2016 IL App (1st) 141062-U

SIXTH DIVISION
Order filed: April 22, 2016

No. 1-14-1062

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 12 CR 19719
	)	
KENYADA ROBERTSON,	)	Honorable
	)	Thomas Byrne,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Rochford and Justice Delort concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's judgment is affirmed, where: (1) the State presented sufficient evidence to prove the defendant guilty of attempt first degree murder and armed robbery beyond a reasonable doubt; (2) the trial court did not abuse its discretion by permitting the State to elicit testimony explaining the course of a police investigation; (3) the prosecutor's remarks during closing arguments properly responded to the defense's theory of the case and reflected the evidence presented at trial; and (4) the defendant was not denied effective assistance of counsel.

¶ 2 Following a jury trial, the defendant, Kenyada Robertson, was convicted of attempt first degree murder, armed robbery, and aggravated battery. The trial court merged the aggravated battery conviction with the attempt first degree murder conviction and sentenced the defendant to

a total of 36 years' imprisonment. On appeal, the defendant argues: (1) the State failed to prove him guilty beyond a reasonable doubt; (2) the trial court erred by allowing the State to present "indirect hearsay" in violation of his rights under the confrontation clause; (3) he was deprived of his right to a fair trial when the State engaged in prosecutorial misconduct during closing argument; and (4) he received ineffective assistance of counsel. For the reasons that follow, we affirm the defendant's convictions.

¶ 3 The evidence adduced at trial may be summarized as follows. On August 6, 2012, shortly before 4 a.m., the victim, Theatric Bailey, was sitting in his vehicle with Delshaun Woulard. Bailey's vehicle was parked outside of Woulard's residence near 1500 West Garfield Boulevard in Chicago. Woulard testified that, as she was talking with Bailey, she noticed two men walk past the car and cross the street. One of the men, later identified as the defendant, proceeded to point a gun at a house or building. Although Woulard could not estimate the distance in which the defendant stood from the vehicle, she stated "it wasn't far" and that she got a good look at his face. Moments later, the defendant turned around and walked toward Bailey's vehicle. Woulard explained that this frightened her and she asked Bailey to "drive off." Bailey refused, saying that she was being "paranoid." When asked what happened next, Woulard testified that she leaned over to give Bailey a hug and the defendant entered the vehicle and sat in the back of the car. Woulard exited the car. She stated that as she was getting out of the car, she noticed the other man, who was also brandishing a gun, approach the front passenger side of Bailey's vehicle. Woulard heard the man ask, "where those bands," followed by the sound of two gun shots. Woulard ran home and called 911. Woulard testified that she spoke with the police at the scene of the shooting and told them what happened. She described the defendant as

a black male, with thin build, had dreadlocks, wore blue jeans, and was carrying a dark-colored revolver. She also testified that she told the police that the defendant had a tattoo.

¶ 4 During her testimony, Woulard acknowledged that that she asked the State to relocate her residence because she was concerned about her safety. She explained that the State agreed to pay for one month's rent, the security deposit, and relocation expenses to ensure her safety. Woulard testified that she was not offered or promised anything in exchange for her testimony and the State's only request was that she tell the truth.

¶ 5 On cross-examination, Woulard stated that the dome light in Bailey's vehicle was triggered when the defendant opened the door and she got "[a] very clear view" of the defendant and would "[n]ever forget." Woulard denied telling the detectives that the defendant was wearing a white t-shirt and was 5'6" to 5'7" tall. She also admitted that she consumed alcohol and smoked marijuana earlier that night.

¶ 6 Bailey corroborated Woulard's testimony that they were sitting in his vehicle when the defendant entered through the rear door and demanded money. He stated that the dome lights were activated when the defendant opened the door and he confirmed that he turned around and looked at the defendant. Bailey testified that he told the defendant he did not have any money, but the defendant kept saying, "where the money at" and "where the bands." Bailey stated that he leaned back to have a conversation with the defendant when he noticed that the defendant was holding the gun towards him with his finger on the trigger. Bailey was reaching for the gun, when the second man approached the front passenger window, pointed a gun at him, and demanded money. Bailey reached into his pockets, took out whatever money and credit cards he had, and placed the items on the front passenger seat. The man at the front passenger window

grabbed what he could, including all of the cash—$70 or $80—and some of the credit cards, and then shot Bailey two times in the stomach.

¶ 7 Bailey further testified that, on August 13, 2012, while he was still in the hospital, he met with Detective Ray Verta who showed him a photo array of possible suspects. He said he was not able to make an identification. When Bailey was asked at trial why he was reluctant to identify the defendant in the photo array or cooperate with the investigation, he explained that he was still injured and "messed up" and "didn't want to deal with it." Thereafter, on October 1, 2012, Bailey went to the police station to view a lineup of possible suspects. He viewed the lineup and positively identified the defendant as the man who entered the backseat of his vehicle with a gun. On cross-examination, Bailey denied having a phone conversation with Detective Verta on August 20, 2012, in which he stated that he could not identify the man in the backseat.

¶ 8 Detective David Roberts testified that he responded to the scene of the shooting at 1524 West Garfield Boulevard. Upon arrival, the victim was being treated by paramedics. Detective Roberts testified about the crime scene and stated that Garfield as a well-lit main road with three lanes of traffic. On cross-examination, Detective Roberts testified that Woulard described the man in the backseat as a black male, 5'6" to 5'7" in height, thin build, had dreadlocks, wore a white t-shirt and blue jeans, and was armed with a dark colored revolver. According to Detective Roberts, Woulard did not say anything about the man having a tattoo on his face.

¶ 9 William Buglio, a Chicago police evidence technician, processed the crime scene and recovered, *inter alia*, two 9-millimeter shell casings from Bailey's car. He inventoried the spent shell casings and sent them to the Illinois State Police crime lab for testing. Forensic testing of the two 9-millimeter shell casings established that they were fired from the same gun, however,

no latent fingerprints suitable for comparison were found on either of the discharged cartridge cases.

¶ 10 It was stipulated that, if called as a witness, Dr. Eugene Tarasov would testify that Bailey suffered from multiple gunshot wounds, including wounds to his abdomen, chest, and right upper arm; he also sustained a laceration to his head.

¶ 11 Chicago police detective Ray Verta testified that he was assigned to investigate the August 6, 2012, attempted murder and armed robbery of Bailey. Although he was not able to interview Bailey at the hospital due to his medical condition, Detective Verta testified that he received a phone call from Bailey's uncle, Ronald Bailey, on August 8, 2012. After this conversation, he compiled a six-person photo array of potential suspects.

¶ 12 On August 13, 2012, Detective Verta went to Stroger Hospital and asked Bailey, Woulard, and Ronald to view the photo array. Neither Bailey nor Woulard identified anyone from the photo array. Over the defendant's objection, Detective Verta testified that after showing the photo array to Ronald, he issued an investigative alert for the defendant. We note, Detective Verta did not testify about the substance of his conversation with Ronald, nor did he say whether Ronald identified anyone from the photo array.

¶ 13 On September 30, 2012, the defendant was in custody on an unrelated matter. On October 1, 2012, the defendant was placed in a lineup at the 9th District police station. Detective Verta testified that Bailey and Woulard viewed the lineup separately and both "immediately" identified the defendant as the man who sat in the backseat with a gun.

¶ 14 On cross-examination, Detective Verta testified that, during his initial interview with Bailey at the hospital on August 13, 2012, Bailey was reluctant and did not want to help in the investigation. Bailey offered a vague description of the defendant and he never said he reached

for the defendant's gun. Detective Verta further testified that he spoke with Bailey over the phone on August 20, 2012, and Bailey said he could not identify the man in the backseat because he was behind him. However, Detective Verta explained that Bailey had a conversation with his father and eventually decided to cooperate with the investigation.

¶ 15 At the close of the State's case-in-chief, the defendant moved for a directed finding, which the trial court denied. The defendant rested without presenting any evidence.

¶ 16 During closing arguments, the State described the crime, reviewed the eyewitness testimony and the police investigation, and then discussed the applicable law. Defense counsel argued, *inter alia*, that the State failed to provide enough evidence to prove beyond a reasonable doubt that the defendant was the person who committed the crime. Counsel pointed to the lack of physical evidence connecting the defendant to the crime, and noted that the State's witnesses offered contradictory testimony and were not credible. He argued that Woulard was "always helping" with the investigation, "didn't seem scared in court," and was being compensated by the State for her time and relocation expenses.

¶ 17 In rebuttal, the State responded to defense counsel's claim that Woulard was not scared and was being compensated by the State. It argued that Woulard requested relocation expenses because she was "afraid for her safety," "afraid of this defendant," and "afraid of repercussions."

¶ 18 Following closing argument, the jury found the defendant guilty of attempt first degree murder, armed robbery, and aggravated battery. Following the denial of his motion for a new trial, the trial court merged the aggravated battery conviction with the attempt murder conviction and sentenced the defendant to consecutive terms of 11 years' imprisonment for attempt murder and 25 years' imprisonment for armed robbery. This appeal followed.

¶ 19 The defendant's first contention on appeal is that the State failed to prove him guilty beyond a reasonable doubt. His argument in this regard rests on the assertion that the State's case relies almost exclusively on the identification testimony of two eyewitnesses, Bailey and Woulard, which he asserts was untrustworthy and insufficient to establish guilt.

¶ 20 When reviewing 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. Washington*, 2012 IL 107993, ¶ 33. The credibility of the witnesses, the weight to be given their testimony, and the resolution of any conflicts in the evidence are within the province of the trier of fact, and a reviewing court will not substitute its judgment for that of the trier of fact on these issues. *People v. Jackson*, 232 Ill. 2d 246, 280 (2009). We will not reverse a conviction unless " 'the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt.' [Citation]." *Washington*, 2012 IL 107993, ¶ 33.

¶ 21 The State bears the burden of proving beyond a reasonable doubt the identity of the person who committed the charged offense. *People v. Lewis*, 165 Ill. 2d 305, 356 (1995). Identification evidence which is vague or doubtful is insufficient to support a conviction. *People v. Slim*, 127 Ill. 2d 302, 307 (1989). However, a single witness's identification of the accused is sufficient to sustain a conviction if the witness viewed the accused under circumstances permitting a positive identification. *Id.* In assessing identification testimony, we consider the following five factors set forth in *Neil v. Biggers*, 409 U.S. 188 (1972): (1) the witness's opportunity to view the defendant during the offense; (2) the witness's degree of attention at the time of the offense; (3) the accuracy of the witness's prior description of the defendant; (4) the witness's level of certainty at the subsequent identification; and (5) the length of time between

the crime and the identification. *Slim*, 127 Ill. 2d at 307-08. None of these factors, standing alone, conclusively establishes the reliability of identification testimony; rather, the trier of fact is to take all of the factors into consideration. *Biggers*, 409 U.S. at 199-200.

¶ 22 With respect to the first *Slim-Biggers* factor, the defendant argues that Bailey and Woulard did not have a good opportunity to view him based upon the short duration of the incident. We disagree. This court has previously rejected claims that the duration of an incident undermines a witness's identification so as to warrant reversal of a conviction; it is merely one factor for the trier of fact to consider in weighing the testimony. See *People v. Petermon*, 2014 IL App (1st) 113536, ¶ 32; *People v. Parks*, 50 Ill. App. 3d 929, 932-33 (1977) (encounter as short as "five to ten seconds" held sufficient to support a conviction). Here, Bailey and Woulard had a good opportunity to view the defendant at the time of the crime. Woulard testified that she had a "good look" at the defendant's face and was able to view him long enough so that she could later describe his approximate height, build, hairstyle, and clothing. Although the defendant was sitting in the backseat, both witnesses testified that the dome light was activated, and Bailey stated that he turned around and looked at the defendant, who was sitting a short distance away. There is no evidence that the defendant was wearing anything to cover his face. Based on these facts, we believe that Bailey and Woulard had ample opportunity to view the defendant at the time of the robbery.

¶ 23 With respect to the second factor, the defendant claims that Bailey's and Woulard's degree of attention could have been affected by the high-stress situation of the shooting, which the defendant argues weighs against a finding of reliable identification. We disagree. Although being robbed and shot was no doubt a stressful situation, there was no evidence presented to suggest that the stress of the situation affected Bailey's or Woulard's degree of attention or ability

to observe the offenders. In this case, both Bailey's and Woulard's degree of attention was high. Woulard's high degree of attention was demonstrated by her detailed recollection of what the defendant did from the time she noticed him walk past the car with the other man, point a gun at a building, and then enter Bailey's vehicle. Likewise, Bailey testified that his attention was directed towards the defendant when he entered the backseat of his vehicle and demanded money. Accordingly, we find that the evidence shows that the second factor weighs in favor of the State.

¶ 24 With respect to the third factor, the defendant's argument is based upon a discrepancy between Woulard's original description of the perpetrator's height as about 5'6" to 5'7" with a thin build, and the defendant's actual height of 5'9" and weight of 180 pounds. Our supreme court has generally rejected this line of argument, noting that "discrepancies and omissions as to facial and other physical characteristics are not fatal, but simply affect the weight to be given the identification testimony." *Slim*, 127 Ill. 2d at 308; see also *id*. at 311-12 (citing cases with approval, including *People v. Calhoun*, 132 Ill. App. 3d 665, 668 (1971) (six-inch difference between description and actual height of defendant)). We also disagree with the defendant's assertion that Detectives Roberts and Verta disputed Woulard's testimony that she told the police the defendant had a tattoo. Here, the jury heard these discrepancies, weighed them accordingly, and found that a positive identifications was made. We will not substitute our judgment for the jury's on these matters. See *People v. Brooks*, 187 Ill. 2d 91, 131 (1999).

¶ 25 Regarding the fourth factor, the witness's level of certainty, the defendant correctly asserts that Bailey and Woulard both failed to identify the defendant's photograph from the six-person photo array. We note, however, Bailey testified that he was initially reluctant to make an identification or cooperate with the investigation, and Woulard testified that she was "frightened"

and concerned about her "safety." Thus, Bailey's and Woulard's failure to identify the defendant in the photo array was not due to uncertainty; rather, it was a result of their unwillingness to cooperate with the investigation. Once Bailey and Woulard decided to cooperate, they "immediately" identified the defendant in a lineup and again in open court. Nothing in the record suggests that the lineup identifications or the in-court identifications were less than certain.

¶ 26 As to the fifth factor, the defendant attacks the reliability of Bailey's and Woulard's physical lineup identifications, arguing that the identifications were made almost two months after the shooting. He argues that their failure to make a positive identification in the photo array, a little more than a week after the shooting, renders their testimony incredible. We do not agree that a two-month gap is a "significant" amount of time. See *Slim*, 127 Ill. 2d at 313-14 (citing *People v. Rogers*, 53 Ill. 2d 207, 214 (1972) (two-year gap); *People v. Dean*, 156 Ill. App. 3d 344, 352 (1987) (two-and-a-half-year gap). Thus, the two-month gap in this case does not undercut the sufficiency of Bailey's or Woulard's identification as evidence in support of the defendant's conviction.

¶ 27 Finally, the defendant argues that Bailey and Woulard were not previously acquainted with the defendant. We note, however, there is no evidence in the record supporting the proposition that either Bailey or Woulard had difficulty identifying the defendant because they were not previously acquainted with him. We also reject the defendant's contention that Ronald "influenced" Bailey's and Woulard's identifications. Once again, there is no evidence that Ronald conspired with Bailey and Woulard to implicate an innocent person, or what reasons they might have for doing so.

¶ 28 After reviewing the *Biggers* factors, we cannot say that Bailey's and Woulard's testimony was so deficient that no rational juror could accept their identification of the defendant. All of

the defendant's arguments are directed against the weight that Bailey's and Woulard's testimony should be afforded by the trier of fact, and it is not the place of this court to substitute our judgment for the jury's on this point so long the evidence is not completely "unreasonable, improbable, or unsatisfactory." *Smith*, 185 Ill. 2d at 542. Therefore, we find that Bailey's and Woulard's testimony was sufficient to prove beyond a reasonable doubt that the defendant was the man who entered the backseat of Bailey's vehicle on August 6, 2012.

¶ 29 The defendant next argues that the trial court erred when it allowed the State to present "indirect hearsay" evidence at trial. Specifically, the defendant claims that the court erred in allowing Detective Verta to testify that he presented a photo array of possible suspects to Bailey, Woulard, and Ronald, and that afterwards he issued an investigative alert for the defendant. The defendant argues that since Detective Verta testified that Bailey and Woulard did not identify anyone from the photo array, the only conclusion to be drawn from Detective Verta's testimony is that an investigative alert was issued for the defendant because Ronald identified him in the photo array. He asserts that Detective Verta's testimony indirectly reveals the substance of Ronald's statement. We disagree.

¶ 30 Hearsay is an out-of-court statement offered to prove the truth of the matter asserted, and is generally inadmissible unless it falls under one of the exceptions to this rule. *People v. Caffey*, 205 Ill. 2d 52, 88 (2001). The course-of-investigation exception allows police officers to testify regarding out-of-court statements that are offered not for the truth of those statements, but to explain why they arrested a defendant or took other action. *People v. Banks*, 237 Ill. 2d 154, 180 (2010). Under this exception, "an officer may not testify to information beyond what is necessary to explain his or her actions," meaning that the officer may not testify to the substance of any conversations or statements he received. *In re Jovan A.*, 2014 IL App (1st) 103835, ¶ 23;

see also *People v. Gacho*, 122 Ill. 2d 221, 248 (1988) (substance of conversation would have addressed whether the defendant was the person who committed the crime). A trial court's ruling on the admissibility of evidence will be reversed only where the court abused its discretion. *Caffey*, 205 Ill. 2d at 89.

¶ 31 In this case, nothing in Detective Verta's testimony reveals what, if anything, Ronald told Detective Verta about the defendant or the shooting. The State did not seek to admit Ronald's statements to prove that the defendant was guilty or even to prove that Ronald identified the defendant in a photo array. Rather, Detective Verta's testimony provided context for his investigation—namely that, after showing a photo array to Ronald, he issued an investigative alert for the defendant. The mere fact that one of the many inferences which the jurors could have drawn was that Ronald implicated the defendant does not render Detective Verta's testimony inadmissible. See *People v. Henderson*, 142 Ill. 2d 258, 304 (1990) ("testimony recounting the steps taken in a police investigation is admissible and does not violate the sixth amendment, even if a jury would conclude that the police began looking for a defendant as a result of what nontestifying witnesses told them"). Because Detective Verta never revealed the substance of any statement made by Ronald, his testimony that he showed Ronald a photo array, did not contain hearsay. See *People v. Gacho*, 122 Ill. 2d 221, 248 (1988).

¶ 32 In a related argument, the defendant asserts that Detective Verta's testimony regarding the photo array violated his sixth amendment right to be confronted by witnesses against him. See U.S. Const., amend. VI. "The confrontation clause 'does not bar the use of testimonial statements for purposes other than establishing the truth of the matter asserted.' [Citation]." *People v. Banks*, 237 Ill. 2d 154, 182 (2010). As we just discussed, Detective Verta's testimony regarding the photo array was admitted into evidence for purposes other than establishing the

truth of the matter asserted. Thus, the defendant's argument that his rights under the confrontation clause were violated is without merit.

¶ 33 The defendant next contends that he was deprived of his right to a fair trial because the State committed prosecutorial misconduct in rebuttal argument. Specifically, the defendant asserts that the prosecutor's comments that Woulard was "afraid of this defendant" and "afraid of repercussions" were highly prejudicial and inflammatory because they were not based upon any evidence in the record. The defendant admits that he did not object to these statements at trial and did not include them in his post-trial motion. He asks this court to review his forfeited claim under the plain-error exception.

¶ 34 To meet the plain-error standard, the defendant has the burden to show that a clear or obvious error occurred, and either (1) the evidence is so closely balanced that the error, standing alone, threatened to tip the scales against the defendant regardless of the seriousness of the error, or (2) the error was so serious that it affected the trial's fairness and challenged the integrity of the judicial process. *People v. Thompson*, 238 Ill. 2d 598, 613 (2010). Before considering whether the plain-error exception applies, we must first determine whether any error occurred. *People v. Glasper*, 234 Ill. 2d 173, 203-04 (2009).

¶ 35 A "defendant faces a substantial burden in attempting to achieve reversal based upon improper remarks made during closing argument." *People v. Byron*, 164 Ill. 2d 279, 295 (1995). It is well settled that prosecutors have wide latitude in closing argument, and may comment on the evidence and any fair, reasonable inferences it yields. *People v. Glasper*, 234 Ill. 2d 173, 204 (2009). Additionally, comments in closing argument are not to be considered in a vacuum, but must be evaluated in context of the entire closing argument of both the State and the defendant. *People v. Williams*, 192 Ill. 2d 548, 573 (2000). "The trial court has discretion to determine the

proper character and scope of argument, and every reasonable presumption is indulged that such discretion was properly exercised." *People v. Cloutier*, 156 Ill. 2d 483, 507 (1993).

¶ 36 Nonetheless, prosecutorial comments which suggest that witnesses are afraid to testify because a defendant threatened or intimidated them, when not based upon any evidence in the record, are highly prejudicial and inflammatory. *People v. Mullen*, 141 Ill. 2d 394, 405 (1990). However, "[s]tatements will not be held improper if they were provoked or invited by the defense counsel's argument." *Glasper*, 234 Ill. 2d at 204; see also *People v. Kirchner*, 194 Ill. 2d 502, 553 (2000). Prosecutorial misconduct in closing argument warrants a new trial "only if *** the improper remarks were so prejudicial that real justice was denied or that the verdict resulted from the error." *People v. Runge*, 234 Ill. 2d 68, 142 (2009).

¶ 37 Here, during direct examination, Woulard testified that she was concerned about her "safety" and asked the State's Attorney's office for relocation assistance. She explained that the State's Attorney's office agreed to pay for her moving expenses, first month's rent, and security deposit. Throughout her testimony, Woulard testified that the defendant's actions "frightened" her and that she was scared. In closing argument, defense counsel attempted to cast doubt on Woulard's credibility and motive for testifying by suggesting that the State was paying her to testify against the defendant. He argued that Woulard was "always helping" with the investigation, "didn't seem scared in court," and was being compensated by the State for her time and relocation expenses.

¶ 38 In rebuttal argument, the assistant State's Attorney responded by arguing:

> "So you have two gunmen out on the street. The police don't have them. And is it reasonable that witnesses don't want to come forward and talk to the police? Is that reasonable? Absolutely.

* * *

> And additionally, regarding Counsel's commentary about [Woulard] being compensated for her time, that was not her testimony. She's not paid by the minute, or the hour, or anything like that to come in here and tell the truth, and you heard her say she was only asked to tell the truth. No promises were made to her for her testimony.
>
> Delshaun Woulard was legitimately afraid, afraid for her safety, and that is why she asked for relocation in this matter. She was afraid of this defendant. She was afraid of repercussions, because what she witnessed and what she came in to tell you about, that is a terrifying life event. That's why she asked for relocation and no other reason."

¶ 39 Based upon our review of the record, the State's argument that Woulard was afraid for her safety and afraid of the defendant was based upon properly-admitted evidence at trial—namely, Woulard's testimony that she was "frightened" and "concerned about [her] safety." We also note that the State did not refer to any threats or acts of intimidation, nor did it argue that the defendant intimidated Woulard. Instead, the State was merely explaining to the jury why Woulard sought, and later received, relocation expenses from the State's Attorney's office. Thus, the prosecutor's argument was based on a reasonable inference derived from the evidence presented, and did not expose the jury to any additional information that would have otherwise been excluded. While there was no evidence presented at trial that Woulard was "afraid of repercussions," any prejudice resulting from the State's comment was minor and insubstantial. *People v. Cox*, 377 Ill. App. 3d 690, 708 (2007).

¶ 40 Moreover, the State's comments were justified because they were made in response to the defendant's theory of the case. In his cross-examination of Woulard and again during closing arguments, defense counsel attempted to cast doubt on Woulard's credibility by suggesting that she was not afraid and was being paid by the State to testify against the defendant. The State properly responded to this argument by explaining to the jury the real reason why Woulard was receiving money from the State: because she was concerned for her safety and wished to move her residence. See *Glasper*, 234 Ill. 2d at 204 ("Statements [in closing arguments] will not be held improper if they were provoked or invited by the defense counsel's argument.").

¶ 41 In sum, the State's and the defendant's closing arguments were extensive and thoroughly explored the facts of the crime based upon the evidence. Viewed in the context of the State's entire argument, the disputed comments, in which the State argued that Woulard was afraid of the defendant and afraid of repercussions, amounted to little more than an isolated reference and was not highlighted, repeated or otherwise emphasized. See *People v. Walker*, 230 Ill. App. 3d 377, 402 (1992) (no prejudice in remark that witness was risking his life to testify where remarks were not overemphasized). Accordingly, we find that the defendant has failed to show that a clear or obvious error occurred and we honor the procedural default of this claim.

¶ 42 In a related argument, the defendant maintains that his trial counsel provided ineffective assistance by failing to object to the State's remarks in closing argument. To show ineffective assistance of counsel, the defendant bears the burden of showing that "his attorney's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different." *People v. Patterson*, 192 Ill. 2d 93, 107 (2000) (citing *Strickland v. Washington*, 466 U.S. 668, 689 (1984)).

¶ 43 Here, the defendant's arguments are based on trial counsel's failure to object to the State's comments during closing argument. However, as we just discussed, the State's remarks during closing argument were based upon the evidence presented at trial and were invited by the defense. Therefore, the defendant cannot establish that the result of the proceeding would have been different had his trial attorney objected to these comments at trial. Accordingly, the defendant's ineffective-assistance-of-counsel claim fails.

¶ 44 For the foregoing reasons, we affirm the defendant's conviction and sentence.

¶ 45 Affirmed.