

APPENDIX

No. 1-21-0162

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

| | | |
|--------------------------------------|---|----------------------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the Circuit Court of |
| |) | Cook County |
| Plaintiff-Appellee, |) | |
| |) | |
| v. |) | No. 16 CR 14882 |
| |) | |
| KASHAI JONES, |) | |
| |) | Honorable Vincent M. Gaughan, |
| Defendant-Appellant. |) | Judge Presiding. |

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Lavin concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court erred when it did not follow Supreme Court Rule 431(b) when it questioned potential jurors during *voir dire*; however, defendant is not entitled to relief under the plain error doctrine for the court's insufficient questioning during *voir dire* because the evidence was not closely balanced. Defendant did not demonstrate that he is entitled to relief on direct appeal for ineffective assistance of counsel during sentencing, and we decline to adjudicate his ineffective assistance claim because the record is insufficiently developed for that purpose.
- ¶ 2 Defendant Kashai Jones was tried by a jury and convicted of first-degree murder. The evidence at trial indisputably established that defendant shot and killed Dietrick Stogner, but the jury was charged with evaluating defendant's claim that he acted in self-defense. The jury

rejected defendant's claim of self-defense. Following the conviction, the trial court sentenced defendant to 47 years in prison.

¶ 3 On appeal, defendant argues that the trial court erred when it questioned jurors during *voir dire*. Defendant also argues that his trial counsel was ineffective for failing to raise a constitutional challenge to the length of his sentence. The State concedes that the trial court did not properly question the potential jurors during *voir dire*, but it argues that the conviction should nonetheless stand because of the strength of the evidence supporting the conviction. We find that the evidence was not closely balanced as it relates to defendant's conviction and, thus, that defendant is not entitled to relief under the plain error doctrine. We further find that defendant is not entitled to relief for ineffective assistance of counsel for his claim relating to his sentence and we decline to review that claim because the record is insufficiently developed for that purpose. Accordingly, we affirm.

¶ 4 BACKGROUND

¶ 5 On April 30, 2016, Dietrick Stogner was shot and killed outside a currency exchange in Chicago. Stogner was a passenger in a car with Brant Davis, Gerald Williams, and Mario Bost when they stopped at a currency exchange located at 55th Street and Wentworth Avenue in Chicago. Bost remained in the vehicle while the other three men went into the currency exchange to get cash to buy dinner. As Davis, Williams, and Stogner exited the currency exchange and approached their vehicle parked outside, a gray SUV drove into their path and abruptly stopped in front of them. Defendant exited the gray SUV from the passenger side with a gun in hand. An exchange of gunfire ensued. Both defendant and Stogner were shot, and Stogner was taken to the hospital and subsequently pronounced dead. Defendant was arrested and charged with first-degree murder. At trial, defendant claimed he killed Stogner in self-defense.

¶ 6

Voir Dire

¶ 7 During *voir dire*, the trial court asked the potential jurors if they had “any problems . . . accepting” or “any qualms or problems about applying” the principle that a defendant in a criminal trial is presumed to be innocent. The trial court asked the potential jurors if they had “any problems accepting” or “any qualms or problems about applying” the principle that a defendant must be found guilty beyond a reasonable doubt. The trial court asked the potential jurors if they had “any problems about accepting” or “any qualms or problems about applying” the principle that the State had the burden of proof. The trial court asked the potential jurors if they had “any problems accepting” or “any qualms or problems about applying” the principle that defendant had a right to testify and that his credibility was to be judged the same way as any other witness. The trial court asked the potential jurors if they had “any problems about accepting” or “any problems or qualms about applying” the principle that defendant had a right not to testify and that no inferences could be made if defendant chose not to testify.

¶ 8 None of the potential jurors raised an issue to any of the questions posed by the trial court. The trial court did not specifically ask the jurors if they understood the principles outlined above.

¶ 9

Trial Testimony

¶ 10 Brant Davis testified that he, Stogner, and Williams were walking from the currency exchange when an SUV abruptly stopped in their path. Davis testified that defendant exited the passenger side of the SUV holding a black gun with a large drum clip on it. Davis, Stogner, and Williams began running from defendant and Davis heard multiple gunshots coming from defendant’s direction. Davis ran onto the nearby expressway to escape the situation. He later

returned to the scene once police arrived and he spoke to the officers. Davis then went to the hospital and learned that Stogner had died in the shooting.

¶ 11 Ronald McCormick testified that he was in the SUV with defendant. McCormick was in the backseat with a man named Marshawn while defendant was in the front passenger seat and a man named Marquis was driving. As they were driving and smoking marijuana, Marquis got a phone call. Marquis drove past the currency exchange, pointed out an Audi in the parking lot, and then made a U-turn to circle back to where that Audi was located. After getting near the location of the Audi, Marquis quickly stopped the vehicle and defendant exited with a gun. McCormick heard an exchange of gunfire.

¶ 12 McCormick testified that Marquis drove the vehicle onto the expressway, leaving defendant at the scene. McCormick exited the vehicle on the expressway ramp. He subsequently walked back near the currency exchange and saw that defendant had been shot and that defendant no longer had a gun. McCormick also saw Stogner lying on the ground with a gun next to him. McCormick testified that he spoke to defendant and suggested to defendant that they call the police, but that defendant told him no. McCormick stated that he did not see who fired first. He testified, however, that he did not see Stogner or any of the men walking with Stogner in possession of a gun when the vehicle he was in pulled up on them.

¶ 13 The State introduced video evidence from two surveillance cameras at the scene. The video evidence supports the State's witnesses' version of events. The video shows the three men exiting the currency exchange and walking until they are abruptly cut off by an SUV. It shows those men running as defendant exits and runs around the back of the vehicle and raises a gun in the direction of the fleeing men. The State presented evidence that defendant fled after the shooting. There was also evidence introduced at trial that defendant lied in the statement that he

gave to investigators after the shooting. Defendant did not tell the police that he shot Stogner in self-defense, but instead told them that he had taken a taxi to that location and stated that he was not armed that day. Defendant denied shooting anyone and never told the police he was acting in self-defense.

¶ 14 The defense presented evidence from Nicholena Robinson and her boyfriend Allonzo Jamison. Robinson testified that she and her boyfriend stopped to eat at a restaurant that was near the currency exchange. They were sitting in the car eating their food when they heard gunshots. Robinson saw a man running who appeared to get shot in the buttocks or the leg. The man stopped running, started shooting, and then ran away towards the expressway. Robinson testified that she did not know who shot first, but she saw defendant get shot and then saw him turn around and shoot back.

¶ 15 Allonzo Jamison testified that he heard several gunshots and looked up and saw defendant. Jamison thought defendant looked suspicious and that he was moving like someone was shooting at him. Jamison did not initially see a gun in defendant's hand. Jamison saw defendant hop as if he had just been shot and then saw defendant jump into the bushes. Jamison then saw defendant come out of the bushes shooting and subsequently saw defendant run towards the expressway.

¶ 16 Defendant testified on his own behalf. He testified that Marquis called him to go for a drive and smoke marijuana. He brought a gun with him which he had purchased from a friend two weeks earlier. Defendant testified that he got the gun for protection and that it had a drum magazine because that was the only magazine his friend had available to sell. Defendant testified that he and the others in the vehicle were going near the currency exchange because the "CD

man” was often located there and they were looking to get some music. As they were driving near the currency exchange, Marquis made a hard stop of the vehicle near three men walking.

¶ 17 Defendant testified that McCormick, who was in the backseat, opened the rear door and then closed it. Defendant saw one of the three men, Stogner, reach for his waistband with his right hand as if he was going for a gun. Defendant testified that he then got out of the vehicle with his gun out to approach Stogner, but he fell down while exiting the vehicle. Defendant heard two shots and then Marquis drove off. Defendant testified that he returned fire by firing two shots back at Stogner, and defendant then realized that he had been shot. Defendant fired another shot at Stogner, and Stogner returned more fire. Defendant did not know whether he had hit anyone with any of the shots, but he dropped his gun and ran to the expressway. Defendant testified that he feared for his life and had no idea why Stogner shot at him. He admitted that he watched YouTube videos about how to use the gun the day before the shooting. Defendant also admitted that he lied to police and fled, but he testified that he lied and fled because he was scared.

¶ 18 Sentencing

¶ 19 Following defendant’s conviction, the trial court sentenced defendant to 47 years in prison. At the sentencing hearing, defense counsel highlighted defendant’s young age, among other things, and asked the court to sentence defendant to the minimum amount of imprisonment for the offense, which was 45 years. Several members of Stogner’s family gave statements about their loss and the impact of his death. Defendant did not offer a statement during sentencing.

¶ 20 The trial court stated that it reviewed the presentence investigation and considered the factors in aggravation and mitigation. The trial court discussed the United States Supreme Court’s decision of *Miller v. Alabama*. The trial court explained that the case applied to young

offenders and expressed that their age and chance of rehabilitation was one of the most important factors in sentencing. The court pointed to defendant's age of 18 years old at the time of the offense and stated that his age was "a consideration, it's not a forgiveness." The trial court sentenced defendant to 22 years in prison for first-degree murder plus 25 years in prison for personally discharging a firearm during the offense. Defendant did not file a motion to reconsider the sentence.

¶ 21

ANALYSIS

¶ 22 Defendant argues that the trial court erred when it questioned the potential jurors during *voir dire*. Defendant also argues his counsel was ineffective because counsel did not raise an as-applied challenge to his sentence because he was only 18 years old at the time of the offense.

¶ 23

Voir Dire and Rule 431(b)

¶ 24 Illinois Supreme Court Rule 431(b) requires the trial court to ask each potential juror whether the juror "understands and accepts" certain constitutional principles that are fundamental to a fair trial. See Ill. S. Ct. R. 431(b) (West 2020) (eff. July 1, 2012). Here, the trial court clearly made sure each juror accepted the relevant principles and was willing to apply those principles, but the trial court did not ask the potential jurors whether they *understood* the relevant principles.

¶ 25 Our supreme court has held that the failure to ask jurors if they understand the principles set forth in Rule 431(b) constitutes error. *People v. Wilmington*, 2013 IL 112938, ¶ 32. We find that the trial judge committed error here by failing to ask the jurors if they understood the relevant principles. See *People v. Jones*, 2021 IL App (1st) 180734-U, ¶¶ 38-39; *People v. Sebby*, 2017 IL 119445, ¶ 49. The State concedes that the trial court did not properly question jurors during *voir dire*.

¶ 26 Defendant, however, did not preserve the error in *voir dire* questioning for appeal.

Defendant made no objection to the trial court's method of *voir dire* inquiry at the time the trial court was questioning the venire and he made no objection in a posttrial motion. Accordingly, defendant's claims about the trial court's *voir dire* questioning are forfeited for purposes of appeal. *People v. Piatkowski*, 225 Ill. 2d 551, 564 (2007) (issues not raised at trial or in a posttrial motion are not preserved for review and are forfeited).

¶ 27 Defendant acknowledges that he failed to preserve the error for review, but he urges us to review the error under the plain error doctrine. Defendant argues that the evidence in the case was closely balanced and that the error threatened to tip the scales against him, such that he is entitled to relief for plain error. Under plain error review, we will grant relief to a defendant on otherwise-forfeited issues in either of two circumstances: (1) if the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant or (2) if the error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence. *People v. Herron*, 215 Ill. 2d 167, 178–79 (2005).

¶ 28 The plain error doctrine is not a general savings clause preserving all errors affecting substantial rights whether or not they have been brought to the attention of the trial court. *People v. Johnson*, 238 Ill. 2d 478, 484 (2010). Rather, it is a narrow and limited exception to the general waiver rule and its purpose is to protect the rights of the defendant and the integrity and reputation of the judicial process. *Herron*, 215 Ill. 2d at 177. Again, to receive relief under plain error review, a defendant must demonstrate that the evidence was closely balanced, and it is the defendant's burden to establish the closeness of the evidence. *Piatkowski*, 225 Ill. 2d at 566-67.

¶ 29 We conclude that the evidence was not closely balanced as it pertains to defendant's conviction for first-degree murder. Defendant admits that he shot and killed Dietrick Stogner on April 30, 2016 outside the currency exchange. The evidence introduced at trial clearly showed defendant to be the initial, unprovoked aggressor. Defendant entered a vehicle with his friends while he was armed with a firearm with a drum-type magazine capable of holding over 50 rounds of ammunition. Defendant had watched YouTube videos about how to use the gun on the day before the shooting. Defendant's friend Marquis drove them by the currency exchange and pointed out a particular vehicle in the parking lot and then circled back around as Stogner and his friends were walking out. Marquis stopped the vehicle in the path of Stogner and the other men cutting off their path. Defendant got out of the vehicle with the loaded weapon. None of the men walking from the currency exchange was an imminent threat to defendant before that time because defendant was not present at the location and none of the men apparently even knew defendant. Marquis and defendant purposefully traveled to the location of Stogner and the other men and targeted them for a confrontation. There was no evidence of provocation. Marquis and defendant created the situation that would later lead to Stogner's death.

¶ 30 After defendant exited the vehicle, brandishing a weapon, Stogner and the other men began to flee. Indeed, brandishing a weapon may qualify as an act of initial aggression because it is often an assault—it "places another in reasonable apprehension of receiving a battery." 720 ILCS 5/12-1 (West 2020); *People v. Cruz*, 2021 IL App (1st) 190132, ¶ 56. Again, there was no credible evidence that any of the men was ever a threat to defendant. The testimony demonstrated that the men were fleeing from defendant as he pursued them, and the surveillance video evidence corroborated that testimony. Stogner and the other men were taken by surprise by the hostile maneuver by the vehicle and then by the confrontation with defendant.

¶ 31 To support his claim of imperfect self-defense, defendant testified that he saw Stogner reach for his waistband and surmised that Stogner was reaching for a gun. Defendant, however, admitted that he did not see a gun in Stogner's hand before exiting the vehicle. McCormick, who was with defendant in the vehicle, similarly testified that he did not see Stogner or any of the other men with a weapon or otherwise posing a threat to them. Defendant was the only person to offer testimony that Stogner did anything remotely threatening and none of the other testimony or video evidence supports defendant's assertion; it instead contradicts defendant's testimony and showed him to be the instigator and the aggressor.

¶ 32 The bystander witnesses, Robinson and Jamison testified that someone was shooting at defendant. However, they both admitted that they did not see who shot first. Similarly, Robinson and Jamison did not see the incident from the beginning. They did not see defendant being the clear aggressor: traveling to that location, cutting off the path of the men with the vehicle, exiting the vehicle with a loaded weapon, and chasing the victim and his friends who were previously minding their own business.

¶ 33 The evidence at trial also showed that defendant engaged in several acts that were inconsistent with someone who acted in self-defense. Defendant fled the scene and did not return even when the scene was secured by the police. Avoiding the police is evidence of consciousness of guilt. *People v. Brown*, 2012 IL App (2d) 110640, ¶ 19. Even when McCormick suggested to defendant that they call the police, defendant told him no. Defendant also lied when he was interviewed by police. After defendant was read his rights and agreed to speak to investigators, he told them that he had taken a taxi to the location. Defendant also told police he was not armed that day. Despite having the opportunity to explain the circumstances of his use of force, defendant did not claim self-defense; he instead stated that he did not shoot anyone, and he never

told police that he acted in self-defense. A false exculpatory statement is probative of a defendant's consciousness of guilt. *People v. Shaw*, 278 Ill. App. 3d 939, 951 (1996). There was no credible evidence introduced at trial that supported a claim of self-defense and the evidence of first-degree murder was overwhelming. Accordingly, defendant is not entitled to relief under the plain error doctrine and his forfeiture of the error must be honored.

¶ 34 Ineffective Assistance of Counsel

¶ 35 The other issue defendant raises on appeal is that his trial counsel was ineffective for failing to raise a challenge during sentencing that his sentence violates the constitution because of his age at the time of the offense and his particularized circumstances. Defendant was 18 years old at the time of the murder. He contends that his 47-year prison sentence violates the federal and Illinois constitutions because he has many of the characteristics and other circumstances of juvenile offenders for whom special sentencing considerations are afforded. Defendant maintains that his trial counsel did not adequately raise his youth during sentencing and did not make a challenge that the sentencing was unconstitutional as applied to him in consideration of his characteristics and circumstances.

¶ 36 The United States Constitution guarantees criminal defendants the right to effective assistance of counsel. U.S. Const. Amend. VI (West 2020). To be entitled to relief on a claim of ineffective assistance of counsel, a defendant must show that his counsel's representation fell below an objective standard of reasonableness and that he suffered prejudice as a result. *Strickland v. Washington*, 466 U.S. 668, 694 (1984); *People v. Scott*, 2015 IL App (1st) 131503, ¶ 27. The failure to satisfy both prongs of the *Strickland* test precludes a finding of ineffective assistance of counsel. *People v. Patterson*, 192 Ill. 2d 93, 107 (2000). We analyze

claims of ineffective assistance of counsel by considering the entire record. *People v. Hommerson*, 399 Ill. App. 3d 405, 415 (2010).

¶ 37 At the sentencing hearing, defense counsel highlighted defendant's young age at the time of the offense and asked the court to sentence him to the minimum amount of imprisonment. The trial court did sentence defendant near the minimum allowable by law. Defendant nonetheless contends that his counsel should have raised a claim and presented evidence that he was legally akin to a juvenile at the time of the offense and should have made a claim that he was entitled to receive special consideration during sentencing.

¶ 38 Defendant did not submit any evidence during sentencing about his particular characteristics or circumstances that would entitle him to special sentencing considerations like those provided to juveniles. Similarly, defendant did not submit any evidence of brain science, nor did he otherwise attempt to develop a record to make a claim that he should be treated as a juvenile for sentencing purposes. Defendant's challenge on appeal is an as-applied constitutional challenge for which the record on appeal is insufficiently developed. Even if we were to assume for purposes of argument that counsel's performance was deficient, defendant could not show the prejudice needed to succeed on an ineffective assistance of counsel claim without submitting evidence of his particular characteristics and circumstances that is not currently in the record. See *People v. Harris*, 2018 IL 121932, ¶¶ 39-40. Perhaps defendant could meet those requirements in a collateral postconviction proceeding, but he cannot meet the burden for relief for ineffective assistance of counsel in this direct appeal. See *id.* at ¶¶ 45-48. We decline review of defendant's claim that his counsel was constitutionally ineffective during sentencing because the record is inadequate to allow us to adjudicate such a claim.

¶ 39

CONCLUSION

¶ 40 Accordingly, we affirm.

¶ 41 Affirmed.

SUPREME COURT OF ILLINOIS

WEDNESDAY, SEPTEMBER 28, 2022

THE FOLLOWING CASES ON THE LEAVE TO APPEAL DOCKET WERE DISPOSED OF AS INDICATED:

- 127660 - Sebastian Agrusa, petitioner, v. L'Oreal USA Products, Inc., respondent. Leave to appeal, Appellate Court, First District. 1-18-0656
Petition for Leave to Appeal Denied.
- 127661 - People State of Illinois, petitioner, v. Amin Smith, respondent. Leave to appeal, Appellate Court, First District. 1-17-3008
Petition for Leave to Appeal Denied.
- 128174 - People State of Illinois, respondent, v. Omari Tinsley, petitioner. Leave to appeal, Appellate Court, Fifth District. 5-19-0536
Petition for Leave to Appeal Denied.
- Overstreet, J. took no part.
- 128260 - Midwest Commercial Funding, LLC, petitioner, v. Robert Sylvester Kelly et al. (Heather Williams, respondent). Leave to appeal, Appellate Court, First District. 1-21-0644
Petition for Leave to Appeal Allowed.
- 128266 - People State of Illinois, respondent, v. Demetrius Hemphill, petitioner. Leave to appeal, Appellate Court, First District. 1-19-2008
Petition for Leave to Appeal Denied.
- 128275 - Sandra Hart et al., respondents, v. The Illinois State Police, petitioner. Leave to appeal, Appellate Court, Fifth District. 5-19-0258, 5-20-0421
Petition for Leave to Appeal Allowed.
- 128278 - People State of Illinois, petitioner, v. Michael E. Smith, respondent. Leave to appeal, Appellate Court, Second District. 2-20-0055
Petition for Leave to Appeal Denied.
- 128280 - Allison Youle, petitioner, v. The Village of Lincolnshire et al., respondents. Leave to appeal, Appellate Court, Second District. 2-20-0693
Petition for Leave to Appeal Denied.

- 128447 - People State of Illinois, respondent, v. Thomas W. Fiala, petitioner.
Leave to appeal, Appellate Court, Second District. 2-20-0600
Petition for Leave to Appeal Denied.

- 128448 - Earl R. Casteel, respondent, v. Thaddeus Richardo Jiminez, petitioner.
Leave to appeal, Appellate Court, First District. 1-20-1288
Petition for Leave to Appeal Denied.

- 128449 - People State of Illinois, respondent, v. Jonathan R. Watson, petitioner.
Leave to appeal, Appellate Court, Fifth District. 5-19-0427
Petition for Leave to Appeal Denied.

- 128450 - James R. Brocks, petitioner, v. Richard F. Blass et al., respondents.
Leave to appeal, Appellate Court, First District. 1-21-0580
Petition for Leave to Appeal Denied.

- 128451 - People State of Illinois, respondent, v. Kashai Jones, petitioner. Leave
to appeal, Appellate Court, First District. 1-21-0162
Petition for Leave to Appeal Denied.

- 128452 - People State of Illinois, respondent, v. Cesar Ruiz, petitioner. Leave to
appeal, Appellate Court, First District. 1-19-0947
Petition for Leave to Appeal Denied.

- 128453 - Diamond Barnes, petitioner, v. Deanna Brookhart, respondent. Leave
to appeal, Appellate Court, Fifth District. 5-20-0144
Petition for Leave to Appeal or, in the alternative, Petition for
Appeal as a Matter of Right Denied.

- 128455 - People State of Illinois, respondent, v. Carlos D. Williams, petitioner.
Leave to appeal, Appellate Court, Third District. 3-19-0562
Petition for Leave to Appeal Denied.

- 128456 - People State of Illinois, respondent, v. Keith Griffin, petitioner. Leave to
appeal, Appellate Court, First District. 1-19-0499
Petition for Leave to Appeal Denied.

- 128457 - People State of Illinois, respondent, v. Anton Ruth, petitioner. Leave to
appeal, Appellate Court, First District. 1-19-2023
Petition for Appeal as a Matter of Right or, in the alternative,
Petition for Leave to Appeal Denied.