire's entire videorecorded police interview, the trial court had no clear and obvious duty to interfere with that strategy by *sua sponte* excluding the evidence.

Thus, this case is materially indistinguishable from *Precup*, where this Court held that the admission of the defendants' objectionable prior statements was not plain error because defense counsel did not raise the

available objection for strategic reasons. 73 Ill. 2d at 17-18. As the Court explained, it was not plainly erroneous to admit an officer's testimony regarding the defendants' prior statements because "[i]t would have been entirely reasonable for a trial judge to assume that it was part of the defense's strategy to permit the police officer to testify to the statements made by the two defendants." *Id.* at 17. Although otherwise inadmissible, "[t]he officer's testimony as to these statements afforded the defense a means of conveying to the jury the story which each defendant had told the police," which were inconsistent with each other in some respects but were consistent with respect to the defendants' shared alibi. *Id.* If defense counsel had objected to the officer's testimony, "the defendants would have been denied the benefit" of having the jury hear the exculpatory portions of their prior statements. *Id.* at 17-18. Indeed, had the trial court *sua sponte* excluded the testimony, purportedly on the defendants' behalf but potentially in conflict with the defense strategy, "[t]he interruption of this strategy may have, in itself, constituted error." *Id.* at 17. Accordingly, the Court found no plain error. *Id.* at 18.

In other words, *Precup* holds that a trial court does not clearly or obviously error by not *sua sponte* overriding what was likely a strategic decision by defense counsel not to raise an objection that, though legally available, counsel believed would be strategically disadvantageous. The same is true here; as reflected in his opening statement, defendant's counsel

made a strategic decision not to object to admission of Longmire's prior statements because he deemed those statements to be ultimately more beneficial to the defense than harmful. The trial court did not clearly or obviously err by allowing counsel to pursue that strategy.

2. The trial court did not clearly or obviously err by not *sua sponte* excluding Amaro's expert opinion that defendant was a gang member.

Nor did the trial court clearly or obviously err by admitting Amaro's expert opinion that defendant was a member of the Spanish Gangster Disciples. The appellate court found that the trial court erred by admitting this evidence for two reasons. *See* A39, ¶ 76. First, the appellate court believed that Amaro's opinion lacked an adequate foundation because he did not testify that the materials he considered in reaching it (such as Servin's hearsay introduction of defendant to others as a gang member) were the type relied upon by experts in his field and because he did not specify when and to whom Servin introduced defendant as a gang member. *Id.* Second, the appellate court reasoned that the probative value of the evidence was substantially outweighed by the risk of unfair prejudice because the evidence was ultimately insufficient to prove that the Spanish Gangster Disciples were a street gang under the statutory definition. *Id.* But neither of these grounds would have justified the trial court in *sua sponte* excluding Amaro's testimony, much less clearly compelled it to do so absent an objection by defendant.

a. An expert's opinion is not clearly or obviously inadmissible for lack of foundation, especially where the defendant declines to object on that basis.

The trial court did not clearly or obviously err by not *sua sponte* excluding Amaro's expert opinion for lack of foundation. Defendant waived any objection to Amaro's acceptance as an expert in his field. *See* R752 (court declared Amaro an expert in field of gangs after noting that defense counsel "[wa]s shrugging his shoulders" in response to Amaro being tendered as such). Once a witness has been accepted as an expert, "any vulnerability relating to an expert's qualifications, experiences, or basis for opinion may be explored on cross-examination and will affect the weight of that testimony rather than its admissibility." *People v. Pingleton*, 2022 IL 127680, ¶ 58.

This is not to say that an expert opinion that is wholly unsupported by any explanation will be sufficient to prove the fact that the opinion was offered to prove. As this Court explained in *People v. Murray*, although an expert is "not obligated to bring forth the underlying facts and data upon which his opinion was premised," if a gang expert, in opining that a defendant was a member of a street gang, "generally describe[s] in broad terms the types of information and facts on which his opinion was based" but "never explain[s] his reasons as to why that information supported his opinion," then that opinion "fails to prove the elements of the offense of unlawful possession of a firearm by a street gang member." 2019 IL 123289, ¶ 31. In other words, an opinion that a defendant is a gang member because

he is a member of a particular organization cannot prove that he is gang member without providing some basis to conclude that the organization in turn satisfies the various elements required to meet the statutory definition of a street gang. *See id.* ¶ 53. But that is a question of sufficiency, not admissibility, and to the extent a defendant wishes to attack an expert opinion by attacking its basis, "the burden is placed upon [the defendant] during cross-examination to elicit facts underlying the expert opinion," *People v. Williams*, 238 Ill. 2d 125, 140 (2010), regardless of whether that opinion is ultimately sufficient to prove the fact it was offered to prove.

Defendant declined to question Amaro about the materials he relied upon to reach his opinion, instead focusing on establishing that Amaro did *not* base his opinion on information provided by defendant himself and otherwise lacked first-hand personal knowledge of defendant's gang membership. *See* R754-56. This approach left defendant free to argue in closing that Amaro's opinion that defendant was a Spanish Gangster Disciple should be discredited because its bases were unclear (or should be ignored because Amaro did not address whether the Spanish Gangster Disciples were a street gang under the statutory definition). *See* R808-09 (arguing that jury should not discredit Amaro's testimony as unfounded). But defendant's decision to limit his cross-examination in this manner and avoid eliciting potentially damaging details about what, exactly, Amaro relied upon in forming his opinion did not render the opinion inadmissible. *See People v.*

Robinson, 2018 IL App (1st) 153319, ¶ 19 ("Defense counsel's inability (or unwillingness) to put [the expert] through her paces does not make the foundation [for the expert's opinion] inadequate. Rather, the lack of detail in [the expert's] testimony went to its weight, not its admissibility."). "Because [defendant] was able to cross-examine [Amaro] regarding the underlying bases for [his] opinion, any weakness in the foundations for th[at] opinion[] would go only to the weight of that evidence and not its admissibility." *Pingleton*, 2022 IL 127680, ¶ 59. Therefore, the trial court did not clearly and obviously err by not excluding Amaro's opinion where defendant raised no objection to its admission.[7]

b. The probative value of evidence of defendant's gang membership was not clearly and obviously substantially outweighed by the risk of unfair prejudice where one of the charges required proof of gang membership.

The trial court did not clearly or obviously abuse its discretion by not *sua sponte* excluding the evidence of defendant's gang membership because the probative value of that evidence was not substantially outweighed by any risk of unfair prejudice. *See People v. Epstein*, 2022 IL 127824, ¶ 20 (trial court's decision to admit evidence reviewed for abuse of discretion). Evidence

[7] The only objection that defendant raised — an objection to Amaro's testimony that Servin had introduced defendant as a gang member on the ground that Amaro did not specify when or to whom Servin made such introductions — was sustained. R758-59. Although the appellate court noted this objection (and that it was sustained) in its discussion of the purported error in admitting Amaro's opinion, it provided no reason why that sustained objection would require the exclusion of the opinion as a whole. *See* A33-34, ¶ 64.

is relevant, and therefore generally admissible, Ill. R. Evid. 402, if it has "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. Illinois Rule of Evidence 403 provides a limited exception to this general rule, granting a trial court discretion to exclude relevant evidence "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Ill. R. Evid. 403.

But in weighing the probative value of a piece of evidence against the risk of unfair prejudice, "'[t]h[e] scale . . . is not evenly balanced.'" *People v. Dea*, 353 Ill. App. 3d 898, 904 (4th Dist. 2004) (Steigmann, J., specially concurring) (quoting T. Mauet & W. Wolfson, Trial Evidence 5 (1997)). Because the risk of unfair prejudice must "substantially outweigh" any probative value, Ill. R. Evid. 403, there is a "presumption" in favor of admissibility even under Rule 403, with exclusion an "extraordinary remedy" that should be used "sparingly." *See* 22A Fed. Prac. & Proc. Evid. § 5221 (2d ed.) (collecting cases and treatises); *see also*, *e.g.*, *United States v. Claxton*, 766 F.3d 280, 302 (3d Cir. 2014) ("Rule 403 creates a presumption of admissibility," and "[e]vidence should not be excluded under Rule 403 merely because its unfairly prejudicial effect is greater than its probative value," but "only if its unfairly prejudicial effect 'substantially outweigh[s] its' probative

value." (internal quotation marks omitted)); *United States v. Seals*, 419 F.3d 600, 612 (7th Cir. 2005) (Posner, J., concurring) ("By making relevant evidence excludable only if its probative value is *substantially* outweighed by competing considerations . . . , Rule 403 establishes a presumption in favor of the admissibility of relevant evidence." (emphasis in original)).[8] Generally, a claim that the risk of unfair prejudice posed by a piece of evidence substantially outweighs its probative value will not support a finding of plain error, for "[g]iven that the great majority of evidence typically offered at trial contains no prejudicial effect, trial courts should be allowed to await an objection by the opposing party on the ground of the evidence's prejudicial effect before being called upon to make a ruling." *Dea*, 353 Ill. App. 3d at 904 (Steigmann, J., specially concurring).

Here, even if the trial court had weighed the probative value against the risk of unfair prejudice for every piece of evidence, unprompted by any objection, it could not have found the evidence of gang membership inadmissible under Rule 403 because the evidence that defendant was a gang

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[8] Although Rule 403 codifies the Illinois common law balancing test, it "is virtually the same as" Federal Rule of Evidence 403, *People v. Moore*, 2020 IL 124538, ¶ 39, which this Court previously endorsed as properly articulating the rule in Illinois, *People v. Walker*, 211 Ill. 2d 317, 338 (2004) ("when deciding whether to exclude certain evidence" under Illinois common law, like Federal Rule of Evidence 403, "the proper consideration is whether the probative value of the evidence is substantially outweighed by the danger of unfair prejudice"). Accordingly, this Court looks to precedent interpreting the federal rule as persuasive authority in Illinois. *See id.* at 336-38 (following the United States Supreme Court's interpretation of Federal Rule of Evidence 403 and citing *Old Chief v. United States*, 519 U.S. 172 (1997)).

member was not only highly probative, but legally necessary — defendant was charged with unlawful possession of a firearm by a street gang member, C40, which required that the prosecution prove that he was a gang member. *See* 720 ILCS 5/24-1.8(a); R937 (jury instructions providing that jury cannot find defendant guilty of unlawful possession of a firearm by a street gang member unless it finds "[t]hat defendant was a street gang member"). Accordingly, the prosecution "ha[d] the right and, in fact the duty, to establish the elements of the crime charged," *Walker*, 211 Ill. 2d at 335, which in this case included the element that defendant was a gang member, 720 ILCS 5/24-1.8(a).

The high probative value of the evidence that defendant was a gang member was not clearly or obviously substantially outweighed by any risk of unfair prejudice. Although evidence that defendant was a gang member was certainly prejudicial, inasmuch as it rendered it more likely the jury would find him guilty of unlawful possession of a firearm by a street gang member, evidence is not unfairly prejudicial simply because it is harmful to the defense. *Old Chief*, 519 U.S. at 193 ("'Unfair prejudice' as used in Rule 403 is not to be equated with testimony simply adverse to the opposing party."); *People v. Daniels*, 164 Ill. App. 3d 1055, 1081 (2d Dist. 1987) ("All effective evidence is prejudicial in the sense of damaging the party against whom it is offered."). Rather, to be unfairly prejudicial under Rule 403, evidence must "cast a negative light upon a defendant for reasons that have nothing to do

with the case on trial." *People v. Pelo*, 404 Ill. App. 3d 839, 867 (4th Dist. 2010), overruled in part on other grounds by *People v. Veach*, 2017 IL 120649; *see also Old Chief*, 519 U.S. at 180 ("'Unfair prejudice within its context means an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one.'" (quoting Fed. R. Evid. 403, Advisory Committee Note)). Because one of the issues in the case was whether defendant was a gang member, the evidence that the prosecution presented to prove that fact was not unfairly prejudicial. *People v. Gonzalez*, 142 Ill. 2d 481, 489 (1991) (defendant "may not insulate the trier of fact" from evidence of his gang membership "where it is relevant to a determination of the case, simply because prejudice attaches to that revelation" (internal quotation marks omitted)).

Indeed, any prejudicial effect of the evidence of gang membership in this case as whole, rather than in relation to the charge of unlawful possession of a firearm by a street gang member, was extremely limited. The prosecution offered no evidence that the Spanish Gangster Disciples engaged in a course or pattern of criminal conduct, and so the only prejudicial effect from the gang evidence was the use of the term "gang," and defense counsel confirmed during *voir dire* that references to gangs would not prevent the jurors from being fair and impartial and deciding the case based on the evidence rather than hostility toward gangs. *See* R296, 314; *People v. Strain*, 194 Ill. 2d 467, 477 (2000) ("when testimony regarding gang membership and

gang-related activity is to be an integral part of the defendant's trial, the defendant must be afforded an opportunity to question the prospective jurors . . . concerning gang bias"). And the prosecution made only a single reference to gangs in each of its opening statement and closing argument. *See* R395 (opening statement comment that "[defendant] did not have a FOID card, he was a gang members and the gun was defaced"), 795 (closing argument statement explaining the elements of the offense of unlawful possession of a firearm by a street gang member and arguing that defendant "was a Shorty Folk, he was an apprentice in the Spanish Gangster Disciples at the time").

The appellate court erred by considering the ultimate sufficiency of the evidence of defendant's gang membership when determining whether the evidence was properly admitted in the first place. That the evidence of defendant's gang membership was ultimately insufficient to prove that fact did not retroactively render admission of the evidence erroneous, much less clearly or obviously erroneous, such that the trial court had a duty to exclude it *sua sponte* when the prosecutor offered it at trial. Whether the totality of the evidence presented at trial is ultimately sufficient to prove the defendant's guilt is irrelevant to whether any particular piece of evidence was admissible when it was offered into evidence. Were the rule otherwise, a trial court would have to wait until the close of the prosecution's case to determine the admissibility of every piece of evidence presented based on whether the totality of the evidence was legally sufficient. Similarly, the remedy available

to a defendant who believes the evidence to be insufficient at the close of the prosecution's case would be to move to strike the entirety of the prosecution's evidence of guilt as inadmissible and send the jury to deliberate on the remaining nullity rather than to move for a directed verdict. But the question of whether a piece of evidence is probative of guilt (and thus admissible) is independent from the question of whether that evidence, together with all of the other evidence in the case, is legally sufficient to prove guilt.

Nor does the fact that the jury found defendant guilty of unlawful possession of a firearm by a street gang member despite the insufficiency of the evidence of his gang membership demonstrate any unfair prejudice. The evidence was insufficient to prove that count because no evidence was presented that the Spanish Gangster Disciples were a street gang under the statutory definition. However, the jury was not provided with the statutory definition of a street gang or instructed that it must acquit defendant unless it found that the Spanish Gangster Disciples satisfied that definition, *see* R936-38; C324-26, and so the jury's finding of guilt reflects the insufficiency of the jury instructions rather than any irrational prejudice aroused by the gang evidence. Therefore, the ultimate insufficiency of the evidence that defendant was a gang member did not clearly or obviously require the trial court to exclude that evidence *sua sponte* when it was offered during trial

where the evidence otherwise was not only highly probative, but necessary, and there was little risk of unfair prejudice.

B. The evidence was not closely balanced, nor did the admission of either Longmire's prior statement or the evidence of defendant's gang membership constitute structural error.

Because the admission of neither Longmire's prior statement nor Amaro's expert opinion was clearly or obviously erroneous, the admission of neither piece of evidence constitutes plain error under either the first or second prong. *See Jackson*, 2022 IL 127256, ¶ 21. But even if the admission of either piece of evidence was clearly or obviously erroneous, defendant did satisfy the first prong of the test because the evidence was not closely balanced and did not satisfy the second prong because neither alleged error constituted structural error.

As the appellate court correctly held, the evidence was not closely balanced under the first prong of the plain-error test. *See* A24-25, ¶¶ 48-49; A30-31, ¶ 57; A35-36, ¶ 65. Under the first prong, a clear and obvious error rises to the level of plain error if the evidence was so closely balanced that any error, no matter how slight, "'[wa]s actually prejudicial,'" in that could have caused the jury to find the defendant guilty where it otherwise would have acquitted him. *See People v. Sebby*, 2017 IL 119445, ¶ 51 (quoting *Herron*, 215 Ill. 2d at 187). Here, the evidence showed that the person who shot at police was standing in the area where Longmire testified he saw defendant fire a gun; the trajectory of the bullets showed that they had been

fired at police and not simply in the air; nearby security footage showed a man who matched defendant's description holding a gun shortly before the shooting; and defendant led police on a foot chase through the apartment complex shortly after the shooting before being apprehended in Longmire's apartment, where the gun that fired the bullets at police (and looked like the gun that defendant was holding in the security footage) was found under the cushions of the couch where defendant had been sitting. Photographs of the gun showed that the serial number had been removed and its removal was so plain that defendant could not but have known the gun was defaced. Thus, the evidence that defendant committed attempted first degree murder of a police officer by shooting at Officers Maschek and Lau and possessed a defaced firearm was not closely balanced.

The appellate court further correctly held that any error in admitting Longmire's prior statement and Amaro's expert opinion did not constitute second-prong plain error. *See* A31, ¶ 58; A36, ¶ 66. To satisfy the second prong of the plain-error test, an error must be "structural," meaning that that it "affect[s] the framework within which the trial proceeds, rather than mere errors in the trial process itself." *Moon*, 2022 IL 125959, ¶¶ 28-29. Thus, for example, a failure to swear the jury constitutes structural error (and, if forfeited, second-prong plain error) because it "affects the very framework within which the trial proceeds" and therefore "cannot be logically categorized as mere trial error." *Id.* ¶ 70. In other words, structural errors

undermine the integrity of the judicial process itself, rendering that process "an unreliable means of determining guilt or innocence." *Id.* ¶ 28. For that reason, "[s]tructural error 'def[ies] analysis by "harmless error" standards'" such as those that govern even constitutional errors, *Jackson*, 2022 IL 127256, ¶ 49 (quoting *Arizona v. Fulminante*, 499 U.S. 279, 309 (1991)), and warrants automatic reversal "regardless of the strength of the evidence of the defendant's guilt," *id.* ¶ 28. Accordingly, structural errors have been recognized in only a "'very limited class of cases.'" *Moon*, 2022 IL 125959, ¶ 28 (quoting *Johnson v. United States*, 520 U.S. 461, 468 (1997)).

The erroneous admission of a piece of evidence like Longmire's prior statement or Amaro's expert opinion does not constitute structural error because it constitutes an error within a functioning judicial process, not an error that prevents the judicial process from functioning. Unlike trial before a biased judge or the complete denial of counsel, *see Moon*, 2022 IL 125959, ¶ 29, the mere fact that a particular trial (like most trials) may contain an evidentiary error does not render the judicial process itself fundamentally unfair. *Ross v. Oklahoma*, 487 U.S. 81, 91 (1988) ("[T]he Constitution entitles a criminal defendant to a fair trial, not a perfect one."); *People v. Allen*, 222 Ill. 2d 340, 353 (2006) ("[A] fair trial is different than a perfect trial."). That is why a preserved claim that a piece of evidence was erroneously admitted is not automatically reversible but instead is reviewed for harmlessness. *See In re E.H.*, 224 Ill. 2d 172, 180 (2006) (explaining

distinction between evidentiary and constitutional harmlessness analyses). The fact that the erroneous admission of a prior statement or expert opinion is reviewed for harmlessness demonstrates that such errors are not structural and therefore cannot constitute second-prong plain error. *See People v. Oglesby*, 2016 IL App (1st) 141477, ¶ 272 (finding error in admitting expert's opinion to be harmless); *People v. Wilson*, 2012 IL App (1st) 101038, ¶¶ 55, 58 (finding error in admitting witness's prior statements to police as prior inconsistent statements to be harmless). Certainly, any error in admitting Longmire's prior statement or Amaro's expert opinion did not have an effect on the integrity of defendant's trial equivalent to a trial before a biased judge, the complete denial of counsel, or failure to swear the jury to perform its function. *See Jackson*, 2022 IL 127256, ¶¶ 29, 64. Therefore, neither error could constitute second-prong plain error.

* * *

Because defendant's unpreserved claims that the trial court erred in admitting Longmire's prior statement and Amaro's expert opinion do not rise the level of plain error, they cannot be considered as components of his due process claim of cumulative error. *See supra* § I. Therefore, with neither of its component errors subject to review, defendant's claim of cumulative error necessarily fails.

CONCLUSION

For these reasons, the People of the State of Illinois respectfully request that this Court reverse the judgment of the appellate court.

May 24, 2023

Respectfully submitted,

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RULE 341(c) CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 10,961 words.

/s/ Joshua M. Schneider
JOSHUA M. SCHNEIDER
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CERTIFICATE OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On May 24, 2023, the foregoing **Brief and Appendix of Plaintiff-Appellant People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the Court's electronic filing system, which provided service to the following:

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APPENDIX

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2022 IL App (2d) 200195
No. 2-20-0195
Opinion filed June 30, 2022

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	from the Circuit Court of Lake County.
Plaintiff-Appellee,	)	
v.	)	No. 16-CF-1655
OLVAN QUEZADA,	)	Honorable James K. Booras,
Defendant-Appellant.	)	Presiding Judge.

JUSTICE JORGENSEN delivered the judgment of the court, with opinion.
Justices McLaren and Schostok concurred in the judgment and opinion.

OPINION

¶ 1 Following a jury trial, defendant, Olvan Quezada, was convicted of attempted murder of a police officer (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2014)), aggravated discharge of a firearm (*id.* § 24-1.2(a)(3)), unlawful possession of a firearm by a street gang member (*id.* § 24-1.8(a)(1)), and possession of a defaced firearm (*id.* § 24-5(b)). Defendant's posttrial motion was denied. On December 16, 2019, the court sentenced defendant to 27 years' imprisonment and, on March 4, 2020, denied defendant's motion to reconsider the sentence. Defendant appeals. For the following reasons, we reverse defendant's convictions and remand for a new trial on all counts except unlawful possession of a firearm by a street gang member.

¶ 2 I. BACKGROUND

¶ 3 For context, we summarize that, in the early morning hours of June 17, 2016, police arrived at the Briarwood apartment complex in Waukegan to address a domestic dispute. After that dispute was resolved, while police officer John Szostak was writing a report, a gunshot was fired (the first shooting). Additional officers arrived on the scene to investigate the gunshot, and then more shots were fired in the officers' direction (the second shooting). Police later arrested defendant and Dominic Longmire, after a gun was found underneath a couch cushion at Longmire's apartment, where defendant had been sleeping. Defendant was ultimately charged with crimes stemming from the second shooting.

¶ 4 A. Trial

¶ 5 1. Shootings and Arrests

¶ 6 On June 17, 2016, at around 1:48 a.m., Szostak responded to a domestic call at 3055 Arthur Court in the Briarwood apartment complex. Jonathan Cardona (Hispanic), William Servin (Hispanic), and Longmire (African-American) were present, as well as Elise Salas (Cardona's fiancé) and some of Cardona's family members. Defendant was also present before police were called but had left by the time Szostak arrived. After the domestic dispute was resolved, Cardona agreed to leave the apartment with Servin and Longmire. Szostak returned to his car to write his report and then, around 2:25 a.m., he heard two gunshots. He saw Cardona, Servin, and Longmire running, and he ordered them to stop. Servin and Cardona ultimately complied, although Longmire ran away. When Cardona walked over and put up his hands, a spent shell casing fell from him. Servin and Cardona were handcuffed and put in separate squad cars. A bit later, Szostak heard several more gunshots. He saw a subject running westbound. Later, he arrived at Longmire's apartment and identified him as the third subject who had been with Cardona and Servin, but who

had run away from him. Szostak testified that he never saw defendant at the domestic call; no mention was made to him about a gun being there.

¶ 7 Salas testified that Cardona was her fiancé and she lived with him on June 17, 2016. On that date, there was a gathering in Cardona's apartment with Cardona, Servin, Longmire, and defendant present. She did not know defendant; he was already there when she arrived home from work. Salas and Cardona's mother thought defendant "was a little bit off" and was looking at people strangely. Someone passed around a gun, but Salas could not recall who took out the gun or who put it away. "Everybody" held the gun at some point. After a fight broke out between Cardona and his sister, the police were called, although defendant left before they were called. The police spoke with the family, and Cardona left with Longmire and Servin. Afterwards, Salas heard a gunshot and ran outside; she saw Cardona and Servin running and then being stopped by police and put in a squad car. She then heard a second round of gunshots. At the police station and at trial, Salas identified lineup photographs of Cardona, Servin, Longmire, and defendant, as well as a picture of a gun that looked like the one passed around the apartment. She had written on the picture that a man who looked like "Wolverine," *i.e.*, defendant, took the gun out of his back pocket. Although, at trial, she could not recall seeing defendant leave the apartment, she wrote in her police statement, "[a]s soon as Wolverine Man had heard my in-laws on the phone with 9-1-1, he had ran [*sic*] out the door taking the gun with him."

¶ 8 Detective Brian Maschek testified that he arrived at the Briarwood apartment complex around 2:35 a.m. Other officers were already on the scene, and Cardona and Servin had already been placed in the back of separate squad cars. Maschek was tasked with processing evidence, specifically, a fired bullet casing that had fallen from Cardona's T-shirt and was found on the pavement. Maschek testified that, while he and the two other officers huddled around the bullet

casing, "that's when I began to hear I guess I heard somebody yell, 'F*** the police,' " followed by five gunshots. He did not hear someone yell, "I'm going to shoot." Maschek heard a whistling sound and felt a projectile going over his head, and he and the other officers took cover. According to Maschek, the shots sounded as though they came from the west, near the complex's pool. Maschek ultimately recovered and processed four cartridges and fired bullet casings, three in the grass near the pool area and one in the parking lot. The bullets that hit parked vehicle windshields did not appear to have been fired from a weapon being shot straight up into the air; rather, they appeared to have been fired in a horizontal trajectory.

¶ 9 Officer Angela Divirgilio testified that she heard yelling prior to the shots and that the shots seemed to come from the northwest, near the basketball court and the pool (although on cross-examination she agreed that she did not see exactly from where they came). After the shots, she saw someone in that area running in a white top, "maybe a tank top."

¶ 10 Officer Jason Lau also heard shouting prior to the shots, but he did not hear what was said, and, while he was "pretty convinced" that the shots came from the west, the buildings and the parking lot created "kind of a funnel" and the shots could have been coming from anywhere. Further, "the radio traffic kind of muddied things up because everybody was saying different things about where they thought the shots were coming from."

¶ 11 Detective Christopher Llenza and Sergeant John Spiewak were at the scene around 2:45 a.m., after the second shooting, and they stood near a dumpster and a fence on the northeast corner of the complex's property line, looking down the south and west perimeters in case any suspects ran from the presumed location of the shots to the north or east. They were trying to be quiet as they looked around, and then they heard a man talking. A man pulled up on the fence with both hands and peeked his head over it. Spiewak shined his flashlight on the man and identified himself

as a police officer, and the man said "s***" and ran east toward Green Bay Road. Both officers identified defendant as the person who looked over the fence and ran from them. They tried to chase defendant as he ran north toward another apartment complex; the path and the grounds were wet and swampy. Llenza and Spiewak later went to Longmire's apartment, where they identified defendant as the person who had been on the fence and ran away. Defendant was wearing the same clothes as before, including a dark shirt, and the bottom of his jeans was wet and covered with grass.

¶ 12 After processing evidence at the shooting scene, Maschek was also asked to collect items at 322 North Green Bay Road, in an apartment belonging to Longmire and his mother. There, a .9-mm Keltec semiautomatic handgun was recovered underneath a couch cushion. The weapon's serial number was defaced. In addition, Maschek was directed to two pairs of tennis shoes—white and red Nike Air Jordans, wet with debris and mud on them, and purple and black Nikes, also wet. Further, in the bathroom, one wet sock and gray sweatpants were on the floor in front of a sink vanity and, on the vanity, there was an open bottle of liquid soap or body wash and dirt around the sink.

¶ 13 Officer Michael Sliozis testified that he collected video evidence from the crime scene. Specifically, he collected and reviewed a video retrieved from a security camera that was mounted on a maintenance shed near the pool. The camera pointed north and recorded, around the relevant time, a person raising his left arm. Sliozis testified that he had been a police officer for 16 years and it appeared that the person on camera held a gun. Sliozis also testified that the video showed dust falling, which could signify multiple gunshots disrupting and causing dust to "shake off" near the camera area. The video did not have any audio, so it did not record the sound of gunshots. The video was admitted without objection and published to the jury. Sliozis also helped process, book,

and collect evidence from defendant. The evidence he collected included white Nike shoes, blue jeans, and a shirt. Sliozis testified that he collected from defendant a white shirt, although the State later referred to it as a black Nike T-shirt and confirmed with Sliozis that he collected from defendant the same black Nike T-shirt that is seen in the security video. Defendant did not have a firearm owners identification (FOID) card on him.

¶ 14 Longmire's mother, Tara Longmire, testified that she lives with Longmire and his brother. On June 17, 2016, around 3 a.m., Longmire came home with a young Hispanic male. She did not know the man, had never seen him before, did not know his name, and could not identify him at trial. When she entered the room, the man was already sitting on a two-cushion love seat. Although she said that the man could not stay and offered to drive him home to Zion, the two men were not ready to leave. Tara ultimately went to bed. When the police arrived, they searched the house and found a gun. Tara testified that she does not own a gun and had never seen the gun before; she was "shocked" to see the gun. She identified photo exhibits of the two-cushion love seat, as well as the gun on the love seat underneath the couch cushion.

¶ 15 2. Longmire's Testimony and Interrogation

¶ 16 Longmire testified that he had a recent robbery conviction. On June 17, 2016, he went to Cardona's apartment and Servin and defendant were there. He testified that, on that night, he had known defendant for only a few months and knew him only as "O," not "Hombre." Defendant left Cardona's apartment prior to the police arriving. After the domestic dispute was resolved, Longmire left Cardona's apartment alone and started to walk home. About halfway there, he heard a gunshot. He tried calling Cardona and defendant, but did not reach them, so he went back to the apartment complex and saw Cardona and Servin being handcuffed. Longmire then walked to the pool area (near a maintenance shed, sidewalk, basketball court, and field) and met up with

defendant to take defendant home to Zion. When they were walking on a path near a flagpole, defendant was in front of Longmire; defendant pointed a gun in the air and shot it. Longmire did not get a close look at the gun, but he realized it was a gun when it went off. Longmire stated that he was not sure if it was "an accidental discharge" and that defendant "did not say he was going to shoot that guy." Longmire was worried and said, "[O]h, we got to go home. We got to get you home, *** come with me ***." Longmire did not want defendant to get in trouble. He and defendant ran to Longmire's apartment, and defendant brought the gun inside. Longmire has never brought a gun into his mother's home, nor did she keep guns there. Longmire's mother was going to take defendant home, but they fell asleep. Police arrived and arrested them; after a gunshot residue test was performed, Longmire was interviewed. He did not recall referring to defendant as "Hombre" during the interview. Nor did he recall which officers interviewed him and which showed him photo lineups. "It was so long ago." Longmire verified the identifications he made from the photo lineups, including one on which he circled a picture of defendant, initialed it, and wrote, "shot his pistol. I know him from mutual friends, D-L." Longmire said that he was scared and that officers coerced him.

¶ 17 On cross-examination, Longmire testified that he heard one shot and that defendant did not say anything before firing the weapon. Longmire testified that he saw defendant pull the trigger with the gun pointing in the air, although not straight up. Longmire did not recall exactly where they were standing when defendant fired the gun, but he did not recall being able to see the police from where they were standing. Longmire agreed with defense counsel that, during his interrogation, he tried to tell the truth but the detective interrupted him numerous times and pressed him to tell a certain story. He agreed with counsel's statement, "[a]nd then you started to tell the truth, and they would interrupt you and tell you that's not the truth. That's not what we need to

hear?" Further, Longmire agreed that, when there were questions he could not answer, the detectives "filled in the blanks" for him with what they wanted him to say. He noted that, during the interrogation, he twice told detectives that he wished to speak to an attorney, but they did not get one. One detective told him, "if we think you are lying, I take this all away and can have you charged with attempted murder, have everybody charged with attempted murder." Further, a detective said, "[i]f I were you sitting in that chair, I would tell you whatever I want to hear to get out of that chair." They told Longmire that, if he did not tell them everything that happened, his mother could lose her apartment. Longmire testified that the detectives "basically threatened" him. Although he originally told them that he did not see a gun, the shooting, or "Hombre" shoot anything, they showed him photo lineups and told him to write on the picture of the gun that "Hombre" shot the gun. He wrote that statement after the detectives badgered him to say what they wanted him to write. "They didn't want to hear that you hadn't seen the gun that night, and you didn't see anybody shoot; did they?" He answered, "no." Counsel continued, "[i]n fact, when you first entered the interview, you told them I didn't see any gun. I didn't see any shooting, correct." Longmire answered, "yes." He reiterated that he told the detectives that defendant did *not* say, "F*** the police," before shooting, and "I thought like that was very wrong. I'm going to tell the truth about that, you know. Anybody could maybe say I'm a liar, you know, but I'm going to tell the truth about that." In sum, defense counsel questioned Longmire about numerous things he said during the interrogation and the police tactics used therein.

¶ 18 On redirect, Longmire agreed that his interrogation was video recorded. In addition, he confirmed that he did not know who was responsible for the first shooting, because he was nowhere near the shooter, but that, for the second shooting, he was by defendant. Longmire also agreed that

he changed his story and some of the details "a little bit here and there" during the interrogation. Finally, he repeated that he never heard defendant say, "F*** the police."

¶ 19 Longmire's interrogation consisted of two interviews conducted in two rooms at the police station. The recordings of those two interviews were published to the jury, with no objection, after the conclusion of Longmire's testimony and after one of the interviewing detectives, sergeant Elias Agalianos, testified that he had watched the videos and they were accurate. The videos were redacted only to remove "dead time," when Longmire was in the room but not actively being interviewed. The unredacted portions of the videos consisted of approximately 90 minutes of interviews by Agalianos and detective George Valko and approximately 12 minutes depicting other officers showing Longmire photo lineups.

¶ 20 In the videos, which this court has reviewed, Longmire was not wearing a shirt, socks, or shoes, although he had a blanket wrapped around his torso for most of the interview. In sum, in the videos, Longmire was the first person to mention defendant and did so by referring to him as "Hombre," a reference he repeated throughout the duration of the interview. Initially, Longmire "glossed over" the night's events, denied having seen a gun or a shooting, and claimed that he went home after leaving Cardona's apartment. The detectives rejected Longmire's story, accused him of being dishonest, and urged him to be truthful because they had already spoken to other officers and persons in custody and knew the "whole story." At times, Agalianos loudly raised his voice. The detectives explained that someone told them that Longmire was at the shooting and saw who was responsible. The detectives discussed Longmire's status as a "Shorty" and advised him that covering for gang members would only get him in trouble and would elevate his involvement in the crimes from low to very high. The detectives stated that, unless he cooperated and was truthful, he could be charged with attempted murder and lose his jobs and his mom could lose her

house. They told Longmire that defendant was doing the "right thing" and that they did not think that Longmire was the shooter but that, if he kept lying, he could be charged with everything. Ultimately, Longmire told the detectives that defendant fired the shots, and they responded, "you are not the first person who told us this." After repeated questioning, Longmire stated that, before firing, defendant said that he was going to shoot at the police. Longmire repeatedly denied that defendant said, "F*** the police."

¶ 21 After the jury had reviewed the videos, Agalianos resumed his testimony concerning Longmire's interrogation. He explained that, before starting the interrogation, he had spoken with other officers about Cardona, Servin, and Longmire and, at some point, they obtained information regarding a fourth individual, "a male Hispanic, approximately five-seven, five-eight with a blown out hairstyle is the way it was described. He was wearing a black shirt, had tattoos, I believe blue jeans." Longmire and defendant arrived at the station, and, around 7:30 a.m., Agalianos and Valko commenced Longmire's interrogation. Agalianos explained his approach to interviewing a suspect when he believes the suspect is being untruthful, including raising his voice and impressing upon the suspect the seriousness of the situation. He likened it to yelling at one's child when the child is untruthful and the parent wishes to impress upon the child the severity of the situation. On cross-examination, when asked whether Longmire changed his story "about 10 different times," Agalianos explained that, "[t]hrough the process, yes, he started to give up more information pertaining to the incident, yes." He agreed that Valko told defendant that, "if I were you, I would tell you whatever I want to hear to get out of that chair," although Agalianos said that the statement could mean several things, depending on how it is interpreted. Counsel asked, "and shortly after that, you raised your voice and told [Longmire], 'if we think you're lying, I can have you charged with everything, including attempted murder,' " and he replied, "Correct. I wanted him to realize

how serious it was and what the consequences potentially could be, yes." He agreed that he told Longmire that he could be charged with attempted murder and that his mother could potentially lose her house. He also agreed that, on occasion, when Longmire started to say something that Agalianos did not want to hear or did not believe was the truth, he would interrupt Longmire to say "no" and that he wanted something different.

¶ 22 3. Gang Evidence

¶ 23 Detective Rigoberto Amaro has been a police officer for more than 18 years and is a detective in the Waukegan Police Department's gang intelligence unit. He works on gang and narcotics investigations, as well as shootings and violent crimes. Around 4 a.m. on June 17, 2016, he arrived at the police station and was briefed on the facts of this investigation. At the time, Servin and Cardona were both in custody, and Amaro interviewed Servin. He then spoke with Agalianos to compare what they were learning. A bit later, defendant and Longmire were brought into the station. Amaro performed gunshot residue testing on defendant and observed that the bottom of his pants and shoes were wet, grassy, and muddy. Further, Amaro noticed that defendant had a tattoo on his arm and a "blowout style haircut," as well as a fresh cut on his right palm.

¶ 24 Amaro testified that he is proficient in understanding the gangs in and around Waukegan, as he has been dealing "with that" for more than 11 years. Amaro has been qualified as an expert witness with respect to gangs a "few times" and, when the State moved to tender Amaro as an expert in gangs, the court replied, "[Defense counsel] is shrugging his shoulders. Therefore, I'll declare the witness as an expert in his field." Amaro testified that he is familiar with Servin and that this case was his first contact with Cardona. He interviewed Servin, observed defendant, and reviewed the reports and videos of other interviews. Based on those things, Amaro opined that defendant is affiliated with the Spanish Gangster Disciples street gang.

¶ 25 On cross-examination, defense counsel asked Amaro whether he had any conversations with defendant about gang membership. Amaro replied, "Your client didn't wish to talk to me." Defense counsel then asked whether Amaro was basing his opinion solely on what other people told him about defendant, and Amaro explained that he saw a "cover-up" tattoo, *i.e.*, one that covers up a previous tattoo, on defendant's right arm. "I noticed that he was covering up another street gang on his arm, and when I asked him if he was a member of the Serrano Street Gang, he didn't answer me." The examination continued:

> "Q: So other than hearsay from other people and a coverup of what you think was a prior gang, do you have any other independent knowledge that he was active in a different gang at that time?
>
> A: Well, he was with other members of the street gang, and during the course of this investigation, William Servin was introducing [defendant] *to other people* as Shorty Folks which is a street term used to describe a young member or a person that's affiliated with the Folks Nation street gang.
>
> Q: Okay. But I said other than other people saying something to you, do you have any independent knowledge other than somebody else saying that?
>
> A: No." (Emphasis added.)

¶ 26 On redirect examination, the State asked Amaro whether street gang members introduce people as being in their gang if they are not, in fact, in the gang. Amaro responded in the negative and added that, if someone is in the same gang, then he or she might be introduced as "Folks or Kings or whatever this person is a member of." Amaro agreed that Servin had introduced defendant as "Shorty Folks." Defense counsel objected to the foundation, asking when and where the statements about defendant were allegedly made. The court sustained the objection but noted that

an expert can base his or her opinion on any information that he or she has been given. The State continued its examination by confirming with Amaro that gang members take gang participation seriously and would not lightly introduce people as being in the gang. The State further confirmed that Amaro was of the opinion that defendant was in the Spanish Gangster Disciples street gang:

"Q: All right. Now, you said the word Folks, Shorty Folks. What's Folks?

A: Folks is the Folks nation. There's two nations in the Midwest area. You've got the People nation and the Folk nation. Underneath each nation, you have multiple street gangs. So you have like the Maniac Latin Disciples, Spanish Gangster Disciples, Satan Disciples, Spanish Cobras, City Knights. All of these gangs are under the Folk nation, and there's many more street gangs.

Under the People nation, you have the Insane Unknowns, Latin Kings, Vicelords, Four Corner Hustlers, P. Stones. These are all street gangs that are under the People nation, and they all ride under the five. The Folk nation ride under number six.

So if you were to have like an Insane Unknown and a King together and you had a bunch of rival gang members, these two would protect each other because they fall under the same nation as opposed to the Folks nation.

Q: All right. So the Spanish Gangster Disciples are under the Folks nation?

A: Correct, and it's not uncommon for them to address each other as Folks. Hey, what's up Folks? What's up, Folks? Sometimes they don't even know each other, they're just introduced. That's my Folks right there and introduce each other that way or that's Folks, he's letting somebody know that, you know, he's one of us.

Q: And what is a shorty?

A: A shorty is a young gang member who has a—you know, like started off in a gang and *really hasn't been around that much*. They'll call him a shorty.

Q: Kind of like a gang apprentice?

A: Yes." (Emphasis added.)

¶ 27 4. Other Evidence, Jury Instructions, Verdict

¶ 28 The gunshot residue expert testified that he tested swabs taken from defendant and Longmire. Both tested negative for gunshot residue. He explained, however, that residue may be washed off and that the lack of residue does not, therefore, conclusively mean that a person did not fire a weapon. The firearm expert testified that the fired casings and bullets recovered from both the first and second shootings were fired from the same weapon and that the weapon was the firearm recovered in this case. A forensic scientist with DNA expertise was unable to obtain sufficient DNA from the firearm or the magazine to compare it to defendant, Longmire, Cardona, and Servin. Similarly, no fingerprints on the firearm or the magazine were suitable for comparison.

¶ 29 After the State rested, defendant moved for a directed verdict. The court denied the motion. Defendant then rested, presenting no evidence. Defendant renewed his motion for a directed verdict, noting that the indictment alleged two counts referring to "Sarah" Divirgilio but only "Angela" Divirgilio testified. Also, he argued that the gang evidence was "very weak." The court granted defendant's motion for a directed verdict as to the two counts that referred to Sarah Divirgilio.

¶ 30 In closing arguments, the State noted, in part, that "Maschek clearly says he heard 'F*** the police' " before the shots were fired. It also noted that, given the security video showing defendant with a weapon and Longmire meeting up with defendant; the cartridge casings in that location, which were fired from the weapon found where defendant was sleeping; and the wet

shoes, clothes, and dirt found at Longmire's apartment, it had presented sufficient evidence to convict, even without Longmire's testimony and interrogation video.

¶ 31 In his closing argument, defense counsel attacked Longmire's credibility. Defense counsel reviewed with the jury the interrogation tactics police used on Longmire, frequently referring to the videos that the jury had viewed. Counsel noted that the detectives "wrenched" information from Longmire, "spoon-fed" him until he said what they wanted, threatened him, and did not accept his story when they did not like it. Counsel commented, "[w]atch that video carefully because it's kind of horrifying to see what two experienced detectives who've been doing it 18 years, I want to say 20 years, they know how to manipulate a witness." Counsel referenced Longmire's comments at the end of the video, the changes in his story after they changed interview rooms and after the detectives left him alone in the room to consider what he wanted to tell them, the way the detectives ignored Longmire's requests for an attorney, and how they pressed on with the questioning over time and with increasing threats until they got what they wanted. Further, counsel argued to the jury that the video showed the detectives

> "[t]rying to push towards this intent to shoot the police officers that Agalianos kept saying didn't he say f*** the police? Did you hear somebody say f*** the police? He said about 50 times no, I didn't hear that. And he said about 30 times I didn't hear anything else except I'm going to shoot. Well, who's going to yell, hey, I'm going to shoot right before they do? I mean that whole interview with [Longmire] is a lie, all right?"

¶ 32 After closing arguments, the jury did *not* receive an instruction concerning accomplice-witness testimony. It was instructed, however, that it was to determine the credibility of witnesses, considering various factors, including any interest or bias the witness may have:

> "Only you are the judges of the believability of the witnesses and of the weight to be given to the testimony of each of them. In considering the testimony of any witness, you may take into account his ability and opportunity to observe, his age, his memory, his manner while testifying, any interest, bias, or prejudice he may have, and the reasonableness of his testimony considered in the light of all the evidence in the case." Illinois Pattern Jury Instructions, Criminal, No. 1.02 (4th ed. 2000) (hereinafter IPI Criminal 4th No. 1.02).

Further, the jury was instructed on witness believability, which pertains to a witness's prior inconsistent statements:

> "The believability of a witness may be challenged by evidence that on some former occasion he made a statement that was not consistent with his testimony in this case. Evidence of this kind ordinarily may be considered by you only for the limited purpose of deciding the weight to be given the testimony you heard from the witness in this courtroom.
>
> However, you may consider a witness's earlier inconsistent statement as evidence without this limitation when the statement narrates, describes, or explains an event or condition the witness had personal knowledge of; and the statement was accurately recorded by a tape recorder, videotape, recording, or a similar electronic means of sound recording.
>
> It is for you to determine what weight should be given to that statement. In determining the weight to be given to an earlier statement, you should consider all of the circumstances under which it was made." IPI Criminal 4th No. 3.11.

¶ 33 On October 18, 2019, the jury found defendant guilty on all counts.

¶ 34 B. Posttrial Motions and Sentencing

¶ 35 On October 28, 2019, defendant filed *pro se* a petition for postconviction relief. It does not appear that the petition was resolved. However, on December 16, 2019, defense counsel made an oral motion for a new trial, arguing that the evidence was insufficient to sustain defendant's guilt. The court denied the motion.

¶ 36 On December 16, 2019, the court sentenced defendant to 27 years' imprisonment (concurrent terms of 27 years for attempted murder, 19 years for aggravated discharge of a firearm, 10 years for unlawful possession of a weapon by a gang member, and 5 years for possession of a defaced firearm). On February 20, 2020, defendant moved to reconsider the sentence, which the court denied on March 4, 2020. Defendant appeals.[1]

¶ 37 II. ANALYSIS

¶ 38 A. Ineffective Assistance of Counsel: Accomplice-Witness Instruction

¶ 39 Defendant argues first that he received ineffective assistance of trial counsel, where counsel failed to request that the jury be given Illinois Pattern Jury Instructions, Criminal, No. 3.17 (approved Oct. 17, 2014) (hereinafter IPI Criminal No. 3.17), the accomplice-witness jury instruction. Defendant notes that Longmire testified that he was near defendant at the time of the shooting, fled with defendant, tried to help defendant escape, hid defendant in his home, and was threatened with charges by police. As such, defendant contends, Longmire could have been indicted either as a principal or under an accountability theory, rendering defendant entitled to have IPI Criminal No. 3.17 provided to the jury. Defendant asserts that "the accomplice[-]witness

[1]On May 7, 2020, defendant moved this court to establish jurisdiction or, in the alternative, for leave to file a late notice of appeal, based upon the timing of defense counsel's filing of the motion to reconsider the sentence in relation to the imposition of the sentence. On May 13, 2020, we granted defendant leave to file a late notice of appeal.

instruction should be given any time the totality of the evidence and the reasonable inferences therefrom establish probable cause to believe that the witness participated in the crime as either a principal or under a theory of accountability" and that the instruction is critical because it warns the jury that the witness may have a strong motivation to provide false testimony for the State. Given Longmire's testimony about his presence during and after the crime, defendant suggests that Longmire was not charged with attempted murder or possession of a firearm only because he told police what they wanted to hear. In addition, defendant contends that the instruction would have given the jury guidance on how to critically evaluate the testimony and statements referenced throughout the trial by Salas, Cardona, and Servin. Defendant argues that counsel's failure to request the instruction was unreasonable, for there is no sound strategic reason for his failure to request that the jury be instructed to view Longmire's testimony with suspicion. In addition, he concludes that counsel's failure prejudiced him, because Longmire's testimony was vital to the State's case, yet the jury was not warned about his strong incentive to testify against defendant. We disagree.

¶ 40 Defendant requests that we review this issue for plain error, because it was not raised posttrial. See, *e.g.*, *People v. Enoch*, 122 Ill. 2d 176, 187 (1988) (failure to include an issue in a posttrial motion results in forfeiture of that issue on appeal). We may address a forfeited issue when an error is plain and (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" (prong one) 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" (prong two). *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007); *People v. Herron*, 215 Ill. 2d 167, 178-79

(2005).[2] The first step in a plain-error analysis is to determine whether a "plain error" occurred. See *Piatkowski*, 225 Ill. 2d at 564-65. In this context, the word "plain" is synonymous with "clear" and is equivalent to "obvious." *Id.* at 565 n.2.

¶ 41 Claims of ineffective assistance of counsel are analyzed by using the two-prong test established in *Strickland v. Washington*, 466 U.S. 668, 687 (1984). To prevail, a defendant must show that counsel's performance was deficient and that the deficient performance was prejudicial. *Id.* Prejudice is demonstrated where a defendant shows that a reasonable probability exists that, but for counsel's deficient performance, the result of the trial would have been different. See *People v. Enis*, 194 Ill. 2d 361, 376 (2000). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. The failure to establish either *Strickland* prong precludes a finding of ineffective assistance of counsel. See *People v. Henderson*, 2013 IL 114040, ¶ 11. Here, we conclude that defendant cannot establish either deficient performance or prejudice to succeed on his ineffective-assistance claim (or, therefore, plain error).

¶ 42 The accomplice-witness instruction provides:

> "When a witness says he was involved in the commission of a crime with the defendant, the testimony of that witness is subject to suspicion and should be considered by you with caution. It should be carefully examined in light of the other evidence in the case." IPI Criminal No. 3.17.

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[2]It is not clear that plain-error analysis is necessary, as we generally review *de novo* claims of ineffective assistance that were not raised before the trial court. See, *e.g.*, *People v. Hunt*, 2016 IL App (2d) 140786, ¶ 51. In any event, for the reasons outlined below, we conclude that defendant's ineffective-assistance claim fails, which is also fatal to any plain-error analysis.

¶ 43 The test for determining whether a witness is an accomplice, such that a defendant is entitled to have IPI Criminal No. 3.17 given to the jury, is " 'whether there is probable cause to believe that [the witness] was guilty either as a principal, or on the theory of accountability.' " *People v. Cobb*, 97 Ill. 2d 465, 476 (1983) (quoting *People v. Robinson*, 59 Ill. 2d 184, 191 (1974)); see also *People v. Hunt*, 2016 IL App (2d) 140786, ¶ 52 ("The instruction should be given if the totality of the evidence and the reasonable inferences derived from the evidence establish probable cause to believe that the witness participated in the crime, as either a principal or an accomplice."). That is, the evidence must show that there is probable cause to believe that the witness was not merely present " 'and failed to disapprove of the crime, but that he participated in the planning or commission.' " *People v. Kirchner*, 194 Ill. 2d 502, 541 (2000) (quoting *People v. Henderson*, 142 Ill. 2d 258, 315 (1990)). Under certain circumstances, trial counsel may render ineffective assistance by failing to tender IPI Criminal No. 3.17. See, *e.g.*, *People v. Wheeler*, 401 Ill. App. 3d 304, 314 (2010); *People v. Campbell*, 275 Ill. App. 3d 993, 999 (1995).

¶ 44 Here, as there was no probable cause to believe that Longmire was an accomplice, trial counsel's failure to request the accomplice-witness jury instruction was not unreasonable. As the State notes, IPI Criminal No. 3.17 states that it may be applicable "[w]hen a witness says he was involved in the commission of a crime with the defendant," and, here, the evidence overall reflected that Longmire was merely present with defendant when the shots were fired. It is true that Longmire also testified that he ran home with defendant and planned to help defendant return to Zion. However, the evidence did not suggest that Longmire participated in planning or committing the shooting itself. He did not, in fact, drive defendant to Zion, and, later, when police arrived, Longmire largely cooperated with them. While the detectives told Longmire that he could be charged "with everything" if he did not cooperate, this was a police tactic meant as a warning

and as a means of gathering information; it was not, for example, an offer of immunity or leniency from the State in exchange for testimony. No charges were brought against Longmire. Further, there was additional evidence that tied defendant to the shooting and/or reflected that Longmire was *not* the shooter. For example, the security video showed an individual with a weapon before the first shooting, and that person was not Longmire. A spent shell casing was found in that area, and it was fired from the same weapon that fired the gunshots in the second shooting. It was, thus, reasonable to infer that the same person used the same gun in both shootings, and that gun was found under the couch cushion on which, according to both Tara and Longmire, defendant had been sitting. Thus, there was no probable cause to believe that Longmire was a principal or an accomplice in the shooting, and counsel's failure to request the instruction was not unreasonable.

¶ 45 In any event, even if trial counsel's failure to request IPI Criminal No. 3.17 was objectively unreasonable, its absence did not prejudice defendant and, so, he cannot establish ineffective assistance of counsel. "Failure to request a particular jury instruction may be grounds for finding ineffective assistance of counsel, only if the instruction was so 'critical' to the defense that its omission 'den[ied] the right of the accused to a fair trial.' " *People v. Rodriguez*, 387 Ill. App. 3d 812, 828 (2008) (quoting *People v. Pegram*, 124 Ill. 2d 166, 174 (1988)). Again, the accomplice-witness instruction directs the jury that it should carefully consider the witness's testimony with suspicion, caution, and in light of all evidence. See *Hunt*, 2016 IL App (2d) 140786, ¶ 52 ("The [purpose of the accomplice-witness instruction] is to warn the jury that the witness might have a strong motivation to provide false testimony for the State in exchange for immunity or some other lenient treatment."). Here, the jury was acutely aware that Longmire's testimony should be closely

scrutinized.[3] Indeed, even in the absence of the accomplice-witness instruction, counsel impressed upon the jury that it should view Longmire's testimony with heightened suspicion and warned of numerous circumstances that might motivate Longmire to provide false testimony. Counsel thoroughly attacked the credibility of Longmire's testimony during cross-examination and in closing argument. Counsel emphasized that Longmire's story changed numerous times and was the product of coercive police interrogation tactics, and he argued to the jury that Longmire was the *only* person who claimed to know who the real shooter was, stating:

> "For all we know, [Longmire] could have had a gun. [Longmire] could have had the gun, right? But we don't know. By the way, who said well, let's come back to my house? [Longmire]. Who was the one that told you, oh, he was sleeping on that couch? [Longmire]. [Longmire's mom]. *** but you didn't hear anybody else say that this guy was found sleeping on that couch. It's only from Dominic Longmire's mom who said that."

Longmire's credibility was so thoroughly attacked that, in closing argument, the State minimized Longmire's importance, informing the jury that, even without him, it had sufficient evidence to convict.

¶ 46 In *Hunt*, our court addressed a similar issue by following *People v. McCallister*, 193 Ill. 2d 63, 90 (2000), where our supreme court held that, even though trial counsel did not request the

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[3]We note that we reject defendant's argument that the jury also needed the instruction to properly consider Salas's testimony and statements by Cardona and Servin. Salas clearly did not qualify as an accomplice. Even if she held the gun when it was being passed around, without possessing a FOID card, those actions had nothing to do with the second shooting. And the instruction pertains to *testimony*; neither Cardona nor Servin testified, nor were any written statements from them introduced at trial.

accomplice-witness instruction, the defendant failed to establish a reasonable probability that the trial would have resulted differently had the instruction been given. See *Hunt*, 2016 IL App (2d) 140786, ¶ 54. The *McCallister* court based its conclusion on (1) the inherent weaknesses of the defendant's own testimony, (2) the strength of the evidence offered against the defendant apart from the accomplice witness's testimony, and (3) the instructions the jury received. *Id.* (citing *McCallister*, 193 Ill. 2d at 91). Here, the first factor is irrelevant, as defendant did not testify. The second factor we discussed above, concluding that there was sufficiently strong evidence offered against defendant apart from Longmire's testimony. As to the third factor, the jury here received the pattern instructions for both general witness credibility (IPI Criminal 4th No. 1.02) and witness believability in light of a prior inconsistent statement (IPI Criminal 4th No. 3.11). While these instructions *alone* do not cure the failure to request the accomplice-witness instruction (*Hunt*, 2016 IL App (2d) 140786, ¶ 60), "the fact that the jury was told to consider, in general, the bias, interest or prejudice of the witnesses may be considered as one factor, *among others*, which establishes that [the] defendant was not prejudiced by his trial counsel's failure to tender the accomplice witness instruction." (Emphasis in original.) *McAllister*, 193 Ill. 2d at 97. Given that the jury received those instructions, coupled with all the evidence and trial counsel's thorough attack on Longmire's credibility, there is no reasonable probability that the jury would have reached a different verdict had it also received IPI Criminal No. 3.17.

¶ 47 Defendant's cited cases do not persuade us otherwise. In *People v. Fane*, 2021 IL 126715, ¶ 43, our supreme court discussed when the instruction should be given but did so in holding that the trial court did not err in *giving* the instruction. Further, in both *Wheeler* and *Campbell*, for example, the courts found that trial counsel was ineffective for failing to request accomplice-witness instructions; but, in both cases, the accomplices, who were given immunity or leniency,

provided essentially the sole evidence identifying the defendants as the perpetrators of the offenses. See *Wheeler*, 401 Ill. App. 3d at 313-14 (where the witness drove the defendant to the scene, was present at the scene, drove the defendant away from the scene, was aware that police were attempting to contact him and actively avoided them, and received immunity in exchange for his testimony); *Campbell*, 275 Ill. App. 3d at 998-99 (the defendant was identified as the perpetrator only by two accomplices, who both testified in exchange for deals with the State); see also *People v. Zambrano*, 2016 IL App (3d) 140178, ¶ 32 (defense counsel's failure to submit the accomplice-witness instruction prejudiced the defendant, because the accomplice was testifying under a grant of use immunity and his testimony was the only evidence establishing the defendant's participation in the crime). We agree with defendant that formal deals are not the only relevant form of leniency. However, and as noted by the court in *Hunt*, in those cases and unlike here, the juries did not receive IPI Criminal 4th No. 3.11, and those trials did not include repeated assertions (by both parties) that the juries should question the alleged accomplices' credibility.

¶ 48 Here, as previously noted and as argued by the State in closing, although Longmire testified that he was the sole witness to the shooting, evidence tied defendant to the shooting *even without Longmire's testimony*. Defendant alleges that the evidence was not overwhelming, because it was a chaotic scene, police were unsure where the gunshots game from, a shell casing was found on Cardona, there was purportedly a male in a white shirt who was never identified, only four shell casings were found when there were allegedly five gunshots, no DNA or other physical evidence tied defendant to the crime, and Longmire was allegedly the only eyewitness. Yet, the jury was able to review the security video and determine for itself whether the individual seen on the video was defendant and whether he was holding a gun. Regardless of the casing found on Cardona, he could *not* have been responsible for the second shooting, as he and Servin were handcuffed and in

separate squad cars at that time. The casings found on the scene near the maintenance shed, where it appeared that defendant stood and raised a gun, and by the pool area were fired from the gun found where defendant was allegedly sleeping. Officers testified that they saw defendant look over the fence and flee from them, and the area through which he ran was swampy and wet. Wet, muddy shoes were found in Longmire's apartment, with dirt and soap on the bathroom console, and defendant's jeans were wet and grassy.

¶ 49 In sum, defendant also cannot establish a reasonable probability that, if the jury had received the accomplice-witness instruction, the result of the trial would have been different. Defendant's ineffective-assistance claim fails.

¶ 50 B. Longmire's Interrogation Videos

¶ 51 Next, defendant argues that it was error to admit the unredacted, nearly two-hour long videos of Longmire's interrogation as substantive evidence or for impeachment. Defendant asserts that Longmire's interrogation videos were not inconsistent with his trial testimony about the second shooting and, further, that they contained a "motherload" of inadmissibility, such as improper layers of hearsay, police narrative and opinions on defendant's guilt, and inflammatory gang references. He asserts that, because it was not inconsistent with his trial testimony, Longmire's recorded statement was an improper use of a consistent statement to bolster the credibility of a key State witness. Defendant notes that the State relied upon the videos "extensively" in closing argument and that the jurors were instructed that they could consider the videos substantively. Further, he notes, the recorded statement was not *inconsistent*, as Longmire was not a "turncoat" witness for the State. Even if it were inconsistent, defendant continues, the State laid no foundation to introduce the inconsistent statement and, even if it had, introduction of only the inconsistent portions of the videos would be proper. Thus, he argues, the State used the

interrogation videos merely to bolster Longmire's testimony and to introduce a "treasure-trove" of inadmissible, prejudicial information.

¶ 52 Defendant also asserts that most of the interrogation videos should have been redacted because they contained improper hearsay and the detectives' narrative about their conversations with other people, comments about what those people said, and opinions on defendant's guilt and who was being truthful. For example, he notes that, when Longmire told the detectives that defendant shot the gun, they responded "you are not the first person who told us this," which the jury could have understood meant that other witnesses corroborated Longmire's story. This, among other comments, he contends, implied that the detectives knew that defendant was guilty, which invaded the province of the jury. Also, Longmire made comments that were not from personal knowledge or lacked foundation and the detectives made references to their interviews with defendant, such as "[Hombre] is doing the right thing," which implied that they interviewed defendant and, since he was charged and Longmire was not, he must have incriminated himself. Defendant reiterates that this was not *his* interrogation, but, rather, a witness's interrogation, and that witness had already testified at trial that defendant was the shooter. Indeed, he notes, the State did not play the videos during Longmire's testimony; rather, it introduced the videos *after* he testified, akin to the process that might be used with a video of the interrogation of a defendant. He contends that the videos here "offered the police's concise, coherent theory of the case and what they believed happened the night of the shooting. It was not to merely show how it affected Longmire." Defendant argues that there is no reasonable trial strategy for not objecting to the admission of the videos and not requesting that they be redacted. He contends that trial counsel's use of the videos in closing to point out the police manipulation did not justify using the entirety of the videos. Instead, defendant asserts, counsel could have used "snippets" or "gone about it the

old-fashion[ed] way, *** and asked the witness did the police say this to you or did the police threaten you and so forth, using the video[s] to either impeach an answer or refresh recollection."

¶ 53 Finally, defendant points out that the videos contained numerous prejudicial, inflammatory references to gangs, including statements that Longmire admitted to being a "Shorty"; that Cardona, Servin, Longmire, and defendant were all gang members; that gangs go on missions, steal, and rob; and that Servin said Longmire was a "Shorty." Defendant contends that the strong prejudice against street gangs makes such evidence inadmissible unless there is sufficient proof that gang activity is related to the charged crime. Here, he asserts, the gang evidence was not relevant to the shooting.

¶ 54 In sum, defendant contends that (1) the admission of Longmire's entire interrogation was plain error under both prongs and (2) trial counsel's failure to object to the interrogation videos or request a redaction was ineffective assistance. He notes that counsel did not use any portion of the videos to attack the State's case. Rather, he allowed the devastating statements to go to the jury unchecked.

¶ 55 The State asserts that the interrogation videos were properly admitted for both impeachment purposes and as substantive evidence under section 115-10.1 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-10.1 (West 2014)). It further contends, citing *People v. Theis*, 2011 IL App (2d) 091080, ¶ 32, that recorded conversations are not hearsay. Finally, it argues that the videos' probative value was not greatly outweighed by their prejudicial effect because they *aided* defendant's efforts to demonstrate that Longmire was not a credible witness and any gang references in the videos were not more prejudicial than probative because they were relevant to the properly joined possession-of-a-weapon-by-a-gang-member charge. We disagree and conclude that the admission of the videos was clear error.

¶ 56 Again, the first step in a plain-error analysis is to determine whether a clear or obvious error occurred. See *Piatkowski*, 225 Ill. 2d at 564-65. Setting aside foundation, the State's position is that Longmire's testimony contained sufficient inconsistencies and vagueness such that he was clearly trying to distance himself from the police interview and cast doubt on the statements that he made to them. Yet, before the State introduced the videos, Longmire had already testified on direct examination that defendant possessed the gun and was the shooter; on redirect, he confirmed that he was near defendant during the second shooting. The State acknowledges that a party may not ordinarily impeach its own witness's credibility by introducing evidence of a prior inconsistent statement *unless* the witness's trial testimony affirmatively damages the impeaching party's case. See, *e.g.*, Ill. S. Ct. R. 238(a) (eff. Apr. 11, 2001) (a party may impeach its own witness with a prior inconsistent statement when the witness's testimony affirmatively damages that party's case); *People v. Guerrero*, 2021 IL App (2d) 190364, ¶ 46. In our view, while Longmire's testimony contained some inconsistencies from what he said in his interrogation, none of the inconsistencies or points upon which Longmire was vague or silent can be considered *affirmatively damaging* to the State's case. For example, the State notes that, at trial, Longmire (1) denied knowing that defendant went by the name "Hombre" or using that term in the interrogation (claiming the detectives used that term first), (2) was silent when asked if he told the detectives that he gave certain answers to protect his people, (3) denied telling the detectives that he met defendant by the woods, testifying that he met him by the pool, (4) did not recall whether he wrote the words "shot his pistol. I know him from mutual friends, D-L" on the photo lineup when he circled defendant's picture (although agreed he did, suggesting that he was coerced and the detectives told him what to write), and (5) could not recall whether the officers who showed him the photo lineups were the same detectives who interviewed him. None of these points affirmatively damaged the State's

case, as they were all collateral. Indeed, "[t]o be used as impeachment, a prior inconsistent statement must be *truly inconsistent* with the witness's trial testimony, and it must deal with a matter that is *more than collateral*." (Emphases added.) *People v. Murray*, 2017 IL App (2d) 150599, ¶ 57, *rev'd in part on other grounds*, 2019 IL 123289, ¶ 53. To be considered affirmatively damaging, as opposed to simply disappointing, the testimony must give "positive aid" to the other side and must be more damaging than a complete failure to testify would have been. *Id.* Longmire testified at trial that he was with defendant, defendant had a gun, and defendant fired the shots. It therefore strains credulity to suggest that introduction of the *entire* interrogation was appropriate because the State's case was so affirmatively damaged by the aforementioned "inconsistencies" that the State would have been better off had Longmire not testified at all. In fact, where Longmire had already testified that defendant was the shooter, it is somewhat surprising that the State wished to publish the interrogation, given that it largely verified the detectives' statements and tactics that defendant challenged, as well as Longmire's inconsistencies therein. Indeed, as the State concedes, the *defense* arguably stood to benefit from the videos, "especially since the videotape actually *aided* the defense's theory that Longmire was not a credible witness when the jury could see how many times he changed his story during the police interview." (Emphasis in original.) As Longmire's trial testimony was not so inconsistent that the State would have been better off without it, the interrogation videos should not have been admitted as impeachment evidence. And,

because they were not inconsistent, they should not have been admitted substantively under section 115-10.1.[4]

¶ 57 Nevertheless, we must reject defendant's plain-error argument. Again, once plain error is established, we must determine whether (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" (prong one) 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" (prong two). *Piatkowski*, 225 Ill. 2d at 565. Here, concerning prong one, and for the reasons we described above in our resolution of the accomplice-witness instruction, the evidence was not so closely balanced that admitting the videos tipped the scales of justice against defendant. The evidence without the videos still would have left Longmire's testimony that he saw defendant commit the shooting. Moreover, even *without* Longmire's testimony, there was a video recording apparently depicting defendant with a gun, in an area where shell casings were found that matched other shell casings found at the scene, and there was a gun found in the apartment where defendant

[4]We note that, although the State accurately summarizes this court's holding in *Theis*, we do not find it helpful here because defendant is not arguing that the videos themselves or all of the detectives' statements therein were hearsay, nor is the issue the effect that their statements had on the listener, *i.e.*, Longmire, not defendant. Rather, and unlike in *Theis*, defendant's arguments concern, in part, that the videos contained statements made by persons not in the video and not subject to cross-examination at trial. Moreover, he contends that, again, unlike in *Theis*, the videos here were not needed to explain the police investigation or, as we explained above, to impeach Longmire after his testimony affirmatively damaged the State's case.

was sleeping. Officers identified defendant as fleeing from them through a swampy area, and wet shoes and jeans were discovered in defendant's presence.

¶ 58 As to prong two, defendant asserts that statements recorded in the videos, concerning other persons—such as Servin and Cardona—making statements to police, violated his right to confront witnesses, as those witnesses did not testify at trial. See, *e.g.*, *People v. Fillyaw*, 409 Ill. App. 3d 302, 319 (2011) (violations of due process and confrontation clause affect substantial rights and, accordingly, may constitute second-prong plain error). We disagree. Defendant points specifically to two occasions in the almost 90-minute-long interrogation videos where Cardona and Servin are mentioned, namely at minutes 35:03 and 36:00. During those occasions, however, the detectives discuss that Cardona and Servin told them that Longmire was with them when they went to a hotel before the first shooting, that Longmire was with defendant, and that Longmire was a "Shorty" trying to "come home," meaning trying to become part of a gang and participate in gang activities, such as robbing or stealing. In essence, their purported statements concerned *Longmire*. To the extent that the statements in the videos referenced defendant being present with Longmire, they were redundant to Longmire's own trial testimony. As such, we cannot agree that certain information in the interrogation videos so seriously impaired defendant's right to cross-examination that defendant's trial was unfair and the integrity of the judicial process compromised.

¶ 59 As to defendant's claim that trial counsel was ineffective for failing to object to the interrogation videos or request that they be redacted, we again must reject defendant's arguments. First, counsel clearly sought to discredit Longmire's testimony, and his decision not to object to the State's introduction of the videos could arguably have been strategy to emphasize Longmire's inconsistencies and the police interrogation tactics. As those tactics and the evolution of Longmire's story involved an ongoing exchange that took place over the course of the entire

interrogation, it would have been challenging for counsel to seek redaction of certain "snippets." Further, even if we accept that, because the videos were improperly admitted and counsel did not object to them, his performance *was* objectively unreasonable, defendant cannot demonstrate prejudice sufficient to undermine confidence in the outcome. Again, the videos arguably could have demonstrated to the jury that Longmire's story should not be trusted. But if not, and as we have stated above, there was adequate evidence absent the videos to convict defendant such that there is no reasonable probability that, but for the videos, the jury's verdict would have been different.

¶ 60 In sum, the error in admitting Longmire's videotaped interrogation is not, on its own, reversible in the plain-error or ineffective-assistance contexts.

¶ 61 C. Gang Testimony and Severability

¶ 62 Next, defendant argues that the State used the charge of unlawful possession of a weapon by a street gang member (count VII) to introduce voluminous prejudicial gang evidence, although none of the remaining charges were gang related. Defendant contends that trial counsel was ineffective for not moving to sever the possession count to protect the integrity of the trial and so that the jurors, when deciding the more serious charges, would not have heard prejudicial gang evidence. Although he concedes that, under section 111-4(a) of the Code (725 ILCS 5/111-4(a) (West 2016)), the possession of a weapon by a gang member and shooting charges *could* initially be joined and a decision regarding severance is usually regarded as a matter of trial strategy, he contends that, under section 114-8 of the Code (*id.* § 114-8), the court may consider severance or other appropriate relief if joinder will prejudice a defendant. As such, defendant argues, had counsel moved to sever the possession of a weapon by a gang member charge, the jury would not

have had before it any references to gangs, or the stereotypes and prejudices that accompany gang membership, while it deliberated upon the most serious charges.

¶ 63 In addition, with respect to the gang evidence itself, defendant argues that it was overwhelmingly more prejudicial than probative, as the most serious charges had no gang-related motive attached to them and the jury was not given any guidance on how to consider the evidence or instructed that it applied to only one count. Further, defendant contends that Amaro's expert testimony lacked adequate foundation; contained improper hearsay about what others told him about defendant, without any determination of when or whether such information is reliable and of the type reasonably considered by experts in the field; and made no distinction between his testimony as an expert and his testimony concerning his role as an investigator who collected evidence to charge someone with attempted murder of a fellow officer. In addition, defendant argues that, as post-arrest silence is inadmissible, Amaro improperly referenced defendant's refusal to speak with him. In defendant's view, when defense counsel said to Amaro, "you didn't have any conversations with my client about that," Amaro should have simply answered, "no," instead of answering, "he didn't wish to talk to me." Further, Amaro noted that, when defendant was asked whether he was in a gang, he did not answer. Defendant concedes that counsel made no objections during or posttrial on these points. As such, defendant contends, (1) admission of the expert testimony was plain error under both prongs and (2) trial counsel was ineffective (a) by not moving to sever the possession charge, (b) by failing to object to Amaro's testimony, and (c) to the extent that counsel's questions opened the door to Amaro's statement that defendant refused to speak with him.

¶ 64 We appreciate defendant's concern about the gang evidence here. Frankly, as trial counsel argued in his motion for a directed verdict, the evidence was weak. As counsel pointed out during

Amaro's examination, Amaro's testimony lacked foundation establishing when and to whom Servin introduced defendant as "Shorty Folks." In fact, the court sustained defendant's objection on those grounds, but those questions remained unanswered. Amaro acknowledged that he had no independent knowledge of defendant's purported gang membership, other than what other people told him. He apparently further based his opinion, in part, on the fact that defendant sported a "cover-up" tattoo. However, there was no description of the tattoo itself and no indication of whether it paid homage to the Spanish Gangster Disciples or whether it "covered-up" an old tattoo that connected him to any specific gang, let alone the Spanish Gangster Disciples. Further, he did not explain why, when covering up a gang tattoo would imply leaving a gang or former membership, such an implication should be rejected here. Similarly, we note that Amaro testified that Servin had introduced defendant as "Shorty Folks," but then, after a long narrative describing gang nations and listing numerous gangs purportedly in the area (which was arguably more prejudicial than probative), Amaro defined a "Shorty" as someone who might have started off in a gang and "really hasn't been around that much." A failure to "be around much," coupled with a cover-up tattoo, could suggest *no* gang membership, and there was nothing beyond this evidence to tie defendant to the Spanish Gangster Disciples. Amaro explained that defendant wore a "blowout" hairstyle, but he never explained how that hairstyle likely reflected gang membership. Further, although Amaro explained that he works in the gang investigation unit and has testified as an expert witness a "few times," he never testified that the evidence upon which he relied in forming his opinions is the type that is typically considered by experts to evaluate a suspect's gang membership. See, *e.g.*, *People v. Simmons*, 2016 IL App (1st) 131300, ¶ 115 (expert testimony requires foundation establishing that the information upon which the expert relied is reliable and is the type reasonably relied upon by experts in the same field). Amaro apparently based his

opinion on his interview with Servin, Servin's comment, made "during the course of this investigation," that he had introduced defendant as "Shorty Folks" at some unknown time (although it is not clear to whom Servin introduced defendant or to whom he made that comment), investigation reports (it is not clear whose specific investigation reports or what was in those reports concerning defendant's gang membership) and video interviews of other people involved in the case, defendant's cover-up tattoo, and defendant's failure to answer when asked if he was in a gang. But Amaro did not testify that the information he relied upon is the type typically relied upon by experts assessing gang membership, nor did he apparently rely upon, for example, objective information, such as databases maintained by the police gang investigation unit, prior contacts, or other similar factors that could indicate gang membership. The State argues that, simply by virtue of Amaro being accepted as an expert in gangs, the court could determine that the information Amaro provided was reliable, "because it was reasonably relied upon in [*sic*] experts in that particular field to form opinions or inferences on the subject of gangs (*i.e.*, Detective Amaro said that he had been qualified as an expert witness in gang affiliation in the past)." Assuming we properly understand this argument, we reject it. The fact that Amaro testified as a gang expert "a few times" in the past, where we do not know the substance of that testimony or the factors he used to form his opinions in those cases, does not *ipso facto* mean that he relied on appropriate factors *here*. Finally, as discussed in the next section, the State failed to establish that the Spanish Gangster Disciples *was* a street gang, as that term is defined by statute. See 720 ILCS 5/24-1.8(a)(1) (West 2016); 740 ILCS 147/10 (West 2016).

¶ 65 However, even if the introduction of the gang evidence was clear error, such that counsel's failure to move for severance or object was unreasonable, our review is constrained by the fact that both plain-error and ineffective-assistance analyses require our consideration of the *remaining*

evidence to determine whether, but for the error, the result of the trial would have been different. Without question, gang-membership evidence may be strongly prejudicial. See, *e.g.*, *People v. Strain*, 194 Ill. 2d 467, 477 (2000). Perhaps the gang-membership evidence influenced the jury's decision to convict defendant of attempted murder of a police officer rather than simply aggravated discharge of a firearm. However, we cannot conclude that the evidence *overall* was so closely balanced that the errors pertaining to gang evidence tipped the scales against defendant (prong-one plain error). Nor can we conclude that the result of the trial would have been different but for counsel's failures to (1) move for severance or (2) object to Amaro's testimony. Even if there was no gang evidence at trial, the evidence against defendant remained sufficient to sustain the jury's verdict. As previously noted, the evidence against defendant included a security video appearing to show him with a weapon, the location of spent shell casings, officers identifying him as peering over a fence and then fleeing from them, his wet shoes and jeans tying him to the swampy area where he fled, the presence of the gun that fired the shots underneath the couch where he was sleeping, and Longmire's testimony.

¶ 66 We note that defendant's arguments fare no better under a prong-two analysis. Again, he submits that the gang references included comments by persons not subject to cross-examination and that the use of his post-arrest silence affected his substantial rights under prong two. However, the statements made in the videos by officers relating what Servin and Cardona said about gangs were not so egregious that the integrity of the trial was compromised, and even if Amaro mentioned defendant's post-arrest silence, the State did not comment on it (see, *e.g.*, *People v. Simmons*, 293 Ill. App. 3d 806, 812 (1998)). Thus, the integrity of the judicial process was not challenged.

¶ 67 In sum, any error concerning gang evidence is not, on its own, reversible in the plain-error or ineffective-assistance contexts.

¶ 68 D. Proof of Gang Membership

¶ 69 Defendant, relying on *Murray*, 2019 IL 123289, ¶ 53, next argues that the State's evidence was insufficient to prove gang membership beyond a reasonable doubt because there was no evidence that the Spanish Gangster Disciples was a street gang engaged in a course or pattern of criminal activity. The State agrees, acknowledging that the conviction on count VII should be vacated because, where there was no evidence that the Spanish Gangster Disciples engaged in a course or pattern of criminal activity, it failed to establish a necessary element of the charge of unlawful possession of a firearm by a street gang member (see 720 ILCS 5/24-1.8(a)(1) (West 2016); 740 ILCS 147/10 (West 2016)).

¶ 70 However, the State urges that we invoke our authority under Illinois Supreme Court Rule 615(b)(3) (eff. Jan. 1, 1967) to instead enter a conviction of the lesser included offense of aggravated unlawful use of a weapon without a FOID card (720 ILCS 5/24-1.6(a)(2), (a)(3)(C) (West 2016)) and remand for resentencing on that charge, as was done by this court in *People v. Figueroa*, 2020 IL App (2d) 160650. The State notes that the evidence established the requirements of the lesser included charge—specifically, that defendant carried or possessed on his person upon a public street, alley, or land, within the city a firearm without having a valid FOID card. See 720 ILCS 5/24-1.6(a)(2), (a)(3)(C) (West 2016).

¶ 71 The parties are correct that the State presented no evidence that the Spanish Gangster Disciples constituted a street gang that engaged in a course or pattern of criminal activity. Further, there is no dispute that defendant did not possess a FOID card, and the evidence sufficiently established that defendant carried or possessed a weapon in public. However, we decline to enter judgment on the lesser included offense because, as discussed below, we are vacating all convictions based on cumulative error.

¶ 72 E. Cumulative Error

¶ 73 Defendant's final argument is that reversal is required due to the cumulative number of errors and the ineffective assistance he received at trial. The State responds that there was no error and, thus, no cumulative error. We agree with defendant.

¶ 74 Both the federal and Illinois constitutions protect a defendant's right to a fair, orderly, and impartial trial. See U.S. Const., amend. XIV; Ill. Const. 1970, art. I, §§ 2, 8; *People v. Bull*, 185 Ill. 2d 179, 214 (1998). While a defendant is not entitled to a perfect trial, courts have recognized that individual trial errors that do not alone warrant reversal may cumulatively deprive a defendant of a fair trial. See *People v. Redmon*, 2022 IL App (3d) 190167, ¶ 34; *People v. Simmons*, 342 Ill. App. 3d 185, 191 (2003). "When such cumulative error occurs, due process and fundamental fairness require that the defendant's conviction be reversed and the case be remanded for a new trial, even when the defendant's guilt is overwhelming, to preserve the integrity of the judicial process." *Redmon*, 2022 IL App (3d) 190167, ¶ 34.

¶ 75 Here, we agree with defendant that the erroneous admission of both Longmire's interrogation videos and the gang evidence, while not individually reversible, particularly within the ineffective-assistance or plain-error contexts, cumulatively deprived him of a fair trial. While we will not reiterate all points from our preceding analyses, we note that Longmire's trial testimony was not so affirmatively damaging to the State's case that the State was justified in admitting his interrogation videos (notably, in their entirety) as an inconsistent statement, whether substantively or to impeach its own witness. In essence, by showing the jury the entire interrogation, the State was able to improperly bolster the consistent portions of Longmire's testimony, while publishing to the jury statements made by nontestifying witnesses and the opinions of the investigating detectives as to their theories of guilt.

¶ 76 In addition, Amaro never testified that the factors he considered when assessing defendant's alleged gang membership are of the type relied upon by experts in the field, nor did the State establish when or to whom Servin purportedly introduced defendant as "Shorty Folks" or why defendant was likely a member of the Spanish Gangster Disciples street gang, as opposed to one of the other "Folks nation" street gangs purportedly in the area. In addition, Amaro never testified that the Spanish Gangster Disciples was engaged in a pattern of criminal activity, and therefore the evidence failed to establish that it was a street gang, as statutorily defined. As the State now concedes, its failure to present sufficient evidence regarding gang membership requires us to reverse the conviction of possession of a weapon by a gang member, which was the *only* count for which gang membership was relevant. There was no evidence that the other charges were committed with a gang-related motive and, while the State contends that gang membership provided context to certain terminology, such as "Wolverine" or "Shorty," we disagree. Here, gang references were not necessary to explain that various persons had nicknames, and a context argument does not justify voluminous evidence that was clearly more prejudicial than probative. When we consider together the errors concerning Longmire's interrogation videos, the gang evidence introduced therein and through Amaro's testimony, and that, without the possession of a weapon by a gang member charge—the conviction on which we now reverse due to a failure of proof—*no* gang evidence would have been introduced on the most serious charges, we cannot conclude that defendant received a fair trial. In sum, under the facts of this case, we are convinced that due process and fundamental fairness require that defendant's convictions be reversed and the cause remanded for a new trial.

¶ 77 We note that, when a reviewing court remands for a new trial, it must consider whether a new trial would violate the double jeopardy clause. See *People v. McKown*, 236 Ill. 2d 278, 311 (2010).

> "If the evidence presented at the first trial, including the improperly admitted evidence, would have been sufficient for any rational trier of fact to find the essential elements of the crime proven beyond a reasonable doubt, retrial is the proper remedy. [Citation.] If no rational trier of fact could so find, defendant may not be subjected to a second trial." *Id.*

Here, the evidence was sufficient to sustain defendant's convictions of attempted murder of a police officer, aggravated discharge of a firearm, and possession of a defaced firearm, such that there is no double-jeopardy implication to remanding those counts. However, "[t]he Double Jeopardy Clause forbids a second trial for the purpose of affording the prosecution another opportunity to supply evidence which it failed to muster in the first proceeding. This is central to the objective of the prohibition against successive trials." *Burks v. United States*, 437 U.S. 1, 11 (1978). Because defendant was tried for unlawful possession of a firearm by a street gang member, but the State failed to satisfy its burden of proof, double jeopardy bars further prosecution on that charge and we reverse that conviction outright.

¶ 78 III. CONCLUSION

¶ 79 For the reasons stated, the judgment of the circuit court of Lake County is reversed and the cause is remanded.

¶ 80 Reversed and remanded.

FILED
MAY 18 2020
Erin Cartwright Weinstein
CIRCUIT CLERK

No. 2-20-0195

IN THE

APPELLATE COURT OF ILLINOIS

SECOND JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the Nineteenth Judicial Circuit, Lake County, Illinois
Plaintiff-Appellee,	)	
	)	No. 16 CF 1655
-vs-	)	
	)	
OLVAN QUEZADA,	)	Honorable James K. Booras,
Defendant-Appellant.	)	Judge Presiding.

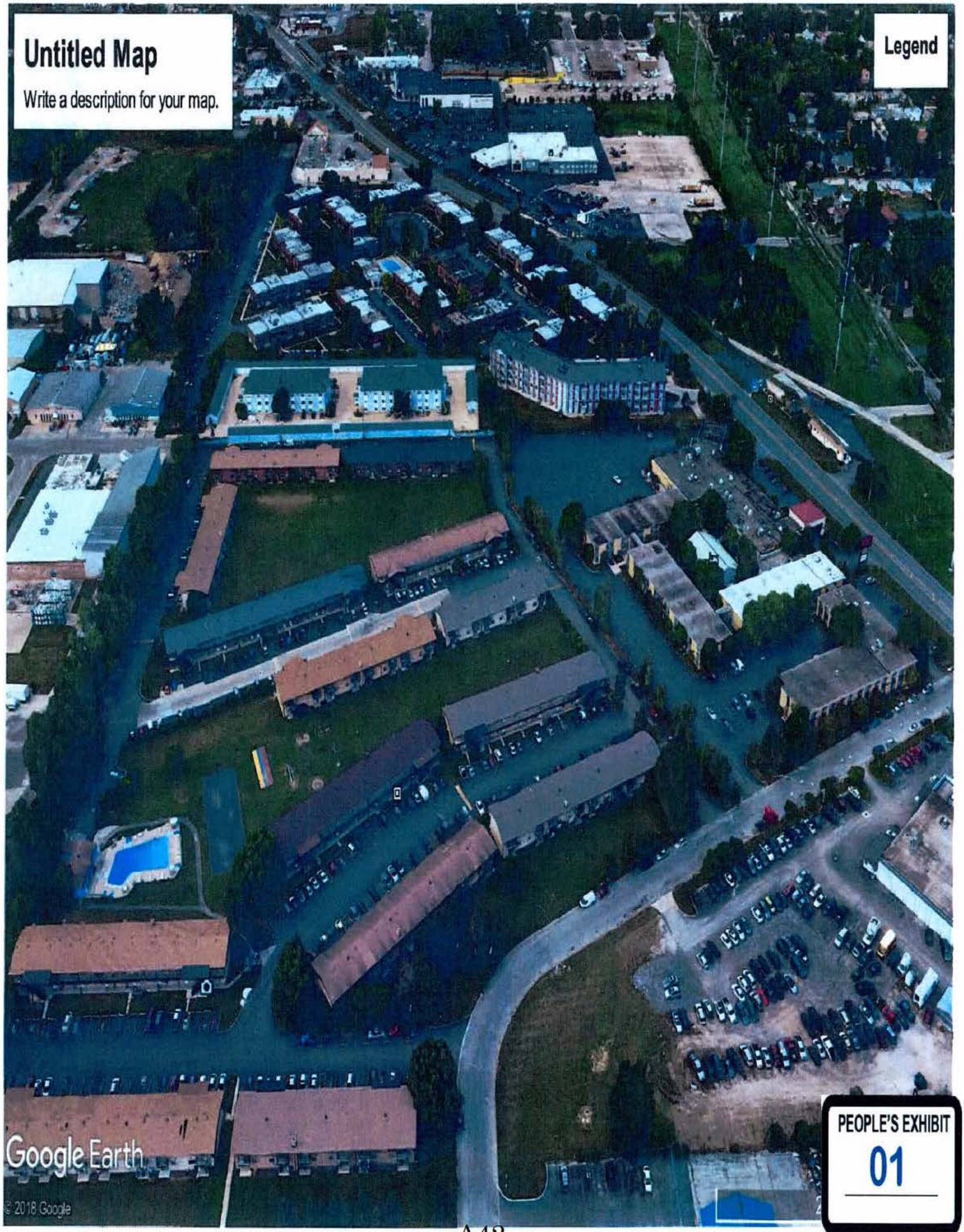
LATE NOTICE OF APPEAL

An appeal is taken to the Appellate Court, Second District, from the judgment described below:

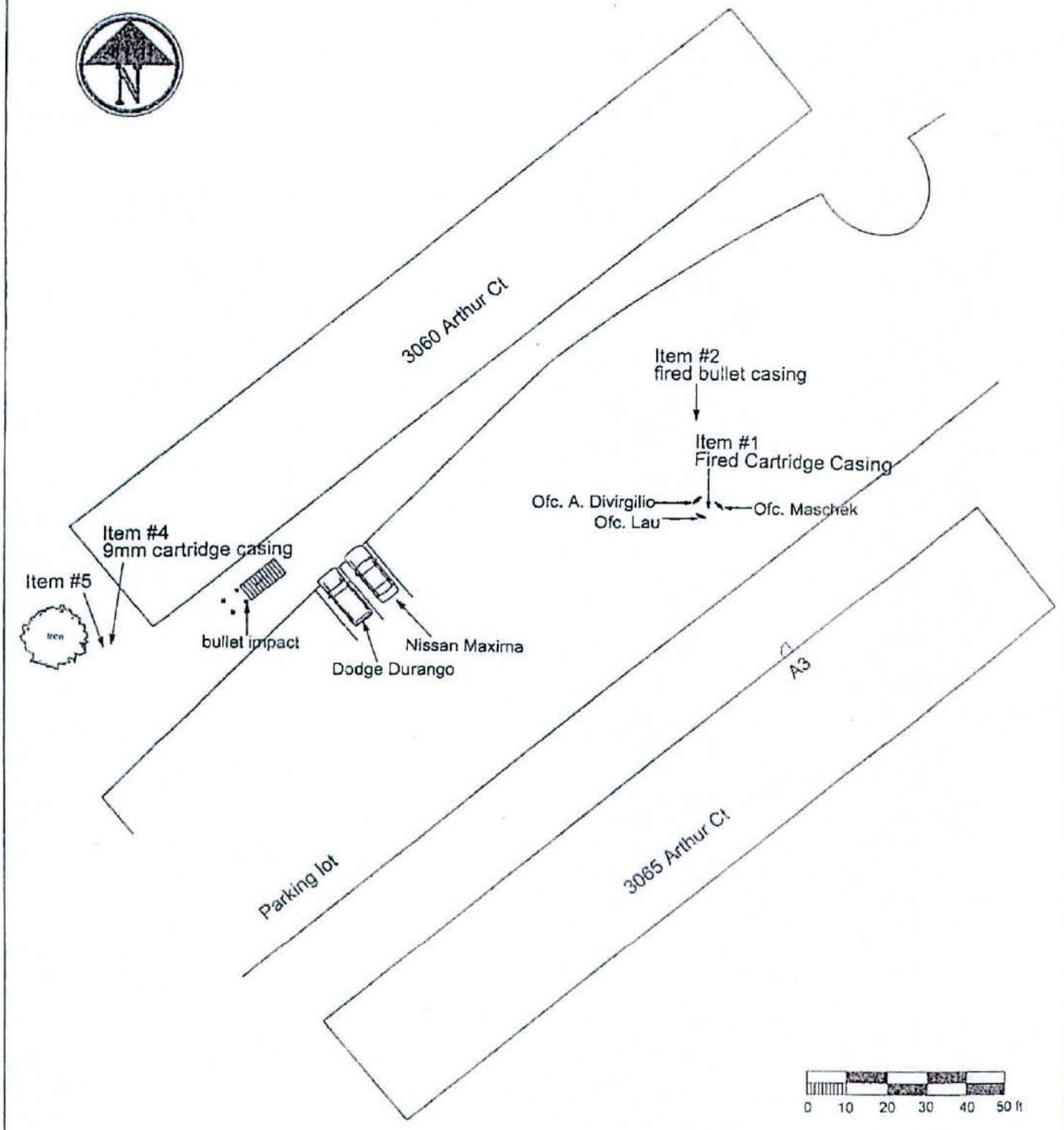
Appellant's Name:	Olvan Quezada Y41744
Appellant's Address:	Stateville Correctional Center P.O. Box 112 Joliet, IL 60434
Appellant's Attorney:	Office of the State Appellate Defender
Appellant's Attorney's Address:	One Douglas Avenue, Second Floor Elgin, IL 60120
Offenses of which convicted:	Attempt first degree murder, aggravated discharge of a firearm, unlawful possession of a firearm by a street gang member, and defacing identification marks on a firearm
Date of Order:	December 16, 2019
Sentences:	27 years, 19 years, 10 years, and 5 years, concurrent

Respectfully submitted,

By: /s/ Thomas A. Lilien
Deputy Defender



Offense	Address	CITY:	COUNTY:
Attempt Murder	3065 Arthur Ct	Waukegan, IL 60085	Lake



CASE #:	Officer	Waukegan PD	DATE:	TIME:
2016-33431	Ofc. Maschek 776	266 SD TBN	06-17-16	0235 hrs

PEOPLE'S EXHIBIT
02

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