

No. 1-12-2944

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

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IN THE APPELLATE  
COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	Nos. 10 CR 1463, 10 CR
	)	1465, 10 MR 38, 11 CR 1484
	)	
JAMES AMISON,	)	The Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.  
Justices Howse and Taylor concurred in the judgment.

**ORDER**

*HELD:* Defendant was not denied a fair trial where the State, in its closing arguments, in no way misstated the law regarding his affirmative defense of insanity nor the facts adduced at trial, and did not disparage him or his defense in any manner warranting the reversal of his convictions. To the contrary, the cited comments were entirely in line with the record presented in this cause and, thus, were wholly proper.

¶ 1 Following a jury trial, defendant-appellant James Amison (defendant) was convicted of first degree murder, armed robbery, home invasion and armed habitual criminal. He was

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sentenced to natural life in prison. He appeals, contending that he was denied a fair trial when the State, in its closing argument, misstated the law regarding his affirmative defense of insanity and the facts adduced at trial, and disparaged him and his defense. He asks that we reverse his convictions and remand his cause for a new trial. For the following reasons, we affirm.

¶ 2 BACKGROUND

¶ 3 The facts of the underlying cause and the evidence presented at trial are undisputed and, based on defendant's videotaped confession as well as on the testimony of a multitude of witnesses, we present them here in brief.

¶ 4 According to defendant's videotaped confession, he was married to Tashika Smith; they shared a five-year-old daughter, and Tashika had an older daughter who was not biologically related to defendant. Defendant did not live with Tashika at the time of the incidents, but would occasionally stay at her apartment in Steger, Illinois. On the evening of December 11, 2009, defendant was there with the girls when Tashika arrived home. Some hours later, after waiting until the girls had gone to their bedrooms, defendant, who believed Tashika was having an affair with his father and was planning on killing him (defendant) in order to collect on an insurance policy, strangled Tashika in the living room until she stopped breathing. He also sliced her throat to make sure she was dead. Defendant had wanted to shoot her, but chose instead to strangle her because he did not want to disturb the children. At one point, Tashika's daughter passed by the living room, whereupon defendant laid on top of Tashika's body in order to obscure her. Defendant then left her body on the couch, put a sheet over it so the girls would think Tashika was sleeping, and left the apartment.

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¶ 5 Defendant drove Tashika's truck to Homewood, Illinois, to the home of his exgirlfriend Terri Ladd, with whom he shared a five-year-old son. At one point, defendant had a romantic relationship with Ladd while he was still married to Tashika, having told Ladd that he was separated. Defendant arrived at Ladd's house at about 9 p.m. and called to her window. Ladd let defendant in after he told her he wanted to see their son; Ladd went to lie down. Defendant took Ladd's car knowing that Tashika's truck would be sought by police upon the discovery of her body and left Ladd's house.

¶ 6 Defendant next drove to his girlfriend Stephanie Reed's apartment in Englewood. He rang the doorbell and asked Reed if they could talk, but Reed refused to let him inside or to talk to him.

¶ 7 Defendant left Reed's home and drove to his father and stepmother's house in Maywood. By this time, it was midnight. Defendant's stepmother was at home with her grandchildren, and defendant's father was asleep in his room. Defendant knocked on their door, whereupon his stepmother let him inside. Defendant asked for his father, went straight to the bedroom and began arguing with him. He then pointed a gun at his father, who was sitting up in the bed, and demanded that he confess to having an affair with Tashika. When his father refused, defendant shot him in the face because "he was supposed to die." As a result of this gunshot, defendant's father became a quadriplegic and passed away a year later due to his injuries.

¶ 8 Defendant left his father's house and drove back to Reed's apartment. He broke down both the door to her apartment building as well as the door to her apartment. He went inside her apartment and into her bedroom. As Reed was sitting on her bed, defendant shot her in the chest,

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believing that she, too, was trying to have him killed. She then walked toward him, and defendant shot her in the head, killing her.

¶ 9 After he departed Reed's apartment, defendant drove to a gentlemen's club looking for his former boss who had fired him a couple months earlier. Defendant wanted to kill his former boss because he believed she owed him money and was having people follow him. Defendant entered the club without paying and took out his gun. He saw a dancer, Monica Anguiniga, who had money hanging out of her shorts, and he took a dollar from her. Following a confrontation, defendant fired his gun inside the club. Someone returned fire and shot defendant in the leg. Defendant was unable to move and was apprehended by club security. He was then arrested by police.

¶ 10 Ballistic evidence presented at trial revealed that the bullets recovered from defendant's father's autopsy and Reed's autopsy came from the gun recovered from defendant. A cartridge case from Reed's apartment also matched defendant's gun. In addition, defendant had prior convictions for a forcible felony in May 1994 and two forcible felonies in July 1997.

¶ 11 Defendant, for his part, raised the affirmative defense of insanity at the time he committed the crimes at issue. Dr. Joan Leska testified on his behalf. She stated that she is a psychologist and not a medical doctor, but that she had performed about 50 sanity evaluations and testifies for defendants at their trials. She met with defendant 7 times for a total of 17 hours of observation about a year and a half after the incidents. Defendant told her that his mother died when he was a teenager and that he became very depressed and had attempted suicide. Dr. Leska observed that defendant had conflict in his relationships with women, and that he believed they

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controlled him and were not being faithful to him. He had a six-year relationship with Tashika, which was "chaotic," and, within two years of that relationship, he began relationships with Ladd and Reed. In the summer of 2009, he started to question Tashika's fidelity, lost his job, and began to believe Tashika and his father were having an affair.

¶ 12 Dr. Leska acknowledged defendant's three prior violent felonies, noted that he was dangerous, and affirmed that dangerousness does not equate to mental illness. She never received any psychiatric records or medical documentation indicating that defendant was ever hospitalized for mental illness. There was also no record of him receiving psychotropic medication any of the times he was incarcerated, and he was not taking any such medication at the time of trial. When she examined him, she found no active psychotic process such as hallucinations and no history of neurological symptoms. Dr. Leska further testified that even though defendant admitted he purposefully covered Tashika's body with a sheet to obscure her, switched cars because he knew police would be looking for him and fled the scenes of his crimes, this demonstrated only that he knew he was concealing his crimes but did not indicate he knew right from wrong. Finally, Dr. Leska noted that defendant had a paranoid personality disorder, but admitted that this is not classified psychologically as a serious mental illness or mental disorder. Ultimately, Dr. Leska testified that, at the time of the incidents, defendant suffered from paranoid personality disorder and that, due to stressors, he decompensated into a psychotic state and was delusional. However, she stated that, because she lacked adequate data, her opinion was inconclusive and she could not conclude that defendant was insane at the time of the incidents.

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¶ 13 In response to Dr. Leska, the State presented the testimony of Dr. Nishad Nadkarni, a staff psychiatrist from Cook County Forensic Clinical Services who has performed almost 800 sanity evaluations. He met with defendant twice. At their first meeting in July 2011, Dr. Nadkarni ascertained general information about defendant, including his psychiatric, medical and criminal history. Defendant was initially cooperative, maintained good eye contact, had clear, coherent and logical speech, and exhibited no delusions or hallucinations; Dr. Nadkarni saw no signs of mental illness. There was no indication that defendant was ever hospitalized, received outpatient treatment or had taken medication for any psychiatric problem. From the information received, Dr. Nadkarni found that nothing suggested defendant had ever been diagnosed with, or had ever been treated for, mental illness. However, when Dr. Nadkarni next attempted to ascertain specific information about the incidents at issue, including defendant's version of what happened, in order to evaluate his sanity, defendant responded that his counsel had told him to say nothing about that day. Dr. Nadkarni told defendant he had already reviewed the police reports, but defendant refused to discuss them as well as any further questions about whether he was engaged in mental health treatment or was having any symptoms. At this point, Dr. Nadkarni had to end the interview.

¶ 14 Dr. Nadkarni next met with defendant in August 2011. Dr. Nadkarni noted that defendant had not received any psychiatric or medical treatment since the last interview and, just as last time, he looked healthy and showed no signs of psychiatric impairment or psychosis. This time, defendant did relate his version of events to Dr. Nadkarni, wherein he referred to being chased by people with guns and followed by a car. Defendant alluded to being paranoid and

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believed that he was going to be killed for his life insurance. Hearing this for the first time and finding it to be "elaborate," Dr. Nadkarni asked defendant if he had spoken about this to police, whereupon defendant responded that he "was just mentally gone." However, Dr. Nadkarni did not find this to be credible in comparison to the reports he had reviewed and defendant's videotaped confession to police which, in his view, provided no evidence of mental illness. In addition, Dr. Nadkarni noted that the form and content of defendant's story was not always the same as it otherwise would be if it were a true delusion. He further noted that defendant did not have a mental disease or defect that would have substantially impaired his capacity to appreciate the criminality of his actions. Ultimately, Dr. Nadkarni concluded that defendant was sane at the time of the incidents.

¶ 15 Following the presentation of this evidence, the cause proceeded to closing arguments during which the State made several comments which are the primary focus of this appeal. First, in discussing the series of incidents committed by defendant and how he had a pattern of attacking, fleeing and moving on to another crime scene, the State noted his videotaped confession and his lack of psychiatric history and stated:

"Where does he come up with this psychiatric issue? He comes up with it when he's looking at three murder cases."

Defendant objected to this comment and his objection was overruled.

¶ 16 Then, the State spoke to the jury about the concept of responsibility and defense counsel's urgency that they find defendant not guilty by reason of insanity. The State told the jury that "not guilty by reason of insanity \*\*\* means we're going to let him go, he's not responsible."

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Defendant did not object to this comment.

¶ 17 Later, the State turned to the testimony of Dr. Leska and discussed how she, as defendant's own expert, could not conclude that defendant was insane at the time he committed the crimes at issue. While explaining that Dr. Leska's examination of defendant was incomplete because she refused to speak to several other witnesses who knew him, and while urging the jury to ignore the verdict forms for not guilty and not guilty by reason of insanity, the State expressed:

"[i]f it's about the amount of time the doctor spent with the defendant, Dr. Nadkarni couldn't spend more time with the defendant because the first time the defendant refused to cooperate. Blame him, not Dr. Nadkarni."

Defendant objected to this comment and his objection was overruled.

¶ 18 Soon thereafter, the State touched upon the burdens in this cause, particularly that upon defendant who raised the affirmative defense of insanity. Again discussing the lack of evidence presented in this cause with respect to mental illness, that State observed to the jury:

"When we talk about insanity, the defendant has to show by clear and convincing evidence that due to a mental illness, he cannot appreciate the criminality of his conduct. Do you know what that means?"

Again, defendant objected, and the trial court informed the jury that it would be the one to instruct them about the applicable law. The State continued, "You know what it means, it means appreciate the criminality of the conduct, he knows, he recognizes that what he's doing is wrong."

¶ 19 The State concluded its closing argument by expressing to the jury, at several points, that defendant's affirmative defense should not be believed, calling it "nonsense," "a joke," and

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"cockamamy." It also noted that defendant was someone who is "dangerous" and "scary" but not someone who is "sick" or "needs to be in a hospital," directly reminding them of Dr. Leska's testimony that "dangerousness does not equal mental illness."

¶ 20 At the conclusion of trial, the jury found defendant guilty of the first degree murders of Tashika, his father and Reed, the armed robbery of Aguiniga, and home invasion; it also found that defendant was an armed habitual criminal. Defendant filed a posttrial motion arguing, in part, that, generally, the State "made prejudicial inflammatory and erroneous statements in closing argument" and, more specifically, that the trial court erred in overruling his objection to the State's comment that defendant "came up with this psychiatric issue," that he was denied a fair trial when the State argued he refused to cooperate with Dr. Nadkarni, that the trial court erred in failing to sustain his objections to the State's misstatement of the law, and that the trial court erred in overruling his objection to the State's characterization of defendant as "dangerous, \*\*\*, scary, [and] not someone who needs to be in a hospital." The trial court denied defendant's posttrial motion. Following a sentencing hearing, the court imposed sentences of natural life in prison for each of the murders, natural life for the home invasion and armed robbery, and 30 years each for the armed habitual criminal convictions, with the natural life sentences to be served consecutively and the 30-year sentences to run concurrently.

¶ 21

#### ANALYSIS

¶ 22 The crux of defendant's appeal focuses on the State's closing argument. Having outlined that argument above, defendant contends that he was denied a fair trial when the State misstated the law regarding the insanity defense and the facts adduced at trial, that he was denied a fair trial

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when the State disparaged him and his theory of defense that he was insane at the time of the incidents, and that the State's "pervasive pattern of misconduct" is plain error warranting a new trial. Analyzing each cited comment on its own, as well as in conjunction with the entirety of the State's closing argument, defendant's closing argument and the evidence admitted at trial, we disagree.

¶ 23 Before turning to the merits of this appeal, there are two threshold matters that must be addressed. First, we note that the parties dispute the standard of review for this issue, with defendant advocating a *de novo* standard and the State advocating for an abuse of discretion standard. Indeed, currently, 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 *People v. Wheeler*, 226 Ill. 2d 92 (2007), 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. Crawford*, 2013 IL App (1st) 100310, ¶ 139, and *People v. Hayes*, 409 Ill. App. 3d 612, 624 (2011) (outlining the current dispute). This division of this district has noted the conflict but has chosen not to declare which standard should be used, particularly where the result would be the same regardless of which standard is applied. See *People v. Cosmano*, 2011 IL App (1st) 101196, ¶ 53, citing *People v. Anderson*, 407 Ill. App. 3d 662, 676 (2011), and *People v. Maldonado*, 402 Ill. App. 3d 411, 422 (2010). In the instant cause, because we would reach the same result under either standard, we, too, choose not to comment on the propriety of these until our supreme court

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resolves the conflict. See *Cosmano*, 2011 IL App (1st) 101196, ¶ 53; accord *Crawford*, 2013 IL App (1st) 100310, ¶ 139.

¶ 24 The second threshold matter concerns the preservation of the issues at hand. In its brief on appeal, the State claims that defendant forfeited his claims concerning several of the remarks cited in its closing argument, "specifically his complaints that the prosecutors misstated the law as to the burden of proof, argued that the jury should not let him go by returning a verdict of not guilty by reason of insanity, and that they attacked the theory of defense." The State further expresses that defendant "neither objected to the remarks at trial nor specifically complained of these remarks, other than a generic complaint" in his posttrial motion and, thus, we should not review them.

¶ 25 However, the State mischaracterizes several points here. There are, essentially, six comments raised by defendant which he claims were improperly made by the State during its closing argument: (1) its assertion that defendant came up with the insanity defense "when he's looking at three murder cases;" (2) its comment that defendant "refused to cooperate" with Dr. Nadkarni during their first meeting; (3) its alleged misstatement of law regarding the insanity defense; (4) its characterization of defendant as "dangerous" and "scary;" (5) its remark that defendant would be "let go" if the jury found him not guilty by reason of insanity; and (6) a collection of its opinions regarding defendant's theory of the case, including use of the words "ridiculous," "cockamamy" and "nonsense." Pursuant to our thorough review of the record in the instant cause, defendant did, indeed, issue contemporaneous objections to the first four of these

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comments and specifically referred to them in his posttrial motion.<sup>1</sup> The record is undoubtedly clear on these points. In direct contradiction to the State's assertions, then, defendant properly preserved these comments for our review and has not waived them. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (timely objection and written posttrial motion are required to preserve issue for appellate review). Thus, we will review these on the merits.

¶ 26 However, the State is correct, and defendant concedes, that he did not object to the last two comments cited (that he would be "let go" and the collection of the State's disparaging remarks regarding his defense) and did not include them in his posttrial motion. Thus, these have been forfeited. See *Enoch*, 122 Ill. 2d at 186. Defendant urges us to nonetheless examine them pursuant to the second prong of the plain error analysis,<sup>2</sup> claiming that the errors committed by these comments amounted to a "pattern of intentional prosecutorial misconduct" that was so serious as to have undermined the integrity of the judicial proceedings against him, thereby denying him a fair trial.

¶ 27 Under the second prong of the plain error doctrine, we may consider a forfeited error when it is of sufficient seriousness. See *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005). 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. But, before a plain error analysis may be undertaken, the defendant must show that an

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<sup>1</sup>References to these are clearly made in paragraphs 9, 39, 40, 44 and 45 of defendant's posttrial motion.

<sup>2</sup>Defendant does not urge any sort of review under the first prong, which examines the closeness of the evidence.

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error occurred, for, absent error, there can be no plain error. See *People v. McGee*, 398 Ill. App. 3d 789, 794 (2010), citing *Herron*, 215 Ill. 2d at 187; see also *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007) ("the first step is to determine whether error occurred"). Errors under the second prong have been equated with structural errors, and there are only a limited class of these. See *Cosmano*, 2011 IL App (1st) 101196, ¶ 78. Specifically, "[e]rror in closing argument does not fall into the type of error recognized as structural." *Cosmano*, 2011 IL App (1st) 101196, ¶ 78. Thus, we conclude that defendant has not, and cannot, demonstrate plain error under the second prong of the plain error doctrine with respect to the last two prosecutorial comments at issue here.

¶ 28 Ultimately, 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; *People v. Caffey*, 205 Ill. 2d 52, 131 (2001). It " 'may comment on the evidence and any fair, reasonable inferences it yields.' " *People v. Phillips*, 392 Ill. App. 3d 243, 275 (2009), 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

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163, 176 (1987)). See also *Wheeler*, 226 Ill. 2d at 122; *Caffey*, 205 Ill. 2d at 131. 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).

¶ 29 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).

¶ 30 I. Preserved Errors

¶ 31 We now turn to the four comments properly preserved by defendant on appeal.

¶ 32 The first of these came during the State's closing argument when it was discussing the series of crimes committed by defendant. The State was pointing out to the jury that the evidence presented a pattern of his attacking a victim, fleeing the area and taking steps to move on to another crime scene without being detected, such as when he put a sheet over Tashika's body so her daughters would think she was sleeping and when he took her vehicle to Ladd's house and then switched it for Ladd's vehicle because he knew police would be looking for it. The State argued that this, when combined with his videotaped confession and his lack of psychiatric history, indicated that he was cognizant and aware of what he was doing and, thus, that his theory

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of insanity could not stand. Accordingly, it raised the question, "Where does he come up with this psychiatric issue?," and answered it by stating that he did so "when he's looking at three murder cases." Defendant objected to this comment and his objection was overruled.

¶ 33 Defendant insists that these comments by the State were erroneous because they did not argue the evidence and were intended solely to convey to the jury that his "theory of defense had no legally cognizable basis or factual underpinnings." However, having reviewed the record *in toto*, we find that defendant's argument is wholly flawed. In direct contradistinction, the State's comments here were closely based on the record and clearly evinced by the facts presented at trial. No document was admitted to demonstrate that defendant, in the entire 39 years of his life before he committed these crimes, ever presented with any sort of psychiatric history, ever received prior psychiatric treatment, was ever prescribed or took psychotropic medications, or was ever hospitalized for any psychiatric condition. In addition, Dr. Leska, who testified on defendant's behalf in support of his insanity defense, admitted that she never saw any documentation to indicate defendant was ever hospitalized for mental illness or that he had received any medication for such an affliction either before these crimes or even after, when he was incarcerated and evaluated by the department of corrections. And, Dr. Leska affirmatively testified that the disorder she has diagnosed defendant with (paranoid personality disorder) is not classified as a serious mental illness or disorder on the psychiatric spectrum. Moreover, Dr. Nadkarni corroborated Dr. Leska in several respects, also testifying that, from all the information he had received, there was nothing to indicate that defendant had ever been diagnosed with, or had ever been treated for, mental illness. He was never hospitalized, never received outpatient

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treatment, nor was ever prescribed medication for any psychiatric problem. Dr. Nadkarni further testified that both times he met with defendant, he maintained good eye contact, had clear and coherent speech and exhibited no delusions or hallucinations which would otherwise show signs of psychiatric impairment or psychosis. And, Dr. Nadkarni specifically did not find defendant's allusion to being "mentally gone" during their second interview to be credible in light of his videotaped confession and his inconsistent stories regarding the crimes, both of which provided no evidence of mental illness.

¶ 34 Indeed, then, the record is clear that the first time defendant ever claimed he suffered from any psychiatric condition, let alone insanity, was after he was charged in this cause. This is exactly the content of the State's remarks at issue here. What is more, we note that defendant himself, in his own closing argument, responded to the State's comment by attempting to argue that he "truly believed" he was insane and that Dr. Leska believed he "was not making up" these claims. However, in doing so, he also specifically admitted that "it was possible that he just spoke of them at the hospital bed [after he was taken into custody] and decided to start talking about these claims," but that it was "substantially more probable" that he actually believed them "from other evidence." Yet, in light of the lack of any psychiatric history, as well as the testimony of both Dr. Leska and Dr. Nadkarni, there was no such "other evidence," but only that evidence showing that the first time defendant claimed a mental illness was after his indictment. Thus, we find no error with the State's comment here.

¶ 35 The second preserved comment defendant attacks on appeal was made by the State during its rebuttal closing argument. While the State was discussing Dr. Leska's testimony and her

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inability to conclude that defendant was insane at the time he committed the crimes, it noted that her examination of defendant was somewhat incomplete because, while she had wanted to speak to several other witnesses who knew defendant such as his friends, sisters and daughter in order to obtain a better psychiatric profile of him, she had not. Then, while attempting to shore up Dr. Nadkarni's counter-testimony and urging the jury to ignore the verdict forms for not guilty and not guilty by reason of insanity, the State remarked:

"[i]f it's about the amount of time the doctor spent with the defendant, Dr. Nadkarni couldn't spend more time with the defendant because the first time the defendant refused to cooperate. Blame him, not Dr. Nadkarni."

Defendant argues that this comment was erroneous because the State misstated the evidence presented and "intentionally attempted to mislead the jury" by claiming that defendant chose not to cooperate with Dr. Nadkarni when testimony indicated that it was defendant's attorney who had told him not to speak about the crimes with Dr. Nadkarni during his evaluation.

¶ 36 We disagree as, again, the State's comments were based on the record. Defendant did choose not to cooperate with Dr. Nadkarni during their first meeting. As the record demonstrates, Dr. Nadkarni, a staff psychiatrist from Cook County Forensic Clinical Services who has performed almost 800 sanity evaluations, met with defendant for the first time in July 2011. At this meeting, he initially attempted to obtain some general information about defendant, including his psychiatric, medical and criminal history. At first, defendant was cooperative and spoke freely with Dr. Nadkarni and, from the information defendant provided, Dr. Nadkarni was able to ascertain that there was no basis to indicate defendant had any sort of

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mental illness. However, when Dr. Nadkarni attempted to obtain more specific information about the crimes in order to evaluate his sanity on the night in question, including defendant's own version of what happened, defendant refused to discuss anything further with him, telling him that his attorney told him to say nothing about that day. Dr. Nadkarni explained to defendant that he had already reviewed the police reports and knew what had happened, but defendant still refused to speak to him any further or to answer any more questions, including general ones about his mental health.

¶ 37 Whatever defendant understood regarding his counsel's advice in speaking to Dr. Nadkarni, and regardless of whatever strategy might have been in play regarding his defense at that time, the fact remains that the person who terminated this psychiatric evaluation was defendant himself. It was not Dr. Nadkarni who, when he noted that defendant refused to speak to him about the crimes, still attempted to proceed with the evaluation by moving the conversation back to generic topics, which defendant was initially comfortable discussing at the outset of the interview. Yet, at this point, defendant completely shut down and refused to discuss anything, causing Dr. Nadkarni to end the interview. Consequently, Dr. Nadkarni's time with defendant was cut short and this was undeniably due to defendant's lack of cooperation. The State's comments on what occurred were directly in line with this record and, thus, we find no error.

¶ 38 The next preserved comment from the State's rebuttal closing argument defendant challenges deals with the burdens of proof in this cause. As the State discussed these with the jury in light of the fact that defendant had raised the affirmative defense of insanity, it noted the

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lack of evidence presented with respect to mental illness and observed:

"When we talk about insanity, the defendant has to show by clear and convincing evidence that due to a mental illness, he cannot appreciate the criminality of his conduct. Do you know what that means?"

When defendant objected, the trial court informed the jury that it would be the one to instruct them about the applicable law. Then, the State continued, "You know what it means, it means appreciate the criminality of the conduct, he knows, he recognizes what he's doing is wrong." Citing the law that "[a] person is not criminally responsible for conduct if at the time of such conduct, as a result of mental disease or mental defect, *he lacks substantial capacity to appreciate the criminality of his conduct*" (720 ILCS 5/6-2(a) (West 2009) (emphasis added by defendant), and noting that while the burden of proof is on the defendant to prove by clear and convincing evidence that he is not guilty by reason of insanity but that the burden of proof remains on the State to prove beyond a reasonable doubt each of the elements of the crimes charged (see 720 ILCS 5/6-2(e) (West 2009)), defendant claims that the State's comments were erroneous because they were "incomplete and misleading." He argues that the State omitted the critical language he highlights and asserts that the jury was left with the impression that "the depth of the defendant's capacity was irrelevant."

¶ 39 It is axiomatic that when a defendant, as defendant here, raises the affirmative defense of insanity, the burden is on him to prove by clear and convincing evidence that he was, indeed, insane at the time he committed the crimes. See 720 ILCS 5/3-2 (West 2009). The State, of course, is still left with the burden of proving the elements of the crimes beyond a reasonable

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doubt. See 720 ILCS 5/6-2(e) (West 2009). However, the State does not have to disprove the defendant's insanity. See 725 ILCS 5/115-4(j) (West 2009). In the instant cause, with respect to defendant's concern regarding the concept of burden of proof, according to these legal guidelines, the State's comments at issue here were not at all improper. Rather, they directly tracked the language of law and did not misstate the burden, as defendant alleges. Interestingly, as the State points out, it was defense counsel in her closing argument who first deviated from the statutory language. At one point in describing defendant's burden of proof, his counsel stated "[o]ur burden of proof is substantial probability on insanity." Following this, the State made the cited comments in rebuttal; clearly, this was a proper response to defense counsel's misstatement. See, e.g., *Glasper*, 234 Ill. 2d at 204 (comments not improper if they were invited by defense counsel's argument). Moreover, we fail to find any merit in defendant's claim that the State's comments somehow misled the jury because the State did not also remind them in the same breath that it had to burden to prove the elements of the crimes beyond a reasonable doubt. The record shows that not only did the State mention its own burden at the outset of its initial closing argument, but it also reiterated it in rebuttal closing argument. In conjunction with this, defendant's videotaped confession had already been admitted at trial, and defense counsel noted in her own closing argument that defendant "conceded that [the State] proved all the elements" of the crimes. And, the trial court further clarified the legal burdens both sides bore when it was instructing the jury. Thus, we fail to see how the cited comments were "incomplete" or "misleading."

¶ 40 Furthermore, with respect to defendant's concern regarding these comments being a

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misstatement of the law, we, again, find that this is meritless. The State's comments on insanity here perhaps incorporated a somewhat shorthand definition of this legal concept. That is, as defendant points out, the State omitted the specific words that a defendant is insane if he lacks substantial capacity to appreciate the criminality of his conduct (720 ILCS 5/6-2(a) (West 2009)) and, in the quote cited, instead used the concept of whether "he recognizes that what he's doing is wrong." However, we would first point out that, immediately before the State used this different phrase in a shorthand manner, it did specifically use the language of the statute not once, but twice. The entire exchange on this point proceeded accordingly:

"[THE STATE]: "When we talk about insanity, the defendant has to show by clear and convincing evidence that due to a mental illness, he *cannot appreciate the criminality of his conduct*. Do you know what that means?"

[DEFENSE COUNSEL]: Objection, your honor, misstates the

[THE COURT]: I'll instruct the jury about the law that applies to this case. You may continue with your argument.

[THE STATE]: You know what it means, it means *to appreciate the criminality of the conduct*, he knows, he recognizes that what he's doing is wrong."

(Emphasis added.)

Obviously, the State made clear what the burden was here, and only made a shorthand reference to it (*i.e.*, "recognizes what he's doing is wrong") after first making known to the jury the relevant law (*i.e.*, "appreciate the criminality of the conduct"). From our perspective, the State was merely reiterating in layman's terms a legal point it had already made clear to the jury in

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accordance with the statutory language. Moreover, as the State points out, it was defense counsel who initially used the concept or phrase "telling right from wrong." In her own closing argument, defense counsel argued that "[w]e can tell [defendant] can't tell right from wrong," that he "could not tell right from wrong," and even summed up her closing by stating that "[h]e could not understand that this was wrong," thereby urging the jury to find him not guilty by reason of insanity. Thus, while the State may have admittedly used this shorthand definition of insanity briefly in its otherwise lengthy closing, it was invited by multiple and repeated use of the same shorthand by defendant himself. Furthermore, even if the State's use of this shorthand definition of insanity was otherwise erroneous, which it was not, the remainder of the record makes clear that its brief reference did not somehow misled the jury so as to require reversal of defendant's convictions. The jury was given the full and statutory definition of insanity repeatedly throughout this trial: from the expert witnesses Dr. Leska and Dr. Nadkarni who testified about it at length, from the State, from defense counsel and, most critically, from the trial court. Thus, if there was any error, it was harmless and, quite obviously, cured so that the jury undeniably understood the proper definition of insanity here. See, e.g., *People v. Duckworth*, 98 Ill. App. 3d 1034, 1039 (1981) (State's comment in closing argument misstating correct standard for insanity was harmless where State identified correct standard at beginning and end of closing, defense counsel criticized comment in his closing and jury was properly instructed by trial court); *People v. Etten*, 29 Ill. App. 3d 842, 847 (1975) (where State argued in closing that defendant knew what he was doing, its comment did not amount to reversible error as misrepresentative of the law of insanity where the State also noted, in language substantially the same as statute, the proper

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definition and instruction for such was given by trial court).

¶ 41 The final preserved comments made by the State during its rebuttal closing argument, as raised by defendant here, occurred at the conclusion of its argument. Reviewing Dr. Leska's testimony one last time, the State referred to defendant as "dangerous" and "scary" and not someone who is "sick" or "needs to be in a hospital." Defendant claims that these comments were erroneous and merit the reversal of his convictions because they disparaged him personally and dehumanized him in order to scare the jury into convicting him, resulting in substantial prejudice. Once again, we wholly disagree. While, as defendant claims, dehumanizing those on trial in order to obtain their convictions may be improper, it does not, as he insists, automatically call for the reversal of those convictions. See, *e.g.*, *People v. Smothers*, 55 Ill. 2d 172, 176 (1973) (calling this improper, but not meriting reversal). More specifically, turning to the circumstances of the instant cause, we find no error. The State made these comments when it was reviewing the testimony of Dr. Leska for the jury. She clearly admitted, when acknowledging his three prior violent felonies, that defendant was dangerous and that "dangerousness does not equal mental illness." She further admitted that defendant had a paranoid personality disorder, that this is not classified psychologically as a serious mental illness, and that, ultimately, she could not conclude that defendant was insane at the time of the incidents. Obviously, defendant's own expert did not support his insanity defense. The State's comments were clearly based on Dr. Leska's testimony, which was part of the record in this cause. While they may have disparaged defendant, the State was only reiterating what a witness defendant's own expert witness had said about him on the stand before the jury.

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Therefore, we do not find them to be improper or erroneous in any way.

¶ 42 Accordingly, the four cited comments made by the State during its closing argument, as preserved by defendant for review, were based directly on the evidence presented in this cause and amounted to fair and reasonable inferences therefrom. In light of all the evidence presented and, particularly, in light of closing arguments as a whole, we do not find that they were a material factor in his convictions nor that the jury would have reached a different result had the State not made them. Thus, we hold that they did not substantially prejudice defendant and do not form the basis for the reversal of his convictions.

¶ 43 II. Forfeited Errors

¶ 44 Finally, we briefly wish to address one last concern. As we noted earlier in our decision, there were two comments made by the State as raised by defendant on appeal that he clearly forfeited for our review due to his failure to issue contemporaneous objections at trial and raise them in his posttrial motion. These were the State's remarks that defendant would be "let go" if the jury found him not guilty by reason of insanity, and its collection of opinions regarding defendant's theory of the case, including use of the words "ridiculous," "cockamamy" and "nonsense." We have already concluded that we may not review them under a plain error analysis because they do not amount to structural error. See *Cosmano*, 2011 IL App (1st) 101196, ¶ 78. However, even were we to do so, we would find no reversible error.

¶ 45 With respect to the first comment, defendant argues that the State misstated the law because, when an individual is found not guilty by reason of insanity, he is not "let go" but remains detained for further evaluation. Defendant claims that by implying defendant would be

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freed, the State prejudiced the jury in light of the serious circumstances regarding the crimes involved here. However, the State did not argue that defendant would be "let go." Rather, the State, at the time of the cited comments, was discussing with the jury the concept of responsibility and defense counsel's urgency that defendant was not responsible because he did not know what he was doing was wrong and, thus, it must find him not guilty by reason of insanity. In response, the State argued to the jury that they should, indeed, hold him responsible, based on the evidence presented and the lack of any testimony reflecting mental illness. From our review of the entire section of the State's comments here, it was not, as defendant implies, arguing that defendant would be "let go" in a physical sense, *i.e.*, freed from any prison time or other punishment or detainment. Instead, the State was clearly speaking of letting defendant "go" in terms of the concept of legal responsibility for the murders of Tashika, his father and Reed. "Under Illinois law, a defendant found not guilty by reason of insanity is held to be not criminally responsible for the charged offense[;] thus, the [State's] argument that a verdict of insanity would result in defendant's not being held criminally responsible [is] an accurate statement of the law." *People v. Johnson*, 146 Ill. 2d 109, 144 (1991) (citation omitted).

¶ 46 The last remaining comment made by the State in its closing argument, although waived by defendant, constituted a collection of what defendant terms the State's opinions on his defense, including the State's repeated use of the words "cockamamy," "nonsense," and "a joke." Noting that he had the right to present a defense and his version of the facts, he claims that these opinions exhibited extreme disdain and were intended to convey to the jury that his defense had no legitimate basis. However, the State was clearly commenting on the weakness of defendant's

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affirmative defense. While defendant had the right to raise it, at the same time, once raised, the State had the right to comment on it, challenging both its validity and its persuasiveness. See *People v. Robinson*, 391 Ill. App. 3d 822, 840-41 (2009). Our courts have repeatedly found that the use of words like "ridiculous," "preposterous," and "a joke" in this manner is proper and does not amount to any error. See *Robinson*, 391 Ill. App. 3d at 841 (citing several cases therein). And, regardless, with these comments, the State was, again, arguing the evidence in this cause. The evidence supporting defendant's insanity claim was scant, to say the least. His own expert could not testify that he was insane at the time of the crimes, and Dr. Nadkarni solidly and repeatedly testified that he was sane. There was not one shred of documentary evidence to indicate that defendant had any sort of mental illness at any time in his life. In his videotaped confession, he described how, on the night in question, he waited for the opportunity to attack Tashika until her daughters went to their rooms. Then, he killed her by strangling her instead of shooting her, as he had wanted to do, in order to avoid detection from her daughters. He also explained that he stabbed her to make sure he was dead, obscured her when her older daughter entered the room, and put a sheet over her so that her daughters would think she was sleeping. He immediately fled and, after taking her car, he switched it out for Ladd's car, knowing that the police would be looking for it. He then completed the same pattern, bursting in his father and Reed's homes, shooting them and quickly leaving, fleeing the scenes. The evidence of defendant's sanity here was overwhelming. Thus, the State's opinions on the weakness of his insanity defense were wholly proper.

¶ 47 Finally, defendant argues that the cumulative effect of the errors in the State's argument

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was prejudicial. Since we have already determined that none of the errors of which defendant complains require reversal, in order to examine the cumulative effect of these errors, we must look to the record as a whole, as we have throughout this decision. In doing so again here, we note that the evidence against defendant was, understatedly, overwhelming. Indeed, on the evidence in this case, no other result would have made sense. Therefore, we hold that defendant was not prejudiced by the State's arguments in any way.

¶ 48

#### CONCLUSION

¶ 49 Accordingly, for the foregoing reasons, we affirm the judgment of the trial court.

¶ 50 Affirmed.