2024 IL App (4th) 230273-U

NO. 4-23-0273

FILED
October 8, 2024
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Livingston County
CLIFFORD BREWER,	)	No. 19CF363
Defendant-Appellant.	)	
	)	Honorable
	)	Jennifer H. Bauknecht,
	)	Judge Presiding.

JUSTICE DOHERTY delivered the judgment of the court.
Justices Steigmann and Lannerd concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence was sufficient to establish defendant's guilt beyond a reasonable doubt; defendant did not receive ineffective assistance of counsel; and there was no error in sentencing him to three consecutive terms of life imprisonment for three murders.

¶ 2 Defendant Clifford Brewer was convicted of three counts of first degree murder and sentenced to three consecutive terms of life in prison plus 25 years. On appeal, he argues that (1) the State did not prove his guilt beyond a reasonable doubt, (2) he was denied a fair trial because of ineffective assistance of counsel regarding the questioning of a witness, and (3) the trial court erred in sentencing him to three consecutive life sentences.

¶ 3 We affirm.

¶ 4 I. BACKGROUND

¶ 5 In the early morning hours of December 25, 2019, police were called to defendant's residence in Callum, Illinois, where they found the bodies of defendant's wife Shirley Brewer, his son Christian Brewer, and his neighbor Norman Walker. Each died from a single gunshot wound to the head.

¶ 6 On December 27, 2019, defendant was charged by information with six counts of first degree murder, two counts related to each victim: counts I and II (Christian); counts III and IV (Shirley); and counts V and VI (Norman) (720 ILCS 5/9-1(a)(1), (2) (West 2018)). A formal indictment followed on January 21, 2020.

¶ 7 A. Trial

¶ 8 A six-day jury trial commenced August 8, 2022. The State presented 13 witnesses; the defense presented 6.

¶ 9 1. *Events of December 24-25*

¶ 10 Jordyn Casey, a dispatcher for the Livingston County 911 call center, testified that she received a call from defendant on the county's nonemergency line at approximately 2 a.m. on December 25, 2019; defendant reported that "[m]y wife, my buddy, my son, they're all dead." A copy of the 911 audio was admitted into evidence and played for the jury. According to that tape, Casey asked defendant what had happened, and he responded, "I don't know." He said that he "was sleeping downstairs" and that the three victims were "upstairs doing their hootin' and hollerin.' " Somewhere between 8:30 and 9 p.m., defendant put in his earphones, took some Ambien, and went to sleep. At some point, he "just woke up and started feeling like it was getting cold in the house." He went upstairs, where he found Shirley, Norman, and Christian, all shot. Defendant said he saw a "black handgun" on the floor near his wife. He told the dispatcher that he had not seen the gun before and that it was not his. Defendant then said, however, that he had "seen

this one before. I thought the neighbor was trying to sell it before." He said he was referring to a different neighbor, not Norman. Defendant did not disclose that, as later evidence presented at trial would show, he purchased the gun himself.

¶ 11 When the dispatcher again asked defendant what had happened, he said he had gone out earlier on Christmas Eve to buy gifts for Shirley, as it was her birthday. After an 8 a.m. doctor's appointment, he drove into Pontiac and bought some gifts. When he returned to the house between 5 and 5:30 p.m., Shirley questioned him about why it had taken him so long to buy the few items. They argued, after which she went upstairs, turned on loud music, and started drinking. Later, she came back downstairs and, in the process, slid or fell. She went back upstairs a while later. Christian came downstairs and asked what was wrong with his mother; defendant said she would "figure it out." A while later, Norman arrived and told defendant that Shirley had called him and "said she needed a friend." Norman then went upstairs. After hearing defendant's account, the dispatcher instructed him to wait outside on the porch and kept him on the phone until police arrived.

¶ 12 Livingston County Sheriff's Deputies Brian Hoffmeyer and Matt Howard, as well as one other deputy, arrived at the residence at about 2:30 a.m. on December 25, 2019. Howard said that, when they arrived, defendant was not on the porch outside the residence as he had been instructed, but he then "appeared in the doorway." Deputy Hoffmeyer then "instructed him to step out of the residence." Howard testified, "As [defendant] walked out of the residence towards us, he had a white rag or paper towel in his hands [and] appeared to be wiping his hands or moving it on his hands." Howard said, "I then placed him in handcuffs, patted him down for weapons and then escorted him to my vehicle to secure him." Howard said that defendant did not struggle with

him. When asked who else was in the house, defendant said, "my wife, son and best friend," but he did not say anything else about what had happened.

¶ 13 Deputy Hoffmeyer entered the residence and went upstairs to the second level, where he found the bodies of the three deceased persons. Hoffmeyer found a handgun on the floor in one of the rooms. He also noticed that a washing machine was running with clothes in it and was set to "extra high heat on sanitize setting." He turned off the machine. Illinois State Police (ISP) Master Sergeant Jeff Enderli, who had also responded to the residence, also heard the washing machine running. The clothes in the washing machine were later identified as a baseball cap belonging to defendant, a pair of moccasins, a raincoat, and a red blanket. Hoffmeyer completed his walk-through of the residence and said there was no one else in the house and no sign of forced entry.

¶ 14 Enderli, who assumed control of the crime scene until the arrival of the crime scene investigator, ISP Master Sergeant Darrell Stafford, testified that Christian was found in the first bedroom and that Norman and Shirley were found in the next room down the hall, which was identified as the "smoke room." Enderli said he inspected the master bedroom and found "a gun box lying on the bed in an open position with a loaded magazine near."

¶ 15 Upon his arrival at the scene, Stafford, along with Enderli and two other technicians, took photographs of the scene and made various observations. Stafford testified that there were "some reddish stains" on the washing machine door, but he did not know what they were. He also testified that both the baseball hat and the raincoat had an unknown discoloration and the raincoat had a partially torn pocket.

¶ 16 Stafford collected samples from defendant's hands to be tested for gunshot residue (GSR). According to Stafford, he "removed [defendant] from the back seat of the squad car" and

"dabbed [his] hands with the gunshot residue evidence collection kit items and placed them back into the kit." The kit was then sent to the ISP lab for testing. During cross-examination, Stafford was asked whether he collected the gunshot residue from defendant while he was in the back seat of the squad car. Stafford answered, "I did not collect it while he was in the back of the squad car. He was in the back of the squad car immediately prior to my collection." Stafford said that defendant's presence in the back of the squad car was concerning because "gunshot residue can transfer, just as it transfers from the gun to potentially a person or surface, it can transfer from that surface back to a person or to another surface."

¶ 17 Stafford collected DNA evidence from the gun by swabbing the grip and the trigger. He acknowledged that he was concerned about the integrity of the sample taken from the grip because the gun was found in a pool of blood, presumably belonging to Shirley. According to Stafford, if there are potentially two DNA profiles and one is immersed in unseparated blood, "it can overpower the other DNA." Stafford did not have these same concerns about the sample taken from the trigger because it "was not immersed in separated blood." Stafford swabbed the entire grip with two swabs, one dry and one wet, but did not swab the two sides of the grip separately.

¶ 18 2. *Defendant's Statement During Interrogation*

¶ 19 Defendant was questioned by police on December 25, 2019, and the video recording of the interrogation was played for the jury. Defendant said he had taken Ambien and had gone to sleep. When he awoke, he found all three people dead upstairs; he then called the police. Defendant's account did not mention the washing machine running; when asked, he said he did not remember having started it. The police informed defendant that none of the neighbor's cameras had shown anyone entering the residence. Stating to defendant, "You went to sleep, and they woke up with gunshot wounds," the officer asked how this could happen; defendant replied,

"One of them would have done it." When police inquired further about how that could have happened, defendant responded, "How would I know?" and "I've been honest and I've been upfront, and I've been cooperative, and we're done."

¶ 20 3. *Defendant's Jail Statement*

¶ 21 The parties stipulated to the introduction into evidence of a recorded jail conversation between defendant and his daughter Bonnie LaCroix, from January 1, 2020. On the video, Bonnie asked defendant if he was okay, to which he responded, "It's not what they're saying." Bonnie agreed, and told her father that "everybody knows that [he] would not hurt mom, or Chris, or Norman." Defendant then walked her through the tragic events leading up to the death of Shirley.

¶ 22 According to defendant, he ran various errands that morning, including trips to his medical appointment, the pharmacy, and Walmart. He said Shirley was upset when he returned home, and the two had fought off-and-on for a few hours. Defendant said he told Shirley, "Why don't you just go upstairs and swallow a bottle of your fucking pills?" He said that Shirley went back upstairs, where she began drinking alcohol and listening to music. Christian was home and told defendant that he did not understand why his mother was upset. Defendant said that Christian asked him if he thought he might leave Shirley, but he said they "would just work it out." Defendant admitted that he had checked with a coworker about rental houses, but they were too small, and he needed enough room to accommodate Christian.

¶ 23 At that point, defendant said his son went upstairs and apparently told Shirley that the two would be moving out together "on the first." Defendant said that this upset Shirley, who came downstairs and confronted him; afterwards, she continued drinking alcohol. At some point in the evening, Shirley informed defendant that Norman would be coming over to "wish her a

happy birthday." When Norman arrived, he told defendant that Shirley told him she needed to talk to someone, and he then went upstairs. Defendant said he fell asleep in the living room after a while.

¶ 24 Defendant said that, when he awoke, the house was quiet. He went upstairs to the bedroom area and observed a "cartridge" lying on the floor at the top of the stairs. Defendant found Christian on the floor of his bedroom in blood, so he began calling out for Shirley. He then moved down the hall to the smoke room, where he found Norman covered in blood. Defendant said that Shirley was in the smoke room and approached him. He told his daughter that Shirley "was not herself." He said that Shirley repeatedly told him, "We can fix this." After defendant assured her the situation could not be fixed, Shirley said, "I can fix this." Shirley was holding the gun, which made defendant fear that she might shoot him next. Instead, she pointed the gun toward her own head. According to defendant, he grabbed for the gun, getting hold of Shirley's arm. She smacked him away, took a step back, tripped, and then fell, causing the gun to discharge. He said he again struggled with Shirley over the gun and tried to pull it away from her. He said he "almost" had it when Shirley pulled the trigger, killing her instantly.

¶ 25 Defendant told his daughter that he did not immediately call the police after Shirley was shot. He said he threw some items in the washing machine, including his cap and the red blanket, which he said he had at first used to cover Shirley's body, then decided not to alter the scene. He later told his daughter, "I shouldn't have started the washer." Defendant said he went downstairs and splashed water on his face, "puked a few times," rinsed his face off, then grabbed some paper towel and sat on the couch with the dogs.

¶ 26 4. *Forensics and Other Evidence*

¶ 27 a. Autopsy Reports

¶ 28 Scott Denton, M.D., a self-employed forensic pathologist who performed autopsies for several central Illinois counties, including Livingston County, conducted the autopsy on all three deceased persons. Denton said that Christian's death was caused by a "through and through gunshot wound," with the point of entry on the right side of his head. Denton said the entrance wound was "perfectly round" and was unaccompanied by any "gun powder tattooing or stippling from unburned gun powder." Denton explained that this indicated that the fatal shot was fired from a distance of two or more feet away. He further said that Norman's death was caused by a gunshot wound that entered his right eye socket and exited "slightly left" of the back of the head. He opined that the shot came from about two feet away, because there was some gunpowder stippling but no black soot around the wound. He explained that "[y]ou get stippling as the muzzle moves away" and said that "as the muzzle moves away, that's when the stippling cones out and makes that pattern." Neither victim's wound was self-inflicted.

¶ 29 Denton opined that Shirley's wound was not reflective of a self-inflicted gunshot wound, which he said would typically be "[c]ontact wounds or intraoral, within the mouth." Denton said the bullet had penetrated Shirley's forehead and left a soot deposit. He said that a ring of stippling, tighter than that found on Norman, surrounded the wound, which told him that the shot came from no more than two feet from Shirley's head—he said "about a foot is fair" with a .40-caliber handgun. He testified, "[I]t could be a little bit more than a foot, up to a foot and a half for the range of fire with the muzzle away from her scalp." Denton said that the bullet caused an uneven laceration—a keyhole shape—because it entered at an angle. He said it impacted the skull and penetrated at a "sideways" angle, which caused the creation of a "keyhole defect." The bullet then traveled downward from "top to bottom, left to right and backwards" before coming to rest behind her right ear.

¶ 30 Denton acknowledged there were indications of six "other injur[ies] on [Shirley's] body or her skin," including contusions on her left foot and thigh, her right hip, the back of her right leg, and her right thumb and forearm. He did not believe these were the cause of death; he further did not observe any injuries consistent with a serious struggle prior to Shirley being shot. Denton also said that there was "no soot or stippling on [Shirley's] hands that would be from a *** gun firing."

¶ 31 b. GSR

¶ 32 Forensics expert Ellen Chapman of the ISP forensics lab performed microscopy trace analysis of the GSR kit collected from defendant, Shirley, Norman, and Christian. According to Chapman, GSR includes the "vapors and particulate debris that's expelled with [a] firearm when it's discharged." She said, "[T]he chemicals that we're looking for originate in the primer of the ammunition." Chapman concluded that defendant had "discharged a firearm, contacted a [primer gunshot residue (PGSR)] related item, or had both hand[s] in the environment of a discharged firearm," that Shirley had "discharged a firearm, contacted a PGSR related item, or had the left hand in the environment of a discharged firearm," and that Norman had "discharged a firearm, contacted a PGSR related item, or had both hands in the environment of a discharged firearm." The results relating to Christian indicated that he "may not have discharged a firearm with either hand," and that if he did discharge a firearm, "then the particulates were not deposited, were removed by activity, or were not detected by the procedure." Chapman also testified that she could not opine, based on any of the GSR results, "exactly who fired the gun or who was standing next to somebody who fired the gun or who picked up residue from somewhere else."

¶ 33 Chapman's September 3, 2020, report, which was accepted into evidence without objection as People's exhibit 75, contained the following unattributed comment:

"Upon my arrival, [defendant] was handcuffed behind his back in the back seat of Liv. Co. squad 53-27. [Defendant] was seated on the passenger side in the back seat. [Defendant's] handcuffs were removed and the kit was collected while he was seated in the rear passenger side seat of Liv. Co. squad 53-27."

¶ 34 c. DNA Testing Results

¶ 35 Forensic scientist Christy Troxell-Thomas of the ISP forensics lab performed DNA testing on the swabs taken from the gun's hand grip (lab item 15A) and trigger (lab item 15B). The initial report dated January 2, 2020, revealed two contributors on the hand grip (lab item 15A), a male and a female; defendant was excluded from both. A supplemental report dated March 12, 2020, stated that Shirley "[c]annot be excluded (is included)" as the female contributor, but it excluded Norman, Christian, and Shirley as the male contributor. The initial report also revealed that the second swab from the hand grip (lab item 15B) had at least three contributors but stated, "[p]rofile inconclusive." The two swabs from the gun trigger were analyzed and results showed "[a]t least 1" contributor, but the profile was "inconclusive." Both the January 2 and March 12, 2020, reports were accepted into evidence.

¶ 36 d. Latent Prints

¶ 37 ISP latent prints examiner John Carnes testified that he examined the firearm recovered from the scene, as well as a magazine, two live cartridges, one spent cartridge case, a plastic gun box, and other gun-related items. He found no latent prints, stating that he finds "prints on firearms less than half the time." His March 9, 2020, report was accepted into evidence.

¶ 38 e. Defendant's Firearms Range Score Sheets

¶ 39 Defendant's firearms range score sheets from the Illinois Department of Corrections were admitted into evidence as People's exhibits 77a, 77b, and 77c. The score sheets

showed defendant's shooting ratings for the noted years 2017 through 2019 were in the range of either "expert" or "sharpshooter."

¶ 40 f. Defendant's Forensic Expert—Manner of Death

¶ 41 Dr. Shaku Teas worked for the Cook County Medical Examiner's Office for about 14 years before entering private practice. She was hired by the defense to provide an opinion regarding the following question: "whether the anatomical findings and everything else [she] looked at [were] consistent or inconsistent with the statement that [defendant] gave to his daughter Bonnie LaCroix in a recorded interview."

¶ 42 Teas concluded "that the appearance of [Shirley's] gunshot wound and the direction of the gunshot wound was consistent with the scenario that [defendant] gave his daughter, Bonnie." She said her opinion was based on "the appearance of the wound and the direction of the wound." According to Teas, she reviewed photographs of the crime scene to familiarize herself with the position of Shirley's body when it was discovered by emergency responders. In Teas's opinion, the direction of the wound was significant. She said that since it was "left to right, front to back and downward," the wound tracked with the expected direction of a shot fired by a left-handed person, such as Shirley.

¶ 43 Teas opined that Shirley's wound was "punched out" and appeared to be a "stellate shaped wound that you often see in suicide." She also said there was soot on the left side of the wound and stippling around the wound, which to her indicated an "intermediate" range and that the firearm "wasn't necessarily touching the skin, but it was very close." This meant the range of fire was "not more than a couple feet, but it could be as close as a few inches." She then said, "I can't give you a precise number, but what I can say it was close. It was probably inches and not

feet." She disagreed with Denton's opinion as to the probable gun location, stating that she did not think it was as far as 18 inches away.

¶ 44 Teas described the wound's entrance as having an atypical keyhole defect, which occurs when a bullet enters the skull at an angle and causes both inward and outward beveling. Teas felt this was a critical concern about Denton's conclusion as to manner of death. According to Teas: "There was a small area of outward beveling if you closely examine it. Dr. Denton described it. Actually he just described it as an internal beveling. He didn't point out to the little area that there was some external beveling."

¶ 45 On cross-examination about whether defendant's version was plausible, Teas focused on the layout of the smoke room in relation the path of the wound and said that because the wound was "coming from the left," a shooter other than Shirley necessarily would have to have been positioned to her left in the smoke room. She said she did not "see any way that somebody would be there and shoot her the way she was shot and then the wound going downwards the way it did."

¶ 46 Teas opined that the bruising on Shirley's forearm was consistent with defendant's account that he grabbed Shirley's arm while trying to take the gun away from her. She also disagreed with Denton's statement that the bruise was "on the back of the forearm" rather than "on the inside of the forearm closer to the wrist."

¶ 47 g. Defendant's Forensics Expert—DNA/Collection Procedures

¶ 48 Jack Hietpas, PhD, who had been retained by defendant to examine the crime scene and comment on police investigatory procedures, was critical of Stafford's collection method respecting the handgun grip, stating:

"I would want to look at the firearm and look at how it's sitting in this pool of blood; and if my goal is to try to identify who handled the gun, I'm going to be swabbing the grip of the gun. Okay. And so I want to focus my attention on swabbing the area where the shooter most likely handled the firearm.

* * *

*** So if there was blood actually touching the firearm, that donor may be the shooter or may not be the killer. That blood is from a blood shedding event, not necessarily if you pulled the trigger, if you held the gun I should say.

So what I would want to do is sample away from the blood. Okay? So I want to get an area on the firearm grip that is away from the blood. So I don't want to have a situation where I have a potential donor DNA that's on the handle of the gun that may have held it mixed with the blood from the scene where the gun was collected.

***

So I would want to ensure that, as I was collecting the swab, I would want to make sure that I'm collecting the area on the handle that's not touching blood."

¶ 49 h. Defendant's Coworkers

¶ 50 Katie Klitzing, a correctional officer at Pontiac Correctional Center, testified that she worked with defendant and considered him "one of [her] best friends." She said the relationship did not involve any "romantic feelings" being expressed by either of them. Klitzing said that she and defendant would communicate outside of work using Facebook Messenger. Defendant had used a profile under his own name, but he changed it to "Dusty Roads or Road" after he and "his wife got into it." The two used that account to communicate about their personal lives. Based on

those communications, Klitzing believed that defendant and Shirley had been "having issues." The two had also discussed defendant "separating from the marriage" and working overtime to afford a divorce attorney.

¶ 51 Klitzing said that defendant had stopped by her house on the morning of December 24, 2019, for a visit. She said it was "[n]ot very common" for them to see one another outside of work, but she then acknowledged it was not "irregular" that he stopped by that day. Defendant had apparently messaged her, and she agreed "it wasn't like he was unexpected." She said defendant stayed less than two hours and that they discussed him "leaving and getting himself financially set up" in a coworker's rental property. Klitzing said that defendant sent her a Facebook message after he left her house stating, "I feel like I'm in a cell. Closing in. Surreal."

¶ 52 She testified that defendant was a peaceful and law-abiding citizen and described him as "happy-go-lucky." If defendant's marriage was causing him strife, he did not show it and was "always in a good mood. *** [H]e never let it show."

¶ 53 Coworker Heather Jordan, also a correctional officer at Pontiac Correctional Center, testified to an occasion on which she had spoken with defendant at work and asked him why he was working so much overtime; he responded that he was working to "save [money] for an attorney" and that "he was going to get a divorce." Defendant also told her that "his wife was crazy, she stopped taking her medicine, and that he thought she was having an affair with the neighbor."

¶ 54 i. Shirley's Blood Alcohol Level

¶ 55 The parties stipulated to the admissibility of a report prepared by William Schroeder, a certifying scientist at NMS Labs in Horsham, Pennsylvania. One of the analytical results contained in that report revealed that Shirley's blood-alcohol concentration was 0.207.

¶ 56 j. Defendant's Daughter

¶ 57 Defendant's daughter Bonnie LaCroix, who is the sister of Christian and the daughter of Shirley, is a staff sergeant with the U.S. Army based at Ft. Hood in Texas. Bonnie said she and her mother Shirley were "best friend[s]" and "talked almost every day." She further described her relationship with her father as someone she "look[s] up to." She said that defendant had a reputation as being "peaceful," "law-abiding", and "a hard worker." She also confirmed that Shirley was left-handed, and defendant was right-handed.

¶ 58 Bonnie said that although she had been quite close with Shirley, her brother Christian's relationship with Shirley involved "some ups and downs." She said that Christian treated his mother poorly and could be "really cruel" to her when he drank alcohol. He was unemployed and had been living with his parents after his recent release from either "jail or prison."

¶ 59 Bonnie said that Shirley suffered from "degenerative disk disease," for which she was prescribed "a number of medications." These medications included a rotating "combination of oxycodone or hydrocodone or fentanyl or morphine." Rated on a scale of 1 to 10, she said she believed that Shirley's pain was a "ten." She said that Shirley was a smoker and had been "sick a lot," with ailments including depression, bronchitis, pneumonia, and chronic obstructive pulmonary disease.

¶ 60 According to Bonnie, her mother had become distant and her "physical ailments [were] affecting her mental health." She believed her mother had been taking medication for depression. These troubles caused Shirley to increasingly turn to alcohol, and "it seemed like she was drinking all the time." This made Bonnie concerned about the relationship between her

parents, Norman, and Norman's wife Tina Cruse; she explained "[t]hey were partying all the time and staying up late."

¶ 61 Bonnie said she and Shirley used to speak via video chats nearly every day, including one on Shirley's birthday, December 24, 2019. During that call, Shirley "was listening to very loud, sad music; and she was trying to give this appearance of being happy; but [Bonnie] could tell that she was emotional." In response to questioning from the State, Bonnie elaborated on why this video chat had bothered her:

> "I think it was more concerning that she was just like physically I could watch, watching her chug alcohol; and that's a little bit, you know, the music, the emotions and then she's chugging alcohol, that's how even though she kind of was trying to play it off like she was having a good time, I could tell something was wrong."

¶ 62 At some point after Shirley's death, Bonnie accessed Shirley's Facebook account and reviewed her mother's private messages, including a message exchange between Shirley and Norman on the night they died. She shared some of the messages Shirley sent to Norman, which read: "Im in trouble"; "Im looking at a bottle of pills and thinking it would be better for everyone"; "With help"; "Im sating whynot when im being told please do"; and "I said goodbye to all the kids." (Spelling and punctuation are set forth here as in the original messages.). A photo of these messages was admitted into evidence.

¶ 63 k. Defendant's Physician's Assistant

¶ 64 Defendant appeared for a medical appointment with his physician's assistant, Amanda Robinson, in Cullom on the morning of December 24, 2019. The appointment had been scheduled to address several concerns, including anxiety, depression, erectile dysfunction, finger pain, and a shoulder complaint. She testified that defendant suffered from anxiety related to "his

job responsibilities and his household responsibilities," and she prescribed him an antianxiety medication.

¶ 65 *l.* Defendant's Cell Phone Photos

¶ 66 The parties stipulated to the admission of defendant's cell phone images, which showed him wearing a hat that appeared to be like the one police found in the washing machine.

¶ 67 m. Firearm

¶ 68 Jesica Ledford testified that she previously owned a handgun purchased from a pawn shop. Toward the end of summer 2019, Ledford sold the gun to defendant in a sale facilitated by her father. She said the gun had not been fired during her ownership, but it had been held by both her and her father, William Ledford.

¶ 69 B. Verdict

¶ 70 On August 16, 2022, the jury returned a verdict of guilty on all counts.

¶ 71 C. Posttrial Motion and Sentencing

¶ 72 Defendant filed a motion to reconsider, arguing that he was not proven guilty beyond a reasonable doubt, that the trial court erred in denying the proffered defense instruction on necessity, and that the court erred in denying defense motion *in limine* No. 4 concerning defendant's "Dusty Rhodes" Facebook postings and his friendship with Klitzing. The motion was denied on October 5, 2022.

¶ 73 That same date, defendant was sentenced to life in prison plus 25 years for each of the three counts, counts I, III, and V; counts II, IV, and VI were merged into the judgment. The sentences were to be served consecutively. Defendant did not move to reconsider his sentence.

¶ 74 Defendant filed a motion to file a late notice of appeal pursuant to Illinois Supreme Court Rule 606(c) (eff. Mar. 12, 2021) on March 27, 2023, which was allowed by this court on

April 3, 2023. Because the late notice of appeal specified the wrong date (October 4, 2022), defendant filed a motion for a supervisory order with the Illinois Supreme Court, which was allowed on September 22, 2023, directing this court "to treat the notice of appeal filed on April 3, 2023, and assigned case No. 4-23-0273, as a properly perfected appeal from the October 5, 2022, judgment of the Circuit Court of Livingston County in case No. 19 CF 363."

¶ 75 This appeal followed.

¶ 76 II. ANALYSIS

¶ 77 On appeal, defendant raises three arguments. First, he contends his convictions must be reversed because the evidence at trial failed to establish beyond a reasonable doubt that he caused any of the deaths at issue. Second, he argues trial counsel rendered ineffective assistance by failing to impeach ISP Master Sergeant Stafford with a prior inconsistent statement found in the written report of Chapman relating the location at which he collected GSR from defendant's hands. Finally, he contends his sentence should be amended to reflect the imposition of a single term of life in prison and urges this court to retreat from its 2023 decision in *People v. Mays*, 2023 IL App (4th) 210612. We address each contention in turn.

¶ 78 A. Insufficiency of Evidence

¶ 79 Defendant initially argues the State failed to prove its case beyond a reasonable doubt. It is well settled that when reviewing challenges to the sufficiency of the evidence, this court will not retry the defendant. *People v. Jones*, 2023 IL 127810, ¶ 28. Instead, we ask whether, "viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt." *Id.* Moreover, we will not substitute our judgment for that of the trial court on issues regarding the weight of the evidence or the credibility of witnesses. *Id.*; *People v. Brown*, 2013 IL 114196, ¶ 48. Additionally,

we will draw all reasonable inferences from the evidence in favor of the State. *Jones*, 2023 IL 127810, ¶ 28. In short, we will not overturn a criminal conviction "unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt." *Id.*; *People v. Conway*, 2023 IL 127670, ¶ 16. In our view, the evidence in a number of areas supported the jury's conclusion that defendant had committed all three murders.

¶ 80 First, there was evidence tending to show that Shirley's wound was not self-inflicted. Dr. Denton, an experienced forensic pathologist, testified that there was "no soot or stippling on [Shirley's] hands that would be from a *** gun firing." Moreover, Denton testified that he saw no injuries consistent with a serious struggle prior to Shirley being shot. Although Dr. Teas disagreed with Dr. Denton and believed Shirley's gunshot wound was self-inflicted, it was the jury's role to resolve the conflicting testimony on this point.

¶ 81 Second, the evidence of GSR was also conflicting. Defendant argues that GSR was found on only Shirley's left hand, yet it was found on both of defendant's hands. Although Chapman stated that she was unable to say who fired the handgun based on these tests, the GSR evidence was nevertheless something for the jury to consider in determining what occurred on the night in question.

¶ 82 Third, there was evidence concerning defendant's possible motivation for the shooting. The jury heard testimony that defendant was not happy with his wife and that the two had been having marital problems for some time. It heard evidence that defendant suffered from anxiety due to work and his "household responsibilities" and that he was on antianxiety medication. It heard evidence that defendant was working overtime to hire a divorce attorney, had spoken to a friend about a new place for him and his son to live, and had a close relationship with

a female coworker, with whom he communicated through a Facebook account he hid from his wife.

¶ 83 Fourth, the jury could assess whether defendant's conduct on the night in question was consistent with his innocence. Defendant initially stated that he did not recall starting the washing machine, but he later admitted putting various items into it. The police found the washing machine running and set on "sanitize," and the items inside included a hat belonging to defendant and a raincoat, as well as Shirley's red blanket and moccasins. Similarly, despite being told by the police dispatcher to wait on the porch until police arrived, defendant was seen emerging from the house cleaning his hands. The jury could have concluded that this conduct was incompatible with defendant's innocence.

¶ 84 Finally, there were defendant's own words explaining the events of the night in question as gleaned from the audio recording of his 911 call, his police interview videos, and the video-recorded jail conversation with his daughter. Defendant initially told the 911 dispatcher that the victims were "all dead," and when asked what happened he replied, "I don't know." He said that he went upstairs and found all three victims had been shot. He initially denied having seen the gun before, then admitted to the dispatcher he had seen it; he did not acknowledge that he had purchased it himself.

¶ 85 When subsequently interviewed by police, defendant initially abided by the account he had given to the 911 dispatcher: he awoke to find all three victims dead upstairs. Confronted with information suggesting that no third party was seen entering the house, defendant was unable to explain how all three victims had been shot.

¶ 86 In the recorded jail conversation with his daughter, defendant materially changed his account of the events in question. He claimed Shirley had shot Christian and Norman and then

herself following a struggle with defendant for the gun. Based on these recordings, the jury could assess whether they believed defendant's account of the night's events. As part of this assessment, the jury was entitled to consider defendant—whose theory indicates he would have known all along that Shirley was the shooter—gave continually evolving accounts of the events in question. He told the dispatcher that he didn't know what happened, and he later told interviewing officers the same thing. It was only when the officers told him that cameras showed no one else entering the premises that he shifted to the conclusion that "one of them" must have done it (even though, according to his theory, he would have known all along that Shirley had done it). He finally came up with the account correlating to his trial theory as reflected in his jail conversation with his daughter, but jurors might rightly question why his earlier accounts were not consistent with this version. There were other inconsistencies in defendant's various statements—about ownership of the firearm, who started the washer, and the fact he had stopped by Klitzing's house on day in question—but it is the evolution of his retelling of the central events in the case that would likely have most damaged the viability of his trial theory in the eyes of the jury. It is the function of the jury as the trier of fact to assess the credibility of the witnesses, the weight to be given their testimony, and the inferences to be drawn from the evidence. *People v. Leger*, 149 Ill. 2d 355, 389-90 (1992). The jury could well have concluded that the credibility of his final account was largely undercut by the contrary accounts he had given previously.

¶ 87 The State's theory was that defendant shot all three victims, and defendant's theory was that Shirley shot two of the victims before shooting herself; the parties do not suggest that the evidence supports the possibility of some third party being the shooter. The jury, then, had the task of considering whether the State's theory had been proven beyond a reasonable doubt in the face of conflicting evidence. Based on the discussion above, and drawing all reasonable inferences in

favor of the State, we cannot say that the evidence is "so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt." *Conway*, 2023 IL 127670, ¶ 16.

¶ 88 B. Ineffective Assistance of Counsel

¶ 89 Next, defendant argues his trial counsel provided ineffective assistance by failing to impeach ISP Master Sergeant Darrell Stafford with a contrary statement reflected in another witness's investigative report. As the Illinois Supreme Court stated in *Jones*, "[t]he familiar standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), applies to claims of ineffective assistance of counsel." *Jones*, 2023 IL 127810, ¶ 51. Under *Strickland*, a defendant must show that his counsel's performance fell below an objective standard of reasonableness and that there is a reasonable probability that the result of the proceeding would have been different but for counsel's unprofessional errors. *Id.*; *Strickland*, 466 U.S. at 694. Matters of trial strategy are generally considered immune from ineffective assistance of counsel claims. *People v. Manning*, 241 Ill. 2d 319, 327 (2011).

¶ 90 At trial, Stafford testified regarding how he collected the GSR swab from defendant:

> "When I arrived at the residence, he was already in the back seat of a squad car. I removed him from the back seat of the squad car and just did what I just described. I dabbed his hands with the gunshot residue evidence collection kit items and placed them back into the kit."

¶ 91 On cross-examination, Stafford was then asked and answered as follows:

> "Q. Now, I want to ask you about gunshot residue; and in this case, you took [defendant's] gunshot residue from the back of the squad car. Fair?

A. I did not collect it while he was in the back of the squad car. He was in the back of the squad car immediately prior to my collection."

¶ 92 Defendant argues that defense counsel should have impeached Stafford with a statement contained in Chapman's September 3, 2020, written report, which stated that, upon arrival at the scene, defendant "was handcuffed behind his back in the back seat" of a squad car and that his "handcuffs were removed and the kit was collected while he was seated in the rear passenger side seat."

¶ 93 Although we analyze defendant's claims of ineffective assistance of counsel under a *de novo* standard of review, we are mindful that cross-examination is generally a matter of trial strategy. *People v. Pecoraro*, 175 Ill. 2d 294, 326 (1997); *People v. Peacock*, 359 Ill. App. 3d 326, 339 (2005). Thus, while it is not impossible for an attorney to render ineffective assistance of counsel during cross-examination, an objectively reasonable cross-examination cannot amount to ineffective assistance unless the defendant suffered prejudice. *Peacock*, 359 Ill. App. 3d at 339-340. Here, we first determine whether the cross-examination was objectively reasonable and, if necessary, whether defendant suffered prejudice.

¶ 94 Defendant is mistaken about *whether* Stafford's testimony was impeached; the record is clear that it was. The GSR report containing the allegedly inconsistent statement from forensic scientist Ellen Chapman, was introduced by the State as People's exhibit 75 prior to Stafford's testimony. This evidence contradicted Stafford's testimony about where the testing took place, so it was impeaching of that testimony. It seems clear that defendant's real complaint is not whether Stafford was impeached, but the manner of his impeachment, *i.e.*, that Stafford was not *confronted* with the contrary information in Chapman's report during his cross-examination. But the question of whether to impeach a witness during cross-examination versus separately admitting

impeaching evidence is fundamentally a matter of trial strategy. *People v. Sturgeon*, 2019 IL App (4th) 170035, ¶ 83 ("Whether and how to conduct a cross-examination is generally a matter of trial strategy."). Defense counsel could have reasonably concluded that, if confronted with the contrary information in Chapman's report, Stafford could undermine it. We note that Chapman apparently did her work in the lab and could not have personally observed where defendant was tested for GSR, something which cross-examination of Stafford on the point might well have highlighted.

¶ 95 Defendant argues that another purpose of confronting Stafford with Chapman's report was to highlight the potential for contamination, but this goal was already accomplished by the substantive admission of Chapman's report and by Stafford's own testimony about possible contamination from defendant having been seated in the back seat of the squad car:

> "Q. Did that have any concern for you?
>
> A. It does.
>
> Q. Why is that?
>
> A. Well, gunshot residue can transfer, just as it transfers from the gun to potentially a person or surface, it can then transfer from that surface back to a person or to another surface. So police officers obviously spend time around firearms. We arrest people who potentially have fired a firearm, and so there could be gunshot residue located in the back of that squad car. I don't know who was in there prior. I don't know last time it was cleaned or any of those things. So there is a potential contamination concern with him being in the back of the squad car prior to me testing it."

Trial counsel could have reasonably concluded that there was no need to confront Stafford with Chapman's report on this point given that he had already conceded it. We find no basis to conclude that defendant's trial counsel was ineffective in regard to these matters of trial strategy.

¶ 96 C. Sentencing

¶ 97 Lastly, defendant argues that his sentence should be modified because the trial court erroneously sentenced him to three consecutive terms of natural life in prison. According to defendant, his sentence violates the plain language of section 5-8-1(a)(1)(c)(ii) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/5-8-1(a)(1)(c)(ii) (West 2022), which states that "the court shall sentence the defendant to a term of natural life imprisonment if the defendant, at the time of the commission of the murder, had attained the age of 18, and *** is found guilty of murdering more than one victim." Defendant urges this court to abandon its recent decision in *Mays*.

¶ 98 We first observe that defendant did not raise this issue—or any issue challenging his sentence—in a postjudgment motion. Thus, under *People v. Hillier*, 237 Ill. 2d 539, 544-45 (2010), he has forfeited any challenge to the nature of his sentence. However, defendant argues that this court should nevertheless consider his claimed error under the second prong of the plain error doctrine, applicable to errors "so serious that the defendant was denied a substantial right, and thus a fair trial." *People v. Herron*, 215 Ill. 2d 167, 178-79. Alternatively, defendant argues that his trial counsel was ineffective for withdrawing his consecutive sentence argument and, therefore, not preserving the issue for review. As discussed above, to prevail on a claim of ineffective assistance of counsel, "a defendant must demonstrate that counsel's performance was deficient and that the deficient performance prejudiced the defendant." *People v. Cathey*, 2012 IL 111746, ¶ 23 (citing *Strickland*, 466 U.S. at 687). More specifically, "a defendant must show that

counsel's performance was objectively unreasonable under prevailing professional norms and that there is a 'reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.' " *Id.* (citing *Strickland*, 466 U.S. at 694).

¶ 99 In examining either of defendant's arguments, we must first determine whether any error has occurred. *People v. Glasper*, 234 Ill. 2d 173, 203-04 (2009); *People v. Piatkowski*, 225 Ill. 2d 551, 565 n.2 (2007). Here, that depends on whether defense counsel was acting in accordance with the law when he failed to object or, alternatively, withdrew his objection, to the imposition of the consecutive life sentences. In essence, defendant is arguing that section 5-8-1(a)(1)(c)(ii) of the Unified Code *requires* this court to impose only a single life sentence where a defendant has been convicted of multiple murders. See 730 ILCS 5/5-8-1(a)(1)(c)(ii) (West 2022). According to section 5-8-1(a)(1)(c)(ii), "the court shall sentence the defendant to a term of natural life imprisonment if the defendant, at the time of the commission of the murder, had attained the age of 18, and *** is found guilty of murdering more than one victim." *Id.* According to defendant, this means that he can *only* be sentenced to one life sentence, regardless of the number of people he is convicted of murdering.

¶ 100 Defendant's interpretation of section 5-8-1(a)(1)(c)(ii) runs directly counter to this court's recent decision in *Mays*, which rejected this exact argument and concluded that a defendant convicted of first degree murder must receive a sentence of life imprisonment for each of the three victims. As we stated in *Mays*:

> "In this case, defendant was charged with and convicted of nine counts of first degree murder ***. The counts with regard to each respective victim merged. As a result, the trial court sentenced defendant on three counts of first degree murder—one felony count for each victim. As a result, pursuant to the plain language of

section 5-8-1(a)(1)(c)(ii), the trial court did not err in sentencing defendant to a natural life term for each of the three victims." *Mays*, 2023 IL App (4th) 210612, ¶ 131.

¶ 101 We continue to adhere to our prior decision in *Mays* and reject defendant's suggestion that we abandon its analysis.

¶ 102 We also note that defendant argues against the trial court's imposition of *consecutive* life sentences. Here again, we find no error and point out that the court's actions were wholly consistent with the plain language of section 5-8-4(d)(1), which *mandates* consecutive sentences if one of the defendant's convictions was for first degree murder. 730 ILCS 5/5-8-4(d)(1) (West 2022); *Mays*, 2023 IL App (4th) 210612, ¶ 132. Here, defendant was convicted of three counts of first degree murder. By statute, the court had no discretion to do anything other than impose consecutive terms.

¶ 103 Finding no error, we reject defendant's arguments regarding plain error and ineffective assistance of counsel.

¶ 104 III. CONCLUSION

¶ 105 For the reasons stated, we affirm the trial court's judgment.

¶ 106 Affirmed.