

FIRST DIVISION

June 18, 2012

No. 1-10-1492

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

---

IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

---

THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

v.

CHRISTOPHER HILLMAN,

Defendant-Appellant.

) Appeal from  
) the Circuit Court  
) of Cook County  
)  
) No. 08 CR 22461  
)  
)  
) Honorable  
) Bertina Lampkin and  
) Jorge Luis Alonso,  
) Judges Presiding.

---

JUSTICE KARNEZIS delivered the judgment of the court.  
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

**ORDER**

¶1 **Held:** Defendant was proven guilty beyond a reasonable doubt. Defendant was not denied a fair trial when the trial court interrupted defense counsel during witness examination and closing argument. The trial court was not required to recuse herself *sua sponte* nor was trial counsel ineffective for failing to make a motion for substitution of judge.

1-10-1492

¶ 2 Following a bench trial, defendant Christopher Hillman was convicted of attempt first degree murder, armed robbery, burglary and aggravated unlawful use of a weapon. He was sentenced to a total of 42 years' imprisonment. Defendant now appeals and argues: (1) the State failed to prove him guilty beyond a reasonable doubt; (2) he was denied a fair trial when the trial court repeatedly interrupted defense counsel during witness examination and closing arguments with comments reflecting the court's bias and prejudgment of the case; and (3) the failure of the trial court to recuse itself and of defense counsel to move to substitute judges requires reversal. For the following reasons, we affirm the judgment of the circuit court.

¶ 3 **BACKGROUND**

¶ 4 Defendant and codefendant Terence Taylor<sup>1</sup> were charged with attempt murder, armed robbery, aggravated battery with a firearm and burglary. Defendant and Taylor were tried simultaneously before Judge Lampkin; Taylor electing a jury trial and defendant a bench trial. The following evidence was adduced at trial.

¶ 5 Pierre Garth testified that shortly before 11 p.m. on August 19, 2008, he was driving down an alley to his two-car garage outside his apartment on 109th Street in Chicago. As he drove through the alley, he noticed a man standing in the alley with a dog. He later learned that the man was Paris Steele. Garth pulled into his garage, which was well lit from a light on the garage ceiling, a motion light from his neighbor's garage and a street lamp 15 to 20 feet away. Garth noticed a black car drive through the alley. Garth grabbed his cell phone, garage door opener, keys and a bottle of pop and then got out of the car. Paris Steele was standing behind

---

<sup>1</sup>Terence Taylor is not a party to this appeal.

1-10-1492

Garth's car so he walked to where Steele was standing. Steele asked Garth where he had gotten his car painted. Garth saw a black car drive through the alley.

¶ 6 While they were talking, Garth saw two men running toward the garage from the alley. Garth testified that one of the men was holding a silver pump-action shotgun and stood about four and one half feet away. Steele put his arms up. Garth offered the men the items he was holding in his hands. Defendant said "you n\*\*\* know what this s\*\*\* is" once or twice. Defendant was not wearing a mask, and the garage area was well lit. Garth identified the man holding the gun as defendant and the man accompanying him as codefendant Taylor.

¶ 7 Defendant approached Steele, causing him to back out of the garage and out of Garth's line of sight. Codefendant Taylor followed Garth into the garage and repeatedly said, "[w]here is that s\*\*\* at, man? Where is the s\*\*\* at? Give it up" as he went through Garth's pockets. Taylor was so close to Garth that he could "smell [defendant's] breath."

¶ 8 Garth then heard a shotgun blast from the direction where Steele and defendant would have been. Garth threw his car keys, garage door opener and cell phone onto the car. Defendant then came back into the garage, still holding the shotgun. Garth stayed still with his hands up because he was "frozen." He said that during the robbery his ability to perceive was heightened and he was focused on both defendants. Codefendant Taylor and defendant ran out of the garage in the same direction the black car had been driving. The entire incident lasted about 60 to 75 seconds. Garth then ran out of the garage. He saw a neighbor and asked her to call 911. The police arrived about five minutes later.

¶ 9 Garth met with Detectives Livingstone and Pullappally at the police station a few hours

1-10-1492

after the incident to examine a photo array of possible suspects. Garth "tentatively" identified defendant as the man who held the shotgun. He also identified codefendant Taylor. On September 4, 2008, Garth positively identified defendant as the man with the shotgun in a lineup.

¶ 10 Paris Steele testified that on August 19, 2008, he went to his friend Linda Gant's house on 108th Street and Forest Avenue in Chicago. When Steele arrived, Gant asked him to walk her dog. He walked the dog southbound on 109th Street then turned down an alley. He described the alley as "pretty lit up" from streetlights and garage lights. He saw a car drive by and pull into a garage. Steele noticed the car had a "nice paint job." Steele continued down the alley and walked to the opening of Garth's garage, where he stopped to ask him about his car. While he was talking with Garth, defendant and codefendant Taylor approached.

¶ 11 Defendant had a shotgun in his hand and pointed it toward Steele. The shotgun was silver with a black pump. Steele could clearly see defendant's face. Defendant asked Steele, "N\*\*\*, you know what this is?" Steele was holding the dog leash in his left hand and held up his right hand as he backed away to the edge of the garage. Steele saw codefendant Taylor standing behind defendant. Taylor ran inside the garage and defendant shot Steele in his left elbow at point blank range. Steele dropped the dog and ran from the garage.

¶ 12 Steele testified that he ran back to Linda Gant's house and knocked on her door after he was shot. He passed out on the grass in front of her house and next remembered being in an ambulance on his way to the hospital. As a result of his gunshot wound, Steele suffered tendon damage, nerve damage and a broken bone, had to undergo four surgeries and lost the use of his left arm.

1-10-1492

¶ 13 Chicago Police Officer Yates spoke with Steele while he was being treated by the paramedics at Gant's house. Steele described the man who shot him as five feet, five inches.

¶ 14 On September 4, 2008, Steele went to the police station to view a lineup. He signed a form stating that he was not required to make an identification. He identified defendant as the man who shot him. About one month later, on October 9, 2008, Steele returned to the police station to view another lineup. Steele positively identified Taylor as the man who was with defendant.

¶ 15 Detective Livingstone testified that at about 11 p.m. on August 19, 2008, he went with Detective Pullappally to investigate the crime scene. There, Garth told Livingstone that one of the suspects was carrying a pump-action shotgun. Garth provided physical descriptions of the suspects. Garth described defendant as a black male between 25-30 years old, 180-200 pounds, with a dark complexion, short hair, and wearing a white hat. He described Taylor as a black male between 17 and 19 years old, 5 feet 8 inches to 5 feet 9 inches tall, 140 to 155 pounds with a medium brown complexion and braided hair.

¶ 16 Detective Livingstone also testified that at 2:40 a.m. on August 20, 2008, he showed Garth two photo arrays. When Garth viewed the first photo array he immediately pointed to defendant and stated that he was the person who robbed him, although he was not 100% sure and would have to see him in person. Livingstone then showed Garth the second photo array, from which he immediately identified codefendant Taylor as the person who attempted to go through his pockets.

¶ 17 On August 24, 2008, Garth viewed a lineup. Garth identified codefendant Taylor as the

1-10-1492

man in the garage. Garth stated he was nervous at the time of the lineup because a threat had been spray-painted on his home a few days earlier.

¶ 18 Defendant was arrested on September 3, 2008. Detective Livingstone testified that he interviewed defendant after the lineup identifications. After defendant waived his rights, defendant told Detective Livingstone that he could not recall where he was or with whom on the night of the shooting.

¶ 19 Defendant presented an alibi defense. Erica Island, defendant's fiance and the mother of her son, testified that she had an appointment with the Department of Human Services on August 19, 2008, at 2 p.m. Defendant picked her up to take her to the appointment at 1:45 p.m. They remained at the appointment until 4:30 p.m. After that, they picked up some food and went to defendant's mother's house, which was right across the street from their house, where they stayed until about 10 p.m. They returned home and the children went to bed while defendant and Island watched television. At 11 p.m., defendant checked the doors as he always did and returned to the bedroom five minutes later. They continued to watch television, engaged in sexual relations and went to sleep about 3 a.m.

¶ 20 Erianna McCray, Island's 12-year-old daughter testified that she was at defendant's mother's house on August 19, 2008. She remembered that day because defendant's brother who lived in Detroit had come to visit. She saw defendant's brother at defendant's mother's house, which was across the street from her own house. Erianna testified that Reva Wilburn, defendant's sister and her two children were also at defendant's mother's house. Erianna testified when she left defendant's mother's house, she was with her mother and her brother. When she

1-10-1492

got home, she got something to eat in the kitchen and then went into her bedroom to watch television.

¶ 21 After hearing all of the evidence, the trial court found defendant guilty of all charges. Because Judge Lampkin was appointed to the Appellate Court, the case was transferred to another judge for sentencing. Judge Jorge Alonso sentenced defendant to 34 years' imprisonment for attempt murder, eight years' imprisonment for armed robbery to be served consecutive to attempt murder and five years' imprisonment for burglary and aggravated unlawful use of a weapon to be served concurrently for a total of 42 years' imprisonment. It is from this judgment that defendant now appeals.

¶ 22 ANALYSIS

¶ 23 Defendant first argues that the State failed to prove him guilty beyond a reasonable doubt. Specifically, defendant claims that the State failed to prove that he was reliably identified as "the man involved."

¶ 24 The standard of review on a challenge to the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). It is not the function of the reviewing court to retry the defendant or substitute its judgment for that of the trier of fact. *People v. Collins*, 214 Ill. 2d 206, 217 (2005). The trier of fact assesses the credibility of the witnesses, determines the appropriate weight of the testimony and resolves conflicts or inconsistencies in the evidence. *People v. Naylor*, 229 Ill. 2d 584, 614 (2008). The trier of fact is not required to disregard inferences that flow from the

1-10-1492

evidence or search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt. *People v. McDonald*, 168 Ill. 2d 420, 447 (1995). A criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 225 (2009).

¶ 25 When assessing the accuracy of an identification based on witness testimony, it is necessary to evaluate: (1) the opportunity of the witness to view the criminal at the time of the crime; (2) the witness's degree of attention; (3) the accuracy of the witness's prior descriptions of the offender; (4) the level of certainty demonstrated by the witness at the confrontation; and (5) the length of time between the crime and the confrontation. *People v. Tisdell*, 201 Ill. 2d 210, 234 (2002) (citing *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972)); *People v. Slim*, 127 Ill. 2d 302, 307-08 (1989)).

¶ 26 When we apply these factors to the instant case, we believe that the evidence, viewed in a light most favorable to the State, was sufficient to convict defendant beyond a reasonable doubt. As to the first factor, the victims testified that the scene of the crime was well lit from a light in the garage ceiling, a motion light from a neighbor's garage and a nearby street lamp. Both victims testified that nothing was covering or obstructing defendant's face. Steele testified that defendant stood only four or five feet from him and that he "had a clear look at both of the guys' faces." While the incident may have been brief, there was ample opportunity for the victims to view defendant at the time of the crime.

¶ 27 As to the witness's degree of attention, Garth said that during the robbery he stayed still

1-10-1492

because he was "frozen." Garth testified that his ability to perceive was heightened and he was focused on defendants. Both victims testified they heard defendant say something to the effect of "you know what this is" while holding the shotgun.

¶ 28 Defendant contends that Steele initially gave Officer Yates a description of defendant a few minutes after the offense and stated that defendant was five feet, five inches tall. Defendant is six foot one inches tall, eight inches taller than the man described by Steele. Defendant claims that Steele's description of defendant casts doubt on the reliability of his identification. Steele testified at trial that he did not remember talking to Officer Yates. In addition, Steele later identified defendant in a line-up. Even without Steele's identification, Garth provided an accurate description of defendant. The testimony of a single eyewitness, if it is positive and the witness is credible, is sufficient to convict. *People v. Smith*, 185 Ill. 2d 532, 541 (1999).

¶ 29 In addition, Defendant claims that Steele's identification of defendant is troublesome because Detective Livingstone's report indicated that Steele could not make an identification because of the traumatic nature of his injury. However, Detective Livingstone testified that Steele told him and his partner that he was in pain and heavily medicated at the time. Steele, did in fact, later identify defendant as the shooter in a line-up. Furthermore, Garth's identification alone was sufficient to convict defendant. See *Smith*, 185 Ill. 2d at 541.

¶ 30 As to the fourth and fifth factors, Garth tentatively identified defendant in a photo only hours after the offense was committed as the man with the shotgun. He also identified codefendant Taylor. On September 4, 2008, after defendant was arrested, Garth positively identified defendant as the man with the shotgun. Although the positive identifications took

1-10-1492

place 16 days after the shooting, the time lapse was not so great as to render the identifications unreliable.

¶ 31 In assessing the above factors, we find the victims' identifications of defendant sufficiently reliable to support a finding of guilty beyond a reasonable doubt.

¶ 32 Defendant next argues that he was denied a fair trial when the trial court repeatedly interrupted defense counsel during witness examination and closing arguments, with comments reflecting the court's bias and prejudgment of the case.

¶ 33 Defendant contends that the trial court's constant berating of defense counsel during his cross-examination of Detective Livingstone demonstrated bias and denied him a fair trial. Specifically, defendant claims that when defense counsel attempted to ask Detective Livingstone a number of questions, the court hindered his ability to do so by prejudicially answering questions for Detective Livingstone and by allowing its frustration with defense counsel to overcome defendant's right to cross-examination.

¶ 34 Defendant's right to cross-examine for the purpose of showing a witness' bias, prejudice or motive to testify falsely is protected by both the Federal and State Constitutions. *People v. Nutall*, 312 Ill. App. 3d 620, 626 (2000); U.S. Const., amends. VI, XIV; Ill. Const., 1970, art. I, § 8. A defendant has a right to cross-examine a witness as long as the cross-examination goes to explain, modify, discredit or destroy the witness' direct examination testimony. *People v. Robinson*, 349 Ill. App. 3d 622, 632 (2004). Although a defendant should be given the widest latitude to establish a witness' bias or motive, a defendant's rights under the confrontation clause are not absolute. *People v. Averhart*, 311 Ill. App. 3d 492, 497 (1999). The proposed cross-

1-10-1492

examination must relate to a proper subject matter and the evidence must be positive and direct, and not remote, speculative or uncertain. *People v. Rivera*, 307 Ill. App. 3d 821, 833 (1999).

Furthermore, "[t]he confrontation clause guarantees an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way or to whatever extent the defense desires." (Emphasis in original.) *Averhart*, 311 Ill. App. 3d at 497, citing *Delaware v. Fensterer*, 474 U.S. 15, 20 (1985). "The trial court has discretion to impose reasonable limits on cross-examination to limit possible harassment, prejudice, jury confusion, witness safety, or repetitive and irrelevant questioning, and we review a defendant's claim of a violation of the confrontation clause under the abuse-of-discretion standard." *People v. Tabb*, 374 Ill. App. 3d 680, 689 (2007) (citing *People v. Blue*, 205 Ill. 2d 1, 13-14 (2001)). Absent a clear abuse of discretion resulting in manifest prejudice to defendant, a reviewing court will not disturb the circuit court's decision to limit cross-examination. *People v. Kliner*, 185 Ill. 2d 81, 130 (1998).

¶ 35 On cross-examination defense counsel asked Detective Livingstone, "Why is it that you put down the same exact time on each of those forms if you have testified that they didn't see it together?" The judge interjected, "He has never said they didn't see the Line-Up Advisory form together. He said they didn't see the line-up together, Mr. Douglass." Defendant claims that defense counsel was trying to challenge Detective Livingstone's claim that the two victims did not see the actual lineup together by asking him why they signed the lineup advisory forms at the same time.

¶ 36 After reviewing the record, we have determined that the trial court's comment was correct and there was no abuse of discretion. Detective Livingstone had previously testified that the

1-10-1492

witnesses viewed the lineup separately but did not comment on whether they had viewed and signed the advisory form separately, only that it had the same time on each form. We do not see how the court's interjection infringed on defendant's right to cross-examination. There was nothing to prevent defense counsel from asking Detective Livingstone a follow-up question for clarification.

¶ 37 Immediately thereafter defense counsel sated "Well, Judge –," after the court asked the question posed to Detective Livingstone, the court stated, "It is not well, Judge. Don't misstate what someone says to me. You know I can hardly stand it." Defendant suggests that where the court could "hardly stand" defense counsel's attempt to validly cross-examine Detective Livingstone, the court curtailed his right to confrontation.

¶ 38 We disagree. The court's comment regarding her inability to "stand it" was not directed at defendant's right to cross-examination, but rather to the trial court's belief that defense counsel had misstated the evidence. Again, defense counsel could have asked Detective Livingstone a follow-up question for clarification.

¶ 39 Shortly thereafter, defense counsel was cross-examining Detective Livingstone about the circumstances under which the victims signed the line-up advisory forms. Detective Livingstone testified that the victims were seated in what is "considered a conference room. It runs into our office. It is on the far left-hand side facing our parking lot. It is a large room with conference type tables and many chairs where we have conferences and you also bring victims." Detective Livingstone added that Garth and Steele were "sitting down in there as I read the advisory form to both of them. They both read it and then signed it." Detective Livingstone further testified

1-10-1492

that he was not certain how long Garth and Steele were sitting in the room before he brought in the line-up advisory forms, but thought it was only minutes. Detective Livingstone did not know what time Garth or Steele arrived in the conference room and could not recall if there was anyone else present in the conference room with them. Detective Livingstone also could not recall where Garth and Steele were sitting in relation to one another. Defense counsel asked Detective Livingstone, "I know you described the conference room before. There are chairs in there, correct?" Detective Livingstone replied, "Yes." Defense counsel then asked, "There are tables in there?" Detective Livingstone again answered, "Yes." The court interjected and said, "I know I am not going over what he just said again. You may not do that to me, Mr. Douglass." Defense counsel replied, "Ok."

¶ 40 Defendant claims that defense counsel was not doing anything improper but was trying to jog Detective Livingstone's memory and the court's impatience prevented him from asking the questions necessary to obtain the ultimate evidence he sought, *i.e.*, whether Garth and Steele sat in close proximity to one another.

¶ 41 Again, we cannot conclude that defendant was denied his right to cross-examination based on this exchange between defense counsel and the court. Defense counsel had already asked Detective Livingstone about the layout of the room and whether he recalled where Garth and Steele were sitting in relation to each other in the conference room. Certainly, the court's impatience stemmed from the fact that counsel had already asked that question and had been given an answer.

¶ 42 Defendant cites another instance where he claims the court exhibited exasperation with

1-10-1492

defense counsel. The parties stipulated that Garth signed the photo array advisory form at 2:40 a.m. on August 20, 2008. Detective Livingstone testified on cross-examination that after Garth signed the photo array advisory form, Garth looked at the photo array and "immediately tentatively identified [defendant]." Sometime after 2:40 a.m., Detective Livingstone went to Stroger Hospital. Detective Livingstone could not recall exactly what time it was. Defense counsel then asked Detective Livingstone, "Do you recall how much time passed between 2:40 a.m. when Mr. Garth viewed that photo array until you arrived at Stroger Hospital." The court interrupted and said, "He didn't say he viewed it. He said he signed it at 2:40 a.m. It just really pains me that you do this repeatedly."

¶ 43 There is nothing from this exchange that would lead us to conclude that the trial court denied defendant his right to cross-examination. We find defendant's argument to be without merit.

¶ 44 Defendant claims that the totality of the court's intemperate treatment of defense counsel denied him a fair trial and argues that *People v. Phuong*, 287 Ill. App. 3d 988 (1997) and *People v. Mays*, 188 Ill. App. 3d 974 (1989), are instructive here. In *Phuong*, the trial court made derogatory statements against the defendant who was Chinese, her counsel and a defense witness. The court exhibited impatience with having a Chinese interpreter and made comments such as, "Nothing like a bench trial with a Chinese interpreter" and "Miss Public Defender, we're going to be here until the Fourth of July" and "She's shaking her head in Chinese." In addition, the court refused to allow a complete answer from a witness, stating that the evidence being elicited was not something the court was concerned about. *Id* at 994. This court found that the court's

1-10-1492

remarks, taken together, demonstrated the trial's court prejudice against defendant. *Id* at 994.

¶ 45 The trial court's interruptions and comments in this case are factually distinguishable from those in *Phuong*. The trial court in the case at bar expressed no prejudice toward defendant, defense counsel or any defense witness. Furthermore, the court addressed defense counsel in a respectful manner calling him "Mr. Douglass."

¶ 46 We similarly find defendant's reliance on *People v. Mays*, 188 Ill. App. 3d 974 (1989), to be misplaced. In *Mays*, the trial court slammed down his pencil, sighed and made facial gestures during the defense counsel's cross-examination of a prosecution witness. This court remanded for a new trial reasoning that the jury could have inferred from the judge's actions that the judge believed the witness to be credible and the cross-examination should not be given consideration. The court held that because the defendant was tried by a jury, "[d]efendant may have been prejudiced in the eyes of some or possibly all of the jurors." *Id* at 985. Unlike *Mays*, the case at bar was a bench trial, not a jury, and any actions on the part of the trial judge could not have improperly influenced a jury.

¶ 47 Defendant claims that the trial court's comments in this case are particularly egregious because the court had been put on notice that its treatment of defense counsel was improper. The lynchpin of defendant's argument is this court's decision in *People v. Grover*, No. 1-07-3497 (2009) (unpublished order under Supreme Court Rule 23). In *Grover*, the defendant argued that he was denied a fair trial when the trial court limited his ability to cross-examine and argue, acted as a prosecutor and demonstrated bias against the defense that reflected a prejudgment of guilt. *Grover* involved the same trial judge (Judge Lampkin) and assistant public defender (Mr.

1-10-1492

Douglass) as in this case and had been decided four days before trial began in the instant case.

¶ 48 This court reversed and remanded the case for a new trial on the grounds that the trial court, as the trier of fact, improperly prejudged the validity of the defendant's defense prior to hearing the totality of the evidence. *Grover*, No. 1-07-3497 at 30. This court noted that the trial court's comments regarding the defense witnesses "crossed the line of impartiality" when it remarked several times that "[it] could not believe" the evidence as testified to by witnesses. Furthermore, this court found that additional prejudice resulted from the trial court's hostile treatment of the defense witnesses and counsel during the proceedings, when the trial court made comments such as "I can not stand it" and "I can't believe it," as well as "[i]t makes no sense to me" and "[y]ou're arguing something that's almost making me want to scream." The court concluded, finding that "[t]he cumulative effect of the trial court's interjections demonstrated her impatience and exasperation with the defense witnesses. Additionally, the comments were condescending and demeaned counsel in the defendant's presence." "The hostility visited by the court was prejudicial to the extent that it impacted negatively upon defendant's right to a fair trial." *Grover*, No. 1-07- 3497 at 32.

¶ 49 Despite being reversed in *Grover*, defendant claims that the trial court engaged in the same behavior again, and to an even greater degree, by giving voice to its exasperation because defense counsel paused during a question, engaging in sarcasm, repeatedly interrupting during defense counsel's cross-examination of Livingstone, and answering questions favorable to the State, among other complaints.

¶ 50 While we acknowledge this court's holding in *Grover*, we note its lack of precedential

1-10-1492

value here. Ill. S. Ct. R. 23(e) (eff. July 1, 2011). Notwithstanding, we find the facts of this case to be significantly different from those in *Grover*. Here, the trial court did not comment on the believability of the witnesses or the sufficiency of the evidence prior to the close of the case.

While the court here did exhibit some impatience with defense counsel, particularly when defense counsel attempted to rephrase questions that had already been asked and answered, that impatience did not amount to the type of condescending and demeaning comments that the court relied on for remanding for a new trial in *Grover*. Unlike *Grover*, the cumulative effect of the trial court comments exhibiting impatience and frustration in this case is not so egregious as to serve as a basis to remand this cause for a new trial.

¶ 51 Defendant next contends that the trial judge improperly prevented him from examining a defense witness, thereby preventing him from presenting an alibi defense.

¶ 52 Defendant did in fact present an alibi defense. To corroborate defendant's alibi, defense counsel called Erianna McCray, Erika Island's 12-year-old daughter. Defense counsel asked McCray who was present at the apartment where she lived with Island and defendant when she returned home for the evening on August 19, 2008. McCray stated, "Me, my mother and my brother, and that's all I recall." Then defense counsel asked "Was anybody else in the house?" the court sustained the State's objection and remarked, "She just said at her mother's house when she arrived was me, my mother, my brother and that is all I recall. You can ask another question."

Defendant takes issue with the fact that the court sustained the objection and subsequently commented on McCray's testimony because defendant claims that McCray had not testified about whether anyone else was at home and thus counsel's routine follow-up question should have been

1-10-1492

allowed.

¶ 53 A defendant's right to due process includes the right to a fundamentally fair trial, including the right to present witnesses on his own behalf. *Chambers v. Mississippi*, 410 U.S. 284, 294 (1973). A trial court however, has the discretion to oversee the manner in which an examination is conducted. *Delaware v. Van Arsdall*, 475 U.S. 673 (1986).

¶ 54 Here, the trial court properly exercised its discretion by sustaining the State's objection to a repetitive question asking McCray "was anybody else in the house" when she returned home on the evening of August 19, 2008. Immediately prior to posing the question at issue here, defense counsel asked McCray who was present at the apartment where she lived with Island and defendant when she returned home for the evening on August 19, 2008. When he next asked the same question in a slightly different way, the court sustained the State's objection on the ground that the posed question had already been answered. In fact, the court repeated McCray's answer to the prior question. Since it had been asked and answered, the court was correct to prohibit defendant's repetitious inquiry. See *People v. Triplett*, 108 Ill. 2d 463, 475 (1985). Doing so did not infringe on defendant's right to a fair trial.

¶ 55 Defendant next contends the trial court denied him his right to make a closing argument when it repeatedly interrupted defense counsel with frequent and argumentative statements. Defendant also claims that these frequent interruptions demonstrate the court's lack of impartiality in deciding the case.

¶ 56 A criminal defendant's right to make a closing argument before the finder of fact is rooted in the sixth amendment right to counsel. *Herring v. New York*, 422 U.S. 853, 856-65 (1975).

1-10-1492

The trial court lacks discretion to deny a defendant his right to make a closing argument on the evidence and applicable law in his favor. *Herring*, 422 U.S. at 860. Illinois courts have likewise concluded that "[i]n a criminal case, our statutes and constitution contemplate that the trial include an opportunity for the defendant to argue his cause by counsel." *People v. Diaz*, 1 Ill. App. 3d 988, 992 (1971). In addition, "[a] defendant who waives a jury and submits his or her rights and liberty to a trial judge is entitled to the same fair, patient and impartial consideration he would be entitled to by a jury of fair, impartial, careful and considerate peers." *People v. Smith*, 205 Ill. App. 3d 153, 157 (1990).

¶ 57 The first interruption came five sentences into defense counsel's closing argument. Counsel was arguing that the court should put itself in the place of Steele and Garth. The court interrupted by saying:

"THE COURT: I can't put myself in their place.

MR. DOUGLASS [Assistant Public Defender]: I understand that, Judge.

THE COURT: Just don't please ask that.

MR. DOUGLASS: Here is what I mean, Judge.

THE COURT: There is two men standing in the alley as opposed to a woman standing in the alley with two men walking. Okay. It is not the same."

¶ 58 Several pages later, defense counsel was attempting to cast doubt on the reliability of the witness identifications and argued that Steele testified he couldn't see Garth's face inside the garage, but could hear him talking. Defense counsel stated:

"MR. DOUGLASS: And that's important, Judge, because that gives you some

1-10-1492

perspective - -

THE COURT: No, it does not. Because no one asked him, the State or you, whether or not Mr. Garth was in his car when Mr. Steele first started talking to him.

Neither side asked that question. I was waiting for it, but I didn't get an answer.

Mr. Garth saw Mr. Steele.

You can go on."

¶ 59 When arguing that Detective Livingstone was impeached regarding whether Steele viewed a photo array of defendant when Steele was in the hospital, defense counsel stated:

"MR. DOUGLASS: And you heard my questions of Detective Livingstone, and you looked at his report. And he had to say, Judge, that Mr. Steele viewed the photo arrays- -

THE COURT: He didn't say that. He said that's what his report said, Mr. Douglass. He said he did not show him the photo arrays.

MR. DOUGLASS: Not a problem, Judge.

THE COURT: Okay. Well, then you know I hear everything.

MR. DOUGLASS: I know you do, Judge.

THE COURT: I don't want it misstated to me.

MR. DOUGLASS: That's fine, Judge."

Defense counsel again touched on Detective Livingstone's testimony regarding the photo array.

"MR. DOUGLASS: And then when Mr. Steele tells you - - when he told you about looking at the photo array or not looking at the photo array, Detective

1-10-1492

Livingstone after reviewing his supplemental report was able to tell you that Mr. Steele viewed the photo array - -

THE COURT: Stop saying that.

MR. DOUGLASS: That's what it says in the transcript.

THE COURT: You showed [sic] me where it says he viewed it? I would like to see that. He said he didn't show him the photo array.

You showed him the report and he said the report said he viewed it.

MR. DOUGLASS: Right, Judge. That's what I'm saying.

THE COURT: No, you are not. You are saying that the police officer said he did view it.

MR. DOUGLASS: In his supplemental report, Judge, that's what I'm talking about.

THE COURT: Well, you are not saying that, Mr. Douglass.

MR. DOUGLASS: Would you let me clarify that?

THE COURT: No. You can't clarify. You know you are going to beat this horse to death.

You've already said the victim said he didn't see a lineup, photographs or a photographic array.

The officer said he didn't show him an array.

The police report says he showed him an array and due to the traumatic incident, he would not be able to identify.

1-10-1492

That's what the testimony was.

It did not go on to say the officer did not - - never said yes, I'm mistaken. He did view a photo array. That never happened, and that's what you keep arguing to me.

MR. DOUGLASS: Well, Judge, my argument would be that that's what did happen. All right."

¶ 60 When talking about defendant's alibi witnesses, defense counsel argued to the court that Erriana McCray was nervous when she took the stand. The following colloquy occurred thereafter:

"THE COURT: That child was not a bit nerve [sic]. I mean I saw her. She sat there like a little princess. And her voice was clear and she was articulate and she was not nervous.

MR. DOUGLASS: Judge, certainly if we both had the benefit of knowing her other than just sitting on that stand at that time, you probably would be able to make that conclusion with more confidence having know her - -

THE COURT: You know her, Mr. Douglass?

MR. DOUGLASS: Judge, I'm not - -

THE COURT: I mean you are just saying the child was nervous and there was nothing at all about it that demonstrated that.

That's why I'm saying what is the basis of your making that statement when she sat here, looked up at me, smiled at me, answered your questions clearly and answered the State's?

1-10-1492

Even when you tried to get her to say something else, she wouldn't bite.

So what is - - what was it about this child that was nervous?

MR. DOUGLASS: Well, Judge, here is a [sic] what you could maybe think is a bright young lady that you said.

THE COURT: Absolutely.

MR. DOUGLASS: So you can assume that she also is a good student. Certainly, there were not any tattoo marks or- -

THE COURT: Mr. Douglass, tattoos have nothing to do with this. Nervousness is what you are putting in my record that was not there.

And that's why I'm asking you why are you saying that?

MR. DOUGLASS: I will get to that, Judge. \* \* \* "

¶ 61 Defense counsel also remarked on Eric Island's testimony regarding the night of the shooting:

MR. DOUGLASS: Close to 11 o'clock, I'm sure you wrote it down, Judge, from Miss Island's testimony, he gets up - -

THE COURT: No, at 11 o'clock. On the dot. He goes to lock the door. That's what she said. Check the doors.

MR. DOUGLASS: And that makes sense, because people living together have routines."

¶ 62 In discussing the lack of physical evidence in this case, defense counsel stated:

MR. DOUGLASS: You have testimony of a person with a shotgun in their face

1-10-1492

five to 10 seconds - -

THE COURT: No one said the shotgun was in anybody's face.

You keep saying that. And no one has testified that the shotgun was pointed to anybody's face.

MR. DOUGLASS: A term of art, Judge.

THE COURT: Well, it is not a term of art. This is a court of law and fact.

MR. DOUGLASS: Absolutely.

THE COURT: Not art.

MR. DOUGLASS: So the shotgun is pretty close to Mr. Steele. I think everybody in the courtroom got that."

¶ 63 Defendant likens the court's interruptions in this case to those found to be reversible error in *People v. Crawford*, 343 Ill. App. 3d 1050 (2003), and *People v. Stevens*, 338 Ill. App. 3d 806 (2003). In *Crawford*, the trial court repeatedly interrupted defense counsel, argued with counsel and characterized defense counsel's argument as a misrepresentation of the evidence. The trial court interrupted counsel after the first two sentences of closing argument, and indicated that defendant was not helped by the examining doctor's use of the word "alleged" in relation to the sexual assault charge. *Crawford*, 343 Ill. App. 3d at 1060. Four sentences later, the court commented: "So it's okay. Then it's okay. If she's-if she's some trollop that's going around smoking crack or weed or drinking beer, and she's not old enough, she has no right to say no." *Id* at 1060. Later, the trial court interrupted defense counsel again and accused him of misrepresenting the evidence.

¶ 64 This court reversed and remanded for a new trial holding that "most of defense counsel's closing argument was interrupted." *Id* at 1060. Furthermore, this court found that the comments the trial court made during defense counsel's opening and closing argument demonstrated the court's bias toward defendant, where the comments went beyond attempting to clarify the charge of aggravated criminal sexual assault. *Id* at 1060-61. "The right to closing argument would be virtually meaningless if we were to find it appropriate for a trial court to make comments evaluating the evidence and otherwise showing bias toward a defendant prior to the end of closing argument." *Id* at 1061.

¶ 65 In *Stevens*, 338 Ill. App. 3d at 810, the trial court repeatedly interrupted defense counsel and exhibited impatience in telling defense counsel, "You got about two more minutes," and then immediately told defense counsel, "I think you overran the amount of time you took on the case to argue." The court also remarked, before defense counsel completed his closing argument, "I'm as clear as can be and convinced as can be that the State has proven [that defendant committed the offense.]" This court, based on these statements made by the trial court, reversed and remanded finding that "these statements support our conclusion that the trial judge committed reversible error by denying defendant her right to make a proper closing argument." *Id* at 810.

¶ 66 Contrary to defendant's argument, we find the comments made by the trial court in this case to be distinguishable from those found to be reversible error in *Crawford* and *Stevens*. Unlike *Crawford* and *Stevens*, defense counsel presented a full closing argument wherein he was permitted to argue his theory of the case to the court. Although some of his remarks were challenged by the court, the trial court here did not make derogatory comments about defendant,

1-10-1492

did not cut short defense counsel's argument by imposing a time limitation, did not comment on the sufficiency of the evidence and did not show a prejudgment of the case before counsel concluded his argument.

¶ 67 Defendant also contends that the trial court erred when it did not *sua sponte* recuse itself based on the fact that in *Grover* this court, four days between the start of trial in the present case found, "[t]he hostility visited by the court [to defense counsel] was prejudicial to the extent that it impacted negatively upon defendant's right to a fair trial," and remanded the cause with direction to assign the case to a different trial judge to avoid "substantial prejudice" to the defendant.

*Grover*, No. 1-07-3497 at 32.

¶ 68 Supreme Court Rule 63(C)(1)(a) (eff. April 16, 2007), also known as Canon 3 of the Illinois Code of Judicial Conduct, provides in relevant part:

“(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding[.]”  
188 Ill.2d R. 63(C)(1)(a).

Based on this rule, a judge is required to recuse herself when her participation might reasonably give rise to questions regarding his impartiality, including situations involving the appearance of impropriety. *People v. McLain*, 226 Ill. App. 3d 892, 902 (1992).

¶ 69 There is nothing in the record before us to suggest that the court, or defense counsel for

1-10-1492

that matter, was aware of this court's holding in *Grover* prior to the commencement of trial. Furthermore, there is nothing before this court that would suggest that the trial judge was even aware that her conduct, her partiality, or her treatment of Mr. Douglass were the subject of defendant's appeal to this Court. Therefore it is untenable for defendant to claim that the court should have *sua sponte* recused herself based on this court's holding in *Grover*.

¶ 70 Furthermore, as the State points out, Mr. Douglass was not private counsel in this case. He was an Assistant Public Defender assigned to Judge Lampkin's courtroom and had been so assigned for four years. Contending that Judge Lampkin should have recused herself in his case is equivalent to suggesting that she recuse herself from all of Mr. Douglass' cases.

¶ 71 Similarly, defendant claims that defense counsel was ineffective for failing to request a substitution of judge based on *Grover*, which was decided four days prior to trial in this case. The law is clear that a defendant in any criminal case is constitutionally guaranteed effective assistance of counsel. U.S. Const., amend. VI, XIV; Ill. Const. 1970, art. I § 8; *Strickland v. Washington*, 466 U.S. 668 (1984); adopted by *People v. Albanese*, 104 Ill. 2d 504 (1984). The *Strickland* court set forth the two requirements that a defendant must show to prevail in an ineffective assistance claim; (1) counsel's performance fell below an objective standard of reasonableness and; (2) there is reasonable probability that, but for counsel's errors, the result of the trial would have been different. The burden is on the defendant to overcome the strong presumption that defense counsel rendered adequate assistance using reasonable professional judgment pursuant to sound trial strategy. *Strickland*, 466 U.S. at 689-90.

¶ 72 A defendant may file a motion for substitution of judge for cause, which is to be

1-10-1492

supported by affidavit after the 10-day period for substitution as a matter of right has expired.

725 ILCS 5/114-5(d) (2008). A hearing on the motion for substitution of judge for cause should be conducted as soon as possible before a judge not named in the motion. 725 ILCS 5/114-5(d) (2008).

¶ 73 Defendant here faults defense counsel for not filing a motion for substitution of judge for cause based on this court's holding in *Grover*. Again, there is nothing in the record from which we can conclude that defense counsel was aware of this court's holding in *Grover*, either before or during trial. We therefore cannot conclude that defense counsel was ineffective on this basis.

¶ 74

#### CONCLUSION

¶ 75 For the following reasons, we affirm the judgment of the circuit court.

¶ 76 Affirmed.