2015 IL App (1st) 121818-U
Sixth Division
Order filed: February 13, 2015

No. 1-12-1818

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellee,	)	
	)	No. 04 CR 21589
	)	
v.	)	
	)	
DEANDRE GREER,	)	Honorable
	)	Luciano Panici,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Lampkin and Rochford concurred in the judgment.

ORDER

Held: The defendant's conviction was affirmed, where he failed to demonstrate any prejudice to him based upon alleged improper jury communications or other claimed improprieties; there was no error in allowing him to be tried simultaneously with his co-defendants; he was proven guilty beyond a reasonable doubt; he failed to show that his counsel was ineffective; his contention that the State intentionally relied upon false testimony to obtain the indictment against him was forfeited; the State's destruction of his automobile before the defendant had an opportunity to examine it was not a denial of his due process rights; and there was no abuse of discretion in the circuit court's refusal to grant sanctions against the State for the destruction of the vehicle.

¶ 1 A jury convicted the defendant, Deandre Greer, of three counts of first-degree murder (720 ILCS 5/9-1(a)(2) (West 2004)) for the shooting deaths of Carmelita Taylor, Cameron

Young and Ryan Jernigan, and one count of attempted first-degree murder (720 ILCS 5/9-1(a)(1), 5/8-4(a) (West 2004)) for the shooting of Terrence Martin. The defendant was subsequently sentenced to life imprisonment along with a consecutive prison term of 30 years. He now appeals, arguing that (1) he was denied a fair trial because various improprieties prejudiced the jury against him; (2) the circuit court abused its discretion in permitting him to be tried simultaneously with his co-defendants; (3) the State failed to prove his guilt beyond a reasonable doubt; (4) his trial counsel was ineffective; (5) the indictment against him must be dismissed because it was based upon testimony that the State knew was false; (6) the State's destruction of his Cadillac before he had an opportunity to examine it for evidence deprived him of due process and warranted sanctions under Illinois Supreme Court Rule 415(g) (eff. Oct. 1, 1971).

¶ 2 The defendant was indicted for first-degree murder and attempted first-degree murder along with co-defendants Samuel Dupree, James Massey and William Smith.[*] The indictment alleged that, on July 6 and 7, 2004, the defendant and his co-defendants participated in the murder of Taylor, the kidnapping and murders of both Jernigan and Young, and the attempted murder of Martin.

¶ 3 The facts of this case may be summarized as follows. Taylor and Martin lived together in an apartment in the town of Robbins (hereinafter apartment). Jernigan paid the rent for the apartment and used one of the bedrooms as a locked storage area, but did not reside there.

[*] Dupree, Massey and Smith are not part of this appeal; Dupree, Smith and the defendant were tried at the same time but before separate juries; Massey negotiated a guilty plea deal in exchange for his cooperation with the State, including his agreement to testify against the defendant.

Jernigan and Martin worked together at Jernigan's auto repair business. Jernigan also operated a drug business with the defendant, who was known as "Little D," and was his drug supplier. The defendant, Dupree and Smith were cousins.

¶ 4 In July of 2004, the defendant contacted Dupree and Smith and instructed them to go to the Robbins apartment to steal Jernigan's drugs and money. On July 6, 2004, Dupree and Smith went to the apartment with guns, but Jernigan was not home. When Taylor answered the door, Dupree and Smith forced their way into the apartment and, for the next few hours, proceeded to restrain, torture, threaten and sexually assault Taylor and Martin because they could not produce drugs or money. During this time, Dupree contacted Massey by cellular phone and asked him to come to the apartment and help them. Massey agreed, and upon arriving at the apartment, found Martin and Taylor tied up. Jernigan, having been lured back to the apartment by the victims under force, arrived with Young. They were met by Dupree and Smith, who had their guns drawn. Dupree and Smith forced Jernigan into the trunk of Massey's Buick and ordered Young into the front of the vehicle. Massey and Smith waited in the car while Dupree went upstairs to the apartment and shot Taylor four times in the head while she was tied up on her bed. Dupree then turned to Martin and shot him in the head twice, leaving him for dead. However, Martin survived.

¶ 5 Dupree, Massey and Smith left Robbins in Massey's car with Jernigan in the trunk and Young in the backseat, and they drove to a remote location at 125th and Doty in Chicago. They released Young, but Dupree shot him in the head as he exited the vehicle. With Jernigan still in the trunk, they drove to Dupree's home in Dolton and parked in the garage, next to his cousin's Jaguar. Realizing he left his car (a cream-colored Aurora) near the Robbins crime scene, Dupree and Massey drove in the Jaguar back to Robbins, leaving Smith to guard Jernigan in the trunk of

the Buick. Jernigan was later moved to the trunk of Dupree's Aurora; Dupree and Smith drove away in the Aurora and Massey followed in his Buick. At that point, the defendant, who was at another location, began calling Jernigan's friends and family members attempting to extort ransom money from them in exchange for Jernigan's life. Dupree and Smith also assisted in making ransom demands by placing cellular calls from their cars. Eventually, after all attempts to get money from Jernigan's friends failed, Dupree, Massey, and Smith stopped their cars around 56th Street and Perry. Jernigan was released from the trunk of Dupree's car, but Dupree shot him as he started to walk away. All three men then fled in their vehicles.

¶ 6 The evidence adduced at trial supported the State's summary of the case. Martin, the surviving victim, provided detailed testimony as to the events at the apartment culminating in his being shot and in Taylor's death. According to Martin, when Dupree and Smith first entered, Dupree asked him whether he was Terry, and when he replied that he was, Dupree put a gun to his head and stated "[m]y employer say (sic) I cannot leave you alive, I must kill you." Dupree repeated this same statement to Martin throughout the evening and also related that killing people was his "job." Martin testified that Smith used extension cords to tie him up and both men repeatedly asked him and Taylor where Jernigan kept his money and drugs. He stated that, over the course of several hours, Dupree and Smith tortured and sexually assaulted Taylor, forced Martin and Taylor to have sex, and attempted to set him on fire by pouring flammable materials, including paint, on him and lighting matches.

¶ 7 Martin testified to a series of phone calls that took place throughout the course of events on July 6 and 7, including an incoming call from Jernigan to the apartment phone during which he and Taylor were forced to entice Jernigan to return home. Martin also described an incoming call to Dupree's cellular phone, which he was able to overhear while he was on his knees on the

floor directly in front of Dupree, as Dupree held a gun to his head. Martin heard the caller tell Dupree "he didn't get you that shit yet? *** man, if that motherfucker don't get you that shit, man, kill that motherfucker. He ain't fix my car." Martin testified that he then exclaimed out loud "that's Little D," whom he identified in court as the defendant. According to Martin, he recognized the defendant's voice because they were former roommates.

¶ 8 On another call, Dupree had Taylor provide directions to a man later identified as Massey. Martin testified that, sometime after Massey arrived at the apartment, he heard the men state that Jernigan had arrived. Martin next remembered waking up disoriented, crawling to the downstairs neighbor to get help, and later awaking at the hospital.

¶ 9 Martin remained in a coma for several days, and testified that, after regaining consciousness in the hospital, he learned he had been shot four times in the head, twice in the neck and twice in his cheek. On July 14, 2004, Martin gave descriptions of Dupree and Smith to the police, and several days later identified Dupree and Smith from photo arrays as the men who had entered the Robbins apartment with guns on the night of July 6.

¶ 10 Martin's version of events was corroborated by Massey who testified pursuant to a plea agreement with the State. Massey testified that, on July 6, 2004, he agreed to pick Dupree up at the apartment in Robbins. At the apartment, Dupree and Smith repeatedly asked Martin where he kept the drugs and money, and then they ransacked the unit. Massey testified that Dupree was receiving cellular calls and Massey asked him what was going on. Dupree told him that the defendant had "set up a lick," which meant an armed robbery.

¶ 11 Massey testified consistently with Martin regarding the several hours of torture, including the attempted paint-and-fire attack, and the sexual assaults that Dupree and Smith inflicted upon Martin and Taylor. He stated that, eventually, Smith went downstairs to meet Jernigan while

Dupree talked on his cell phone. Shortly after this phone conversation, Dupree ordered Massey to back his car into the driveway and open his trunk, which he did. Dupree forced Jernigan into the trunk and forced Young to lay on the armrest between the front seats of the vehicle. Dupree then went upstairs to the apartment, and Massey heard gunshots.

¶ 12 Massey further testified that they left the scene in his Buick and got on the expressway. After exiting the expressway, Dupree told Young that he was being released, but then he shot Young several times. Massey testified that he saw Dupree talking on his cell phone as they drove around, but that he did not know to whom Dupree was speaking.

¶ 13 Several days after the events of July 6 and 7, Massey called Dupree and inquired what it was that had just occurred, to which Dupree responded that it was something his cousin "Little D" had "going on." Dupree later contacted Massey and reported that the police had Little D in custody, and that if Massey "said something" Dupree would have to "whack him."

¶ 14 Jernigan's mother, Sheryl Parks, testified that on July 6, 2004, she received a phone call from Jernigan's downstairs neighbor informing her that people had been shot in the apartment. Parks went to Jernigan's apartment, but was relieved to find out that Jernigan was not there. Shortly thereafter, she received a phone call from the defendant, who asked for $10,000 in exchange for Jernigan's life. Parks testified that the defendant told her that he was the only one who could bring the ransom money to the kidnappers. When Parks inquired how the defendant could be sure Jernigan would not be killed while bringing the ransom, the defendant gave no response. Parks then asked the defendant how she could ensure that nothing would happen to Jernigan, and the defendant told her that Jernigan would be "beat up bad" but would not be killed. The next day, Parks received another call from the defendant, who told her that Jernigan was dead.

¶ 15 Raymond Lee, a close friend of Jernigan's, testified to also having received cellular calls on the night of July 6, 2004, from kidnappers demanding money and cocaine from him in exchange for Jernigan's release. At one point, Jernigan himself got on the phone to convince Lee the callers were serious and that they had already shot Young. Another friend of Jernigan's, Steve Watson, testified that he also spoke with one of the kidnappers and had attempted to arrange a "drop" of the drugs and money that the kidnappers had demanded. Watson testified that the caller instructed him to give the ransom money to "Little D." Lee and Watson later went to the police department in Robbins.

¶ 16 Glenda Young testified that, in July of 2004, she was 17 years old and was the defendant's girlfriend. Glenda testified that the defendant was known as Little D and sold crack cocaine for a living. On July 6, she was sitting with the defendant and others on a front porch, when the defendant received a cell phone call. He walked away while on the call and was gone for over one hour. Glenda testified that, after the defendant returned, she drove away with him in his pink Cadillac. While they were driving, the defendant was talking on his cell phone, and Glenda heard him tell the caller to "kill that bitch and that nigger." The defendant put the phone to Glenda's ear, and she heard Taylor screaming and begging for her life. Glenda testified that she knew Taylor well because she and the defendant had formerly resided with Taylor and Martin.

¶ 17 Glenda and the defendant then stopped at a restaurant, after which they returned to the defendant's home and went to his basement, where the defendant received more cell phone calls. At one point, Glenda heard the defendant relate what he had been told in an earlier call, to "be patient," that "he'll be here in 45 minutes to an hour." The defendant placed one of the calls on the cell phone speaker, and Glenda heard him ask for Jernigan, with whom she was acquainted.

She testified that she then heard the defendant speak with Jernigan, telling Jernigan that he did not know what he was going to do next. She also testified that, at one point, she saw the name "Jack" appear on the defendant's incoming caller identification and that "Jack" was Dupree's nickname.

¶ 18 On cross-examination, Glenda admitted testifying in her deposition of March 15, 2007, nearly five years prior to trial, that when she left the front porch, she went directly to the defendant's basement to lie down for a minute, and that she was there for over one hour. Glenda testified that this statement in her deposition was not true, and explained that, at that time, she did not "feel like being bothered" to relate the whole story to the police and State's attorney. Glenda further stated that she had been told by the defendant to "make things up" to tell the defendant's attorney.

¶ 19 The State presented phone records establishing the ongoing communications between the co-defendants and others, including Parks, throughout the events of July 6 and 7. The parties stipulated to subscriber information for the cell phones that were used; in particular, that one of the phones was registered to the defendant, and another to Fransine Wells, Dupree's roommate and girlfriend. According to Niki Skovran, an expert in historical cell site analysis, a cell phone to which the defendant subscribed had interacted with the phone registered to Wells at various times on July 6 and July 7, 2004, and had connected through a cellular tower located near the Robbins apartment. Skovran also provided detailed testimony as to the locations of the cellular towers through which calls were placed during the kidnapping, reflecting the movement of the defendants and Jernigan as they drove around.

¶ 20 Megan Misura, a cell phone analyst employed by Chicago's High Intensity Drug Trafficking Area, used charts which detailed the date, time, and duration of each call made

during the events of July 6 and 7, together with the number dialed and the phone subscriber, to link each call to the co-defendants themselves or to subscribers with whom they were associated. Most of this data was derived from the business records of cellular providers and was admitted pursuant to a stipulation between the parties.

¶ 21 Other evidence submitted at trial included: the electrical cords, blood evidence; paint from Taylor's body; spent shell casings, projectiles, fired bullets, bullet fragments, copper-jacketed bullets and other ballistic evidence collected from the scenes and during the victims' autopsies; a 9 millimeter pistol; and a newspaper covering the crime retrieved from the defendant's home. Chicago Police Detective Brian Quinn testified that he recovered a 9 millimeter semi-automatic luger pistol after a passenger in a car which he was pursuing discarded it near 4111 West End Street. Firearms testing later proved that this weapon was used in the shootings in this case.

¶ 22 Following arguments, the jury convicted the defendant of three counts of murder and one count of attempted murder, and he was sentenced to life imprisonment with an additional 30-year consecutive prison term. His post-trial motions were denied, and this appeal followed.

¶ 23 The defendant's initial assignments of error involve various alleged improprieties which he claims prejudiced the jury and deprived him of a fair trial. First, he contends that the jury was presumptively prejudiced when one of the jurors communicated with a family member of one of the victims of the offense.

¶ 24 After opening statements, defense counsel notified the trial court that co-defendant Dupree's mother, Linda Anders, believed she had observed one of the jurors speaking with a "possible" family member of one of the victims as they entered the courtroom. When the court questioned Anders under oath about the alleged encounter, Anders described the juror as a white

woman with "long, black, silky hair" and stated that she was talking to one of the victim's family members for three to five minutes. However, despite the fact that the family members were present in the courtroom, Anders was unable to identify the specific family member at issue until pressed to do so by the court, at which point she apparently identified Rona Parks. Anders then stated that this alleged family member "might not have been talking to anybody."

¶ 25 The trial court next questioned Rona Parks, who denied that the "white" woman to whom she had been speaking was a juror. Parks pointed the woman out for the court, and she was then identified by the prosecutor as a representative from the victim witness unit of the State's attorney's office. The court denied a defense request to individually *voir dire* the woman, concluding that there was "nothing to" Anders's report. The defendant now asserts that the court erred in failing to conduct a further inquiry into potential prejudice against the defendant resulting from the alleged communication, with the burden on the State to prove that no prejudice occurred.

¶ 26 In response, the State initially asserts that the defendant forfeited this issue by failing to specifically articulate it in his post-trial motion. The supreme court has emphasized that, in order to preserve an issue for review, it is necessary both to object to the matter at trial and specifically raise it in a post-trial motion. See *People v. Burrows*, 148 Ill. 2d 196, 251 (1992). Regardless of the forfeiture, however, we find the argument to be without merit.

¶ 27 Communications with a juror about a matter pending before the jury are considered presumptively prejudicial to a defendant's right to a fair trial (*People v. Hobley,* 182 Ill. 2d 404, 460 (1998)), although this presumption may be rebutted by the State upon a showing that the juror contact or communication was harmless to the defendant. *Id*. In determining whether prejudice resulted from such contact, the trial court is necessarily vested with substantial

discretion. *People v. Harris*, 123 Ill. 2d 113, 132 (1988); *People v. Ward*, 371 Ill. App. 3d 382, 398-99 (2007). Further, the trial court is entitled to broad discretion in arriving at the proper means to investigate the alleged third-party juror contact, including evaluating the need for further inquiry or for a hearing regarding any alleged harm to the defendant. *Ward*, 371 Ill. App. 3d at 398-99, quoting *United States v. Chiantese*, 582 F.2d 974, 980 (5th Cir. 1978) (trial court is in far better position to judge mood at trial and the predilections of the jury). The individual questioning of a juror regarding alleged misconduct is generally warranted only where there has been a strong indication of bias or irregularity. *People v. Runge*, 234 Ill. 2d 68, 103-04 (2009). A court abuses its discretion only when it acts arbitrarily, exceeds the bounds of reason and ignores recognized principles of law so that no reasonable person would take the view adopted by that court. *Ward*, 371 Ill. App. 3d at 398-99 (quoting *People v. Rojas*, 359 Ill. App. 3d 392, 401 (2005)).

¶ 28 Here, we find no abuse of discretion in the manner in which the trial court resolved the alleged third-party communication. After thoroughly questioning Anders about what she had observed, the court questioned Parks and determined that the woman to whom she was speaking was not actually a juror but a victim-witness counselor. The court then asked the jury as a whole if they had conversed with anyone about the case and, apparently satisfied that they had not, proceeded to admonish them for a second time that they were barred from doing so. These facts support the court's conclusion that there was no basis for Anders's claim, and obviated any need for further inquiry.

¶ 29 The defendant next argues that the court committed reversible error by refusing to *voir dire* jurors regarding their views on drug use and sales, sexual abuse, and about their own

individual criminal histories. He maintains that the court deprived him of any opportunity to learn of potential juror biases in these areas. We disagree.

¶ 30 Under Supreme Court Rule 431(a) (eff. July 1, 2012), the court must *voir dire* prospective jurors with appropriate questions touching upon their qualifications to serve as jurors in the case before the court. The court may then permit the parties to submit additional questions for further inquiry if it finds them appropriate, and must "permit the parties to supplement the examination by such direct inquiry as the court deems proper for a reasonable period of time depending upon the length of examination by the court, the complexity of the case, and the nature of the charges."

¶ 31 The defendant provides no citation to the record wherein the trial court refused to ask, or denied a request by the defendant to ask, jurors about sexual assault or abuse or about their individual criminal histories. Our review of the record reveals that no such request ever was made. With regard to the jurors' perceptions about drugs, the defendant initially inquired whether the court would propose questions about drug use or sales, or whether this should be done by counsel. The court responded unequivocally that the defense would be permitted to inquire about jurors' possible biases in this area. Thus, this contention fails.

¶ 32 We note that the court rejected a defense request to *voir dire* jurors concerning the prior convictions of *witnesses,* including the defendant should he decide to testify, and whether this fact would automatically cause the juror to disbelieve the testimony of these witnesses. However, in denying the defendant's request, the court pointed out that the jury would be provided instructions as to the witness' prior convictions and the restricted probative effect. The defendant does not challenge this decision, and we find no abuse of discretion in it. See *People v. Anderson,* 407 Ill. App. 3d 662, 680 (2011).

¶ 33 The defendant argues that the jury was never properly admonished to avoid media coverage of the alleged occurrence. A review of the record belies this assertion. Prior to opening statements, the court did in fact thoroughly advise the jury to refrain from listening to or reading news accounts of the proceedings throughout the duration of the trial, and explained to the jury the rationale underlying its admonishment. Thus, the defendant's contention is without merit.

¶ 34 Next, the defendant argues that the trial court erred in permitting simultaneous jury trials of the defendant and his co-defendants and also in allowing them to be seated next to each other throughout the trial. In particular, he asserts that this created an association in the minds of the jurors between the three defendants, when he was not present during the commission of the offense and had "different involvement" in it.

¶ 35 We point out here that, as with several of his other contentions on appeal, the defendant's argument on this point is devoid of a single citation to the record or any legal authority. Contrary to the assertion in the defendant's reply brief, it is axiomatic that Supreme Court Rule 341(h)(7) (eff. February 6, 2013) requires appellants to support each assignment of error with citations to the record and relevant case law, or they may be deemed forfeited (argument "shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on"); see, e.g., *People v. Ward*, 215 Ill. 2d 317, 332 (2005); *People v. Nieves*, 192 Ill. 2d 487, 503 (2000); *People v. Hernandez*, 2012 IL App (1st) 092841 ¶ 98. Supreme Court Rules are mandatory and not mere suggestions. *People v. Houston*, 226 Ill. 2d 135, 152 (2007). A reviewing court is entitled to have the issues before it clearly defined, and is not simply a repository into which appellants may dump the burden of argument and research. *People v. Chatman*, 357 Ill. App. 3d 695, 703 (2005); *Pecora v. Szabo*, 109 Ill. App. 3d 824, 826

(1982). Further, a reviewing court should not search the record in support of grounds on which to base a reversal. *People v. Hughes*, 2013 IL App (1st) 110237 ¶¶ 63, 64; *People v. Hawkins*, 163 Ill. App. 3d 939, 942 (1987). An appellant's failure to properly present his own argument or to otherwise fail to comply with Rule 341(h) may result in that argument being forfeited. *Chatman*, 357 Ill. App. 3d at 703.

¶ 36 Forfeiture aside, we agree with the State that the defendant has failed to identify any specific prejudice resulting from the manner in which his trial was conducted. An accused does not have a right to be tried separately from his companions when the charged offenses arose from a common occurrence. *People v. Ruiz*, 94 Ill. 2d 245, 257 (1982); *People v. Leak*, 398 Ill. App. 3d 798, 829 (2010). It is constitutionally permissible for the court to conduct simultaneous jury trials before two juries in the same courtroom (*Leak*, 398 Ill. App. 3d at 829), and the determination of whether a severance or separate trials should be granted is largely a matter of trial court discretion (*Ruiz*, 94 Ill. 2d at 257). Simultaneous trials are permissible "so long as the defendant is given every opportunity to present a complete defense to his own jury, there is no event which confused the jury or affected its ability to render a fair decision, and the record shows that the jurors were adequately prepared for the procedure." *Leak*, 398 Ill. App. 3d at 829-30, citing *People v. Negron*, 220 Ill. App. 3d 754, 766–67 (1991). "The primary question to be considered is whether the defenses of the several defendants are so antagonistic that any or all of them could not receive a fair trial unless severance is granted." *Ruiz*, 94 Ill. 2d at 257.

¶ 37 In this case, there is no indication that the defendant was inhibited in his defense or in presenting his theory of the case. The charges against each of the three defendants arose from a common occurrence, the preplanned robbery of drugs and money from Jernigan's apartment which lead to the shooting of the victims. The defendant's theory was not to deny that the

alleged offenses occurred, or even that he had been speaking on his cell phone to his co-defendants on July 6 and 7. Instead, he attempted to argue that he and his co-defendants were communicating solely about their drug business and ongoing drug transactions. We do not find this defense to be particularly inconsistent with or antagonistic to those of his co-defendants, especially where it was not necessary to their cases to identify the defendant as a caller or ringleader in the offense. Further, the court admonished the jury not to attach significance to the fact that the defendants were being tried together or were sitting together, but that this was a matter of "logistics." Accordingly, there was no abuse of discretion in allowing simultaneous trials, or permitting the defendant's to sit together. See *Leak*, 398 Ill. App. 3d at 830.

¶ 38 The defendant also argues that he suffered prejudice when the court allowed hearsay testimony and an inflammatory photograph into evidence. We decline to address the assertions regarding the alleged hearsay statements, as the defendant fails to specify his allegation of error or cite to any case law in support thereof. With regard to the inflammatory photograph, the defendant essentially reasserts this argument in the context of his ineffective assistance claim, and we include it in our consideration of that point.

¶ 39 The defendant next asserts that the State failed to prove him guilty of murder and attempted murder beyond a reasonable doubt, because the collective testimony of the State's primary witnesses, Martin, Massey, and Glenda Young, is unreliable and so riddled with inconsistency that it fails to satisfy the State's burden of proof. We disagree.

¶ 40 When reviewing challenges to the sufficiency of the evidence, this court must determine whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime for which the defendant was convicted beyond a reasonable doubt. *People v. Ross*, 229 Ill. 2d 255, 272 (2008); *Leak*, 398 Ill. App. 3d at

818. We will not set aside a criminal conviction unless the evidence is so unreasonable, improbable, or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *Leak,* 398 Ill. App. 3d at 815. Furthermore, it is not this court's role to reweigh the evidence or retry the defendant. Rather, it is the responsibility of the trier of fact to resolve inconsistencies in the evidence, ascertain the credibility of the witnesses, and determine the weight to be given to their testimony. *Id.* at 818.

¶ 41 First, the defendant contests Martin's testimony that he was able to overhear and identify the defendant's voice coming through Dupree's cell phone and his having told Dupree to kill Martin, while Martin was kneeling on the floor in front of Dupree. According to the defendant, this account is especially suspicious where, by that point, Martin had been beaten and covered with gasoline and lighter fluid, and also admitted having smoked crack cocaine the previous night.

¶ 42 We do not find that these circumstances so discredit Martin's testimony as to warrant our interference with the jury's determination. The jury was well aware of the facts surrounding Martin's identification of the defendant as the caller, and was free to accept or reject any part of it as the jury found appropriate. See *Leak,* 398 Ill. App. 3d at 818. Martin was kneeling in very close proximity to Dupree at the time the call came in and he unequivocally identified the caller as Little D (the defendant), his former roommate. Further, Martin was able to recount specifically what the defendant said in the call, and the validity of what he recounted was corroborated by other evidence that the defendant ordered Dupree to kill Martin and Taylor.

¶ 43 With regard to Glenda Young, the defendant argues that her testimony was unreliable because she admitted to drinking on the day of the offense; was only 17 years old at the time of the occurrence; and admitted to misstatements in her deposition of March 15, 2007. As to the

misstatements, the defendant appears to be referring to Glenda's admission that, in her deposition, she stated that she went directly to the defendant's basement to lay down for over an hour instead of driving with the defendant, going to a restaurant, and then returning to his basement where she overheard his statements on his cell phone.

¶ 44 Again, these contentions affect only the weight to be given to Glenda's testimony and provide no basis for reversal. A review of the record indicates that, at the time of trial, Glenda was 24 years of age and testified with sufficient consistency. Further, the misstatement in her deposition was relatively minor when viewed in the context of her entire testimony and the corroborating evidence at trial. For example, the fact that the defendant had been speaking by cell phone with Dupree was established by cellular records, and Glenda's trial testimony regarding the defendant's instruction to "kill that bitch and that nigger" was corroborated by Martin, who heard the defendant telling Dupree to kill him. Finally, Glenda was subjected to careful cross-examination by defense counsel regarding the alleged misstatement, and she explained that she had been instructed by the defendant to concoct information in his defense. For these reasons, the prior inconsistency alone is insufficient to warrant reversal on appeal. See *People v. Cosme*, 247 Ill. App. 3d 420, 428 (1993).

¶ 45 The defendant also asserts that Massey's testimony should be subject to scrutiny because he was an accomplice to the crime and was testifying pursuant to a plea agreement with the State.

¶ 46 Testimony against the accused by an accomplice, particularly if uncorroborated, is subject to inherent weaknesses and should be closely scrutinized on appeal. *People v. Rouse*, 2014 IL App (1st) 121462, ¶ 43 (citing *People v. Holmes*, 141 Ill. 2d 204, 242 (1990)). However, whether corroborated or not, such testimony is sufficient to sustain a criminal conviction if it

convinces the jury of the defendant's guilt beyond a reasonable doubt. *Holmes*, 141 Ill. 2d at 242; *People v. Young*, 128 Ill. 2d 1, 48 (1989). Further, these inherent weaknesses affect matters of the witness' credibility and the weight to be given his testimony, matters peculiarly within the province of the trier of fact, in this case the jury. *Holmes*, 141 Ill. 2d at 242. Finally, material corroboration of an accomplice's testimony is entitled to great weight on appeal. *Id.* (citing *People v. Baker* 16 Ill. 2d 364, 370 (1959)).

¶ 47 Even apart from Massey's corroborative testimony, the evidence in this case was more than sufficient to sustain the defendant's convictions. Statements by Dupree, the testimony of Glenda, Martin, Parks and others, as well as cellular phone evidence and expert testimony, proved that the defendant originated the plan to go to Jernigan's residence and rob him, that he was kept informed about the offense as it unfolded, that he issued orders to kill Martin and Taylor, and that he was, at the very least, a participant in the ransom demand for Jernigan. There is no basis to disturb his conviction based upon his assertions as to issues of credibility which, viewed in context, were either unsubstantiated, subjected to sufficient cross-examination or relatively minor.

¶ 48 Next, the defendant argues that he was denied a fair trial because various errors and omissions by his attorney amounted to ineffective assistance of counsel. Specifically, he contends that his counsel failed to object to damaging leading questions and to highly prejudicial exhibits and failed to cross-examine important State witnesses.

¶ 49 When asserting a claim of ineffective assistance of trial counsel, the defendant bears the burden of demonstrating *both* that counsel's performance was deficient and that this deficiency substantially prejudiced him. (Emphasis added.) *Strickland v. Washington*, 466 U.S. 668 (1984); *People v. Enis*, 194 Ill. 2d 361, 376 (2000). A "deficient performance" means that counsel's

representation fell below an objective standard of reasonableness (see *People v. Enoch*, 122 Ill. 2d 176, 202 (1988)), whereas a showing of prejudice is made where the defendant proves there is a reasonable probability that, but for his trial counsel's unprofessional errors, the result of the proceedings would have been different. *Id*. A "reasonable probability" is one sufficient to undermine confidence in the outcome. See *Enis*, 194 Ill. 2d at 376; see also *People v. Sanchez*, 169 Ill. 2d 472, 487 (1996).

¶ 50 In this case, the defendant has failed to establish how his counsel's performance was deficient. Again, we are compelled to note that several of his claims as to his counsel's alleged deficiencies come in the form of conclusory assertions, unsubstantiated by any real argument or relevant supporting authority. As stated above, it is not this court's function to search the record and make the defendant's arguments for him. See *Chatman*, 357 Ill. App. 3d at 703. Accordingly, we do not consider these assertions.

¶ 51 In addition, the defendant argues that his counsel failed to object to the introduction of 43 photographs, 41 of the apartment building, the crime scene, automobiles, and other materials, and 2 apparently of the victims, which he claims were duplicative and intended solely to provoke emotion from the jury, gratuitously bloody, or arranged in such a way as to "associate [the defendant's] image with those of the victims." However, as not one of these photographs was included in the record on appeal, this court is unable to determine their sequence, content, or alleged prejudicial effect. Accordingly, we are unable to conduct any type of meaningful review of this issue.

¶ 52 Next, the defendant argues that the circuit court erred in denying his motion to dismiss the indictment against him, because it was premised upon a statement or statements by Glenda Young that proved to be untrue. The indictment was based upon the August 31, 2004, testimony

of investigating Officer Deon Kimble. The defendant now appears to argue that this testimony was perjured, because Officer Kimble relied in part upon misstatements of Young that both Kimble and the State knew to be false. The State contends that this issue was forfeited for the defendant's failure to raise it in any one of his four pretrial attempts to dismiss the indictment, or in his post-trial motion. We agree.

¶ 53 As stated above, in order to preserve this court's review of an issue, the issue must first have been placed before the trial court. Therefore, it is necessary both to specifically object to the matter at trial and to raise it in a post-trial motion. See *Burrows*, 148 Ill. 2d at 251; *People v. Shelton*, 401 Ill. App. 3d 564, 573 (2010). As this was not done here, we decline to reach the issue. See *People v. Rivera*, 176 Ill. App. 3d 781, 790 (1988).

¶ 54 The defendant argues that the court violated his due process rights and the rules of discovery by allowing testimony at trial referencing his pink Cadillac, which the State permitted to be destroyed without first being produced to the defendant for investigation.

¶ 55 On September 9, 2004, the defendant filed a motion for discovery pursuant to Illinois Supreme Court Rule 412(a)(v) (eff. March 1, 2001), seeking, in relevant part, any tangible objects the State intended to use at trial which were obtained from, or belong to, any of the defendants. On July 2, 2007, the defendant requested that the State give him access to the Cadillac and produce all materials regarding the confiscation and movement of the vehicle. On August 15, 2007, however, the State informed the defendant that the vehicle inadvertently had been sold to a scrap processor on September 8, 2004, which was just prior to the defendant's initial discovery request, and was crushed for scrap metal within two days of that sale. Thereafter, on January 13, 2012, the defendant moved *in limine* to bar all evidence and testimony of any alleged activities by the defendant occurring within the Cadillac. The defendant argued

that it was his position that the vehicle was inoperable at the time of the offense and that it could not have been driven or used in connection with the offense. The defense later sent a subpoena to the scrap metal company for documents relating to the destruction of the vehicle.

¶ 56 We may consider a discovery violation either as a due-process claim (*Arizona v. Youngblood*, 488 U.S. 51, 58 (1988)), or under Illinois Supreme Court Rule 415(g)(i) (eff. Oct. 1, 1971). *People v. Stolberg*, 2014 IL App (2d) 130963, ¶ 25; *People v. Borys*, 2013 IL App (1st) 111629, ¶ 17. We review the due process contention first.

¶ 57 The State's failure to preserve evidentiary material does not automatically constitute a violation of the defendant's due process rights. *Illinois v. Fisher*, 540 U.S. 544, 547-8 (2004); *People v. Sutherland*, 223 Ill. 2d 187 (2006). Rather, the analysis centers upon a consideration of the degree of negligence or bad faith on the part of the State in discarding the evidence, balanced against the importance of the lost evidence relative to other proof against the defendant at trial. *Sutherland*, 223 Ill. 2d at 236-37. While lost evidence that is material and exculpatory to the defendant or essential to the outcome of the case may be a violation of his due process rights (see, *e.g.*, *People v. Kizer*, 365 Ill. App. 3d 949 (2006), quoting *Youngblood*, 488 U.S. 5), it is clear that the failure to preserve evidence that is merely "potentially useful" or of some conceivable evidentiary significance will not violate due process *unless the defendant can show bad faith on the part of the police*. (Emphasis in original.) *Fisher*, 540 U.S. at 547-48; *Sutherland*, 223 Ill. 2d at 236-27.

¶ 58 In this case, the defendant essentially concedes, as he did below, that it is difficult to prove bad faith on the part of the State. Instead, his argument centers on the assertion that the Cadillac contained "potentially exculpatory evidence that would obliterate [the State's] already weak link" between him and the offense. The defendant also posits that his inability to

investigate the vehicle inhibited him from conducting an effective cross-examination of Glenda Young.

¶ 59 Under the above analysis, however, the speculative assertion that the lost vehicle may have produced potentially exculpatory evidence is insufficient, particularly in the absence of any bad faith by the authorities. We note initially that there is no suggestion that any of the victims or co-defendants were in or near the vehicle at any time during the offense. In fact, at the hearing on the defendant's motion *in limine*, the State argued, and the defendant acknowledged, that the Cadillac was not a crucial piece of evidence in the case against the defendant. Also, the State argued below that the vehicle was found to be devoid of any forensic evidence.

¶ 60 The most substantial reference to the Cadillac at trial occurred during Glenda's testimony, in which she stated that she and the defendant were riding in the vehicle when the defendant gave the order to kill Martin and Taylor. In his motion *in limine*, the defendant argued that it was his theory that the vehicle was inoperable at the time of the offense, and that this fact would have undermined Glenda's testimony that she and the defendant were riding in it. However, as noted by the trial court, Glenda was subject to cross-examination on this point, and in fact acknowledged that the Cadillac did not run well. Other witnesses corroborated this fact. For these reasons, combined with the overwhelming evidence of the defendant's guilt, we reject the defendant's argument that he was denied due process by the State's destruction of the vehicle.

¶ 61 We similarly reject the claim that the State should have been sanctioned for its destruction of the Cadillac. Rule 415(g) provides for the exclusion of evidence if such evidence is the product of a discovery violation. It is well established, however, that sanctions are intended to accomplish the purpose of discovery and not to punish the offending party. *People v. Scott*, 339 Ill. App. 3d 565, 572 (2003). The standard of review for a ruling on a discovery sanction is

whether the trial court abused its discretion. *Stolberg*, 2014 IL App (2d) 130963, ¶ 31; *People v. Mullen*, 313 Ill. App. 3d 718, 736 (2000).

¶ 62 We find no abuse of discretion in the court's refusal to exclude any reference to the vehicle or otherwise sanction the State. As stated above, Glenda was subject to cross-examination regarding her testimony that she and the defendant were driving in the car at one point during the offense. Beyond this, the defendant fails to point to any potentially exculpatory evidence which could have been obtained from the vehicle.

¶ 63 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 64 Affirmed.