

No. 1-09-0739

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Third Division
May 4, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,) Appeal from the
) Circuit Court of
Plaintiff-Appellee,) Cook County.
)
v.) 02 CR 25936
)
JOSE BARRERA,) Honorable
) Preston L. Bowie,
Defendant-Appellant.) Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Quinn and Justice Murphy concurred in the judgment.

ORDER

Held: The record reveals that defendant understood and spoke English and that the State proved that defendant was willfully absent from court, therefore, the trial court did not err when it held a trial and sentenced defendant *in absentia*; evidence regarding defendant's prior immigration violation was properly admitted because it showed how the investigation was conducted and that the defendant evaded the trial by concealing himself and this evidence connected the defendant to the crime; and defendant forfeited his argument regarding the State's comment during its closing argument.

Following a jury trial, Jose Barrera, the defendant, was found guilty of aggravated reckless homicide, reckless homicide, obstruction of justice, and aggravated driving under the influence of

alcohol. Barrera was not present for the trial or the sentencing hearing.

BACKGROUND

The Arraignment

On October 30, 2002, during Barrera's arraignment, defense counsel informed the court that Barrera did not speak English and needed an interpreter so the judge passed the case. When the case was recalled, the record does not indicate whether an interpreter was present in court, but the judge asked Barrera, "Mr. Barrera, do you understand if you fail to appear on your court dates, you could be tried, convicted and sentenced even though you're not present?" Barrera responded, "[y]es" and there was no objection from defense counsel.

On October 31, 2003, the trial court issued a warrant for Barrera's arrest when he failed to appear in court for a Supreme Court Rule 402 conference. Ill. §. Ct. R. 402 (eff. July 1, 1997). Prior to that date, Barrera appeared in court on at least eight other occasions.

On March 22, 2005, after a number of unsuccessful attempts were made to locate Barrera, the State sought to proceed with Barrera's trial, *in absentia*. During the hearing, the court heard testimony from Brian Murphy, an investigator with the Cook County State's Attorney office. Murphy testified that he was assigned to search for Barrera after he failed to appear in court on October 31, 2003. Murphy searched for Barrera in local area hospitals, in jails, at his last known addresses, and checked with his last employer, but his efforts to locate Barrera were unsuccessful. Murphy testified that he spoke with Barrera's girlfriend, Dawn Weaver, who informed him that Barrera had a problem with immigration and that she believed he went back to Mexico. Murphy also

spoke with Investigator George Petros from the Department of Homeland Security who informed him that he was also looking for Barrera for an immigration violation. Based upon the evidence presented, the trial court found that Barrera had willfully absented himself from being present at trial and proceeded with the trial *in absentia*.

The Trial

At the trial, Reynaldo Jara, a Cook County Sheriff, testified that he and the decedent, Kenneth Valera, were together from the evening of Saturday, July 27, 2002, until the morning of Sunday, July 28, 2002. On the evening of July 27, Jara and Valera rode their Harley Davidson motorcycles to a party and several bars beginning at approximately 7:00 p.m. At approximately 2:00 a.m. on July 28th, Jara and Valera were riding home and proceeding north on Torrence from a bar on 138th Street. At the intersection of 130th and Torrence, a white van, driving east on Torrence, ran a red light driving at 40 or 50 miles per hour.

Jara testified that while riding east on 133rd street, two blocks east of Brainard street, they saw the white van parked in front of a funeral home. Jara and Valera pulled over and approached the van. Jara pulled out his Cook County Sheriff's badge, showed it to the passenger, and told the passenger that the driver should not be driving. Jara and Valera then got back on their motorcycles and proceeded home.

Jara testified that the last thing he remembered was lying on the ground and a lady telling him to stay there. He passed out again and woke up in an ambulance that was transporting him to Christ Medical Center. Jara was hospitalized for six days, suffered a broken pelvis, underwent surgery and rehabilitation. He identified a photograph of Barrera during trial as the driver of the white van at the

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time it was parked outside the funeral home on 133th Street.

George Pena testified that during the early morning of July 28th, at approximately 2:00 a.m., he was at 3149 East 133rd Street, in Chicago, “stuffing” newspapers at a building. He heard motorcycles and looked outside where he saw two motorcycles traveling at about 10 to 20 miles per hour. About ten to twenty seconds later, he heard a vehicle accelerating very fast, faster than the motorcycles, looked outside and saw a white van. He then heard a loud crash. He went outside and saw the white van and the motorcycles about one and a half blocks away from the building he was working in. He went back inside and called the police.

Stephanie Kairns testified that in the early morning of July 28th at approximately 2:00 a.m., she was headed west on 133rd Street driving home from her boyfriend’s house. She saw a van swerve and crash into a light pole. Kairns testified that she saw a man lying on the right side of the street, whom she later identified as Jara. She saw the body of another man lying by a fire hydrant. She also testified that she saw a group of people get out of the van and run into an alley. Kairns got out of her car and stayed with Jara until an ambulance arrived.

Angela Juco testified that on the morning of July 28th at approximately 2:00 a.m., she was at home on 133rd and Burley, when she heard tires screeching and a big boom. She went outside and saw two motorcycles, two men on the ground, and a white van that had crashed into a pole.

Sharon Norway, a traffic specialist with the Chicago Police Department (“CPD”) testified that on July 28th she and her partner, Officer Robert Fronczak, were assigned to investigate the accident that caused Valera’s death. When she arrived at the scene of the accident, the ambulance had already arrived and taken Valera and Jara away. Officer Norway observed empty beer cans

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inside of the white van, but there were no skid marks at the scene of the accident. According to Officer Norway, this indicated that the van did not break prior to the accident.

After Officer Norway arrived at Cook County Hospital's emergency room, she observed Juana Vasquez, Barrera's mother, and Filippe Barrera, Barrera's brother, being treated. At approximately 6:00 a.m., Officer Norway interviewed Barrera who was in the waiting room of the hospital. Barrera informed Officer Norway that he was too drunk to drive, that someone else, whom he did not know, had driven the van, and that he was in the back of the van. Barrera also told Officer Norway that he did not recall anything at the scene of the accident because he was too drunk. Officer Norway testified that she did not speak Spanish, that she spoke to Barrera in English and that she believed that Barrera understood her. Officer Norway then identified the white van in a photograph, and she identified a photograph which showed three beer cans inside the van.

Officer Sisler, a Chicago police officer in the major accidents department, testified that on July 28th he and his partner, Officer Holland, went to Cook County Hospital to interview Barrera's mother and brother. The officers received Barrera's name as the suspect driving the van.

Officer Mullins, a traffic specialist with the Chicago police, testified that on July 28th he went to Barrera's home at 142 East Wabash in Hammond, Indiana. Barrera spoke to Officer Mullins in English and Barrera agreed to return to Chicago for further questioning. Officer Mullins drove Barrera to the CPD office at 1718 South State in Chicago. At 2:15 p.m., Officer Mullins took Barrera to Officer Soccoro Sisler's office where he was interviewed by Officer Sisler. Officer Sisler advised Barrera of his *Miranda* rights in both English and Spanish and Barrera indicated that he understood his rights and was willing to talk with the officer. Barrera admitted attending a baptismal

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party where he had two to three beers.

According to Barrera, his brother, uncle, father, mother and his uncle's girlfriend, were in the vehicle. Barrera told the officer that he drove south on the expressway, and exited at 130th Street heading east. Barrera also told Officer Sisler that he saw four motorcycles and may have cut them off. The cyclist followed him and flicked their lights so he pulled over, and two cyclists approached the vehicle with one on each side of the van. When his brother got out of the van, a cyclist struck him. Two of the cyclists chased his brother while the other two got in front of the van. Barrera told Officer Sisler that he was scared, so he decided to drive away. As he drove away, two of the cyclists criss-crossed in front of his van and tried to get him to stop. His mother started screaming and Barrera turned around and told her to calm down. While turning around, he hit the motorcycles with the van, and then the van hit a light pole.

Barrera told Officer Sisler that he remained at the scene of the accident but he never admitted that he was the driver of the van. Barrera also told Officer Sisler that he did not know who the driver was. Officer Sisler testified that during the interview with Barrera, they switched back and forth between English and Spanish.

Alexander Calatayud, a Chicago police officer, testified that on July 28th at approximately 2:00 a.m., he appeared at the scene of the accident. He approached the white van and spoke to Barrera who was standing outside the van on the driver's side. Officer Calatayud asked Barrera in broken Spanish, "Donde esta?", to tell him who was driving the van. Barrera responded in English that the driver ran down the alley. Officer Calatayud observed empty beer cans in the van. Officer Calatayud later identified a photo of Barrera as the person he spoke to standing by the driver's side

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of the van and testified that Barrera was under the influence of alcohol at the time he saw him. He stated that the defendant spoke to him in broken English.

Diane Shapiro, a probation officer in the Cook County Adult Probation Department, testified that she interviewed Barrera prior to his trial on April 23, 2003, at her office. Barrera spoke to her in both English and Spanish. Shapiro did not think Barrera had any problem understanding her when she spoke in English. Barrera also told Shapiro that he was drunk at the time of the accident.

Margaret Anderson, a supervisor in the office of the Clerk of the Circuit Court of Cook County, testified that the court records indicated that Barrera was not in court on October 31, 2003, and a warrant was issued for his arrest. She testified that the arrest warrant was still outstanding as of March 23, 2005.

Murphy, the State's Attorney investigator, testified that he was assigned to search for Barrera after he failed to appear in court on October 31, 2003. His efforts to locate Barrera were unsuccessful. Murphy testified that he spoke with Investigator George Petros from the Department of Homeland Security who informed him that he was also looking for Barrera for an immigration violation.

Closing Arguments

After all the witnesses testified, the parties made their closing arguments. During the State's rebuttal argument, the prosecutor made the statement that the State's burden of proof "is a burden that is met every single day in every single courtroom in this country, in this State, in this country." Defense counsel's objection to the statement was overruled.

Verdict and Sentencing

On March 24, 2005, a jury found the defendant guilty of aggravated reckless homicide, reckless homicide, aggravated driving under the influence of alcohol, and obstruction of justice. On March 31, 2005, Barrera was not present in court but a hearing was held on Barrera's motion for a new trial and the motion was denied. The trial court sentenced Barrera to 14 years imprisonment for reckless homicide (which was merged with aggravated reckless homicide), three years imprisonment for aggravated driving under the influence of alcohol, and three years imprisonment for obstruction of justice, to be served concurrently.

Barrera's Arrest

After being arrested on an outstanding warrant, Barrera appeared in court on February 26, 2009, but the case was continued. On March 6, 2009, with an interpreter present, Barrera's motion to reconsider his sentence was denied. Barrera was then admonished, informed about his appellate rights, and he filed the instant appeal.

ANALYSIS

Standard of Review

Barrera argues that the trial court erred when it failed to use an interpreter when admonishing him about the possibility of being tried and sentenced *in absentia*. The State first argues that Barrera has forfeited this argument on appeal by failing to challenge the adequacy of this admonishment in the trial court. Alternatively, the State argues that the trial court adequately admonished Barrera of the possibility of a trial *in absentia* if he willfully failed to appear in court.

Barrera acknowledges that he *both* failed to object at trial and failed to include the error in a written posttrial motion, and therefore forfeits appellate review of that error. *People v. Johnson*,

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238 Ill. 2d 478, 484 (2010), citing *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). However, Barrera requests that this court review the issue under the “plain error” doctrine which allows reviewing courts to consider unpreserved errors in certain limited circumstances. *People v. Sargent*, 239 Ill. 2d 166, 189 (2010); 134 Ill. R. 2d 615(a). The first step in plain-error analysis is to determine whether an error has occurred (*Sargent*, 239 Ill. 2d at 189-90), because without error there can be no plain error. *People v. Wade*, 131 Ill. 2d 370, 376 (1989).

In order to determine whether the trial court committed error in admonishing Barrera, we must first determine whether Barrera willfully avoided being present at trial. A criminal defendant has a constitutional right to be present at all stages of the trial and to confront all witnesses against him. U.S. Const., amend. VI; Ill. Const.1970, art. I, §8; *People v. Phillips*, No. 109413, 2011 WL 1049790, at *1 (Mar. 24, 2011). It is well established that “[i]t is not only defendant's right to be present, but it is also [defendant's] duty, especially where [defendant] has been released on bail.” *People v. Smith*, 188 Ill. 2d 335, 340 (1999). Trials conducted in the absence of a defendant are not favored, and courts are reluctant to permit a trial to proceed in a defendant's absence. *Smith*, 188 Ill. 2d at 340. However, a defendant’s voluntary absence from trial may be construed as an effective waiver of his constitutional right to be present and he may be tried and sentenced *in absentia*, even if he is not specifically warned that this is a possible consequence of his absence. *Phillips*, 2011 WL 1049790, at *1. A trial court's decision to proceed with a trial *in absentia* will not be reversed unless the trial court abused its discretion. *Smith*, 188 Ill. 2d at 341.

Trial in Absentia

Under section 115-4.1(a) of the Illinois Code of Criminal Procedure of 1963, the trial court

may commence a trial *in absentia* if “the State has affirmatively proven through substantial evidence that the defendant is wilfully avoiding trial.” 725 ILCS 5/115-4.1(a) (West 2004); *Smith*, 188 Ill. 2d at 341. To establish a *prima facie* case of wilful absence, the State must show that the defendant (1) was advised of the trial date; (2) was advised that failure to appear could result in a trial *in absentia*; and (3) did not appear for trial when the case was called. *Smith*, 188 Ill. 2d at 343.

First, the record reveals that Barrera was arraigned on October 30, 2002, and was advised that if he failed to appear he would be tried and sentenced *in absentia*. On October 31, 2003, one year after his arraignment, Barrera failed to appear in court and a warrant was issued for his arrest. Murphy attempted to locate Barrera by completing a custody check of federal, state and local prisons and jails; checking local hospitals; going to the addresses listed for Barrera; going to Barrera’s last employer; and by contacting other state and federal officials. When Barrera could not be located a certified notice from the clerk of the circuit court was sent to Barrera’s last known address on March 10, 2005, notifying him that the trial was set for March 22, 2005. Therefore, the record establishes that on March 10, 2005, Barrera was advised by certified mail from the clerk of the circuit court of the March 22, 2005, trial date.

Second, contrary to Barrera’s argument, the record also establishes that Barrera was advised by the trial court at his arraignment that failure to appear could result in his being tried and sentenced *in absentia*. The judge asked Barrera, “Mr. Barrera, do you understand if you fail to appear on your court dates, you could be tried, convicted and sentenced even though you’re not present?” Barrera responded, “[y]es” and there was no objection from defense counsel.

Barrera argues that this admonishment was inadequate because the trial court’s failure to use

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an interpreter effectively rendered him not present for the admonishment. But the record does not support Barrera's argument. During Barrera's arraignment, we note that the case was called and defense counsel indicated that Barrera did not speak English and that he needed an interpreter. However, we also note when the case was recalled, the court admonished Barrera again and asked him if he understood that if he failed to appear in court, he could be tried and sentenced *in absentia*. Barrera responded "yes" that he understood the admonishment, without objection from defense counsel.

The record also reveals that Barrera communicated in and understood English. Trial testimony established that Barrera understood and spoke English. Officer Norway testified that she did not speak Spanish, that she spoke to Barrera in English and that she believes Barrera understood her. Officer Mullins testified that Barrera spoke to him in English and agreed to come back to Chicago for further questioning. Officer Sisler testified that during the interview with Barrera, they switched back and forth between English and Spanish. Officer Calatayud testified that after he asked Barrera who was driving in Spanish, Barrera responded in English that the driver ran down the alley. Shapiro, testified that Barrera spoke to her in both English and Spanish and that she did not think Barrera had any problem understanding her when she spoke in English. Therefore, we find that Barrera understood English and was properly admonished by the trial court that his failure to appear could result in a trial *in absentia*.

Third, the record reveals that Barrera was not present for either the trial or the sentencing hearing and therefore, the State established a *prima facie* case that Barrera was willfully avoiding trial. *Smith*, 188 Ill.2d at 343 (the State may satisfy section 115-4.1(a)'s "substantial evidence" burden

by establishing a *prima facie* case that the defendant's absence is willful). Because the State affirmatively proved through substantial evidence that Barrera willfully avoided his trial and sentencing, we find that the trial court did not err or abuse its discretion when it proceeded with Barrera's trial *in absentia*. Therefore, because there was no error, there can be no plain error and Barrera has waived this issue on appeal. *Wade*, 131 Ill. 2d at 376.

Barrera relies on *People v. Thomas*, 216 Ill. App. 3d 405 (1991) and *People v. Escalante*, 256 Ill. App. 3d 239, 240 (1994), to support his argument. The facts in *Thomas* are readily distinguishable from the facts in the instant case. In *Thomas*, there was no indication in the record that the defendant *was ever advised* of the possibility that he could be tried and sentenced *in absentia*. *Thomas*, 216 Ill. App. 3d at 409. *Escalante* is also distinguishable because the defendant, unlike Barrera, (1) “*spoke only Spanish*,” (2) did not speak or understand any English, and (3) was provided with an interpreter during all of the pretrial proceedings. (Emphasis added.) *Escalante*, 256 Ill. App. 3d at 240, 245-46. Therefore, Barrera's reliance on *Thomas* and *Escalante* is misplaced.

Introduction of Evidence Regarding Barrera's Immigration Violation

Next, Barrera argues that he was denied a fair trial where evidence was admitted at trial that he was being sought for an immigration violation because the prejudicial effect of this evidence exceeded its probative value. The State argues that this issue is subject to waiver because Barrera both failed to object to the admission of the evidence and to raise the issue in his motion for a new trial. Alternatively, the State argues that the single, unobjected to, ambiguous reference was relevant to explain the steps the prosecution took to locate Barrera for trial.

The defendant acknowledges that he failed to preserve the issue and forfeited appellate review

but requests that this court review the issue under the plain error doctrine. *See Johnson*, 238 Ill. 2d at 484, citing *Enoch*, 122 Ill. 2d at 186. However, before we reach the issue of plain error, we must first determine whether the introduction of evidence regarding Barrera's immigration violation was an error because without error there can be no plain error. *Wade*, 131 Ill. 2d at 376.

Evidence of prior wrongful acts is not admissible to show a propensity to commit crimes, but is admissible where relevant for any purpose other than to show the propensity to commit crime. *People v. Robinson*, 167 Ill. 2d 53, 62 (1995). Evidence is considered relevant if it has any tendency to make the existence of any fact that is of consequence to the determination of an action more or less probable than it would be without the evidence. *People v. Illgen*, 145 Ill. 2d 353, 365-66 (1991). The trial court's decision regarding the admissibility of other-crimes evidence will not be disturbed on review absent a clear showing of an abuse of the court's discretion. *People v. Adkins*, 239 Ill. 2d 1, 23 (2010). An erroneous admission of other-crimes evidence calls for reversal only if the evidence was "a material factor in the defendant's conviction such that, without the evidence, the verdict likely would have been different." *Adkins*, 239 Ill. 2d at 23.

We find *People v. Jackson*, 232 Ill. 2d 246 (2009), a case cited by the State, dispositive of this issue. In *Jackson*, the appellate court found reversible error because the DNA expert mentioned "the fact that defendant's DNA profile was stored in a database," and that testimony was prejudicial because it allowed the jurors to speculate regarding why the defendant's DNA profile was stored in a database in Springfield. *Jackson*, 372 Ill. App. 3d at 124. The supreme court agreed with the State that "[a]llowing [the] limited testimony was necessary to explain how defendant came to be identified as the source of the DNA recovered at the crime scene." *Jackson*, 232 Ill. 2d at 265. The supreme

court stated that when considering whether to admit evidence, “the trial court must consider a number of circumstances that bear on the issue, including questions of reliability and prejudice.” *Jackson*, 232 Ill. 2d at 266. Therefore, the supreme court reversed the appellate court and upheld the trial court’s decision to admit the evidence. *Jackson*, 232 Ill. 2d at 284-85.

One consideration is whether the consequential steps in the investigation of a crime are relevant, necessary and important to a full explanation of the State’s case to the trier of fact. *Jackson*, 232 Ill. 2d at 267-68; *People v. Hayes*, 139 Ill. 2d 89, 145-46 (1990), *overruled on other grounds*, *People v. Tisdell*, 201 Ill. 2d 210, 219 (2002). Here, the information regarding Barrera’s immigration violation was introduced while Murphy, the State’s Attorney’s investigator, was testifying regarding the consequential steps he took in the investigation of Barrera’s failure to appear in court. The record establishes that Barrera failed to appear in court on October 31, 2003, and his trial began on March 22, 2005, over one and one half years later. Because Barrera failed to appear, the trial proceeded *in absentia* and the State elicited testimony from Murphy regarding the steps he took in order to locate Barrera prior to trial. Murphy’s testimony established that he attempted to locate Barrera in city, state and federal jails, in hospitals, at six addresses he was provided for Barrera, and at Barrera’s last known employer. Murphy also testified, without objection from defense counsel, that he contacted Immigration and Homeland Security and that they informed him that they were also “looking for Mr. Barrera for an immigration violation.”

Murphy’s testimony was also relevant because it connected Barrera to the crime for which he was being tried. *People v. Lewis*, 165 Ill. 2d 305, 346 (1995) (evidence of other crimes is not admissible merely to show how the investigation unfolded *unless* such evidence is also relevant to

specifically connect the defendant with the crimes for which he is being tried), citing *Hayes*, 139 Ill. 2d at 145-46. Evidence of intentional concealment is relevant and admissible as a circumstance tending to show consciousness of guilt. *Hayes*, 139 Ill. 2d at 132. The inference of guilt that may be drawn from such evidence, however, depends upon the defendant's knowledge that a crime has been committed and that he is suspected of committing it. *Hayes*, 139 Ill. 2d at 132.

Here, Barrera appeared in court at least eight times after his arraignment and he was aware that he was suspected of committing a crime. The record also reveals that Barrera was notified by certified mail that the case was proceeding to trial. Therefore, the evidence regarding Barrera's immigration violation was properly admitted to show that Barrera was evading trial and intentionally concealing himself from law enforcement.

Although an inference could have been raised in the jury's mind that Barrera committed another crime, the evidence was relevant because it explained the State's steps in the investigation of Barrera's failure to appear and connected Barrera to the crimes for which he was being tried. *Jackson*, 232 Ill. 2d at 267-68; *Lewis*, 165 Ill. 2d at 345-47; *Hayes*, 139 Ill. 2d at 145-46. Murphy's testimony was necessary to establish that Barrera's whereabouts were unknown and that he was willfully avoiding being found. The single, isolated reference to Barrera's immigration violation was not so prejudicial as to overpersuade the jury on the issue of Barrera's guilt. *Jackson*, 232 Ill. 2d at 268, citing *Lewis*, 165 Ill. 2d at 346.

We find that the introduction of evidence concerning Barrera's immigration violation was not only admissible because it explained the consequential steps in the investigation of a crime, but it also connected Barrera to the crime for which he was being tried. We also find the trial court did not err

when it admitted the evidence, therefore, the trial court did not abuse its discretion by allowing Murphy's testimony in evidence. Finally, because there was no error, we find no plain error. *Wade*, 131 Ill. 2d at 376.

The State's Comments During Closing Argument Regarding the Burden of Proof

Barrera argues that he did not receive a fair trial as a result of the State's comment during its rebuttal argument that the burden of proof "is a burden that is met every single day in every single courtroom in this country, in this State, in this country." The State argues that although Barrera's counsel objected to the comment at trial, he failed to specify the issue in his posttrial motion. Barrera maintains that his general objection to the State's closing arguments in his motion for a new trial and his statement that the "[a]ssistant State's attorney made prejudicial inflammatory and erroneous statement in closing argument" properly preserved the issue for appellate review. In order to properly preserve this issue on appeal, Barrera was required to *both* object at trial and include the error in a written posttrial motion. *Enoch*, 122 Ill. 2d at 186. Although Barrera's counsel did object to the State's comments at trial, his general allegations of error in his post-trial motion were not sufficient to preserve the issue for appeal. *People v. Moss*, 205 Ill. 2d 139, 168 (2001) (While defendant objected at trial, his written posttrial motion alleged generally that the prosecutor made prejudicial, inflammatory, and erroneous statements in closing argument designed to arouse the prejudices and passions of the court; this general allegation of error is insufficient to preserve this issue for review). Therefore, Barrera's posttrial motion lacked the specificity required to preserve this issue for review.

Forfeiture aside, were we to review this issue, we would hold that the complained-of remarks do not require reversal. In *People v. Wheeler*, 226 Ill. 2d 92, 121 (2007), the Illinois Supreme Court

held that “[w]hether statements made by a prosecutor at closing argument were so egregious that they warrant a new trial is a legal issue this court reviews *de novo*.” However, in *People v. Blue*, 189 Ill. 2d 99, 128 (2000), the supreme court held that the substance and style of closing arguments is within the trial court's discretion and will not be reversed absent an abuse of that discretion. See also *People v. Caffey*, 205 Ill. 2d 52, 128 (2001); *People v. Emerson*, 189 Ill. 2d 436, 488 (2000); *People v. Armstrong*, 183 Ill. 2d 130, 145 (1998). Regardless of the standard of review applied, we find that Barrera was not denied a fair trial due to the State’s comments.

The Illinois Supreme Court’s holding in *People v. Bryant*, 94 Ill. 2d 514 (1983), is dispositive of this issue. In *Bryant*, the State remarked during closing argument that the State's burden was “one which is ‘not unreasonable’ and ‘met each and every day in courts.’” *Bryant*, 94 Ill. 2d at 523. The supreme court reasoned that the State’s characterization of the burden of proof did not reduce that burden and defendant was not denied a fair trial due to the State’s remarks. *Bryant*, 94 Ill. 2d at 523. In this case, the State’s comment was almost identical to the State’s comment in *Bryant*. Therefore, we find that the State’s comment in this case did not reduce its burden of proof. *Bryant*, 94 Ill. 2d at 523.

Barrera cites *People v. Starks*, 116 Ill. App. 3d 384, 394-95 (1983), in support of his argument. However, the facts in *Starks* are distinguishable from the facts in this case. In *Starks*, the prosecutor made the following statement regarding the State's burden of proof, over defense counsel’s objection: “The burden of proof in this case, you should know, is no different than in the hundreds of thousands of cases that have been tried in courtrooms all over this country.” *Starks*, 116 Ill. App. 3d at 394-95. However, the State further commented that, “In this case, in terms of what the State must prove, it

is no different than in any other case. A theft case, a rape case, a murder case, any type of case. So there's nothing special going on here and we don't have a burden, no matter what Mr. Smith would like you to think and we don't have to produce a weapon ***.” *Starks*, 116 Ill. App. 3d at 395. The *Starks* court held that this argument reduced the State's burden of proof to a *pro forma* or minor detail. *Starks*, 116 Ill. App. 3d at 395. Distinguishing the facts in *Starks* from the facts in *Bryant*, the *Starks* court reasoned that, “The remarks in the instant case go beyond the bland characterization of the burden of proof in *Bryant*. Here, the prosecutor asserted that the burden was the same in ‘any type of case’ and stated that ‘we don't have a burden.’ ” *Starks*, 116 Ill. App. 3d at 395. The *Starks* court found reversible error. *Starks*, 116 Ill. App. 3d at 394-95. We find the facts in this case more like the facts in *Bryant*. Therefore, the defendant’s reliance on *Starks* is misplaced.

The State’s comment during its closing argument was not improper. Therefore, Barrera was not denied his constitutional right to a fair trial.

CONCLUSION

We find that the record reveals that defendant understood and spoke English and that the State proved that defendant was willfully absent from court, therefore the trial court did not err when it held a trial and sentenced defendant *in absentia*. We also find that evidence regarding defendant’s prior immigration violation was properly admitted because it showed how the investigation was conducted and that the defendant evaded the trial and concealed himself which connected the defendant to the crime. Finally, the defendant forfeited his argument regarding the State’s comment during its closing argument.

Affirmed.