

SIXTH DIVISION
March 15, 2013

No. 1-10-2688

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THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit
)	Court of Cook County
Plaintiff-Appellee,)	
)	
v.)	No. 07 CR 05255
)	
VILIULFO ESCOBAR,)	Honorable Colleen Ann
)	Hyland, Judge Presiding.
Defendant-Appellant.)	

JUSTICE REYES delivered the judgment of the court.
Presiding Justice Lampkin and Justice Hall concurred in the judgment.

ORDER

¶ 1 *Held:* Affirmed defendant's conviction for murder where a rational trier of fact could have found defendant guilty beyond a reasonable doubt based on sufficient circumstantial evidence and where trial court did not abuse its discretion by allowing remarks by the State in closing arguments and admitting a knife block into evidence.

¶ 2 Following a jury trial, defendant Viliulfo Escobar was convicted of first-degree murder. 720 ILCS 5/9-1(a)(1) (West 2004). Subsequently, the trial court sentenced Escobar to 45 years' imprisonment in the Illinois Department of Corrections. On appeal, Escobar argues: (1) the State failed to prove his guilt beyond a reasonable doubt; (2) he was denied a fair trial when the State argued his DNA matched the major

No. 1-10-2688

profile from the victim's rectal swab; and (3) the trial court erred when it allowed the State to admit a knife block and knives into evidence. For the reasons discussed below, we affirm.

¶ 3

BACKGROUND

¶ 4 This case involves the murder of 26-year-old Melissa Stromek. On January 3, 2004, Stromek's parents found their daughter dead in her Chicago Ridge condominium. Stromek was naked and lying across her bed. Her throat had been slit and she had been stabbed multiple times. After the defendant Viliufo Escobar fled to Mexico, he was captured, extradited, and put on trial for the murder of Stromek in the Circuit Court of Cook County.

¶ 5

I. Jury Trial

¶ 6

A. Prosecutorial Witnesses

¶ 7 At trial, the State presented the testimony of 19 witnesses: (1) Elizabeth Jozwiak, Stromek's close friend; (2) Thomas Stromek, Stromek's father; (3) Officer John Barloga of the Cook County Sheriff's Department; (4) Socorro Isabel Corral, an acquaintance of Escobar; (5) William Katon, Stromek's coworker and love interest; (6) Marilyn Katon, the ex-wife of William Katon; (7) Erika Corral, Escobar's intimate friend; (8) Robert Prescott, Escobar's manager; (9) Terry Rivera, a T-Mobile representative; (10) Officer Jimmy Martinez of the Federal Air Marshals; (11) Officer Kevin Rake of the Chicago police department; (12) Sergeant Yolanda Watson of the Cook County Sheriff's Department; (13) Jamie Gibson, a biologist with the Illinois state police; (14) Carly

No. 1-10-2688

Leider, a forensic scientist; (15) Dr. Ponni Arunkumar, Deputy Medical Examiner at the Cook County Medical Examiner's Office; (16) Michael Cariola, Senior Vice President of Forensic Operations at Bode; (17) Lisa Fallara, a forensic scientist with the Illinois state police; (18) Sergeant Larry Rafferty of the Cook County Sheriff's Department; and (19) Amparo Portillo, a representative of Mexicana Airlines. The witnesses testified as to the time line of events surrounding Stromeck's death, the details of the homicide investigation, and the forensic evidence connecting Escobar to the murder.

Collectively, the witness testimony established the following facts at trial.

¶ 8 1. Events Surrounding Stromeck's Death

¶ 9 Prior to her death, Stromeck had been romantically involved with two men: Escobar and Stromeck's coworker, William Katon. Stromeck and Escobar had been dating since 1999 and the couple moved in together in 2002. Stromeck and Escobar were living together at Stromeck's Chicago Ridge condominium at the time of her murder in 2004.

¶ 10 Katon and Stromeck worked together at Pollution Control Industries. Katon served as Stromeck's supervisor for nine months until Stromeck was promoted in October 2003. Shortly after Stromeck's promotion, Stromeck and Katon began a sexual relationship that continued up until her death.

¶ 11 In the weeks leading up to the murder, Elizabeth Jozwiak, a close friend of Stromeck, revealed Stromeck's affair with Katon to Escobar. According to Jozwiak,

No. 1-10-2688

Escobar became visibly upset and cried upon learning of the affair. Escobar told Jozwiak he could not live without Stromek, as she was the best thing in his life.

¶ 12 Weeks later, Stromek, Escobar, Jozwiak, and other friends celebrated New Year's Eve at the Hyatt Hotel in Chicago. The group attended a party in the hotel, drinking alcohol and using cocaine throughout the night and into the early morning hours of the following day. The group also rented two rooms in the hotel for the evening. Escobar, Stromek, and Jozwiak stayed in the same room, returning to their room after the party ended around 2 a.m. While most of the group went to sleep after the party, Jozwiak and Escobar stayed awake talking. During their conversation, Escobar became emotional. He again cried while reiterating that he could not live without Stromek and that she was the best thing to happen to him.

¶ 13 After waking up around noon on New Year's Day, Jozwiak witnessed an argument between Stromek and Escobar in their hotel room. Stromek and Escobar then left together shortly thereafter. This was the last time Stromek would be seen alive. According to Jozwiak, she and Stromek planned to leave later the same day for a ski trip in Minnesota. When Jozwiak called Stromek sometime after 2 p.m., however, she did not answer either her home phone or cell phone. Jozwiak continued to call repeatedly with no success. Jozwiak also believes she attempted to reach Stromek by calling Escobar's cell phone, but nobody answered. According to Jozwiak, Escobar was supposed to drop Stromek off at Jozwiak's home in Elgin so he could use Stromek's vehicle while she was away.

No. 1-10-2688

¶ 14 Between 5:28 p.m. and 9:07 p.m. on New Year's Day, nineteen phone calls were made from Stromeck's cell phone to Socorro Isabel Corral, an acquaintance of Escobar. Later, around 9:30 p.m., Escobar drove Stromeck's white Ford Focus to the home of Corral looking for his estranged wife, Deanna. Corral informed Escobar that Deanna no longer lived there. Escobar then asked Corral if she would like to buy any of the DVD's he had in the automobile. Escobar grabbed a black garbage bag from the vehicle and, after browsing the contents of the bag, Corral purchased two movies. While making the transaction, Corral asked Escobar why he was selling the movies. Escobar admitted he needed money to leave town. Corral also inquired about Escobar's vehicle, asking him if he had purchased a new automobile. Escobar said "no." Corral followed up and asked if the vehicle belonged to Stromeck. Escobar denied this as well. Escobar then left Corral's apartment. Shortly thereafter, Escobar called Corral again from Stromeck's cell phone and asked if he could stay at her apartment until her husband came home. Corral said no and Escobar hung up the phone.

¶ 15 Sometime after 11 p.m., Escobar used Stromeck's cell phone to call his friend, Erika, and asked if he could come over to her house. According to Erika, he sounded upset. Escobar admitted to Erika he had stormed out of his apartment after a fight with Stromeck. Erika told Escobar he could not come over because she had to work the next day and her father would not allow him into their home.

¶ 16 The next morning, January 2, Escobar failed to show up for work. An hour into the shift, his manager, Robert Prescott, left a voice mail on Escobar's phone. Several

No. 1-10-2688

hours later, Prescott made a second call to Escobar. At around 1 p.m., Escobar called Prescott back from Stromeck's cell phone. Escobar informed Prescott he had to forfeit his employment because of "a major family issue" and asked Prescott to mail his final check to the address on file. During the call, Prescott noted a loud speaker in the background, similar to one heard at an airport. In fact, Escobar had traveled to O'Hare International Airport that day. According to the records of Mexicana Airlines, Escobar bought a one-way ticket at the airport's ticket counter for a 2:20 p.m. flight to Mexico City. The records also revealed that, upon arrival in Mexico City, Escobar purchased another one-way ticket and boarded a 7:23 p.m. flight to Acapulco.

¶ 17 Meanwhile, Jozwiak continued to repeatedly call Stromeck, but still received no answer. By midday January 3, Jozwiak grew increasingly worried and drove with her sister to Stromeck's condominium. All of the condominium unit's doors were locked and no one responded from within. On her way back home, Jozwiak called Stromeck's parents informing them of their daughter's disappearance. After receiving the call, Stromeck's parents rushed from their home in Willow Springs to the condominium in Chicago Ridge. The parents arrived at the condominium around 3:00 p.m. and knocked on the unit's door a few times. After nobody responded, they used a spare key to unlock the door. Upon entry, the parents discovered their daughter naked on her bed with a slit throat and numerous stab wounds. Mrs. Stromeck cradled her daughter's body against her chest. Mr. Stromeck covered his daughter's body with a towel. The parents then called 911, taking care not to further disturb the scene.

No. 1-10-2688

¶ 18

2. Homicide Investigation

¶ 19 The Cook County Sheriff's Department responded to the 911 call and arrived at the condominium in the late afternoon of January 3, 2004. According to Officer John Barloga, detectives photographed and videotaped the crime scene and discovered no signs of forced entry to the condominium. In the living room, detectives found Wendy's fast food wrappers and Stromeck's purse, which contained the keys to her unit and to her white Ford Focus. In the kitchen, detectives recovered two Wendy's drink cups, three cylinders of compressed gas, and a knife block with a missing knife. In the bathroom, the police recovered two tissues with blood on them. Men's clothing was found in almost every room of the condominium. Rigor mortis had set in Stromeck's body.

¶ 20 That night, Sergeant Larry Rafferty of the Cook County police department and two other detectives interviewed William Katon at the Markham Police Station. According to Sergeant Rafferty, Katon appeared visibly upset upon learning of Stromeck's death. Katon cooperated with the police; he answered all of their questions and consented to provide a buccal swab for a DNA sample. During the interview, Katon informed the police officers of his whereabouts around the time of the murder. According to Katon, he and his wife at the time stayed home with their two children on New Year's Eve 2003. On January 2, 2004, Katon drove with his family to Pittsburgh to visit his brother. The family planned to stay until January 4, but returned the next day to avoid a heavy snowstorm. Katon stated he had never been to Stromeck's condominium

No. 1-10-2688

prior to her death. In the interview, Katon also admitted to his affair with Stromek. At trial, he testified to the details of the affair, including that he had sexual intercourse with Stromek sometime between Christmas and New Year's Day, but "closer to New Years."

¶ 21 On January 4, officers with the Chicago police department drove to an apartment complex near O'Hare Airport, where they discovered Stromek's white Ford Focus. Inside the vehicle, the police recovered a blue coat on the front seat. The sleeve was cut or torn from the elbow to the collar and the feathers from the filling of the coat were found all over the vehicle. On the driver's seat of the vehicle, the police observed possible blood. The seat material was collected and sent to the state laboratory for processing. Multiple empty garbage bags were found inside of the vehicle, but only one bag contained DVD's.

¶ 22 Eventually, the U.S. Marshal Services was enlisted to locate Escobar in Mexico. On January 9, 2004, a Cook County judge issued an arrest warrant for Escobar. On February 12, 2006, the U.S. Marshals contacted Sergeant Rafferty to notify him that Escobar had been located in Mexico and that the extradition process to bring him back to the United States had commenced. After a year-long extradition process, on February 14, 2007, Sergeant Rafferty went to O'Hare Airport where he met the U.S. Marshals who had returned on a flight with Escobar in custody. Pursuant to a court order, in March 2007, Sergeant Rafferty took buccal swabs from defendant for the purpose of performing a DNA analysis.

¶ 23

3. Forensic Evidence

¶ 24 Dr. Arunkumar, Deputy Medical Examiner at the Cook County Medical Examiner's Office,¹ conducted a post-mortem examination on Stromeck's body on January 4, 2004. Dr. Arunkumar prepared an autopsy protocol and testified to his findings at trial. According to Dr. Arunkumar, there was an absence of rigor mortis at the autopsy. Dr. Arunkumar testified, however, that this was not unusual for someone who had died 72 hours earlier because rigor mortis dissipates over time. Dr. Arunkumar explained that the date of death is based on the date the victim was pronounced dead and "she was pronounced on the 3rd of January 2004." He also explained that it is not necessarily the date of actual death: "[i]t's the date they are found dead and then pronounced dead." In the course of the autopsy, Dr. Arunkumar took fingernail clippings from each of Stromeck's hands as well as oral, vaginal, and rectal swabs from her body.

¶ 25 Of the swabs taken from Stromeck's body at the autopsy, a limited amount of semen was found on only the rectal swab, which was preserved for future DNA analysis. Blood was identified on the two tissues recovered from the victim's bathroom and from the material cut from the victim's car seat. Possible cellular material from the victim's fingernail scrapings were collected and preserved for future testing. Blood-like stains were observed on both sets of fingernail clippings.

¹ At the time of trial, Dr. Arunkumar was employed as Assistant Medical Examiner at the Cook County Medical Examiner's Office

No. 1-10-2688

¶ 26 Illinois State Police forensic scientist Leider² performed a DNA analysis of the fingernail clippings as well as the blood stains recovered from the tissues. Leider first began processing the fingernail samples, but stopped her analysis after determining that there was not enough male DNA suitable for regular testing. Leider instead referred the fingernail clippings to Lisa Fallara for Y-STR (Short Tandem Repeats) analysis.³

¶ 27 Leider further analyzed the blood stains recovered from the tissues found in Stromeck's bathroom and the blood stain found on the driver's seat of her automobile. After comparing the DNA profile of the blood stains⁴ to the known DNA profile of Escobar, Leider found Escobar's profile matched the three blood stains. The rarity of this profile would be expected to occur in a random population of approximately 1 in 240 quadrillion Blacks, 1 in 1.6 quintillion Whites, or 1 in 33 quadrillion Hispanics.

¶ 28 Illinois State Police forensic scientist Fallara conducted the Y-STR analysis of the fingernail clippings and the rectal swabs. First, Fallara generated Y-STR DNA profiles from the extracted DNA from the known samples of both Escobar and Katon. Fallara then examined the fingernail clippings and identified a mixture of Y-STR DNA

² At the time of trial, Leider was employed as a senior forensic scientist in the field of DNA analysis with the Wisconsin Department of Justice, in the Madison Crime Laboratory.

³ According to Leider, Y-STR analysis differs from standard DNA analysis in that it looks to the Y-chromosomes to amplify male DNA.

⁴ Bode Technology, a private laboratory, generated the DNA profiles from the three blood-stained items. Bode extracted the same DNA profile from all three items, and excluded both Stromeck and Katon as the source.

No. 1-10-2688

profiles originating from two males. Fallara identified both a major profile, which constituted a majority of the DNA sample, and a minor profile. Fallara excluded both Katon and Escobar as having contributed the minor profile. Fallara, however, found the major profile matched Escobar. According to Fallara, this Y-STR DNA profile would be expected to occur in approximately 1 in 370 unrelated African American males, 1 in 430 unrelated Caucasian males, or 1 in 290 unrelated Hispanic males.

¶ 29 Fallara also performed Y-STR DNA analysis on the extracted DNA collected from rectal swabs of the victim. According to Fallara, two males provided a mixture of Y-STR DNA profiles in the sperm fraction from the rectal swabs. Again, Fallara identified both a major profile and a minor profile. The major profile matched the Y-STR DNA profile from Katon and did not match Escobar.⁵ The minor profile matched the Y-STR DNA profile of Escobar, and did not match Katon. However, this profile would be expected to occur in approximately 25 percent of unrelated African American males, 56 percent of unrelated Caucasian males, and 41 percent of unrelated Hispanic males.

¶ 30 B. The Defense Case in Chief

¶ 31 1. Motion *in limine*

¶ 32 Prior to trial, defense counsel filed a motion *in limine* to preclude the State from introducing into evidence the knife block and several knives recovered from Stromeck's

⁵ No specific statistic or weight representing the rarity or abundance to that DNA profile in the population was provided at trial.

No. 1-10-2688

kitchen counter. After weighing the probative value of the evidence against its potential for any prejudice, the trial court denied Escobar's motion *in limine*. Specifically, the trial court found the evidence relevant and admissible for the purpose of raising the "reasonable inference *** that [the missing knife] was the knife used."

¶ 33

2. Dr. Karl Reich

¶ 34 At trial, the defense called Dr. Karl Reich, an expert in forensic biology and DNA analysis. Dr. Reich agreed with the Illinois State Police's testing methods and its decision to do Y-STR analysis. Dr. Reich also corroborated that the fingernail clippings and rectal swabs contained a mixture of DNA from two different men. Additionally, Dr. Reich agreed it was possible to determine from the two sources identified in the sample that there was a major contributor who contributed most of the sample.

¶ 35 With regards to the rectal swabs, Dr. Reich opined that Escobar could not have provided the major contributor profile and that Katon was "not excluded" as the source. Further, with respect to the minor contributor's profile, Dr. Reich testified the result "demonstrates that there is a second contributor[,] but it is not sufficient to identify anybody in particular." The minor sample contained a single DNA peak that identified a male other than Katon and that would match Escobar. However, Dr. Reich testified that since this same peak would be shared with roughly half of the male population, it was insignificant. Dr. Reich also added that semen deposited in the rectum would be detectable from the typical range of one to four days, and possibly five. The semen could have been deposited as far back as December 30 or 31, which is approximately

No. 1-10-2688

five days prior to January 4 when the sample was recovered during the autopsy.

"Anywhere in that range *** the results that were obtain [*sic*] could be explained."

However, Dr. Reich testified he is unaware of a scientific way to determine when semen is deposited in the body.

¶ 36 Dr. Reich also discussed the analysis of the victim's fingernail clippings. He testified that while there was DNA recovered from the clippings, the DNA did not likely come from blood. Moreover, Dr. Reich explained that it would not be unusual for defendant's DNA to be under the victim's fingernails because they were living together and sexually intimate.

¶ 37 C. Closing Arguments

¶ 38 In closing, the State argued, "[y]ou now know [Escobar's] DNA was found in that rectal swab. And you can tiptoe it and dance around it all you want like Dr. Reich did, but he never, never took him out of that profile in her rectum; not one single time." The State later added, "[n]ow, some may be thinking or some may say, I know Bill Katon's DNA was found in the [*sic*] Missy's rectal swab; but just remember this every time you hear that: [s]o was his." Defense counsel then objected, stating, "[t]hat's not the evidence." The trial court overruled the objection, noting that "[t]he jury may rely on their recollection of what the evidence is. What the attorneys say is not evidence at closing arguments. You may proceed." The State then continued, "[y]ou heard through the stipulation that he cannot be ruled out of the major profile. Bill Katon cannot be ruled out of the major profile; neither one of them can be ruled. And because Bill Katon

No. 1-10-2688

can't be ruled out, what does that say about him when he can't be ruled out?

Defendant can't be ruled out of the profile."

¶ 39 Defense counsel responded in its closing argument, "I don't agree with [the Assistant State's Attorney] and his characterization that Viliulfo cannot be excluded from the minor profile. It's not a minor profile. It's a minor peak. There's a minor profile that shows a genetic marker that over 50 percent of the men on the planet have."

¶ 40 II. Posttrial Motion, Conviction, and Sentencing

¶ 41 On July 15, 2010, the jury found Escobar guilty of first-degree murder. Escobar then filed a posttrial motion for a new trial, arguing that the trial court erred in admitting the knife block into evidence, and that "[t]he prosecutors made prejudicial, inflammatory, and erroneous statements in closing arguments, denying defendant a fair trial." The trial court denied the motion and later sentenced Escobar to 45 years' imprisonment in the Illinois Department of Corrections. This appeal followed.

¶ 42 ANALYSIS

¶ 43 I. Reasonable Doubt

¶ 44 Escobar argues the State failed to prove he committed first-degree murder beyond a reasonable doubt. According to Escobar, the evidence was insufficient to reach a conviction because: (1) no direct evidence linked him to Stromeck's death; and (2) the evidence suggested an alternative suspect. When reviewing the sufficiency of the evidence in a criminal case, we must determine whether, after viewing the evidence

No. 1-10-2688

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. *People v. Pollock*, 202 Ill. 2d 189, 217 (2002). A person commits murder when, in relevant part, he "kills an individual without lawful justification [and] *** intends to kill or do great bodily harm to that individual *** ." 720 ILCS 5/9-1(a)(1) (West 2004).

¶ 45

A. Lack of Direct Evidence

¶ 46 According to Escobar, no rational trier of fact could have found him guilty beyond a reasonable doubt because no direct evidence linked him to Stromek's death. Specifically, Escobar argues no murder weapon was identified and the exact time of Stromek's death was unknown. Illinois courts, however, have consistently held that "a conviction may be based solely on circumstantial evidence." *People v. Patterson*, 217 Ill.2d 407, 435 (2005). "Circumstantial evidence is proof of facts or circumstances giving rise to a reasonable inference of other facts which tend to establish the guilt or innocence of a defendant." *People v. Evans*, 87 Ill.2d 77, 83 (1981). The trier of fact does not have to be satisfied beyond a reasonable doubt as to each link in the chain of circumstantial evidence. *People v. Milka*, 211 Ill.2d 150, 178 (2004). Rather, "[i]t is sufficient if all the evidence taken as a whole satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt." *Id.* (quoting *People v. Hall*, 194 Ill.2d 305, 330 (2000)).

No. 1-10-2688

¶ 47 At trial, the State presented a myriad of testimonial, physical, and forensic evidence to support its theory. In aggregate, this evidence provided a credible time line of events and a convincing argument for Escobar's guilt.

¶ 48 First, the evidence established both Escobar's motive and opportunity. In the days leading up to the murder, Escobar was emotionally distraught over Stromeck's affair and expressed devastation at the possibility of their relationship ending. On New Year's Eve, Escobar stayed awake into the early morning hours crying about his inability to live without Stromeck. Only two hours elapsed between the time that Stomek was last seen alive arguing with Escobar and the time when she became incommunicado, despite having specific travel plans to leave town that afternoon. Stromeck was then found stabbed eight times in the locked condominium she shared with Escobar.

¶ 49 Furthermore, ample testimony painted the discernable image of a last-minute cover-up and escape from the country. See *People v. McDonald*, 168 Ill.2d 420, 448 (1995), *abrogated on other grounds by People v. Clemons*, 2012 IL 107821 (flight "is a circumstance from which a trier of fact may infer consciousness of guilt"). According to Stromeck's close friend, Jozwiak, Escobar planned to drive Stromeck to her residence that afternoon but Escobar never showed up and avoided all contact from Jozwiak. Jozwiak attempted to reach Stromeck on her home phone and cell phone without success, even though Escobar possessed Stromeck's cell phone throughout this time. Nor could Jozwiak reach Escobar on his cell phone.

No. 1-10-2688

¶ 50 Escobar further engaged in an unusual series of events that involved abruptly quitting his job, driving around late at night in Stromek's white Ford Focus, selling DVD's out of a garbage bag, and desperately reaching out to acquaintances for a place to spend the night. He gave varying explanations for his unusual behavior. Escobar told one person he stormed out of the condominium after having a fight with Stromek because she was leaving him for someone else. Escobar then told his employer that a "major family issue" required him to immediately quit his job. Finally, Escobar's actions culminated in a hurried flight out of the country after abandoning Stromek's vehicle at a location near O'Hare Airport. On January 2, Escobar left the country on a one-way flight to Mexico, one day before the victim's body was discovered and less than 24 hours from when she was last seen alive. Escobar left his clothes and work boots in the victim's condominium. Despite his apparent need for money, he did not wait to pick up the last paycheck owed to him.

¶ 51 Forensic and physical evidence also provided circumstantial evidence of Escobar's guilt. Escobar's blood was discovered on tissues found at the crime scene and in Stromek's abandoned vehicle. Escobar's DNA was recovered from blood found under Stromek's fingernails. In Stromek's automobile, which Escobar had been driving, police discovered a down coat that had been cut or torn along the sleeve. A kitchen knife was missing from a knife block found at the crime scene. The doors of the condominium remained locked and there were no signs of forced entry or a struggle.

No. 1-10-2688

¶ 52 While the evidence in this case was indeed circumstantial, the sum of that evidence was still compelling. Viewing this evidence in a light most favorable to the State, we find that a rational trier of fact could have found defendant guilty of murder beyond a reasonable doubt.

¶ 53 B. Defendant's Alternative Suspect Claim

¶ 54 Escobar additionally claims the State's failure to exclude Katon as an alternative suspect conclusively raises reasonable doubt. According to Escobar, the DNA evidence suggested Katon was with Stromek after she had last been seen alive. Further, Escobar argues the onset and dissipation of rigor mortis suggests a time of death when Escobar had already left for Mexico. We do not find Escobar's arguments persuasive.

¶ 55 First, the record does not support Escobar's assertion that the DNA evidence places Katon in contact with the victim after she had last been seen alive. None of the experts testified that the DNA evidence indicated Katon must have been with Stromek after January 1. Dr. Reich, a witness for the defense, opined that he was unaware of a scientific way to determine precisely when semen is deposited in a body. Dr. Reich further testified the semen taken from the rectal swabs could have been deposited as far back as December 30 or 31. According to Katon, he had sex with Stromek sometime between Christmas and New Year's Day, but "closer to New Years." The rectal swab DNA evidence does not refute this account of events.

No. 1-10-2688

¶ 56 Moreover, the record does not, as Escobar suggests, set a time of death as between late-January 2 and early-January 3, thereby presenting Escobar with an alibi for the murder and implying instead that Katon killed Stromeck. While the testimony established rigor mortis typically sets in between 12 to 24 hours after death, the testimony also established that it remains anywhere from 24 to 36 hours thereafter. Given that the police first observed Stromeck's body on the afternoon of January 3, this testimony does not exclude the afternoon of January 1 as a possible time of death.

¶ 57 Despite defense counsel's efforts to depict Katon as an alternative suspect, the jury was not obligated to "accept any possible explanation compatible with the defendant's innocence and elevate it to the status of reasonable doubt." *People v. Sutherland*, 223 Ill. 2d 187, 233 (2006). The jury was entitled to believe the State's theory of the case, which was thoroughly supported by the evidence. Accordingly, a rational trier of fact could have found Escobar guilty of murder beyond a reasonable doubt.

¶ 58 II. The State's Closing Argument

¶ 59 Escobar argues he was denied a fair trial because the State misstated the evidence during closing arguments. According to Escobar, the State falsely asserted: (1) Escobar could not be ruled out as having contributed to the major profile; and (2) Escobar's DNA was found in the victim's rectal swab.

¶ 60 During closing arguments, the State argued, "[n]ow, some may be thinking or some may say, I know Bill Katon's DNA was found in the [*sic*] Missy's rectal swab; but

No. 1-10-2688

just remember this every time you hear that: [s]o was his." Defense counsel then made an objection which the trial court overruled, noting "[t]he jury may rely on their recollection of what the evidence is. What the attorneys say is not evidence at closing arguments. You may proceed." The State then added, "[y]ou heard through the stipulation that he cannot be ruled out of the major profile. Bill Katon cannot be ruled out of the major profile; neither one of them can be ruled. And because Bill Katon can't be ruled out, what does that say about him when he can't be ruled out? Defendant can't be ruled out of the profile."

¶ 61 According to Escobar, the trial evidence ruled him out as contributing the major DNA profile found on the victim's rectal swab and failed to sufficiently connect him to the minor DNA profile. In support of this argument, Escobar first refers to the testimony of Fallara, the scientist who conducted the Y-chromosome DNA analysis. Fallara's testimony indicated that both a major and minor DNA profile were identified. This major DNA profile matched the DNA profile of Katon, but did not match the DNA profile of Escobar. Additionally, the minor profile consisted of only one DNA location and, while this one location matched Escobar's profile, it also matched the profiles of 56 percent of Caucasian males, 41 percent of Hispanic males, and 25 percent of African American males. Escobar also relies on the testimony of Dr. Reich, who testified that the single DNA location on the minor profile was insufficient to identify anyone as the contributor and was only significant to establish there was another contributor besides Katon. Escobar argues, in light of this evidence, the trial court denied his right to a fair trial

No. 1-10-2688

when it allowed the State to argue his DNA was found in the rectal swab and he could not be ruled out as having contributed to the major profile. We do not find this argument persuasive.

¶ 62 As a threshold matter, we note that Escobar has failed to preserve this issue for appeal. To preserve an alleged trial error for appellate review, a defendant must raise an objection both at trial and in a written posttrial motion. *People v. Bush*, 214 Ill.2d 318, 333 (2005). While the record demonstrates defense counsel initially objected at trial to the State's remarks, the general allegations raised in the posttrial motion lack the necessary specificity to preserve the issue for appeal. Escobar's posttrial motion alleged only that "the prosecutors made prejudicial, inflammatory, and erroneous statements in closing arguments, denying defendant a fair trial." Illinois courts have consistently held such vague language to be insufficient. See *People v. Moss*, 205 Ill.2d 139, 168 (2001) (finding a posttrial motion generally alleging that the prosecutor "made prejudicial[,] inflammatory[,] and erroneous statements in closing argument designed to arouse the prejudices and passions of the court" did not preserve issue for review); *People v. Jones*, 240 Ill. App. 213, 226 (1992) (finding "boilerplate" language in a posttrial motion failed to preserve issue for appeal without setting forth "specific complained of remarks").

¶ 63 Further, this issue does not rise to the level of plain error necessary to overcome forfeiture of the issue. The plain error doctrine allows a reviewing court to review an issue that has been forfeited when: (1) the evidence is "so closely balanced that the

No. 1-10-2688

jury's guilty verdict may have resulted from the error and not the evidence"; or (2) when "the error is so serious that the defendant was denied a substantial right, and thus a fair trial." *People v. Herron*, 215 Ill. 2d 167, 179 (2005). "The first step of plain-error review is determining whether any error occurred." *People v. Thompson*, 238 Ill. 2d 598, 613 (2010). We need not address the two prongs of plain error because, in this case, no error occurred at all.

¶ 64 "It is well established that the prosecutor is afforded wide latitude and may argue to the jury facts and reasonable inferences drawn from the evidence." *People v. Kliner*, 185 Ill. 2d 81, 151 (1998). Improper closing arguments warrant a reversal only where they constitute a "material factor" in the conviction. *People v. Linscott*, 142 Ill. 2d 22, 28 (1991). The court must ask whether "the jury could *** have reached a contrary verdict had the improper remarks not been made." *Id.* (quoting *People v. Witted*, 79 Ill. App. 3d 156, 168 (1979)) (internal quotation marks omitted). Judging the evidence in its entirety, we find the complained-of comments were reasonable inferences in this case. Additionally, even assuming for the sake of argument these remarks were improper, we find they did not constitute such a "material factor" that the jury would have reached a different verdict in the absence of the comments.

¶ 65 First, we note the State never argued during closing arguments that Escobar could not be ruled out as a contributor to the major profile. At times, the State failed to accurately convey whether "he" referred to Escobar or Katon and whether "profile" referred to the major or minor profile. Regardless, these few ambiguous comments

No. 1-10-2688

viewed in the context of the entire closing argument reveal the State did not argue Escobar matched the major DNA profile taken from the rectal swabs. See, e.g., *People v. Evans*, 209 Ill. 2d 194, 225 (2004) (noting that alleged prejudicial statements made during closing arguments "must be considered in the context of the closing arguments as a whole"). Defense counsel even recognized this by responding in their own closing argument, "I don't agree with Mr. [Assistant State's Attorney] and his characterization that Viliulfo cannot be excluded from the *minor* profile."

¶ 66 Second, the State's assertion that Escobar contributed to the minor profile was a reasonable inference to make. See *People v. Bell*, 343 Ill. App. 3d 110, 115 (2003) ("[a] prosecutor may comment on the evidence and may draw all legitimate inferences from the evidence, even if unfavorable to the defendant"). A wealth of uncontested evidence at trial established that both Katon and Escobar were having sexual relations with Stromeck around the time of her death and that two male DNA profiles were recovered from the rectal swabs. While Escobar could be ruled out as a contributor to the major DNA profile, he could not be ruled out as a contributor to the minor DNA profile. Given Escobar's intimate relationship with Stromeck, the State's argument that Escobar contributed to the minor DNA profile was hardly far-fetched. Indeed, Escobar even acknowledged his sexual relationship with Stromeck and, through Dr. Reich's testimony, used this fact to explain why it would be expected to find his DNA behind Stromeck's fingernails.

No. 1-10-2688

¶ 67 Furthermore, Escobar fails to show how that inference was prejudicial to his case. The DNA evidence taken from the rectal swab was not a crucial piece of evidence used to identify the murderer. The State did not mention the evidence in its opening statement, nor did it emphasize the evidence during its case-in-chief and closing argument. Instead, the DNA evidence merely served as an additional link to establish the recency and intimacy of his relationship with Stromek—a fact that Escobar never denied and, in fact, acknowledged.

¶ 68 Escobar relies on *People v. Linscott*, 142 Ill. 2d 22 (1991), whose facts are distinguishable from the facts of this case. In *Linscott*, the Illinois Supreme Court reversed a conviction for murder based on improper remarks made by the State during opening statements and closing arguments. *Linscott*, 142 Ill. 2d at 28. At trial, the State relied on three pieces of evidence to convict the defendant of murder: (1) a violent dream the defendant recounted to the police that paralleled the facts of the murder; (2) head and pubic hairs recovered from the crime scene and body of the victim; and (3) blood-typing tests showing that the semen recovered from the victim could have belonged to the defendant. *Id.* at 27. The State argued the defendant's hairs were conclusively found in the victim's apartment and left in the most intimate parts of her body. *Id.* at 30–31. In fact, all of the experts at trial claimed that identifying the hairs as coming from the defendant was impossible. *Id.* at 30. The State then similarly misrepresented the blood-type evidence. *Id.* at 38-39.

No. 1-10-2688

¶ 69 In *Linscott*, a murder case involving a rape, the forensic evidence was crucial to identifying the killer; the State presented no witness to connect the defendant to the crime, no evidence to connect the defendant with the murder weapon, no evidence of a prior relationship between the victim and the defendant, and no evidence of a motive. *People v. Linscott*, 159 Ill. App. 3d 71, 73–74 (1987), *vacated on other grounds*, 142 Ill. 2d 22 (1991). In other words, without the forensic evidence, the only evidence connecting defendant to the crime was a dream that the defendant admitted having to the police. To the contrary in this case, the rectal swabs were of minor significance compared to the abundance of other evidence connecting Escobar to the murder. The evidence here was not a "material factor" in Escobar's conviction.

¶ 70 Finally, we note the trial court carefully admonished the jury after defense counsel's objection. The trial court advised the jury they "may rely on their recollection of what the evidence is," and added, "[w]hat the attorneys say is not evidence at closing arguments." Under Illinois law, "a statement made during closing arguments constituting alleged prejudice to the defendant will be cured when the trial court subsequently instructs the jury that closing arguments are not evidence and that they should disregard any argument not based on the evidence." *People v. DeSantiago*, 365 Ill. App. 3d 855, 866 (2006); see also *People v. Simms*, 192 Ill.2d 348, 396 (2000). In sum, we do not find the complained-of comments were error, and even if they were error, any error was cured by the admonishments given by the court.

¶ 71

III. The Knife Block

¶ 72 Lastly, Escobar argues the trial court abused its discretion when it denied Escobar's motion *in limine* and admitted into evidence the knife block and several knives recovered from Stromek's kitchen counter. Escobar argues this evidence violated Illinois' long-standing rule against admitting weapons into evidence that have not been specifically connected to the defendant or to the crime. See *People v. Ashley*, 18 Ill. 2d 272, 280 (1960). Escobar contends nothing connected him to the knives and no testimony established a knife was in fact used during the murder. According to Escobar, the knife block was highly prejudicial and without probative value. We disagree.

¶ 73 Evidence is relevant if it tends to prove a fact in controversy or render a matter in issue more or less probable. *People v. Nelson*, 235 Ill. 2d 386, 432 (2009). Relevant evidence will be admitted so long as its probative value is not substantially outweighed by the danger of unfair prejudice. *People v. Cruz*, 162 Ill. 2d 314, 348 (1994). The knife block in this case was both relevant and not prejudicial.

¶ 74 The probative value of a knife block found at the crime scene with a missing knife is readily apparent. Stromek was stabbed in her bedroom. No evidence revealed any sign of forced entry or a struggle. At trial, the State argued Escobar, who lived in the condominium, committed the murder while inside the condominium with Stromek. The knife block further advances that theory, suggesting the murderer reached for a knife on the counter to commit the crime while already inside the unit.

No. 1-10-2688

¶ 75 Moreover, admitting the knife block into evidence did not prejudice Escobar. On appeal, Escobar relies on a rule designed to prevent the jury from inferring that a defendant possesses violent character traits based on his ownership of a weapon not otherwise linked to the crime. See *People v. Smith*, 413 Ill. 218, 223 (1952). This rule does not apply here. Aside from the fact that Stromek—not Escobar—owned the knife block, no rational juror would attribute violent character traits to a person who owned a common kitchen knife set.

¶ 76 The issue of whether evidence is relevant and admissible is reserved to the sound discretion of the trial court and will not be reversed absent an abuse of discretion. *People v. Lucas*, 151 Ill. 2d 461, 489 (1992). A trial court abuses its discretion only when its decision is arbitrary, unreasonable, or fanciful or where no reasonable person would take the trial court's view. *People v. Illgen*, 145 Ill.2d 353, 364 (1991). Given the probative value and lack of prejudice associated with the evidence, the trial court did not abuse its discretion when it denied Escobar's motion *in limine* and allowed the knife block and several knives to be admitted into evidence.

¶ 77 CONCLUSION

¶ 78 For the foregoing reasons, we affirm the judgment of the Circuit Court of Cook County.

¶ 79 Affirmed.