NOTICE
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2026 IL App (5th) 241320-U

NO. 5-24-1320

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Alexander County.
	)	
v.	)	No. 23-CF-29
	)	
SAMUEL L. LEWIS,	)	Honorable
	)	Jeffery B. Farris,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE McHANEY delivered the judgment of the court.
Justices Sholar and Bollinger concurred in the judgment.

ORDER

¶ 1 *Held*: Although the prosecutor improperly suggested that the jurors' oath required them to find the defendant guilty, the evidence was not closely balanced and the remarks did not amount to structural error warranting relief under the plain-error doctrine. The circuit court also did not abuse its discretion in sentencing the defendant, as the record did not establish that it failed to consider the mitigating evidence concerning his role as a caregiver. We affirm the defendant's convictions and sentence.

¶ 2 I. BACKGROUND

¶ 3 The defendant, Samuel L. Lewis, was charged by information with first degree murder arising from the shooting death of Lafayette Woods Jr. (Woods) outside the Spirit House liquor store (Spirit House) in Cairo, Illinois, on May 9, 2023. The State charged alternative theories concerning the defendant's mental state. The matter proceeded to a jury trial on January 23, 2024.

¶ 4 Before the presentation of evidence, the circuit court told the jury that the defendant was presumed innocent and had no obligation to present evidence. The circuit court also instructed that their verdict must rest on the evidence rather than speculation, guess, or conjecture, and that determining the facts and assessing the credibility of witnesses was the jury's responsibility.

¶ 5 In opening statement, the prosecutor characterized the case as one in which the defendant "brought a gun to a fistfight" and explained that surveillance video depicted the encounter but contained no audio, leaving the participants' words unknown. He described an initially friendly interaction, a subsequent confrontation, punches thrown by Woods, and the defendant's use of a handgun and pursuit of Woods, who had been shot. The prosecutor acknowledged that the State had to prove not only that the defendant performed the acts causing Woods's death, but also that the defendant was not justified in the force used.

¶ 6 During the trial, the following relevant evidence was adduced. Bharat Patel (Patel), an employee of the Spirit House, testified concerning the store's surveillance system. After police contacted him in the early morning hours of May 10, 2023, he retrieved video recordings from the system. Patel described the cameras and the areas they covered, including the parking lot and drive-through. Patel identified the views shown by the different cameras. The videos were admitted into evidence as State's Exhibit 1 without objection.

¶ 7 Chico Woods (Chico), Woods's uncle, testified that he arrived at Spirit House with Woods in a red sport utility vehicle late on May 9, 2023. Chico was not feeling well and initially remained in the vehicle while Woods entered the store. The defendant approached and asked Chico to get out, but Chico declined. Chico later went inside to ask Woods to leave because Chico's stomach was bothering him. After returning to the vehicle and waiting, Chico encountered Joe Coleman, who gave him a ride home. Chico left before the shooting. Chico identified himself, Woods, and

the defendant in the surveillance videos and testified that the videos fairly and accurately represented what he had observed while present. The videos were then played for the jury.

¶ 8 Constance Puckett (Puckett), Woods's mother-in-law, testified concerning events after the shooting. Her daughter, BreAnna, awakened her and said that Woods had been shot. Puckett went outside and found Woods bleeding in the passenger seat of a red vehicle. Puckett recalled Woods telling her, "OG, I love you, but I'm dying." An ambulance was called, but after waiting approximately 20 to 30 minutes, BreAnna drove Woods to the fire department.

¶ 9 Illinois State Trooper Matthew Deschamps, a crime scene investigator, testified that he processed the scene at Spirit House and subsequently examined and photographed Woods's body at the fire department. He also attended and documented the autopsy. His testimony addressed photographs of the scene, the body, and the clothing, including defects in the shirt and pants. On cross-examination, defense counsel played and paused portions of the surveillance videos while asking Trooper Deschamps about the participants' positions and movements. At one point shortly before the physical blows, Trooper Deschamps estimated that the defendant and Woods were approximately 10 to 15 feet apart. When counsel asked whether Woods was moving toward the defendant, Trooper Deschamps answered, "As Samuel was moving towards him, correct." He agreed that the distance narrowed to approximately five or six feet.

¶ 10 Trooper Deschamps agreed that, in a paused image, the defendant's hands were down, although his arms appeared angled farther backward than Woods's, whose right elbow was raised and appeared to be ready to strike the defendant. When asked whether the defendant held a gun, Trooper Deschamps testified that something similar in shape could be seen but that he could not make a definite identification from that frame. He explained that the two-dimensional image did

not permit him to determine conclusively whether a possible barrel pointed toward Woods or toward the defendant's own waist.

¶ 11 In subsequent frames, Trooper Deschamps agreed that Woods struck the defendant on the side of the head and that the defendant's hat flew off. In some of those images, the object in the defendant's hand did not appear directed at Woods; in another, Trooper Deschamps declined to guess because the view was unclear. He then agreed that the object appeared directed toward, and close to, Woods's abdomen as Woods's left hand connected with the right side of the defendant's head or neck. Trooper Deschamps testified that the defendant's feet appeared to leave the ground. When defense counsel asked whether Woods had struck the defendant so hard that the blow sent him airborne, the State's objection based upon speculation was sustained. Counsel rephrased the questions, and Trooper Deschamps agreed that both of the defendant's feet appeared off the ground.

¶ 12 When counsel asked whether the back of the defendant's head appeared to have struck the asphalt, Trooper Deschamps answered, "It appears so." Woods remained standing, with his left hand appearing to rest on the defendant's back or shoulder and his right arm drawn back in a striking position. After the video was replayed at normal speed, Trooper Deschamps did not identify a third contact. He could not say why Woods did not strike again and allowed that Woods might have stopped or missed. Trooper Deschamps agreed that Woods appeared to continue pursuing the defendant as the defendant rose from the ground. On redirect examination, Trooper Deschamps acknowledged that he had no training specifically concerning the review of surveillance videos. He had reviewed them to help determine where to look for physical evidence. In answering counsel's questions concerning the images, he was using his sight rather than specialized crime scene training and was reviewing the videos as another person would.

¶ 13 Christopher Kiefer (Kiefer), a forensic pathologist, testified that he performed Woods's autopsy. He identified an entrance gunshot wound to Woods's lower left chest. Soot and searing around the entrance were consistent with a close-range discharge. Kiefer distinguished a loose-contact or very close shot from a firearm pressed firmly against the skin and estimated a firing distance of approximately one to three inches. Kiefer also examined Woods's shirt, including soot around a defect corresponding to the entrance wound. He explained that soot generally would not be visible on skin beyond approximately three inches, although gunpowder stippling could appear at a greater distance. Because soot and searing indicated contact by hot gases and flame, Kiefer opined that there was a "99 percent" probability that the firearm was within three inches when that wound was inflicted. The bullet entered between the sixth and seventh ribs, passed through the diaphragm, stomach, and liver, and exited on the right side of the abdomen. The path ran from left to right, slightly from front to back, and downward. Kiefer explained that the injuries to the stomach and liver would not necessarily cause immediate death but could result in substantial bleeding. Approximately one liter of blood was present in Woods's abdomen, in addition to blood lost externally.

¶ 14 Kiefer identified a separate grazing gunshot wound to the right thigh. He could not determine its direction and observed no soot associated with that wound. Two defects and soot were present in the left sleeve of the shirt, although Woods had no corresponding arm injury. Kiefer also discussed defects in the pants associated with the thigh graze. He concluded that the cause of death was the gunshot wound to the abdomen.

¶ 15 Toxicology testing detected alcohol, THC, and benzodiazepines. Kiefer described the benzodiazepine level as low and consistent with taking prescribed medication. He testified that the marijuana-related findings suggested recent use and intoxication. On cross-examination, he

clarified that the blood alcohol concentration was .196 and the vitreous concentration was .138, describing the blood alcohol concentration as moderate. Woods weighed approximately 222 pounds and was approximately 70 inches tall. Kiefer agreed that size could affect one person's ability to overpower another, although it was not the ultimate deciding factor.

¶ 16 Defense counsel questioned Kiefer concerning deaths from beatings and the role of the participants' size. On redirect, Kiefer could not recall a case from his own experience in which a person died from a beating inflicted solely with bare hands, explaining that the cases he recalled involved an instrument. He acknowledged that such deaths could occur and referred to a person being pushed and striking the concrete. He also agreed that repeated blows could increase the possibility of fatal injury and that interrupting an assault could reduce it.

¶ 17 After the State rested, defense counsel moved for a directed finding, arguing that the evidence established self-defense. The circuit court denied the motion, determining that the evidence was sufficient to allow the case to go to the jury. Outside the jury's presence, the defendant confirmed that after discussion with counsel, he decided not to testify. The defense rested without calling witnesses or presenting additional evidence.

¶ 18 At the instruction conference, the parties advised the circuit court that they had discussed the proposed instructions. Although an instruction packet was identified as the State's instructions, the prosecutor explained that portions had been prepared through discussions with defense counsel, including instructions to be given at the defendant's request. Defense counsel confirmed that they had jointly prepared those instructions.

¶ 19 The agreed instructions addressed first degree murder, justified use of force, and second degree murder based on an unreasonable belief in circumstances justifying deadly force. Defense counsel specifically requested the statement that "[t]he defendant is not required to present any

evidence in order to establish the existence of a mitigating factor." Counsel also tendered an instruction concerning the defendant's decision not to testify, which the circuit court agreed to give. No instruction on second degree murder based on serious provocation was requested or given.

¶ 20 In the State's initial closing argument, the prosecutor discussed the elements of first degree murder and the competing theories of self-defense and unreasonable-belief second degree murder. He described the evidence that the defendant pointed a handgun and shot Woods as "uncontroverted." He similarly characterized the first two propositions concerning the defendant's acts and mental state as "uncontroverted by the evidence in this case." When discussing the separate firearm allegation, he again stated that "the evidence is uncontroverted." The prosecutor identified justification as the principal disputed question for the jury.

¶ 21 The prosecutor replayed portions of the surveillance videos, describing the earlier interaction, animated movements, and separation of the participants. He acknowledged that the videos showed body language but no audio. He urged the jury to consider both the encounter before the shooting and the defendant's subsequent pursuit in deciding what the defendant believed when he fired the gun and whether that belief was reasonable. In discussing a red stain visible on Woods's shirt as Woods entered the drive-through view, the prosecutor stated that the fatal shot occurred "[s]ometime before he turned the corner" and "[p]robably in the parking lot." He then asked whether the defendant's conduct after that shot reflected his earlier state of mind.

¶ 22 The prosecutor argued that the defendant wanted to shoot Woods and waited for Woods to throw a punch to provide an excuse. He concluded: "I think when you weigh all of the evidence that is uncontroverted, you will find that this defendant is guilty beyond a reasonable doubt of first degree murder. *And your only decision, upholding your oath as jurors, is to sign the verdict form*

that finds him guilty of first degree murder." (Emphasis added.) Defense counsel did not object to that statement.

¶ 23 In the defense closing argument, counsel characterized the case as concerning "eight seconds and one gunshot," rather than every event shown in the videos. He argued that Woods was the aggressor, that the defendant was subjected to unlawful force, and that the force was not merely imminent but ongoing. Counsel emphasized the blows to the defendant's head, his fall, the appearance that his feet left the ground, and the difference in the participants' size. He argued that the close-range fatal shot was a response to the assault and that later events did not determine whether that shot was justified. Defense counsel sought an acquittal on self-defense grounds and alternatively a second degree murder verdict if the jury concluded that the defendant's belief concerning the necessary force was unreasonable. Addressing the defendant's mental state, counsel stated, "we do not know and you cannot hold it against Samuel Lewis that he's not testifying." Counsel argued that the defendant and Woods knew each other and that the defendant understood the force necessary to stop Woods's attack.

¶ 24 During rebuttal, the prosecutor again played and paused the videos while explaining what he contended the images showed. He disputed the defense's account of the participants' size and the significance of the defendant's fall. The prosecutor acknowledged that Woods was the aggressor in the sense that he "punched first" and "escalated the physical violence first," but distinguished that question from who initiated or instigated the confrontation. He argued that the defendant already had the handgun before the blows. In discussing the second punch and the firearm's proximity to Woods's torso, he connected that portion of the video to Kiefer's close-range findings.

¶ 25 The prosecutor attributed the defendant's movement to inertia and momentum rather than solely to the strength of Woods's blows. He stated, "Nobody's head bounces off that concrete. There's no rebound. He's on his shoulders there." He further argued that Woods's subsequent reaching was an effort to protect himself or disarm the defendant after recognizing that a gun had been fired, rather than an attempt to deliver another punch. The prosecutor identified what he described as additional muzzle flashes and emphasized the defendant's pursuit of Woods after Woods turned and fled. These descriptions were presented in argument while the videos were shown to the jury. The prosecutor acknowledged that the defendant faced imminent unlawful force but disputed that the defendant reasonably believed he faced imminent death or great bodily harm. He argued that the defendant sought the confrontation and that the evidence did not support either self-defense or an actual but unreasonable belief justifying deadly force. At the end of rebuttal, he stated: "And with this evidence and *your oath as jurors, the only, the only verdict form that you can sign this afternoon is guilty on first degree murder*." (Emphasis added.) Defense counsel did not object to that statement.

¶ 26 Following closing arguments, the circuit court instructed the jurors to apply the law supplied by the court and to consider all the instructions together. It explained that closing arguments were not evidence and that any attorney's statement unsupported by the evidence should be disregarded. The circuit court instructed the jury on the presumption of innocence and burden of proof and told the jurors that the defendant's failure to testify must not be considered "in any way" in reaching a verdict. The circuit court also instructed the jury on the State's obligation to prove first degree murder, including that the defendant was not justified in using the force he employed. The circuit court further instructed the jury that, after finding the first degree murder propositions proved, the jury should consider whether the defendant established the mitigating

factor of an actual but unreasonable belief in circumstances justifying deadly force. The jury received verdict forms for not guilty, guilty of first degree murder, and guilty of second degree murder, together with a separate form concerning personal discharge of a firearm proximately causing death. The jury retired at approximately 3:13 p.m. and returned at approximately 3:50 p.m., finding the defendant guilty of first degree murder and that personal discharge of a firearm was proved.

¶ 27 On May 2, 2024, the circuit court heard the defendant's motion for a new trial. Counsel challenged the exclusion of evidence concerning Woods's prior weapon conviction, medical information concerning a retained projectile from an earlier injury, and the limitation of Chico's cross-examination. The circuit court denied the motion, which failed to raise the prosecutor's oath comments or request a new trial based on the absence of a serious-provocation instruction.

¶ 28 The circuit court then proceeded to sentencing. Neither party proposed corrections to the presentence report or called witnesses. The prosecutor noted that the defendant was 42 years old at the time of the offense. He discussed the defendant's prior federal imprisonment beginning in 2001, an older misdemeanor cannabis conviction, and a conviction for obstructing a peace officer. The prosecutor also directed attention to the report's discussion of mental and emotional health and substance use, along with victim impact statements from Woods's widow, mother, and mother-in-law.

¶ 29 In discussing mitigation, the prosecutor argued that the defendant had not acted under strong provocation and that the circumstances did not provide substantial grounds excusing or justifying his conduct. He also disputed that the circumstances were unlikely to recur. Referring to other incidents at the intersection of 24th and Sycamore (the location of Spirit House), he stated

that he would not stop there because he feared that he or someone traveling with him "might catch a stray." He described it as "the worst intersection in this county."

¶ 30 Addressing deterrence, the prosecutor referred to other murders in Alexander County based on his recollection and asserted that, given the county's population, its per capita murder rate equaled Cook County's. He acknowledged that serious harm was incorporated into the sentencing range for first degree murder, while urging the circuit court to consider the defendant's multiple discharges, pursuit, and the risks to bystanders and nearby residents. The prosecutor recommended a total sentence of 60 years, consisting of 35 years for murder and the 25-year firearm enhancement.

¶ 31 Defense counsel disputed that the evidence established a pursuit intended to finish killing Woods and emphasized that the prosecution concerned the shot that struck Woods. Counsel characterized the defendant's record as lacking assaults or other violent crimes. Referring to the presentence report, counsel stated that the defendant had been diagnosed with schizophrenia while in jail and had mental health and treatment issues. Counsel also reported that the defendant admitted drinking and using illicit substances on the night of the shooting, while disclaiming those circumstances as an excuse. He discussed the effect of imprisonment on the defendant's children and family and argued that Woods initiated the physical attack. Counsel maintained that the trial evidence supported fear of great bodily harm and urged the minimum sentence. He reported that the defendant had expressed "remorse, regret, shame, pain, and a tremendous amount of anguish." The defendant did not make a statement in allocution. No oral victim impact statement was presented.

¶ 32 The circuit court reviewed the statutory factors in mitigation and aggravation. Concerning strong provocation, it stated: "From what I have heard and seen, I do not know what the

provocation, if any, was, so I'm going to leave out finding that he acted under a strong provocation. Maybe he did, maybe he did not." The circuit court also stated that it had no proof of substantial grounds tending to excuse or justify the conduct although insufficient to establish a defense. The circuit court characterized the defendant's criminal record as "remarkably small, remarkably short," identifying "one glimpse of violent behavior" in the older obstructing conviction. It did not determine that the circumstances were unlikely to recur or that the defendant's character indicated he was unlikely to commit another crime. Although acknowledging some indication of mental health issues, the circuit court did not find proof of a serious mental illness substantially affecting the defendant's ability to understand his acts or conform his conduct to the law. It also stated that the defendant was not the caregiver of an ill, disabled, or elderly relative.

¶ 33 In aggravation, the circuit court found that the conduct caused or threatened serious harm. It gave the defendant's prior criminal history "very low" weight and identified deterrence as a consideration. In explaining deterrence, the circuit court referred to its experience with violent incidents in the county and said it did not understand why people were not deterred from participating in similar conduct. The circuit court stated that it had considered the victim impact statements. Discussing the videos, the circuit court explained that the prosecutor's detailed replay had enabled it to see muzzle flashes it had not otherwise recognized. It described the situation in the parking lot as appearing "a little bit too regular," adding, "like Mr. Gowin says, not the first time." The circuit court commented on bystanders scattering and expressed concern that the same people might return to the location without knowing who would arrive with a grievance.

¶ 34 The circuit court described what it viewed as the defendant's buildup before the shooting and repeated approaches toward Woods when he could have left. It acknowledged the impact of the death and imprisonment on both families. The circuit court also emphasized the pursuit and

continued firing after Woods was wounded, stating that Woods "apparently has one bullet in him" but remained able to move. In discussing the danger along 24th Street, it stated, "I agree with Mr. Gowin. I wouldn't want to be back there." It compared the defendant's conduct to that of a hunter and emphasized that he continued firing rather than stopping after the initial shot. Stating that it had considered counsel's arguments, the victim impact statements, the aggravating and mitigating factors, and the trial evidence, the circuit court imposed 45 years' imprisonment for first degree murder and an additional 25 years for the firearm enhancement, for a total of 70 years. It also imposed three years of mandatory supervised release.

¶ 35 The defendant sought a sentence reduction, which motion was heard on December 12, 2024. Counsel relied on the age and nature of the defendant's criminal history, asserted unlikelihood of another violent incident, remorse expressed in letters, and the absence of an intention to cause Woods's death. Counsel also argued that the sentence was excessive, that Woods physically attacked first, that the defendant had withdrawn from the earlier confrontation, and that the defendant believed force was necessary to defend against the attack. Counsel requested the minimum sentence or, alternatively, a reduction to the State's recommended base term of 35 years.

¶ 36 The prosecutor responded that the circuit court had considered those matters in its original review of aggravation and mitigation. He disputed the claims concerning intent, justification, and who was the aggressor, emphasizing both the defendant's conduct before the first shot and his conduct during the subsequent pursuit. He asked that the 70-year sentence remain in place.

¶ 37 In denying the motion, the circuit court stated that the 45-year base term rested not on the firearm itself but on what it viewed as the defendant's aggression during the pursuit. It described the defendant as chasing Woods around the corner and down the street, hiding, taking aim "like he was some sort of trained soldier," and being determined to kill him, "which he finally did." The

circuit court also questioned whether the defendant's remorse arose from recognizing that he had not escaped the consequences of his conduct. The circuit court reiterated its view that the defendant had provoked the confrontation and could have left the location. It stated that the defendant continued to crouch, fire, and "finally kill the victim as the victim was trying to leave." It denied the motion and left the sentence unchanged. The defendant timely appealed.

¶ 38 II. ANALYSIS

¶ 39 A. Prosecutor's Comments

¶ 40 The defendant contends that the prosecutor improperly told the jurors during closing argument that their oath required them to find him guilty of first degree murder. Specifically, at the conclusion of his initial closing argument, the prosecutor stated: "I think when you weigh all of the evidence that is uncontroverted, you will find that this defendant is guilty beyond a reasonable doubt of first degree murder. And your only decision, upholding your oath as jurors, is to sign the verdict form that finds him guilty of first degree murder."

¶ 41 The prosecutor returned to the jurors' oath at the conclusion of rebuttal, stating: "And with this evidence and your oath as jurors, the only, the only verdict form that you can sign this afternoon is guilty on first degree murder." A prosecutor may not tell jurors that their oath requires them to return a particular verdict or imply that they would violate their oath by acquitting the defendant. *People v. Nelson*, 193 Ill. 2d 216, 227-28 (2000).

¶ 42 In *Nelson*, our supreme court condemned the prosecutor's argument that the jurors had not lived up to their oaths if they allowed the defendant to "walk out of this courtroom" and that their oaths required them to find the defendant guilty. *Id.* at 227. We agree with the defendant that the prosecutor's remarks in this case were improper. By telling the jurors that the "only decision" consistent with their oath and the "only" verdict form they could sign was one finding the

defendant guilty, the prosecutor improperly suggested that the jurors' sworn duty compelled a particular verdict.

¶ 43 The State correctly points out, and the defendant acknowledges, that the defendant did not contemporaneously object to the prosecutor's remarks or raise the issue in a written posttrial motion. To preserve a claim of error for appellate review, a defendant must both contemporaneously object and raise the claimed error in a written posttrial motion. *People v. James*, 2025 IL App (3d) 230195-U, ¶ 14. Accordingly, the defendant forfeited review of the prosecutor's comments and now seeks appellate review of this issue under the plain-error doctrine.

¶ 44 The plain-error doctrine permits a reviewing court to consider a forfeited error under two circumstances: "(1) where the evidence in a case is so closely balanced that the jury's guilty verdict may have resulted from a clear or obvious error and not the evidence or (2) when a clear or obvious error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process." *People v. Jackson*, 2022 IL 127256, ¶ 19. Under either prong, the defendant bears the burden of persuading the reviewing court to excuse his forfeiture. *Id.* "When a defendant invokes the plain error rule, the first step in the analysis is to determine whether a clear or obvious error occurred." *Id.* ¶ 21. We have found the prosecutor's comments concerning the jurors' oath constituted error. We therefore proceed to determine whether that error satisfies either prong of the plain-error doctrine.

¶ 45 We find that although the surveillance videos showed that Woods initiated the physical confrontation by striking the defendant and knocking him to the ground, they also showed the defendant firing multiple shots toward Woods, regaining his footing, and continuing to advance as Woods turned and attempted to flee. The evidence established that the defendant pursued Woods and continued firing the gun after the initial confrontation had ended. The videos provide

compelling evidence that the defendant's continued use of deadly force was not reasonably necessary to defend himself. Considering the evidence as a whole, particularly the surveillance videos that permitted the jury to observe the encounter, we cannot conclude that the evidence was closely balanced. Accordingly, the defendant cannot obtain relief under the first prong of the plain-error doctrine.

¶ 46 The defendant specifically asks us to review the prosecutor's oath comments under the second prong of the plain-error doctrine. Second-prong plain error is reserved for exceptional circumstances. *Id.* ¶¶ 27-28. Our supreme court has explained that the second prong may be invoked "only in those exceptional circumstances where, despite the absence of objection, application of the rule is necessary to preserve the integrity and reputation of the judicial process." (Internal quotation marks omitted.) *Id.* ¶ 28. That court has equated second-prong plain error with structural error—an error that "erode[s] the integrity of the judicial process and undermine[s] the fairness of the defendant's trial." (Internal quotation marks omitted.) *Id.* Unlike first-prong plain error, structural error does not require a defendant to demonstrate prejudice because prejudice is presumed regardless of the strength of the evidence. *Id.* Importantly, structural errors are errors affecting "the framework within which the trial proceeds," rather than errors occurring during the trial process itself. *Id.* ¶ 29. Moreover, "second-prong plain error can be invoked only for structural errors that are not subject to harmless error analysis." *Id.* ¶ 49. Thus, the fact that an error is serious or implicates an important right does not, standing alone, transform the error into second-prong plain error warranting automatic reversal.

¶ 47 The defendant relies principally upon *Nelson* and *People v. Ganaway*, 2021 IL App (3d) 170844-U, in arguing that the prosecutor's oath comments constitute structural error. We disagree.

¶ 48 In *Nelson*, the prosecutor repeatedly invoked the jury's oath throughout rebuttal argument, told the jurors that acquitting the defendant would mean they had failed to live up to their oaths, and expressly told them that their oaths required a guilty verdict. *Nelson*, 193 Ill. 2d at 227-28. The improper oath arguments was therefore not an isolated remark but a sustained theme of the prosecutor's rebuttal. The supreme court described the argument as "wholly inappropriate" and concluded, under the circumstances presented there, that the error was "so fundamental and of such magnitude that the defendant was denied a fair trial." *Id*. Though the prosecutor's two comments here were improper, they were substantially less extensive than the repeated oath-based argument condemned in *Nelson*.

¶ 49 The defendant also relies upon the unpublished decision in *Ganaway*. There, the majority held that the prosecutor committed second-prong plain error by concluding rebuttal with the statement, " 'I'm asking you to do your sworn duty and find the defendant guilty of all the charges.' " *Ganaway*, 2021 IL App (3d) 170844-U, ¶¶ 44-48. The majority reasoned that the prosecutor's comment rendered the trial "an unreliable means of determining guilt or innocence" and therefore constituted structural error. (Internal quotation marks omitted.) *Id.* ¶ 48.

¶ 50 We find the reasoning of the dissent in *Ganaway* more persuasive regarding second-prong plain error. The dissent emphasized that *Nelson* did not hold that every improper reference to a jury's oath constitutes structural error warranting automatic reversal. *Id.* ¶ 56 (Schmidt, J., dissenting). Rather, improper prosecutorial argument reaches the level of structural error only in extreme circumstances. *Id.* The dissent reasoned that even assuming the prosecutor's oath comment constituted error, the error was not structural because the challenged remark was not sufficiently inflammatory, flagrant, or pervasive to undermine the framework of the trial itself. *Id.* ¶¶ 56-57.

¶ 51 That reasoning is consistent with our supreme court's subsequent explanation in *Jackson* that second-prong plain error is limited to structural errors—errors affecting the framework within which the trial proceeds and which are not amenable to harmless-error review. *Jackson*, 2022 IL 127256, ¶¶ 28-29, 49. The prosecutor's comments here occurred during closing argument in an otherwise properly constituted jury trial. They did not alter the burden of proof, deprive the defendant of counsel, compromise the composition or impartiality of the jury, or otherwise alter the basic framework within which the jury determined guilt. Rather, they were improper comments made during the course of that trial and are capable of being assessed in light of the evidence and the proceedings as a whole.

¶ 52 We agree that the prosecutor erred when he told the jurors that the only verdict consistent with their oath was a verdict finding the defendant guilty. We do not minimize that error. However, we find that two improper comments do not rise to the level of structural error necessary to establish second-prong plain error warranting automatic reversal. Because the evidence was not closely balanced and the prosecutor's improper remarks did not constitute structural error, the defendant has failed to establish plain error, which would excuse forfeiture.

¶ 53 B. Ineffective Assistance During Closing Argument

¶ 54 To establish ineffective assistance, the defendant must show objectively unreasonable performance and a reasonable probability that, but for counsel's deficient performance, the result would have been different. *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984). A reasonable probability is one sufficient to undermine confidence in the outcome; it need not amount to a showing that a different result was more likely than not. *Id.* at 694. We may dispose of a claim on the prejudice component without deciding whether counsel performed deficiently. *People v. Hale*, 2013 IL 113140, ¶ 17. Assuming that counsel should have objected to the challenged remarks, the

defendant has not established prejudice. The jury heard the defense's interpretation of the assault, received the legal standards governing both self-defense and unreasonable-belief mitigation, and was instructed not to consider the defendant's silence. Removing the improper oath references and the disputed narration would not remove the evidence of the defendant's conduct before the punches or his armed pursuit after Woods withdrew. Considering the challenged argument collectively and applying the reasonable-probability standard independently, we find no basis to conclude that counsel's failure to object undermines confidence in the verdict.

¶ 55 C. Second Degree Murder Instruction

¶ 56 The defendant next argues that counsel was ineffective for failing to request an instruction on second degree murder based on serious provocation. The jury was instructed on second degree murder based on an actual but unreasonable belief in the need for deadly force, but not on sudden and intense passion resulting from serious provocation. The defendant maintains that Woods's physical assault supported the omitted instruction and offered a route to mitigation that did not require the jury to find that he believed deadly force was necessary.

¶ 57 Serious provocation is conduct sufficient to excite an intense passion in a reasonable person. 720 ILCS 5/9-2(b) (West 2022). The recognized categories include substantial physical injury or assault and mutual combat. *People v. Fausz*, 95 Ill. 2d 535, 539 (1983). To reduce first degree murder to second degree murder on this basis, the defendant must establish by a preponderance of the evidence that he acted under a sudden and intense passion resulting from serious provocation. *People v. Jeffries*, 164 Ill. 2d 104, 107 (1995). Only very slight evidence is necessary to warrant an instruction on a recognized theory. *People v. Hari*, 218 Ill. 2d 275, 296 (2006). Entitlement to an instruction and proof of ineffective assistance, however, present different questions. For purposes of the latter, the defendant must satisfy both components of *Strickland*.

¶ 58 We assume that an instruction on serious provocation would have been warranted. The evidence of the two punches, the fall, and the close temporal relationship between the assault and the close-range shot supplies support for the defendant's position. Nor do we accept the proposition that pursuing self-defense necessarily foreclosed a provocation instruction. The theories address different questions, and a jury could reject a belief in the necessity of deadly force while finding that an assault produced a sudden and intense passion. Counsel's pursuit of one available mitigating theory therefore does not, by itself, answer the claim that another should have been submitted.

¶ 59 The defendant's reliance on *People v. Parker*, 260 Ill. App. 3d 942, 948 (1994), and *People v. Smallwood*, 2023 IL App (5th) 220124-U, ¶ 42, reinforces that point. *Parker* found deficient performance where counsel sought unreasonable-belief instructions but omitted a supported provocation instruction. *Smallwood*, offered as persuasive authority, rejected counsel's selection of self-defense to the exclusion of defense of dwelling when the omitted defense fit the facts and offered a distinct, less demanding path to acquittal. We do not dismiss those authorities merely because counsel here pursued a recognizable defense. Instead, we assume that omitting the additional instruction was unreasonable and resolve the claim on prejudice. That approach also makes it unnecessary to infer counsel's private reasoning from the parties' agreement on the instruction packet.

¶ 60 An instruction based on serious provocation would have allowed the jury to consider a different mitigating state of mind, but the possibility of an additional verdict is not itself a reasonable probability of a different result. The evidence must support not only a qualifying assault but also the conclusion that the defendant killed while acting under the resulting sudden and intense passion. Woods's punches supplied evidence of provocation. The surrounding conduct

substantially weakened the asserted causal connection between that assault and the defendant's resort to deadly force. Before the fall, the defendant was participating in the confrontation with his hand behind his waist and an object in that hand. After regaining his footing, he pursued Woods and continued taking aim and firing. The evidence thus supported a purposeful armed response extending beyond the immediate physical assault, rather than a killing explained by a sudden passion first produced by the punches.

¶ 61 We recognize that an angry person may act purposefully and that continued firing does not conclusively exclude intense passion. We also recognize that the fatal close-range shot may have been fired during the assault. Those points prevent the pursuit from being treated as an automatic legal bar to mitigation. They do not deprive it of evidentiary significance when considered with the defendant's conduct before and during the physical encounter. Even with the favorable evidence of the assault and its force fully credited, the complete sequence strongly supported the conclusion that the defendant's use of the firearm reflected an offensive course of conduct already underway, not a sudden loss of self-control induced by Woods's blows. We do not draw an adverse inference from the defendant's silence or require his testimony to establish passion. Our conclusion rests on the affirmative evidence of his conduct.

¶ 62 The defendant correctly observes that the jury's rejection of unreasonable-belief mitigation does not establish that it would also have rejected provocation. We do not use the first verdict as a substitute for evaluating the omitted theory. Having considered that theory on its own elements, including the evidence most favorable to it, we find no reasonable probability that an additional instruction would have produced a second degree murder verdict. We likewise reach no different conclusion when the omission is considered together with counsel's failure to object to the closing

argument. The combined claims do not undermine confidence in the verdict under *Strickland*. Accordingly, the defendant has not established ineffective assistance of counsel.

¶ 63 D. Sentencing

¶ 64 Finally, the defendant challenges his aggregate 70-year sentence. The circuit court imposed 45 years for first degree murder and added the mandatory 25-year firearm enhancement. The defendant argues that the court relied on unsubstantiated assertions about crime in Cairo, failed to give proper mitigating weight to Woods's assault, and imposed an excessive sentence despite his limited and largely nonviolent criminal history, education, employment, and family support. He also notes that the sentence exceeded the State's 60-year recommendation.

¶ 65 A circuit court has broad discretion in imposing sentence because it observed the defendant and the proceedings and is better positioned to evaluate the defendant's credibility, demeanor, character, mentality, social environment, habits, and age. *People v. Alexander*, 239 Ill. 2d 205, 212-13 (2010). We may not substitute our judgment merely because we might have weighed the pertinent factors differently. *Id.* at 213. A sentence within the statutory range is presumed proper and will not be disturbed absent an abuse of discretion. *People v. Knox*, 2014 IL App (1st) 120349, ¶ 46. A court abuses its discretion when the sentence is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense. *People v. Stacey*, 193 Ill. 2d 203, 210 (2000).

¶ 66 1. Caregiver Mitigation

¶ 67 The defendant first contends that the circuit court failed to consider a statutory mitigating factor arising from his care for his elderly mother. Section 5-5-3.1(a)(19) of the Unified Code of Corrections directs a sentencing court to accord mitigating weight when "[t]he defendant serves as the caregiver for a relative who is ill, disabled, or elderly." 730 ILCS 5/5-5-3.1(a)(19) (West

2022). According to the defendant's opening brief, he lived with his 84-year-old mother before his incarceration and cooked for her, did her laundry, and shopped for her. The circuit court reviewed the statutory factors and stated that the elderly-relative caregiver factor did not apply.

¶ 68 The defendant's description establishes that he assisted his mother with household tasks, but it identifies no illness, disability, limitation, or other circumstance showing that she depended on him for care or that he assumed a caregiving responsibility beyond the assistance family members commonly provide one another. The circuit court was not required to find the statutory factor established merely because the defendant performed helpful tasks for an elderly relative. Moreover, the court did not overlook the relationship. It acknowledged that the defendant had family members who cared about him. A sentencing court need not recite and assign a value to each item of mitigating evidence, and we may not reweigh that evidence merely because the defendant would have assigned it greater significance. See *Alexander*, 239 Ill. 2d at 213-14. We find that the court's determination that section 5-5-3.1(a)(19) did not apply was not an abuse of discretion.

¶ 69 2. Information Outside the Record

¶ 70 A sentencing issue ordinarily must be raised both by a contemporaneous objection and in a written postsentencing motion. *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). The defendant's motion and the hearing on that motion challenged the length of the sentence, the court's treatment of his criminal history, and the weight afforded the evidence that Woods was the initial aggressor. Those contentions preserved the same essential excessive-sentence claims raised here. See *People v. Heider*, 231 Ill. 2d 1, 18 (2008). The defendant did not, however, object when the prosecutor discussed crime at the intersection and county murder rates, nor did his written motion allege that the court relied on those matters. That distinct claim is forfeited.

¶ 71 Under sentencing plain-error review, the defendant must first establish a clear or obvious error. *Hillier*, 237 Ill. 2d at 545. He then must show either that the evidence at the sentencing hearing was closely balanced or that the error was "so egregious as to deny the defendant a fair sentencing hearing." *Id.* The defendant retains the burden of persuasion under both prongs. *Id.* If he fails to carry that burden, we honor the procedural default. *Id.*

¶ 72 A sentencing court may consider a wide range of information, but that information must be relevant and reliable. *People v. Williams*, 149 Ill. 2d 467, 490 (1992). The court "must exercise care to insure the accuracy of information considered and to shield itself from what might be the prejudicial effect of improper materials." (Internal quotation marks omitted.) *Id.* If an improper aggravating factor was considered, remand is unnecessary only when "the weight placed on the improperly considered aggravating factor was so insignificant that it did not lead to a greater sentence." *Heider*, 231 Ill. 2d at 21. Whether the court relied on an improper factor is a question of law we review *de novo*. *People v. Mauricio*, 2014 IL App (2d) 121340, ¶ 15. "[A] reviewing court should consider the record as a whole rather than a few isolated statements." *People v. Musgrave*, 2019 IL App (4th) 170106, ¶ 55.

¶ 73 The prosecutor asserted that 24th Street and Sycamore was the "worst intersection" in the county, discussed Cairo's reputation for violence, and compared Alexander County's murder rate to Cook County's. Those assertions were unsupported by evidence and were improper bases upon which to sentence this defendant. The record does not establish, however, that the circuit court adopted the comparison of county murder rates or found that this was the county's worst intersection. A sentencing court is presumed to have considered only competent evidence, and that presumption is overcome only when the record affirmatively demonstrates the contrary. *People v. Myrieckes*, 315 Ill. App. 3d 478, 483 (2000).

¶ 74 The defendant points to the court's observations that the events depicted on the video seemed "a little bit too regular," that it was "not the first time," and that the court "wouldn't want to be back there." Read alone, those remarks are troubling, particularly the reference to an unspecified prior occurrence. Read in context, however, they formed a small part of an extended discussion centered on the conduct shown in this case. The court described the bystanders' apparent familiarity with gunfire, the defendant's decision to pursue Woods after the immediate assault ended, the repeated shots fired toward a public street, and the danger that conduct created for the surrounding community. Those were reasonable considerations arising from the video and the nature and circumstances of the offense. See *People v. Robinson*, 2015 IL App (1st) 130837, ¶ 92.

¶ 75 Any uncertainty about the weight assigned to the isolated remarks was resolved when the court reconsidered the sentence. The court explained that the permissible sentencing range for the murder term was 20 to 60 years, identified 40 years as the midpoint, and stated that the additional five years reflected the defendant's aggression in chasing Woods around the corner and down the street while repeatedly taking aim. The court did not cite Cairo's reputation, unrelated crimes, comparative murder rates, or the prosecutor's description of the intersection in explaining the 45-year term. Considering the entire record, the defendant has not affirmatively established that the court relied on the prosecutor's unsupported assertions in selecting the sentence. The court's express calculation also establishes that any incidental consideration of those assertions was too insignificant to lead to a greater sentence. See *Heider*, 231 Ill. 2d at 21. The defendant therefore has not established a clear or obvious error.

¶ 76 Even assuming the court's brief references incorporated some improper off-record information, the defendant has not established plain error. The sentencing evidence was not closely

balanced. The substantial mitigation included the defendant's limited and largely nonviolent criminal record, the evidence that Woods struck first, and the education, employment, and family circumstances identified by the defense. But the aggravating evidence was pronounced: after the close-range shooting, the defendant regained his footing, pursued the fleeing victim, repeatedly fired toward him near a public street, and endangered bystanders in the area. The court gave little weight to the defendant's old criminal history and based the term five years above the midpoint on the circumstances of the offense. Nor did the isolated remarks render the hearing fundamentally unfair. The court heard both parties, reviewed the statutory factors individually, explained the evidentiary basis for the sentence, and reconsidered that decision at a later hearing. Thus, neither prong of *Hillier* excuses the forfeiture.

¶ 77 3. Provocation and Excessiveness

¶ 78 The Unified Code of Corrections requires a sentencing court to consider whether the defendant acted under strong provocation or whether substantial grounds tended to excuse or justify the conduct even though they failed to establish a defense. 730 ILCS 5/5-5-3.1(a)(3), (4) (West 2022). As *People v. Calhoun*, 404 Ill. App. 3d 362, 386 (2010), explains, the statute "mandates that in imposing a sentence the trial judge consider" those mitigating circumstances. Strong provocation at sentencing "encompasses a wider range of conduct than serious provocation for the purposes of second degree murder." *People v. Powell*, 2013 IL App (1st) 111654, ¶ 36.

¶ 79 The record does not show that the circuit court overlooked Woods's assault. The video of the encounter was central to the trial and the sentencing arguments. In reviewing the statutory factors, the court expressly considered whether the defendant acted under strong provocation and whether circumstances tended to excuse or justify his conduct. It declined to find either factor established. The evidence that Woods struck the defendant twice, knocked off his hat, and caused

him to fall was significant. But the court was not required to view those blows apart from the remainder of the encounter. The video also showed the defendant participating in the confrontation before the punches, producing the firearm at close range, regaining his footing, and continuing to fire while pursuing Woods as he fled.

¶ 80 This case differs from *Calhoun*, where the sentencing court failed to recognize the full nature of corroborated evidence that the defendant sincerely believed the victim had sexually assaulted her infant daughter and instead treated her response as an aggravating act of vigilantism. *Calhoun*, 404 Ill. App. 3d at 385-87. Here, the circuit court saw the assault, considered the applicable mitigating factors, and determined from the complete sequence that the defendant had not acted under strong provocation or circumstances substantially excusing his conduct. The court's later references to anger and to the defendant's continued pursuit confirm that it considered both the precipitating blows and the defendant's response. The defendant essentially asks us to assign those facts different weight, which we may not do. See *Alexander*, 239 Ill. 2d at 213.

¶ 81 The remaining mitigation does not render the sentence excessive. The circuit court was not required to recite each item of mitigating evidence or assign it the value the defendant preferred. See *id.* at 214. The court expressly characterized the defendant's criminal record as "remarkably small" and "remarkably short" and assigned it "very low" aggravating weight. It also acknowledged that the defendant cared for his family and that his family cared for him. The circuit court was entitled to give greater weight to the seriousness of the offense than to the defendant's rehabilitative potential. *People v. Kendrick*, 2023 IL App (3d) 200127, ¶ 50. The seriousness of the offense is the "most important factor in determining an appropriate sentence," and the court need not give rehabilitative potential greater weight than other considerations. *Id.*

¶ 82 The court stressed that the shooting did not end with the close-range discharge during the physical encounter. The defendant continued to fire after Woods retreated and chased him toward a public street, creating an additional danger to others. At the reconsideration hearing, the court again identified that continued aggression—not the mere fact that a firearm was used—as the reason for imposing a sentence five years above the 40-year midpoint. The defendant faced a sentencing range of 20 to 60 years for first degree murder, plus a mandatory firearm enhancement of 25 years to natural life because the jury found that his discharge of the firearm proximately caused Woods's death. 730 ILCS 5/5-4.5-20(a), 5-8-1(a)(1)(d)(iii) (West 2022). His aggregate 70-year sentence consists of a 45-year murder term and the minimum 25-year enhancement. It is therefore within the statutory range and presumed proper. The State's recommendation of 60 years did not bind the court. Given the court's express consideration of the mitigating evidence, its limited reliance on the defendant's prior record, and its repeated explanation that the nature of the offense warranted the selected term, the sentence was not arbitrary, fanciful, or unreasonable and was not manifestly disproportionate to the offense.

¶ 83 4. Ineffective Assistance at Sentencing

¶ 84 The defendant alternatively argues that counsel was ineffective for failing to preserve the asserted sentencing errors. That claim fails for lack of prejudice. For the reasons stated, the record does not show that the court relied on the prosecutor's unsupported assertions; the court considered the claimed provocation and other mitigation; and the 45-year murder term rested on the defendant's continued aggression and danger to the public. There is no reasonable probability that an objection to the disputed remarks or further argument concerning the same mitigation would have produced a lower sentence. Accordingly, the defendant has not established either plain error, an abuse of sentencing discretion, or ineffective assistance of counsel.

¶ 85 III. CONCLUSION

¶ 86 For the foregoing reasons, we affirm the defendant’s convictions and sentence.

¶ 87 Affirmed.