

FIRST DIVISION  
January 23, 2012

No. 1-10-1195

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 08 CR 4677
	)	
MILTON CROSS,	)	Honorable
	)	Jorge Luis Alonso,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE ROCHFORD delivered the judgment of the court.  
Justice Hall and Justice Karnezis concurred in the judgment.

**ORDER**

¶ 1 **Held:** We affirmed defendant's conviction and 60-year sentence for first-degree murder where the State proved him guilty beyond a reasonable doubt, the circuit court committed no abuse of discretion in excluding *Lynch* evidence, and the State's remarks during closing arguments did not deprive him of a fair trial.

¶ 2 A jury convicted defendant, Milton Cross, of first-degree murder and the circuit court sentenced him to 60 years' imprisonment. On appeal, defendant contends: (1) the State failed to prove him guilty beyond a reasonable doubt; (2) the circuit court erred by denying his motion *in limine* to introduce evidence of the victim's prior conviction for aggravated battery of a police officer

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to support his self-defense claim; and (3) the State made improper remarks during closing arguments.

We affirm.

¶ 3 Prior to trial, defendant filed a motion *in limine* pursuant to *People v. Lynch*, 104 Ill. 2d 194 (1984), to introduce evidence of the victim's conviction in 2000 for aggravated battery of a police officer to support his self-defense claim. The State responded by filing a motion *in limine* to bar introduction of this *Lynch* evidence, contending it was not admissible because: (1) there was no evidence defendant acted in self-defense, which is a necessary precursor to the admission of *Lynch* evidence; and (2) both the victim and the police officer, who were the only witnesses to the aggravated battery, had died, and, therefore, the defense could not elicit any testimony regarding the circumstances thereof. After hearing arguments from both sides, the circuit court denied defendant's motion *in limine*, granted the State's motion *in limine*, and barred the admission of the *Lynch* evidence.

¶ 4 At the jury trial, Gary Gates testified that in 2008, he was the manager of the Callo Hotel, located at 4820 South Michigan Avenue in Chicago. The Callo Hotel was a single room occupancy hotel, with three floors and approximately 21 to 25 rooms. Mr. Gates and the victim, Gregory Gordon, were childhood friends who had known each other for over 40 years. On January 30, 2008, the victim, who had just been released from prison, was living in room 215 at the Callo Hotel. He had been living in room 215 for about one month.

¶ 5 Mr. Gates testified he hired the victim to work at the hotel as "protection" because Mr. Gates' daughters worked at the hotel and "the area it was in was kind of unsafe." In return, Mr. Gates gave the victim a free room and paid him out of his pocket.

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¶ 6 Mr. Gates worked the midnight shift at the Callo Hotel on January 30 through January 31, 2008. Mr. Gates testified that upon arriving at the Callo Hotel, at around midnight on January 30, 2008, the victim met him outside and asked him to drive to the store and buy him a half-pint of Hennessy. Mr. Gates went to the store, bought the Hennessy, and returned in about 10 minutes. Mr. Gates entered the hotel, gave the victim the Hennessy while they were both standing in the hallway, and then he went into his office. Mr. Gates' office was in the front of the hotel, "straight up the hallway" from room 215.

¶ 7 Mr. Gates testified that at approximately 3 a.m., he heard an argument coming from outside the victim's room. Mr. Gates went to investigate, and saw the victim arguing with defendant. The victim's brother, Joe Gordon, also was there. Mr. Gates heard defendant and the victim arguing over money; the victim was complaining to defendant that he should not have exposed their "business" to everyone in the hallway, and he denied owing defendant any money. Defendant "hollered back" that the victim was treating him like a "punk." Mr. Gates did not see defendant and the victim touch or punch each other during this argument, and he did not observe anyone holding a gun.

¶ 8 Mr. Gates testified he asked the victim to return to his room, which he did. Mr. Gates and Joe brought defendant into his office and talked to him for about 10 minutes in an effort to calm him down. After their conversation, defendant said he was fine and left the office. Mr. Gates testified that upon leaving the office, defendant was not screaming and he did not appear to be edgy. Joe also left, after which Mr. Gates closed the office door and got ready to take a nap.

¶ 9 Mr. Gates testified he then heard two gunshots. He jumped up and opened his office door, whereupon he saw Joe pushing defendant up against the wall, right across from the doorway to room

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215. Mr. Gates went down the hallway and saw defendant "standing up against the wall, staring in the room." Mr. Gates looked inside room 215 and saw the victim on the floor, with Joe holding him. A woman and a child also were in the room. Mr. Gates heard Joe say to defendant, "Look what you did." Mr. Gates looked back toward defendant, but he was already gone. Mr. Gates turned back around and saw Joe attempt to give the victim mouth-to-mouth resuscitation.

¶ 10 Mr. Gates testified he walked into the room, picked up the child, and took him to his office. Mr. Gates called the police and reported the shooting. The police arrived shortly thereafter.

¶ 11 Mr. Gates testified he never saw defendant, Joe, or the victim holding a gun that night. He did not see defendant drinking or doing any drugs, nor did he see the victim drinking or doing any drugs. Mr. Gates also explained, with regard to the type of lock on room 215, that the Callo Hotel buys "package locks of six from Home Depot", and that one key fits all six locks. Mr. Gates had previously rented a room to defendant. Mr. Gates testified it was possible defendant's key would also open room 215.

¶ 12 Joe Gordon testified he is the victim's older brother. Joe was currently serving a 2½ year sentence for retail theft, and he had so many prior convictions for retail theft, he had "lost track." Joe testified he knew defendant because defendant's mother was also the mother to two of Joe's children, and Joe considered defendant to be "something like a stepson" to him. Joe testified defendant and the victim knew each other; they were more than just friends, they were "like uncle and nephew."

¶ 13 Joe testified that late in the evening on January 30, 2008, and into the early morning hours of January 31, 2008, defendant, the victim, the victim's girlfriend (Tasha Cribbs), and the victim's

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son were all residing at the Callo Hotel. Joe went to see the victim at the hotel between 11 p.m. and 11:30 p.m. on January 30, 2008. Defendant greeted him when he walked inside the hotel. Joe, defendant, and the victim began talking about taking Joe shopping the next morning to buy clothes. They were not drinking or taking any drugs. At approximately midnight, defendant left, saying he had to go somewhere but that he would be back. Defendant was in a good mood when he left. After defendant left, Joe, the victim, Ms. Cribbs, and their son remained in the victim's room, socializing and talking. Joe saw no drugs in the room.

¶ 14 Joe testified defendant returned at approximately 3 a.m. and came by the victim's room. Joe was laying on a lounge chair in the room. The victim, Ms. Cribbs, and their son were also in the room. The victim was sleeping. Defendant woke up the victim and they started arguing. Defendant and the victim went into the hallway, where they continued arguing. Joe followed them out to the hallway. Joe testified he did not know what they were arguing about, and he did not remember what they were saying to each other. They were not punching or kicking each other, but they did do a little pushing. Joe did not see any weapons on them.

¶ 15 Joe testified that Mr. Gates walked into the hallway and helped stop the argument. The victim went back to his room. Defendant went with Mr. Gates to his office and Joe followed. Joe told defendant that he and the victim were like family and they had no business arguing. Defendant appeared to calm down. After about five to seven minutes, Joe left the office and went to check on the victim in his room. As Joe was walking down the hallway toward the victim's room, defendant broke in front of him and stuck a key in the victim's door. Defendant opened the door and stepped inside. Defendant and the victim were approximately three feet away from each other. The victim

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jumped out of bed and said, "What's up?" Defendant replied, "This what's up." Then defendant pulled out a gun from his side and started shooting. He fired "around four shots."

¶ 16 Joe testified that when he saw defendant with the gun, he grabbed at defendant and pushed him up against the hallway wall in an effort to stop him from shooting the victim. However, defendant was still able to get the shots off. Joe saw the victim "flinch" upon being shot, and then he fell to the floor. After the fourth shot, defendant ran down the hallway. Joe ran to the victim and tried to give him mouth-to-mouth resuscitation. Ms. Cribbs was screaming. Joe told Mr. Gates to take the child out of the room. Soon after, the ambulance and the police arrived. Joe asked the paramedics to help the victim. However, they were too late to save the victim, who had died.

¶ 17 Joe testified that when defendant fled down the hallway following the shooting, he was still in possession of the gun. Joe also testified the victim did not have a gun in his possession that evening.

¶ 18 On cross-examination, Joe testified he had only started to get to know defendant in 2000, following defendant's release from prison, and defendant was not really like a stepson to him. Joe also admitted that his sister, Angelie, had been at the Callo Hotel on the night of the shooting, but she had gone upstairs before the victim was shot. Joe further testified on cross-examination that when defendant returned to the victim's room at around 3 a.m., the light was off and the door was shut and locked. Joe did not know how defendant got into the room. When defendant first walked into the room, the victim handed him some money; then they began arguing. Defense counsel asked Joe if he remembered testifying before the grand jury that the argument was over money. Joe stated he never told the grand jury the argument was over money, and that he did not know why they were

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arguing. Joe testified that after he and Mr. Gates broke up the argument, defendant subsequently returned to the victim's room and opened it with a key. The light was already on when he opened the door. Defendant "went to his left side with his right hand" and pulled out a gun, which he used to shoot the victim, who was about 4½ feet away from him. Ms. Cribbs was standing right behind the victim when he was shot. Their son was standing right beside Ms. Cribbs.

¶ 19 During redirect examination, Joe admitted he did remember testifying before the grand jury that defendant and the victim were arguing over money. However, on recross examination, defendant again stated he did not remember telling the grand jury the argument was over money.

¶ 20 Tasha Cribbs initially testified on direct examination that the victim was her husband and they had one son who was seven-years old at the time of the victim's death. Ms. Cribbs subsequently clarified during direct examination that she and the victim were not actually married, but they had gotten engaged on the day of his death. Ms. Cribbs testified the victim worked two jobs; one at the Callo Hotel and one at a grocery store. On January 30, 2008, the victim got off work at the grocery store at approximately 7:30 p.m. or 8 p.m. He then picked up Ms. Cribbs and their son, and they arrived at the hotel at approximately 9 p.m. At the victim's hotel room, they met with Joe and defendant. Ms. Cribbs had known defendant for about one week.

¶ 21 Ms. Cribbs testified defendant was in their room for less than a couple of hours, during which time they all sat around looking at television, listening to music, and talking. Nobody was arguing. Ms. Cribbs did not see defendant doing any drugs, but she did see defendant and the victim drinking a half pint of Hennessy mixed with Coca-Cola. Defendant left around midnight.

¶ 22 Ms. Cribbs testified that after defendant left, she, the victim, their son, and Joe remained in

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the room, watching television. Joe was on a chair, while the rest of them were in bed. She and her son fell asleep. At approximately 3 a.m., she was awakened when "someone" came in with a key. She saw defendant, the victim, and Joe standing in the room, and she heard defendant and the victim arguing. She did not know what they were arguing about. Her son remained sleeping.

¶ 23 Ms. Cribbs testified that defendant, the victim, and Joe went into the hallway. Ms. Cribbs tried to follow them to the hallway, but the victim ordered her to stay in the room. She heard defendant and the victim yelling at each other for about 10 to 15 minutes. The victim then returned to their room alone; Ms. Cribbs did not know where Joe and defendant went. The victim closed and locked the door and got in bed with her. They started to "get intimate" while their son was asleep on the other side of the bed. Ms. Cribbs took off her clothes and took off the victim's shirt and pants; he was still wearing his boxers. Then they "heard keys." The victim told her to put her clothes back on, which she did, and he got out of bed and put on his pants. Then he "jumped at the door" and put his feet on the door because they heard "somebody trying to get in with the key."

¶ 24 Ms. Cribbs testified the door opened and she saw defendant at the door. The victim backed up; he was about three feet away from defendant. The victim said, "What's up, man? What's up?" Defendant pulled the gun from his right side, fired it at the victim, and said, "Who's the bitch?" Defendant shot the victim four times. Ms. Cribbs grabbed her son and began screaming. After the fourth shot, Joe ran inside the room and tried to give the victim mouth-to-mouth resuscitation. Mr. Gates also came into the room and took her son out. The police and paramedics arrived shortly thereafter.

¶ 25 Ms. Cribbs later clarified on direct examination that she did not actually see defendant with

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the gun. She "felt the smoke, the vibration of it. \*\*\* The smoke, the vibration, everything of the gun." Ms. Cribbs also testified she never saw the victim or Joe with a gun that whole night.

¶ 26 During cross-examination, Ms. Cribbs testified she saw defendant's gun once he started shooting. Ms. Cribbs also testified she and her son were in bed at the time of the shooting and the lights were on. Defendant and the victim did not struggle with each other prior to the shooting. Ms. Cribbs testified she saw Joe run into the room after the shooting. Defense counsel asked her if she ever saw Joe "tussling" with defendant. Ms. Cribbs testified, "No, I didn't. Because remind you, bed is on the side and door is over there. I cannot see among the door." Ms. Cribbs further testified she could not see into the hallway from where she was positioned on the bed. Ms. Cribbs testified that after the victim was shot, she grabbed him and then some of his blood splashed on her.

¶ 27 Officer Eric Szwed, a forensic investigator for the Chicago police department, testified he was assigned to investigate the shooting on January 31, 2008. He arrived at the Callo Hotel at approximately 5:05 a.m. and went to room 215, which he described as being small, approximately 15 feet by 15 feet square. Immediately inside the doorway, the victim was lying face up on the floor. Officer Szwed and his partner photographed and videotaped the scene. Officer Szwed also conducted a search of the room, including the "dresser, night stand, tv stand, table, mattresses, behind the door, behind curtains, in the closet" and inside the victim's pockets, and no guns or drugs were recovered. During the search, he recovered three fired bullets from the hotel room that were later inventoried. One of the bullets was found underneath the victim, inside his shirt. The parties stipulated the three bullets were fired from the same gun. Officer Szwed did not recover any cartridge casings at the scene.

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¶ 28 Michael Hughes testified he was formerly employed as a detective for the Chicago police department in January 2008. At approximately 3:30 a.m. on January 31, 2008, he and his partner, Detective Benoit, were assigned to investigate the shooting. After interviewing other officers already on the scene, Officer Hughes went to room 215, where he observed the victim's body and "several pieces of evidence still lying about the floor." Evidence technicians subsequently arrived at the scene.

¶ 29 Officer Hughes testified he spoke with Joe and with Ms. Cribbs, both of whom told him defendant had knocked on the victim's door (as opposed to entering it with a key) prior to the shooting. Officer Hughes testified he witnessed the search of room 215. During the search, the mattress was lifted up and officers looked between the mattress and the box spring for anything of evidentiary value, including a gun. No guns or drugs were found.

¶ 30 After speaking with his fellow detectives, Officer Hughes learned defendant was the suspected shooter. Officer Hughes returned to the police station, where he obtained photographs and the last known addresses of defendant. He went to defendant's last known addresses, but was unable to immediately locate him. Defendant was subsequently arrested on February 5, 2008, outside a residence in Chicago.

¶ 31 Doctor Valerie Arangelovich testified she is an assistant medical examiner at the Cook County Medical Examiner's Office. She performed the autopsy on the victim at approximately 8:10 a.m. on January 31, 2008, and she noted, when his body was received, he was clothed in a black, sleeveless shirt, multi-colored boxer shorts, and black denim jeans with a black belt. Doctor Arangelovich's examination revealed the victim suffered four gunshot wounds. One of the gunshot

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wounds was to the front of the victim's left chest, one was to the lower-right chest, one was to the back of the right forearm, and one was to the right thigh. The victim also had a purple bruise on the left side of his forehead, a healing abrasion on the back of his right elbow, two abrasions on his left knee, and multiple healing abrasions on the front of his lower-right leg. Doctor Arangelovich determined the victim died from the multiple gunshot wounds and the manner of death was homicide.

¶ 32 Doctor Arangelovich testified there was no evidence of close-range firing with respect to any of the four gunshot wounds sustained by the victim. She explained, "[c]lose range firing evidence consists of seeing gunpowder soot or gunpowder stippling on the skin. So [when] you have [a] gunshot wound of entrance that you think [is the result of] close range firing, around the gunshot wound of entrance on the skin there should be some black powder deposits or tattooing of the skin by the gunpowder that comes out the muzzle of the gun. It basically tattoos the skin. With close range firing, the muzzle of the gun should be less than 18 to 24 inches from the deceased." Doctor Arangelovich explained, however, "if you have clothing on and you are looking at a gunshot wound of entrance, that clothing will protect the skin so that clothing can possibly pick up the gunpowder soot and residue and protects the skin that surrounds that gunshot wound of entrance." Further, Doctor Arangelovich testified the results of the toxicological tests on the victim came back negative for heroin or cocaine. However, there was a presence of ethanol or alcohol in his blood and his blood alcohol level was .041.

¶ 33 In his case-in-chief, defendant called Detective John Foster, who testified that on January 31, 2008, he was assigned to investigate the shooting at the Callo Hotel. Detective Foster testified he

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spoke with Joe Gordon, who told him Ms. Cribbs was standing outside the closed door of room 215 when defendant walked past, opened the door, and started arguing with the victim.

¶ 34 Sergeant Kelvin Williams testified that during his interview of Ms. Cribbs on the night of the shooting, she told him defendant and a brother and sister knocked on the door of room 215. Ms. Cribbs further told him defendant and the victim were arguing over money. Sergeant Williams did not recall Ms. Cribbs telling him defendant had stated "Who's the bitch now?" or "You're treating me like a bitch." to the victim before shooting him.

¶ 35 The parties stipulated that on February 20, 2008, before the grand jury, Joe Gordon was asked, "What happened when [defendant] came back?" and Joe answered, "He and [the victim] got to arguing about some money." Following this stipulation, defendant testified on his own behalf.

¶ 36 Defendant testified he had known the victim all his life and they always had a good relationship. Defendant further testified he looked up to the victim's brother, Joe Gordon, as a father figure and that they also had a good relationship.

¶ 37 Defendant testified he had been selling drugs out of the Callo Hotel in partnership with the victim; defendant would give the victim ounces of crack cocaine and the victim, in turn, would sell the crack cocaine and give defendant some of the transactional money he had received for selling the drugs. Defendant also sold drugs himself; he stashed the drugs in a little hole in a mattress in the victim's room, room 215. Defendant did not tell the victim about the drugs in the mattress. Defendant admitted he had prior convictions for selling and possessing narcotics.

¶ 38 Defendant testified that at approximately 2:30 p.m. on January 30, 2008, he took a cab to the Callo Hotel. He gave the victim approximately one ounce of crack cocaine in exchange for money.

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The victim went into another room to bag the cocaine, but returned and accused defendant of "short[ing] him on the crack cocaine," meaning defendant had not given him the correct amount. Defendant denied shorting the victim, and they began to argue. The argument did not "get physical" at that point; it was a verbal argument only. Following the argument, defendant and the victim went their separate ways to sell their respective drugs. There was still "tension in the air."

¶ 39 Defendant testified that at approximately midnight, Joe came into the hotel. Angelie and Mr. Gates also were there. Defendant buzzed Joe into the hotel, gave him a hug because he had just gotten out of prison, and told him he was going to take him shopping for clothes the next day. Joe went to get something to eat, and defendant returned to selling drugs. Defendant was also drinking Hennessy.

¶ 40 Defendant testified he left the hotel around midnight and went to a lounge. At approximately 2:15 a.m., defendant received a phone call from Angelie telling him there were no more drugs in the hotel to sell. Defendant returned to the hotel to get some more drugs. The victim, Ms. Cribbs, Joe, Angelie, and Mr. Gates were all in the front hallway of the hotel. Defendant and the victim resumed their argument. Mr. Gates, Joe, and Angelie called defendant into Mr. Gates' office and told him to calm down. Defendant sat in the office for about five minutes and calmed down.

¶ 41 Defendant testified that after leaving the office, he went to the victim's room to retrieve the drugs he had stashed in the mattress. Defendant knocked on the door, which the victim opened halfway. The victim blocked defendant from entering the room and pulled out a gun from somewhere near the middle of his stomach. Thinking the victim was going to kill him, defendant grabbed the gun and they began "tussling." During the struggle, defendant pulled the trigger because

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he was "scared for [his] life." After he pulled the trigger, defendant dropped the gun and fled to his sister's house.

¶ 42 On cross-examination, defendant testified he had never rented a room at the Callo Hotel and that Mr. Gates never gave him a key to any of the hotel rooms. However, defendant sometimes slept in room 215 and he kept drugs in a mattress in the room. On January 30, 2008, defendant sold the victim one ounce of cocaine for \$500. They began arguing when the victim accused defendant of shorting him on the amount of cocaine. Defendant left the hotel at midnight, but returned to the hotel when Angelie called him at 2:45 a.m. and told him they needed more packets of cocaine. At the hotel, defendant saw the victim again and they resumed their "heated argument." The victim tried to hit him and they engaged in a "little tussle." Mr. Gates, Angelie, and Joe broke up the argument and took defendant to Mr. Gates' office, where they told him that he and the victim were like family and should not be arguing. Defendant told them he had calmed down.

¶ 43 Defendant further testified on cross-examination that after about 15 or 20 minutes, he left the office and went to the victim's room in order to retrieve the cocaine in the mattress. Defendant knocked on the door and the victim answered and pulled a gun on him. Defendant thought the victim was going to kill him. They began "tussling" over the gun. Defendant fired the gun and the first bullet hit the victim, who fell backward. Defendant then fired more shots at the victim. Defendant testified he shot the victim because he was in "fear for [his] life." He did not remember how many times he shot the gun; he testified it "happened so quick when [he] pulled the trigger." Defendant dropped the gun and fled. Defendant denied Joe ever tried to grab him or prevent him from shooting the victim.

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¶ 44 Defendant testified that after his arrest, he told the police officers he and the victim had argued because the victim owed defendant some money for drugs. Defendant did not tell the officers about the drugs he stashed in the victim's mattress. Defendant did not tell the officers about the kind of gun the victim had pointed at him and he denied telling them he fired the gun several times.

¶ 45 In rebuttal, the State called Officer David Brown, who testified he and his partner placed defendant under arrest on February 5, 2008. Officer Brown subsequently spoke with defendant at the police station at approximately 12:25 a.m. Defendant told Officer Brown he and the victim had gotten into an argument over drugs, at which time the victim pulled out a silver, .357 Magnum handgun. Defendant stated he had taken the handgun from the victim and fired the gun at the victim, striking him several times. Defendant observed the victim fall to the ground.

¶ 46 The jury convicted defendant of first-degree murder and found that during the commission of the offense, he had personally discharged a firearm that proximately caused the victim's death. The circuit court sentenced him to 60 years' imprisonment. Defendant filed this timely appeal.

¶ 47 First, defendant contends the State failed to prove him guilty beyond a reasonable doubt because he acted in self-defense. It is not the function of the reviewing court to retry defendant when presented with a challenge to the sufficiency of the evidence. *People v. Evans*, 209 Ill. 2d 194, 209 (2004). The relevant inquiry is "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (Emphasis in original.) *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). Under this standard, the trier of fact remains responsible for determining the credibility of the witnesses, the weight to be given their testimony, and the reasonable inferences to be drawn from the evidence.

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*People v. Ross*, 229 Ill. 2d 255, 272 (2008).

¶ 48 A defendant is guilty of first-degree murder when he kills an individual without lawful justification if, in performing the acts that cause the death, he intends to kill or do great bodily harm to that individual or knows such acts will cause death to that individual, or knows his acts create a strong probability of death or great bodily harm to that individual. 720 ILCS 5/9-1(a)(1), (a)(2) (West 2008).

¶ 49 "Self-defense is an affirmative defense, and once a defendant raises it, the State has the burden of proving beyond a reasonable doubt that the defendant did not act in self-defense, in addition to proving the elements of the charged offense." *People v. Lee*, 213 Ill. 2d 218, 224 (2004). A defendant who raises self-defense must establish some evidence of each of the following elements: (1) force is threatened against defendant; (2) defendant is not the aggressor; (3) the danger of harm was imminent; (4) the threatened force was unlawful; (5) defendant actually and subjectively believed a danger existed that required the use of the force applied; and (6) defendant's beliefs were objectively reasonable. *People v. Jeffries*, 164 Ill. 2d 104, 127-28 (1995). A person is justified in the use of force in self-defense against another that is intended or likely to cause death or great bodily harm when he reasonably believes such force is necessary to prevent imminent death or great bodily harm to himself or another or the commission of a forcible felony. 720 ILCS 5/7-1 (West 2008). Defendant's claim fails if the State negates any one of the self-defense elements. *Jeffries*, 164 Ill. 2d at 128; *Lee*, 213 Ill. 2d at 225.

¶ 50 In the present case, defendant's testimony was sufficient to raise all the elements of self-defense, specifically: the victim threatened deadly force against him when he pulled his gun; the

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victim was the aggressor for pulling the gun on the unarmed defendant upon answering the door and before defendant even had the chance to walk into the room; the danger of harm was imminent where defendant and the victim had argued previously, and the victim was now wielding a weapon; the threatened force was unlawful; defendant actually and subjectively believed deadly force was necessary to prevent imminent death or great bodily harm to himself; and his belief was objectively reasonable.

¶ 51 However, Ms. Cribbs' and Joe's testimony was sufficient to negate all the elements of self-defense and prove defendant committed first-degree murder. Specifically, they testified defendant, not the victim, was the aggressor for opening the victim's door with a key and pushing it open even though, according to Ms. Cribbs, the victim was pushing against the door with his foot; the victim never threatened force when defendant opened the door, but merely asked, "What's up?"; defendant, not the victim, pulled the gun, and shot the victim four times; and defendant fled the scene. The jury could determine from Ms. Cribbs' and Joe's testimony that since the victim was not wielding a weapon or otherwise acting in a threatening manner, defendant had no subjectively or objectively reasonable belief that the use of deadly force against the victim was necessary. Ms. Cribbs' and Joe's testimony that defendant entered the room with a key was supported by Mr. Gates, who testified he had previously rented a room to defendant, and it was possible his key could open the victim's room. Ms. Cribbs' and Joe's testimony that defendant was the aggressor was supported by Officer Hughes' and Office Szwed's testimony at trial that no drugs were found in the victim's mattress, which negated defendant's claim that he came to the room for the nonviolent purpose of retrieving said drugs. Their testimony was also supported by Doctor Arangelovich, who testified there was no

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evidence of close range firing in which the muzzle of defendant's gun was less than 18 to 24 inches from the victim's body. Although Doctor Arangelovich acknowledged that clothing could mask the signs of close-range firing, one of the victim's gunshot wounds was to his forearm, which was unclothed. Doctor Arangelovich's testimony negated defendant's claim that the shooting was in self-defense while he struggled in close range with the victim over the gun; Doctor Arangelovich's testimony supported Ms. Cribbs' and Joe's testimony that defendant shot the victim while he was between 3 to 4½ feet away from the victim.

¶ 52 Thus, this case turned on whether the jury believed defendant's version of the events leading to the shooting, or whether it believed Ms. Cribbs' and Joe's version. The jury obviously believed Ms. Cribbs' and Joe's version of the events leading to the victim's death, as it rejected defendant's claim of self-defense and convicted him of first-degree murder. We will not retry defendant or substitute our judgment for the jury's credibility determinations. Viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have rejected defendant's claim of self-defense and found defendant guilty of first-degree murder beyond a reasonable doubt.

¶ 53 Defendant argues that while fact-finding and credibility determinations are normally the province of the jury and will not be disturbed on review, the sheer amount of "false, implausible, and conflicting testimony" at trial necessitates reversal of his conviction. Specifically, defendant points to Ms. Cribbs' inconsistent testimony as to whether she was the victim's wife or whether she was his fiancé, and Joe's inconsistent testimony as to whether or not he considered defendant to be his stepson. Defendant points to conflicts in Joe's and Ms. Cribbs' testimony regarding the lighting in the victim's room and whether the victim had been drinking, the position of the room's occupants and

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their manner of dress before and during the shooting, the location of the gun on defendant's body and whether Joe and defendant struggled with each other in the hallway, and whether Joe said anything to the paramedics following the shooting. Defendant points to conflicts between Joe's and Ms. Cribbs' testimony at trial that defendant used a key to enter the room, and their statements to police that defendant knocked on the door in order to gain entrance. Defendant also points to Ms. Cribbs' inconsistent accounts as to whether she actually saw, or merely heard the shooting, and to the allegedly implausible testimony from both Ms. Cribbs and Joe that they did not hear what defendant and the victim were arguing about prior to the shooting. Finally, defendant points to further allegedly implausible testimony from Ms. Cribbs that she was "splashed" with the victim's blood and that she knew defendant entered the room with a key at 3 a.m., even though she was asleep at the time. Defendant contends Joe, Ms. Cribbs, and Mr. Gates all had motives to participate in a cover-up of the victim's responsibility for the shooting, as Joe was the victim's brother, Ms. Cribbs was his fiancé, and Mr. Gates had hired him as "protection" for the hotel without the ownership's knowledge. Defendant argues that although Joe and Ms. Cribbs testified defendant, not the victim, possessed the gun, it is more plausible and probable the gun belonged to the victim, as Mr. Gates testified the victim, who had just been released from prison, was hired as "protection" because the hotel was in an unsafe neighborhood. Defendant also argues Joe's criminal background raises doubts as to the truthfulness of all his testimony against defendant.

¶ 54 Defendant contends all of this improbable and/or contradictory testimony casts reasonable doubt of his guilt. We disagree. First, we note there were explanations given at trial for why some of the testimony seemingly conflicted with each other. For example, with respect to why Ms. Cribbs

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did not corroborate Joe's testimony that he fought with defendant in the hallway outside the victim's room in an attempt to prevent him from shooting the victim, Ms. Cribbs explained that from where she was positioned, she could not see into the hallway. With respect to how the victim's blood could have splashed on Ms. Cribbs if she was not near him at the time of the shooting, Ms. Cribbs explained that after he was shot, she grabbed him and got some of his blood on her.

¶ 55 As for the remaining testimony, defendant contends its inconsistent and improbable nature affects the credibility of the whole, and raises reasonable doubt as to Joe's and Ms. Cribbs' identification of defendant as the aggressor in the shooting. We disagree. Our supreme court has held, "even when a witness is found to have knowingly given false testimony on a material point, a fact finder may reject his entire testimony *but is not bound to do so.*" (Emphasis added.) *People v. Cunningham*, 212 Ill. 2d 274, 283 (2004). Even " 'contradictory testimony of a witness does not *per se* destroy [his credibility], and it remains for the trier of fact to decide when, if at all, he testified truthfully' \*\*\*. In other words, it is for the fact finder to judge how flaws in part of the testimony affect the credibility of the whole." *Id.*, (quoting *Sparling v. Peabody Coal Co.*, 59 Ill. 2d 491, 498-99 (1974)). "Where the record is not such that the only inference reasonably drawn from flaws in the testimony is disbelief of the whole, a reviewing court should bear in mind that the fact finder had the benefit of watching the witness' demeanor." *Id.* at 284.

¶ 56 In the present case, despite their inconsistencies as to certain details surrounding the shooting, both Joe and Ms. Cribbs were consistent in their testimony that defendant entered the room with a key while armed with a gun, and defendant shot the victim four times before fleeing. Their

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testimony was the opposite of that of defendant, who testified he approached the victim's room unarmed to retrieve his drugs from the mattress, that he knocked on the door and the victim opened the door, pulled a gun on him and died in the ensuing struggle. The jury had the opportunity to view the witnesses as they testified, and, therefore, was in a better position than we are to weigh their credibility and determine who was telling the truth about how the victim was shot and killed. Any rational trier of fact could find beyond a reasonable doubt defendant was guilty of first-degree murder after considering: Ms. Cribbs' and Joe's testimony consistently identifying defendant as the aggressor who entered the victim's room with a key and shot the unarmed victim four times; Mr. Gates' supporting testimony that defendant may have a key which possibly could have opened the victim's door; Officer Szwed's and Officer Hughes' testimony that no drugs were found in the victim's mattress and, therefore, defendant's ostensibly non-violent reason for approaching the victim was unsupported by the evidence; and Doctor Arangelovich's testimony that there was no evidence of close-range firing supporting defendant's theory of self-defense. Further, defendant's flight from the scene is additional evidence supporting the jury's verdict. See *People v. Lewis*, 165 Ill. 2d 305, 349 (1995) ("The fact of flight, when considered in connection with all other evidence in a case, is a circumstance which may be considered by the jury as tending to prove guilt.")

¶ 57 Defendant contends *People v. Herman*, 407 Ill. App. 3d 688 (2011), compels a different result. Herman was a police officer convicted of multiple offenses relating to criminal sexual assault, official misconduct and kidnaping. *Id.* The State's case relied primarily on the testimony of the victim who alleged that the sexual encounter was not consensual. *Id.* at 704. We reversed Herman's conviction, noting the victim was an admitted crack addict who was admittedly "high"

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during the entire night of the encounter. *Id.* at 705. We held, "this type of addiction is an important consideration in passing on the credibility of a witness 'for \*\*\* testimony of a narcotics addict is subject to suspicion due to the fact that habitual users of narcotics become notorious liars' [citations], and such evidence may cast serious doubt on the truth of the balance of their testimony [citation]."

*Id.* After scrutinizing the victim's testimony, we found "it was fraught with inconsistencies and contradictions, most notably related to the time line of events related to the encounter. The time line was material to [the victim's] credibility as it related to all of [Herman's] convictions." *Id.* We further found, "[b]ased on the evidence presented, and taken in the light most favorable to the State, [and] after considering the whole record, the flaws in [the victim's] testimony made it impossible for any fact finder reasonably to accept any part of it." *Id.* at 707.

¶ 58 In contrast to *Herman*, there was no evidence at trial that Ms. Cribbs and Joe were narcotics addicts or they used drugs on the night of the murder such that their testimony was subject to suspicion due to their drug use, nor was their testimony so flawed so as to make it impossible for any fact finder reasonably to accept any part thereof. They testified consistently with each other that defendant, not the victim, had possession of the gun, and defendant was the aggressor in the shooting and he shot the victim four times at a distance of between 3 and 4½ feet. Their testimony was corroborated in key parts by Mr. Gates, Officer Szwed, Officer Hughes and Doctor Arangelovich (see our discussion above.) Unlike *Herman*, the evidence here, viewed in the light most favorable to the State, was sufficient for any rational trier of fact to find defendant guilty of first-degree murder beyond a reasonable doubt.

¶ 59 Next, defendant contends the circuit court erred by denying his motion *in limine*, pursuant

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to *Lynch*, to introduce the victim's conviction in 2000 for aggravated battery of a police officer to support defendant's self-defense claim. The circuit court has the discretion to grant a motion *in limine*, and we will not reverse the court's ruling absent a clear showing of an abuse of that discretion. *Davis v. Kraff*, 405 Ill. App. 3d 20, 28 (2010).

¶ 60 Review of this issue requires a discussion of *Lynch*. Paul Lynch, Sr. shot Lester Howard in the head and was tried for murder. *Lynch*, 104 Ill. 2d at 197. The evidence at trial established Mr. Lynch's son, Paul Lynch, Jr. (Junior), was physically and mentally handicapped. *Id.* at 198. Without authorization, Junior took Earnest Bell's car and wrecked it. *Id.* Mr. Bell demanded money from Mr. Lynch for the repairs, but negotiations broke down. *Id.* Mr. Bell became angry and said he would get his money or kill Junior. *Id.* Later, Mr. Lynch noticed Mr. Bell's car in front of Junior's apartment. *Id.* Fearing for Junior's safety, Mr. Lynch went to the apartment with a gun in his pocket that he had planned to give Junior for his protection. *Id.* Junior, Mr. Bell, and Lester Howard, a friend of Mr. Bell's, were discussing the repair problem when Mr. Lynch arrived. *Id.* Mr. Bell and Mr. Howard were bigger than Mr. Lynch, and both had been drinking. *Id.* Eventually, Mr. Howard made an angry remark and started toward Mr. Lynch, but Mr. Bell stepped between them. *Id.* Minutes later, Mr. Howard said, "I don't have to sit here and listen to this [expletive] any further." *Id.* Mr. Lynch testified Mr. Howard lunged forward, reaching behind his back and beneath his coat with his right hand. *Id.* Mr. Lynch testified he thought Mr. Howard was going to shoot him. *Id.* Mr. Bell testified Mr. Howard's hands were in front of him, but he admitted telling the police shortly after the shooting he did not see Mr. Howard's hands. *Id.* at 198-99. Mr. Lynch, who had been sitting on top of a dresser at the time Mr. Howard lunged toward him, fell off the dresser and shot

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once at Mr. Howard. *Id.* at 199. Then he went to the door and stayed there while Junior and a neighbor went for the police. *Id.* No weapon was found on Mr. Howard's body. *Id.*

¶ 61 In his statements to police and at trial, Mr. Lynch admitted the shooting but claimed self-defense. *Id.* On cross-examination, defense counsel asked Mr. Bell if he was aware Mr. Howard had prior battery convictions. *Id.* The State objected. *Id.* The ensuing colloquy outside the presence of the jury established that Mr. Howard had three such battery convictions, and Mr. Lynch's theory was that Mr. Bell brought Mr. Howard as "muscle" to shake down Junior. *Id.* Since Mr. Lynch was unaware of Mr. Howard's battery convictions prior to shooting him, the circuit court ruled that the prior convictions were irrelevant and inadmissible. *Id.*

¶ 62 The supreme court reversed and remanded, holding that when self-defense is properly raised, defendant may offer evidence of the victim's violent and aggressive character for two reasons: (1) to show that defendant's knowledge of the victim's violent tendencies affected his perceptions of and reactions to the victim's behavior; and (2) to support defendant's version of the facts where there are conflicting accounts of what occurred. *Id.* at 199-200. The supreme court held, "when the theory of self-defense is raised, the victim's aggressive and violent character is relevant to show who was the aggressor, and the defendant may show it by appropriate evidence, regardless of when he learned of it." *Id.* at 200. The supreme court noted, "[c]onvictions for crimes of violence, such as Howard's three convictions for battery, are reasonably reliable evidence of a violent character," (*id.* at 201) all three convictions were recent, with the last one occurring only six weeks before the homicide (*id.* at 203), and, therefore, the batteries "were competent evidence to prove that Howard was an aggressive and violent man." *Id.* at 204.

¶ 63 Interpreting *Lynch*, we have held, the supreme court "stopped short of holding that refusal to admit such evidence [of the victim's prior convictions for violent crimes] is *per se* prejudicial and, thus, preserved the trial court's discretion to exclude it based upon the facts of each case." *People v. Armstrong*, 273 Ill. App. 3d 531, 534 (1995).

¶ 64 In the present case, defendant filed a motion *in limine* to introduce, pursuant to *Lynch*, a certified copy of the victim's 2000 conviction of aggravated battery of a police officer to show the victim was the aggressor in the 2008 shooting for which defendant was on trial. The State filed a motion *in limine* to bar the introduction of this *Lynch* evidence. At the hearing on the *in limine* motions, the prosecutor stated he had reviewed the police reports of the 2000 incident, which revealed the officer had confronted the victim on a Chicago Transit Authority (CTA) platform for allegedly attempting to engage in pick-pocketing. There was a struggle, during which the victim pushed the officer onto the CTA platform and then fled. The victim was convicted of aggravated battery of the police officer. However, the officer had died in 2002, and there were no other witnesses to the aggravated battery who could identify the victim as the perpetrator. The prosecutor argued that evidence of the aggravated battery of the police officer was inadmissible in the absence of any firsthand testimony as to the circumstances thereof. The circuit court agreed, citing *People v. Cook*, 352 Ill. App. 3d 108 (2004). However, *Cook* held only that evidence of a victim's mere arrest is inadmissible under *Lynch* as it does not indicate whether the victim actually committed the charged act. *Id.* at 128. In the present case, the victim was not merely arrested for aggravated battery of a police officer; he was also convicted. *Cook* expressly noted, "[a] conviction is persuasive proof" under *Lynch* that the victim committed the crime. *Id.* Accordingly, the circuit court erred here in

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determining the certified copy of the victim's conviction was not adequate proof under *Lynch* that he actually committed the crime of aggravated battery of a police officer.

¶ 65 On appeal, the State has abandoned the argument that the certified copy of conviction was not adequate proof of the victim's commission of the aggravated battery of the police officer. Instead, the State argues the aggravated battery conviction was inadmissible under *Lynch* because *Lynch* only applies where defendant's theory of self-defense is supported by the evidence (*People v. Figueroa*, 381 Ill. App. 3d 828, 842 (2008)), *i.e.*, when there is some evidence in the record which, if believed by the jury, would support defendant's claim of self-defense. *People v. Everette*, 141 Ill. 2d 147, 157 (1990). The State contends the evidence at trial firmly established defendant was the initial aggressor in the shooting of the victim and was not entitled to assert a claim of self-defense and, as such, the *Lynch* evidence of the victim's 2000 conviction for aggravated battery of a police officer was inadmissible.

¶ 66 Contrary to the State's argument, defendant's testimony at trial provided some evidence in the record which, if believed by the jury, would support his theory of self-defense. Specifically, defendant testified that following his argument with the victim, he had gone to Mr. Gates' office and calmed down. He left the office and went to the victim's room solely to retrieve his drugs he had hidden in the mattress. After defendant knocked on the door, the victim opened it and blocked defendant from entering the room. Defendant testified he never used any force on the victim or attempted to push his way into the room; defendant explained, "I was just fixing to walk in, like, man, I'm fixing to get my drugs up out of there but I didn't never get a chance to step—soon as I was fixing to step then he upped the gun." Defendant testified he thought the victim was going to kill

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him, so defendant grabbed the gun and they began to "tussle." During the struggle, defendant pulled the trigger because he was "scared for [his] life." Defendant's testimony indicated the victim was the aggressor, that he shot the victim in self-defense and, as such, could serve as support of the admission, under *Lynch*, of the victim's 2000 conviction of aggravated battery of a police officer, to show the victim's aggressive and violent character.

¶ 67 The State makes no argument that the 2000 conviction was too remote to be admissible under *Lynch*. However, we note, unlike *Lynch*, in which the most recent prior conviction of the victim was only six weeks before the homicide, the victim's conviction here of aggravated battery of a police officer occurred *eight years* prior to the homicide for which defendant was on trial. Further, even without evidence of the victim's 2000 conviction, the jury still heard evidence of the victim's violent and aggressive character, specifically, that he had just been released from prison and hired as "protection" for the hotel employees and guests, and, prior to the murder, he had engaged in a heated argument with defendant involving some pushing and he had tried to hit defendant. The remoteness of the victim's prior conviction supported the circuit court's discretionary decision to deny its admission, especially where other evidence of the victim's violent and aggressive character was admitted at trial. See *People v. Morgan*, 197 Ill. 2d 404, 457-58 (2001) (finding no error in the exclusion of *Lynch* evidence in part because it was remote to the incident at issue); *People v. Nunn*, 357 Ill. App. 3d 625, 632 (2005) (finding no error in the exclusion of *Lynch* evidence where it was cumulative to other evidence presented). Although the circuit court did not rely on the remoteness and cumulativeness of the victim's conviction in denying its admission, we may affirm on any basis supported by the record. See *People v. Toy*, 407 Ill. App. 3d 272, 293 (2011).

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¶ 68 Further, any error in the exclusion of the victim's conviction is harmless beyond a reasonable doubt where, as here, defendant would have been convicted even if the conviction had been admitted into evidence. See our discussion above concerning the State's proof of defendant's guilt beyond a reasonable doubt; and *Armstrong*, 273 Ill. App. 3d at 536 (applying a harmless-error analysis to the exclusion of *Lynch* evidence).

¶ 69 Next, defendant contends the State made improper remarks during closing arguments depriving him of a fair trial. Prosecutors have great latitude in making their closing arguments, and such arguments are proper if they are based on the record or are reasonable inferences drawn therefrom. *People v. Moya*, 175 Ill. App. 3d 22, 24 (1988). The entire record, particularly the full argument of both sides, must be considered to assess the propriety of prosecutorial argument. *People v. Williams*, 313 Ill. App. 3d 849, 863 (2000). "Where the complained-of remarks are within a prosecutor's rebuttal argument, they will not be held improper if they appear to have been provoked or invited by defense counsel's argument." *Id.* Prosecutorial comments constitute reversible error only if they engender "substantial prejudice." *People v. Wheeler*, 226 Ill. 2d 92, 123 (2007). Substantial prejudice occurs when "the improper remarks constituted a material factor in a defendant's conviction." *Id.*

¶ 70 In *Wheeler*, our supreme court applied a *de novo* standard of review to the issue of prosecutorial statements during closing arguments. *Id.* at 121. In *People v. Blue*, 189 Ill. 2d 99 (2000), which was cited by *Wheeler*, our supreme court applied an abuse of discretion standard. *Id.* at 128. We need not resolve the issue of the appropriate standard of review, because our holding affirming the circuit court would be the same under either standard.

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¶ 71 First, defendant challenges the following remark made by the prosecutor during closing arguments:

"Ladies and gentlemen, when the defense came up here and painted a picture of 4820 South Michigan Avenue as this place of ill repute and all these people doing all that stuff. They presented no evidence of that except what [defendant] said."

¶ 72 Defendant contends, contrary to the prosecutor's remark, there was other evidence that the Callo Hotel was a place of ill repute. Specifically, defendant points to Mr. Gates' testimony that the area where the hotel was located was unsafe, and he had hired the victim as security inside the hotel.

¶ 73 Considering the totality of the closing arguments, we find the prosecutor's remark did not constitute a misstatement of the evidence. Prior to making the aforementioned remark, the prosecutor discussed the evidence directly refuting defendant's testimony that drugs were sold in the hotel, stating:

"Gary Gates, the manager of the hotel, came in here. He told you who lived there. People on disability. Social security checks. Single room occupancy. It is affordable. No evidence from Gary Gates, Tasha Cribbs, or Joe Gordon about drugs.

Do you remember the forensic investigator that searched the room. No drugs found. None anywhere inside the victim's home. How about the medical examiner that performed the autopsy on the victim. \*\*\* What did the medical examiner tell you about opiates or heroin and cocaine in the system. Zero. The victim had none of that."

¶ 74 It was after these remarks that the prosecutor made the remark there was no evidence other than defendant's testimony that the hotel was a place of ill repute. Placing the remark in question

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in its proper context, the prosecutor was equating a place of ill repute with a place in which drugs were bought and sold, and he was stating that no other witness corroborated defendant's account that the killing was in self-defense after the victim pulled a gun on him to prevent him from entering the room to retrieve his drugs. The prosecutor's remark accurately stated the evidence and was not error.

¶ 75 Next, defendant contends the prosecutor misstated the evidence when he made the following remark, over objection:

"How about the final shot, ladies and gentlemen. This one went in the victim's leg. His right thigh. Came out the right side near his right buttock and kind of traveled in an upward fashion. Do you remember what the forensic investigator told us about this bullet? Where was it \*\*\* recovered? Remember they moved the body. They found it underneath between his shirt. His back and the floor. Ladies and gentlemen, you will get that bullet. You will get to see it. You will get all the bullets. That one I want to highlight. That's this bullet right here. You will all get the chance to take a look at it. When you look at it, you can see that the top of that bullet is completely flattened as if it hit something flat."

¶ 76 Defendant contends the prosecutor misstated the evidence by commenting on the "flattened" nature of the bullet. Defendant has waived review by failing to include the bullet in the record on appeal. Although, there is a photograph of the bullet which was shown to the jury, and it is contained in the record on appeal, the bullet is partially obscured by the victim's shirt, and we are unable to make any determinations as to its allegedly flattened condition. Defendant, as the appellant, has the burden to provide this court with a sufficiently complete record to support his contentions of error, and the reviewing court will resolve any doubt raised by an incomplete record

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against him. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984).

¶ 77 Next, defendant contends the prosecutor misstated the evidence when he made the following remark:

"That bullet came out of the victim's side and hit the floor off his velocity and stopped. That's why it was recovered right there. Which corroborates and supports what Tasha told you. Joe told you. Shot him when he was down on the ground. That fourth shot. Self-defense, mitigating factors, are you kidding me. He was down on the ground when this bullet went through the victim. There is no self-defense."

¶ 78 Defendant argues there was no evidence in the record from which to draw the conclusion that the victim was on the floor when he was shot by the fourth bullet. However, defendant waived review by failing to object to the State's remark at trial. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988).

¶ 79 Next, defendant contends the prosecutor improperly bolstered Mr. Gates' credibility and suggested to the jury defendant had the burden of proving Mr. Gates had a motive to lie when he made the following remark during rebuttal closing arguments:

"You know, you heard from Gary Gates. I mean he is basically that's his business there. I mean that's his. I mean that's his. He is personal. That's my hotel. I am the manager. You think he is going to let people sell drugs at that place using drugs in his presence, you know, in the hallway?"

¶ 80 The prosecutor's remark was not error, as it was made in response to defense counsel's argument that drugs were being sold out of the hotel. *Williams*, 313 Ill. App. 3d at 863. The remark also did not constitute an erroneous reference to Mr. Gates' credibility. Although the prosecutor may

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not express his personal belief in the credibility of a witness (*People v. Rogers*, 172 Ill. App. 3d 471, 476 (1988)), "The credibility of witnesses is a proper subject for closing argument if it is based on the facts in the record or inferences drawn from those facts." *People v. Flores*, 128 Ill. 2d 66, 94 (1989). Here, the prosecutor's remark was correctly based on facts in the record (*i.e.*, Mr. Gates' management of the hotel) and inferences drawn from those facts (*i.e.*, as manager of the hotel, he would not allow the sale of drugs in the hallway.)

¶ 81 Finally, defendant contends the prosecutor denied him a fair trial when he made comments during closing arguments that defendant had the greatest interest and bias in saying "whatever it takes to get him out of this case" and nobody in the courthouse was more biased or prejudiced than defendant. Our supreme court has held such comments do not constitute error:

"Where, as here, a prosecutor suggests to the members of the jury that a defendant's testimony is biased because he has an interest in the outcome of the case, the prosecutor is not telling them anything they do not know and are not already thinking. The notion that the possibility of conviction may color a defendant's testimony is so basic, so rooted in common experience and human nature, that it would be taken into account by the jurors whether the prosecutor mentioned it or not. When the prosecution makes the point during closing argument, it is merely stating the obvious. The complexion of the case is unchanged." *People v. Barney*, 176 Ill. 2d 69, 73 (1997).

¶ 82 Defendant argues the cumulative effect of the prosecutor's misconduct requires us to reverse and remand for a new trial. We disagree. As there was no individual error, logic dictates there can be no cumulative error. See *People v. Moore*, 358 Ill. App. 3d 683, 695 (2005).

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¶ 83 For the foregoing reasons, we affirm the circuit court.

¶ 84 Affirmed.