

No. 1-12-0225

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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. 11 CR 1414
)	
ALBERTO GONZALEZ,)	Honorable
)	William T. O'Brien,
Defendant-Appellant.)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Justices Lampkin and Reyes concurred in the judgment.

ORDER

¶ 1 *Held:* Judgment entered on defendant's conviction for possession of a stolen motor vehicle affirmed over claims that evidence was insufficient to sustain the conviction, trial counsel was ineffective, and the prosecutor improperly vouched for the State's witness during rebuttal closing argument.

¶ 2 Following a bench trial, defendant Alberto Gonzalez was found guilty of possession of a stolen motor vehicle (PSMV) and sentenced as a Class X offender to eight years' imprisonment. On appeal, defendant argues: (1) the evidence was insufficient to prove him guilty beyond a reasonable doubt where his identification was unreliable; (2) trial counsel was ineffective for failing to file a motion to quash his arrest and suppress evidence, and to present evidence which would have impeached the testimony of the State's primary witness; and (3) the prosecutor improperly bolstered the credibility of the State's witness during rebuttal closing arguments. Defendant requests this court reverse his conviction or, in the alternative, remand his case for a new trial. We affirm.

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¶ 3 At trial, Patrick Bresnahan testified that on Thanksgiving Day 2010, his undamaged, light blue, 1982 Buick LeSabre (Buick) was stolen from the corner of Kimball Avenue and Altgeld Street near his residence. On January 9, 2011, Mr. Bresnahan went to the police station located at 5555 West Grand Avenue to claim and recover his vehicle. He observed that along with other damage to the Buick, the steering column had been broken. Mr. Bresnahan did not know defendant and had never given defendant permission to drive his vehicle. Mr. Bresnahan, however, never observed defendant in possession of his vehicle.

¶ 4 Sergeant Eric Olson testified that on the evening of January 8, 2011, he was alone on patrol in a marked squad car. At approximately 11:30 p.m., as he was driving north on Kostner Avenue, Sergeant Olson observed a "greenish colored" Buick, driving erratically. When the Buick stopped at a traffic light on the corner of Kostner Avenue and Hirsch Street, Sergeant Olson pulled along the driver side of the vehicle to ascertain the number of occupants before attempting to effectuate a stop. Sergeant Olson testified the artificial lighting at that time was "excellent," and observed there was a single passenger riding in the vehicle. The driver of the Buick looked at Sergeant Olson. Sergeant Olson had an unobstructed view of the driver's face. He testified the driver was wearing a hat or hood with fur, "a very distinctive clothing item and a dark-colored black jacket." Sergeant Olson identified defendant in court as the driver of the Buick.

¶ 5 Sergeant Olson activated his emergency lights and siren; however, defendant accelerated the Buick, and went eastbound on Hirsch Street going in the wrong direction. Sergeant Olson pursued the Buick. During the chase, defendant committed several traffic violations. When Sergeant Olson slowed down to avoid a collision, he lost sight of the Buick.

¶ 6 Sergeant Olson sent out a flash radio message which stated the reason for the pursuit of defendant and described the vehicle and its two occupants. Defendant was described in the flash message as a black male wearing a hat or a hood with fur, and a black jacket. The passenger was described as having a lighter complexion than defendant, wearing a gray two-tone flannel-type

jacket.

¶ 7 Shortly thereafter, Sergeant Olson heard over the radio that another officer had discovered an unoccupied green four-door Buick in the alley at Harding Avenue and Lemoyne Street— less than one mile from where he first encountered defendant. Sergeant Olson went to that location and identified the Buick as the same car he had been pursuing. The Buick's steering column had been broken and the backseat of the Buick contained a number of power tools. After receiving a flash message from another officer, Sergeant Olson proceeded to the intersection of Grand and Harding Avenues, also less than one mile from the area where he first encountered the Buick. When he arrived there, Sergeant Olson immediately identified the person who had been detained as the passenger in the Buick. At trial, Sergeant Olson identified a photograph of the Buick's passenger, and testified that the passenger had a lighter complexion and less facial hair than the driver had at the time of the incident.

¶ 8 Sergeant Olson received another flash message from officers who had detained an individual matching the driver's description. After going to that location, Sergeant Olson determined this person was not the driver of the Buick. After receiving one more alert, Sergeant Olson proceeded to a parking lot near Grand Avenue and Pulaski Road—less than one mile from the area where the unoccupied Buick was discovered— and observed a man seated in the backseat of a squad car in handcuffs. Sergeant Olson shined a flashlight in the man's face and identified him as the driver of the Buick. Defendant was wearing a black hat with fur. At the time Sergeant Olson made the identification, "approximately under 20 minutes" had passed from his first encounter with the Buick and its driver. Sergeant Olson identified defendant as the person he identified at that time. At trial, Sergeant Olson was shown a photograph taken of defendant after his arrest on the night of the incident and was asked if he noticed a difference between the photograph and defendant's appearance at trial. Sergeant Olson responded: "Yes, the same man, but without the heavy facial hair, heavy beard and goatee."

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¶ 9 On cross-examination, Sergeant Olson testified that when he pulled up to the Buick, he was able to view defendant for a couple of seconds, and that he could not recall if his flash message included a description of defendant's facial hair. Because defendant was seated in the car, Sergeant Olson was unable to ascertain defendant's height and, given the active pursuit, he was unable to provide a more detailed flash message. Sergeant Olson further testified that when defendant was detained by the officers, defendant was wearing a hat with fur, and that on the night of the incident, nothing was found on defendant which related to the Buick.

¶ 10 Chicago police officer, Gregory Klimaszewski, testified that on the night of the incident, he and his partner, Officer Williams, received a flash message which gave a description of a black male wearing a dark jacket and a dark hat with fur on it. The officers patrolled the streets near the area which was described in the flash message. There they observed a man who matched the description given in the flash message who stood alone on the sidewalk near an alley at 1210 North Harding Avenue. This location was four to five blocks from the place where Sergeant Olson first viewed the Buick. Officer Klimaszewski made an in-court identification of defendant as that person. He testified that at the time of their encounter, defendant was wearing a dark-colored jacket and a dark-colored hat with fur. Officer Klimaszewski and Officer Williams exited their vehicles and had a brief conversation with defendant. During the field interview, defendant stated that he had in his possession a pipe for smoking crack cocaine. When the officers recovered the crack pipe, they observed a substance on the pipe described as "cocaine residue." The officers then arrested defendant and placed him in the backseat of the squad car. Officer Klimaszewski testified that he then contacted Sergeant Olson and arranged a meeting. Upon arriving, Sergeant Olson opened the rear door of the squad car, shined a flashlight in defendant's face, and positively identified him.

¶ 11 On cross-examination, Officer Klimaszewski testified that when he and Officer Williams encountered defendant, defendant obeyed their instructions and did not attempt to run away, and nothing related to the Buick was recovered from defendant. The State rested and defendant

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unsuccessfully moved for a directed verdict.

¶ 12 After closing arguments, the trial court found defendant guilty of possession of a stolen motor vehicle. In doing so, the court stated, *inter alia*, that "the sergeant was clear and definite on his identification" of defendant and the identification was made close in time to the first observation of the Buick. The court also noted that, although he does have a Hispanic-sounding last name, defendant could be African-American or "a combination."

¶ 13 Defense counsel moved for a new trial. Defendant later filed a *pro se* posttrial motion. During the hearing on the motions, defense counsel addressed comments made by defendant as to uncalled witnesses which were contained in the presentence investigation report. Defense counsel also addressed defendant's claim that his clothing receipt from the jail listed a brown jacket. Defense counsel explained that she did not introduce the jacket at trial because the driver's jacket had been described as both black and dark colored, and brown could be considered a dark color. The trial court found that defense counsel was effective and denied the motions for new trial.

¶ 14 On appeal, defendant first argues the evidence was insufficient to prove he was in possession of the stolen Buick because the State's case hinged upon Sergeant Olson's unreliable identification of him. Defendant specifically contends that Sergeant Olson: had very little opportunity to view the driver of the Buick; he did so with a minimal degree of attention; his description of the driver did not match defendant's appearance; and a significant amount of time had passed between the time of the incident and the officer's identification of defendant.

¶ 15 The standard of review on a challenge to the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). This standard applies to all criminal cases, whether the evidence is direct or circumstantial, and acknowledges the responsibility of the trier of fact to determine the credibility of witnesses, to weigh the evidence, and draw reasonable inferences therefrom, and to

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resolve any conflicts in the evidence. *People v. Campbell*, 146 Ill. 2d 363, 375 (1992). A reviewing court will not reverse a conviction unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *Id.*

¶ 16 Proof of an offense requires proof that a crime occurred, and that it was committed by the person charged. *People v. Ehlert*, 211 Ill. 2d 192, 202 (2004). In this case, defendant was found guilty of possession of a stolen motor vehicle. 625 ILCS 5/4-103(a)(1) (West 2010). On appeal, he does not question that the crime was committed, but challenges the sufficiency of the evidence to establish that he was the perpetrator.

¶ 17 A positive identification of the accused by a single witness is sufficient to sustain a conviction provided that the witness had an adequate opportunity to view the accused. *People v. Slim*, 127 Ill. 2d 302, 307 (1989). The supreme court in *Neil v. Biggers*, 409 U.S. 188 (1972) held that factors to be considered in evaluating the reliability of an identification include: (1) the witness's opportunity to view the offender at the time of the crime; (2) the witness's degree of attention; (3) the accuracy of the witness's prior description of the criminal; (4) the witness's degree of certainty at an identification confrontation; and (5) the length of time between the crime and the identification confrontation. *Id.* at 307-08 (citing *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972)). "[A] witness' positive identification can be sufficient even though the witness gives only a general description based on the total impression the accused's appearance made." *Id.* at 309.

¶ 18 Sergeant Olson testified that after observing traffic violations, he pulled along the driver side of the Buick while it was stopped at a traffic light. The driver turned and looked at the officer. Sergeant Olson had an unobstructed view of the driver's face for one to two seconds under artificial lighting conditions which were "excellent." Because he was alone on patrol, his purpose was to ascertain the number of occupants in the vehicle prior to effectuating a stop. In doing so, his degree of attention was such that he was able to note the difference in complexion between the driver of the vehicle and it's passenger and their clothing. Defendant acknowledges that the brevity of Sergeant

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Olson's observation is not conclusive of unreliability. Additionally, we note the supreme court has found that an identification made after only a "few seconds" of observation in dim lighting conditions, is sufficient. *People v. Herrett*, 137 Ill. 2d 195, 200 (1990).

¶ 19 Further, in the flash message, Sergeant Olson described the driver as a black male wearing a hat or hood with fur and a black jacket, and noted that the driver's complexion was darker than that of his passenger. Defendant argues that this description was inaccurate in that he is Hispanic, had a beard, and was wearing a brown jacket and a hat with fur on the night of the incident. Discrepancies or omissions in a witness' description of the accused do not in and of themselves generate reasonable doubt, so long as a positive identification has been made. *Slim*, 127 Ill. 2d at 308-09. Sergeant Olson was certain of his identification of defendant, both on the night of the incident, and at trial. In fact, his initial positive identification of defendant came after he had viewed and rejected another person who had been detained as a possible suspect, lending further support to the reliability of his identification. *People v. Thomas*, 72 Ill. App. 3d 186, 196 (1979). In addition, the trial court observed defendant's appearance at trial, and found defendant appeared to be black, Hispanic, or "a combination." Here, the minor discrepancies in Sergeant Olson's description do not undermine the validity of his identification of defendant, as he positively identified him on the street and again at trial. *Id.* Although he failed to mention defendant's facial hair in the flash message, that omission does not undermine his identification of defendant, as discrepancies and omissions regarding facial and other physical characteristics are not fatal to an identification but, rather, merely affect the weight to be given to it. *Slim*, 127 Ill. 2d at 308.

¶ 20 Defendant maintains that we should question Sergeant Olson's certainty as to his out-of-court identification because Sergeant Olson identified him after shining a flashlight on his face while he was seated in the backseat of a squad car; significantly different lighting conditions from those which existed when he first observed the Buick's driver. Defendant cites *People v. Reese*, 14 Ill. App. 3d 1049 (1973), in support of this contention. In *Reese*, the complaining witness observed her

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assailant's face for only a few seconds in a vestibule with no electric lights before the attack and, thus, before there was any suspicious behavior, but not during the attack. *Id.* at 1053. Her description of the assailant was that he was 29 years of age, five feet nine inches or five feet 10 inches tall and weighed 145 pounds. *Id.* at 1052. Defendant was 17 years of age, six feet two inches or six feet three inches tall and weighed between 155 and 165 pounds. *Id.* at 1053. The victim first identified defendant over two months after the incident. The identification took place while the victim was walking in an alley. She turned, and for a "split second," saw defendant in sunlight. *Id.* Based on the fact that the victim had limited time under poor lighting conditions to see her assailant and did not identify the defendant for two months when she saw him for a split second wearing different clothes, the court found the identification was not clear and convincing. *Id.* at 1053-54. The decision in *Reese* did not turn on the difference in the lighting conditions between the initial observation and the identification as defendant argues. Thus, *Reese* does not support defendant's position. Furthermore, in this case, Sergeant Olson made his observations of defendant at a time defendant was already under investigation for traffic violations with excellent lighting conditions. Sergeant Olson positively identified defendant under good lighting a short time later and near the scene. At the time of the identification, defendant was wearing the same distinctive head covering.

¶ 21 Finally, Sergeant Olson testified that only 20 minutes had passed between his first encounter with defendant, and his identification of him in the backseat of the squad car. Defendant argues without citation, that this constitutes a "significant" amount of time. We disagree, and observe that this court has upheld identifications made well past one year after the incident. *People v. Malone*, 2012 IL App (1st) 110517, ¶ 36.

¶ 22 In sum, after weighing the *Slim/Biggers* factors, and viewing the evidence in the light most favorable to the prosecution (*Siguenza-Brito*, 235 Ill. 2d at 224), we find that Sergeant Olson had sufficient opportunity to see defendant under circumstances permitting a reliable identification (*Herrett*, 137 Ill. 2d at 204), and that defendant's identification as the driver of the stolen motor

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vehicle was proved beyond a reasonable doubt.

¶ 23 Defendant next contends that he received ineffective assistance of trial counsel due to counsel's failure to file a motion to quash his arrest and suppress evidence, and to present evidence which would have impeached Sergeant Olson's identification.

¶ 24 To establish ineffective assistance of counsel, defendant must show both that counsel's performance was deficient and that he suffered prejudice as a result of that deficiency. *People v. Givens*, 237 Ill. 2d 311, 331 (2010). If such a claim can be disposed of on the ground that defendant did not suffer prejudice, this court need not consider whether counsel's performance was deficient. *People v. Flores*, 153 Ill. 2d 264, 283-84 (1992). To establish prejudice based on counsel's failure to file a motion to quash arrest and suppress evidence, defendant must show, *inter alia*, a reasonable probability that such a motion would have been granted. *Givens*, 237 Ill. 2d at 331. Where the motion would have been futile, counsel's failure to file a motion to suppress evidence does not establish incompetent representation. *People v. Patterson*, 217 Ill. 2d 407, 438 (2005). Thus, the question is whether a motion to quash arrest and suppress evidence would have been granted and the outcome at trial would have been different. *People v. Bailey*, 375 Ill. App. 3d 1055, 1059 (2007). Our review of this issue is *de novo*. *Id.*

¶ 25 The fourth amendment to the United States constitution guarantees the right to be free from unreasonable searches and seizures. U.S. Const., amend. IV; *People v. Gherna*, 203 Ill. 2d 165, 176 (2003). Reasonableness under the fourth amendment generally requires a warrant which is supported by probable cause. The exception under *Terry v. Ohio*, 392 U.S. 1 (1968), is that a police officer may briefly stop a person for questioning if he reasonably believes the person has committed, or is about to commit, a crime. *People v. Flowers*, 179 Ill. 2d 257, 262 (1997) (citing *Terry v. Ohio*, 392 U.S. at 22. In justifying a *Terry* stop, a police officer must point to specific, articulable facts which when considered with rational inferences, make the intrusion reasonable. *People v. Shafer*, 372 Ill. App. 3d 1044, 1048 (2007). In determining the reasonableness of a *Terry* stop, the totality of the

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circumstances are considered. *People v. Baskins-Spears*, 337 Ill. App. 3d 490, 499 (2003).

¶ 26 The State argues that defendant's ineffectiveness claim which is based on counsel's failure to file a motion to quash arrest and suppress evidence cannot be considered on direct appeal because the evidentiary basis for his claim is *dehors* the record, and cites to *People v. Ligon*, 239 Ill. 2d 94 (2010). We disagree. Here, the trial evidence included testimony as to the circumstances surrounding defendant's stop, search and subsequent arrest and testimony as to the flash message which led to the stop. Accordingly, the evidentiary basis for defendant's claim is not *dehors* the record.

¶ 27 In the instant case, Officers Klimaszewski and Williams received Sergeant Olson's flash message which described a person who had been observed violating traffic laws and had fled from Sergeant Olson. Based on this information, the officers patrolled the area in the vicinity of where Sergeant Olson first observed the Buick as given in the flash message. Shortly thereafter, the officers encountered defendant, who was wearing a dark-colored jacket and a dark-colored hat with fur, which matched the description of the offender. Under these circumstances, we find Officers Klimaszewski and Williams had a sufficient articulable suspicion to conduct a *Terry* stop of defendant. *People v. Cox*, 295 Ill. App. 3d 666, 672 (1998).

¶ 28 Officer Klimaszewski testified that in the course of the initial brief conversation with defendant, he informed the officers he had a crack pipe in his possession, which constitutes illegal possession of drug paraphernalia. 720 ILCS 600/3.5 (West 2010). At that point, the officers had probable cause to arrest defendant and search him in order to recover the crack pipe. *People v. Bailey*, 159 Ill. 2d 498, 503 (1994). Accordingly, defendant's stop, arrest, and search of his person were valid, and trial counsel's failure to file a motion to quash arrest and suppress evidence does not constitute incompetent representation.

¶ 29 In reaching this conclusion we have considered *People v. Washington*, 269 Ill. App. 3d 862 (1995); *People v. Cox*, 295 Ill. App. 3d 666 (1998); and *People v. Hyland*, 2012 IL App (1st)

110966, upon which defendant relies, and find them distinguishable.

¶ 30 In *Washington*, the trial court, at the end of trial, granted defendant's motion to suppress evidence and ordered a mistrial, and this court affirmed that decision on appeal. *Washington*, 269 Ill. App. 3d at 866-67. The sole reason given for stopping the defendant was that he allegedly matched the description of a robbery suspect. However, the record did not include any information as to the description of the suspect and did not include the suspect's race or gender. *Id.* at 867. Furthermore, there was no evidence as to the defendant's appearance at the time of his stop. The trial court's decision to grant the motion to suppress was upheld because the record did not allow the trial court "to determine whether the description of the offender and the physical characteristics of [the] defendant were similar enough to justify the detention of the defendant." *Id.* Here, in contrast, the evidence showed the driver of the Buick was described as a black male wearing a hat or hood with fur and a black jacket, who had a darker complexion than that of his passenger. At the time of his stop, defendant was wearing a dark-colored jacket and a dark-colored hat with fur. The record included a photograph of defendant at the time of his arrest. Accordingly, unlike *Washington*, there is ample evidence to determine whether defendant's characteristics at the time of his stop were sufficiently similar to the description of the offender so as to justify his initial stop.

¶ 31 In *Cox*, the reviewing court found that police officers conducted a valid *Terry* stop of defendant, who somewhat resembled the description of a robbery suspect, but found that the subsequent search and recovery of drugs from him was improper. *Cox*, 295 Ill. App. 3d at 672. The court found the officers did not have reason to frisk under *Terry*. *Id.* In doing so, the court noted that defendant attempted to discard the drugs only after police told him that he was going to be "check[ed]" for evidence relating to the robbery, and that no evidence was presented that the officer believed defendant was armed or dangerous. *Id.* at 673. As in *Cox*, the initial *Terry* stop here was valid. The officers in this case did not immediately inform defendant he would be searched. However, in the course of the brief initial field interview and, before the search, defendant informed

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them he had a crack pipe in his possession. Accordingly, the circumstances which caused the search in *Cox* to be invalid, are not present here.

¶ 32 The defendant in *Hyland*, was taken into custody and searched based on an investigative alert that he had violated an order of protection. *Hyland*, 2012 IL App (1st) 110966, ¶ 25. There was no testimony from an officer or other person with personal knowledge as to the factual basis for the alert. *Hyland*, 2012 IL App (1st) 110966, ¶ 25. The circuit court held that there was no probable cause for the arrest. *Hyland*, 2012 IL App (1st) 110966, ¶ 29. On appeal, the State primarily argued for the first time that the stop and search of the defendant was done pursuant to *Terry*. This court stated that the issue was not only forfeited, but unsupported by the record. *Hyland*, 2012 IL App (1st) 110966, ¶ 30. The stop of the defendant was not investigative as the officers testified to stopping the defendant based on the alert for purposes of making an arrest. *Hyland*, 2012 IL App (1st) 110966, ¶¶ 30-31. Further, even if there was a *Terry* stop, the State had failed to "present any evidence from which it might be inferred that the officer who issued the investigative alert possessed facts which would have justified the stop." *Hyland*, 2012 IL App (1st) 110966, ¶ 31. In this case, the record contains the testimony of Sergeant Olson who issued the flash message and had personal knowledge of the facts which gave rise to the message and to the stop of defendant.

¶ 33 Defendant also argues counsel's failure to impeach Sergeant Olson with the evidence of what he actually wore the night of the incident—either through introduction of the police inventory sheet from the night of his arrest, or by presenting the actual clothing—constituted ineffective assistance. We disagree.

¶ 34 To satisfy the deficient-performance prong of *Strickland*, defendant must overcome the strong presumption that the challenged action or inaction of trial counsel was the result of sound trial strategy. *People v. Smith*, 195 Ill. 2d 179, 188 (2000). Thus, "[m]atters of trial strategy are generally immune from claims of ineffective assistance of counsel." *Id.* (citing *People v. West*, 187 Ill. 2d 418, 432 (1999)). Matters of trial strategy include whether or not to cross-examine or impeach a witness.

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People v. Pecoraro, 175 Ill. 2d 294, 326 (1997).

¶ 35 Sergeant Olson testified that when he observed defendant in the Buick, he was wearing a distinctive hat with fur and a dark-colored black jacket. In the flash message he described the driver of the Buick as a black male wearing a hat or hood with fur and "a black jacket." The police inventory sheet contained in the record on appeal lists a black hat with fur, which is consistent with Sergeant Olson's testimony. The inventory sheet does not include a jacket. Thus, the contents of the inventory sheet would not have been impeaching of Sergeant Olson's description.

¶ 36 During the hearing on defendant's motion for a new trial, trial counsel referred to defendant's receipt from the jail which listed a brown jacket. The actual receipt is not before us. Trial counsel explained that based on the receipt, she decided not to introduce the jacket at trial because brown can be considered a dark color and, as such, would not clearly impeach the description given by Sergeant Olson of a dark jacket or black jacket. We find that it was reasonable trial strategy not to introduce the jacket itself or the receipt.

¶ 37 In sum, we find that trial counsel's decision as to evidence pertaining to defendant's jacket did not constitute ineffective assistance, as defendant has failed to show that counsel's decision was so irrational and unreasonable, that no reasonably effective defense attorney facing similar circumstances would have pursued the same strategy. *People v. Salcedo*, 2011 IL App (1st) 083148, ¶ 50.

¶ 38 Finally, defendant argues he was deprived of a fair trial due to improper comments made by the prosecutor during rebuttal closing argument which, he claims, bolstered the credibility of Sergeant Olson. Defendant argues *de novo* review applies here and cites to *People v. Graham*, 206 Ill. 2d 465, 474 (2003). We observe, however, that the standard of review for closing arguments is unclear, but decline to determine the appropriate standard of review as we would reach the same result under either a *de novo*, or an abuse of discretion standard. See *People v. Cosmano*, 2011 IL App (1st) 101196, ¶ 53 (citing *People v. Maldonado*, 402 Ill. App. 3d 411, 422 (2010) and *People*

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v. Anderson, 407 Ill. App. 3d 662, 676 (2011)).

¶ 39 Defendant concedes he has failed to preserve the closing argument issue for appellate review by failing to raise it, both at trial and in his post-trial motion (*People v. Enoch*, 122 Ill. 2d 176, 186 (1988)), but maintains that we may consider it pursuant to the plain error doctrine.

¶ 40 The plain-error doctrine allows a reviewing court to consider unpreserved claims of error where defendant shows the evidence is so closely balanced, or the error is so serious, it affected the fairness of his trial and challenged the integrity of the judicial process. *People v. Naylor*, 229 Ill. 2d 584, 593 (2008). Under either prong, defendant bears the burden of persuasion, and he must first show that a clear or obvious error occurred. *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). Accordingly, we must determine whether any error occurred. *In re Samantha V.*, 234 Ill. 2d 359, 368 (2009).

¶ 41 Prosecutors are afforded considerable latitude in delivering closing arguments, and may comment on the evidence presented and reasonable inferences arising therefrom. *People v. Glasper*, 234 Ill. 2d 173, 204 (2009). On review, we consider the closing argument in its entirety, rather than focusing solely on select words or phrases. *People v. Perry*, 224 Ill. 2d 312, 347 (2007).

¶ 42 Here, defendant complains of the following remarks by the prosecutor during rebuttal closing argument:

"Judge, you heard the testimony with officer – Sergeant Olson. He's a very credible witness, very truthful witness. The work that he had done in the case was very methodical, very professional, very thorough."

Defendant argues those remarks amount to error but we disagree.

¶ 43 The supreme court has observed that the credibility of a witness is a proper subject for closing argument, so long as it is based on the evidence presented or inferences drawn therefrom. *People v. Hickey*, 178 Ill. 2d 256, 291 (1997). A prosecutor may not, however, vouch for a witness by injecting his or her personal beliefs about their credibility. *People v. Sims*, 403 Ill. App. 3d 9, 20

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(2010). For a prosecutor's closing argument to be deemed improper vouching, he must explicitly state that he is offering his personal views on a witness's credibility; no improper bolstering has occurred if the trier of fact has to infer that the prosecutor is asserting a personal opinion. *People v. Pope*, 284 Ill. App. 3d 695, 707 (1996).

¶ 44 Here, the prosecutor referred to Sergeant Olson as a very "credible" and "truthful" witness. In doing so, he did not use the word "vouch," or otherwise indicate he was referring to his own personal beliefs. Because the trial court, as trier of fact, would have to infer the prosecutor was asserting his personal opinions, the prosecutor here did not engage in improper bolstering. *Pope*, 248 Ill. App. 3d at 707. Further, although the prosecutor referred to the thorough and professional work performed by Sergeant Olson in this case, he did not argue Sergeant Olson was more truthful simply by virtue of his profession. Rather, the prosecutor commented on inferences which could be made from the evidence presented with regard to how Sergeant Olson handled the process from his first encounter with defendant, to his subsequent identification of defendant in the back of the squad car 20 minutes later.

¶ 45 We also find no merit in defendant's further contention that the trial court indicated it had relied on those comments in finding defendant guilty. The record shows that prior to announcing its decision, the trial court stated it had reviewed the exhibits, listened to the testimony, and considered the arguments of counsel. The trial court, however, made no specific mention of the prosecutor's comments during rebuttal closing argument regarding Sergeant Olson's credibility and professionalism.

¶ 46 Defendant, nevertheless, points to the trial court's denial of his motion for a new trial and its statement that in so ruling, the arguments of counsel and its recollection of the testimony were considered, and that it relied upon the credibility of Sergeant Olson. Once again, the trial court did not mention the prosecutor's comments during rebuttal closing argument. Although the trial court did refer to Sergeant Olson's credibility, as trier of fact, it was incumbent on the trial court to assess

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and consider the credibility of each witness in reaching its determination. *Campbell*, 146 Ill. 2d at 374-75. Accordingly, defendant's contention—the presumption that the trial court is presumed to know the law in a bench trial is rebutted by the record—fails.

¶ 47 Thus, under these circumstances, where defendant failed to establish error warranting plain-error review, the issue is forfeited. *Hillier*, 237 Ill. 2d at 545-46.

¶ 48 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 49 Affirmed.