

NOTICE
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2019 IL App (5th) 160087-U

NO. 5-16-0087

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party 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,)	Marion County.
)	
v.)	No. 13-CF-279
)	
MARK A. HILLS,)	Honorable
)	Michael D. McHaney,
Defendant-Appellant.)	Judge, presiding.

JUSTICE BARBERIS delivered the judgment of the court.
Justices Welch and Boie concurred in the judgment.

ORDER

- ¶ 1 *Held*: The judgment of conviction is affirmed where the admission of other-crimes evidence did not constitute second-prong plain error.
- ¶ 2 After a jury trial *in absentia*, the defendant, Mark A. Hills, was convicted in the circuit court of Marion County of methamphetamine possession and sentenced to eight years in the Illinois Department of Corrections (IDOC). On appeal, the defendant argues that the court abused its discretion by improperly admitting at trial his prior convictions, as other-crimes evidence, to show knowledge or absence of mistake. We affirm.

¶ 3

I. Background

¶ 4 The following recitation of facts was drawn from the trial transcript and the common law record on appeal. We have summarized the trial testimony and evidence germane to this appeal.

¶ 5 On August 3, 2013, after the execution of a search warrant, the defendant was arrested at a house in Salem, Illinois, for knowingly possessing less than five grams of methamphetamine. Shortly thereafter, the State charged the defendant by information with methamphetamine possession (720 ILCS 646/60(a), (b)(1) (West 2012)), a Class 3 felony. The defendant later posted bond and was released from custody.

¶ 6 On May 5, 2014, the defendant failed to appear for trial. Over defense counsel's objection, the circuit court proceeded to a jury trial *in absentia*. Prior to starting trial, the circuit court held a hearing on the State's motion *in limine*, filed that same day, requesting admission of the defendant's convictions of methamphetamine manufacturing in 2002 and methamphetamine possession in 2011. The State expressed its desire to rebut any argument made by defense counsel that the defendant had "accidentally, mistakenly or unknowingly" possessed methamphetamine. During the hearing, the State requested admission of the defendant's prior convictions as substantive evidence to show that the defendant knew "what methamphetamine is, what it looks like, what it feels like when ingested," and not "merely [to] show the defendant has [a] propensity to commit crimes."

¶ 7 In response, defense counsel argued against the admission of the defendant's 2002 methamphetamine manufacturing conviction because it was too remote in time. The State argued that the defendant had been released from prison in 2008 for the

methamphetamine manufacturing conviction and was then convicted of methamphetamine possession “just a couple of years ago.” After weighing the probative value of the evidence against the prejudicial effect and also considering the “posture *** and the unique circumstances of this case,” the circuit court granted the State’s motion *in limine*, although it noted that it normally excluded prior convictions based on case law.

¶ 8 The case proceeded to trial. Marion County Sergeant Kevin Cripps testified to the following. On August 3, 2013, Sergeant Cripps arrived at a house in Salem, Illinois, to investigate a suspect who had repeatedly purchased Sudafed, an ingredient necessary to manufacture methamphetamine. As he exited his squad car, Sergeant Cripps noticed a distinct odor commonly associated with methamphetamine. After Sergeant Cripps knocked on the front door, the defendant answered, and the odor emanated from inside the home. The defendant and two other individuals were immediately secured, and Detective Ryan Castleman was contacted to obtain a search warrant.

¶ 9 After obtaining the search warrant, Sergeant Cripps and Detective Castleman searched the home. In the kitchen, the officers discovered various items associated with methamphetamine manufacturing, including a baggie containing methamphetamine, a plate with a razor blade, a short straw, and methamphetamine residue. Multiple items belonging to the defendant were located near the plate. Additionally, a baggie containing methamphetamine and a digital scale were discovered in the defendant’s bedroom.

¶ 10 Shortly thereafter, the defendant was transported to the Marion County sheriff’s department, where he was interviewed by Sergeant Cripps and Detective Castleman. During the defendant’s video interview, he admitted that he had placed

methamphetamine on the plate and then used the straw to ingest it. The defendant denied ownership of the methamphetamine located in his bedroom.

¶ 11 The defendant's video interview was played for the jury, and the jury was informed of the defendant's two prior methamphetamine-related convictions from 2002 and 2011. The circuit court's limiting instruction that was read to the jury informed them that the evidence could be considered only to show knowledge, intent, and absence of mistake or accident. The defense rested without presenting evidence. After deliberations, the jury returned a guilty verdict. The court revoked the defendant's bond and issued a no-bond arrest warrant. The court also ordered a presentence investigation report and set the matter for sentencing.

¶ 12 On January 25, 2016, the defendant was taken into custody on the no-bond warrant. The defendant remained in the Marion County jail pending sentencing.

¶ 13 On March 2, 2016, the defendant was sentenced to eight years in IDOC with one year of mandatory supervised release. The defendant did not file a posttrial motion. This appeal followed.

¶ 14 II. Analysis

¶ 15 On appeal, the defendant challenges the circuit court's decision to admit the prior methamphetamine-related convictions as other-crimes evidence. The defendant asserts that the court abused its discretion by admitting his two prior convictions because (1) the State's purported purpose for seeking admission of other-crimes evidence, which was to prove the defendant's knowledge or absence of mistake, was not at issue since the

defendant never raised such a defense and (2) the probative value of the admission did not substantially outweigh the prejudicial effect.

¶ 16 In response, the State asserts that the defendant failed to preserve his claim of error in a posttrial motion. The State also argues that there was no plain error, given the evidence of the defendant's guilt was so overwhelming that the circuit court's decision to admit other-crimes evidence did not amount to reversible error. The defendant's reply brief does not dispute that he failed to preserve this issue, but he argues that this claim "can be reviewed under the second prong of the plain-error analysis: fundamental fairness."

¶ 17 Generally, it is well-settled that other-crimes evidence may not be introduced merely to establish a propensity to commit crime (*People v. Dabbs*, 239 Ill. 2d 277, 283-86 (2010)) but may be admitted for other purposes, such as proving "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Ill. R. Evid. 404(b) (eff. Jan. 1, 2011). However, even when offered for a permissible purpose, such evidence will not be admitted if its prejudicial effect substantially outweighs its probative value. *Dabbs*, 239 Ill. 2d at 284; *People v. Hanson*, 238 Ill. 2d 74, 101-02 (2010); see also Ill. R. Evid. 403 (eff. Jan. 1, 2011) ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice *** or by considerations of *** needless presentation of cumulative evidence."). When other-crimes evidence is offered, courts must establish the purpose for which the evidence is offered and weigh the relevance of the evidence against the danger of unfair prejudice. *People v. Harris*, 225 Ill. 2d 1, 28 (2007). "[T]he actual need for the

evidence must be considered in light of other methods of proof available to the prosecution.” *People v. Nunley*, 271 Ill. App. 3d 427, 431-32 (1995) (citing E. Cleary & M. Graham, Handbook of Illinois Evidence § 404.5, at 201 (5th ed. 1990)).

¶ 18 It is within the sound discretion of the circuit court to determine the relevance of other-crimes evidence and whether the probative value outweighs its prejudicial impact. *People v. Tolbert*, 323 Ill. App. 3d 793, 797 (2001). The court’s decision regarding the admissibility of such evidence will not be reversed unless an abuse of discretion has been clearly shown. *Id.* An abuse of discretion occurs when the court’s decision is arbitrary, fanciful, or unreasonable or where no reasonable person would take that view. *Id.*

¶ 19 In order to preserve a claimed error for review, both a trial objection and a written posttrial motion raising the error are required. *People v. Greer*, 336 Ill. App. 3d 965, 980 (2003). Failure to do so operates as a forfeiture on appeal. *People v. Ward*, 154 Ill. 2d 272, 293 (1992). The plain-error doctrine provides for review of unpreserved errors or defects affecting substantial rights. See Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967). However, the plain-error doctrine is not a general savings clause but a narrow and limited exception to the general rule governing procedural default. *People v. Herron*, 215 Ill. 2d 167, 177 (2005). The plain-error doctrine is considered when the admission of evidence results in a miscarriage of justice upon a defendant or a tainting of the integrity and reputation of the judicial process. *Id.* at 177-78. “[T]he plain-error doctrine allows a reviewing court to consider unpreserved error when (1) a clear or obvious error occurs and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurs

and that 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. Piatkowski*, 225 Ill. 2d 551, 565 (2007).

¶ 20 To obtain relief under the plain-error doctrine, the burden of persuasion is on the defendant to show that one of the two prongs applies. *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). If the defendant fails to meet his burden, the procedural default will be honored. *Id.* Our supreme court has acknowledged that raising plain error in a reply brief is sufficient for review. *People v. Ramsey*, 239 Ill. 2d 342, 412 (2010). Reviewing courts apply a *de novo* standard to determine whether a forfeited claim is reviewable under the plain-error doctrine. *People v. Johnson*, 238 Ill. 2d 478, 485 (2010).

¶ 21 The defendant acknowledges in his reply brief that he failed to preserve his claim of error. Nevertheless, he requests this court to review the claim under the plain-error doctrine. The defendant limited his reply brief to a second-prong plain-error analysis. As such, we need not address the first prong of plain error.

¶ 22 "Our supreme court has equated the second prong of the plain error test with structural error such that automatic reversal is only warranted when the error renders a defendant's trial fundamentally unfair or unreliable." *People v. Jackson*, 2013 IL App (3d) 120205, ¶ 25. "Structural errors are systemic, serving to erode the integrity of the judicial process and undermine the fairness of the defendant's trial." (Internal quotation marks omitted.) *People v. Thompson*, 238 Ill. 2d 598, 608 (2010) (citing *People v. Glasper*, 234 Ill. 2d 173, 197-98 (2009)). Examples of structural errors include a complete denial of counsel, trial before a biased judge, racial discrimination in the

selection of the grand jury, denial of self-representation at trial, denial of a public trial, and a defective reasonable doubt instruction. *Id.* at 609. However, the second prong of the plain-error doctrine is not restricted to only the previously recognized types of structural errors (*People v. Clark*, 2016 IL 118845, ¶ 46) but must be "an error affecting the framework within which the trial proceeds, rather than simply an error in the trial process itself." (Internal quotation marks omitted.) *People v. Johnson*, 2017 IL App (2d) 141241, ¶ 51. Moreover, prejudice is presumed under the second prong of plain error. *People v. Sebby*, 2017 IL 119445, ¶ 50.

¶ 23 On review, the defendant argues that the erroneous admission of the other-crimes evidence at trial was so serious an error that it affected the fairness of his trial and challenged the integrity of the judicial process. We disagree.

¶ 24 The first step of a plain-error analysis requires this court to determine whether there was clear or obvious error. *Id.* ¶ 49. Here, however, even if we were to find that the circuit court committed a clear or obvious error by improperly admitting other-crimes evidence, we are not persuaded that the error amounted to a structural error, which would have deprived the defendant of a fair trial and would require reversal of his conviction. Despite the defendant's assertion that the other-crimes evidence was admitted merely to show his propensity to possess methamphetamine, we do not find support for that proposition in the record. In particular, the record reflects that the State sought to admit the defendant's prior convictions as other-crimes evidence for the purpose of establishing an issue at trial, that is, the *mens rea* element (*i.e.*, "knowingly") of methamphetamine possession. Likewise, the record demonstrates that the circuit court considered the State's

purpose in admitting the evidence, and the court also read a limiting instruction to the jury informing them that the evidence could be considered only to show knowledge, intent, and absence of mistake or accident.

¶ 25 While this court may not agree with the circuit court's decision to admit other-crimes evidence, especially considering the highly prejudicial nature of the defendant's prior criminal convictions, the other methods of proof available to the prosecution, and the needless presentation of cumulative evidence, we cannot say the court's decision to admit the other-crimes evidence constituted a second-prong structural error. In other words, the court's decision did not rise to a level so serious that it rendered the defendant's trial fundamentally unfair or unreliable and challenged the integrity of the judicial process. *Piatkowski*, 225 Ill. 2d at 565.

¶ 26 Under these circumstances, we conclude that the defendant failed to carry his burden of persuasion to satisfy the second prong of the plain-error doctrine. Thus, this issue is forfeited on appeal.

¶ 27 III. Conclusion

¶ 28 Based on the foregoing, the judgment of the circuit court of Marion County is affirmed.

¶ 29 Affirmed.