2016 IL App (1st) 142598-U

Fifth Division
December 30, 2016

No. 1-14-2598

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. KEVIN STANLEY, Defendant-Appellant.	)	Appeal from the Circuit Court of Cook County. No. 09 CR 16803(01) The Honorable William G. Lacy, Judge Presiding.

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

ORDER

¶ 1 *Held:* We affirm the judgment of the circuit court of Cook County where the defendant's claim of ineffective assistance of counsel did not prejudice the defendant.

¶ 2 After a jury trial, defendant Kevin Stanley was convicted of one count of first degree murder for the shooting of nine-year-old Chastity Turner and two counts of attempted murder for the shooting of Chastity's father, Andre Turner, and Joseph Walker, a friend of Andre

Turner. After hearing factors in aggravation and mitigation, defendant was sentenced to 100 years in the Illinois Department of Corrections (IDOC).

¶ 3 On this appeal, defendant claims (1) that he received ineffective assistance of counsel when trial counsel failed to object to hearsay testimony which established alibis for alternative suspects, (2) that he received ineffective assistance of counsel when his trial counsel failed to object to inflammatory remarks made by the prosecution during closing arguments, or (3) in the alternative, those remarks rose to the level of plain error.

¶ 4 For the following reasons, we affirm.

¶ 5 BACKGROUND

¶ 6 At trial, the State called 15 witnesses: (1) Dr. Lauren Woertz, (2) Andre Turner, (3) Julius Davis, (4) Donise Robertson, (5) Tawanda Sterling, (6) Joe Howard, (7) Officer Edward Garcia, (8) Officer John Sanders, (9) Officer Nancy DeCook, (10) Paul Presnell, (11) Mike Mazurski, (12) Aaron Horn, (13) Detective Timothy J. O'Brien, (14) Detective Michael O'Donnell, and (15) Lakesha Edwards.

¶ 7 The defense called four witnesses: (1) Darren Keith Paulk, (2) Keyon Taylor, (3) Alfonzo Deadwiler, and (4) Sergeant John Nowakowski.

¶ 8 I. Dr. Lauren Woertz, M.D.

¶ 9 Dr. Lauren Woertz testified that she is a forensic pathologist and has been an assistant medical examiner since July 2009. On June 25, 2009, a postmortem examination of Chastity Turner[1] was performed by Dr. Valerie Arangelovich, who is no longer employed for the Cook County medical examiner's office. As a result, Dr. Woertz reviewed Dr. Arangelovich's notes of the postmortem examination, which revealed that Chastity had a

[1] Since the murder victim and her father share the same last name, we refer to the murder victim as Chastity and her father as Andre.

bullet entrance wound on the right side of her back. Dr. Woertz opined that this gunshot wound was not the result of a close range firing because there was a lack of gun powder stipplings.

¶ 10 A bullet was recovered on the right side of Chastity's neck, and placed in an envelope, labeled, and turned over to an evidence technician from the Chicago police department. Furthermore, Dr. Woertz testified that, given the "classic straightforward entrance wound," she was able to opine that the bullet was not a ricochet. Dr. Woertz was also able to opine that the cause of death was a gunshot wound to the back and that the manner of death was a homicide. These opinions were consistent with Dr. Arangelovich's findings in her postmortem examination.

¶ 11 The parties stipulated that a proper chain of custody was maintained with regard to the sealed envelope containing the bullet removed from Chastity's body.

¶ 12 II. Andre Turner

¶ 13 Andre testified that Chastity was his nine-year-old daughter and that Lakeisha Edwards was Chastity's mother. Andre knew Deshawn Walls, who is also known as Shaky Shawn, through an individual known only to Andre as Gargamel. Gargamel was the brother of Ronald Henderson and the leader of a "set[2]" of the Gangster Disciples (GD) gang located on 75th Street and Normal Avenue in June 2009. This was two blocks from where Andre was the leader of the same set of GDs on the 7400 block of South Stewart Avenue. Davionne Whitfield, who was known as Gucci, was also a GD who was once friendly with Andre, but at the time of the shooting on June 24, 2009, Henderson, defendant, and Whitfield were no longer friendly toward Andre.

[2] "Set" is used as the street name for a special independent group in the same gang.

¶ 14 Weeks prior to the shooting, Andre met with Gargamel to discuss a resolution regarding the drug business between each of their sets. Andre rejected Gargamel's offer, and Gargamel was noticeably upset. A day or two before the shooting, Henderson and Andre had an argument that resulted in a physical altercation.

¶ 15 On June 24, 2009, at 6:45 p.m., there was a large group of both adults and children outside Andre's home on South Stewart Avenue. Andre's girlfriend, Tawanda Sterling, was present. Andre and Chastity were in the process of washing their three dogs. Andre testified that he was standing in his driveway near the sidewalk talking with Joe Walker and Ricardo Foster when he observed a van that he had never observed before pull up on his street. Immediately prior to the shooting, Andre received a phone call from Nosha Sharky, and at the time Andre was answering that call, he had his back to the street. Andre is colorblind so he could not determine the color of the van but observed it was moving southbound toward him at a high rate of speed. The phone call alerted Andre that the vehicle was moving toward him.

¶ 16 When the van pulled up to where Andre was standing, the passenger side was facing him, and the passenger side sliding door was already open. Andre was able to identify Henderson as the driver and defendant sitting in the front passenger side of the vehicle. The front passenger's window was open. Andre heard over 10 shots fired, not all of which sounded the same. Andre observed only defendant shooting a rifle with a wooden stock. Defendant was leaning out of the vehicle window. As the vehicle pulled up, Andre grabbed all the children present and threw them over a gate and had his back toward the vehicle while he was in the process of removing the children.

¶ 17 After he was struck by a bullet in his left bicep, Andre began to run toward the vehicle as it was fleeing from the scene. He could not recall if shots were still being fired from the vehicle as he ran toward it. At that time, Andre observed Davionne Whitfield sliding the right side passenger door closed, but Andre could not recall observing a firearm in Whitfield's hands. After the vehicle had left, Andre's friend Tim "pulled up" and drove him to the hospital because his arm was "gushing out blood."

¶ 18 Andre was taken to St. Bernard's Hospital and treated for a gunshot wound. He later woke up at Stroger Hospital in the intensive care unit (ICU) during the evening on June 24, 2009. While still in the ICU, Andre was notified by police that his daughter had died. Andre concluded from the officers' tone of voice that the police were blaming him for his daughter's death. As a result, he did not cooperate with the police's questioning at that time. Weeks after the incident, Andre met with Detectives Michael O'Donnell and Timothy O'Brien and began to cooperate with the authorities.

¶ 19 Andre had been using marijuana during the time period of the incident, but he could not recall if he used it that day. On cross-examination, Andre testified that he never told Sergeant Nowakowski at Stroger Hospital that he was told the names of the vehicle's occupants.[3] Andre met with an assistant State's Attorney (ASA) on July 17, 2009, but Andre did not tell him about other people shooting back toward the vehicle because Andre was unaware that occurred.

¶ 20 On August 7, 2009, at the Area 1 Violent Crimes Unit, Andre identified a photo of defendant and then viewed a lineup of suspects and identified the June 24, 2009, shooter as defendant. Andre gave a handwritten statement to an ASA on August 7, stating that shots

[3] Sergeant Nowakowski's testimony is offered in defendant's case-in-chief, addressed in paragraph 128 in this opinion.

were fired from the street toward Andre before he could turn around and observe the vehicle. On August 17, 2009, Andre gave a sworn testimony in front of a grand jury. In addition, during cross-examination at trial, Andre's version of his location in the driveway and what he observed varied each time he explained what happened.

¶ 21 On August 28, 2009, Andre returned to the Area 1 Violent Crimes Unit with Detectives O'Brien and O'Donnell to view another lineup and Andre identified Ronald Henderson as the driver of the vehicle. Andre did not know whether Henderson had a gun in his hand during the incident. Andre identified the vehicle involved in the shooting and identified a photograph of Davionne Whitfield as being one of the occupants of the vehicle.

¶ 22 Andre recalled meeting with an ASA and Investigator Kimberly Taylor on December 8, 2010, but denied answering the following question: "All you want from Davionne is to tell who was in the van" to which he denied answering "yes."

¶ 23 III. Julius Davis

¶ 24 Julius Davis testified at approximately 7 p.m. on June 24, 2009, he was on the 7400 block of South Stewart Avenue. At that time, he was standing on the corner and on the same side of the street as the liquor store, which was on the opposite side of the street and down the block from Andre's residence. Davis was "drinking" outside the liquor store. He recalled observing a crowd of people standing in front of Andre's home when he observed a vehicle coming down South Stewart Avenue and heading toward Andre's home. Davis observed the vehicle stop in front of Andre's home and the occupants of the vehicle began shooting in the direction of Andre's residence. Davis took cover behind a tree when he heard shots fired. From behind the tree, Davis observed Ronald Henderson inside the vehicle and identified him in court. As the vehicle drove away, Davis observed Henderson holding a firearm and

then Henderson shot at Davis. Davis recalled hearing bullets ricochet off a nearby tree as he tried to take cover by hiding behind bushes and another tree. The entire incident occurred within a few seconds. Davis walked toward Andre's home after the vehicle left and observed Chastity lying on the ground beside the house.

¶ 25 On July 4, 2009, Davis viewed a photo array at the Area 1 Violent Crimes Unit where he picked out Ronald Henderson's photograph and identified him as the driver of the vehicle. Although Davis had no memory of returning to Area 1 on August 28, 2009, to view a physical lineup, he recognized his signature on the lineup advisory form dated August 28, but testified that he viewed a photo array where he identified Henderson's photograph and did not pick out Henderson from a lineup.

¶ 26 IV. Donise Robertson

¶ 27 Donise Robertson testified that, on June 24, 2009, she resided on South Stewart Avenue, on the opposite side of the street from Andre's home. Robertson had babysat for two children on June 24, 2009, and around 5:45 p.m., Robertson left her home and walked across the street to Andre's home to participate in a water fight. Thirteen or fourteen people were present at that time.

¶ 28 Robertson and others then went to purchase snow cones for the children. Chastity Turner was outside of the house preparing to wash Andre's dogs. Andre and Chastity were by the front gate and in the driveway which was close to the sidewalk in front of the house. Robertson remained at Andre's home where she sat at the top of the porch with others to watch the children playing in the front yard.

¶ 29 At 6:50 p.m., she observed a teal green van traveling toward her southbound on Stewart Avenue, with the passenger side of the vehicle facing her. Robertson first noticed the van when it was near the garbage receptacles next door to Andre's home.

¶ 30 Robertson heard shots fired from the vehicle as it pulled up and stopped in front of the home. She was not able to observe who was driving the vehicle but was able to identify defendant as the shooter in the front passenger's seat because she observed defendant hanging out the window as he was shooting. She had known defendant for many years before the shooting occurred and was able to identify defendant on June 24, 2009, because her view was clear and unobstructed.

¶ 31 She also observed another individual shooting from the right side passenger door who she identified as "Gucci." Her eldest son was friends with Gucci, and she recognized Gucci as someone who had come in and out of her home for the past two or three years.

¶ 32 When the shooting began, Robertson dropped to the floor of the porch, and was unable to observe what happened to the vehicle after the shooting began. Following the shooting, Robertson grabbed the two children she was babysitting and ran to her home across the street. Robertson did not leave her home until after the police arrived and requested that she come out to speak with the detectives. Robertson recalled that the first officers arrived on the scene a minute or two following the shooting. Robertson informed the first responding officers that she knew who did it and provided the officers with the nicknames of the shooters as "Kevo" and "Gucci." "Kevo" was defendant's nickname and "Gucci" was Davionne Whitfield's nickname.

¶ 33 At 8:30 p.m. that evening, she went to the Area 1 Violent Crimes Unit where she met with Detective O'Brien. From a photo array, she identified Whitfield. She met with Detective

Brian Lutzow and, from a second photo array, she identified defendant as the shooter in the front passenger's seat. On that same date, she viewed a physical lineup and identified Whitfield as the individual who was shooting from the back of the van.

¶ 34 V. Tawanda Sterling

¶ 35 Tawanda Sterling testified that she is in a relationship with Andre Turner and that on June 24, 2009, she was living on South Stewart Avenue with Andre and Andre's mother, Tanya Turner. At 6:50 p.m. on June 24, Sterling was at Andre's home with many other people who were both on the porch and in the front yard. Around 6:50 p.m., Sterling was at the bottom of the porch and observed Andre and his daughter washing their three dogs in the driveway near the sidewalk. Sterling was drinking and consumed a pint of vodka, but she claims she was not "super drunk."

¶ 36 She recalls observing a dark green or blue van with stripes on the side driving southbound on Stewart Avenue, which she first noticed as it approached the garbage receptacles next to the neighbor's property. Sterling first noticed the van when Julius Davis yelled "on that van" and the vehicle stopped in front of Andre's home with the passenger side sliding door open. When the van stopped, the firing began from both the front passenger and back passenger seats of the van. Sterling observed the shooters and identified Whitfield, who she knew as "Gucci Man," firing from the back passenger's side door. She was unable to observe who was firing out of the front passenger's seat. She identified the driver as Ronald Henderson but did not recall whether he had a gun in his hand.

¶ 37 On June 25, 2009, around 1 a.m., Sterling travelled to Area 1 with Donise Robertson to speak with detectives and view a lineup, which they viewed individually. Sterling identified Gerald Lauderdale as an associate of both Whitfield and Henderson, but did not observe

Lauderdale at the scene. In the second lineup, Sterling identified Whitfield as the shooter in the back passenger's side seat, who she had known for approximately six years prior to the shooting. She also identified Henderson in a lineup on August 28, 2009, as the driver of the vehicle.

¶ 38 VI. Joseph Walker

¶ 39 Joseph Walker testified that he had known Andre Turner for approximately 20 years and was at Andre's home on June 24 at 6:50 p.m. Walker recalled conversing with Andre in the driveway, near the sidewalk, with Andre facing South Stewart Avenue. When Andre received a phone call, Walker heard gunshots and could not tell where the shots were coming from. He was struck in the back by a bullet and fell to the driveway where he remained until the paramedics arrived to take him to Stroger Hospital.

¶ 40 Walker was not able to identify anyone in the vehicle.

¶ 41 VII. Officer Edward Garcia

¶ 42 Police officer Edward Garcia testified that he is a Chicago police officer stationed in the Englewood neighborhood. During the evening of June 24, 2009, he was patrolling with his partner, Officer Torres[4]. At 7:20 p.m., he received information over his police radio about a green minivan believed to be involved in a shooting earlier that day. Garcia and his partner found a vehicle matching the radio description in an alley off of South Parnell Street, approximately three blocks from the crime scene. The minivan was parked on the grass in the alley with its doors swung open and the engine running.

[4] The record does not disclose the first name of Officer Torres.

¶ 43 Garcia observed Christopher Cannon walking away from the vehicle, approximately 50 to 60 feet from the vehicle. While Garcia and his partner secured the vehicle, another police vehicle took Cannon to Area 1 at 7:30 p.m.

¶ 44 The parties entered a written stipulation that the Secretary of State records show the vehicle involved in the shooting was owned by Wenseilla Meyers on June 24, 2009. At 6:30 a.m. on June 24, Myers reported the vehicle stolen.

¶ 45 VIII. Officer John Sanders

¶ 46 Police officer John Sanders testified that he was a Chicago police officer assigned to the Englewood police district. On June 24, 2009, at 10:40 p.m., Sanders was on patrol in the area of West 74th Street with his partner Derrick Patterson, when Sanders noticed multiple individuals enter a dark colored minivan at a quick pace and drive off. Sanders was aware of the shooting that occurred a few hours earlier. Sanders and his partner followed the vehicle.

¶ 47 When the van disobeyed a stop sign, they pulled the van over. As he approached the stopped vehicle, Sanders observed four individuals in the van, including Gerald Lauderdale, a known associate of Davionne Whitfield. Sanders observed a bag in the van and observed a handle of a weapon protruding from it.

¶ 48 IX. Officer Nancy DeCook

¶ 49 Police officer Nancy DeCook testified that she was a Chicago police officer and forensic investigator. On June 24, 2009, at 7 p.m., she received an assignment to proceed to South Stewart Avenue with her partner, John Miller.

¶ 50 On the scene, DeCook observed fired cartridge casing in the street in front of Andre's residence that were from a .22-caliber rifle. DeCook also found two spent .40-caliber cartridges, one at the top landing of the porch and one on top of the steps.

¶ 51 DeCook recovered two weapons from the scene; the first was a Smith & Wesson .38-caliber revolver, found in a grill under the back porch. The second firearm recovered was a .40-caliber Kel-Tec found on the rooftop. The firearms and the casings were both identified, photographed and inventoried.

¶ 52 X. Paul Presnell, Donald Fanelli, and Kathleen Gauhagen

¶ 53 Paul Presnell testified that he is a forensic investigator for the Chicago police department and was on duty on June 24, 2009, when he received an assignment to perform a gunshot residue test at Area 1 Detective Division. Presnell arrived at Area 1 at 10:25 p.m. and performed a gunshot residue (GSR) test on Davionne Whitfield.

¶ 54 The parties entered a written stipulation that forensic investigator Donald Fanelli photographed the vehicle involved in the shooting and collected seven fired cartridges from inside the vehicle.

¶ 55 The parties also entered a written stipulation that on July 1, 2009, forensic investigator Kathleen Gauhagen processed the vehicle involved in the shooting, specifically looking for any possible fingerprints and DNA evidence. Gauhagen found no fingerprints and no viable DNA. Gauhagen also recovered a shell casing from the front passenger's seat, which was sent to the Illinois State Police Forensic Services for firearms testing.

¶ 56 XI. Mike Mazurski and Mary Wong

¶ 57 Mark Marzurski testified that he was an evidence technician with the Chicago police department and that he was on duty at 9:46 a.m. on June 25, 2009, when he received an assignment to recover a tote bag. The bag, which contained a firearm and ammunition, was located in the backyard of a residence on South Stewart Avenue. After photographing the

tote bag as it appeared at the scene, Marzurski removed all the items and photographed them individually, and then inventoried each item.

¶ 58 The parties entered a written stipulation that Mary Wong is a forensic scientist employed by the Illinois State Police. On June 25, 2009, Wong received GSR collection kits administered to Foster, Whitfield, Andre, and Walker as well as Whitfield's shirt. Wong tested for gunshot residue and opined that within a reasonable degree of scientific certainty, the GSR tests were not positive to indicate Foster, Whitfield, Andre or Walker discharged a firearm. Wong opined, from the samples taken on Whitfield's shirt, that tests indicated that sample areas were not in contact with gunshot residue related items or may not have been in the environment of a discharged firearm. A proper chain of custody was maintained.

¶ 59 XII. Aaron Horn

¶ 60 Aaron Horn testified that he is a forensic scientist employed by the Illinois State Police specializing in the area of firearms. Horn examined (1) a revolver found hidden inside a grill at Andre's house, (2) a Smith & Wesson model 10-5 revolver, (3) a Ruger model 1022 semiautomatic rifle, and (4) a Kel-Tec model P40 semiautomatic pistol. Horn discovered that all four firearms were functioning firearms.

¶ 61 Horn examined a fired bullet from the Medical Examiner's Office and opined that the bullet was a .22-caliber and that this bullet could not have been fired from any of the four firearms which he previously examined.

¶ 62 Horn opined that all five .22-caliber long rifle casings recovered from South Stewart Avenue were fired from the same firearm. These five .22-caliber long rifle casings could not have been fired from any of the four firearms which he previously examined. Seven other .22-caliber long rifle cartridges were also fired from the same weapon as the previous five

.22-caliber cartridges. None of the 12 .22-caliber cartridges were fired from any of the four firearms examined. Another cartridge casing recovered was a .223-caliber which could not have been fired from any of the four firearms examined.

¶ 63 He opined that two .40-caliber cartridge casings found on the front porch of Andre's home were fired from the same firearm and only the Kel-Tec model P40 could have fired these cartridges.

¶ 64 He further opined that it is possible for the .22-caliber long rifle or .223-caliber casings to have been fired from a carbine type rifle; .22-caliber cartridge casings could also have been fired from a semiautomatic pistol as well as a revolver designed to fire that caliber. It was possible that the bullet he received from the medical examiner's office could have been fired from a revolver.

¶ 65 He further opined that, based upon the number of shell casings he examined, there was a minimum of two firearms involved in this incident and a maximum of three.

¶ 66 XIII. Detective Timothy J. O'Brien

¶ 67 Detective Timothy J. O'Brien testified that he was a homicide detective with the Chicago police department and he was familiar with the street gangs in the Englewood area. Based on his investigation, the Gangster Disciples street gang had control of the 74th and Stewart Avenue block, and the 75th and Normal block. However, on June 24, 2009, the Gangster Disciples from the 74th and 75th blocks were not a unified group due to an internal gang conflict.

¶ 68 O'Brien inspected the scene and observed numerous areas of biological and physical evidence, suspect blood and shell casings.

¶ 69 O'Brien testified that Whitfield was found at a relative's home and taken into custody at Area 1 for questioning about Chastity's murder. He questioned Whitfield and requested that forensic investigators perform a GSR test on Whitfield's hands, which was performed 3½ hours after the shooting, which proved to be negative.

¶ 70 Tawanda Sterling, Dominique Turner, Donise Robertson, and Christopher Cannon were brought to Area 1. O'Brien met with Donise Robertson, who witnessed the shooting. Prior to his interview, O'Brien prepared a photo array for Robertson to view with six photographs obtained from arrest records.[5] One of the six photographs included Davionne Whitfield, also known as "Gucci." On the same day when he interviewed Robertson, she stated that she had observed defendant carrying a silver firearm. Robertson viewed the photo array, from which she identified Davionne Whitfield as a shooter inside the vehicle during the incident.

¶ 71 O'Brien testified that Cannon was detained and interviewed after he was found in the vicinity of the vehicle involved in the shooting, but provided an alibi, and was subsequently released.

¶ 72 XIV. Detective Michael O'Donnell

¶ 73 Detective Michael O'Donnell testified that he is a detective for the Chicago police department assigned to Area 1, and that on June 24, 2009, he was assigned to investigate a shooting in the 7400 block of South Stewart Avenue with his partner, Detective Timothy O'Brien. O'Donnell was present for the questioning of witness Donise Robertson and was present when Robertson viewed the photo array, and "she identified Davionne Whitfield as

[5] O'Brien testified that he generated a photo array for Robertson by using the "mug shot system" to enter the names "Gucci" and "Davionne Whitfield." Once a photograph of Whitfield was obtained, O'Brien then used the system to generate more photographs of persons with similar demographics as fillers for the photo array.

Gucci Man as one of the shooters from the incident[,]" and specifically as a shooter inside the van.

¶ 74 O'Donnell was made aware of Donise Robertson's identification of defendant from a photo array conducted by Detective Brian Lutzow.[6] An hour and a half later, O'Donnell conducted a lineup for witness Tawanda Sterling. Both Whitfield and Lauderdale were in the lineup.

¶ 75 At 1:27 a.m., Sterling identified both Whitfield and Lauderdale as the shooters in the vehicle. Shortly after that identification, Sterling clarified her statement and stated that she had identified Lauderdale only because he was always with Whitfield and she had simply assumed that Lauderdale had been in the van. She insisted that she had misidentified Lauderdale. At 1:29 a.m., Robertson viewed the same lineup and she identified Whitfield as one of the shooters inside the vehicle. Neither Sterling nor Robertson made mention of Cannon, who was a filler in the lineup.

¶ 76 After the lineup viewings were completed, O'Donnell interviewed Lauderdale and Iesha Sesson concerning Lauderdale's whereabouts at the time of the shooting. O'Donnell testified that Lauderdale's alibi placed him at a different location at the time of the crime and that his alibi was verified by four separate witnesses. O'Donnell contacted Iesha's mother, Tamika Sesson, concerning Lauderdale's whereabouts. Tamika was not in the vehicle stopped by Officer Sanders. O'Donnell also interviewed Ebony Hogan and Scott Ferman, who were also

[6] The parties stipulated at trial that Detective Brian Lutzow was an investigator assigned to the shooting on South Stewart Street. During his canvassing, Lutzow spoke with Robertson and brought her to Area 1. Lutzow compiled a photo array using a databank, searching for the name "Kevin." An advisory form was prepared and signed by both Lutzow and Robertson. Lutzow presented the photo array to Robertson who was able to positively identify defendant as one of the shooters in the van.

in the van, and concluded that Lauderdale was no longer a suspect in the shooting, although he was charged with possession of a firearm.

¶ 77 On June 25, 2009, at 4:30 p.m., O'Donnell conducted a photo array with Deannosha Sharkey. Following the photo array, Sharkey provided a handwritten statement. After his meeting with Sharkey, three investigative alerts were issued for (1) DeShawn Walls, (2) defendant, and (3) Ronald Henderson.

¶ 78 Walls was arrested on June 26, 2009, and O'Donnell was subsequently present for his interview at Area 1. After the interview with Walls and his attorney, O'Donnell contacted Walls' girlfriend, Krystal Terry, and another woman in regards to Walls' alibi and Walls was released without charges.

¶ 79 O'Donnell interviewed Julius Davis on July 4, 2009. Following that interview, Davis viewed a photo array where he identified Henderson as the driver of the vehicle. Davis stated that he observed Henderson point a gun and shoot at him as the vehicle fled the scene.

¶ 80 After defendant's arrest, Andre viewed a lineup and identified defendant as the shooter in the front passenger seat of the vehicle. Andre and Donise Robertson later viewed the same lineup and also identified defendant as a shooter in the vehicle.

¶ 81 On August 28, 2009, Davis viewed a lineup and identified Henderson as the driver of the vehicle who shot at him. A second lineup was conducted in which Andre also identified Henderson as the driver. During a third lineup Tawanda Sterling, also identified Henderson as the driver.

¶ 82 Although a gunshot residue test was performed on the vehicle, it was never sent to a lab for testing, because the police had sufficient eyewitness testimony to link the vehicle to the crime.

¶ 83 DNA swabs were taken from the revolver found hidden in the grill at Andre's home, but the swabs were not sent to a lab because that weapon was not associated with the shooting.

¶ 84 XV. Lakesha Edwards

¶ 85 Lakesha Edwards testified that Chastity Turner was her youngest child and that she spoke with Chastity on June 20, 2009, and gave her permission to go to her father Andre's house. Edwards testified that Andre picked up Chastity on June 20, and she stayed with Andre at his home until her death on June 24.

¶ 86 XVI. Darren Keith Paulk

¶ 87 After the State rested, defendant called Darren Keith Paulk, who testified that defendant is his cousin and that he has known defendant his whole life. Paulk testified that, on June 24, 2009, he was celebrating the birthday of Erica Stevenson, a friend, at Carolyn Lowe's house when he received a call "from the area saying a little girl got killed."

¶ 88 Paulk picked up defendant near Simeon High School near 85th Street and Wallace Street between 1 p.m. and 2:30 p.m. accompanied by Keyon Taylor and an individual known as "Boo." They were in Boo's vehicle. "Boo" was someone who had a vehicle and transported them around, similar to a cab driver.

¶ 89 They arrived at the party around 3 p.m. and there were about 10 to 15 people at the party. Defendant left the party with Alfonzo Deadwiler and a woman named "Nicole" some time between 5 p.m. and 6:30 p.m. Deadwiler and Nicole's children were in a vehicle with defendant when they departed.

¶ 90 Paulk never spoke with defendant about his alibi on the murder charge; Paulk was released from IDOC in January or February of 2010.

¶ 91 Paulk did not attempt to contact the authorities in 2010 but provided the information to the police on August 8, 2011, when he met with an investigator from the State's Attorney's Office.

¶ 92 He told the investigator that he did not remember the exact date of the party but he observed defendant at the birthday party up until 5 p.m. When Paulk spoke to a defense investigator on December 20, 2013, a few months prior to trial, he changed the time that he observed defendant at the party to 6:45 p.m. Paulk testified that he was not sure of the time, but believed his observation of defendant at the party was between 5 p.m. and 6:45 p.m.

¶ 93 XVII. Keyon Taylor

¶ 94 Keyon Taylor testified that he is a friend of defendant and has known him for 16 years. In June 2009, he was at a barbecue and birthday party for Erica Stevenson, who is the mother of Taylor's two daughters. His uncle, Herman Payton, told him that evening about the shooting, and Taylor recalled the party specifically because it was the same day as the shooting.

¶ 95 There were many people at the party, including defendant, whom Taylor picked up with Paulk and "Boo." Taylor picked up defendant at 1:30 p.m. near 81st Street and Wallace Street and drove to the party. Taylor was at the party throughout the day and observed defendant leave the party in the evening with Alfonzo Deadwiler, his wife Nicole, and their children at 5 p.m. or 5:30 p.m.

¶ 96 Taylor did not know Chastity nor did he know when she was killed, but that defendant was with Taylor at the party when they received a phone call from Herman Payton about Chastity's death.

¶ 97 On August 8, 2011, when Taylor spoke with the State's Attorney's investigator he stated that he did not remember the exact date that Chastity was shot; however, he believed it may have been June 25, 2009, because June 25 was the day of Stevenson's birthday party.

¶ 98 XVIII. Alfonzo Deadwiler

¶ 99 Alfonzo Deadwiler testified that he had known defendant for six years and had met him through Keyon Taylor and Darren Keith Paulk. In June 2009, his mother, Carolyn Lowe, threw a barbecue for Taylor's daughter's mother, Erica Stevenson, at Lowe's house. Stevenson's birthday was June 24. Deadwiler testified that this party took place on June 24, 2009, although it could have been the 23rd or 25th. The party occurred in a vacant lot next to Lowe's house, and Deadwiler recalled observing many people coming and going.

¶ 100 Defendant, Taylor, and Paulk arrived shortly after Deadwiler, around 2:45 p.m. Deadwiler was at the party throughout the day, and defendant never left the party while Deadwiler was there. Deadwiler left the party between 6:30 p.m. and 7 p.m. with his wife, Nicole Stevens; their children; and defendant. Deadwiler left the party and traveled to his home in East Chicago, Indiana. At 6:50 p.m., he was in his red 2007 sport utility vehicle with defendant on his way to East Chicago. Defendant remained in his vehicle for the entire trip from the party to East Chicago, which took about 25 to 30 minutes. At Deadwiler's home in East Chicago, Deadwiler and defendant drank and watched television all night until the next morning; Deadwiler was with defendant the entire time and never observed defendant leave the house.

¶ 101 Deadwiler dropped defendant off just before defendant's arrest on August 6, 2009, and did not learn of his arrest until the next day. With regards to the date of the shooting, Deadwiler testified "I'm not for sure who told me the date. I don't even know what day it

was. Nobody ever told me that." Deadwiler was told about the date of the murder, and once he was told the date, he remembered being at the party with defendant. Deadwiler remembered June 24, 2009, specifically, because he only went to Lowe's house for special occasions, and this birthday party was one of them.

¶ 102 XIX. Sergeant John Nowakowski

¶ 103 Sergeant John Nowakowski testified that he was employed by the Chicago police department and that he met with Andre at Stroger Hospital the day after the shooting. Andre told Nowakowski that he knew the occupants of the vehicle because he was told their names. He did not reveal their names to Nowakowski. Sergeant Nowakowski testified that he believed that Andre was still upset with the police when he spoke with Nowakowski.

¶ 104 XX. Procedural History

¶ 105 On August 6, 2009, defendant was arrested; and on September 15, 2009, a grand jury indicted defendant and Ronald Henderson for first degree murder of Chastity Turner and for the attempted first degree murder of Andre Turner and Joe Walker on June 24, 2009.

¶ 106 Trial began on March 18, 2014, and on March 26, 2014, after deliberating for two hours, the jury returned its verdict. Defendant was found guilty of (1) the first degree murder of Chastity Turner; (2) the attempted first degree murder of Andre Turner; and (3) the attempted first degree murder of Joe Walker.

¶ 107 Ronald Henderson was found guilty of (1) the first degree murder of Chastity Turner; (2) the attempted first degree murder of Andre Turner; and (3) the attempted first degree murder of Joe Walker.

¶ 108 On May 7, 2014, defendant substituted counsel, and on July 9, 2014, a new attorney appeared on defendant's behalf. Defendant filed posttrial motions for a new trial or judgment

notwithstanding the verdict. In defendant's posttrial motion for a new trial, he listed 39 points of error, including ineffective assistance of counsel for failing to object to Detective Timothy O'Brien's testimony as hearsay evidence and for failing to object to improper comments during the prosecutor's closing arguments.

¶ 109 The trial court denied defendant's claims for ineffective assistance of counsel, noting counsel's "performance *** in representing the defendant *** far exceeds the standards set forth in *Strickland v. Washington* [466 U.S. 668 (1984)]." The court opined that counsel's decision to call three alibi witnesses as opposed to a possible six was trial strategy. Finally, the court found the claim of prosecutorial misconduct during closing arguments to be unfounded.

¶ 110 Defendant submitted seven letters from members of his family in mitigation at sentencing. On July 9, 2014, the trial court sentenced defendant to 50 years for the murder of Chastity, 25 years for the attempted murder of Walker, and 25 years for the attempted murder of Andre. These sentences were to be served consecutively for a total of 100 years.

¶ 111 On August 7, 2014, defendant filed a motion to reconsider the sentence. On August 12, 2014, the trial court denied the motion to reconsider and defendant filed a timely notice of appeal.

¶ 112 ANALYSIS

¶ 113 On appeal, defendant claims that he received ineffective assistance of counsel based on his trial counsel's failure (1) to object to hearsay testimony which established alibis for alternative suspects and (2) to object to portions of the prosecutor's closing arguments, which defendant claims were inflammatory. For the following reasons, we affirm.

¶ 114 I. Ineffective Assistance of Counsel

¶ 115 Every defendant has a constitutional right to the effective assistance of counsel under the sixth amendment to the United States Constitution and under article I, section 8 of the Illinois Constitution. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § 8; *People v. Domagala*, 2013 IL 113688, ¶ 36. In order to determine whether a defendant was denied his or her right to effective assistance of counsel, a reviewing court must apply the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668, 687 (1984). *People v. Colon*, 225 Ill. 2d 125, 135 (2007) (citing *People v. Albanese*, 104 Ill. 2d 504 (1984) (adopting *Strickland*)). To prevail on a claim of ineffective assistance of counsel under *Strickland*, a defendant must prove both (1) that his or her attorney's actions constituted a deficiency so serious as to fall below an objective standard of reasonableness and (2) that this deficient performance prejudiced defendant. *Domagala*, 2013 IL 113688, ¶ 36 (citing *Strickland*, 466 U.S. at 687).

¶ 116 To establish the first prong of the *Strickland* test, the defendant must show "that counsel's performance was objectively unreasonable under prevailing professional norms." *Domagala*, 2013 IL 113688, ¶ 36. To establish the second prong, that this deficient performance prejudiced the defendant, the defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Domagala*, 2013 IL 113688, ¶ 36 (citing *Strickland*, 466 U.S. at 694). "[A] reasonable probability that the result would have been different is a probability sufficient to undermine confidence in the outcome—or put another way, that counsel's deficient performance rendered the result of the trial unreliable or fundamentally unfair." *People v. Evans*, 209 Ill. 2d 194, 220 (2004); *Colon*, 225 Ill. 2d at 135. A mistake in trial strategy or tactics, without more, does not amount to ineffective assistance of counsel. *People*

v. McGee, 373 Ill. App. 3d 824, 835 (2007) (citing *People v. Ward*, 371 Ill. App. 3d 382, 434 (2007)). Counsel's trial strategy is " 'virtually unchallengeable.' " *McGee*, 373 Ill. App. 3d at 835 (quoting *People v. Palmer*, 162 Ill. 2d 465, 476 (1994)).

¶ 117 Since a defendant must satisfy both prongs of the *Strickland* test in order to prevail, a trial court may dismiss the claim if either prong is missing. *People v. Flores*, 153 Ill. 2d 264, 283 (1992). Thus, if a court finds that defendant was not prejudiced by the alleged error, it may dismiss on that basis alone without further analysis. *People v. Graham*, 206 Ill. 2d 465, 476 (2003); *People v. Albanese*, 104 Ill. 2d 504, 527 (1984). The court does not need to consider the first prong of the *Strickland* test when the second prong cannot be satisfied. *People v. Lacy*, 407 Ill. App. 3d 442, 457 (2011) (citing *Graham*, 206 Ill. 2d at 476).

¶ 118 II. Hearsay Testimony

¶ 119 In defendant's first claim, defendant argues that his trial counsel was ineffective for failing to object to hearsay testimony which the State offered to show the steps of the officers' investigation.

¶ 120 Hearsay testimony is an out-of-court statement offered to prove the truth of the matter asserted. *People v. Whitfield*, 2014 IL App (1st) 123135, ¶ 25 (2014) (citing *People v. Peoples*, 377 Ill. App. 3d 978, 983 (2007)). If the trial court finds that the out-of-court statement is offered for a purpose other than to prove the truth of the matter asserted, it is not hearsay. *Whitfield*, 2014 IL App (1st) 123135, ¶ 25. Thus an officer may testify to his or her investigatory procedures without violating the hearsay rule. *People v. Jones*, 153 Ill. 2d 155, 159-60 (1992). Statements offered for the limited purpose of showing the course of a criminal investigation, where that testimony is necessary to fully explain the State's case to the trier of fact, are not inadmissible hearsay. *People v. Jura*, 352 Ill. App. 3d 1080, 1085

(2004). This court has held that, if a statement is offered to explain the actions or steps that a police officer has taken during the course of an investigation, that statement is not hearsay. *Jura*, 352 Ill. App. 3d at 1086; *People v. Edgecombe*, 317 Ill. App. 3d 615, 627 (2000); *People v. Warlick*, 302 Ill. App. 3d 595, 598-99 (1998). Police officers may testify to information they receive during the course of an investigation to explain why they took such action. *People v. Rush*, 401 Ill. App. 3d 1, 15 (2010). This is permissible nonhearsay testimony, as it is being offered to show the steps the officer took. It was not offered for the truth of the matter asserted. *Rush*, 401 Ill. App. 3d at 15.

¶ 121 A court's determination of the admissibility of evidence is within its sound discretion, and its ruling will not be reversed on appeal absent an abuse of discretion. *Whitfield*, 2014 IL App (1st) 123135, ¶ 25. "An abuse of discretion occurs where the trial court's decision is arbitrary, fanciful, or unreasonable [citation], or where no reasonable person would agree with the position adopted by the trial court [citations]." *People v. Ciborowski*, 2016 IL App (1st) 143352, ¶ 88. For example, this court held in *Whitfield* that a statement offered for the sole purpose of showing the conduct of police and the steps in their investigation was proper to show the course of the police conduct, and thus there was no abuse of discretion by the court in its admission in evidence. *Whitfield*, 2014 IL App (1st) 123135, ¶ 28. In contrast, police testimony which reveals not only the steps an officer took in the course of the investigation but also substantive information in an out-of-court statement is not admissible in evidence. *People v. Thompson*, 2016 IL App (1st) 133648, ¶ 43.

¶ 122 III. Failure to Object to Hearsay Testimony

¶ 123 Defendant's first claim is that trial counsel was ineffective by failing to object to hearsay testimony by Detectives O'Brien and O'Donnell which established alibis for two alternative suspects.

¶ 124 A. Detective Timothy O'Brien's Testimony

¶ 125 First, defendant claims that trial counsel was ineffective by failing to object to testimony by Detective Timothy O'Brien regarding Christopher Cannon. Defendant argues that Cannon was a viable alternative suspect to the shooting whom the investigators improperly dismissed based on an alibi. Defendant claims Cannon was a proper suspect because investigators observed Cannon walking near the vehicle involved in the shooting. O'Brien testified that he interviewed Cannon, who provided an alibi which was confirmed by Cannon's mother. Defendant claims that trial counsel should have objected to this testimony as inadmissible hearsay because O'Brien was offering his "opinion as to the alibi provided by Cannon," which affected the truth of the matter. Moreover, defendant claims that Cannon's mother's testimony is "classically biased and unsubstantiated" alibi testimony and insufficient to justify not completing the GSR test performed on Cannon. Defendant argues that, "[i]n this case, allowing the detectives to testify to the facts asserted by the alibi witnesses constituted impermissible hearsay because the detectives were testifying in court about matters asserted by non-testifying third parties (the alibi witnesses), and thus constitutes inadmissible hearsay." Defendant argues that his counsel's failure to object to this testimony rises to the level of ineffective assistance of counsel.

¶ 126 In response, the State argues that O'Brien's testimony did not address the facts of Cannon's alleged alibi nor did the detective vouch for Cannon's credibility. Rather, the State

offered the testimony to show the steps taken in the course of the investigation which led the investigators to charge defendant. The State argues that O'Brien's testimony was admissible for the purpose offered and that any objection would have been overruled by the trial court, and thus there was neither deficiency nor prejudice.

¶ 127 Defendant was not prejudiced by trial counsel's failure to object to O'Brien's testimony that Cannon had an alibi. During the course of the murder investigation, Cannon was taken into custody for questioning because investigators observed Cannon between 50 and 60 feet from the shooter's vehicle. After Cannon provided an alibi, which his mother corroborated, the police no longer considered Cannon a suspect in the shooting. The details of Cannon's alibi were never provided at trial. O'Brien's trial testimony revealed that Cannon cooperated with the police and remained at Area 1 where he stood as a subject in two lineup viewings. Tawanda Sterling and Donise Robertson, both eyewitnesses to the shooting, separately viewed the lineups which contained Cannon as a subject, but neither identified Cannon as one of the shooters or as a passenger in the vehicle.

¶ 128 Nothing in the trial testimony revealed any facts about the subject matter of Cannon's alibi. Still, defendant contends that this testimony was impermissible as it constituted improper bolstering of a witness. This bolstering argument is inapplicable here as Cannon never testified at trial.

¶ 129 Even if counsel had made an objection and even if the court had sustained it, the testimony about Cannon's participation in the lineup and not being identified as a shooter or in the vehicle by eyewitnesses would have had a similar effect of ruling out Cannon as a suspect. Given the overwhelming evidence provided by the State, including Sterling and

Andre Turner's identification of defendant as the shooter, trial counsel's failure to object to O'Brien's testimony about Cannon providing an alibi did not prejudice defendant.

¶ 130 B. Detective Michael O'Donnell's Testimony

¶ 131 Defendant's second claim about trial counsel's failure to object to testimony concerns Detective Michael O'Donnell's testimony that Gerald Lauderdale was eliminated as a suspect. Defendant claims that Lauderdale was an even more convincing suspect in this shooting since the police stopped him in a vehicle similar to the one involved in the shooting and found him in possession of a firearm of the same caliber used in the shooting. Defendant contends that his trial counsel should have objected to Detective O'Donnell's testimony about ruling out Lauderdale as a suspect and that this failure prejudiced defendant.

¶ 132 Defendant argues that this was inadmissible hearsay testimony as O'Donnell was allowed to testify to the credibility of Lauderdale's alibi and "was simply cleared as an alternative suspect *** because his alibi, too, supposedly checked out." Further, defendant claims his trial counsel's failure to object prejudiced him because the State conclusively "eliminated Lauderdale as a suspect based solely on the detective's assessment and summary of the alibi, rather than having to establish the validity of that alibi through the alibi witnesses themselves."

¶ 133 O'Donnell testified that two police officers, Officer Sanders and Officer Patterson, observed Lauderdale and three other individuals quickly enter a vehicle which appeared similar to the one used in the shooting. O'Donnell testified that, after Sanders and Patterson observed this vehicle commit a traffic violation, they pulled the vehicle over, and Officer Sanders observed a firearm in the vehicle. O'Donnell testified that, after Sanders and

Patterson identified Lauderdale as a known associate of Whitfield, who was a suspect in the shooting, they took all four individuals in the vehicle into custody for questioning.

¶ 134 O'Donnell testified that he questioned Lauderdale, who then provided an alibi. After Lauderdale's alibi was corroborated by four other individuals, O'Donnell ruled him out as a suspect but kept Lauderdale to stand as a subject in two lineups. Both Sterling and Robertson separately viewed lineups with Lauderdale as a subject. During Sterling's viewing, she initially identified Lauderdale as one of the shooters, but quickly corrected herself, stating that she simply knew who he was and that Lauderdale was an associate of Whitfield, another suspect. Robertson viewed the same lineup but did not identify Lauderdale as being present during the incident.

¶ 135 Nothing in the trial testimony revealed any facts about the subject matter of Lauderdale's alibi. Had an objection been made and sustained by the trial court, the testimony of Lauderdale's participation in the lineup and not being identified as a shooter by eyewitnesses had a similar effect of ruling out Lauderdale as a suspect. Given the overwhelming evidence provided by the State, including two eyewitness identifications of defendant as one of the shooters and Sterling and Robertson's failure to identify Lauderdale during lineups, trial counsel's failure to object to O'Donnell's testimony about Lauderdale providing an alibi did not prejudice defendant.

¶ 136 In addition, defendant's contention that the police dismissed Lauderdale as a suspect based solely on one detective's assessment of his alibi is not supported by the record. To the contrary, trial testimony demonstrated that the police made the decision to eliminate Lauderdale as a suspect in the shooting after multiple interviews and the lineups. O'Donnell testified and defendant acknowledges in his brief that Lauderdale's alibi was corroborated by

four other individuals. This, in conjunction with Lauderdale not being identified in a lineup, revealed that he was not simply dismissed as a suspect on a hunch.

¶ 137 IV. Plain Error

¶ 138 If we are not persuaded that his counsel's failure to object to alleged hearsay constituted ineffective assistance, defendant asks us, in the alternative, to review the same issue for plain error. "Under the plain error rule, issues not properly preserved may be considered by a reviewing court under two limited circumstances: (1) where the evidence is closely balanced, so as to preclude argument that an innocent person was wrongfully convicted; or (2) where the alleged error is so substantial that it affected the fundamental fairness of the proceeding, and remedying the error is necessary to preserve the integrity of the judicial process." *People v. Hall*, 194 Ill. 2d 305, 335 (2000).

¶ 139 Defendant argues that there is no difference between the first prong of the plain error doctrine and the second prong of *Strickland* test and, thus, the issue constitutes plain error for the same reason which he already argued. Our supreme court has held:

> "Plain-error review under the closely-balanced-evidence prong of plain error is similar to an analysis for ineffective assistance of counsel based on evidentiary error insofar as a defendant in either case must show he was prejudiced: that the evidence is so closely balanced that the alleged error alone would tip the scales of justice against him, *i.e.*, that the verdict 'may have resulted from the error and not the evidence' properly adduced at trial [citation]; or that there was a 'reasonable probability' of a different result had the evidence in question been excluded [citation]." *People v. White*, 2011 IL 109689, ¶ 133.

¶ 140 For the same reasons which we concluded that there was no prejudice under *Strickland*, we also conclude no plain error occurred. As noted above, there were two eyewitnesses who identified defendant as a shooter and later identified him in lineups at Area 1. While defendant produced three witnesses of his own who all testified to observing or meeting with defendant at a birthday party, these witnesses had difficulty correctly identifying the date of the party which defendant attended. Although Darren Paulk, defendant's cousin, testified that the party occurred on June 24, 2009, Paulk also testified that, on August 8, 2011, he told an investigator at the State's Attorney's Office that he did not remember the exact date. Kevin Taylor, who had been friends with defendant for 16 years, testified that, on August 8, 2011, when he spoke with the State's Attorney's investigator, he stated that he did not remember the exact date when Chastity was shot; however, he believed that it may have been June 25, 2009, because that was the day of Stevenson's birthday party. The shooting occurred on June 24, 2009. Alfonzo Deadwiler, who had been friends with defendant for six years, testified that the party took place on June 24, 2009, although it could have been June 23 or June 25. The evidence in this case was not closely balanced such that the detectives' testimonies about the course of the investigation swayed a closely balanced case.

¶ 141 The State presented the testimony of two eyewitnesses who had previously known defendant and who identified him as a shooter. Had the trial court not allowed the detectives' testimony regarding the two potential suspects who had alibis, defendant still would not have been prejudiced given the weight of the evidence against defendant identifying him as one of the shooters.

¶ 142 V. Failure to Object to State's Closing Arguments

¶ 143 Defendant also claims that trial counsel was ineffective in failing to object to portions of the prosecution's closing arguments, which defendant claims were both inflammatory and unprofessional.

¶ 144 First, defendant argues that the State's closing arguments were improper as they were used to inflame the jury's passions. Defendant asserts that the State repeatedly appealed to the jurors' passions and prejudices, improperly impugned the professionalism and role of defense counsel, and exhorted jurors to use their verdict as a vehicle to vindicate the victim.

¶ 145 Courts have allowed prosecutors great latitude when making closing arguments. *People v. Blue*, 189 Ill. 2d 99, 127 (2000). Further, the State may comment on the evidence and all inferences reasonably yielded from it. *Blue*, 189 Ill. 2d at 127. In reviewing comments made at closing arguments, the court asks whether or not the comments engendered substantial prejudice against a defendant such that it is impossible to say whether or not a verdict of guilt resulted from them. *People v. Wheeler*, 226 Ill. 2d 92, 123 (2007). Misconduct in closing argument is substantial if the improper remarks constituted a material factor in a defendant's conviction. *Wheeler*, 226 Ill. 2d at 123.

¶ 146 During the State's closing argument, the prosecutor told the jurors that "[Chastity's] innocence was taken away by a bullet that went through her back and killed her. Nonsense. And that is why you are here, folks, to declare an end to this." In the State's rebuttal closing argument, the prosecutor stated "[t]here is an old saying in law school. It goes something like this: when the facts are against you, argue the law. And when the law is against you, argue the facts. And when everything is against you, just get up there and argue." The prosecutor repeated a similar version of this later, stating "when the facts are against you, argue the law,

and when the law is against you argue the facts. And when Andre is hitting the ball out of the park on everything, you just get up and argue."

¶ 147 Defendant claims that the prosecutor argued that the defense's closing argument was not based on "any admissible evidence" and his trial counsel failed to object and was thus ineffective. The prosecutor argued: "[a]nd what is the defense's response to this whole nonsense, pitiful nonsense? Deny, deflect, and offer a disingenuous defense. *** Deflect. The photo arrays are meaningless. And by deflect, pay no attention to all these identifications, all this real evidence, the totality of the circumstances. Pay no attention to that." The prosecutor then told the jurors "this was not CSI TV," and that "when this case is over and you go back and come out with guilty verdicts for these guys, the credits do not roll and Chastity Turner is not going to pop behind the screen and take a bow. The only place you are going to see her name is on a polished rock in a field where these two put her." Defendant claims that the prosecutor addressed defense counsel's attempts to argue reasonable doubt, by stating the defense "wants a perfect case," and "the perfect case to the defendant is the one that they get away with."

¶ 148 Defendant claimed that his counsel should have also objected when the prosecutor argued that, when the witnesses stated that they knew the date of the party because it was the date a little girl was shot, "[t]hey are trying to use, this is disgusting, Chastity Turner's murder to set them free. Think about it. That is twisted." The prosecutor then stated "your intelligence was insulted and insulted by that defense. A real alibi, he was in the hospital, we got records. I was in jail. We got records. *** They (referring to defendant's witnesses) have a constitutional right to get up there and tell you the biggest bunch of garbage that they can come up with, and that is exactly what they did." Defendant claims that the prosecutor was

arguing that defendant's alibi was not a real alibi, one that is corroborated by the records, and that the defense insulted the jury's intelligence with its alibi defense.

¶ 149 Defense counsel did not object when the prosecutor concluded his argument with:

> "And when Chastity Turner was slaughtered by these guys, laying on the ground in the back of the yard, she did not have her mom with her. Her dad did not know she was shot. He went to the hospital. She was alone. She was alone. When the ambulance came for her and took her to the hospital, the emergency room, she was alone. And finally, when death's icy grip came for her and took her, she was alone. What is magnificent about this criminal justice system and your job is she is not alone anymore. She has you 12 people to give her and to give Lakeisha Edwards the only thing that matters, not your pity, not your sympathy, the one thing you can give her, and that is justice ladies and gentlemen. Justice must be done. Do it."

¶ 150 Defendant argues that this case presents a similar situation to that in *People v. Blue*, 189 Ill. 2d 99, 130 (2000), where the Illinois Supreme Court ordered a new trial based, in part, on the prosecution's highlighting the victim's family's loss. The *Blue* court found this to be patently immaterial to the defendant's guilt and aimed only to play on the jury's emotions. *Blue*, 208 Ill. 2d at 130. Additionally, the supreme court held in *People v. Johnson*, 208 Ill. 2d 53, 77 (2003), that when the jury is considering a defendant's guilt, the broader problems of crime should not be the focus. Defendant argues that the State created an "us versus them" mentality attempting to influence the jury to send a message about the evils of crime and the trauma on the victims. Defendant argues that the State's use of the phrases "[a]nd that's why you're here, folks. To declare an end to this" and "[j]ustice must be done. Do it" were the same exhortations to deliver a message which were prohibited in *Johnson*. *Johnson*, 208 Ill.

2d at 77. Defendant compares the State's asking the jury here to declare an end to a gang war to asking the jury to solve the broader problem of crime, which was held improper in *Johnson*. *Johnson*, 208 Ill. 2d at 77.

¶ 151 While appealing to the jury to end societal ills is improper, that is not what happened here. Defendant argues that the State proposed to the jury that a guilty verdict would be a step in combating gang wars, but the closing statement he cites contains nothing about the criminal gangs which were involved here. The State's closing mirrored the facts established at trial: Chastity was alone when she was taken to the hospital; Andre had left immediately after the shooting; and Chastity's mother was not present at Andre's house that day. Telling the jury that "justice must be done" does not conclusively mean, as defendant asserts, that the jury's duty is to return a guilty verdict in defense of society. It does not rise to the level of reprehensibility that the prosecutor's comments in *Blue* did, that " 'every police officer in this state needs to hear from you right now.' " *Blue*, 189 Ill. 2d at 128. While asking a jury to return a verdict in defense of society is improper, defendant's claim that, in the present case, the State's comments rise to that level is a stretch.

¶ 152 Second, defendant claims that the State "improperly dehumanized the defendant by referring to him as a hunter." (Internal quotation marks omitted.) Defendant alleges that, when the State's closing argument referred to defendant's "personal hunting ground," it was calling him a predator with the sole purpose of dehumanizing him. Defendant cites *People v. Ivory*, 333 Ill. App. 3d 505, 517 (2002), which found that referring to a defendant as an animal is improper. In *Ivory*, the prosecutor referred to the defendant as an animal, stating that he might be " 'all dressed up in his nice wool suit' " now. *Ivory*, 333 Ill. App. 3d at 516. But he was " 'just a wolf in sheep's clothing.' " *Ivory*, 333 Ill. App. 3d at 516. The prosecutor

in *Ivory* argued that the defendant was " 'part of a pack of predators, and when you run with the pack, you share in the kill.' " *Ivory*, 333 Ill. App. 3d at 516. The *Ivory* court found that the trial court erred in overruling the objection made by the defense counsel, although this single isolated passage did not rise to the level of reversible error. *Ivory*, 333 Ill. App. 3d at 517. Here, defendant draws an analogy between the phrase "hunting grounds" which was used by the State, and the word "predator" which was used in *Ivory*, thus arguing that the failure to object to this statement constituted ineffective assistance of counsel. In defendant's brief on appeal, he argued "the State made reference to the defendant's 'personal hunting ground,' where he and his 'partners in crime had declared open season.' " While it is improper to call a defendant an animal, that did not occur here. Defendant argues that hunter is analogous to predator, but the words in *Ivory* included "wolf" and "pack" and "sharing in the kill."

¶ 153 Although the State did "stretch the envelope" here in attempting to gain sympathy for the victim, any error was harmless. Even if the prosecutor's remarks were inappropriate, defense counsel's failure to object to them did not substantially prejudice defendant where the evidence against him was so overwhelming.

¶ 154 The *Ivory* court also found:

> "Nonetheless, ' "[i]mproper remarks generally do not constitute reversible error unless they result in substantial prejudice to the accused." ' [Citation.] We have already noted that the evidence of defendant's guilt—based in substantial part on defendant's own confession—was overwhelming. Further, viewing the improper comment in the context of the closing argument as a whole [citation], we note that the objectionable commentary was contained in a single 'isolated [passage] and was

> not dwelled upon further by the prosecutor' [citation]. We therefore conclude that the improper characterization of defendant as a wolf did not rise to the level of reversible error." *Ivory*, 333 Ill. App. 3d at 517.

¶ 155 Similarly, in the case at bar, the evidence was overwhelming. Two eyewitnesses identified defendant as one of the shooters, and defendant's alibi witnesses had difficulty correctly identifying the date of the party which defendant allegedly attended, placing their credibility into an issue.

¶ 156 Third, defendant claims the State systematically belittled and demeaned trial counsel, thereby impugning the concept of reasonable doubt. Defendant claims the State inappropriately mocked defense counsel by sarcastically asking did "all four main witnesses misidentify the same three defendants?" Defendant argues in his brief to this court that this comment was misleading to the jury, because "[o]nly two witnesses identified the Defendant." While only two eyewitnesses identified defendant, the State's comment refers to the sum total of all eyewitnesses identifying all suspects in the shooting. The trial testimony thus supports State's comment about four "main" identifying witnesses: Sterling, Andre Turner, Robertson, and Davis, who each identified at least one of the three suspected shooters. Thus, the State's closing remark was based on trial testimony.

¶ 157 Defendant argues that the State's prejudicial remarks in closing should not be looked at in isolation, but rather in the full context of the closing arguments. Specifically, defendant claims that the two eyewitnesses who identified defendant were impeached and that there was no physical evidence, no confession, and that, in a close case, the State's remarks could have led to a guilty verdict. However, this is not the case because the two eyewitnesses, who knew defendant well, identified him as a shooter, and the jury believed what they heard. The

jury heard both sides tell their story and resolved all of the inconsistencies in the evidence. We find no substantial prejudice to defendant as a result of the State's closing arguments.

¶ 158 CONCLUSION

¶ 159 For the foregoing reasons, we conclude that defendant failed to establish ineffective assistance of counsel. Defendant was not prejudiced by trial counsel's failure to object to testimony by two detectives regarding two suspects' alibis. This was not a deciding factor in the outcome of the case where two eyewitnesses, who knew defendant, testified and identified defendant as a shooter.

¶ 160 Additionally, defendant did not suffer prejudice from the State's closing arguments. Prosecutors are given great latitude to zealously represent the State's interest. Even if these comments were improper, the weight of the evidence against defendant was so substantial that the closing arguments did not tip the scales of justice.

¶ 161 Affirmed.