2015 IL App (1st) 131428-U

FIRST DIVISION
March 30, 2015

No. 1-13-1428

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 19638
	)	
MIGUEL JUAREZ,	)	Honorable
	)	Noreen Valeria Love,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court
Presiding Justice Delort and Justice Cunningham concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction and sentence is affirmed where he knowingly and voluntarily waived his right to counsel and proceeded *pro se*, the trial court did not err in admitting or excluding evidence, and the evidence supported his conviction for home invasion beyond a reasonable doubt.

¶ 2 Defendant, Miguel Juarez, appeals his conviction after a jury trial of home invasion, aggravated battery and kidnapping, and his aggregate sentence of six years' imprisonment. On appeal, Defendant contends this court should reverse his convictions and remand for a new trial

where 1) his waiver of counsel was not knowing and voluntary as required by Illinois Supreme Court Rule 401(a) (eff. July 1, 1984); 2) the trial court erred in allowing the State to present other crimes evidence in the form of hundreds of telephone calls to the victim; 3) the State presented erroneous evidence that defendant coerced the victim to recant her earlier statement to police; and 4) he was denied his right to present a defense to the jury. Defendant also contends that the State failed to prove him guilty of home invasion beyond a reasonable doubt. For the following reasons, we affirm.

¶ 3 JURISDICTION

¶ 4 The trial court sentenced defendant on April 5, 2013. The trial court denied defendant's motion to reconsider sentence on May 3, 2013, and he filed a notice of appeal that same day. Accordingly, this court has jurisdiction pursuant to Article VI, section 6, of the Illinois Constitution and Illinois Supreme Court Rules 603 and 606, governing appeals from a final judgment of conviction in a criminal case entered below. Ill. Const. 1970, art. VI, §6; Ill. S. Ct. R. 603 (eff. Oct. 1, 2010); R. 606 (eff. Mar. 20, 2009).

¶ 5 BACKGROUND

¶ 6 Defendant was charged with home invasion, residential burglary, aggravated domestic battery, kidnapping and unlawful restraint, in connection with an incident that occurred on October 21, 2011. The State subsequently *nolle prossed* the residential burglary and unlawful restraint charges. Defendant was appointed a public defender to represent him. Prior to trial, his counsel ordered a clinical exam to determine whether defendant could understand his *Miranda* warnings. On March 7, 2012, a report was issued stating that defendant was capable of understanding the *Miranda* warnings. Also on this date, defendant informed the trial court the he "would like to demand a speedy trial" because he wanted to prove his innocence. The

trial court told defendant to let defense counsel "do his job" and gather the information he needs to best represent defendant against the State's case. Defendant, however, again stated, "I would like to demand a speedy trial, your Honor."

¶ 7 On April 25, 2012, defense counsel informed the trial court that defendant wished to proceed *pro se*, and asked the trial court to admonish defendant. The trial court questioned defendant about his decision, comprising approximately eight pages of record. The trial court informed defendant of each charge against him and the sentencing range for each. Defendant stated that he understood the nature of the charges and the minimum and maximum sentencing ranges for each charge. The trial court informed defendant that he has a right to counsel, and if he cannot afford an attorney, it would appoint one for him. The trial court then stated:

> "You're going to be required to conduct a trial. There are a lot of technical rules and issues that govern putting on a trial. I want you to understand that lawyers do have substantial experience and training in trial procedures. The prosecution is going to be representing the State. They are experienced attorneys, they understand the rules, they understand what the requirements are. A person who is unfamiliar with legal procedures may put the prosecution in a position that would be an advantage to them. You might fail to make objections when it's appropriate. You might allow inadmissible evidence to come in because you wouldn't know that that's something that should be kept out and that the Court should rule on. You may not be able to make effective usage of rights, such as in voir dire of the jurors, should you decide to go with a jury trial, you may not be able to make tactical decisions. And, unfortunately, there might be some unintended consequences regarding that.
>
> You also have to understand that if you're allowed to go pro se and you should be

> convicted of one or more of these charges, and you decide to take an appeal, one of the things you can't allege is that there was ineffective assistance of counsel. You can't say, 'well, I didn't know what I was doing so I was not competent as an attorney and it should be reversed,' that you cannot do, do you understand that?"

Defendant answered, "Yes." After further admonishment, the trial court asked defendant again, "Do you wish to proceed pro se, that is to say, to represent yourself?" Defendant responded, "Yes, your Honor." The trial court granted the public defender leave to withdraw.

¶ 8 Discovery commenced and at a hearing on June 1, 2012, the trial court asked defendant how long he would need to "get to the law library" and determine whether he needed to file any motions prior to trial. Defendant answered, "Well, your Honor, actually, I have all the research I need." The trial court suggested continuing the case until June 26, and asked defendant if that date was too soon. Defendant answered, "Maybe too long. I really—I mean if it's okay for you, 2 weeks from now." Defendant then informed the trial court that he had a check stub to present which would be "proof of residence at the time from the incident." The trial court stated that the check stub was something that could be taken into consideration but "[t]his would not be the appropriate time for me to look at that." However, the trial court asked defendant to give the check stub to the attorney from the public defender's office to make copies for the State. Defendant complied and gave the check stub to the attorney.

¶ 9 At a hearing on June 12, 2012, the trial court asked defendant about his witnesses. The trial court noted that defendant listed two witnesses, Daisy Terrazas, and the victim, Vanessa Orozco. Defendant requested a jury trial, and the State offered August 27, 2012, as a tentative trial date. Defendant, however, did not agree. The trial court asked defendant if he was ready "at this time" to go to trial and defendant answered, "Yes, your Honor." The State then

suggested June 25, 2012, and when the trial court asked defendant "[a]re you agreeing to that date?" defendant responded, "By agreement." The matter was set for trial.

¶ 10 On June 25, 2012, the State presented motions to allow proof of other crimes pursuant to section 115-7.4 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-7.4 (West 2010)). One incident, which occurred two months prior to the incident alleged against defendant, involved the defendant outside of Orozco's apartment, banging on the door. The police arrived to remove defendant, but he returned about an hour later. Defendant was then arrested and charged with disobeying a police officer. The second incident involved a series of phone calls, beginning with a call at the Cicero police station immediately after defendant's arrest. Although told by the processing officer not to contact Orozco, defendant called a relative and, in Spanish, told him or her to call Orozco and tell her to drop the charges. The officer, who understood Spanish, immediately ended the call. From October 24, 2011 to February 8, 2012, defendant made 52 attempts to call Orozco but she did not pick up those calls. During that time, Orozco had an order of protection against defendant. Defendant also called a female cousin on November 16, 2011, and March 4, 2012. In the March call, he states that he spoke with Orozco "last Saturday" about her probation in connection with drug use, how she was going to help him with his case, and he apologized to her for his behavior in the incident. The State argued that after this contact, Orozco recanted her statement to police about the October 21, 2011, incident when she spoke with defendant's investigator. The trial court asked defendant, "So is there any argument that you want to make why I should not allow them to let all of this information in at trial?" Defendant responded, "No, your Honor. I have no problem to you granting his motion at all." The trial court granted the State's motion to allow the other crimes evidence. The next day, the State informed the trial court it had just learned that defendant attempted to contact

Orozco almost 700 times from jail, and that Orozco answered six of those calls. The State asked to supplement their previous motion to include the revised number of calls. When the trial court asked defendant whether he had any objection to the State's request, defendant answered, "No, your Honor."

¶ 11 At trial, Orozco testified that she and defendant dated from August or September of 2010 until October of 2011, although she had been trying to separate from him prior to October. She testified that on August 25, 2011, she was sleeping in her apartment when defendant banged on her back door and would not leave. She called the police and they told defendant he had to leave. Defendant, however, later returned and Orozco again called the police and they took defendant into custody.

¶ 12 Orozco testified that on October 21, 2011, she was in her apartment around 11 p.m. getting ready to meet some friends. When she opened the front door of her apartment, defendant was waiting in the hallway. He pushed her back into her apartment and she screamed and struggled to push him out. After he got her into her apartment, defendant closed the door and turned off the lights. Orozco continued to scream and defendant told her to "shut up" or he "would snap [her] neck." Defendant then covered her mouth and started to choke her by forcing two fingers onto her throat. He told Orozco that he would kill her, and he reached behind him as if he had a weapon. Orozco stopped screaming, and defendant said "look at you, you're dressed up ready to go out, have fun with your friends, and I'm here homeless, struggling." When asked whether defendant had been living with her, Orozco answered, "No."

¶ 13 Meanwhile, Orozco's friends arrived to pick her up, and they were calling her cell phone. Defendant turned off her cell phone and told Orozco he wanted to talk about their relationship. Orozco testified that she was very scared and just wanted to calm him down. She offered him

drugs to smoke, and she told him lies to get him to calm down. After talking for about an hour, Orozco suggested that they go to the store to get some alcohol and maybe to get more drugs. She testified that she wanted to be outside because she was scared. She could feel that her right cheek was swollen and warm. They walked to a nearby Walgreens and in the store, Orozco spoke with a security guard and asked to contact the police. When defendant saw her speaking with the security guard, he left.

¶ 14 Officer Carlos Vasquez of the Cicero police department arrived at the Walgreens. Orozco approached him, crying and distraught. He "noticed a bruise underneath her right eye" and "red markings on the front of her throat." In response to a dispatch call, Cicero police officer Joyce found defendant walking eastbound on Cermak. Orozco was brought to that location and she identified defendant as the person who forced her back into her apartment. Officer Vasquez stated that he did not notice whether defendant or Orozco was under the influence of drugs. After defendant's arrest, Orozco started receiving calls from jail "maybe three times a day." She also had a friend who was in jail so she answered a call thinking it was her friend, but it was defendant. Orozco testified that she did speak to defendant a few times. He wanted her to drop the charges and to say he was living with her. She also spoke with his cousin, Janet Salgado, who also talked to her about the case.

¶ 15 Defendant cross-examined Orozco about the statement she made to a private investigator on March 4, 2012. She acknowledged that she had changed her statement from the one she initially gave to police. She told the investigator that defendant was already inside her apartment when the incident occurred and he was with her the entire day. When defendant asked her why she changed her story she answered, "Because you asked me to." On re-direct examination, Orozco stated that she made the statement to the investigator after receiving over a

hundred calls from defendant in jail. She spoke to defendant "a couple times" and he asked her to change her story from what she had told the police. When the prosecutor asked Orozco, "What you told to the police right after the incident was true, correct?" Orozco answered, "Yes." On re-cross, defendant asked Orozco why she made the statement to the investigator and she responded, "Because you were threatening me" and "[y]ou were saying that because I'm on probation that I was going to get in trouble for it, I was going to get in trouble for doing drugs."

¶ 16 Detective Joseph Melone testified that he spoke with Orozco on October 22, 2011. He noticed that her right cheek was red and swollen and he took a photograph. He also took a picture of a black mark on the wall and an air freshener that had been knocked out of the wall, which Orozco said resulted from the struggle she had with defendant. Detective Melone also spoke with defendant at the police station that day. He read defendant his *Miranda* rights and defendant agreed to speak with him. Defendant told him that he was in love with Orozco and had been trying to contact her. He went to her apartment and waited for approximately an hour. When she opened the door, he forced his way inside. He knocked Orozco to the ground and put his hand over her mouth. After speaking with Detective Melone, defendant agreed to speak with an assistant state's attorney (ASA).

¶ 17 ASA Nicholas Kantas testified that he met with defendant and Detective Melone on October 22, 2011, at the Cicero police station. He read defendant his *Miranda* rights and defendant agreed to put his statement in writing. In summary, defendant stated:

> "He currently lives with his mother, Esperanza Juarez at 2046 West 18th Place, Chicago, Illinois. Vanessa Orozco was his girlfriend; they dated for about one year and broke up about one month ago. On October 21st he went to her apartment, and sat down on the steps and waited for her to come out. When Vanessa exited the apartment

defendant went up to her and grabbed her by both arms, and made her go back into her apartment. He stated that she started yelling for him to stop, but he pushed her into the apartment and shut the door and turned the lights off. Vanessa kept yelling, and she tried to leave. Defendant grabbed Vanessa by the shoulders and she fell to the ground, and he fell on her. Vanessa started screaming, so he covered her mouth to get her to stop. Defendant grabbed her neck, but he did not mean to. Defendant just wanted to talk about their relationship. When Vanessa calmed down, he got off of her. Vanessa had a phone call, and defendant took her phone and turned it off. Defendant put his hand by his waistband and pretended that he had a weapon. Vanessa took out some PCP and they went into the bathroom, and they smoked it. Vanessa told defendant that she wanted to leave the apartment to get some more drugs. They walked towards Walgreens. Vanessa walked inside the Walgreens to get something to drink, and then she asked the security guard to call the police and defendant walked out of the store."

¶ 18 After giving his statement, defendant was processed by Officer Michael Garcia. Officer Garcia allowed defendant to make a phone call, but he told defendant not to contact Orozco. In the presence of Officer Garcia, defendant called his brother and told him in Spanish to call Orozco and tell her to drop the charges. Officer Garcia immediately took the phone away from defendant. Although Officer Garcia understood what defendant said in Spanish, he could not repeat what defendant said in Spanish.

¶ 19 During the lunch break, outside the jury's presence, the State informed the trial court that the number of calls made was not 700 as previously reported, but instead 416. Of the 416 calls, 269 came from defendant's voice biometrics. The State acknowledged that the six completed

calls all occurred after Orozco's statement to the private investigator. Therefore, the State would not present those calls to the jury.

¶ 20 After the break, Kathleen Urbanczyk testified that she monitored and recorded phone calls made from Cook county jail. While in jail, defendant must go through a voice biometric system for identification in order to make phone calls. Urbanczyk testified that defendant made 416 calls from the time he was incarcerated to the date of trial. Defendant made 269 of the calls and the rest came from other inmates in his tier. Phone records reveal that 209 calls were made to Orozco prior to March 20, 2012, and Urbanczyk learned that date was significant because that was when Orozco gave her statement to the investigator. Although the records show one complete call, she was unable to locate that recording. Urbanczyk stated that inmates can get around the voice biometric system by making three-way calls from a cell phone.

¶ 21 Defendant informed the trial court that he wanted to call as a witness the investigator who took Orozco's statement. The trial court noted that the investigator was not under subpoena, and since Orozco already admitted that she made the statements to the investigator, it was not necessary to call him. After the State rested its case in chief, defendant asked to recall Orozco as a witness. Defendant, however, had not subpoenaed Orozco and she had already left the building. The trial court informed defendant that he had already cross-examined Orozco, but he wanted to "do [his] own investigation on her, why, you know, she's like saying one thing then the other."

¶ 22 Defendant testified in his defense. He stated that he and Orozco had an "altercation" over "drug use." He testified that PCP is "a very dangerous substance" and makes a person "hallucinate. It cuts off your bloodstream. You don't function right." He stated on October 21, 2011, he and Orozco had been doing drugs all day. Orozco wanted to go out, but defendant

didn't let her because she was on probation and he "worried about her." He testified that neither he nor Orozco was in the right state of mind when they spoke with police about the incident. He admitted calling Orozco from jail, but he never "threatened her or pressured her or intimidated her" to change her statement. On cross-examination, defendant stated that Detective Melone was yelling and cursing, and told him he could go home if he signed the papers. Whenever he tried to read the papers, Detective Melone would take them away. Defendant stated that he was "scared, dehydrated, high, hungry."

¶ 23 Defendant attempted to put the paycheck stub into evidence. The trial court explained that defendant could not present the evidence to the jury because it was hearsay. Although the trial court had copies of the paystub made for the State, it explained that it was merely following the rules of discovery. However, "[i]t doesn't mean that it makes it admissible just because you want to get it in." Defendant rested his case.

¶ 24 In rebuttal, Detective Melone testified that defendant was sober when he gave his statement on October 22, 2011. Furthermore, when defendant spoke four hours later to ASA Kantas, he was cooperative, coherent and logical. The State rested in rebuttal.

¶ 25 After deliberations, the jury found defendant guilty of home invasion, aggravated domestic battery, and kidnapping. A public defender was appointed for sentencing and posttrial motions. Defense counsel filed a motion for a new trial, alleging that (1) defendant's waiver of his right to counsel was not knowing or voluntary; (2) the trial court erred in admitting other crimes evidence; (3) the trial court erred in allowing the State to present evidence of defendant's phone calls made from jail; (4) defendant was denied his right to present a defense; and (5) the State did not prove defendant guilty beyond a reasonable doubt of the offense of home invasion. The trial court denied the motion, finding that defendant was properly admonished and

understood the consequences of his decision to go *pro se*, defendant had ample opportunity to cross-examine witnesses and present a defense, and his conviction for home invasion was supported by evidence beyond a reasonable doubt. After a hearing, the trial court sentenced defendant to six years' imprisonment for home invasion, and three years each for aggravated domestic battery and kidnapping, with the sentences to run concurrently. Defendant filed a motion to reconsider which the trial court denied. Defendant filed this timely appeal.

¶ 26 ANALYSIS

¶ 27 Defendant first contends that he was denied his right to counsel because he did not waive his right knowingly or voluntarily, as required by Rule 401(a). Defendant acknowledges that he did not preserve this issue for review. However, the right to counsel is a fundamental right and this court may consider whether defendant's waiver of his right was plain error. *People v. Ogurek*, 356 Ill. App. 3d 429, 433 (2005). First we must determine whether any error occurred. *People v. Thompson*, 238 Ill. 2d 598, 613 (2010).

¶ 28 A defendant has a constitutional right to represent himself, but in order to proceed *pro se* he must knowingly relinquish his right to counsel. *People v. Baez*, 241 Ill. 2d 44, 115-16 (2011). His "waiver of counsel must be clear and unequivocal, not ambiguous." *Id*. at 116. A defendant waives his right to counsel voluntarily and knowingly if he understands the nature of the right being relinquished and the consequences of waiving that right. *People v. Kidd*, 178 Ill. 2d 92, 104-05 (1997). Rule 401(a) requires, at the very least, that defendant is apprised of the nature of the charges against him, the corresponding maximum and minimum sentences, and that he has the right to have counsel appointed if he is indigent. Ill. S. Ct. R. 401(a) (eff. July 1, 1984). Even if the trial court's admonishment include an incorrect statement of the charge or sentence, defendant's waiver of his right to counsel can be found to be knowing and voluntary

where the error did not play a part in his decision to proceed *pro se*. *Id*. at 114-15. The trial court's determination of whether defendant has knowingly waived his right to counsel is reviewed for abuse of discretion. *Baez*, 241 Ill. 2d at 116.

¶ 29 The record shows that defendant knowingly and voluntarily waived his right to counsel. At the hearing on April 25, 2012, defense counsel informed the trial court that defendant wished to proceed *pro se*. The trial court admonished defendant and its questioning comprised eight pages of record. The trial court informed defendant of each charge against him and the sentencing range for each. Defendant stated that he understood the nature of the charges and the minimum and maximum sentencing ranges for each charge. The trial court also informed defendant of his right to counsel, and that if he could not afford an attorney, it would appoint one for him. The trial court further explained the complexities of conducting a trial, and that defendant's lack of legal experience could put him at a disadvantage in defending against the State's case. Defendant stated that he understood. After further admonishment, the trial court asked defendant again, "Do you wish to proceed pro se, that is to say, to represent yourself?" and defendant responded, "Yes, your Honor." Even if the trial court considers "defendant's decision to represent himself unwise, if his decision is freely, knowingly, and intelligently made, it must be accepted." *Id.*

¶ 30 Defendant disagrees, arguing that prior to the hearing his counsel did not obey all of defendant's requests for proceeding with the case, and counsel became "aggressive" and would not make eye contact with him. Defendant contends that counsel told him to proceed with his case *pro se* and he felt he had no choice. However, defendant acknowledges that he did not make his concerns about defense counsel known until he filed his posttrial motion. At no point at the hearing or during proceedings did defendant inform the trial court that he had issues with

defense counsel. The record shows that the trial court questioned defendant extensively about his decision to proceed *pro se*, and defendant stated he understood and affirmatively reiterated his wish to represent himself.

¶ 31 Furthermore, the record reveals another possible reason defendant wanted to proceed *pro se*: he wanted a speedy trial and was unsatisfied with the progression of his case with defense counsel. When defendant made his first demand, the trial court responded that he should give his counsel a chance to make his case. After the trial court subsequently granted defense counsel leave to withdraw, it attempted to schedule discovery and trial dates in order to give defendant time to build his case. Each time defendant believed that the suggested dates allowed for too much time. He stated that he wanted a speedy trial because he was innocent and wanted to prove his case. As evidenced in the record, defendant never hesitated to make known to the trial court what he wanted or his reasons for wanting it.

¶ 32 A knowing and intelligent waiver requires "a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." *People v. Lego*, 168 Ill. 2d 561, 565 (1995). In open court, defendant stated that he understood both prongs and during the proceedings he never indicated he had reservations about representing himself. The trial court did not abuse its discretion in permitting defendant to waive his right to counsel.

¶ 33 Defendant next contends that the trial court erred in allowing the State to present other crimes evidence, through the testimony of Kathleen Urbanczyk, that defendant allegedly made hundreds of calls to Orozco while he was in jail without weighing the prejudicial effect of the evidence against its probative value. He argues that the State used the improper evidence to bolster its argument that he coerced Orozco into changing her story when she spoke with the investigator. The admissibility of evidence at trial "is a matter within the sound discretion of

the trial court, and that court's decision may not be overturned on appeal absent a clear abuse of discretion." *People v. Illgen*, 145 Ill. 2d 353, 364 (1991).

¶ 34 We note that defendant forfeited this issue for review when he failed to object to the evidence at trial. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (to preserve an issue for review a party must object at trial and raise the issue in a posttrial motion). Furthermore, defendant agreed to the admission of the phone call evidence. At the hearing on the State's motion to admit the phone call evidence the trial court asked defendant, "So is there any argument that you want to make why I should not allow them to let all of this information in at trial?" Defendant responded, "No, your Honor. I have no problem to you granting his motion at all." A defendant who procures, invites, or acquiesces to the admission of evidence, even if the evidence is improper, cannot complain of the admission on appeal. *People v. Greenwood*, 2012 IL App (1st) 100566, ¶ 35.

¶ 35 Even on the merits we do not find defendant's argument persuasive. Although other crimes evidence is not admissible to show defendant's propensity to commit a crime, such evidence is admissible if it is relevant for any other purpose. *Illgen*, 145 Ill. 2d at 364-65. Evidence is relevant if it has any tendency to make the existence of any fact material to the determination of a case more or less probable. *Id*. at 365-66. However, even if the evidence is relevant the trial court must weigh its probative value against its prejudicial effect, and exclude the evidence if its prejudicial effect outweighs its probative value. *Id*. at 365.

¶ 36 Defendant contends that the trial court erred in failing to conduct the required balancing test, and he was denied a fair trial because the prejudicial effect of the evidence far outweighed its probative value. The trial court did find that the phone call evidence "is probative of the defendant's intent, motive," and allowed the evidence "so that the jury does have a clear

understanding of the defendant's actions with respect to his intent in this particular offense." The trial court made no mention of the prejudicial effect of the evidence and this omission was error. *People v. Boyd*, 366 Ill. App. 3d 84, 94 (2006). However, reversal is not required if the error did not prejudice defendant. *Id*. at 95.

¶ 37 Here, other admissible evidence supported the State's argument that defendant made phone calls to Orozco to intimidate her into changing her story. Orozco testified that defendant called her over one hundred times after he was arrested, and she spoke with him "a couple times." She stated that he asked her to change her story from what she had told police. Orozco testified that she made the false statement to the investigator after receiving the calls from defendant in jail. Officer Garcia testified that he allowed defendant to make a phone call, but told him not to contact Orozco. In the presence of Officer Garcia, defendant called his brother and told him in Spanish to call Orozco and tell her to drop the charges. Officer Garcia, who understood Spanish, immediately took the phone away from defendant. Defendant was not prejudiced by the admission of the phone call evidence.

¶ 38 Defendant also argues that he was prejudiced by the State's failure to disclose Urbanczyk as its expert witness sooner and having to file, as a *pro se* defendant, a "last minute, bulky motion" in response to the State's changing number of phone calls he allegedly made from jail. Defendant presents his "bulky motion" argument with little analysis and no citation to authority in violation of Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013) (argument "shall contain the contentions of appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on").

¶ 39 As to the failure to disclose Urbanczyk as a witness sooner, the State responds that defendant demanded a speedy trial which left the State little time to conduct discovery. The

State argues that it provided the information as soon as it became known and defendant had an opportunity to review the evidence prior to trial. The trial court has the discretion to allow a previously unlisted witness to testify, and a reviewing court will find no abuse of discretion unless the defendant suffers surprise or prejudice. *People v. Millan*, 47 Ill. App. 3d 296, 300 (1977). As discussed above, defendant was not prejudiced by the admission of this evidence. In addition, rather than request a continuance defendant elected to proceed to trial. When a discovery violation occurs and defendant chooses to go to trial, the claimed error, if any, is waived. *People v. Robinson*, 157 Ill. 2d 68, 78 (1993).

¶ 40 Defendant next contends that the State's closing argument referring to the phone calls as attempts to threaten Orozco was not based on the evidence and prejudiced him. Defendant waived review of this issue by failing to object to the comments at trial. *Enoch*, 122 Ill. 2d at 186. Nonetheless, a prosecutor has great latitude in closing argument and may comment on the evidence presented as well as any reasonable inferences arising therefrom, even if they are unfavorable to defendant. *People v. Hudson*, 157 Ill. 2d 401, 441 (1993). Although a prosecutor must not make improper or prejudicial arguments, such arguments do not constitute reversible error unless they result in substantial prejudice to defendant. *Id*. Defendant suffers substantial prejudice when "the improper remarks constituted a material factor" in his conviction. *People v. Wheeler*, 226 Ill. 2d 92, 123 (2007). Although the standard of review for closing arguments is currently unclear, our finding is the same under either an abuse of discretion or *de novo* standard. See *People v. Thompson*, 2013 IL App (1st) 113105, ¶¶ 76-77 (acknowledging standard of review conflict in our supreme court).

¶ 41 As discussed above, the trial court did not abuse its discretion in admitting the evidence. Defendant argues, however, that the evidence does not show that defendant spoke to Orozco

prior to her giving her statement to the investigator, since the only completed calls recorded occurred afterwards. We disagree. Orozco testified that defendant called her from jail and asked her to change her story. Urbanczyk testified that it was possible to make calls from jail, using three-way calling, that could not be identified by the system. Orozco also stated that she received calls from his family with the same request. Officer Garcia testified that when processing defendant after he had been taken into custody, he allowed defendant a phone call but told him not to contact Orozco. Defendant instead called his brother and, in Spanish, told him to call Orozco and tell her to drop the charges. The officer, who understood Spanish, immediately ended the call. We find the prosecutor's comments properly argued the evidence and reasonable inferences arising therefrom.

¶ 42 Furthermore, defendant has not shown that the comments constituted a material factor in his conviction. He gave a detailed confession to ASA Kantas after speaking with police, and his signed statement was admitted at trial and corroborated by the testimony of Orozco and Detective Melone. The jury clearly found Orozco a credible witness. "The testimony of one witness if positive and credible is sufficient to convict, even if contradicted by the accused." *People v. Williams,* 252 Ill. App. 3d 1050, 1060 (1993). In light of this overwhelming evidence, the result of defendant's trial would not have been different even absent the challenged remarks. See *People v. Evans,* 209 Ill. 2d 194, 220 (2004).

¶ 43 Defendant next argues that the trial court denied him his right to present a defense to the jury. Specifically, he points to his inability to call as defense witnesses Orozco, the defense investigator who took her statement, and Officer Carlos Vasquez, as well as the trial court's finding that the paystub was inadmissible as hearsay evidence. He contends that the trial court assured him he could present "his story" but when he attempted to do so, the State "bombarded"

him with objections. He essentially argues that because he was "unfamiliar with the legal process," his self-representation proved ineffective and he was therefore deprived of his right to a fair trial.

¶ 44 We initially note that defendant's argument and analysis on this issue contains little or no citation to authority in violation of Rule 341(h)(7). Nonetheless, whether to admit or exclude evidence in a trial is within the sound discretion of the trial court, and we will not overturn its ruling absent an abuse of discretion. *People v. Leak*, 398 Ill. App. 3d 798, 824 (2010). A claim that the trial court improperly limited discovery is similarly reviewed for abuse of discretion. *People v. Graham*, 406 Ill. App. 3d 1183, 1189 (2011). Here, defendant could not call the witnesses because he did not subpoena them and they had already left the building. The trial court determined that defendant was not prejudiced by his inability to call Orozco and Officer Vasquez because he had an opportunity to cross-examine them on the issues when they testified for the State. Also, defendant was not prejudiced by his inability to call the defense investigator as a witness because Orozco already admitted that she told the investigator defendant was with her in her apartment when the incident occurred. As to the paystub, defendant attempted to admit it as evidence to prove his residence at the time of the incident. However, since the document was offered as proof of a matter asserted in the document, it was hearsay and properly excluded. See *People v. Hammond*, 196 Ill. App. 3d 986, 994 (1990). Although the paystub may have been admitted under the business record exception to the hearsay rule, no adequate foundation was laid at trial for its admission as a business record. Defendant acknowledges that he was "unfamiliar with the legal process." However, *pro se* litigants are presumed to have full knowledge of the applicable rules and procedures, and must be in compliance with them as is required of litigants represented by attorneys. *People v.*

Steinbrecher v. Steinbrecher, 197 Ill. 2d 514, 528 (2001). The trial court did not abuse its discretion.

¶ 45 Defendant's final contention is that the State failed to prove him guilty of home invasion beyond a reasonable doubt. In a challenge to the sufficiency of the evidence, the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Jackson*, 232 Ill. 2d 246, 280 (2009). The trier of fact is responsible for determining the credibility of witnesses and the weight to be given their testimony, resolving any inconsistencies or conflicts in the evidence, and drawing reasonable inferences therefrom. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). A reviewing court will not overturn a conviction unless the evidence is so unreasonable, improbable, or unsatisfactory that it creates a reasonable doubt of defendant's guilt. *People v. Wheeler*, 226 Ill. 2d 92, 115 (2007). Defendant contends that the proper standard of review is *de novo* where he does not contest the facts and the issues involved are "purely legal." However, defendant questions the credibility of Orozco and the facts based on her testimony in his argument, rendering *de novo* review inappropriate here. *People v. McNeal*, 405 Ill. App. 3d 647, 677 (2010).

¶ 46 To prove defendant guilty of home invasion, the evidence must show that he, (1) without authority, knowingly entered the dwelling of another when he knew or had reason to know another was present; and (2) intentionally caused injury to any person in the dwelling. 720 ILCS 5/19-6(a)(2) (West 2010). Defendant contends that the State's evidence was insufficient because Orozco testified she had used drugs on the night of the incident, she gave conflicting testimony on whether defendant was already in her apartment with permission when the incident occurred, and other evidence (the paystub) indicated that he actually resided at the apartment.

¶ 47 As support, defendant cites *People v. Delacruz*, 352 Ill. App. 3d 801 (2004). In *Delacruz*, the victim gave conflicting testimony as to whether the defendant lived at the residence when he assaulted her, and there was uncontradicted evidence that the defendant had paid rent on the apartment and still had many personal possessions, including furniture, clothing, and tools, in the apartment. *Id*. at 810-11. Here, Orozco never wavered in her testimony that at the time of the incident, defendant did not reside in her apartment. No evidence was presented that defendant paid rent or that he had personal possession in Orozco's apartment. *Delacruz* does not support defendant's argument.

¶ 48 Defendant also argues that the State did not prove Orozco was injured in the incident beyond a reasonable doubt. Orozco testified that after the incident, her face felt swollen and warm, but she did not state that her face was bruised. However, Officer Vasquez testified that he saw a bruise hours after the incident and observed "red markings on the front of her throat," and Detective Melone testified that her cheek was red. Taking the evidence in the light most favorable to the prosecution, a rational trier of fact could have found Orozco injured beyond a reasonable doubt. See *People v. Woods*, 373 Ill. App. 3d 171, 178-79 (2007) (evidence of pain without evidence of visible harm such as lacerations, bruises, or abrasions, is sufficient to support injury element of the home invasion charge).

¶ 49 Furthermore, in arguing that the State's evidence was not sufficient to convict, defendant relies on the conclusion that Orozco's testimony, which contradicted defendant's testimony, was not credible. However, the fact finder may believe as much, or as little, of a witness's testimony as it sees fit. *People v. Tabb*, 374 Ill. App. 3d 680, 692 (2007). It is not obligated to accept the defendant's version of the events. *People v. Villarreal*, 198 Ill. 2d 209, 231 (2001). As discussed above, the jury found Orozco to be a credible witness and the evidence, including

defendant's own statement, supports a finding that defendant committed home invasion beyond a reasonable doubt.

¶ 50 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 51 Affirmed.