2012 IL App (1st) 100066-U

FIFTH DIVISION
December 31, 2012

No. 1-10-0066

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
	)	the Circuit Court
Plaintiff-Appellee,	)	of Cook County
	)	
v.	)	No. 07 CR 08221 (03)
	)	
RICO CLARK,	)	Honorable
	)	Joseph M. Claps,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE PALMER delivered the judgment of the court.
Presiding Justice McBride and Justice Howse concurred in the judgment.

O R D E R

¶ 1 ***Held:*** Defendant's conviction for first degree murder was affirmed where the evidence presented at trial was sufficient to support that conviction. Defendant forfeited review of his claims regarding improperly admitted evidence and improper remarks by the prosecution during closing arguments where defendant failed to establish that either claim constituted plain error.

¶ 2 Following a jury trial, defendant, Rico Clark, was found guilty of first degree murder and sentenced to 55 years' imprisonment. On appeal, defendant contends that he was not proven

guilty beyond a reasonable doubt, that the trial court abused its discretion by admitting irrelevant and prejudicial evidence regarding another shooting and that the prosecution made improper comments during closing arguments. For the reasons that follow, we affirm.

¶ 3 Defendant was arrested and charged by indictment with, among other things, first degree murder (720 ILCS 5/9-1(A)(1), (2) (West 2006)) of the victim, Damion Kendrick, and of being armed with and personally discharging a firearm during the commission of that offense. Defendant and codefendant, Corey Manuel, were tried simultaneously before a single jury. Prior to trial, two of the State's witnesses, Demetrius Murry and Kevin Eson, gave handwritten statements and grand jury testimony about the victim's murder.[1] However, during defendant's trial, Murry and Eson disavowed portions of their prior statements. Both witnesses' prior handwritten statements and grand jury testimony were admitted as substantive evidence at defendant's trial.[2] For purposes of clarity, we will set forth each witness's prior statements before recounting their trial testimony.

¶ 4 Murry gave a handwritten statement to Assistant State's Attorney (ASA) Kevin Nolan on February 16, 2007, and testified before a grand jury on March 7, 2007. His statement and grand jury testimony established that on the evening of September 24, 2006, Murry was standing in

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[1]Eson's name is alternatively spelled in the record as "Eason" and "Eson." Eson spelled his last name "Eson" at trial, and we will therefore use that spelling.

[2]The prior statements were admitted pursuant to section 115-10.1 of the Code of Criminal Procedure (Code) (725 ILCS 5/115-10.1 (West 2008)). That section provides certain criteria under which a witness's prior inconsistent statements and grand jury testimony may be admitted not just for impeachment purposes but also as substantive evidence.

front of his grandmother's house that was located south of an alley on the east side of Dorchester Street near the intersection of Dorchester and 76th Street. Murry was talking to "Boo Man" when he saw the victim farther north on Dorchester near a car and the alley. Murry heard gunshots from the north and ran south to 76th Street and then turned and ran east. Murry stopped when he saw defendant, codefendant, Marcellus French and Bodey Cook running across 76th toward a black Jeep Cherokee waiting at the corner of Dante and 76th. As defendant and codefendant ran across 76th, Murry saw that each was carrying a gun. In his handwritten statement, Murry also stated that he had been treated well by the police and ASA Nolan, that he had not been threatened or promised anything to give his statement and that he was giving the statement voluntarily. At trial, the State adduced the substance of Murry's handwritten statement and grand jury testimony through the testimony of ASA Nolan and ASA Koula Fournier.

¶ 5 At trial, Murry acknowledged that he had previously been convicted of aggravated unlawful use of a weapon and of unlawful use of a weapon by a felon. Murry testified that in September of 2006, he lived at 76th and Blackstone Streets, a neighborhood known as "Sircon City." On September 22, 2006, Murry drove to an area of Chicago known as "the Pocket" and, along with four other men from Sircon, played a game of basketball against five men from the Pocket. Defendant was one of the men from the Pocket who played in that game. Murry testified that he had been friends with defendant for approximately two years prior to the basketball game and that he also knew codefendant. Murry knew that both defendant and codefendant "hung out" in the Pocket. There was a bet of $200 on the game, but it never finished because of an argument between the two teams. Murry testified that there was "probably" a

shooting after the game but that he did not know who fired the shots. He denied filing an aggravated assault with a firearm police report after the shooting. According to Murry, he left his car in the Pocket after the game and never returned to retrieve it.

¶ 6 Murry testified that he left his grandmother's house at approximately 6 p.m. on the night of the murder and saw the victim sitting by himself on the back of a vehicle parked on Dorchester. Murry heard "a lot" of gunshots coming from 75th Street and ran in the direction of 76th. He turned east on 76th and ran toward Dante but stopped when he saw "people" running south on Dante and then across 76th. Murry then returned to Dorchester and saw the victim lying on the ground with a gunshot wound to his head. Murry was still at the scene when police arrived but he did not tell them what he saw.

¶ 7 Murry testified that did not remember how many people he saw running south on Dante, but that he thought it was three men. Murry did not know who the men were or where they ran after they crossed 76th and he did not remember if any of them were carrying a gun. He only remembered that the men were wearing black "hoodies" that obscured their faces and hair. Murry denied seeing defendant and codefendant carrying guns in their hands and testified that he did not see who shot the victim. He acknowledged that he knew French and Cook but denied that he saw them enter a vehicle with defendant and codefendant.

¶ 8 Murry did not attempt to speak to the police until he was arrested for possession of cannabis on February 15, 2007. Following his arrest, Murry was questioned by police about the victim's murder. Murry was on parole for a felony gun charge at the time and he did not want to go back to prison. Murry testified that he told the detectives what they instructed him to say

because they threatened to call his parole officer and Murry feared going back to jail. He acknowledged that detectives showed him six photographs on February 15, 2007, from which he identified and signed photos of defendant and codefendant. Murry denied that he identified them as the two people he saw running with guns and instead claimed that he only identified them as people he knew. Murry also denied identifying defendant, codefendant, French and Bodey to ASA Nolan as the four men he saw running across the street or telling the ASA that defendant and codefendant were each holding a gun as they ran toward the black jeep. Murry did not know who wrote out his handwritten statement but acknowledged that his signature appeared at the bottom of each page. He also admitted that he did not tell Nolan that his statement was false and that the detectives had told him what to say. Murry acknowledged initialing photographs of defendant, codefendant, French and Cook that were attached to his statement but claimed that he did so only to indicate to Nolan that he knew these men. He did not remember a paragraph in his handwritten statement that stated that nobody threatened him or promised him anything to give his statement and that he made the statement voluntarily.

¶ 9 Murry similarly denied telling the grand jury that he saw defendant, codefendant, French and Cook running across the street after he heard the gunshots and that defendant and codefendant were each carrying a gun. Instead, he claimed that he told the grand jury that he saw "people with hoods holding guns." He admitted that he did not tell the grand jury that detectives allegedly threatened to call his parole officer. He also admitted that when he appeared before the grand jury, he answered "no" when asked if he had been threatened or promised anything and that he answered "yes" when asked if he was testifying of his own free will. Murry claimed that he

testified before the grand jury because he had been threatened by police and still feared being sent back to prison on a parole violation. He further claimed that he only appeared to testify at defendant's trial because he had been subpoenad. He agreed that he did not want anything to do with the case and that he preferred to let "street justice control" what happened.

¶ 10 Kevin Eson gave a handwritten statement to ASA Nolan on February 17, 2007, and testified before the grand jury on March 12, 2007. Eson's statement and grand jury testimony established that at approximately 5:50 p.m. on September 24, 2006, Eson was walking through the alley near 75th and Kenwood on his way to the store when he saw the victim sitting on a car across Dorchester near the mouth of the alley. As Eson continued east, he saw defendant, codefendant and two other men walking out of the alley in the direction of the victim. Defendant and codefendant were carrying guns in their hands and Eson saw them both fire their guns at the victim. Eson also stated that defendant was standing closer to the victim, that he saw defendant shoot in the victim's direction and that he saw flames coming out of the end of the gun defendant was holding. All four men then ran back down the alley in the direction from which they came. Eson stated that he had known defendant for about five years and codefendant for about one year.

¶ 11 Eson testified at trial that as he was walking through the alley to the store on the evening of September 24, he saw the victim on Dorchester with four or five people, leaning on a car. Eson denied seeing anyone coming toward him in the alley across Dorchester at that time. Eson exited the alley and was walking on Dorchester when he heard shots coming from the alley. He denied seeing the shooting and claimed that he only heard it. Eson walked back to the scene and pulled the victim out from under the car and put his own shirt under the victim's head. Eson left

the scene before the police arrived and denied telling an officer at the scene that he "could not believe what he saw" and that it was "horrible."

¶ 12 The police found Eson later that night and brought him to the police station to speak with detectives. Eson denied telling Detective Brian Forberg that he saw four men coming out of the alley and instead claimed that he told the detective that he saw four men with the victim. Eson also denied telling the detective that two of the four men were carrying guns and that one of the men fired his gun at the victim. Instead, he claimed that he heard two different guns being fired but did not recall how many shots he heard. Eson denied telling police that he could identify the two men with guns and claimed that it was the police who told him who to identify. Eson admitted that when he next spoke to police on February 16, 2007, he identified and signed photos of defendant and codefendant. He explained that "before that time I was showed [*sic*] pictures, yes. That's how I identified somebody." When further questioned as to who he identified defendant and codefendant as being, he responded "[a]s they was saying they was the shooters." When asked if he was testifying that detectives told him which two people to identify, Eson responded "I am not saying that. I am saying I was showed pictures, yes."

¶ 13 Eson admitted that he signed the bottom of each page of his handwritten statement after the ASA reviewed it with him. He claimed, however, that there were "things" in the statement that he did not say to the ASA. He admitted telling ASA Nolan that as he approached the mouth of the alley at Dorchester, he saw four men running from the alley on the other side of Dorchester. He denied telling Nolan that two of the four men had guns and that, although he did not know the names, he knew them from the neighborhood. Eson testified that he did not know

defendant or codefendant. When asked again if he told the ASA that he recognized the two men with guns and that he later learned their names were "Rico" and "Corey," Eson alternatively answered "I didn't know them though," "[y]es" and "I don't know." Eson further denied telling the ASA that "Rico" was standing closer to the victim and shooting in his direction and that Eson could see the flames and hear the shots coming from "Rico's" gun. Eson testified that he did not remember the ASA reading his statement out loud and that he signed the statement only because it was 1 a.m. and he was ready to leave the police station. Eson admitted that when he gave his statement, he identified two photographs, which were attached to his statement, as photos of defendant and codefendant.

¶ 14 Eson acknowledged testifying before the grand jury that as he walked to the store, he saw four men coming out of alley and two of them were holding guns. He also admitted testifying that these two men fired their guns. He admitted identifying a photograph of defendant as "Rico," one of the shooters, but claimed he did so because he had learned defendant's name by the time of his grand jury testimony. He also admitted identifying a photo of codefendant as "Corey," the other shooter, but he denied telling the grand jury that he knew "Rico" for five years and "Corey" for about a year. Eson admitted telling the grand jury that he was not threatened or promised anything in exchange for giving a handwritten statement. Finally, Eson acknowledged that he viewed lineups at the police station on February 24, 2007, and March 30, 2007, and that each time he identified defendant and codefendant as the shooters.

¶ 15 On cross-examination, Eson testified that he told the police that his identification of defendant and codefendant was based on "rumors" he heard in the neighborhood. He also told

police that the four men running in the alley were wearing red and black hoods and that, although the hoods were down, Eson could only see the top and back of their heads because they were running away from him. Eson did not make any identifications to the police on the night of September 24, but he admitted that he was not shown any photographs that night. Eson claimed that he did not tell the grand jury that he did not actually see the shooting because he had already signed the handwritten statement in which he identified defendant and codefendant as the shooters. He then admitted that defendant's trial was the first time he said his identifications were based solely on rumors.

¶ 16 Under cross-examination by codefendant's counsel, Eson testified that he did not actually see codefendant with a gun and that he only heard shots but did not see who fired them. Eson claimed that he told the police that his identification of defendant and codefendant was based on rumors. He also testified that he was never given a pen to write his own handwritten statement and he was never asked if he wanted to have his statement tape recorded or video recorded.

¶ 17 Leroy Moore, the victim's brother-in-law, testified that on the night of the shooting he was living in a third floor apartment near the intersection of 76th and Dorchester. Moore was in his kitchen between 5 and 6 p.m. that night when he heard five to six gunshots coming from the direction of Dorchester. It was daylight at the time and Moore walked out onto his back porch and saw four men wearing "hoodies" running east from Dorchester to Dante in the alley behind his apartment. One of the men was carrying a gun in his right hand and Moore identified this person as defendant. Moore explained that defendant's hood was coming off as he ran and that he could see defendant's profile and his braided hair. Defendant turned and faced Moore when

he was "directly" behind Moore's porch, at which point Moore could see defendant's face.

¶ 18 Moore did not know defendant's name at the time but he recognized him from the neighborhood. Moore could only partially see the faces of the other three men because of the hoods they were wearing. The four men continued to run east and then turned south on Dante toward 76th. Moore lost sight of the men at that point and went outside and saw the victim lying on the ground, bleeding from a gunshot wound to his head.

¶ 19 Moore remained at the scene and told responding officers what he observed. He repeated the same information later that night when he spoke to detectives at the police station. On December 4, 2006, Moore viewed a photo array and identified defendant as the person he saw running in the alley holding a gun. On March 29, 2007, Moore viewed a lineup at the police station and identified defendant as the person he saw running in the alley holding a gun.

¶ 20 On cross-examination, Moore denied that he was unable to give officers at the scene a physical description of the person running in the alley holding a gun. Instead, he told police that the person with the gun appeared to be around Moore's size, which was 5 feet 6 inches tall and 134 pounds. Moore denied telling police that defendant's braids covered his face as he ran through the alley and testified that defendant's braids were blowing backwards away from his face because he was running.

¶ 21 Officer Michael Chiocca testified that he arrived at the scene at approximately 6 p.m. on the night of the shooting in an unmarked squad car and dressed in plain clothes. The scene was "chaotic" and Chiocca attempted to gather intelligence by walking around and listening to the crowd. He saw someone, who he later learned was Eson, yelling to a group of people across

Dorchester "[y]ou guys were wrong for what you did." Someone from the group across the street yelled something back that the officer could not hear and Eson responded, "[l]isten, I saw it. You guys, you know that was wrong for what happened to him." Chiocca asked Eson if he witnessed the murder, and Eson responded that he had and agreed to accompany the officer to the police station.

¶ 22 Detective Forberg testified that he and his partner, Detective Eberle, arrived at the scene of the victim's murder at 6:30 p.m. on September 24, 2006. The victim had already been taken from the scene. Forberg spoke with Ethel Johnson and Moore at the scene and then returned to the police station and spoke with Eson. Eson told Forberg what he knew about the shooting, including that he saw the shooters' faces and knew what they looked like. Forberg continued his investigation over the next couple months, including attempting to locate potential witnesses and familiarizing himself with other criminal activities in the area. On December 4, 2006, he contacted Moore and asked him to come to the police station. Moore agreed to do so. The detective showed Moore a photo array from which Moore identified defendant. Forberg continued to investigate the case until he learned of an aggravated assault with a firearm charge with a victim by the name of Demetrius Murry that occurred two days before the victim's murder in the 7200 block of Dobson. Paul Revere Park is located at that address and there is a basketball court in the park. He also learned that a fight had occurred during a basketball game between individuals from Sircon City and the Pocket two days before the victim's murder. Based upon what the detective learned about that incident, he began looking for Murry as a possible witness to the victim's murder. On February 15, 2007, the detective learned that Murry was in custody on

an unrelated case. Forberg spoke with Murry, who told him what he knew about the victim's murder. Murry viewed a photo array from which he identified and signed photos of defendant and codefendant as the men he saw carrying guns running across 76th Street to a black Jeep Cherokee. He also identified and signed photographs of French and Cook as the two men with defendant and codefendant. Forberg was present on February 16, 2007, when ASA Nolan spoke with Murry before taking his handwritten statement, and neither he nor his partner told Murry who to identify or threatened to violate his parole.

¶ 23 On February 16, Detective Forberg contacted Eson and asked him to come to the police station. Eson viewed a photo array from which he identified defendant and codefendant. Neither Forberg nor his partner gave Eson the names of any suspects. However, when Eson gave a handwritten statement the following day, he was able to provide defendant's and codefendant's names. Based upon his conversations with Murry and Eson as well as their photograph identifications, Forberg began looking for defendant, codefendant, French and Cook in connection with the victim's murder. Cook was found and brought to the police station on February 23, 2007, and codefendant and French were brought to the police station the following day. An investigative alert was then issued for defendant.

¶ 24 The police located defendant on March 29, 2007, and brought him to the police station. Detective Forberg and an ASA spoke with defendant while his attorney was present. On that same day, the police asked Moore to come to the police station and view a lineup. Moore did so and identified defendant. On March 30, Eson viewed a lineup and also identified defendant. Detective Forberg testified that Eson never told him that his identification of defendant was

based on rumors. Instead, Eson told him that he witnessed the shooting.

¶ 25 Detective Chigaros testified that on September 23, 2006, she was assigned to investigate an incident involving someone who was shot in the eye while driving a car. The detective went to the hospital and spoke with the victim, defendant's brother Lester Owens. Defendant subsequently called Chigaros and told her that it was his car Owens was driving when he was shot and that he wanted to get it back. Detective Chigaros told defendant that the car was being held for investigation and that defendant needed his identification and registration in order to retrieve the vehicle.

¶ 26 ASA Nolan testified to the circumstances surrounding Murry and Eson's handwritten statements. Nolan arrived at the police station at approximately 10 p.m. on February 16, 2007, and was told by detectives that Murry and Eson were at the police station. Nolan interviewed Murry and Eson separately in an interview room. When Nolan initially spoke with Murry, Detective Eberle and ASA Al Vistouros were also present. Nolan began by explaining to Murry that he was an attorney and a prosecutor but that he was not Murry's attorney. Murry then told the ASA what he knew about the shooting and he never said that the police told him what to say or complained about his treatment by the police. When Nolan spoke with Murry alone later that night, Nolan asked Murry how he had been treated and Murry had no complaints. Nolan asked if Murry would be willing to memorialize his statement in writing. Nolan explained that he would ask questions and take down Murry's responses in a narrative form, that they would both review the statement for accuracy and that Murry could make any changes he wished. Nolan told Murry that it was his choice whether to submit to a handwritten statement. Murry said he was willing to

make a handwritten statement.

¶ 27 ASA Nolan took Murry's statement at approximately 11 p.m. that night. Afterwards, Nolan sat next to Murry and had him read the first paragraph out loud to verify that he could read and write English. Nolan then gave Murry the choice of reading the rest of the statement aloud or having the ASA read it to him, and Murry elected to have Nolan read the rest of the statement aloud. Nolan did so while sitting next to Murry. Nolan, Murry and the others present (Detective Eberle and ASA Vistouros) signed the bottom of each page after it was read. After giving his statement, Murry identified photographs of defendant, codefendant, French and Cook as the four men he saw running to the Jeep.

¶ 28 Eson also agreed to give a handwritten statement that ASA Nolan took at approximately 12:41 a.m. on February 17, 2007. Nolan followed the same procedures with Eson as when he took Murry's handwritten statement, and Detective Forberg was present for the statement. However, at one point Nolan was alone with Eson and he did not have any complaints about how he had been treated by police. Eson also identified photographs of defendant and codefendant as "Rico" and "Corey," respectively. Eson never told Nolan that his identification of defendant or codefendant was based on rumors he heard in the neighborhood.

¶ 29 ASA Nolan also testified that it was his responsibility to take Eson's and Murry's statements in handwritten form and that he did not attempt to audio or video record their statements. He explained that in 2006, the prosecution only videotaped statements or used interview rooms with cameras and microphones for homicide suspects.

¶ 30 ASA Fournier testified regarding Eson and Murry's grand jury testimony. Fournier spoke

with Murry on March 7, 2007, and he told her what he knew about the victim's murder. Murry never told Fournier that the police told him who to identify or that they threatened to contact his parole officer. Fournier was aware that Murry was on parole at that time. The ASA asked Murry if he would testify before the grand jury, and he agreed to do so. Fournier then testified to the substance of Murry's grand jury testimony and that Murry identified photographs of defendant, codefendant, French and Cook before the grand jury.

¶ 31 ASA Fournier met with Eson on March 12, 2007, and he told her that he witnessed the murder and what he saw. He never told the ASA that he identified the shooters based on rumors. Fournier asked Eson if he would testify before the grand jury and Eson agreed to do so. Fournier testified to the substance of Eson's grand jury testimony and that Eson identified photographs of defendant and codefendant to the grand jury as the men who shot their guns.

¶ 32 The medical examiner performed an autopsy on the victim. She testified that he suffered a gunshot wound to the head and another gunshot wound that she described as a "graze wound" to the victim's right arm. In the medical examiner's opinion, the victim died of a gunshot wound to the head and the cause of death was homicide.

¶ 33 The State then rested its case. Defendant called Ethel Johnson to testify on his behalf. Johnson lived on the first floor of a building at the corner of 76th and Dorchester. On the evening of September 24, 2006, Johnson looked out her back door and saw the victim sitting on a car on Dorchester near the alley that ran behind her house. At approximately 6 p.m., Johnson was looking out of her window and saw two African-American males with dark hoodies cinched around their heads. One was standing near the mouth of the alley and the other was standing

farther back in the alley. She did not see anyone else in the alley at the time. One of the men had a gun in his hand and ran toward the victim and shot at him. Johnson heard three or four shots. The victim fell off the car and the shooter ran up and shot the victim again. Johnson could not see the shooter's face. The second man remained in the alley and the shooter was the only person Johnson saw with a gun. The two men then ran back down the alley and Johnson called police. She spoke to the police at the scene later that evening and on several other occasions but never made identifications because she did not see any faces. She did not remember telling the police the height of the two men she saw, but she did tell them they were two African-American males. Detective Forberg later testified that on the day of the shooting, Johnson told him that the shooter was an African-American male who was 5 feet 4 inches to 5 feet 6 inches tall and was wearing a dark hooded sweatshirt.

¶ 34 Johnson further testified that she was Murry's great-grandmother and that he was at her house on the day the victim was shot. However, Murry left in a car prior to the shooting. Finally, she testified that there is a fence that is over 5 feet tall that runs behind Moore's and her house.

¶ 35 The parties stipulated that, if called as witnesses, Officers Martinez and Salgado would testify that they went to the scene of the shooting on September 24 at approximately 6 p.m. and gathered three witnesses: Johnson, Moore and Diane Thomas. They generated a police report with a description of the suspect as an African-American male wearing a black hooded sweatshirt and black pants, but the report contained no other physical descriptions.

¶ 36 Defendant testified on his own behalf. Defendant was 18 years old on the day the victim

was shot and 21 years old at the time of trial. Defendant testified that he was about 5 feet 7 inches tall and weighed 160 pounds. On the day of the shooting defendant lived in Calumet City but he lived at an address in the Pocket for most of his life and moved to Calumet City in the spring of 2006. Codefendant also lived in the Pocket. Defendant testified that he was not at the basketball game on September 22, 2006, and claimed that he did not visit his old neighborhood after he moved to Calumet City. Defendant was not close with his brother, Lester Owens, but admitted that they talked several times a week. In September of 2006, defendant was friends with Murry and codefendant but, although he "knew of" Eson, French and Cook, he had no relationship with them.

¶ 37 Defendant denied that he shot and killed the victim. Defendant claimed that, on the evening the victim was murdered, he was not in the area and that he did not remember where he was at the time. Defendant knew the victim because they had played basketball together and he did not consider the victim his enemy. Although defendant had lived in the Pocket for most of his life, he had friends who lived in Sircon City. Defendant did not wear his hair in braids in 2006 but instead wore "dreadlocks."

¶ 38 On September 23, 2006, defendant's brother, Lester Owens, borrowed defendant's car and was driving it in the Pocket when he was shot and lost his eye. Codefendant, who was Owens' best friend, called defendant in Calumet City and told him that Owens had been shot while driving defendant's car. Defendant got a ride to the hospital and testified that codefendant also came to visit Owens. Defendant did not remember where he went after he left the hospital. Defendant denied being angry about the shooting and stated that he was "okay" because the

doctors said Owens would be fine. He never found out who shot his brother and he did not care or go to the police. Defendant inquired once about his car but he never picked it up because he did not have a driver's license at the time. Defendant saw French around the neighborhood and knew that he drove his mom's black van. Defendant was not questioned by police about the victim's murder prior to March 2007, and he did not know they were looking for him.

¶ 39 On March 22, 2007, defendant was stopped by police and brought to the Calumet City police station for a murder investigation. He was released 10 to 15 minutes later and he was not told what murder police were investigating. On March 29, defendant was in a Bridgeview, Illinois, courthouse when an officer he knew from the Pocket told him he was wanted for murder and arrested him. Defendant was taken to the police station and given *Miranda* warnings. Defendant spoke to police with his attorney present. He denied that he told police that his brother played in the basketball game the day before he was shot.

¶ 40 In rebuttal, Detective Forberg testified that defendant told him at the police station that his brother played in the basketball game.

¶ 41 Following closing arguments, the jury found defendant guilty of first degree murder. The jury also found that during the commission of that offense, defendant was armed with and personally discharged a firearm. The trial court denied defendant's motion for a new trial and sentenced him to a term of 55 years' imprisonment. This appeal followed.

¶ 42 Defendant contends that the State failed to prove him guilty of first degree murder beyond a reasonable doubt. He claims that the evidence against him was insufficient to establish his identity as the person who shot the victim because it consisted primarily of unreliable, recanted

prior statements and because the other evidence was too "suspect" to support his conviction.

¶ 43 When reviewing a challenge to the sufficiency of the evidence, the relevant question is whether, after viewing the evidence in a light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004). The trier of fact is responsible for assessing the credibility of the witnesses, weighing the testimony and drawing reasonable inferences from the evidence. *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001). A criminal conviction will not be set aside on appeal unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to the defendant's guilt. *People v. Cox*, 195 Ill. 2d 378, 387 (2001).

¶ 44 This standard of review applies to all evidence, including prior inconsistent statements. *People v. Curtis*, 296 Ill. App. 3d 991, 999 (1998). A conviction may be sustained even when it is primarily or solely based on recanted prior inconsistent statements. *People v. Thomas*, 354 Ill. App. 3d 868, 880 (2004); *People v. Craig*, 334 Ill. App. 3d 426, 440 (2002); *People v. Brown*, 303 Ill. App. 3d 949, 964 (1999); *People v. Morrow*, 303 Ill. App. 3d 671, 677 (1999); *People v. Zizzo*, 301 Ill. App. 3d 481, 489 (1998); *Curtis*, 296 Ill. App. 3d at 996-97. The trier of fact is responsible for weighing the different statements and determining which is more credible. *People v. Williams*, 332 Ill. App. 3d 693, 696-97 (2002).

¶ 45 In this case, the evidence presented at trial was sufficient to sustain defendant's conviction for first degree murder. Eson's handwritten statement and grand jury testimony provided an eyewitness account of the victim's murder that implicated defendant as the person who killed him. That evidence established that as Eson was walking east through the alley toward

Dorchester, he saw the victim sitting on the back of a car parked across Dorchester near the alley. He then saw defendant and codefendant, along with two other men, in the alley across Dorchester walking west toward the victim. Defendant and codefendant were each carrying a gun and Eson saw defendant shoot his gun at the victim. Eson also stated that defendant was standing closer to the victim, that he saw defendant shoot in the victim's direction and that he saw flames coming out of defendant's gun. The four men then ran back east through the alley toward Dante.

¶ 46 The State presented additional evidence in the form of Moore's testimony and Murry's handwritten statement and grand jury testimony that corroborated portions of Eson's prior statements. Moore testified that he was in his kitchen between 5 and 6 p.m. on September 24, 2006, when he heard five or six gunshots coming from the direction of Dorchester. It was daylight at the time and Moore walked out onto his porch and saw four men wearing hoodies running east from Dorchester to Dante through the alley. One of the men was carrying a gun and Moore identified this person as defendant. Moore explained he was able to see defendant's face because his hood was coming off and because at one point defendant turned and faced Moore as he ran though the alley. In addition to his testimony at trial, Moore identified defendant from a photo array and a lineup as the person he saw running through the alley carrying a gun.

¶ 47 Murry's prior statements established that he was standing near the corner of Dorchester and 76th when he saw the victim sitting or leaning on a car on the east side of Dorchester near the alley. Murry then heard several gunshots and ran away. As he was running on 76th, he saw defendant, codefendant, French and Cook running south on Dante toward a black Jeep waiting at the corner of Dante and 76th. Murry saw that defendant and codefendant were each carrying a

gun as they ran toward the Jeep. At the end of his handwritten statement, Murry indicated that he had not been threatened or promised anything in exchange for his statement and that he was giving the statement voluntarily.

¶ 48 Further corroborative evidence was presented through the trial testimony of Johnson, Officer Chiocca, Detective Forberg, ASA Nolan and ASA Fournier. Johnson testified that she saw the victim sitting on a car on Dorchester and then saw two African-American men wearing dark hoodies standing in the alley. One of these men was close to the mouth of the alley and the other remained farther back. One of the men was carrying a gun and Johnson saw him run toward the victim and shoot at him. The victim then fell off the car and the shooter ran up to the victim and shot him again.

¶ 49 Detective Forberg testified that Eson told him that he witnessed the murder and that he saw the shooters' faces and knew what they looked like. Officer Chiocco similarly testified that he heard Eson yelling to a group of people that he saw the shooting and that Eson told him at the scene that he witnessed the murder. Forberg also testified that Eson and Murry identified defendant and codefendant from photo arrays and lineups at the police station and that neither he nor his partner threatened Murry with a parole violation or told Eson or Murry who to identify.

¶ 50 Finally, ASA Nolan and ASA Fournier testified to the substance of and circumstances surrounding Eson and Murry's handwritten statements and grand jury testimony. They also testified to those witnesses' identifications of defendant as the shooter. Their testimony also provided corroborating evidence that Eson and Murry gave their prior statements voluntarily and that those witnesses were not threatened in order to obtain their statements.

¶ 51 Defendant argues that Eson and Murry's prior statements are unreliable because at trial each witness disavowed portions of their prior statements. Specifically, Eson testified at trial that he did not see anyone with a gun and that he did not see who shot the victim. Eson also testified that there were things in his handwritten statement that he did not say and that he signed the statement because he wanted to leave the police station. Finally, Eson testified that his knowledge of who the shooters were was based on "rumors" he heard in the neighborhood and that he identified defendant and codefendant to the grand jury as the shooters because he had already signed his handwritten statement identifying them. Similarly, at trial Murry denied seeing defendant with a gun and claimed he did not know who the men were he saw running in the alley because they were wearing hoods that obscured their faces. Murry also claimed that he said what the detectives instructed him to say because the detectives threatened him with a parole violation and he feared going back to jail. Finally, Murry claimed that he testified before the grand jury because he still feared being put back in jail on a parole violation and he denied telling the grand jury that he saw defendant carrying a gun after he heard the gunshots.

¶ 52 Contrary to defendant's argument, the fact that Murry and Eson disavowed portions of their prior statements does not establish that those statements were insufficient to prove defendant's guilt beyond a reasonable doubt. There is no dispute in this case that Eson and Murry's prior statements were properly admitted not only for impeachment purposes but as substantive evidence pursuant to section 115-10.1 of the Code (725 ILCS 5/115-10.1 (West 2008)). Therefore, those prior statements are treated like any other evidence. See *Craig*, 334 Ill. App. 3d at 439. Although Eson and Murry disavowed portions of their prior statements, it was

the jury's responsibility to weigh Murry and Eson's prior statements against their trial testimony and to determine which, if any, was to be believed. See *Zizzo*, 301 Ill. App. 3d at 489. By its verdict, we can infer that the jury believed that Murry and Eson were telling the truth when they made their prior statements and that they were lying at trial when they disavowed portions of those statements. See *Zizzo*, 301 Ill. App. 3d at 489 (looking at witness's two statements in the light most favorable to the State and judging from jury's verdict, court can presume which statement the jury, who was able to observe the witness on the stand, reasonably concluded was truthful and which statement was untruthful); *Morrow*, 303 Ill. App. 3d at 676-77 (in which the court observed that the jury weighed the evidence and assessed the witness's credibility and that, by its verdict, the jury determined that the witness was telling the truth when she made her prior statements and was lying at trial). After reviewing the record, we find no basis to justify substituting this court's judgment for that of the jury in weighing the witnesses' statements.

¶ 53 We also find unpersuasive defendant's claim that other alleged deficiencies in the State's evidence warrant reversal of his conviction. These alleged deficiencies include that Moore's identification of defendant was "suspect" because of "poor lighting" and the distance from which Moore made his observations and because, although Moore claimed to have told police he had seen defendant around the neighborhood and provided police with a physical description, the stipulated testimony of Officers Martinez and Salgado indicated that Moore did not give the police a physical description and did not indicate that Moore had previously seen defendant in the neighborhood. Defendant also complains of the "troubling" procedure used by ASA Nolan to memorialize Murry and Eson's statements, claiming that they should have been allowed to write

the statements themselves and that the statements should have been recorded.

¶ 54 Defendant's claims amount to no more than an attack on the credibility of the witnesses and the weight to be given to their testimony. However, in considering a challenge to the sufficiency of the evidence, it is not the function of this court to reweigh the evidence or retry the defendant. *People v. Johnson*, 347 Ill. App. 3d 442, 445 (2004). Rather, the trier of fact, in this case the jury, is responsible for resolving inconsistencies in the evidence and determining the credibility of the witnesses and the weight to be given to their testimony. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). Here, the alleged deficiencies and inconsistencies in the evidence pointed to by defendant were minor in nature and fully explored at trial and do not create a reasonable doubt as to defendant's guilt. For example, the jury was made aware of the distance from which Moore made his observations and of the lighting conditions at the time. Similarly, the jury was aware that Eson and Murry did not physically write their own statements and that their statements were not recorded with audio or video equipment. On the other hand, the jury heard ASA Nolan testify that it was his responsibility to take the handwritten statements of the witnesses and that, in 2006, the State only videotaped statements or used interview rooms with recording equipment for homicide suspects. The jury resolved these issues against defendant and we find no basis to disturb the jury's determination.

¶ 55 When viewed in the light most favorable to the State, we find that the evidence presented at trial, including the witnesses' prior statements and the other corroborating evidence, was sufficient to prove defendant guilty of first degree murder beyond a reasonable doubt.

¶ 56 Defendant next contends that the trial court erred by allowing the State to introduce

evidence of the shooting of Lester Owens. Defendant claims that there was no evidence presented of the circumstances surrounding Owens' shooting or that defendant thought that someone from "Sircon City" shot his brother. Therefore, defendant concludes, the evidence of Owens' shooting did not tend to establish a motive for defendant to murder the victim.

¶ 57 The State responds that defendant has forfeited review of this issue. It is well-settled that to preserve an issue on appeal, the defendant must object to the alleged error during trial and include it in his written posttrial motion. *People v. Glasper*, 234 Ill. 2d 173, 203 (2009); *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). The record shows that defendant raised no objection when he was informed prior to trial that the State intended to introduce evidence regarding Owens' shooting. Specifically, at a hearing prior to trial, the prosecutor informed the court that the State did not intend to introduce gang evidence in the case but that it did intend to introduce evidence of a basketball game between members of two areas of Chicago, "Sircon City" and "the Pocket." The prosecutor stated that there was a basketball game a couple of days prior to the murder at issue in this case and that there was a shooting following the game and another shooting the following day. The State intended to introduce evidence that a resident of "Sircon City," Demetrius Murry, was shot at after the game and that the following day, Lester Owens, who was from the "Pocket" and who was defendant's brother and codefendant's friend, was shot in the eye after the game. The State intended to introduce this evidence to show the motive for the victim's murder. Defense counsel stated that defendant had no objection to this evidence because it was "all over the police report" and counsel could not "imagine that it can't be brought into evidence." Codefendant's counsel objected to the evidence but, after the State made an offer of proof, the

court allowed the evidence and indicated it would give the jury a limiting instruction at the time the evidence was introduced.

¶ 58 This discussion indicates that prior to trial defendant acquiesced to the admission of the disputed evidence. See *People v. Bush*, 214 Ill. 2d 318, 332 (2005) ("when a defendant procures, invites, or acquiesces in the admission of evidence, even though the evidence is improper, []he cannot contest the admission on appeal"). Although codefendant's counsel objected to the introduction of this evidence prior to trial, that does not preserve the issue for defendant. See *Brendel v. Hustava*, 97 Ill. App. 3d 792, 797 (1981) ("one co-defendant may not take advantage of the objection made by counsel for a co-defendant"); *Bunch v. Rose*, 10 Ill. App. 3d 198, 205 (1973) (an objection by one of two defendants, which was neither joined in nor adopted by the other defendant, did not inure to the benefit of the defendant who did not object); *Martino v. Barra*, 10 Ill. App. 3d 97, 104 (1973).

¶ 59 The record further shows that defendant did not object when Detective Chigaros testified to her investigation regarding Owens' shooting, which was the first time the jury heard evidence that Owens had been shot. Defendant also did not object when, under cross-examination, the State asked defendant if his brother was the person who was shot in the eye on September 22, 2006, and if defendant visited Owens in the hospital that day. Defense counsel only objected when the State asked defendant what he knew about the basketball game in which Owens played the day before he was shot. The basis of defense counsel's objection was that defendant's knowledge of the basketball game was not relevant to his alleged motive to murder the victim. The court overruled that objection, stating that what defendant believed occurred regarding the

basketball game or Owens having been shot was relevant to defendant's mental state and to "any motivation he may have to do something or not do something." Finally, defendant failed to include this issue in his written posttrial motion.

¶ 60 Consequently, we may review defendant's claim only if he has established plain error. The plain error doctrine bypasses normal forfeiture principles and allows a reviewing court to consider unpreserved error when "(1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). Under both prongs of the plain-error doctrine, the defendant bears the burden of persuasion. *People v. Herron*, 215 Ill. 2d 167, 187 (2005). If the defendant fails to sustain his burden, we must honor the procedural default. *People v. Hillier*, 237 Ill. 2d 539, 545 (2010)

¶ 61 In this case, defendant takes a scattershot approach and argues that we should review the issue under both prongs of the plain error doctrine. Specifically, in his reply brief, defendant attempts to meet his burden of persuasion by citing to the plain-error rule and claiming that "[b]ecause the evidence against [defendant] was so week [*sic*], as argued in the first section of his brief, and because the error was so clear and obvious, [defendant] believes this court could find that plain error has occurred under either prong of the analysis." Aside from this sentence, defendant's entire argument consists of explaining why the admission of the disputed evidence was error.

¶ 62 Our supreme court has repeatedly admonished that a defendant's procedural default must be honored unless the defendant meets his burden of establishing plain error. In *People v. Nieves*, 192 Ill. 2d 487, 502 (2000), the defendant argued that improperly admitted evidence denied him a fair death penalty sentencing hearing. The court found that the defendant had waived his claim because he failed to object when the evidence was introduced at trial and failed to sufficiently argue for plain error review on appeal. *Nieves*, 192 Ill. 2d at 502-03. The court observed:

> "Defendant's plain error argument consists of a single sentence asking us to employ the plain error rule because the right to a fair death penalty sentencing hearing is a fundamental right. The balance of his argument consists of explaining why the admission of the evidence was error, not plain error. He neither argues that the evidence was closely balanced nor explains why the error is so severe that it must be remedied to preserve the integrity of the judicial process. Accordingly, we find the argument waived." *Nieves*, 192 Ill. 2d at 503.

¶ 63 Our supreme court recently reiterated that "[a] defendant who fails to argue for plain-error review obviously cannot meet his burden of persuasion." *Hillier*, 237 Ill. 2d at 545. The defendant in *Hillier* had raised a sentencing argument that the appellate court considered and found to be without merit. See *Hillier*, 237 Ill. 2d at 543. On review, our supreme court noted that "the [appellate] court did not acknowledge or address the State's contention that defendant had forfeited review" of his claim. *Hillier*, 237 Ill. 2d at 543. The court then reiterated its holding in *Nieves* that "when a defendant fails to present an argument on how either of the two

prongs of the plain-error doctrine is satisfied, he forfeits plain-error review." *Hillier*, 237 Ill. 2d at 545-46 (citing *Nieves*, 192 Ill. 2d at 502-03). The court found that the defendant had failed to meet his burden of arguing plain error and it therefore honored his procedural default. *Hillier*, 237 Ill. 2d at 547. In doing so, the court admonished that when an appellate court finds that a defendant has forfeited an issue, "the court must hold the defendant to his burden of demonstrating plain error." *Hillier*, 237 Ill. 2d at 549.

¶ 64 Here, defendant has failed to meet his burden of establishing plain error. First, in light of our supreme court's admonishments, defendant's claim that "the error was so clear and obvious" is insufficient to warrant review under the second prong of the plain-error doctrine. Our supreme court has "equated the second prong of plain-error review with structural error, asserting that automatic reversal is only required where an error is deemed structural, *i.e.*, a systemic error which serves to erode the integrity of the judicial process and undermine the fairness of the respondent's trial." (Internal quotation marks omitted.) *People v. Thompson*, 238 Ill. 2d 598, 613-14 (2010) (quoting *Glasper*, 234 Ill. 2d at 197-98). The court recently stated that "[t]he category of structural errors is very limited," including "the complete denial of counsel, trial before a biased judge, racial discrimination in the selection of a grand jury, denial of the right of self-representation at trial, denial of a public trial, and defective reasonable doubt instructions." *People v. Washington*, 2012 IL 110283, ¶ 59. In *Neder v. United States*, 527 U.S. 1, 8-9 (1999), the United States Supreme Court noted that structural errors are those that affect the framework within which a trial proceeds, rather than simply an error in the trial process itself.

¶ 65 In this case, defendant does not allege that such a structural error occurred or explain

why, even if the evidence of Owens' shooting was improperly admitted, that error affected the framework within which his trial proceeded such that automatic reversal is required. In light of defendant's failure to do so, we will not review this issue under the second prong of the plain-error rule.

¶ 66 Regarding the first prong of the plain-error rule, defendant does not explain how the alleged error threatened to tip the scales of justice against him. However, he does argue that he was not proven guilty beyond a reasonable doubt and equates that argument with a claim that the evidence was closely balanced. Although we believe this is close to being insufficient, we will review the issue under the first prong of the plain-error doctrine. Our first step is to determine whether it was error to admit evidence of Owens' shooting. See *People v. Lewis*, 234 Ill. 2d 32, 43 (2009) ("[t]he first step of plain-error review is to determine whether any error occurred").

¶ 67 "Evidence is relevant if it has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable than it would be without such evidence." *People v. Lucas*, 132 Ill. 2d 399, 427 (1989). "Evidence which tends to establish that the accused had a motive for killing the decedent is relevant, and if the evidence, at least to a slight degree, tends to establish the motive relied on, it is also competent." *Lucas*, 132 Ill. 2d at 427. Thus, when the State undertakes to prove facts that it asserts constitute a motive for murder, it must be shown that the accused knew of those facts. *People v. Smith*, 141 Ill. 2d 40, 56 (1990).

¶ 68 Defendant claims that the motive evidence was improperly admitted because the State failed to prove the circumstances surrounding Owens' shooting or that defendant had knowledge of the events leading to the shooting. The flaw in defendant's argument is that it views each

piece of evidence in isolation and without regard for the other evidence presented at trial. A review of the entire record shows that the State introduced testimony that two days before the victim's murder, Murry and four other men from Sircon City went to the Pocket and played a basketball game against five men from the Pocket. There was testimony that defendant, who was from the Pocket, and his brother Owens played in that game. There was a bet of approximately $200 on the game but there was an argument between the two teams and the game never finished. Murry acknowledged that there was "probably" a shooting after the game and Detective Forberg testified that Murry filed a police report for an aggravated assault with a firearm that occurred in the Pocket near the basketball court that same day. Defendant's brother was driving defendant's car in the Pocket the following day when he was shot in the eye, and both defendant and codefendant visited him in the hospital. The victim was murdered in Sircon City the following day and there was testimony that defendant shot the victim and that defendant and codefendant were seen running from the scene of where the victim was shot. When all of this evidence is considered in its entirety, the jury could infer a relationship between the three shootings and that defendant had a motive to murder the victim.

¶ 69 We also find that the evidence of defendant's guilt was not closely balanced and that defendant was not prejudiced by the admission of evidence that Owens was shot. The nature of the evidence itself does not carry the same risk of prejudice as does other types of evidence. For example, the shooting of Owens is not evidence of "other crimes" committed by defendant that could have been improperly construed by the jury as propensity evidence. If defendant is correct that the evidence was insufficient for the jury to infer a connection between the shootings or that

defendant believed his brother was shot by someone from Sircon City, this only means that the State failed in its attempt to establish motive. "However, motive is not an essential element of murder and the State is not required to prove it in order to sustain a murder conviction." *People v. Gonzalez*, 388 Ill. App. 3d 566, 586 (2008). Therefore, the failure of the State to prove a motive would have had no bearing on the sufficiency of the evidence to support defendant's conviction. That evidence included the accounts of three eyewitnesses, one who saw defendant shoot the victim and two who heard the gunshots and saw defendant running from the scene carrying a gun. The State presented a number of other witnesses whose testimony corroborated the eyewitness accounts. This evidence was not closely balanced and was more than sufficient to prove defendant guilty beyond a reasonable doubt. Finally, the trial court instructed the jury that references to certain areas of the city were admitted for the limited purpose of identifying an area geographically and that evidence of events following the basketball game, including "the alleged shooting," was not part of the charged offense and was admissible only as it might establish motive. There is a strong presumption that jurors follow the instructions given to them by the court. *People v. Gonzalez*, 379 Ill. App. 3d 941, 954-55 (2008). There is nothing in the record to rebut that presumption or to support defendant's claim that the jury heard of Owens' shooting and made an impermissible "leap" that defendant shot the victim in retaliation.

¶ 70 For all these reasons, we find that defendant has failed to establish that a "clear and obvious" error occurred or that the evidence was so closely balanced that "the error alone threatened to tip the scales of justice" against him. See *Piatkowski*, 225 Ill. 2d at 565. Accordingly, we find that defendant has forfeited his claim that the trial court erred by admitting

evidence that Owens was shot.

¶ 71 Defendant's final contention is that the prosecution made improper comments during closing arguments. Defendant claims that the prosecution improperly argued that defendant had a motive to murder the victim and used the Pocket and Sircon City as "proxies for gangs." He also claims that the prosecution accused defendant and codefendant of intimidating the witnesses and "potentially" intimidated the jury itself.

¶ 72 We find that defendant has forfeited this contention because he did not object to any of the alleged improper comments when they were made or raise this issue in his posttrial motion. See *People v. Wheeler*, 226 Ill. 2d 92, 122 (2007) ("To preserve claimed improper statements during closing argument for review, a defendant must object to the offending statements both at trial and in a written posttrial motion"). Codefendant's counsel did raise an objection to one of the prosecutor's remarks that was sustained but, again, that objection does not benefit defendant. See *Martino*, 10 Ill. App. 3d at 104. Defendant argues that we should review the issue for plain error because the evidence was closely balanced and the prosecution's use of the Pocket and Sircon City as "proxies for gangs" likely led to his conviction. We first consider whether any of the complained-of remarks were error.

¶ 73 The prosecution is afforded wide latitude in making closing arguments so long as the comments made are based on the evidence or reasonable inferences drawn therefrom. *People v. Williams*, 192 Ill. 2d 548, 573 (2000). The prosecution may comment upon the credibility of the witnesses and the defense characterizations of the evidence or case and it may respond in rebuttal to statements made by defense counsel that clearly invite a response. *Gonzalez*, 388 Ill. App. 3d

at 590. When reviewing a challenge to remarks made by the prosecution during closing arguments, the comments must be considered in context of the entire closing arguments made by both parties. *People v. Wiley*, 165 Ill. 2d 259, 295 (1995). A reviewing court will not reverse a jury's verdict based upon improper remarks made during closing arguments unless the comments were of such magnitude that they resulted in substantial prejudice to the defendant and constituted a material factor in his conviction. *People v. Griffin*, 368 Ill. App. 3d 369, 376 (2006).

¶ 74 Defendant first claims that the prosecution improperly argued that the fight following the basketball game between people from the Pocket and Sircon City ultimately led to defendant's brother, Owens, being shot and that defendant murdered the victim as revenge for that shooting. Defendant asserts that this line of argument was error because there were no facts linking the basketball game to Owens' shooting.

¶ 75 This is essentially a reiteration of defendant's prior argument that the trial court improperly admitted evidence that Owens had been shot. We have already found that this evidence was properly admitted. The prosecution's argument regarding motive was based on the reasonable inferences drawn from that evidence and was therefore proper. See *People v. Nicholas*, 218 Ill. 2d 104, 121 (2005) (a prosecutor may comment on the evidence presented at trial, as well as any fair, reasonable inferences therefrom, even if such inferences reflect negatively on the defendant). The prosecution's argument was also a proper comment on defendant's credibility and his testimony that he was not upset when he found out his brother had been shot. See *Gonzalez*, 388 Ill. App. 3d at 590. Finally, the prosecution framed the case as

being about the credibility of the witnesses and defendant's alleged motive for the murder was not a central theme in the prosecution's closing arguments. The prosecution itself diminished the importance of the motive evidence when, after briefly arguing that defendant had a motive to shoot the victim, it told the jury "[b]ut you don't all have to agree on the motive. Because we don't have to prove it."

¶ 76 Defendant next challenges the following comment made during the prosecution's rebuttal argument:

> "But do you think Kevin Eson really wants to go back in the neighborhood that he lives in all his life. And some neighborhoods, ladies and gentleman, the worse [*sic*] thing, probably almost worse than committing first degree murder, and do you know what that is, that's being a snitch, your Honor."

Defendant claims that this was an improper characterization of Sircon City and the Pocket as more than simply geographical areas that was unsupported by the evidence.

¶ 77 Defendant takes the prosecutor's remarks out of context. In closing, defense counsel argued that Murry and Eson's trial testimony was more credible than their prior statements because in open court in front of the public they were able to tell their version of events free from the coercive influence of the police. In response, the prosecutor told the jury that Eson saw defendant shoot the victim and that a person does not forget seeing another person "shooting at a fellow human being." The prosecutor then made the challenged remark and told the jury that it had observed Eson's demeanor and that he appeared "stuck" and had been put in a "bad predicament" because he was made an eyewitness when defendant shot the victim in front of

him. The prosecutor concluded that Eson told the truth when he made his prior statements because he was doing "the right thing" and that it was "easy to be reluctant when you come into a courtroom and you actually have to say it."

¶ 78 Viewed in context, the prosecutor's remark was made in response to defense counsel's closing argument that the jury should credit the witnesses' trial testimony over their prior statements and was a comment on Eson's credibility and why he may have told a different version of events at trial. See *Gonzalez*, 388 Ill. App. 3d at 590 (counsel may comment upon defense characterizations of the evidence or case and may respond in rebuttal to statements made by defense counsel that clearly invite a response); *People v. Graves*, 142 Ill. App. 3d 885, 895-96 (1986) (comments regarding witness's fear and demeanor while testifying were proper comments on witness's credibility based on the evidence and were invited by defense counsel's closing arguments). We also note that the prosecution in no way suggested that defendant ever threatened Eson before he testified at trial. In making the challenged comment, the prosecutor also did not specifically reference Sircon City or the Pocket or characterize them as "proxies for gangs" but, rather, made a more general comment as to why at trial Eson disavowed portions of his prior statements. Finally, the reference to being a "snitch" was brief and isolated and did not deny defendant a fair trial. See *People v. Gorosteata*, 374 Ill. App. 3d 203, 226 (2007) (finding that the challenged comments made by the prosecutor were "minor and transitory" and therefore did not deny the defendant a fair trial); *Gonzalez*, 388 Ill. App. 3d at 590 (challenged remark was brief and isolated and therefore did not deny the defendant a fair trial).

¶ 79 Defendant next claims that the prosecution accused defendant and codefendant of staring

at and intimidating Eson and Murry during their testimony and that the prosecution put "the jury in the position itself of facing the neighborhoods where, according to the State, it's better to be a murderer than a snitch."

¶ 80 Again, defendant takes the prosecution's remarks out of context. The comments were made during a larger argument by the prosecutor as to why the jury should credit Eson and Murry's prior statements over their trial testimony. The prosecutor specifically argued:

> "And is it any surprise really that neither [Eson] nor [Murry] pointed to these two guys at this table and said, Demetrius, these two guys are the guys I saw running with a gun or Kevin, these are the guys that I saw shooting. Why didn't he say that here? Why was he saying it before and not here? Because never before have they had to say it in front of them, never before have these two guys had to get up and say that they saw who shot [the victim] in front of half of the Pocket and Sircon City.
>
> When they gave those statements to the police, it was the police, the [S]tate's [A]ttorney and them. There is no [defendant]. There is no [codefendant] starring them down.
>
> When they gave those statements in front of a grand jury and to a [S]tate's [A]ttorney before that, there is no [defendant] there. There is no [codefendant] there. There is no Pocket. And there is no [S]ircon City. But these guys still live there, and they still have to go back there after this trial is over.
>
> So is it unbelievable that they would make these statements in the past, but

they would deny them now? No. And that's why the law says that you can consider them just as if they said them before you."

¶ 81 Contrary to defendant's argument, the prosecution did not intimidate the jury or accuse defendant of intimidating the witnesses. Viewed in context, the prosecutor's remarks were simply comments on the credibility of the witnesses and the discrepancies between their prior statements and their trial testimony. As such, the comments were proper. See *People v. Smith*, 2012 IL App (1st) 102354, ¶ 62 (the State did not improperly insinuate that a witness was afraid of the defendant when it argued that the witness was more forthcoming when the defendant was not seated in the courtroom with her; the prosecutor's remarks were reasonable comments on the discrepancies between the witness's trial testimony and her prior handwritten statement and grand jury testimony).

¶ 82 The final comment that defendant challenges is the prosecutor's remark that "[b]ack in the Pocket, these guys are heroes." However, the trial court sustained an objection to this comment made by counsel for codefendant and the jury was instructed to disregard material to which the trial court sustained an objection. Moreover, the comment was brief and isolated and therefore did not deny defendant a fair trial. See *Gonzalez*, 388 Ill. App. 3d at 590.

¶ 83 We conclude by finding that the prosecution's remarks, viewed either individually or cumulatively, were not of such a magnitude that defendant was denied a fair trial. First, as previously discussed, the evidence of defendant's guilt was not closely balanced. Second, the trial court instructed the jury that closing arguments were not evidence and that closing arguments were to be confined to the evidence and to reasonable inferences drawn therefrom and

that the jury should disregard any statement made by the attorneys that was not based on the evidence. See *Gonzalez*, 388 Ill. App. 3d at 598 (trial court's instructions to the jury that closing arguments were not evidence and that the jury should disregard any statement made by the attorneys that was not based on the evidence "ameliorated any possible prejudice resulting from the prosecutor's allegedly improper remarks"). As this court has stated:

> "Regulation of remarks by counsel is best left to the trial court's discretion, which may cure such errors by giving proper jury instructions on the law, informing the jury that counsel's arguments are not evidence and to be disregarded if not supported by the evidence at trial, or by granting an objection and admonishing the jury to disregard comments." *People v. Tijerina*, 381 Ill. App. 3d 1024, 1032–33 (2008) (citing *People v. Simms*, 192 Ill. 2d 348, 396 (2000)).

¶ 84 For these reasons, we find that defendant has failed to meet his burden of establishing that the prosecutor's alleged improper remarks constituted plain error. Accordingly, we find that defendant has forfeited his challenge to the prosecution's closing arguments.

¶ 85 For the reasons stated, the judgment of the circuit court of Cook County is affirmed.

¶ 86 Affirmed.