2013 IL App (1st) 101487-U

FOURTH DIVISION
March 28, 2013

No. 1-10-1487

IN THE APPELLATE
COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 06 CR 27588
	)	
RASHED TILLMAN,	)	The Honorable
	)	Maura Slattery Boyle,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Lavin and Justice Pucinski concurred in the judgment.

ORDER

HELD: Trial court did not abuse its discretion in granting State's petition to extend defendant's speedy trial term; the evidence presented at trial was sufficient to support defendant's convictions beyond a reasonable doubt; the State's remarks during rebuttal closing argument were not so egregious as to have deprived defendant of a fair trial; and there was no error in the admission of testimony from the victim's mother.

¶ 1 Following simultaneous but separate trials with codefendant Darvin Tillman (codefendant),[1] defendant Rashed Tillman (defendant) was convicted of first degree murder with a firearm enhancement and three counts of aggravated discharge of a firearm. He was sentenced to a total of 55 years in prison. He appeals, contending that the trial court erred in granting the State's petition for an extension of his speedy trial term, that the State failed to prove him guilty beyond a reasonable doubt, that he was deprived of a fair trial when the State made improper comments during closing argument, and that he was deprived of a fair trial due to the testimony of the victim's mother. He asks that we reverse his convictions outright or, alternatively, that we reverse his convictions and remand the cause for a new trial. For the following reasons, we affirm.

¶ 2 BACKGROUND

¶ 3 The instant cause involves incidents related to the shootings of the victim, Myeisha Samuels, as well as Patrick Carter, Jovon Thurman and Randall Williams, Jr., on June 11, 2006. The victim was killed, and Thurman and Williams were wounded.

¶ 4 Prior to trial, the State filed a "Petition For An Extension of Time Under The 4th Term Act," requesting a 60-day extension of defendant's statutory speedy trial term. The State explained to the trial court that several material witnesses had failed to appear pursuant to its subpoenas. Following related hearings, and over defendant's objection, the trial court granted the

[1]Codefendant is defendant's cousin. He elected to proceed with a bench trial, while defendant elected to proceed with a jury trial. Codefendant is not a party to this appeal.

State's petition.[2]

¶ 5 When the cause proceeded to trial, the State's first witness, Mari Samuels, testified that her daughter, the victim, was, at the time of her death, an 18-year-old high school student who was about to graduate. The State then asked Samuels to "tell the jury a bit about Myeisha," whereupon Samuels responded:

> "She was a sweetheart. My only daughter. I can't have any more kids. She's all I had. Myeisha enjoyed dancing, helping out with the community. Helping other kids. She always said she wanted her own. She was pregnant at the time. That would have been my first grandbaby."

Defendant did not object to this testimony.

¶ 6 Police officer Bernard Veleta testified that, in the early morning hours of June 11, 2006, he and his partner were assigned to investigate a shooting near the intersection of Congress Parkway and Lavergne Street in Chicago. They arrived at 4946 West Congress to find a crowd of people. Officer Veleta saw the victim lying on the ground in a pool of blood. She was taken by ambulance to the hospital. Officer Veleta then spoke to others at the scene, including Jovon Thurman,[3] who had been shot in the left thigh, and Randall Williams, Jr., who had been shot in the back above his shoulder. Officer Veleta went to the hospital, where he learned that the victim had died from a gunshot wound to the head.

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[2]We will cite the facts relative to this matter on appeal in more detail when we address the issue later in our decision.

[3]Thurman also goes by the name of Lynell Hicks, and is referred to as such by some who testified at defendant's trial. We will refer to him as Thurman, for the sake of consistency.

¶ 7 Shawntelle Myles testified that on the day in question, she was in the yard of her grandmother's building at 4948 West Congress when, at around 1:20 a.m., her cousin Williams and a group of 8 to 12 friends arrived and gathered in front of the building by the gate. Shortly thereafter, Myles heard a gunshot and ran inside her grandmother's building. Once inside, she heard a second gunshot and remained inside her grandmother's house until she heard police arrive. She did not speak to police at the scene, explaining that she was "scared at the time." When she eventually spoke to police later, she could not identify the shooter.

¶ 8 Reginald Bowdery testified that earlier in the evening of June 10, 2006, he saw defendant and codefendant, both of whom he has known for almost 20 years, on three separate occasions driving around the neighborhood in a red or maroon car. Codefendant was driving and defendant was sitting in the front passenger seat. Bowdery stated that, as the night wore on into the early morning hours of the next day, he was hanging out by a church at the intersection of Congress and Lavergne with four or five friends. At about 1:20 a.m., he saw a large group of people gathered on Congress on the opposite side of the street. He knew several of the people in the group from the neighborhood. Bowdery then saw the red car again, this time driving west on Congress and toward him with its headlights off. As the car neared, it pulled over to a parking spot. Bowdery averred that defendant exited the passenger door of the car and walked behind a white van parked across the street, on the same side where the large group of people were standing. When defendant got to the side of the van closest to the curb, Bowdery saw him fire about nine shots toward the group of people. Defendant then stopped shooting and got back in the red car, which drove down Congress toward Bowdery before turning on Lavergne toward

Harrison Street. Bowdery could not see the driver at that time.

¶ 9 Bowdery further testified that when police arrived at the scene, he and his friends began to walk away; he did not talk to police or to anyone who had been in the large group of people. He stated that he did not speak to police because "when you live in that neighborhood, you don't necessarily want to be the one who tattles." About a month later, on July 19, 2006, Bowdery was arrested on a narcotics charge. While in custody, he recounted for police what he had seen regarding the incident. After viewing two photo arrays presented by police, Bowdery identified defendant as the person he saw shooting the gun that night and codefendant as the driver of the red car.

¶ 10 Bowdery admitted that he has prior drug convictions for possession and possession with intent to deliver. He pled guilty to the narcotics charge for which he was taken into custody on July 19, 2006, but noted that this charge was eventually "dropped." Bowdery also stated that in October 2007, he spoke to Quentin Hall, an investigator from the Cook County Public Defender's Office. Bowdery could not remember exactly what he told Hall, but essentially told him he did not see anything on the night in question. He explained that he told Hall "what he wanted to hear" in the hope that Hall would leave, as Bowdery had just gotten out of jail and there were other people nearby when Hall approached him. Lastly, Bowdery noted that gunshots were frequently heard in the neighborhood and people often do not go to police with information; in this particular instance, he did not do so because he did not want to deal with the situation.

¶ 11 Detective Jaciento Gonzalez testified that he was assigned to investigate the murder of the victim, at which time he learned that Thurman and Williams had also been shot. On July 19,

2006, he interviewed Bowdery at the police station. Detective Gonzalez recounted that Bowdery told him he had been standing with some friends near the intersection of Congress and Lavergne when he saw a red or maroon car pull up on Congress on the opposite side of the street. Bowdery told Detective Gonzalez that codefendant was driving the car and defendant was a passenger. Once the car stopped, defendant exited, ran behind a white van, stood on the sidewalk and fired about 9 or 10 shots at a group of people standing in front of a building on Congress. Defendant then jumped back in the car, which pulled away and turned left on Lavergne and right on Harrison. Bowdery also told Detective Gonzalez that defendant was wearing a black baseball cap and dark clothes at the time of the shooting, and that his (Bowdery's) friends who also witnessed the shooting were "afraid to talk" to police.

¶ 12 Patrick Carter testified that at around 9:30 p.m. on June 10, 2006, he joined several friends at a local establishment, including the victim and Williams, to play pool and shoot darts. About an hour later, the group left together to go buy beer and walk around the neighborhood. At this time, as they walked down Adams Street, Carter saw defendant and codefendant, both of whom he has known for almost 18 years, standing near a red car. Later, as the group continued walking, he saw defendant and codefendant driving around the neighborhood in the same red car; codefendant was driving and defendant was in the front passenger seat. He observed that defendant was wearing a white hat, a white shirt and blue pants.

¶ 13 Carter further testified that his group, which now included Lavonte Moore, walked to Williams' house at Congress and Lavergne, where they stood outside talking until well after midnight. At about 1:30 a.m. on June 11, 2006, Carter noticed that a motion sensor light

illuminated across the street on the other side of Congress. He averred that, when he looked in the direction of that light, he saw defendant emerge from the gangway and fire a gun at the group. Carter heard approximately 10 gunshots and ran. When the shooting stopped, he returned to where the group had been standing and saw the same red car he had noticed earlier containing defendant and codefendant drive away down the alley; however, he could not see at this time who was in the car. Carter then notice that the victim and Williams had been shot. Police arrived, but Carter did not speak to them, explaining that it "just ain't something I do." Instead, he rode in an ambulance with the victim to the hospital.

¶ 14 Carter admitted that he has been convicted of several crimes, including possession of a controlled substance with intent to deliver and unlawful use of a weapon by a felon. He further noted that in late August 2006, while in custody for an assault charge, he told police what he saw on the night in question. Police presented him with photographic lineups, at which time he identified both defendant and codefendant. Carter averred that, after speaking to police, his assault charge was eventually "thrown out." In addition, Carter stated that he did not see Bowdery on the night of the shooting, nor did he see the red car parked on Congress at the time of the shooting.

¶ 15 At the outset of his testimony, Lavonte Moore told the jury that he did not want to testify and was present in court only because a warrant for his arrest had been issued due to his prior failure to appear. Regarding the night in question, he testified that he only "vaguely" remembered what happened. He averred that he went to play pool and shoot darts with a group of friends which included Williams and the victim. They all left at approximately 11 p.m.

Moore separated from the group to go buy cigarettes, but eventually met with them again as they walked around the neighborhood. They went to Williams' house on Lavergne and Congress, and the group stood in front of the building talking, as they usually did on summer evenings. A while later, Moore heard gunshots ricocheting against the gate of the building and everyone ran inside, after which he went home and then out of town the next day. At first, he stated that he had not seen a red car that evening, but then testified that he did see a red car a couple times that day driving around the neighborhood. He averred that he could not see who was inside the car, nor did he see who fired the shots or the victim, because it was too dark for him to see anything. He also stated that he never identified defendant or codefendant from any photographs, and never saw Bowdery or his group of friends, a white van or a red car parked on Congress at the time of the shooting.

¶ 16 Moore then testified regarding a meeting he had with police and an Assistant State's Attorney (ASA) in November 2006. Moore provided a statement to the ASA at that time about the night in question; the ASA wrote out his statement and Moore signed the bottom of each page. At first, Moore averred that he never read the statement, but then admitted that the ASA read every page to him at that time and affirmed that it comprised a summary of what he had told the ASA during their meeting, including that when he heard the gunshots, he looked in their direction and saw defendant pointing a gun at his group of friends. However, Moore now testified that some of his statement was false. When asked to specify what was false, Moore averred that the portion of his statement wherein he told the ASA that he saw defendant with the gun was not true.

¶ 17 Moore further acknowledged that he had previously testified about the incident before a grand jury, but stated that he did not really remember it and could only "vaguely" recall his testimony. He was presented with his grand jury testimony, wherein he had recounted that he heard the gunshots, looked in their direction and saw defendant pointing a gun at the group gathered in front of Williams' house. His grand jury testimony included a statement that he had seen the red car coming from an alley earlier in the evening when he was walking toward Congress and Lavergne; he saw the car pass the group and noted that defendant and codefendant, whom he has known for 15 years, were in the passenger and driver's seats, respectively. Moore also identified photographs of them at the grand jury hearing. In response to the presentation of his grand jury testimony, Moore stated that he was not sure if he saw defendant on the day in question, that he never identified him or codefendant from any photographs, and that he only told the grand jury what the police had told him to say. However, he admitted that, at no time when he gave any of his statements or testimony, was he ever threatened or forced to say or write anything by police or the ASA, and he was always treated well and fairly by them. He also admitted that he was convicted in the past of possession of a controlled substance.

¶ 18 ASA Alexander Vroustouris testified that in November 2006, he interviewed Moore at the police station. Moore agreed to speak to him and allowed him to transcribe his statement regarding the night in question. ASA Vroustouris averred that Moore told him that he saw the red car driving around the neighborhood earlier that evening and that defendant and codefendant were the passenger and driver, respectively. Moore further recounted to ASA Vroustouris that, after playing pool with friends, the group went to Congress and Lavergne where they later heard

gunshots. At that point, Moore looked in the direction of the shots and saw defendant, who he identified from a photograph and who he has known for 15 years, holding a gun in his hand and pointing it in the direction of the group.

¶ 19 ASA Vroustouris further testified that, after Moore gave his statement, he (Vrousouris) reviewed it with Moore by reading it to him and allowed him the opportunity to make any changes or corrections. Moore made a few corrections and then signed the bottom of each page of the statement. ASA Vroustouris also verified with Moore that he had been treated well by police and that he had given his statement voluntarily.

¶ 20 After the State rested its case-in-chief, defendant presented his witnesses, which included the testimony of Quentin Hall, an investigator for the Cook County Public Defender's Office, who had interviewed Bowdery in October 2007. Hall acknowledged that Bowdery was "reluctant" to talk to him, but did so, and when Hall asked him about the incident, Bowdery told him he was not there at the time and had not seen defendant commit the shooting, nor did he see codefendant driving a car. However, on cross-examination, Hall admitted that he did not take notes from his interview with Bowdery and only wrote a report about it via his memory; Bowdery never signed Hall's report. Hall further admitted that the interview was "brief" and that Bowdery repeatedly told him he did not "want to have anything to do with this."

¶ 21 Camilla Tillman, defendant's cousin, testified that defendant, his girlfriend and their baby were living with her at her home temporarily during May and June 2006. She averred that, on June 10, 2006, she arrived home at about 11 or 11:30 p.m. to find defendant, his girlfriend and their baby present at her house. She stated that they talked and played cards until 2 or 2:30 a.m.

on June 11, 2006, and then she went to bed. She saw defendant the next morning, when they all heard about the shooting. Tillman further testified that she believed another of her cousins had borrowed defendant's red car on the night of the shooting, as she had seen this cousin drive the car in the past. Tillman admitted that she did not see the car when she arrived home on the evening of June 10, 2006. She also admitted that, when she learned that defendant had been charged in this cause, she did not contact police to say he was at home with her at the time of the shooting.

¶ 22 Following closing argument, the jury found defendant guilty of first degree murder of the victim by personally discharging a firearm that was the cause of her death, and three counts of aggravated discharge of a firearm, with respect to Carter, Thurman and Williams. Defendant received a sentence of 30 years' imprisonment on the murder conviction and a sentence of 25 years' imprisonment for the firearm sentencing enhancer; these sentences were ordered to be served concurrently with sentences of 5 years' imprisonment on each of defendant's three convictions for aggravated discharge of a firearm, for a total of 55 years in prison.

¶ 23 ANALYSIS

¶ 24 Defendant presents four issues for review. We will address each separately.

¶ 25 I. Speedy Trial Term

¶ 26 Defendant's first contention on appeal is that the trial court abused its discretion in granting the State's petition for an extension of the speedy trial term. He asserts that the State made only conclusory assertions in its petition and in its representations in support of it, thereby failing to establish any degree of due diligence required and, thus, his convictions should be

reversed. We disagree.

¶ 27 A defendant possesses both constitutional and statutory rights to a speedy trial. See U.S. Const. amends. VI, XIV; Ill. Const. 1970, art. I, § 8; 725 ILCS 5/103-5(a) (West 2008). While these provisions address similar concerns, "the rights established by each of them are not necessarily coextensive." *People v. Kliner*, 185 Ill. 2d 81, 114 (1998); accord *People v. Wells*, 2012 IL App (1st) 083660, ¶ 20. Here, we note for the record that defendant only asserts a violation of his statutory right to a speedy trial and not any constitutional concerns. Accordingly, we turn to a review of our state's statute regarding the speedy trial term.

¶ 28 Pursuant to section 103-5 of the Code of Criminal Procedure of 1963, a defendant in custody must be tried within 120 days from the date he was taken into custody. See 725 ILCS 5/103-5(a) (West 2008); accord *Wells*, 2012 IL App (1st) 083660, ¶ 21. If he is not, then he must be discharged. See 725 ILCS 5/103-5(d) (West 2008); accord *Wells*, 2012 IL App (1st) 083660, ¶ 21. There are only two exceptions to this rule. The first is if the defendant himself "occasion[s] the delay;" in such an instance, the running of the speedy trial period is tolled and then resumes once the delay is over. 725 ILCS 5/103-5(a) (West 2008); see also *Kliner*, 185 Ill. 2d at 114; *Wells*, 2012 IL App (1st) 083660, ¶ 21. A "delay occasioned by the defendant" is one where he does something to cause or contribute to the postponement of his trial. See *People v. Hall*, 194 Ill. 2d 305, 326-27 (2000); accord *Kliner*, 185 Ill. 2d at 114; *Wells*, 2012 IL App (1st) 083660, ¶ 21. This also includes his express agreement to a continuance. See *Kliner*, 185 Ill. 2d at 114, 115-16 (when the defendant and the State agree to a continuance as a cause proceeds to trial, this "constitutes an affirmative act of delay attributable to the defendant which tolls the

speedy-trial term"); accord *Wells*, 2012 IL App (1st) 083660, ¶ 21.

¶ 29 The other exception to the 120-day speedy trial term, which is at issue in the instant cause, may be exercised by the State. That is, the State may petition the trial court for a one-time 60-day extension of the term. See 725 ILCS 5/103-5(c) (West 2008). To obtain this extension, the State must show that it has been unable to obtain evidence material to the defendant's prosecution despite due diligence and must provide reasonable grounds for the court to believe that it will be able to obtain this evidence at a later date. See 725 ILCS 5/103-5(c) (West 2008); see also *People v. Terry*, 312 Ill. App. 3d 984, 990 (2000). While there is no specific, bright-line definition of the due diligence the State must exert, the key test is whether the State began its efforts to locate the cited evidence before the speedy trial term was set to end. See *Terry*, 312 Ill. App. 3d at 990-91; accord *People v. Smith*, 268 Ill. App. 3d 1008, 1013 (1994).

¶ 30 The trial court's decision to grant a speedy trial term extension pursuant to the State's petition is within its discretion. See *Terry*, 312 Ill. App. 3d at 990; *Smith*, 268 Ill. App. 3d at 1012. Accordingly, we, as the reviewing court, will not reverse the trial court's decision in this respect absent a clear showing of abuse. See *Terry*, 312 Ill. App. 3d at 990; *Smith*, 268 Ill. App. 3d at 1012; accord *People v. Bonds*, 401 Ill. App. 3d 668, 674 (2010). Moreover, we are to examine and consider the entire record as it existed at the time the trial court considered the State's petition. See *Terry*, 312 Ill. App. 3d at 990; accord *Bonds*, 401 Ill. App. 3d at 674 (this is because we are called to examine the information the trial court had before it when making its decision). Ultimately, " '[w]hether the State has exercised due diligence is a question that must be determined on a case-by-case basis after careful review of the particular circumstances

presented.' " *Bonds*, 401 Ill. App. 3d at 674 (quoting *People v. Swanson*, 322 Ill. App. 3d 339, 342 (2001)).

¶ 31 In the instant cause, the record, as it existed at the time the trial court considered the State's petition for extension of defendant's speedy trial term, does not show that the court abused its discretion in granting it.

¶ 32 Defendant asserts, and the State does not refute herein, that his speedy trial term was set to expire on February 9, 2010; however, his jury trial did not begin until March 8, 2010. Let us now, at this point, examine several facts relevant to the time between when defendant was taken into custody and the start of his trial.[4] As the record shows, defendant's cause was set for trial on July 20, 2009, with subpoenas. However, on that date, the State told the trial court that, while it had served all of its witnesses, it was not ready for trial because three of them had not appeared. It also noted that if it could not make contact with the witnesses or they did not appear, it would seek a rule to show cause. Following this explanation, the parties agreed to continue the cause until August 21, 2009. The State obtained rules to show cause against the three witnesses but, on August 21, 2009, it again told the court that it was not ready to proceed because, while two of the witnesses had appeared, there was still an outstanding arrest warrant as to the third. The parties again agreed to continue the cause.

¶ 33 On September 18, 2009, the State told the court that it was having difficulty personally

[4]As defendant notes, his 120-day term was interrupted several times between November 8, 2006, the date he was taken into custody, and March 8, 2010, the date on which his trial began. He concedes that some of these periods were delays he occasioned and, thus, were attributable to him. Also, as the record shows, some of them were pursuant to agreed continuances and, under the statute already outlined, were therefore also attributable to him and tolled the period.

serving several witnesses, including Thurman, who had been served with a subpoena but had failed to respond. The State asked that a no-bail warrant be issued for his arrest, and defendant's cause was continued. On October 5, 2009, the State acknowledged that defendant's speedy trial term was running, and noted for the court that it would be best to set the case for November 19, 2009; the State had subpoenaed all the witnesses for that date and told the court that it believed they would be there. However, the court could not accommodate the November 19, 2009 date and continued the cause by agreement to November 30, 2009. On that date, the State appeared and told the court it was not ready for trial. The cause was continued until January 4, 2010, but on that date, the State again appeared and told the court it was not ready. The cause was continued until February 1, 2010.

¶ 34 Before the next court date, on January 11, 2010, the State told the court that it was seeking an extension of defendant's speedy trial term pursuant to section 103-5(c). In its petition, the State explained that Williams, Thurman and Moore were "material and essential witnesses" in defendant's cause and that it had "exercised due diligence to produce the presence of these witnesses." The State then outlined what had occurred as it tried to obtain their presence. First, regarding Williams and Thurman, the State noted that it had personally served both with subpoenas on September 22, 2009, but they failed to appear. The State further described that, since that time, it had been making "attempts to locate and compel" them to appear, but that neither of them can be located. Second, regarding Moore, the State detailed that it had issued subpoenas for his appearance four times: September 18, 2009; October 5, 2009, October 19, 2009; and January 4, 2010; all of these attempts to serve him were unsuccessful.

Then, on January 5, 2010, a fifth subpoena was issued for Moore to appear on February 1, 2010 (the next scheduled court date), and Cook County State's Attorney investigator Frank Argentine was finally able to serve him. However, the State informed the court that, upon service, Moore "crumpled the subpoena" and told Argentine he would not comply. The State noted that it would be filing a petition for rule to show cause against Moore if he fails to appear on February 1, 2010, and would request an arrest warrant. Finally, in its petition, the State concluded by indicating that there was reasonable grounds to believe that the presence of all three material witnesses could be procured at a later date. Upon consideration, the trial court noted that its decision whether to grant the State's petition depended on what would occur on February 1, 2010, as the State had again subpoenaed the witnesses to appear on that date. Therefore, the court delayed its ruling.

¶ 35 On February 1, 2010, the State told the court it was not ready to proceed to trial because it was "still missing several witnesses" and asked the court to rule on its petition. Defendant objected, arguing that there was no "testimony or evidence" that the State "had done due diligence." The court responded by recalling the facts contained in the petition, namely, that there were "two warrants out" (Williams and Thurman) and that one witness had been served but had "crumbled up the piece of paper" (Moore). Upon confirming these facts again with the State, along with the materiality of these witnesses relative to the cause against defendant (that Williams and Thurman were shooting victims and Moore was an eyewitness), the court granted the State's petition, explaining:

"The warrants have been outstanding. An individual has been served. He

> is not here.
>
> While [defendant] may be correct in that there has not been direct testimony, [the State] has indicated that to the court on numerous occasions in court. As an officer of the court, I have no reason to doubt [its] assertions at this time."

¶ 36 Defendant's argument here is simple: he asserts that the State failed to meet its burden of demonstrating due diligence because its petition for extension of the speedy trial term was not specific enough with respect to the efforts it used to obtain the presence of Williams, Thurman and Moore. He complains that the State, for example, did not identify who from the State's Attorney's office was looking for Williams and Thurman and what efforts were undertaken to locate them and take them into custody pursuant to their arrest warrants, and that the State did not file a rule to show cause against Moore in January 2010 or obtain the issuance of a warrant for his arrest.

¶ 37 However, upon our examination of the record in this cause, and, particularly, of the State's petition, we find that the State did, indeed, meet the test of due diligence required to obtain an extension of defendant's speedy trial term. Contrary to defendant's assertions, the State was legitimately unsuccessful in obtaining the presence of Williams, Thurman and Moore, and sufficiently expressed as much to the trial court.

¶ 38 First, these witnesses were critical to the State's case: Williams, Thurman and Moore were present at the time of the shooting, Williams and Thurman had actually been shot and wounded in the incident, and Moore had repeatedly stated–to police, to ASA Vroustouris and

even to a grand jury–that he was an eyewitness to the incident and had seen defendant shoot the victim. The record demonstrates that, from the very beginning of this cause, the case against defendant was plagued by the refusal of several witnesses to adhere to the subpoenas, rules to show cause and warrants issued, and to appear in court to recount what occurred. All the court hearings, beginning in July 2009, undeniably confirm this. The facts of this cause clearly show that Williams, Thurman and Moore comprised material and essential evidence for the State in its case against defendant.

¶ 39 In addition, both the State's representations in court and its petition explain, with much detail, the efforts it undertook to secure the witnesses and the fact that it did so before the expiration of defendant's speedy trial term. Again, defendant confirms on appeal, and the State does not dispute, that his speedy trial term was set to expire on February 9, 2010. Long before this, the State began several legal maneuvers to obtain the presence of Williams, Thurman and Moore. The record shows that, once defendant's trial was set for July 20, 2009, the State issued witness subpoenas. After the July 20, 2009 hearing when the State told the court that three of its witnesses had not appeared, the State obtained rules to show cause against them. However, by September 2009, it was clear that the State was having difficulty in securing their appearances. Specifically, with respect to Williams and Thurman, the State recounted that it had personally served them in September 2009 with orders to be present in court, but both failed to respond or appear. The State then sought a no-bail warrant. Since that time, the State made multiple attempts to locate and compel their presence, but the State's Attorney of Cook County could not find either of them. The State further described that, with respect to Moore, it had issued a total

of five subpoenas for his presence in court, spanning quite a length of time–from September 2009 to February 1, 2010. The State was unsuccessful in personally serving Moore with the first four subpoenas when finally, one of its investigators, Frank Argentine, was able to do so. However, Moore "crumpled the subpoena and indicated he would not comply."

¶ 40 The State presented all this to the trial court, which, after considering the petition and the record as it stood on February 1, 2010, granted the extension of defendant's speedy trial term. The court took into particular account that the arrest warrants for Williams and Thurman were still outstanding, and that, while Moore had finally been served, he still refused to appear. As the court noted, while there may not have been any direct testimony, the State had repeatedly indicated and explained to the court all that had been occurring and, thus, the court had no reason to doubt the State's need for the extension.

¶ 41 We find no abuse in this respect. Instead, the record bears out the trial court's determination. The State was candid regarding its difficulties in securing these three witnesses early on at the outset of this litigation. As time passed, and as evidenced by its discussions with the court, the State was mindful of the speedy trial term and asked for the court's assistance in setting future dates. While defendant's cause was continued upon several motions filed by the State, it was also continued by several agreed motions, as well as the trial court's scheduling prerogative. Ultimately, the State filed its petition for extension a month before defendant's speedy trial term was to end, and the court ruled on it before his term expired, clearly citing its conclusion, as based in the record, that the State had been duly diligent. Upon our review of these same facts, we find no reason to disturb the trial court's determination here.

¶ 42 Defendant cites several cases in his brief on appeal which he states "are examples of what 'due diligence' looks like." See *People v. Winfield*, 113 Ill. App. 3d 818, 824-25 (1983) (speedy trial term extension properly granted since State's efforts to secure witness were sufficient to support finding of due diligence, where it sent officers to witness' last known address, contacted her acquaintances, left messages for her and searched her neighborhood); *Smith*, 268 Ill. App. 3d at 1013-14 (1994) (same, where State checked with several government agencies and with arrest records in an effort to locate the witnesses); *People v. Morgan*, 62 Ill. App. 3d 279, 282-83 (1978) (same, where State's investigators made numerous calls to witness' telephone number, checked medical records, visited address provided by government agency and spoke to witness' brother); *People v. Elliott*, 68 Ill. App. 3d 873, 879 (1979) (same, where sheriff's investigators visited witness' last addresses, spoke to neighbors and contacted telephone and electric companies and government agencies). He then relies primarily on *People v. Durham*, 193 Ill. App. 3d 545 (1990), a case which concluded that the trial court had abused its discretion in granting the State's request for an extension of the speedy trial term, and states that "the present case is far more like it" than the others.

¶ 43 However, the reality is that, for every case defendant cites to suggest that the State's actions here were not sufficient in obtaining the presence of Williams, Thurman and Moore, there are others to support the opposite conclusion that what it did in this cause was, indeed, enough to validate the trial court's grant of its petition to extend defendant's speedy trial term. See, *e.g.*, *People v. Gray*, 326 Ill. App. 3d 906 (2001); *Terry*, 312 Ill. App. 3d 984; *People v. Foster*, 297 Ill. App. 3d 600 (1998); *People v. Hughes*, 274 Ill. App. 3d 107 (1995); *Smith*, 268

Ill. App. 3d 1008 (all holding that State's efforts were sufficient to obtain presence of missing material witnesses where it performed acts similar to those present in the instant cause, such as using investigators, requesting arrest warrant, and attempting to serve subpoenas, all before the expiration of the defendants' speedy trial terms). Moreover, section 103-5(c) does not require an affidavit or any evidence in support of the State's petition for extension of the speedy trial term. See *Foster*, 297 Ill. App. 3d at 606; *People v. Folenga*, 83 Ill. App. 3d 210, 214 (1980). Instead, when a defendant does not challenge their truth, the State's factual propositions contained in its petition are sufficient to satisfy its burden under the statute. See *Foster*, 297 Ill. App. 3d at 606; *Folenga*, 83 Ill. App. 3d at 214 (these *prima facie* satisfy the State's burden absent denial by the defendant). In the instant cause, defendant has never asserted that the State was untruthful with respect to the allegations in its petition–only that its allegations were not sufficient to satisfy its burden.

¶ 44 Furthermore, we wholly disagree with defendant's reliance on *Durham*, as that case is entirely distinguishable from the instant cause. In *Durham*, the State moved for an extension of the defendant's speedy trial term about two weeks before it was to end, citing that it was not prepared for trial because it had yet to receive a police crime lab report related to that drug case. The trial court granted the extension. In a two-page decision, the *Durham* court found that this was an abuse of discretion because the record was "barren of actions or efforts on the part of the State, which would support a finding that due diligence was exercised in obtaining evidence from the police crime-lab." *Durham*, 193 Ill. App. 3d at 546. Indeed, the only articulation by the State of its attempts was a statement from the prosecutor that there was a general delay of five months

between any defendant's arrest and the lab's preparation of its reports. See *Durham*, 193 Ill. App. 3d at 546. In addition, the record bore out that the trial court had particular issues with the increase in the number of drug cases before it, inclining it to permit delays. See *Durham*, 193 Ill. App. 3d at 547.

¶ 45 Defendant is correct, and *Durham* aptly demonstrates, that the mere assertion of due diligence by the State does not establish the due diligence required by section 103-5(c). See *Durham*, 193 Ill. App. 3d at 547. However, to infer that the State did that in the instant cause or to liken the circumstances of defendant's case to *Durham* is entirely inappropriate. First and foremost, unlike *Durham* which involved a lab report, from the beginning here, the State was forced to deal with several key witnesses–victims, nonetheless–who were essential to building its case against defendant but who were resistant to even discussing the events of the night in question, let alone assisting the State in prosecuting defendant and proving its case. The delicate nature of securing a witness to testify against a defendant is, oftentimes, incomparable to the nature of obtaining a static report from a lab which performs general and routine functions. In addition, and key to our analysis herein, the record in *Durham* failed to elaborate on any actions conducted by the State to secure the evidence it sought, precisely because the State there did nothing in its attempts to do so other than to provide a general excuse to the court regarding lab delays. To the contrary, it can hardly be said that the record in the instant cause is, as it was in *Durham*, "barren" of any effort by the State to obtain the testimony of Williams, Thurman and Moore. Again, we have thoroughly discussed the State's representations to the trial court at the hearings and the contents of its written petition, and find that these clearly establish that it

undertook several actions to locate the witnesses and secure their appearance in court before the expiration of defendant's speedy trial term. Its actions were ongoing, from as early as July 2009, and it consistently informed the trial court of its difficulties in serving the witnesses. The State sought several rules to show cause, requested multiple no-bail warrants for arrests, and performed other legal maneuvers to obtain these witnesses. It can be gleaned from the materials the State provided to the trial court that it had investigators from the State's Attorney's office including, specifically, Frank Argentine, attempting to locate the witnesses and serve them. These witnesses could not be located, could not be served and, as represented by Moore's own actions and testimony, as well as those of several other witnesses like Bowdery and Carter who vocalized their reluctance at being involved, simply did not want to participate in this cause.

¶ 46 As we discussed earlier while reviewing the legal principles of section 103-5(c), ultimately, we are to examine the trial court's decision to grant the State's petition for extension of the speedy trial term on a case-by-case basis after careful review of the entire record as it existed at the time the petition was filed. See *Terry*, 312 Ill. App. 3d at 990; accord *Bonds*, 401 Ill. App. 3d at 674. And, again, there is no bright-line rule for what comprises due diligence under the statute. See *Terry*, 312 Ill. App. 3d at 990-91; *Smith*, 268 Ill. App. 3d at 1013. While we suppose there is always more room for infinite detail when composing a petition like the one at issue, we find that, in the instant cause, the State's petition and its supportive representations were sufficiently specific to justify the extension of defendant's speedy trial term. There is simply nothing in the record to indicate that the State attempted curtail its burden under the due diligence requirement in order to carelessly or maliciously prolong and delay the start of

defendant's trial.

¶ 47 Accordingly, based on everything presented before us, we find that the trial court properly granted the State's petition to extend defendant's speedy trial term and committed no abuse of discretion in its determination.

¶ 48 II. Sufficiency of the Evidence

¶ 49 Defendant's second contention on appeal is that the State failed to prove him guilty beyond a reasonable doubt. He asserts that the testimony of Bowdery, Carter and Moore was "so fraught with inconsistencies and contradictions" that, in combination with the fact that there was no confession or physical evidence linking him to the crimes and with the timing and circumstances of these witnesses' cooperation with police, the evidence presented against him was insufficient and, therefore, his convictions cannot stand. We disagree.

¶ 50 When a criminal defendant challenges the sufficiency of the evidence used to convict him, the standard of review is whether, when viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. See *People v. Smith*, 185 Ill. 2d 532, 542 (1999); *People v. Hunley*, 313 Ill. App. 3d 16, 20 (2000). Courts of appeal will not retry the defendant. See *People v. Digirolamo*, 179 Ill. 2d 24, 43 (1997). Instead, the jury, as the trier of fact, hears and sees the witnesses and, thus, has the responsibility to adjudge their credibility, resolve any inconsistencies, determine the weight to afford their testimony and draw reasonable inferences from all the evidence presented. See *People v. Steidl*, 142 Ill. 2d 204, 226 (1991); *Hunley*, 313 Ill. App. 3d at 21.

¶ 51 Further, we note that inconsistencies in the testimony of witnesses do not create

reasonable doubt, especially if those inconsistencies are minor. See *People v. Adams*, 109 Ill. 2d 102, 115 (1985) ("[m]inor inconsistencies in the testimonies do not, of themselves, create a reasonable doubt"); *People v. Bennet*, 329 Ill. App. 3d 502, 513 (2002) ("[i]nconsistency between certain eyewitnesses' testimony does not necessarily establish reasonable doubt"). Such discrepancies go only to the weight that is to be afforded to their testimony (see *People v. Hruza*, 312 Ill. App. 3d 319, 326 (2000)), which is for the jury here as the trier of fact to determine, not the reviewing court (see *People v. Vasquez*, 313 Ill. App. 3d 82, 103 (2000)). See *People v. Robinson*, 30 Ill. 2d 437, 440 (1964) ("minor variations *** pointed to by defendant at most affect the credibility of the witnesses"); *People v. McPherson*, 306 Ill. App. 3d 758, 766 (1999) (judgment will not be reversed on appeal where testimony is merely conflicting). Ultimately, a conviction will not be overturned unless the evidence is so improbable or unsatisfactory as to create a reasonable doubt of guilt. See *People v. Brown*, 185 Ill. 2d 229, 247 (1998).

¶ 52 The State must prove beyond a reasonable doubt the identity of the person who committed the offense. See *People v. Lewis*, 165 Ill. 2d 305, 356 (1995). While a vague or doubtful identification will not support a conviction, a single witness' identification of the defendant is sufficient to sustain his conviction as long as that witness viewed the offender under circumstances permitting a positive identification. See *Lewis*, 165 Ill. 2d at 356. The factors to consider in evaluating the reliability of identification testimony include: the witness' opportunity to view the offender, the witness' degree of attention, the accuracy of the witness' description, the witness' level of certainty, and the length of time between the crime and the identification. See *People v. Slim*, 127 Ill. 2d 302, 307-08 (1989). Additional factors include whether the witness

was under any pressure to make a certain identification and whether the witness knew the defendant prior to the crime. See *People v. Brooks*, 187 Ill. 2d 91, 130 (1999); see also *People v. Enis*, 163 Ill. 2d 367, 399 (1994). Again, we will not overturn a conviction unless the identification or evidence presented is so improbable or unsatisfactory as to create a reasonable doubt of guilt. See *Brown*, 185 Ill. 2d at 247; *People v. Killingsworth*, 314 Ill. App. 3d 506, 510 (2000).

¶ 53 Based on the record before us, we find that the State proved defendant guilty beyond a reasonable doubt. Bowdery, Carter and Moore all testified corroboratively that they were present at the time of the shooting and that defendant committed the shooting. Bowdery testified that he knew defendant and codefendant from the neighborhood, and has known them for 20 years. Earlier in the day, before the shooting, he saw them driving around in a red car, passing him three times; codefendant was driving and defendant was in the front passenger seat each time. Later, at about 1:20 a.m., Bowdery, who was with a few friends outside a church on Congress and Lavergne, saw a larger group of people, whom he also knew from the neighborhood, gathered on the opposite side of Congress. At this time, he saw the same red car in which he had seen codefendant and defendant earlier that day, driving west on Congress and coming toward him. Before it passed him, the car pulled over into a parking spot and stopped. Bowdery saw defendant exited the passenger door of the car, walk across Congress to a white van parked on the same side of the street as the large group of people, and fire approximately nine shots at them. When defendant stopped shooting, he got back into the red car, which then drove down Congress toward Bowdery before turning on Lavergne. Bowdery identified defendant as the shooter to

police and again in court at trial.

¶ 54 Similarly, Carter testified that earlier that evening, after gathering with friends to play pool and shoot darts, the group was walking in the neighborhood when they came upon defendant and codefendant; at that time, they were standing next to a red car. Carter affirmed that he, too, has known defendant and codefendant from the neighborhood, for 18 years. Also like Bowdery, he saw them again later driving around the neighborhood in that red car; codefendant was driving and defendant was in the front passenger seat. Once Carter and his group reached their destination on Congress Lavergne, at about 1:30 a.m., he looked across the street at a motion sensor light that illuminated, whereupon he saw defendant begin shooting at them. Just as Bowdery testified, Carter saw defendant fire approximately 10 shots; when Carter returned to the group after taking cover, he saw the same red car in which he had seen codefendant and defendant twice a few hours before driving away from the scene. And, Carter, too, identified defendant as the shooter to police and again in court at trial.

¶ 55 Like Bowdery and Carter, Moore testified that he has known defendant and codefendant from the neighborhood, for 15 years. Although he could only "vaguely" remember the night in question, he recounted the same sightings of defendant earlier that night as did Bowdery and Carter; in both his trial and grand jury testimony, Moore stated that he had seen the red car more than once earlier in the evening when he and his friends were walking toward Congress and Lavergne and that, as it passed, he saw codefendant driving and defendant in the front passenger seat. Later, as the group sat outside that summer evening, Moore heard gunshots and ran for cover. In his statement to police and in his grand jury testimony, Moore, just as Bowdery and

Carter, independently stated that he saw defendant point and shoot the gun at the group. And, Moore also identified defendant as the shooter twice–to police, just like Bowdery and Carter, and at the grand jury hearing.

¶ 56 Defendant argues that the testimony of these witnesses was not credible for three reasons. First, he claims that Bowdery and Carter could not agree on what defendant was wearing when they saw him, with Bowdery stating that he was wearing a black baseball cap and dark clothes while Carter stated he was wearing a white hat, white shirt and blue pants. Next, he claims that the witnesses could not agree from which direction defendant emerged at the time of the shooting; Bowdery stated that defendant was standing on the side of a white van, Carter testified that defendant emerged from a gangway, and Moore testified he did not see defendant. And, the third example of incredibility defendant asserts is the witnesses' testimony regarding where the shooter was located when the shooting occurred, with Bowdery stating that defendant was on the side of the van closest to the curb and Carter stating that defendant shot from the alley across the street.

¶ 57 However, we have already discussed that inconsistencies in the testimony of witnesses do not create reasonable doubt, particularly when these are only minor. Rather, these go only to the weight afforded to the witnesses' testimony, which, again, was for the jury here to determine, not us as the reviewing court. We have thoroughly reviewed the record in this cause and find that the discrepancies defendant alleges were certainly nothing more than minor and do not warrant the reversal of his convictions. The discrepancies cited by defendant here can easily be explained by the fact that the eyewitnesses were not standing together that night before or during the shooting.

Rather, the record is clear that Bowdery was with his friends outside the church on the corner of Congress and Lavergne, while Carter was standing with the victim, Moore and their friends further down Congress in front of Williams' house. Clearly, then, Bowdery, Carter and Moore saw defendant both before and after the shooting, as well as during the actually shooting itself, from different vantage points. Ultimately, each of the three eyewitnesses testified under oath regarding what they saw, and it was for the jury to determine the credibility of their testimony.

¶ 58 Moreover, these minor discrepancies do not change the fact that Bowdery, Carter and even Moore, for that matter, each identified defendant as the shooter both to police after the shooting and in court at trial. In addition, upon further examination, each of the witnesses' essential testimony was corroborative. That is, Bowdery, Carter and Moore have known defendant and codefendant from the neighborhood for long over a decade. On the evening in question, prior to the shooting, each of them saw defendant and codefendant driving around the neighborhood in the same red car; each identified codefendant as the driver and defendant as the passenger. The three witnesses then recounted[5] the same story that, at about 1:30 a.m., they saw defendant on Congress whereupon he raised his hand and shot approximately 10 times at the group gathered in front of Williams' house. Bowdery and Carter confirmed that, immediately after the shooting, they both saw a red car–the same one from earlier that day which codefendant was driving and in which defendant sat as the front passenger–drive away from the scene. And, most critically, all these witnesses–Bowdery, Carter and the most-reluctant Moore, who even

[5]As noted earlier, while Moore denied it at trial, he gave this testimony in his statement to police and before the grand jury.

certified at trial that he had always been treated well and had never been threatened by the authorities with whom he spoke regarding the shooting–unequivocally and positively identified defendant, their long-time acquaintance, as the shooter. See, *e.g.*, *People v. Tomei*, 2013 IL App (1st) 112632, ¶¶ 50, 52 (quoting *People v. Magee*, 374 Ill. App. 3d 1024, 1032 (2007) (" '[t]he presence of discrepancies or omissions in a witness's description of the accused do not in and of themselves generate a reasonable doubt as long as a positive identification has been made' ").

¶ 59 Nor do we find defendant's references to the witnesses' prior criminal records or their delays in coming forward to police here to be factors which would merit the reversal of his convictions. As with the minor discrepancies in their testimony, these points, again, go only to the weight to be afforded their testimony, which was for the jury here. See, *e.g.*, *People v. Mullins*, 242 Ill. 2d 1, 14 (2011) (evidence of a witness' prior conviction is admissible, but only in an effort to attack his credibility and is only evaluated as it relates to weight to be given his testimony); *Slim*, 127 Ill. 2d at 313-14 (length of time between crime and identification does not destroy witness' credibility but only goes to weight to be assigned to testimony by trier of fact). All three witnesses were forthcoming about their criminal pasts, which included drug possession, assault, weapons possession and an outstanding warrant for the failure to appear in court. Significantly, none of these involved truthfulness as a witness to a crime or the ability to identify an offender. Moreover, regarding their delay in speaking to police, the witnesses themselves described during their testimony their shared social environment and the neighborhood which was the setting of this shooting. Each of the three witnesses echoed the same sentiment: this was not an environment which fosters the voluntary approach of police with information with respect

to criminal activity.[6]

¶ 60 Finally, in examining the testimony of the three eyewitnesses at defendant's trial, we cannot discount the additional testimony of Detective Gonzalez and ASA Vroustouris. Detective Gonzalez corroborated Bowdery's testimony in every material respect. He testified that Bowdery told him he was standing with friends at Congress and Lavergne when he saw defendant arrive and fire about 9 or 10 shots at a group of people standing on Congress. Similarly, ASA Vroustouris corroborated the contents of Moore's initial statement to police, wherein he had stated that he (Moore) turned toward the direction of the shots coming from Congress and saw defendant holding a gun in his hand and pointing it in the direction of the group. ASA Vroustouris further confirmed Moore's testimony that, regardless of what he (Moore) stated at trial, he had provided this initial statement voluntarily, he had reviewed and signed its contents as true, and he was always treated well by police.

¶ 61 Considering each and every one of defendant's allegations here, they simply do not, even when taken together, render the evidence against him so improbable or unsatisfactory as to create a reasonable doubt of his guilt. Rather, they are nothing more than minor variations of what the

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[6]Bowdery repeatedly testified people in that neighborhood do not "tattle" to police or go to them with information even though gun violence there is frequent, and he never wanted to be involve in this situation; Carter testified that he avoided police that night by riding in the ambulance with the victim, and speaking to police is just not something he does; and Moore, whose reluctance in dealing with police and legal authorities in this entire matter was well documented, testified that he left the scene immediately after the shooting and then left town the next morning. All this was corroborated by Myles, the most seemingly-neutral witness who testified, when she stated that she did not go to police with her information regarding the shooting immediately, either, but continued to hide in her grandmother's house after police arrived, as well as Detective Gonzalez, who confirmed that Bowdery told him his friends who also saw the shooting refused to come forward.

evidence clearly proves occurred on the night in question: Bowdery, Carter and Moore saw defendant approach the group standing on Congress in front of Williams' house with a gun and shoot at them some 10 times, striking the victim, killing her, and wounding two others. Ultimately, the jury here heard the witnesses testify and examined all the evidence presented. It was for them to assess its sufficiency, and we will not overturn their determinations involving the weight of the evidence, the credibility of the witnesses or the resolution of any conflicting testimony. See *Steidl*, 142 Ill. 2d at 226.

¶ 62 Accordingly, from all this, we find that, viewing the evidence in the light most favorable to State, there is no reason to reverse the jury's determination in light of the overwhelming evidence in the record before us supporting its conclusion.

¶ 63 III. State's Rebuttal Closing Argument

¶ 64 Defendant's next contention on appeal focuses on certain comments made by the State during its rebuttal closing argument. He asserts that he was deprived of his right to a fair trial where the State argued, without any support in the evidence or any invitation by the defense, that its eyewitnesses failed to come forward out of their fear of him. He claims that, as this caused the jury to reject any other explanation provided and to instead consider such an inflammatory and prejudicial notion, his conviction must be reversed and his cause remanded. We disagree.

¶ 65 As a threshold matter, the parties dispute the standard of review for this issue. Citing *People v. Wheeler*, 226 Ill. 2d 92 (2007), defendant claims that a *de novo* standard applies. Meanwhile, the State, while acknowledging *Wheeler*, explains that the standard of review is, implicitly, a two-step approach: assessing first whether the comments even comprise error, which

involves an abuse of discretion standard of review; and then, if so, determining whether this error was so egregious as to warrant a new trial, which involves *de novo* review.

¶ 66 As numerous reviewing courts have done since the supreme court's issuance of *Wheeler*, we recognize that, at this time, it is not wholly clear whether the appropriate standard of review for this issue is *de novo* or abuse of discretion. This is because there are two Illinois Supreme Court cases in conflict–*Wheeler*, wherein the court, without much explanation, applied a *de novo* standard of review when examining the propriety of closing arguments, and *People v. Blue*, 189 Ill. 2d 99 (2000), wherein it followed countless decisions in applying the traditional abuse of discretion standard of review. See *People v. Hayes*, 409 Ill. App. 3d 612, 624 (2011) (noting the current conflict); *People v. Phillips*, 392 Ill. App. 3d 243, 274 (2009) (same, and noting the resulting split between appellate courts, with the First District applying the abuse standard and the Third and Fourth Districts applying the *de novo* standard). Because of this, our appellate courts have declined to resolve this issue, opting instead, oftentimes, to review the contention on appeal under both standards. See *Hayes*, 409 Ill. App. 3d at 624 (citing multiple cases where this approach was taken); accord *People v. Raymond*, 404 Ill. App. 3d 1028, 1060 (2010); *Phillips*, 392 Ill. App. 3d at 275.

¶ 67 We note that we are inclined, for several reasons, to follow the breakdown presented by the State here, namely, that we are to operate pursuant to a two-step approach using an abuse of discretion evaluation to determine first if error occurred, and then applying a *de novo* standard to determine whether that error violated the defendant's rights to a fair trial. First, and foremost, this view accommodates our supreme court's decisions in *Wheeler* and *Blue*, both of which are

currently valid legal precedent regarding this issue. See, *e.g.*, *Wheeler*, 226 Ill. 2d 92, and *Blue*, 189 Ill. 2d 99; *Hayes*, 409 Ill. App. 3d at 624. Second, and perhaps more significantly, such a view is clearly reasonable and legally rational. It is difficult to believe, as defendant would have us, that our supreme court in *Wheeler*, by its single-sentence declaration that whether comments at closing argument were so egregious as to merit a new trial should be reviewed *de novo*, without much other support, intended to completely deviate from the well-established abuse of discretion standard and sought instead to change it strictly to a *de novo* standard. See, *e.g.*, *Wheeler*, 226 Ill. 2d at 121 (this standard is announced in last sentence of paragraph which discusses only what the defendant contends on appeal and presents no supportive legal precedent). To the contrary, we would consider this not to be the case. This is because our supreme court, in *Wheeler* itself no less, reaffirmed *Blue* and, thus, its use of the abuse of discretion standard, and has not overruled that case in any shape or form. See, *e.g.*, *Wheeler*, 226 Ill. 2d 91 (citing *Blue*, 189 Ill. 2d 99); see *Phillips*, 392 Ill. App. 3d at 274 (noting that *Wheeler* cites *Blue* with approval). In addition, upon examination of *Wheeler*, we note that, aside from its one sentence declaring *de novo* review, the remainder of its analysis presents an identical recitation of the same legal principles consistently cited by our courts which have addressed this issue in the past and maintain the use of an abuse of discretion review–landmark principles such as viewing the contested comments in their entirety within the context of the closing argument, affording the State wide latitude in making its closing argument, and awarding reversal only when the allegedly inappropriate comment constituted a material factor in the defendant's conviction. See *Wheeler*, 226 Ill. 2d at 122-23. Obviously, our supreme court in *Wheeler* did not

throw the baby out with the bath water. Third, the State's two-part proposition fits directly in line with our current law as outlined by our state supreme court. That is, in these situations, it is imperative to first determine whether a error was committed by the utterance of the comments at issue, for if there was none, any further analysis is unwarranted. See *Blue*, 189 Ill. 2d at 128; *People v. Caffey*, 205 Ill. 2d 52, 128 (2001); *People v. Emerson*, 189 Ill. 2d 436, 488 (2000); *People v. Williams*, 192 Ill. 2d 548, 583 (2000). However, if the comments were erroneous, then the reviewing court must consider, as *Wheeler* indicates, whether they were so much so–"so egregious"–that they merit the reversal of the defendant's conviction and the remand of his cause. *Wheeler*, 226 Ill. 2d at 121. The former question has always been declared one of fact, reflecting on the style and substance of the comments and argument themselves; *Wheeler* did not change this. See *Phillips*, 392 Ill. App. 3d at 274 (citing *Blue*, 189 Ill. 2d at 128, and numerous other state supreme court cases which have declared that, because the trial court is in a better position than a reviewing court to determine whether the remarks were prejudicial to the particular defendant at his particular trial, the scope of closing argument is within the trial court's discretion). In contrast, the latter question is more one of law, as highlighted by *Wheeler*, since it examines whether the comments and the surrounding circumstances denied the defendant his right to a fair trial. See *Wheeler*, 226 Ill. 2d at 121. Accordingly, an abuse of discretion standard should be applied initially, followed by a *de novo* standard, if needed.

¶ 68 Ultimately, we suppose, we need not officially resolve the issue of which standard of review should apply. Not only does defendant in his brief on appeal eventually concede that the issue he raises may be examined under both *de novo* and abuse of discretion standards, but we

conclude, as evidenced by our analysis below, that our holding in this case would be the same under either standard.

¶ 69 The State is allowed a great deal of latitude in closing argument. See *People v. Nieves*, 193 Ill. 2d 513, 532 (2000); see also *Wheeler*, 226 Ill. 2d at 123; *Caffey*, 205 Ill. 2d at 131. It " 'may comment on the evidence and any fair, reasonable inferences it yields.' " *Phillips*, 392 Ill. App. 3d at 275 (quoting *People v. Nicholas*, 218 Ill. 2d 104, 121 (2005)). The test for determining whether there was reversible error because a remark resulted in substantial prejudice to a defendant is whether the remark was a material factor in his conviction, or whether the jury would have reached a different verdict had the State not made the remark. See *People v. Flax*, 255 Ill. App. 3d 103, 109 (1993); accord *Nieves*, 193 Ill. 2d at 533; see also *Wheeler*, 226 Ill. 2d at 123; *People v. Perry*, 224 Ill. 2d 312, 347 (2007); *People v. Linscott*, 142 Ill. 2d 22, 28 (1991). We review the allegedly improper remark in light of all the evidence presented against the defendant (see *Flax*, 255 Ill. App. 3d at 109), as well as within the full context of the entire closing argument itself (see *People v. Cisewski*, 118 Ill. 2d 163, 176 (1987)). See also *Wheeler*, 226 Ill. 2d at 122; *Caffey*, 205 Ill. 2d at 131. Ultimately, unless deliberate misconduct by the State during closing argument can be demonstrated, comments will be considered incidental and uncalculated and will not form the basis for reversal. See *People v. Cloutier*, 156 Ill. 2d 483, 507 (1993).

¶ 70 We further note that "[s]tatements will not be held improper if they were provoked or invited by the defense counsel's argument." *People v. Glasper*, 234 Ill. 2d 173, 204 (2009). Thus, when a defendant's own closing argument attacks the State's case and its witnesses, the

State is entitled to respond thereto in its rebuttal closing argument, particularly when that response is invited; in such an instance, the defendant cannot then claim prejudice. See *Nieves*, 193 Ill. 2d at 534 (defendant cannot rely upon invited response by State during rebuttal closing argument as error on appeal); accord *People v. Reed*, 243 Ill. App. 3d 598, 606-07 (1993).

¶ 71 In the instant cause, the State's comments, cited by defendant as improper, came in its rebuttal closing argument and concerned the testimony of Bowdery, Carter and Moore. In his closing argument, defendant repeatedly asserted that these witnesses were not credible because, not only were they all convicted felons, but they waited to say anything to police about what they saw on the night in question, *i.e.*, that defendant shot at the group, until they were in custody on other charges months after the shooting occurred. Defendant consistently argued to the jury that none of them came forward voluntarily to say they knew defendant shot at them; Bowdery waited until July 2006 when he was in custody on a drug arrest, Carter waited until August 2006 when he was in custody on an assault arrest, and Moore waited until November 2006 when he was in custody on an arrest warrant. From this, defendant claimed that their testimony could not be trusted because they only spoke about the incident to gain favor with police and to have their own pending charges dropped.

¶ 72 In response to defendant's comments, the State remarked:

> "[Defense c]ounsel talked at length about nobody came forward, nobody came forward. Again, with common sense. I wonder what possible reason would somebody who had just witnessed one of their friends being gunned down, as they too are running for their lives, what possible reason would they have to be

reluctant to go to the police and get involved in that kind of investigation.

You can use your common sense. Maybe, I don't know, fear. They live in the same neighborhood. They have the same acquaintances. Is it safe to be the one that points a finger[?] Would that be a possible motive why it might not necessarily be the first thing you want to run and do[?]"

Then, turning specifically to defendant's assertions that Bowdery, Carter and Moore could not be believed because they gave their statements only after they were in police custody, the State commented:

"Counsel also talked about some potential bias, apparently, that the witnesses had for favorable treatment. ***

Again, I think really, truly, ladies and gentlemen, the thing to really, really focus on is the demeanor of those witnesses. Think about did a single one of them look like they really wanted to be here, like it was a great thing for them to be able to stand up in front of a courtroom full of people, knowing the ramifications, possible ramifications to them for fingering the person they saw slaughter [the victim]. Of course they didn't want to be here.

***

They didn't even want to be here. But they had the strength and the courage and strength of character to overcome their fear and take that stand ***."

¶ 73 Based on the record before us, we do not find that the State's comments were erroneous or that they merit the reversal and remand of defendant's convictions. To the contrary, when viewed

within their context and within the entirety of this trial, it is clear that the State was only replying to defendant's theory on the case and drawing its own inferences from the evidence presented to refute those asserted by defendant.

¶ 74 The record is clear that the witnesses involved in defendant's trial were, at the very least, reluctant from the beginning about participating with authorities in defendant's prosecution. Unfortunately, in today's society, and in certain neighborhoods, this situation is all too common. For example, Bowdery testified that he did not speak to police after the shooting because "when you live in that neighborhood, you don't necessarily want to be the one who tattles." He was not honest with investigator Hall, telling him only "what he wanted to hear" in the hope that Hall would leave him alone and he would not have to be involved in this situation. Bowdery also confirmed that, in this neighborhood, gunshots are frequent and its residents often do not go to police with information. Likewise, Carter testified that speaking to police "just ain't something I do." Instead, he volunteered to ride in the ambulance with the victim to the hospital so that he would not have to deal with them and the situation. And Moore provided the best example of reluctance here, as the record shows he constantly evaded subpoenas to appear in court, stated at the outset of his testimony that he did not want to be on the stand, and left the scene immediately after the shooting and then left town the next day.

¶ 75 Defendant cited the witnesses' testimony as a reason for them not to be deemed credible. The case against him, as he was well aware, depended entirely on eyewitness testimony. Attacking the witnesses' credibility by noting that they waited to speak to police and did not come forward immediately or voluntarily was the thrust of his closing argument. Defendant went

so far as to provide his own conclusion as to why they did not come forward sooner, namely, that they waited until they were in custody to use what they knew in an effort to gain favor with police. To combat defendant's attack, the State provided the jury with a different conclusion, namely, that they were simply reluctant witnesses who, in light of their daily environment (which Bowdery clearly detailed for the jury during his testimony), do not like to voluntarily deal with police and just did not want to get involved in this particular case.

¶ 76 Defendant claims that Bowdery, Carter and Moore never mentioned the word "fear" during their testimony, or that they "feared" defendant. Interestingly, however, other witnesses did mention this. Shawntelle Myles, who was on her grandmother's porch at the time of the shooting, testified that she did not volunteer to speak to police when she heard them arrive at the scene, and instead stayed inside her grandmother's house, precisely because she was "scared at the time." She only reluctantly spoke to police later. And, Detective Gonzalez testified that, while interviewing Bowdery, Bowdery told him that his friends, who he was with at the time of the incident and who saw what happened, were "afraid to talk" to police. From this evidence, it is legitimately deducible that, contrary to defendant's theory that Bowdery, Carter and Moore waited to speak to police in an attempt to gain favor with them when needed, they delayed for other reasons–perhaps, like other witnesses, out of fear.

¶ 77 Defendant relies heavily on *People v. Mullen*, 141 Ill. 2d 394 (1990) (Miller, J., dissenting), in support of his argument for reversal and remand here. *Mullen*, however, is wholly distinguishable. There, as the prosecution was commenting in rebuttal closing argument to the jury with respect to why a certain witness did not want to get involved in the case, the

prosecution made a motion with his hands to indicate that the witness would be shot in the back. See *Mullen*, 141 Ill. 2d at 405. Significantly, the prosecution's comments came after the trial court had specifically excluded any mention of the witness' fear of the defendant. The *Mullen* court determined that the comments amounted to plain and, thus, reversible error because they were unsupported by any evidence presented in the record, the prosecution had intentionally disregarded the trial court's explicit orders and the evidence against the defendant was closely balanced. See *Mullen*, 141 Ill. 2d at 405-06 (with J. Miller disagreeing with majority that this amounted to plain error).

¶ 78 Unlike *Mullen*, in the instant cause, the State's comments were in accord with the record and the evidence presented. The State refuted defendant's inference that the witnesses were not credible because they waited to speak to police until a time they could use the information for their own benefit with the inference that they did not speak because they did not want to get involved in an incident that occurred in their own backyard. This was, as we have discussed, supported by the record. Also, the State in the instant cause did not violate any court order in replying to defendant's comments, and did not refer to any evidence that was excluded. Instead, the comments here were not egregious, differed in comparison to those in *Mullen*, and are not comparable. See *People v. Williams*, 192 Ill. 2d 548, 574-75 (2000) (distinguishing *Mullen* and finding that it "does not compel reversal;" instead, each case is to be decided according to its own facts); *People v. Sims*, 285 Ill. App. 3d 598, 606-07 (1996) (distinguishing *Mullen* and declining to extend its holding of error).

¶ 79 Additionally, the record in the instant cause demonstrates that the jurors were informed

that they should not consider closing or rebuttal arguments as evidence, and that their verdict should only be based on the evidence presented at trial. See *People v. Garcia*, 231 Ill. App. 3d 460, 469 (1992) (such a jury instruction cures prejudice from improper remark in closing); accord *People v. Macri*, 185 Ill. 2d 1, 52 (1998). This, in conjunction with the preeminent presumption that jurors follow the trial court's instructions (see *People v. Biggs*, 294 Ill. App. 3d 1046, 1051 (1998)), and the fact that we have already determined that the evidence overwhelmingly supported defendant's convictions and was not closely balance, further underscores our determination that no reversible error occurred in defendant's cause. See, *e.g.*, *Williams*, 192 Ill. 2d at 575; *Sims*, 285 Ill. App. 3d at 607.

¶ 80 Ultimately, defendant has failed to show that the State's comments at issue were material to his convictions. Accordingly, we will not reverse or remand his cause on this ground.

¶ 81 IV. Testimony of Victim's Mother

¶ 82 Defendant's final contention on appeal is that he was deprived of a fair trial where the victim's mother was allowed to testify that the victim was pregnant at the time of her death, that she was her mother's only daughter and that her mother could not conceive any more children. He asserts that this "highly prejudicial" testimony "irreparably tainted" his trial and, thus, warrants the reversal of his convictions and remand for a new trial. Again, we disagree.

¶ 83 We begin by recalling the testimony at issue. The State's first witness at trial was Mari Samuels, the victim's mother. When the State asked her to "tell the jury a little bit about" the victim, such as "[w]hat did she enjoy doing," Samuels replied:

"She was a sweetheart. My only daughter. I can't have any more kids.

> She's all I had. Myeisha enjoyed dancing, helping out with the community. Helping other kids. She always said she wanted her own. She was pregnant at the time. That would have been my first grandbaby."

¶ 84 As a threshold matter, we note for the record, and defendant admits on appeal, that he did not present an objection to Samuels' testimony. Our law is clear that, in such instances, we must proceed under plain error review. See *People v. Enoch*, 122 Ill. 2d 176, 186, (1988); see also *People v. Reddick*, 123 Ill. 2d 184, 198 (1988); *People v. Herron*, 215 Ill. 2d 167, 175 (2005) (a defendant must object to alleged error when it occurs at trial and include it in his written posttrial motion, thereby allowing trial court the ability to address and attempt to cure it; otherwise, it is forfeited for appellate review). However, defendant insists that his failure to object "is entirely understandable" and that this issue merits full review, rather than one pursuant to plain error because he was "placed in an untenable position" of having to object to the testimony of the victim's mother in front of the jury in order to preserve the issue for appeal. He cites *People v. McCoy*, 80 Ill. App. 2d 257 (1967), claiming that an objection would have been futile, and *People v. Bernette*, 30 Ill. 2d 359 (1964), claiming that the trial court should have refused the testimony *sua sponte*.

¶ 85 Neither *McCoy* nor *Bernette*, both of which are of a considerably earlier time in our jurisprudence, absolve a defendant from the requirements of preserving an issue for review. *McCoy* and *Bernette*, like the instant cause, involved what is termed "life and death" witness testimony. First, in *McCoy*, a family member of the deceased victim testified that the victim was pregnant at the time of her death. The reviewing court reversed and remanded the defendant's

conviction. However, *McCoy* differs from the instant cause in several important respects. Unlike the instant cause, the defendant in *McCoy* did object at trial to the testimony at issue; his objection was sustained and the trial court struck the testimony. See *McCoy*, 80 Ill. App. 2d at 260. Moreover, contrary to defendant's characterization of that case, the *McCoy* court did not reverse solely based on this testimony. Rather, it spent a majority of its discussion citing several other reasons why it was reversing the defendant's conviction, including errors regarding jury instructions and the incompetency of counsel, which caused him prejudice and deprived him of a fair trial. See *McCoy*, 80 Ill. App. 2d at 261-64. Clearly, *McCoy* does not support defendant's insistence that we should not proceed under plain error review.

¶ 86 The same is true of *Bernette*. There, the prosecution barraged the victim's widow with a litany of question to elicit testimony regarding the victim's young age, how many children the victim had, their ages, and her current living conditions now that he was deceased. The prosecution then repeated her answers throughout the trial and closing argument. The defendant did not object to the testimony. The *Bernette* court reversed and remanded the defendant's conviction. In doing so, it responded to the prosecution's argument that any issue regarding the widow's testimony was waived because the defendant had not objected by noting that, due to the "irrelevancy and highly prejudicial nature" of the testimony, it believed the trial court should have stepped in *sua sponte* under the circumstances. See *Bernette*, 30 Ill. 2d at 372-73. Before recommending this, however, the *Bernette* court noted that, specific to that case, it was clear that the prosecution brought out the widow's lengthy testimony regarding the victim intentionally before the jury with its series of questions into irrelevant matters, such as the children's ages and

her current lifestyle which resulted from the victim's death. See *Bernette*, 30 Ill. 2d at 372. By conducting its questioning in this manner, the prosecution made the contents of the testimony a material matter for the jury when it otherwise had no relevancy to the defendant's guilt or innocence, all in an effort to inflame the jury's passions, thereby causing the defendant irreparable prejudice. See *Bernette*, 30 Ill. 2d at 372. While *Bernette* is valid precedent, it is clear from that court's decision that it was specific to the circumstances that were present therein. The circumstances of the instant cause, as we will discuss in further detail below, do not mirror those of *Bernette*: the State did not barrage Samuels with a lengthy series of questions about the victim, it did not delve further into the matters she raised regarding the victim's pregnancy or her own fertility, and it never again mentioned the facts Samuels raised at any other point during defendant's trial. Accordingly, we fail to find that *Bernette* supports defendant's conclusion that he was not required to object to the testimony in order to preserve this issue on appeal.

¶ 87 We further note in this regard that, within the same pages of his brief wherein he asserts he did not have to object to Samuels' testimony, defendant presents us with the current standard of law regarding this issue:

> " ' "[w]here testimony in a murder case respecting the fact the deceased has left a spouse and family is not elicited incidentally, but is presented in such a manner as to cause the jury to believe it is material, its admission is highly prejudicial and constitutes reversible error *unless an objection thereto is sustained and the jury instructed to disregard such evidence*." ' "

People v. Harris, 225 Ill. 2d 1, 31 (2007) (emphasis added) (quoting *People v. Hope*, 116 Ill. 2d

265, 275 (1986) (quoting *Bernette*, 30 Ill. 2d at 371)). Our initial declaration unmistakably holds true: defendant was required to object to the testimony at issue and include a claim of error regarding it in his posttrial motion in order to preserve this issue for our full review. See *Harris*, 225 Ill. 2d at 31 (issue regarding testimony of victim "procedurally defaulted" were the defendant did not object to it at trial and did not include it in posttrial motion; thus, review is to proceed under plain error analysis); see, *e.g.*, *People v. Prince*, 362 Ill. App. 3d 762, 778 (2005).[7]

¶ 88 Inevitably, even defendant discusses the use of plain error review as an alternative in his brief on appeal. Therefore, from all this, we will proceed accordingly.

¶ 89 The plain error doctrine allows us to consider a forfeited error when either the evidence is close or when the error is of sufficient seriousness. See *Herron*, 215 Ill. 2d at 186-87. Under the first prong, a defendant must prove a prejudicial error occurred, namely, that there was plain error and that the evidence was so closely balanced that this error alone severely threatened to tip the scales of justice against him. See *Herron*, 215 Ill. 2d at 187. The second prong of the plain error doctrine examines the seriousness of the error, regardless of the closeness of the evidence. See *Herron*, 215 Ill. 2d at 187. The defendant must prove that there was plain error and that the error was so serious that it affected the fairness of his trial and challenged the integrity of the judicial process. See *Herron*, 215 Ill. 2d at 187. Based on the circumstances presented in the

[7]We would also note in this respect that, even acknowledging defendant's point that objecting at trial to the testimony of the victim's mother "placed him in an untenable position," he could have at least raised this issue in his posttrial motion in an effort to comply partially with our rules on preservation. It remains significant to us that he did not do so; in all his assertions of error in that motion, he never once even mentioned that what occurred during Samuels' testimony in any way affected the outcome of his trial or prejudiced him in any way.

instant cause, defendant cannot meet his burden under either prong.

¶ 90 We have already discussed at length in this decision that the evidence against defendant here was not closely balanced. Instead, as we have analyzed, and upon our thorough examination of the record, there was more than ample evidence to establish his guilt beyond a reasonable doubt. Thus, he cannot prevail in his argument under the first prong of plain error.

¶ 91 Under the second prong, again, the defendant must show the existence of an error and that this error was so serious that it affected the outcome of his trial. See *Herron*, 215 Ill. 2d at 187. Not only do we find that no error occurred with the admission of Samuels' testimony, but also that, even if there was an error, it did not rise to the level necessary under this prong of plain error.

¶ 92 Our state supreme court has acknowledged that, while argument before a jury which dwells upon a victim or her family and attempts to somehow relate this to the question of the defendant's guilt is improper, " ' "[c]ommon sense tells us that murder victims do not live in a vacuum ***." ' " See *Harris*, 215 Ill. 2d at 31 (quoting *Hope*, 116 Ill. 2d at 275 (quoting *People v. Free*, 94 Ill. 2d 378, 415 (1983)); accord *People v. Scott*, 401 Ill. App. 3d 585, 600 (2010); *People v. Lavelle*, 396 Ill. App. 3d 372, 380 (2009). Accordingly, it has held that not every mention of the victim or her family requires, *per se*, the reversal and remand of a defendant's conviction. See *Harris*, 215 Ill. 2d at 31 (citing *Hope*, 116 Ill. 2d at 276 (citing *People v. Bartall*, 98 Ill. 2d 294, 322 (1983)); accord *Lavelle*, 396 Ill. App. 3d at 380 (reversal and remand not automatic). Rather, it is how the evidence is introduced at trial that is key. See *Hope*, 116 Ill. 2d at 276. Again, if the prosecution obtains it from the witness intentionally and in such a manner

as to make it appear to the jury to be material to the defendant's guilt or innocence, or if the prosecution dwells on it throughout the trial or closing argument in an effort to relate it to the defendant's punishment, then the evidence will be deemed inflammatory as highly prejudicial and its admission will be improper and constitute reversible error. See *Harris*, 215 Ill. 2d at 31-32; *Hope*, 116 Ill. 2d at 275. However, if the evidence is elicited only incidentally or if it is necessary to explain a pertinent part of the cause against the defendant, and if it is brief, merely foundational, has no bearing on the defendant's guilt or innocence and is not repeated, the evidence does not constitute error and its admission will be deemed proper. See *Harris*, 215 Ill. 2d at 31-32; see also *Scott*, 401 Ill. App. 3d at 600 (no error exists where this evidence is not made to appear material to issues in case); *Lavelle*, 396 Ill. App. 3d at 380 (testimony from family members that victim, right before his death, was laughing and playing with his children and hugging his siblings did not comprise error where it came in response to procedural background questions and had no bearing on the defendant's guilt or innocence).

¶ 93 It is within this latter category where the circumstance of the instant cause undoubtedly lie. Samuels' testimony was clearly elicited only incidentally. The State asked her one question, to describe the victim and what she enjoyed doing. This was not only brief but also merely foundational in nature, as it sought background and introductory information pertaining to the victim. Nor did the State make Samuels' response regarding the victim's pregnancy or her own current infertility material to defendant's guilt or innocence. Although Samuels was the State's first witness, it did not ask her repeated questions regarding this or dwell on it. In fact, this evidence was never mentioned again during defendant's lengthy trial, not even during closing or

rebuttal closing arguments. Moreover, it is clear that the State in no way attempted to tie this evidence to defendant's guilt or innocence but, rather, treated it as irrelevant. There were no crimes to the victim's fetus charged against defendant, the jury was not instructed that the fetus was an additional victim, and, again, there was no further testimony regarding Samuels' comments or mention of them in closing argument by either party. See, *e.g.*, *People v. Lewis*, 165 Ill. 2d 305, 332-33 (1995) (admission of testimony that victim was pregnant at time of murder did not constitute error when it was elicited incidentally from the proposition of only one question by the prosecution, rather than several, and the prosecution did not argue the fact to the jury in opening or closing arguments). Furthermore, we would be remiss to ignore the general and well-established legal principles that the decision to admit testimony at trial lies within the sound discretion of the trial court and will not be overturned unless that decision was arbitrary or unreasonable (see *People v. Becker*, 239 Ill. 2d 215, 234 (2010)), and we are to presume that the jury, which was specifically instructed by the trial court in the instant cause not to let sympathy or prejudice be of any influence, considered only relevant evidence in making its determination of guilt or innocence (see *People v. Illgen*, 145 Ill. 2d 353, 376 (1991)).

¶ 94 From all this, we find that there was no error in the admission of Samuels' testimony regarding the victim and her pregnancy, as well as her own current infertility. Instead, due to the subtle and unintentional manner in which this testimony was presented, we do not find it to be any more prejudicial than a witness testifying that the victim was young or elderly, a mother or father, a wife or husband, a student or veteran–any one of these characteristics, which are inescapable labels in our society, can, without intention, resonate with any juror. By its

declaration that victims are people (see *Harris*, 215 Ill. 2d at 31), our state supreme court clearly did not intend to allow such statements to become the basis for constant legal challenges, and we will not foster such a notion either. Again, our focus is to be on how such evidence is presented and, in the instant cause, we conclude that its presentation did not amount to any error.

¶ 95 CONCLUSION

¶ 96 Therefore, for all the foregoing reasons, we affirm the judgment of the trial court.

¶ 97 Affirmed.