

2026 IL App (4th) 250281

NO. 4-25-0281

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

February 17, 2026

Carla Bender

4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Peoria County
DARREN BROWN,)	No. 15CF484
Defendant-Appellant.)	
)	Honorable
)	Sean W. Donahue,
)	Judge Presiding.

PRESIDING JUSTICE STEIGMANN delivered the judgment of the court, with opinion.

Justices Grischow and Harris concurred in the judgment and opinion.

OPINION

¶ 1 In November 2024, following a jury trial, defendant, Darren Brown, was convicted of first degree murder (720 ILCS 5/9-1(a)(2) (West 2014)) and aggravated battery (*id.* § 12-3.05(e)(1)). In January 2025, the trial court sentenced defendant to consecutive terms of 55 years in prison for first degree murder and 8 years in prison for aggravated battery.

¶ 2 Defendant appeals, arguing his convictions should be reversed because (1) the admission of the prior testimony of a deceased witness was erroneous, (2) the trial court improperly prohibited defendant from calling an expert witness, (3) his trial counsel provided ineffective assistance by failing to object to the admission of a video of the deceased witness’s out-of-court identification of defendant, and (4) the errors he alleges amounted to cumulative error.

¶ 3 We disagree and affirm.

¶ 4

I. BACKGROUND

¶ 5

A. The Charges and Defendant's First Trial

¶ 6 In August 2015, defendant was charged by indictment with three counts of first degree murder (*id.* § 9-1(a)(1)-(3)), one count of aggravated battery (*id.* § 12-3.05(e)(1)), and one count of unlawful possession of a weapon by a felon (*id.* § 24-1.1(a)). The charges alleged that on July 14, 2015, defendant, a felon, shot Nikko Smith and Charles Shelton, resulting in Nikko Smith's death and injury to Shelton. The unlawful possession of a weapon by a felon count was later dismissed on the State's motion.

¶ 7

In May 2017, the trial court conducted defendant's jury trial. However, following jury selection, the court declared a mistrial on defendant's motion because the composition of the jury venire did not fairly represent Peoria County.

¶ 8

B. Defendant's Second Trial and the Evidence of Shelton's Alcohol Consumption

¶ 9

In July 2017, the trial court conducted defendant's second jury trial. The State presented evidence establishing defendant shot Nikko Smith and Shelton in Jesse Smith's home in Peoria, Illinois, killing Nikko and injuring Shelton.

¶ 10

Shelton testified at that trial and identified defendant as the shooter. Shelton admitted he had felony convictions for retail theft and possession of a controlled substance from 2004 or 2005. He also admitted that on the day of the shooting, he had consumed (1) "two or three" beers, (2) "a little marijuana" four or five hours before the incident, and (3) cocaine "way earlier" in the day.

¶ 11

The State also presented the testimony of Dr. Thomas Rossi, a surgeon who treated Shelton at the hospital following the shooting. Relevant to this appeal, Rossi testified on

cross-examination that an alcohol screening showed Shelton had a blood alcohol level (BAL) of 202 at the time of treatment, which corresponded to a blood alcohol content (BAC) of 0.2. Rossi agreed Shelton’s BAC of 0.2 was more than twice the legal driving limit of 0.08. He noted, however, individuals react differently to alcohol, in that some “are more tolerant to alcohol than others.” Accordingly, someone with a high alcohol tolerance with a BAL of 202 “could be completely normal,” while someone who has never had alcohol with the same BAL could be put into a coma. Rossi also opined that patients admitted for traumatic injuries, such as gunshot wounds, can sometimes go into shock due to the loss of blood, which can affect their ability to recall or describe events.

¶ 12 The jury ultimately found defendant guilty of both first degree murder and aggravated battery, and the trial court sentenced him to 55 years in prison for first degree murder and 8 years in prison for aggravated battery. However, the Third District Appellate Court reversed and remanded for a new trial, concluding that the trial court erred by allowing the State to present evidence about the contents of defendant’s cell phone records. See *People v. Brown*, 2021 IL App (3d) 170621, ¶ 35.

¶ 13 C. Defendant’s Third Trial

¶ 14 1. *Pretrial Motions*

¶ 15 On remand, defendant filed a motion *in limine* seeking to bar the State from presenting the July 2017 trial testimony of Shelton, who was then deceased. Defendant argued Shelton’s testimony did not have the circumstantial guarantees of trustworthiness necessary to admit a deceased individual’s hearsay statements under section 115-10.4 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-10.4 (West 2024)). Specifically, defendant asserted Shelton committed perjury when he testified he had no more than two or three beers because that

amount of alcohol could not result in a BAC as high as 0.2.

¶ 16 In support of this contention, defendant attached to his motion a letter from Dr. Leon M. Gussow, an emergency room physician, who had reviewed portions of the July 2017 trial evidence and Shelton's medical records. Gussow opined Shelton's BAL at the time of his blood draw suggested he had consumed approximately six 12-ounce Budweiser beers. Further, when accounting for the rate at which Shelton would have eliminated alcohol from his body, it was likely Shelton's BAL was "substantially higher" at the time of the shooting. Gussow concluded Shelton's testimony that he consumed at most two or three beers was not credible.

¶ 17 According to defendant, Shelton's lack of truthfulness, his prior felonies, and his consumption of drugs and alcohol on the day of the incident rendered his prior testimony untrustworthy, such that it should not be admitted at trial. However, the trial court rejected defendant's argument, finding that, because "different people can react differently" to alcohol, it was "hard-pressed to say [Shelton's testimony] was flat out perjury." Accordingly, the court denied defendant's motion *in limine* to bar Shelton's July 2017 trial testimony.

¶ 18 Defendant also filed a motion *in limine* requesting the trial court allow him to present Gussow as an expert witness to testify about the number of beers Shelton would likely have consumed to reach a BAC of 0.2. Defendant argued that, although some people "have an idea" about "alcohol levels," Gussow's testimony would assist the jury in understanding "how many beers it would take" to reach Shelton's level of intoxication at the hospital and "how alcohol dissipates in the bloodstream, how fast it dissipates." Defendant asserted Gussow's testimony would be offered to "impeach" Shelton's testimony that he consumed no more than two or three beers, which would assist in the jury's consideration of whether Shelton's identification of defendant as the shooter was reliable.

¶ 19 The trial court rejected defendant’s argument, noting the quantity of alcohol Shelton needed to consume to reach a BAC of 0.2 was inconclusive because evidence had been adduced that alcohol tolerance varies by individual. Thus, an “alcoholic *** could walk around at a 0.16 BAC, have two or three beers and then be at a 0.2, and still function[] absolutely normally.” Additionally, the court explained Shelton’s credibility had already been addressed in the denial of the previous motion *in limine*.

¶ 20 *2. Jury Trial*

¶ 21 Defendant’s third jury trial commenced in November 2024, and the following evidence was presented.

¶ 22 On the evening of July 14, 2015, Nikko, Shelton, Jesse, Clay King, and Kendrick Wilson were at Jesse’s home on West Kettelle Street in Peoria, Illinois. At approximately 10:30 p.m., Shelton, Nikko, and Wilson were in the kitchen, and Jesse was in the bathroom. Nikko, who was Shelton’s nephew, was bagging cocaine for sale at the kitchen table.

¶ 23 As Nikko finished packaging the cocaine, a man with dreadlocks “came in,” told Shelton and Wilson to get on the floor, held a revolver to Nikko’s head, and said, “I’m getting this.” Shelton and Wilson sat on the floor, and the man grabbed the cocaine and took money out of Nikko’s pocket. The man then told Nikko, “ ‘You’re coming with me,’ ” and directed him toward the back door in the kitchen.

¶ 24 The door was barricaded with a two-by-four piece of lumber to prevent it from being opened from the outside. As the man attempted to remove the barricade, Nikko tried to resist. Shelton jumped up, and the man shot him in the stomach, causing him to fall back to the ground. Jesse came out of the bathroom, and Shelton told him he was shot. Shelton then crawled to the living room.

¶ 25 The police arrived shortly thereafter and found Shelton sitting on the floor with a gunshot wound to his lower abdomen. After removing Shelton, the police cleared the residence. While doing so, officers located Nikko in the kitchen, lying face down. He had been shot underneath his chin from close range, and an autopsy established the bullet struck the vertebrae at the back of his throat, which caused a laceration of his spinal cord and resulted in death almost instantly.

¶ 26 When officers processed the scene, they located two bullets in the kitchen—one under Nikko’s body and another under a chair. Subsequent lab analysis of the bullets indicated they were fired from the same firearm. Officers also located two strands of dreadlocked hair. Analysis of those hairs showed they matched the DNA profile of defendant.

¶ 27 During the State’s case-in-chief, the State read into evidence a transcript of Shelton’s testimony from the July 2017 jury trial. The reading included Shelton’s identification of defendant as the shooter. Shelton had also testified defendant had dreadlocks at the time of the incident and Nikko, Wilson, Jesse, and Shelton himself did not have dreadlocks. Additionally, the reading included Shelton’s admission he had felony convictions for retail theft and possession of a controlled substance, as well as his claim on cross-examination that he had no more than two or three beers prior to the shooting. Shelton testified the next thing he recalled after the shooting was police and paramedics entering the house and taking him to the emergency room. Although he was a “bit fuzzy,” he believed detectives asked him questions about what happened.

¶ 28 Shelton was admitted to the hospital at 11:30 p.m. and treated by Rossi. Rossi testified at trial that Shelton was “alert and responsive” and “answering questions appropriately” at the time of treatment. The medical records did not show whether Shelton was administered morphine, and Rossi explained that although Shelton had been provided intravenous therapy, it

was not reasonable to assume he was on pain medication because “things other than pain medicine,” such as antibiotics, can be delivered through intravenous therapy.

¶ 29 Although Shelton only remembered being shot once, Rossi noted he had gunshot wounds to his torso and thigh. However, no projectiles were found in Shelton’s body, and he was stable. Laboratory tests of blood drawn from Shelton at the time of treatment indicated the presence of cocaine, marijuana, and alcohol. Rossi testified that the results showed Shelton’s BAL was “202,” and Rossi explained on cross-examination that a BAL of 202 amounted to a BAC of 0.2, which was at least twice the legal driving limit of 0.08. Rossi also acknowledged that for Shelton’s height of six feet and weight of 160 pounds, he “would assume” he had to drink more than two beers to reach a BAL of 202. He further agreed that many years of alcohol abuse could cause a person to have memory gaps or trouble remembering things.

¶ 30 Shelton testified he was kept at the hospital overnight and that, the next afternoon, detectives visited him to administer a photo array. The detectives read a form to him, which he initialed and signed at approximately 3 p.m. When the detectives showed Shelton the photographs, he circled defendant’s photograph and put his initials under it, noting he recognized defendant as “[t]he person that shot me” and held a gun to Nikko’s head. Shelton was discharged from the hospital later that afternoon. He could not remember whether he had been administered pain medication at the hospital or whether he was falling asleep while detectives were asking him questions, but he noted he “[c]ould have been” nodding off.

¶ 31 The photo lineup identification had been video recorded by the detectives, and the recording was admitted into evidence without objection from defendant as State’s exhibit No. 27 and played for the jury. In the video, Shelton was sitting in a hospital bed and had his eyes closed while one of the detectives, Detective Christopher Lenover, instructed him on how to complete a

form prior to the lineup. When Lenover told Shelton to ask him any questions he had about the form, he received no response from Shelton, whose eyes remained closed. Lenover said Shelton's name to get his attention, and Shelton appeared to open his eyes before acknowledging he understood the form. Lenover testified he did not know whether Shelton was "nodding out or not paying attention" at that time; Lenover then read Shelton the form, which Shelton signed. Thereafter, Lenover showed Shelton photographs of six individuals, and Shelton circled and placed his initials next to the photograph of defendant.

¶ 32 Thereafter, on July 30, 2015, detectives interviewed defendant. The interview was recorded, and the recording was admitted into evidence and published to the jury. During the interview, defendant told the detectives that at 9 p.m. on July 14, 2015, he was at his mother's home in Peoria, preparing to travel to Georgia. Defendant claimed he generally knew of Nikko but did not know him personally. He asserted he had never been to Nikko's house and did not "hang around that side of town."

¶ 33 At the conclusion of the evidence, the jury found defendant guilty of both first degree murder and aggravated battery.

¶ 34 3. *Defendant's Posttrial Motion and Sentencing*

¶ 35 In defendant's posttrial motion, he argued the trial court erred by allowing the presentation of Shelton's July 2017 trial testimony because it contained "blatant perjury" and failed to meet the requisite standard of trustworthiness necessary to admit a deceased witness's hearsay statement under section 115-10.4 of the Code. He also argued the court improperly barred Gussow's testimony, which would have "offered the jury valuable scientific information."

¶ 36 The trial court rejected defendant's arguments and denied his motion. The court opined there was "[n]ot enough real information" to find Shelton's testimony that he had only two

or three beers constituted perjury. The court noted that the evidence did not indicate how many ounces each can of beer Shelton consumed was, and assuming he was consuming 24-ounce beers, his testimony would have been consistent with Gussow's determination Shelton would have had to consume approximately six 12-ounce beers to reach a BAL of 202. The court also explained no expert testimony was needed from Gussow because a jury would be able to determine without an expert opinion someone with a 0.2 BAC would likely have consumed more than two or three 12-ounce beers. Additionally, defendant's effort to introduce Gussow's testimony was simply a means by which to raise a "collateral attack on [Shelton's] credibility." The court explained, however, defendant was sufficiently able to contest Shelton's credibility at trial when he highlighted Shelton's BAC was over twice the legal driving limit. Accordingly, the court denied defendant's posttrial motion.

¶ 37 The trial court sentenced defendant to consecutive terms of 55 years in prison for first degree murder and 8 years in prison for aggravated battery.

¶ 38 This appeal followed.

¶ 39 II. ANALYSIS

¶ 40 Defendant appeals, arguing (1) the presentation of Shelton's July 2017 trial testimony was erroneous, (2) the trial court improperly prohibited him from calling Gussow as an expert witness, (3) his trial counsel provided ineffective assistance by failing to object to the admission of the video depicting Shelton's photo identification of defendant, and (4) the foregoing errors amounted to cumulative error.

¶ 41 We disagree and affirm.

¶ 42 A. The Admission of Shelton's July 2017 Trial Testimony Was Not Erroneous

¶ 43 Defendant challenges the admission of Shelton's July 2017 trial testimony on two

grounds, which we address in turn. First, he argues Shelton’s testimony should have been barred because it lacked the requisite level of trustworthiness for the admission of a deceased witness’s hearsay statement under section 115-10.4 of the Code. Second, he contends the admission of Shelton’s testimony violated his right to due process because the State presented that testimony despite knowing it contained perjury. We disagree with both contentions.

¶ 44 1. *Shelton’s Testimony Was Sufficiently Trustworthy for Admission*

Under Section 115-10.4 of the Code

¶ 45 a. The Applicable Law and Standard of Review

¶ 46 Generally, the hearsay rule prohibits the introduction at trial of an out-of-court statement offered to prove the truth of the matter asserted. *People v. Gardner*, 2024 IL App (4th) 230443, ¶ 48. Section 115-10.4 of the Code supplies one of the many exceptions to this rule, permitting the admission of a prior statement of a deceased witness. *People v. Rush*, 401 Ill. App. 3d 1, 9 (2010). Section 115-10.4 provides:

“A statement not specifically covered by any other hearsay exception but having equivalent circumstantial guarantees of trustworthiness is not excluded by the hearsay rule if the declarant is deceased and if the court determines that:

(1) the statement is offered as evidence of a material fact; and

(2) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and

(3) the general purposes of this Section and the interests of justice will best be served by admission of the statement into evidence.” 725 ILCS 5/115-10.4(a) (West 2024).

Section 115-10.4 further provides, “Any prior statement that is sought to be admitted under this Section must have been made by the declarant under oath at a trial, hearing, or other proceeding and been subject to cross-examination by the adverse party.” *Id.* § 115-10.4(d). Accordingly, before admitting the prior testimony of a deceased individual, “section 115-10.4 requires a court to consider (1) materiality; (2) probative value; (3) trustworthiness of the statement; (4) interests of justice; and (5) prior opportunity for cross-examination.” *Rush*, 401 Ill. App. 3d at 9 (citing *People v. Melchor*, 376 Ill. App. 3d 444, 450 (2007)).

¶ 47 Because evidentiary rulings are within the sound discretion of the trial court, a reviewing court will not reverse those rulings unless the trial court has abused its discretion. *Id.* at 13. An abuse of discretion occurs “only where the trial court’s ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court.” *Id.*

¶ 48 b. This Case

¶ 49 On appeal, defendant contests only the trial court’s assessment of the trustworthiness of Shelton’s July 2017 trial testimony. He argues Shelton’s testimony lacked the circumstantial guarantees of trustworthiness necessary for admission under section 115-10.4 because it is evident Shelton testified falsely. Specifically, defendant targets Shelton’s claim he had no more than two or three beers prior to the shooting and asserts that Shelton’s testimony must be false because the evidence showed he had a BAC of 0.2 at the hospital. Defendant thus concludes that (1) the trial court erred by admitting Shelton’s testimony and (2) the error prejudiced him because Shelton was the only person to identify defendant as the shooter.

¶ 50 Section 115-10.4’s requirement that a deceased individual’s statement have circumstantial guarantees of trustworthiness limits the admission of such statements to exceptional circumstances. *Id.* at 10. “When evaluating trustworthiness of hearsay testimony, a trial court must

consider the totality of the circumstances surrounding the declaration and no one factor is required or dispositive.” *Id.* Factors that bear on the untrustworthiness of a deceased witness’s prior statements include the witness’s (1) lack of cross-examination, (2) motivation to testify falsely, (3) prior convictions and criminal history, (4) use of drugs or alcohol at the time of the events, and (5) hopes of making a deal with the State. *Id.* A court can also consider “the character of the witness for truthfulness and honesty.” *People v. Smith*, 333 Ill. App. 3d 622, 635 (2002).

¶ 51 Defendant acknowledges some of the foregoing factors suggest Shelton’s testimony was trustworthy. In particular, defendant concedes Shelton was subject to cross-examination during the July 2017 trial, and defendant agrees nothing in the evidence suggests Shelton had a motive to testify falsely, particularly because Shelton likely had an interest in bringing his nephew’s killer to justice. Nevertheless, defendant argues that, under the totality of the circumstances, Shelton’s testimony was untrustworthy because he (1) had a prior conviction for retail theft, (2) used alcohol and drugs before the shooting, (3) “may have had hopes of making a deal” with the State to avoid criminal liability related to his presence around cocaine in Jesse’s home, and, most importantly, (4) revealed a character for untruthfulness by lying under oath at trial about how much alcohol he consumed before the shooting.

¶ 52 In making this argument, defendant relies predominantly on *People v. Melchor*, 376 Ill. App. 3d 444 (2007). In that case, the defendant and a codefendant were alleged to have been involved in the shooting death of the victim. *Id.* at 446. At the codefendant’s trial, the sole eyewitness to the incident implicated both the defendant and the codefendant, but the codefendant was found not guilty. *Id.* Thereafter, the eyewitness died from a drug overdose, and at the defendant’s subsequent trial, the defendant contested the admission of the eyewitness’s testimony, claiming it did not bear sufficient guarantees of trustworthiness. *Id.* The trial court rejected the

defendant's contention, and the defendant was convicted of murder. *Id.* at 449.

¶ 53 The appellate court reversed, emphasizing that although the codefendant had the opportunity to cross-examine the eyewitness at his trial, the defendant was not afforded the same opportunity at his, which could have been prejudicial considering that the motives of the defendant and codefendant may not have been aligned. *Id.* at 455. Additionally, the eyewitness had a long criminal history that included 15 arrests and a felony conviction for armed robbery, and he had admitted to consuming alcohol prior to seeing the shooting. *Id.* at 455-56. Moreover, the court noted the eyewitness had a pending robbery charge at the time of the codefendant's trial, such that it was possible he gave his testimony to curry favor with the State with respect to that charge. *Id.* at 456.

¶ 54 The appellate court concluded that under the totality of those circumstances, the eyewitness's testimony was not sufficiently trustworthy to be admitted under section 115-10.4. *Id.* The error, in turn, likely contributed to the defendant's conviction because the only evidence—physical, testimonial, or otherwise—linking the defendant to the crime was the eyewitness's testimony and the other evidence presented consisted mainly of the defendant's flight from justice. *Id.* at 457.

¶ 55 *Melchor* is distinguishable from the present case. Unlike *Melchor*, the prior proceeding from which Shelton's testimony had been adduced was defendant's own criminal trial in July 2017, prior to remand. Accordingly, defendant was afforded the opportunity to test the reliability of Shelton's testimony by cross-examining him at the July 2017 trial. Moreover, unlike *Melchor*, Shelton's testimony was not the only link between defendant and the shooting. The evidence established that the police recovered from the scene strands of hair matching defendant's DNA profile, which tended to show he was present at Jesse's home during the shooting. Given

this additional evidence linking defendant and the crime, Shelton’s credibility was not as definitive a factor of defendant’s guilt as was the case in *Melchor*. See *Rush*, 401 Ill. App. 3d at 12 (distinguishing *Melchor* because physical evidence linked the defendant to the offense, such that a deceased witness’s prior testimony “was not as central an issue as it was for the testimony of the deceased witness in *Melchor*”). As a result, we conclude that *Melchor* does not apply to the present case.

¶ 56 Instead, we conclude the trial court properly determined Shelton’s testimony had sufficient guarantees of trustworthiness for admission under section 115-10.4. Even assuming, *arguendo*, Shelton’s remote criminal history from 2004 or 2005 and his consumption of drugs and alcohol some 17 hours before identifying defendant could suggest his testimony was untrustworthy, the balance of the remaining factors weigh in favor of trustworthiness.

¶ 57 Most important, defendant had the opportunity to—and did—cross-examine Shelton at defendant’s July 2017 trial. Indeed, at that time, defendant took the opportunity to explore the very issue he claims bars the admission of Shelton’s testimony—Shelton’s credibility—by asking him whether he consumed more than the two or three beers that he claimed to have had prior to the shooting. See *Smith*, 333 Ill. App. 3d at 637 (noting that whether prior testimony was subject to cross-examination “is a significant factor” in determining its trustworthiness under section 115-10.4); *Rush*, 401 Ill. App. 3d at 11-12 (concluding the deceased witness’s prior testimony was sufficiently trustworthy under section 115-10.4 where, among other things, she was subjected to cross-examination by the defendant at the defendant’s prior trial). Because defendant had a meaningful opportunity to test the reliability of Shelton’s testimony at the July 2017 trial, this factor weighs heavily in favor of that testimony being trustworthy. See *People v. Rice*, 166 Ill. 2d 35, 41 (1995) (“For an opportunity to cross-examine to be considered

meaningful, and therefore adequate and effective, the motive and focus of the cross-examination at the time of the initial proceeding must be the same or similar to that which guides the cross-examination during the subsequent proceeding.”).

¶ 58 Additionally, the fact that Nikko was Shelton’s nephew diminishes the likelihood Shelton had a motive to testify falsely because Shelton would have had an interest in bringing his nephew’s killer to justice. See *Melchor*, 376 Ill. App. 3d at 455 (noting the fact that the deceased witness was a friend of the victim and would want to see the victim’s murderer brought to justice was a factor weighing toward trustworthiness). Accordingly, this factor also weighs in favor of trustworthiness.

¶ 59 Moreover, defendant’s speculative claim that Shelton testified with the hope of making a deal with the State is wholly unsupported. Defendant suggests Shelton may have provided his testimony to curry favor with the State regarding a potential charge of possession of a controlled substance relating to his presence near cocaine on the day of the shooting. However, nothing in the record even hints that Shelton either faced criminal liability or feared exposure to such liability. Defendant points to nothing indicating, for example, at the time of Shelton’s testimony, Shelton was in police custody or had a pending charge of possession of a controlled substance. See *Smith*, 333 Ill. App. 3d at 637 (noting “the fact that [the witness] had been in police custody at the time of his grand jury testimony indicates the possibility that he testified in the hopes of making a deal”); *Melchor*, 376 Ill. App. 3d at 456 (noting witness’s prior testimony was untrustworthy, in part, because evidence of a pending robbery charge against him at the time of his testimony suggested he had hopes of currying favor with the State). Absent any evidence to suggest Shelton hoped to make a deal with the State, this factor also weighs in favor of trustworthiness.

¶ 60 Further, we emphatically reject defendant’s claim that Shelton revealed a character for untruthfulness during his testimony. Defendant points to Shelton’s claim he had no more than two or three beers prior to the shooting as proof of Shelton’s dishonesty. Defendant contends Shelton’s testimony was flatly contradicted by evidence indicating he had a BAC of 0.2 because a person would have to consume significantly more than two or three beers to reach such a high BAC. Defendant’s claims are far from persuasive.

¶ 61 Although defendant vociferously argues the purported discrepancy between the number of beers Shelton claimed to have consumed and his high BAC measured after the shooting was the result of Shelton’s conscious effort to engage in deception, he points to not a scintilla of evidence to support that claim. The record *does*, however, contain evidence suggesting the discrepancy was merely the result of an innocent mistake or a simple misunderstanding.

¶ 62 For example, Rossi testified that a patient suffering from a gunshot wound could go into shock as a result of blood loss, which can affect his or her ability to recall or describe events. Shelton’s testimony reflected this. Among other things, Shelton noted he was a “bit fuzzy” after the shooting, could not recall whether he had been administered pain medication at the hospital, and remembered only being shot once, despite having suffered gunshot wounds to both his torso and thigh. Defendant fails to provide any evidence or argument to contradict the obvious explanation that Shelton simply had a mistaken recollection about the number of beers he consumed due to the traumatic event he experienced and the injuries he sustained.

¶ 63 In fact, defendant adopts this very position in another portion of his brief to argue Shelton’s testimony was unreliable because the traumatic nature of the event could have “affected Shelton’s ability to accurately perceive and recall the incident.” But this second assertion directly undercuts his claim Shelton *intentionally* presented false testimony. In other words, defendant

cannot have it both ways by arguing both that Shelton consciously testified falsely and that Shelton's testimony was based upon a mistaken recollection.

¶ 64 Additionally, defendant cannot convincingly argue Shelton consciously testified falsely about the amount of beer he drank because, as the trial court noted, the record does not establish the size of the beers Shelton consumed prior to the shooting. Although defendant contends Shelton must have consumed approximately six 12-ounce beers to reach a BAL of 202, Shelton never claimed he was drinking 12-ounce beers. He testified only that he consumed "two or three beers," and defendant's counsel never sought clarification as to how many ounces each beer was. Assuming Shelton was consuming 24-ounce beers, his testimony he had two or three would have been consistent with defendant's claim a BAL of 202 required the consumption of approximately six 12-ounce beers. We will not excuse counsel's failure to seek clarification from Shelton about the size of the beers he consumed by attributing to Shelton a nefarious intent to present deceptive testimony. Accordingly, defendant has failed to establish Shelton had a character for untruthfulness, which weighs in favor of trustworthiness.

¶ 65 Finally, to the extent defendant argues Shelton's demeanor in State's exhibit No. 27 depicting his photo identification of defendant establishes that Shelton's identification cannot be considered trustworthy, we reject that argument. Defendant asserts Shelton's identification is not reliable because Shelton appeared to be "mentally impaired" from pain medication, drugs, or alcohol in that he constantly closed his eyes and failed to respond to Lenover while he was explaining the lineup process. However, defendant directs us to no evidence to establish any such impairment. Indeed, Lenover testified he was not sure whether Shelton was "nodding out" or simply "not paying attention." In turn, Rossi testified nothing indicated Shelton was given morphine and it was not reasonable to assume that, because a patient is receiving intravenous

therapy, he must have been administered pain medication. Moreover, although Shelton admitted he consumed drugs and alcohol prior to the shooting, nothing indicated he was suffering from impairment at the time of treatment or during the photo identification, which occurred some 17 hours after the shooting. Beyond that, Rossi testified some individuals are more tolerant to alcohol than others, such that a person with a high alcohol tolerance at a BAL of 202 could be “completely normal.” To that point, Rossi testified Shelton was “alert and responsive” and “answering questions appropriately” at the time of treatment. Accordingly, we reject defendant’s claim Shelton’s demeanor in State’s exhibit No. 27 rendered his identification unreliable.

¶ 66 Given the foregoing, the trial court properly weighed the appropriate factors and reasonably concluded Shelton’s testimony had sufficient guarantees of trustworthiness to warrant admission under section 115-10.4. Accordingly, we conclude that the trial court did not abuse its discretion by admitting Shelton’s testimony.

¶ 67 *2. The State Did Not Present Perjured Testimony in Violation of
Defendant’s Right to Due Process*

¶ 68 a. The Applicable Law and Standard of Review

¶ 69 The State violates a defendant’s constitutional right to due process of law if it knowingly uses perjured testimony to obtain a criminal conviction. *People v. Simpson*, 204 Ill. 2d 536, 552 (2001). Accordingly, a conviction obtained through the knowing use of perjured testimony must be set aside, and the same result applies when the State allows false testimony to go uncorrected. *Id.*

¶ 70 “A person commits perjury when, under oath or affirmation, in a proceeding or in any other matter where by law the oath or affirmation is required, he or she makes a false statement, material to the issue or point in question, knowing the statement is false.” 720 ILCS 5/32-2(a)

(West 2014). Knowledge of the falsity of the statement is an essential element of perjury. *People v. Kang*, 269 Ill. App. 3d 546, 552 (1995). It is the defendant’s burden to show the State knowingly used perjured testimony, and it must be established “by clear, convincing and satisfactory evidence, not only that the testimony was false, but that the testimony was ‘willfully and purposefully falsely given.’ ” (Emphases in original.) *People v. Redmond*, 265 Ill. App. 3d 292, 309 (1994) (quoting *People v. Trimble*, 220 Ill. App. 3d 338, 346 (1991)). Once the defendant has established the State knowingly used perjured testimony, the burden shifts to the State to prove beyond a reasonable doubt the testimony did not contribute to the conviction. *People v. Bracey*, 51 Ill. 2d 514, 520 (1972).

¶ 71 We note that, citing *People v. Perkins*, 292 Ill. App. 3d 624 (1997), defendant asserts that whether the State knowingly presented false testimony at trial in violation of his right to due process should be reviewed *de novo*. The court in *Perkins*, however, did not specify the standard of review it applied in its analysis of the alleged use of perjured testimony. Other cases have applied a manifest-weight-of-the-evidence standard of review when considering the alleged use of perjured testimony. See *People v. Perkins*, 2020 IL App (2d) 170963, ¶ 41; *People v. Veal*, 58 Ill. App. 3d 938, 964-65 (1978). The State offers no input as to the appropriate standard of review. *Perkins* and *Veal* support applying the manifest-weight-of-the-evidence standard of review. Nonetheless, we reach the same conclusion under either standard.

¶ 72 b. This Case

¶ 73 Defendant argues “it is a fact” Shelton falsely testified at the July 2017 trial that he drank only two or three beers prior to the shooting because other evidence established he had a BAC of 0.2 following the incident, which roughly requires six 12-ounce, 5% alcohol by volume (ABV) beers to reach. He further contends although the State knew this information, it presented

Shelton's testimony on remand without correcting it or informing the jury it was false. Defendant asserts he is entitled to a new trial because there is a reasonable likelihood the State's presentation of Shelton's perjured testimony affected the outcome of the trial by causing the jury to improperly determine Shelton (1) was not impaired during the shooting, (2) accurately perceived defendant as the shooter, and (3) reliably identified defendant to the police.

¶ 74 We reject this argument. Contrary to defendant's claims, we conclude he has wholly failed to establish Shelton committed perjury because defendant cannot show by clear, convincing, and satisfactory evidence Shelton willfully and purposefully gave false testimony. As explained above (*supra* ¶¶ 59-62), defendant points to nothing in the record to indicate Shelton consciously engaged in deception when he testified he had only two or three beers. Indeed, as the State argues, "it is entirely possible that [Shelton] only remembered drinking two or three beers," particularly where evidence was presented that a traumatic injury such as a gunshot can affect an individual's ability to recall or describe events. See *People v. Columbo*, 118 Ill. App. 3d 882, 968 (1983) (concluding perjury could not be established where false testimony could have been inadvertent or due to a lapse of memory). Additionally, as we have noted, because no evidence of the size of the beers Shelton was consuming was elicited, it is entirely possible Shelton's testimony he only had two or three beers was truthful and consistent with his BAC of 0.2 because he was consuming beers larger than 12 ounces.

¶ 75 On this record, Shelton's testimony regarding the number of beers he consumed can, at best, only be interpreted as inconsistent with evidence of his BAC following the shooting. However, "[i]nconsistencies between the testimony of witnesses and an alleged improbability of testimony go only to the weight and credibility of the evidence and fall short of establishing a knowing use of perjury." *People v. Tyner*, 40 Ill. 2d 1, 3 (1968). Accordingly, a mere inconsistency

in a witness's testimony cannot, on its own, constitute perjury. See *People v. Amos*, 204 Ill. App. 3d 75, 85 (1990) (“Mere inconsistencies in testimony do not establish perjury or that the State knowingly used perjured evidence.”).

¶ 76 Accordingly, because defendant has failed to show the State knowingly used perjured testimony to secure his conviction, we conclude the trial court's determination the State did not present perjurious testimony from Shelton was not against the manifest weight of the evidence.

¶ 77 B. The Trial Court Properly Rejected Defendant's Request To
Present Gussow as an Expert Witness

¶ 78 Defendant next argues the trial court violated his right to due process by prohibiting him from calling Gussow as an expert witness at trial. Specifically, he argues that, by barring Gussow from presenting his expert testimony, the court deprived him of the ability to provide evidence that would assist the jury in assessing Shelton's credibility and the reliability of Shelton's identification of defendant as the shooter. We disagree.

¶ 79 Initially, we note defendant, citing *People v. Lerma*, 2016 IL 118496, ¶ 23, frames this issue as a due process claim. In *Lerma*, the supreme court stated, “A criminal defendant's right to due process and a fundamentally fair trial includes the right to present witnesses on his or her own behalf.” *Id.* The State argues defendant's claim amounts to a mere evidentiary issue that should be addressed without resorting to constitutional principles. See *People v. Brown*, 225 Ill. 2d 188, 200 (2007) (noting constitutional issues should be reached only as a last resort and a court should resolve a case on nonconstitutional grounds if possible). We agree with the State.

¶ 80 Although *Lerma* referred to the defendant's right to due process in the context of the defendant's challenge to the refusal to allow expert witness testimony regarding the reliability

of eyewitness identifications, the court nevertheless reviewed that refusal for an abuse of discretion under general evidentiary principles. *Lerma*, 2016 IL 118496, ¶¶ 10, 23, 25. Thus, *Lerma* did not change the relevant law but “reaffirmed the longstanding rule that admission of expert testimony is within the trial court’s discretion and shall not be overturned on review absent an abuse of that discretion.” *People v. Brown*, 2020 IL App (1st) 190828, ¶ 52.

¶ 81 Accordingly, we address the trial court’s decision regarding whether to admit expert witness testimony for an abuse of discretion. *Lerma*, 2016 IL 118496, ¶ 23. An abuse of discretion occurs only when the court’s decision is arbitrary, fanciful, or so unreasonable that no reasonable person would agree with it. *Id.*

¶ 82 1. *The Applicable Law and Standard of Review*

¶ 83 “In Illinois, generally, an individual will be permitted to testify as an expert if his experience and qualifications afford him knowledge which is not common to lay persons and where such testimony will aid the trier of fact in reaching its conclusion.’ ” *People v. King*, 2020 IL 123926, ¶ 35 (quoting *People v. Enis*, 139 Ill. 2d 264, 288 (1990)). When determining whether to admit expert testimony, the trial court, in the exercise of its discretion, should “carefully consider the necessity and relevance of the expert testimony in light of the particular facts of the case before admitting that testimony for the jury’s consideration.” *Id.*

¶ 84 Expert testimony is necessary only when (1) the subject is particularly within the witness’s experience and qualifications while outside that of the average juror and (2) it will aid the jury in reaching its conclusion. *Id.* Additionally, when proposed expert testimony addresses matters of common knowledge, such testimony is inadmissible unless the subject is difficult to understand and explain. *Id.*

¶ 85 2. *This Case*

¶ 86 Defendant sought to call Gussow to testify about the “actual number of beers required to be consumed to reach a level of 202” to “impeach the testimony of *** Shelton that he consumed no more than 2 or 3 beers prior to the incident.” Defendant argues such testimony would encompass how a serum alcohol level is calculated and the average rate at which alcohol is eliminated from the body. Accordingly, Gussow would opine Shelton’s BAL would have been higher at the time of the shooting, when accounting for his body’s elimination of alcohol, and Shelton would have needed to consume approximately six 12-ounce, 5% ABV beers to reach the BAL of 202 he had at the hospital. In barring Gussow’s testimony, the trial court explained that, because evidence had been adduced that alcohol tolerance varies by person, the number of beers Shelton would have had to drink was inconclusive.

¶ 87 We conclude that the trial court did not abuse its discretion. First, defendant has not demonstrated that Gussow’s proposed testimony fell outside the ken of an average juror so as to necessitate expert assistance in this case. Indeed, defendant admits in his brief “lay individuals have general knowledge of what a BAL is given the well-known legal driving limit” and that “lay individuals know that alcohol levels dissipate over time.” And when arguing his motion *in limine* to admit Gussow’s testimony, defendant argued lay people “have an idea” about “alcohol levels.” Consistent with those acknowledgements, we do not believe it is outside of the knowledge of the average juror to determine that an individual who consumes high amounts of alcohol will have a correspondingly high BAC.

¶ 88 Here, the jury heard testimony from Shelton he consumed only two or three beers before the shooting. Rossi, however, testified Shelton’s BAC measured 0.2, or more than twice the legal driving limit in Illinois. Although defendant contends Gussow’s testimony was necessary to assist the jury in evaluating Shelton’s credibility, we believe a jury would be fully capable of

using its own knowledge of “what a BAL is” and “the well-known legal driving limit” to (1) assess whether consumption of two or three beers could result in a BAC over twice the legal driving limit and (2) apply that assessment to a determination of whether Shelton’s testimony was credible.

¶ 89 Further, even assuming Gussow’s testimony *did* fall outside of the average juror’s expertise, his testimony would nevertheless fail to aid the jury in this case. As previously noted, Shelton did not testify how many ounces were in each beer he consumed, and defendant points to nothing in the record to establish the same. Although defendant intended to “impeach” Shelton’s testimony that he had only two or three beers by introducing Gussow’s testimony that Shelton likely had to consume approximately six 12-ounce beers to reach the BAL he had at the hospital, the jury would have been unable to effectively use Gussow’s testimony to evaluate Shelton’s credibility absent information as to the number of ounces contained in each beer Shelton consumed.

¶ 90 In other words, the jury would be in no better position to assess Shelton’s credibility because Shelton could very well have been consuming beers larger than 12 ounces. To that point, Shelton’s consumption of two or three 24-ounce beers would be consistent with Gussow’s proposed testimony that Shelton must have consumed six 12-ounce beers. Because Gussow’s testimony would not have aided the jury, we conclude the trial court reasonably barred it.

¶ 91 Given the foregoing, we conclude the trial court’s rejection of defendant’s request to present Gussow as an expert witness was not an abuse of the court’s discretion.

¶ 92 C. Trial Counsel Did Not Provide Ineffective Assistance

¶ 93 Next, defendant argues his trial counsel was ineffective for failing to object to the admission of State’s exhibit No. 27, a video recording depicting Shelton’s photo identification of defendant. He contends that (1) the video was inadmissible hearsay that counsel should have prevented from being admitted and (2) the admission of the video prejudiced him. We disagree.

¶ 94

1. *The Applicable Law and Standard of Review*

¶ 95 We review claims of ineffective assistance of counsel under the two-pronged test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Keys*, 2025 IL 130110, ¶ 57. A successful claim of ineffective assistance of counsel requires a defendant to show both (1) counsel’s performance was deficient and (2) the deficient performance resulted in prejudice to the defendant. *Id.*

¶ 96 “To establish deficient performance, a defendant must show that his attorney’s performance fell below an objective standard of reasonableness.” *People v. Bates*, 2018 IL App (4th) 160255, ¶ 47. We employ a highly deferential assessment of counsel’s performance on review. *Id.* To that end, a defendant “must overcome the strong presumption that the challenged action or inaction may have been the product of sound trial strategy,” which includes decisions such as what matters to object to. *Id.* Strategic choices by counsel are “‘virtually unchallengeable.’” *Id.* (quoting *People v. Manning*, 241 Ill. 2d 319, 333 (2011)).

¶ 97 A defendant establishes prejudice by showing that, but for counsel’s errors, there is a reasonable probability that the result of the proceeding would have been different. *Id.* ¶ 48.

¶ 98 We review *de novo* whether a defendant received ineffective assistance of counsel. *People v. Gittings*, 2025 IL App (4th) 241445, ¶ 54.

¶ 99

2. *This Case*

¶ 100 Defendant argues counsel’s failure to object to the admission of the video was deficient because the video, which contained Shelton’s claim defendant was the person who shot him and held a gun to Nikko’s head, amounted to inadmissible hearsay for which no exception applied. Defendant contends he was prejudiced by counsel’s failure to object to the admission of the video because “Shelton was the only person who identified defendant as the offender.”

According to defendant, absent Shelton's prior hearsay identification, the jury likely would have found Shelton's in-court identification of defendant less reliable, such that the outcome of the trial would have been different.

¶ 101 We reject this argument because defendant can show neither that his counsel's performance was deficient nor that he suffered prejudice.

¶ 102 Regarding counsel's performance, defendant fails to establish that counsel's decision was not strategic. Decisions such as whether to file a motion to suppress evidence or when to object are strategic decisions to which we accord great deference. See *People v. Wilson*, 164 Ill. 2d 436, 454-55 (1994); *Bates*, 2018 IL App (4th) 160255, ¶ 52. Consistent with defendant's prior arguments that Shelton's demeanor in the video suggested he was impaired from drugs, alcohol, or pain medication, counsel could have reasonably sought to permit the introduction of the video to allow the jury to view his purported impairment. Counsel could have rationally determined the jury's observation of Shelton's behavior could lead it to believe Shelton's identification of defendant as the shooter was unreliable. Accordingly, we conclude defendant fails to demonstrate his counsel's performance was deficient.

¶ 103 Nor can defendant establish he suffered prejudice. Even assuming for argument's sake that counsel should have objected to State's exhibit No. 27 and successfully argued against its admission, the State nevertheless also presented Shelton's in-court identification of defendant from the July 2017 trial. Although Shelton was not physically present when his testimony was presented at the November 2024 trial, defendant's counsel had the opportunity at the 2017 trial to question Shelton about his demeanor at the time he received treatment and during the photo lineup. The reading of Shelton's testimony established that Shelton had admitted he "[c]ould have been" nodding off while detectives were asking him questions, but he ultimately could not remember.

¶ 104 The jury, having been presented with Shelton's prior in-court identification of defendant and information bearing upon the reliability of that identification, was free to assess what weight to assign to Shelton's identification, and we will not substitute our judgment for that of the trier of fact on questions involving the weight of the evidence or the credibility of witnesses. *People v. Gray*, 2017 IL 120958, ¶ 35.

¶ 105 Moreover, as we previously explained, Shelton's identification of defendant was not the only evidence linking defendant to the crime. The State presented evidence that the police recovered strands of hair that matched defendant's DNA profile from the crime scene, suggesting he was at the scene at the time of the shooting. The jury could have attributed significant weight to this circumstantial evidence and convicted him even without Shelton's out-of-court identification in State's exhibit No. 27. See *People v. Davis*, 2023 IL App (1st) 220231, ¶ 26, 42-43 (rejecting the defendant's argument counsel was ineffective for failing to impeach a witness's identification testimony where other circumstantial evidence was sufficient to establish his guilt). Accordingly, we conclude defendant also failed to demonstrate he suffered prejudice.

¶ 106 Given the foregoing, we reject defendant's claim of ineffective assistance of counsel.

¶ 107 D. Reversal Due to Cumulative Error Is Unwarranted

¶ 108 Last, defendant argues that even if none of the errors he identified warrant reversal in isolation, the errors in combination and their resulting prejudice denied him a fair trial, such that reversal of his convictions is appropriate. We are unpersuaded. Because we have concluded defendant failed to establish any error on the merits of any of his individual claims, his argument of cumulative error based on those claims also fails. *People v. Gilker*, 2023 IL App (4th) 220914, ¶ 104.

¶ 109

III. CONCLUSION

¶ 110

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

¶ 111

Affirmed.

People v. Brown, 2026 IL App (4th) 250281

Decision Under Review: Appeal from the Circuit Court of Peoria County, No. 15-CF-484; the Hon. Sean W. Donahue, Judge, presiding.

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