2016 IL App (1st) 143962-U

FOURTH DIVISION
September 29, 2016

No. 1-14-3962

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 CR 14137(02)
	)	
DARNEL CHAFFIN,	)	Honorable
	)	Neera Lall Walsh,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice Ellis and Justice Burke concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Defendant was proven guilty of armed robbery beyond a reasonable doubt; (2) the State did not commit prosecutorial misconduct; (3) the trial court did not abuse its discretion in denying defendant a continuance to substitute counsel; (4) defendant did not request a continuance to subpoena witnesses; (5) defendant failed to make an offer of proof regarding character evidence he intended to present; and (6) defendant also failed to make an offer of proof regarding a statement of an unnamed police officer.

¶ 2 Following a June 2014 jury trial, defendant Darnel Chaffin was found guilty of armed robbery with a firearm, and subsequently sentenced to a 21-year prison term. Defendant appeals, arguing that: (1) the State failed to prove him guilty beyond a reasonable doubt; (2) the State

erred by cross-examining defendant and making comments in closing arguments that suggested he or his family intimidated the victim, Tedmund Gordon; (3) the trial court erred in denying a continuance allowing defendant to substitute counsel; (4) the trial court erred in denying defendant's motion for a continuance to subpoena witnesses; (5) the trial court erred in granting the State's motion *in limine* to bar character evidence; and (6) the trial court erred in sustaining a hearsay objection to defendant's testimony that an unnamed police officer said defendant was arrested because he was a black male in the vicinity of an armed robbery. We affirm.

¶ 3 Defendant was arrested on July 20, 2010, and subsequently charged in August 2010, with armed robbery with a firearm and aggravated unlawful restraint with codefendant Jovani Velasquez.[1] On July 27, 2010, attorney Steven Wagner filed an appearance on defendant's behalf. Later, on August 16, 2010, a public defender filed an appearance, but Wagner refiled his appearance on August 24. Wagner withdrew from the case on May 9, 2011. On June 7, 2011, Tony Thedford filed an appearance on defendant's behalf.[2] Michael Lewis filed an appearance on March 1, 2012. On December 18, 2012, Donald Rendler-Kaplan filed an additional appearance, but withdrew on November 20, 2013. On January 8, 2014, Kendall Hill filed an appearance on defendant's behalf. Hill and Lewis proceeded to represent defendant jointly. Hill and Lewis filed a motion to quash arrest and suppress evidence and a motion to suppress a showup identification, both were denied by the trial court after a hearing in March 2014. Also on March 7, 2014, following the denial of the motion to suppress, the trial court set the case for a jury trial on May 12, 2014.

[1] Velasquez is not a party to this appeal, but he did testify at defendant's trial as described below.

[2] The record does not indicate when Thedford withdrew his appearance. In the proceedings leading to trial in 2014, the parties and the trial court discuss Thedford as a former attorney for defendant.

¶ 4 At the April 14, 2014 status date, Hill and Lewis appeared and informed the trial court that defendant no longer wanted them to represent him. Lewis stated that defendant had filed a complaint with the Attorney Registration and Disciplinary Commission (ARDC) against him. The trial court stated that the case was on the "supplemental call," noting that it had been pending since 2010, and that "the cases on the supplemental call are not like ordinary cases where anybody can withdraw whenever they want to." The court admonished defendant that he was permitted to hire a new attorney, but that attorney needed to be ready to go to trial on May 12. Hill and Lewis also argued to be allowed to withdraw since defendant had not compensated them for their representation. The trial court transferred the case to the presiding judge to determine whether defendant's attorneys could withdraw. The presiding judge subsequently denied the attorneys' request to withdraw.

¶ 5 On April 23, 2014, defendant and his attorneys appeared again before the trial court. Hill noted that defendant had stopped communicating with them. Defendant indicated that he had found a new attorney named Mr. Dickinson, who was not present in court. The court advised that Mr. Dickinson needed to appear and confirm that he would be ready for trial on May 12. At the next status date on April 28, Lewis and Hill appeared for defendant. Another attorney, Mr. Brice, appeared and indicated to the court that he was willing to represent defendant, but it would be "unprofessional" to attempt to be prepared by May 12, and would seek an extension of time. The court maintained that the trial would begin on May 12, and Brice could file an appearance to proceed on that date. Brice responded that based on the court's representations, he would not file an appearance. Hill told the court that he would be ready to try the case on June 9. The record indicates that the case was set for jury trial on June 9, 2014. The court then allowed Lewis to withdraw and set a status date for May 12.

¶ 6 Hill appeared for defendant at the May 12 status hearing. On May 29, 2014, Hill again appeared on defendant's behalf. Defendant, however, informed the trial court that he wanted to represent himself with assistance from an attorney named Luther Spence, who was not present. The court conducted a *voir dire* of defendant's ability to represent himself. The trial court reiterated that the trial date was June 9, and it wanted Spence to appear to discuss appearing as standby counsel. The court granted Hill's motion to withdraw.

¶ 7 On June 2, defendant appeared at a status hearing representing himself. Spence was not present. The court stated it wanted to speak to Spence before Spence would be allowed to file an appearance or act as standby counsel. The court noted that defendant had been represented by five attorneys over many dates, and told defendant it was "looking at this as a dilatory tactic. You are trying to delay this trial." The case was continued to the next day. On June 3, defendant indicated to the trial court that he intended to call Terry Gatherings as an alibi witness, but Gatherings was not under subpoena. Defendant also stated that he planned to call Motoya Marsha, his summer school teacher, but she was not under subpoena.

¶ 8 On June 9, defendant appeared *pro se* and answered ready for trial three times. When the trial court asked defendant if his witnesses were present, defendant responded that they were on their way, but he was "still answering ready with or without them." Defendant confirmed that he was ready to go without them stating, "Yes, if they not [*sic*] here, they're not here." The court discussed each of defendant's intended witnesses with him and asked regarding each witness if he or she was not present the following day, defendant would still be answering ready. Defendant answered yes for each witness. The State answered that it was not ready, asked for the issuance of a rule to show cause, and moved to continue the trial for one day. The trial court granted both requests.

¶ 9 On June 10, 2014, defendant answered that he was not ready to begin the trial because his witnesses were not present. Defendant also asked for the court to appoint an attorney to represent him because he does not have any money. The court reiterated that it had discussed defendant's representation before and defendant had indicated that he wanted to represent himself. Defendant asserted that he did not find "the right lawyer" and he did not "come across the right attorneys." The court responded that it found "that this is a dilatory tactic on [defendant's] part." The parties proceeded to trial.

¶ 10 Following jury selection, defendant stated that his grandparents were able to pay an attorney and he asked if the court could hold the proceedings until the next day when he could have an attorney present. Defendant said the attorney retained was Spence. Defendant informed the court that Spence was aware that jury selection had occurred and he would answer ready for trial. During a brief recess, the State contacted Spence and the court spoke with him. Spence indicated that he had not been retained by defendant or his family, but if he was retained, then he would ask for a continuance. The trial court held that no continuance would be granted and the trial would proceed.

¶ 11 Tedmund Gordon testified that at approximately 2:30 p.m. on July 20, 2010, he had left his girlfriend's house near West Gladys Avenue and South Kostner Avenue in Chicago. Gordon had called a cab to take him to work at his uncle's body shop. Gordon stated that he had $840 in cash in his right shoe.

¶ 12 While standing at the corner, Gordon was approached by a white male, later identified as codefendant Jovani Velasquez, and a black male. The white male stood approximately three feet in front of Gordon and the black male stood approximately three feet behind Gordon. Neither man was wearing anything to cover their faces. Velasquez pointed a gun at Gordon's chest and

said, "Give me your money." Gordon tried to turn to see the black man, but was told to turn and face Velasquez. Gordon took a few dollars from his pockets and gave it to Velasquez. Gordon was then told to remove his shoes. He stated that Velasquez took the shoe with $840 in it. Both men ran away in the same direction. Gordon testified that he did not attempt to run during the robbery because Velasquez was pointing a gun at him.

¶ 13 After the robbery, Gordon ran to his uncle's house on Gladys Avenue. He told his uncle that he had been robbed. He stated that they did not call the police. Gordon, his uncle, and his cousin got into a car and went to look for the men who had robbed him. While driving, Gordon's cousin received a call that someone was being chased on Lake Street. They drove to 3557 West Lake Street. Gordon testified that the police were already at that location. Gordon testified that he told an officer about the robbery. Gordon identified a firearm as the one used in the robbery.

¶ 14 During cross-examination, defendant asked Gordon if Gordon could identify defendant as the black man who participated in the robbery. Gordon responded in the negative, stating that defendant was not the man.

¶ 15 Officer Moore testified that he was employed as a police officer with the Chicago police department. At approximately 2:30 p.m. on July 20, 2010, Officer Moore was alone in a marked squad car near West Madison Street and South Springfield Avenue when he received a radio dispatch of an armed robbery. The dispatch indicated that four males were involved in a robbery and were driving east in a black Trailblazer with the license plate A891485. Officer Moore said the robbery occurred near 321 South Kostner, approximately half a mile from the officer's location. He began to look for the vehicle. At approximately 2:35 p.m., Officer Moore observed a black Trailblazer which fit the description stop at Madison and Springfield. He stated that the license plate matched the description and he began to follow the vehicle. Officer Moore testified

that he requested a repeat of the description and requested more police units. He said the vehicle drove to Central Park and made a left turn. Officer Moore was able confirm the license plate matched the description. He heard other officers approaching. After the vehicle turned right onto Lake Street, Officer Moore curbed the vehicle near 3557 West Lake Street.

¶ 16 Officer Ramirez testified that he was employed as a police officer with the Chicago police department. At approximately 2:30 p.m. on July 20, 2010, he was working as part of a tactical team with Officer Alvarez as his partner. He was dressed in plain clothes. At approximately 2:35 p.m., he heard a radio dispatch about an armed robbery which described the vehicle leaving the scene as a black Chevy with the license plate A891485. Shortly thereafter, he heard a second dispatch stating that Officer Moore was following the vehicle. Officer Ramirez and his partner joined the pursuit of the vehicle. He assisted in curbing the vehicle. Officer Ramirez identified defendant as one of the four occupants of the vehicle. Defendant was sitting in the front passenger seat.

¶ 17 As the officers were ordering the occupants from the vehicle, Gordon arrived on the scene. Officer Ramirez testified that "[w]hen Tedmund Gordon arrived he was hysterical, and he ended up yelling that he was the individual that held him by his neck and took his money that he had in his shoes." Officer Ramirez stated that Gordon pointed at defendant and Velasquez when Gordon "yelled" about the individual who held him by his neck and took his money. Officer Ramirez said that Gordon did not reference the other two individuals in the vehicle.

¶ 18 Officer Salvador Ruggiero testified that he was employed as a Chicago police officer. He stated that at approximately 2:35 p.m. on July 20, 2010, he was called to assist the officers who had stopped the black SUV at 3557 West Lake Street. Officer Ruggiero observed four occupants in the black SUV. He identified defendant as the individual in the front passenger seat, while

Velasquez was seated in the rear driver seat. The four individuals were taken out of the vehicle. Officer Ruggiero identified defendant in court as the person he observed being taken out of the front passenger seat. Officer Ruggiero identified that driver of the vehicle as James Carrera and the rear passenger as Daniel Hernandez. He described Velasquez, Carrera, and Hernandez as "white-skinned" Latino individuals. Defendant was described as having a black complexion and no one else in the vehicle had a dark complexion.

¶ 19 After the occupants were removed from the vehicle, Officer Ruggiero searched the vehicle and recovered a .38-caliber firearm loaded with six live rounds in the rear passenger seat. The firearm and the live rounds were inventoried. Officer Ruggiero identified the firearm at trial. Officer Ruggiero also testified that he observed defendant being searched at the police station and that officers recovered $737 from defendant's left shoe, which was inventoried and deposited into an account.

¶ 20 Detective Luis Carrizal testified that he was employed as a detective with the Chicago police department. On July 20, 2010, Detective Carrizal was assigned to investigate the armed robbery of Gordon. He stated that he interviewed Gordon at about 7 p.m. that day in regard to the incident at Gladys and Kostner. He described Gordon as "cooperative." Detective Carrizal questioned Gordon about the individuals identified from the black SUV. Detective Carrizal used mug shot photographs to confirm identifications. He stated that Gordon identified defendant as the person who approached him from behind and grabbed him. Gordon also identified Velasquez as the individual who held a firearm during the robbery. Detective Carrizal testified that Gordon was also shown photographs of Carrera and Hernandez, but Gordon did not identify them as participants in the robbery.

¶ 21 The State rested after Detective Carrizal's testimony.

¶ 22 Jovani Velasquez testified for the defense. Velasquez stated that he attended high school with defendant in 2007, but had not seen defendant since defendant was expelled in 2008. He said that he participated in the robbery with Carrera and Hernandez, but defendant was not involved. Velasquez stated that defendant was not in the vehicle when it was curbed.

¶ 23 On cross-examination, Velasquez admitted that he pled guilty to the armed robbery at issue and was serving 10 years in the Illinois Department of Corrections. Velasquez stated that when the SUV was stopped, he had $820 of the proceeds from the robbery. He said that he "flagged" down Carrera, who he "happened to see" driving by him.

¶ 24 The prosecutor asked Velasquez about the statements he made during his plea proceedings in February 2013 before the trial court. Velasquez was specifically asked if he remembered being shown defendant's picture and admitting that he was the individual who was involved in the robbery of Gordon with Velasquez. Velasquez testified that he did not remember his statements.

¶ 25 Defendant's mother, Misha Hamlin, testified that on July 20, 2010, she dropped defendant off at Crane High School at approximately 7:45 a.m., and she did not see him again that day.

¶ 26 Defendant testified on his own behalf. The trial court instructed defendant to ask and answer questions, rather than testify in a narrative. Defendant asked, "Why was I arrested and picked up on Lake Street?" He answered, "Because the police officer told me I was a black man in the vicinity –." The prosecutor then objected, which the trial court sustained.

¶ 27 Defendant stated that at the time of the robbery, he "was coming down from an el train on Central Park and Lake going to a barber shop to schedule [his] appointment for a hair cut ***."

¶ 28 On cross-examination, the prosecutor asked defendant if he had copies of the police reports that included Gordon's address, cell phone number, as well as Gordon's girlfriend's name and cell phone number. Defendant admitted he did, but was unsure if the reports contained Gordon's girlfriend's phone number. He denied that the reports listed Gordon's place of employment. Defendant stated that he studied the reports. He also admitted that he did not live by himself, rather his mother and brother lived with him. Defendant said that he kept the documents in a safe, but the prosecutor impeached defendant with a prior statement to the trial court that he had lost documents when he moved.

¶ 29 Defendant denied that Velasquez was his friend. He stated that he knew Velasquez from high school, but had no contact with Velasquez until the preliminary hearing in this case. Defendant testified that at 2:30 p.m., he was exiting the train at Central Park. He had been on the train with a classmate named Terry Gatherings. Defendant had subpoenaed Gatherings to testify, but Gatherings had not appeared. Defendant maintained that he was going to a barber shop at Lake and Central Park, but the shop is now closed.

¶ 30 Defendant rested after his testimony. In rebuttal, the State called Assistant State's Attorney (ASA) Geraldine D'Souza. ASA D'Souza testified that on February 8, 2013, Velasquez pled guilty to armed robbery with a firearm. During the hearing, Velasquez was shown defendant's photograph, and he identified defendant as the individual involved in the robbery of Gordon. Velasquez also testified that defendant was in the vehicle when it was stopped by the police. The transcript from the plea hearing was admitted into evidence. The State rested in rebuttal.

¶ 31 Following deliberations, the jury found defendant guilty of armed robbery with a firearm. Defendant, represented by an attorney, filed a motion for a new trial, which the trial court denied. Subsequently, the court sentenced defendant to a term of 21 years in prison

¶ 32 This appeal followed.

¶ 33 Defendant first argues that the State failed to prove defendant guilty beyond a reasonable doubt. Specifically, defendant relies on Gordon's testimony that defendant was not one of the men who robbed him and Velasquez's testimony that defendant was not involved in the robbery. The State maintains that a reasonable jury could have found defendant guilty of armed robbery with a firearm.

¶ 34 When this court considers a challenge to a criminal conviction based upon the sufficiency of the evidence, it is not our function to retry the defendant. *People v. Hall*, 194 Ill. 2d 305, 329-30 (2000). Rather, our inquiry is limited to "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." (Emphasis in original.) *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); accord *People v. Cox*, 195 Ill. 2d 378, 387 (2001). It is the responsibility of the trier of fact to "fairly *** resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Id.*

¶ 35 The reviewing court must carefully examine the record evidence while bearing in mind that it was the fact finder who saw and heard the witnesses. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). Testimony may be found insufficient under the *Jackson* standard, but only where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt. *Id.* However, the fact a judge or jury did accept testimony does not guarantee it was reasonable to do so. Reasonable people may on occasion act unreasonably.

Therefore, the fact finder's decision to accept testimony is entitled to great deference but is not conclusive and does not bind the reviewing court. *Id*. Only where the evidence is so improbable or unsatisfactory as to create reasonable doubt of the defendant's guilt will a conviction be set aside. *Hall*, 194 Ill. 2d at 330.

¶ 36 A person commits robbery when he takes property from the person or presence of another by the use of force or threatening the imminent use of force. 720 ILCS 5/18-1(a) (West 2010). Section 18-2(a) of the Criminal Code of 1961 (Criminal Code) sets forth the offense of armed robbery and provides:

> "(a) A person commits armed robbery when he or she violates Section 18-1; and
>
> (1) he or she carries on or about his or her person or is otherwise armed with a dangerous weapon other than a firearm; or
>
> (2) he or she carries on or about his or her person or is otherwise armed with a firearm; or
>
> (3) he or she, during the commission of the offense, personally discharges a firearm; or
>
> (4) he or she, during the commission of the offense, personally discharges a firearm that proximately causes great bodily harm, permanent disability, permanent disfigurement, or death to another person." 720 ILCS 5/18-2(a) (West 2010).

¶ 37 Further, defendant's conviction was based on a theory of accountability. "A person is responsible for conduct which is an element of an offense if the conduct is either that of the person himself, or that of another and he is legally accountable for such conduct as provided in

Section 5-2, or both." 720 ILCS 5/5-1 (West 2010). To convict a defendant under the theory of accountability, the State must prove beyond a reasonable doubt that he (1) solicited, aided, abetted, agreed or attempted to aid another person in the planning or commission of the offense; (2) did so before or during the commission of the offense; and (3) did so with the concurrent, specific intent to promote or facilitate the commission of the offense. 720 ILCS 5/5-2(c) (West 2010); *People v. Smith*, 278 Ill. App. 3d 343, 355 (1996). The law on accountability incorporates the "common design rule," which provides that where two or more persons engage in a common criminal design, any acts in furtherance thereof committed by one party are considered to be the acts of all parties to the common design and all are equally responsible for the consequences of such further acts. *People v. Cooper*, 194 Ill. 2d 419, 434-35 (2000).

¶ 38 "Accountability may be established through a person's knowledge of and participation in the criminal scheme, even though there is no evidence that he directly participated in the criminal act itself." *In re W.C.*, 167 Ill. 2d 307, 338 (1995). "Evidence that a defendant voluntarily attached himself to a group bent on illegal acts with knowledge of its design supports an inference that he shared the common purpose and will sustain his conviction for an offense committed by another." *Cooper*, 194 Ill. 2d at 435. Nevertheless, "mere presence at the scene, even with knowledge that the crime is being committed, is insufficient to establish accountability for the actions of another." *W.C.*, 167 Ill. 2d at 338.

¶ 39 Viewing the evidence in the light most favorable to the State, we find that a rational trier of fact could have found defendant guilty of armed robbery with a firearm under a theory of accountability. At trial, the State presented evidence that Gordon was approached by two men, one with a lighter complexion, and one with a darker complexion. The lighter skinned individual pointed a firearm at Gordon and demanded money. The individual asked for Gordon's shoe,

which contained $840. During the robbery, the other individual stood behind Gordon. The perpetrators took Gordon's shoe and fled. Velasquez admitted that he robbed Gordon with a firearm. Officer Moore received a radio dispatch of a black SUV involved in an armed robbery and located the SUV shortly thereafter, and subsequently curbed the vehicle. Officer Ruggiero identified defendant as the individual removed from the front passenger seat of the curbed SUV. Officer Ramirez and Detective Carrizal testified that Gordon identified defendant as the perpetrator with the darker complexion at the scene and in photographs at the police station, respectively. This evidence satisfied the elements necessary to prove armed robbery with a firearm under an accountability theory.

¶ 40 Defendant bases his claim on the testimony of Gordon and Velasquez. First, Velasquez was impeached with his statements at his plea hearing in which he identified defendant as his codefendant in the armed robbery. As for Gordon, the prosecutor elicited testimony from defendant that Gordon's personal information was contained in police reports present in defendant's house. Later, the prosecutor argued about the inference that Gordon may have been intimidated by defendant, either prior to trial or by having to identify defendant directly during cross-examination.

¶ 41 The jury was presented with all of this evidence in reaching its verdict. It is within the purview of the jury as the finder of fact to assess credibility and weigh the evidence presented. See *Jackson*, 443 U.S. at 319. "That one witness's testimony contradicts the testimony of other prosecution witnesses does not render each witness's testimony beyond belief." *People v. McCarter*, 2011 IL App (1st) 092864, ¶ 22. "The trier of fact is free to accept or reject as much or as little of a witness's testimony as it pleases." *Id.* We cannot say that the evidence was "so

improbable or unsatisfactory as to create reasonable doubt of the defendant's guilt" such that, we will set aside the jury's verdict. *Hall*, 194 Ill. 2d at 330.

¶ 42 Defendant next contends that it was plain error to permit the State to cross-examine defendant regarding whether the police reports contained Gordon's personal information and later to argue the inference that Gordon had been intimidated prior to trial. Defendant admits that this issue was not preserved in the trial court, but asks this court to review it under the plain error doctrine.

¶ 43 To preserve an issue for review, defendant must object both at trial and in a written posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Failure to do so operates as a forfeiture as to that issue on appeal. *People v. Ward*, 154 Ill. 2d 272, 293 (1992). Supreme Court Rule 615(a) states that "[a]ny error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court." Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967). The plain error rule "allows a reviewing court to consider unpreserved error when (1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007) (citing *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005)). However, the plain error rule "is not 'a general saving clause preserving for review all errors affecting substantial rights whether or not they have been brought to the attention of the trial court.' " *Herron*, 215 Ill. 2d at 177 (quoting *People*

v. Precup, 73 Ill. 2d 7, 16 (1978)). Rather, the supreme court has held that the plain error rule is a narrow and limited exception to the general rules of forfeiture. *Id*.

¶ 44 Defendant carries the burden of persuasion under both prongs of the plain error rule. *People v. Lewis*, 234 Ill. 2d 32, 43 (2009). Defendant asserts that this alleged error would qualify as a plain error under both prongs. However, "[t]he first step of plain-error review is to determine whether any error occurred." *Lewis*, 234 Ill. 2d at 43.

¶ 45 We will review defendant's claim to determine if there was any error before considering it under plain error. Defendant has asserted that the prosecutors erred in both cross examination and in closing arguments, but during his analysis, defendant offers no legal authority or argument related to his general allegations regarding cross examination. Defendant offered only conclusory statements that the evidence elicited was error, but failed to detail how this was error and under what authority this alleged error was based. Defendant's citations to case law related only to prosecutorial errors in closing arguments. We find that defendant has forfeited this claim by failing to comply with Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2008). Supreme Court Rule 341(h)(7) requires appellants' brief to include "[a]rgument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). " '[A] reviewing court is entitled to have the issues on appeal clearly defined with pertinent authority cited and a cohesive legal argument presented. The appellate court is not a depository in which the appellant may dump the burden of argument and research.' " *In re Marriage of Auriemma*, 271 Ill. App. 3d 68, 72 (1994) (quoting *Thrall Car Manufacturing Co. v. Lindquist*, 145 Ill. App. 3d 712, 719 (1986)). Contentions supported by some argument, but no authority do not meet the requirements of Supreme Court Rule 341(h)(7) (*People v. Pickens*, 354 Ill. App. 3d 904, 916

(2004)), and, therefore, defendant has forfeited this argument as it relates to improper cross examination.

¶ 46 We next consider whether the prosecutor's comments in closing argument constituted plain error. Generally, a prosecutor is given wide latitude in closing arguments, although his or her comments must be based on the facts in evidence or upon reasonable inferences drawn therefrom. *People v. Page*, 156 Ill. 2d 258, 276 (1993). "The prosecutor has the right to comment on the evidence and to draw all legitimate inferences deducible therefrom, even if they are unfavorable to the defendant." *People v. Simms*, 192 Ill. 2d 348, 396 (2000). "Whether a prosecutor's comments or arguments constitute prejudicial error is evaluated according to the language used, its relation to the evidence, and the effect of the argument on the defendant's right to a fair and impartial trial." *Id.* "In reviewing comments made at closing arguments, this court asks whether or not the comments engender 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). "Prosecutorial misconduct warrants reversal only if it 'caused substantial prejudice to the defendant, taking into account the content and context of the comment[s], its relationship to the evidence, and its effect on the defendant's right to a fair and impartial trial.' " *People v. Love*, 377 Ill. App. 3d 306, 313 (2007) (quoting *People v. Johnson*, 208 Ill. 2d 53, 115 (2004)). "If the jury could have reached a contrary verdict had the improper remarks not been made, or the reviewing court cannot say that the prosecutor's improper remarks did not contribute to the defendant's conviction, a new trial should be granted." *Wheeler*, 226 Ill. 2d at 123. "The trial court may cure errors by giving the jury proper instructions on the law to be applied; informing the jury that arguments are not themselves evidence and must be disregarded

if not supported by the evidence at trial; or sustaining the defendant's objections and instructing the jury to disregard the inappropriate remark." *Simms*, 192 Ill. 2d at 396-97.

¶ 47 We note that there is a question of the correct standard of review for prosecutorial misconduct. In *Wheeler*, our supreme court suggested we review this issue *de novo*. *Wheeler*, 226 Ill. 2d at 121. However, *Wheeler* cited with approval *People v. Caffey*, 205 Ill. 2d 52 (2001), which suggested the standard of review is abuse of discretion (*Caffey*, 205 Ill. 2d at 128). *Wheeler*, 226 Ill. 2d at 122-23. Since *Wheeler*, appellate courts have been divided regarding the appropriate standard of review. *People v. Alvidrez*, 2014 IL App (1st) 121740, ¶ 26 (noting that the issue remains divided). Nevertheless, we need not resolve the issue of the proper standard in this case as the result would be the same under either standard.

¶ 48 Here, defendant argues that the prosecutors in closing and rebuttal arguments improperly inferred that defendant or members of his family intimidated Gordon in some manner, which caused Gordon to testify that defendant was not the dark skinned perpetrator. Specifically, one of the prosecutors made the following argument in the State's initial closing argument.

> "There's one more thing you must consider, that you must weigh. The defendant was asked about the fact that he had police reports at his home. These reports that he acknowledged he had in his presence, which included Tedmund Gordon's name, his address, his phone number, his place of employment, where his girlfriend lived, her name. He told you he didn't live at home alone, he lived with mother and Darryl Chaffin, his brother, other people who had access to this information. Here's where your life experience and common sense come in; Tedmund Gordon had to

> sit there and confront him (indicating), Tedmund Gordon had to sit there and answer questions put to him by the person who participated in this armed robbery with a loaded gun, looking out at who knows who. That's no easy proposition to do. Weigh that."

¶ 49 Defendant argued in closing that the police made "untrue statements saying they took me out of a car in which that committed an armed robbery." [*Sic*.] Defendant asserted that the State failed to prove defendant guilty beyond a reasonable doubt, noting several times that Gordon testified that defendant was not the man who stood behind him during the armed robbery. He also noted multiple times that Velasquez stated that defendant was not involved in the armed robbery.

¶ 50 In rebuttal, the prosecutor commented, "As you heard from his own lips possessing the discovery in this case, possessing information about Tedmund Gordon, possessing information about his girlfriend, where he works." Shortly thereafter, the prosecutor also made the following comment.

> "Now, Mr. Gordon, who then is testifying here in the course of this trial, you heard him as the first witness right off the bat. And he sees the man that he looked at, the man who said turn around, the man who prevented him from running, asking him, am I the guy that robbed you? You see, folks, that's a tough, a very difficult position to be in. Tedmund Gordon, a west side Chicago guy. The defendant's here, defendant's family. So that's what he did, defendant confronted him himself, acting as his own lawyer,

> confronting him, almost suggesting an answer to him. Difficult position, folks, for Tedmund Gordon."

¶ 51 Later in rebuttal argument, the prosecutor commented to the jury, "You are the masters of the evidence now. You have the power and you have the power to say – and we submit to you that that's intimidation that Tedmund Gordon said that this man did not rob him – you have control now."

¶ 52 Defendant argues that these comments in closing and rebuttal argument were without factual support and were plain error. "It is improper [] for the State to suggest that a witness was afraid to testify because the defendant threatened or intimidated him when that argument is not based on evidence produced at trial." *People v. Cox*, 377 Ill. App. 3d 690, 707 (2007). For this claim, defendant relies primarily on the supreme court's decision in *People v. Mullen*, 141 Ill. 2d 394 (1990). In that case, an occurrence witness initially testified, but then refused to answer questions. During a conference in chambers, the witness indicated that he did not want to testify because "he was afraid of some boys 'around the house.' " *Id.* at 398. The next day, the witness agreed to testify and the trial court admonished the parties not to ask questions or reference why the witness was reluctant to testify. *Id.* In closing argument, the prosecutor specifically referenced the witness and why he hesitated in his testimony. The prosecutor argued, " 'And use your common sense why he did not want to answer. The same reason no one wanted to talk, at first; they do not want to get involved. Why don't they want to get involved? They do not want one of these ... in their back. Is this going to be what runs the streets of the City of Chicago.' " *Id.* at 401.

¶ 53 On appeal, the supreme court found plain error where (1) the evidence was closely balanced, noting numerous discrepancies in the evidence, and (2) the prosecutor commented on evidence that the trial court had explicitly excluded. *Id.* at 403-04.

¶ 54 However, we point out that the supreme court recognized the limited application of its findings in *Mullen* in a later decision, entitled *People v. Williams*, 192 Ill. 2d 548 (200). The court stated in *Williams*:

> "*Mullen* is distinguishable. In *Mullen*, the prosecution in closing argument in a close case deliberately and forcefully argued that a witness was afraid of being shot in the back if he testified against defendant. The trial court had previously specifically excluded any mention of the witness' fear of defendant. We concluded that such a comment was improper and prejudicial because (1) there was 'no evidence in the record that defendant in any way threatened or intimidated any witness'; (2) the argument evinced an 'egregious' disregard 'as to proper argument and the orders of the trial court'; and (3) the evidence of guilt was closely balanced. In the instant case, on the other hand, the record established that defendant had intimidated the witnesses; the prosecution's argument did not transgress any court order; and the evidence was not closely balanced. *Mullen* is thus distinguishable, and, as we stated in *Mullen*, ' "[e]ach case of this kind must be decided upon its own facts." ' *People v. Williams*, 192 Ill. 2d 548, 574-75 (2000)

(quoting *Mullen*, 141 Ill. 2d at 407, quoting *People v. Weathers*, 62 Ill. 2d 114, 120 (1975)).

¶ 55 We also find *Mullen* distinguishable from the instant case for several reasons. First and foremost, the trial court did not make any rulings excluding evidence and references to intimidation, and as such, the arguments were not in direct violation of a court's ruling. Second, the evidence elicited at trial disclosed that defendant was in possession of Gordon's personal information, this information was kept at his house, and defendant did not live alone. The only errors in the prosecutors' comments were its references to Gordon's place of work and Gordon's girlfriend's address, which defendant testified was not in the police report. Defendant admitted that the reports had Gordon's name and personal information, as well as Gordon's girlfriend's name, though defendant was unsure if her phone number was included. We do not find the error in these comments to have impacted the jury's verdict where defendant admitted to possessing identifying information about Gordon.

¶ 56 Further, the comments here were not inflammatory as were the comments in *Mullen* that the witness was afraid of being shot in the back. Specifically, the instant comments related to defendant's possession of information with Gordon's personal information to make an inference that Gordon may have been intimidated to testify. Additionally, we are not considering the word "intimidation" in the criminal sense, but in its commonly understood meaning. "Intimidate" is defined as "to make timid or fearful." *Merriam-Webster's Collegiate Dictionary* 613 (10th ed. 1995). The prosecutors' arguments in both the initial and rebuttal closing argument explained multiple times how "difficult" it was for Gordon to testify when directly confronted with one of the individuals who robbed him. Gordon was 19 years old at the time of the robbery and 23

years old at trial, and faced with the unusual and daunting circumstances of testifying in a criminal trial. The same situation could make a reasonable person feel "timid" or "fearful."

¶ 57 We also find this case to be distinguishable from *People v. Fluker*, 318 Ill. App. 3d 193 (2000), and *People v. Ray*, 126 Ill. App. 3d 656 (1984), cited by defendant. In *Fluker*, the reviewing court reversed and remanded for a new trial after the prosecutor's rebuttal argument "turned the jury's attention away from the issues in an effort to turn the case into a referendum on attitudes toward gangs." *Fluker*, 318 Ill. App. 3d at 202-03. The court also observed that the prosecutor improperly shifted the burden of proof to defendant in rebuttal. *Id*. at 203-04. While there was testimony from a witness that she was afraid of retaliation for her change in testimony, the court did not base its decision on the argument on that issue. We find *Fluker* to be inapposite to the issues in the present case.

¶ 58 Defendant's reliance on *Ray* is also misplaced. In that case, the reviewing court found error after an "examination of the State's rebuttal argument reveals a litany of remarks so vituperative and inflammatory that they could only have created an atmosphere inimical to the even-handed dispensation of justice and thus resulted in prejudice to defendant." *Ray*, 126 Ill. App. 3d at 659-60. The court observed that the prosecutor "repeatedly attacked the professional integrity of defense counsel, charging him with 'lying' some 16 times, as well as with trying to 'confuse' and 'intimidate' the jury in an effort to win defendant's acquittal." *Id*. at 660. The prosecutor also misstated the law regarding the defendant's presumption of innocence. *Id*. at 661. The court also pointed to the prosecutor's comments about the defendant's failure to testify, insinuation that additional State evidence was excluded by the defendant's objection, intimation about the defendant's criminal history, and suggestions that the defendant was manipulating his constitutional rights to avoid conviction. *Id*. at 661-63. In addition, the prosecutor argued that

witnesses chose not to speak with the defense counsel or testify because they were afraid of the defendant and that the defendant was " 'working through the lawyers to intimidate you in the courtroom.' " *Id.* at 662.

¶ 59 The *Ray* court based its decision on multiple egregious and improper comments made by the prosecutor in rebuttal. For this reason, the case is easily distinguishable from the instant case. Defendant failed to discuss the breadth of the prosecutor's improper comments in *Ray*, but instead singled out only the argument related to intimidation. A complete reading of *Ray* shows that the case was based on the cumulative effect of the errors and did not turn on the single argument regarding intimidation. Further, the intimidation comment in *Ray* was not based on any evidence or inference from the trial.

¶ 60 Unlike the cases relied on by defendant, most of the prosecutors' comments here were tied to the evidence in this case and were argued as inferences for the jury to weigh in its decision. The prosecutor argued that it was difficult for Gordon to be confronted by defendant himself about the crime. We also point out that defendant devoted a substantial portion of his closing argument on Gordon's testimony. The State was permitted to respond to defendant's argument. "Statements will not be held improper if they were provoked or invited by the defense counsel's argument." *People v. Glasper*, 234 Ill. 2d 173, 204 (2009). "A closing argument must be viewed in its entirety, and the challenged remarks must be viewed in their context." *Id.* When we view the complained-of comments in context with the case, we find no error. When defendant admitted that he had the police reports and what was contained in them, the State was not required to substantiate defendant's admissions at trial. Gordon's testimony was relied on extensively by defendant and it was reasonable for the State to infer based on the elicited evidence that Gordon may have been intimidated. None of the comments charged

defendant with physical intimidation, but instead, properly discussed the evidence and posed the inference that Gordon was intimidated to testify to the jury as something to weigh, which was their job as the finder of fact. It was reasonable for the prosecutor to argue that Gordon might be timid or fearful when confronted directly by defendant, the alleged person who participated in the armed robbery. Moreover, we point out that the prosecutor made a single reference to "intimidation" in closing arguments. When taken in context, we cannot say that this isolated comment constitutes error.

¶ 61 Additionally, the trial court properly advised the jury numerous times that closing arguments are not evidence and any statement or argument made that was not supported by the evidence should be disregarded. See *Simms*, 192 Ill. 2d at 396-97. Throughout defendant's closing argument as well as an admonition in rebuttal, the trial court instructed the jury seven times that closing arguments are not evidence and to disregard comments involving personal opinions or those comments not based upon the evidence presented at trial. Given the wide latitude permitted for closing arguments, the trial court's admonishments, and the substantial evidence presented by the State, we decline to find error in the State's closing arguments. Since there was no error, there cannot be plain error and defendant's argument fails.

¶ 62 However, even if the prosecutor's comments regarding intimidation were error, defendant cannot succeed under the plain error doctrine because the evidence in this case was not closely balanced. While Gordon denied that defendant was one of the perpetrators of the robbery, his testimony was that he was robbed by two individuals, one was a light skinned Latino male, and the other a dark skinned African American male. Gordon's nonidentification of defendant at trial was in contrast to testimony from Officer Ramirez and Detective Carrizal. Officer Ramirez testified that Gordon identified defendant and Velasquez at the scene as the perpetrators.

Detective Carrizal also testified that Gordon identified defendant using mug shot photographs during an interview that evening. Additionally, there was substantial circumstantial evidence from the police witnesses. Testimony from Officer Moore established that following a radio dispatch of an armed robbery, a black SUV that matched the description and license plate was curbed in the area of the robbery. Officers Ramirez and Ruggiero testified that defendant was seated in the front passenger seat of the vehicle at the time it was stopped. Defendant was the only African American in the vehicle, the other three occupants, including Velasquez, were light skinned Latino males. Further, Officer Ruggiero recovered $737 from defendant's shoe at the time of the stop. Defendant provided no explanation at trial for the money recovered. Officer Ruggiero also stated that he recovered a loaded firearm from the vehicle, which Gordon identified at trial as the gun used in the robbery.

¶ 63 Velasquez testified at trial that defendant did not participate in the robbery with him. However, Velasquez was impeached with his prior testimony at his own plea hearing in which he testified that defendant helped him rob Gordon. When confronted with his prior testimony, Velasquez stated that he did not remember giving it. The State presented the ASA from his plea hearing as a rebuttal witness, who read Velasquez's prior testimony into the record in which he named and identified defendant as his codefendant in the robbery. Given the State's evidence presented at trial, we cannot conclude that the evidence was closely balanced. Since the evidence was not closely balanced, defendant's claim of plain error must fail.

¶ 64 Next, defendant asserts that the trial court erred by holding that defendant could only hire a new attorney if that attorney would be ready for a jury trial on the date set by the court. Specifically, defendant argues that the trial court abused its discretion by denying him a continuance to obtain a new attorney. The State responds that the trial court's decision was not

an abuse of discretion because defendant repeatedly requested new counsel as a tactic to delay trial.

¶ 65 The sixth amendment to the United States Constitution provides: "[i]n all criminal prosecutions, the accused shall enjoy the right *** to have the Assistance of Counsel for his defence." U.S. Const., amend. VI. "The Supreme Court has held that the right to retained counsel of choice is included in the sixth amendment right to counsel." *People v. Baez*, 241 Ill. 2d 44, 104-05 (2011) (citing *United States v. Gonzalez-Lopez*, 548 U.S. 140, 147-48 (2006); *Wheat v. United States*, 486 U.S. 153, 159 (1988)). "The Illinois Constitution's guarantee that 'the accused shall have the right to appear and defend in person and by counsel' likewise encompasses the right to counsel of choice." *Id.* (quoting Ill. Const.1970, art. I, § 8).

¶ 66 "However, 'while the right to select and be represented by one's preferred attorney is comprehended by the Sixth Amendment, the essential aim of the Amendment is to guarantee an effective advocate for each criminal defendant rather than to ensure that a defendant will inexorably be represented by the lawyer whom he prefers.' " *Id.* (quoting *Wheat*, 486 U.S. at 159). For example, a defendant "may not insist on representation by an attorney he cannot afford or who for other reasons declines to represent the defendant." *Wheat*, 486 U.S. at 159. The Supreme Court has observed that courts have "an independent interest in ensuring that criminal trials are conducted within the ethical standards of the profession and that legal proceedings appear fair to all who observe them." *Id.* at 160. "A defendant who abuses the sixth amendment in an attempt to delay trial and the effective administration of justice may forfeit his right to counsel of choice." *People v. Howard*, 376 Ill. App. 3d 322, 335 (2007) (citing *People v. Childress*, 276 Ill. App. 3d 402, 413 (1995) (defendant will lose right to counsel of choice when he attempts to "thwart justice, delay, or embarrass the effective administration of justice"); see

also *People v. Antoine*, 335 Ill. App. 3d 562, 580 (2002) ("[t]he exercise of the right to choice of counsel may be denied if it will unduly interfere with the administration of justice")).

¶ 67 Here, defendant was arrested in July 2010 and indicted in August 2010. In March 2014, defense counsel filed and argued a motion to quash arrest and suppress evidence, which the trial court denied. On April 14, 2014, defendant's attorneys Lewis and Hill appeared before the trial court and indicated that defendant "no longer want[ed] to retain the defense team and that there has been some disagreement over the last month and things that should have been done have not been done." The attorneys moved to withdraw. Lewis informed the court that defendant had filed an ARDC complaint against him. Hill also told the court that defendant had failed to pay under the financial arrangements for his representation.

¶ 68 The trial court detailed how long the case had been pending and observed that it was on the "supplemental call," which meant that it was "not like ordinary cases where anybody can just withdraw whenever they want to." The court then discussed the multiple lawyers that had represented defendant. The court also observed that the case was set for a jury trial in a month. The court told defendant that if he wanted to hire a new attorney, then that attorney needed to be ready to proceed to trial in May.

¶ 69 When the trial court questioned defendant, he stated that the attorneys "were suppose to put in a motion to dismiss not a motion to suppress evidence." The court advised defendant that the decision regarding which motions to file rested with his attorneys. The trial court transferred the case to the presiding judge to consider the motion to withdraw by Lewis and Hill, which the presiding judge did not allow.

¶ 70 At a subsequent court date, defendant told the court an attorney named Dickinson had agreed to represent him for the trial, but Dickinson never appeared in court. At the April 28

court date, defendant was still represented by Lewis and Hill. However, an attorney named Brice appeared before the court. When the trial court explained the status and the date for jury trial, Brice indicated that he would not file an appearance because he would not be ready for trial by the date previously set of May 12. The trial court permitted Lewis to withdraw as one of defendant's attorneys at this time. Hill requested an extension of time of June 9, 2014 for the jury trial, which the court allowed.

¶ 71 At a May 29, 2014 status hearing, defendant told the trial court that he wanted to represent himself with some assistance from counsel. Defendant stated that an attorney named Spence would assist him as defendant represented himself. The court pointed out that during the pendency of the case, defendant had been represented by five different attorneys. The trial court discussed with defendant the consequences of appearing *pro se* at trial, including presenting a defense, understanding the tactical decisions, making objections to inadmissible evidence, in that defense, and understanding legal terms. The court advised defendant that it would not be explaining things to him and would not be his lawyer, and that defendant would not receive special consideration. The court asked defendant if he was in possession of the police reports and other court documents, defendant indicated that he had most of the files for the case at his home. The court also told defendant that if he wanted Spence as standby counsel, then the court wanted to speak with Spence prior to trial. The court asked defendant if after all the things it had told him, did he still want to represent himself, and defendant responded that he did. The trial court allowed defendant to represent himself and also granted Hill's request to withdraw from the case.

¶ 72 At the June 2 status hearing, Spence did not appear. The trial court found defendant's actions were "dilatory" and an attempt to delay trial. On June 10, 2014, after jury selection was

completed, the trial court spoke with Spence. Spence informed the court that he had not been retained by defendant or his family, but if he did come in, he would be seeking a continuance. The court stated that no continuance would be allowed and the trial would proceed.

¶ 73 "All motions for continuance are addressed to the discretion of the trial court and shall be considered in the light of the diligence shown on the part of the movant." 725 ILCS 5/114-4(e) (West 2012). The decision of whether to grant a continuance for purposes of substitution of counsel is a matter left to the discretion of the trial court and will not be overturned absent an abuse of that discretion. *People v. Segoviano*, 189 Ill. 2d 228, 245 (2000). The appropriate factors to consider include the movant's diligence, the defendant's right to a speedy, impartial and fair trial, and the interests of justice. *Id*. In balancing a defendant's right to counsel of choice against the judicial interest in trying the case with due diligence, the court should look to the actual request to determine whether it is being used merely as a delay tactic. *People v. Tucker*, 382 Ill. App. 3d 916, 920 (2008). "[A] trial court is granted 'wide latitude in balancing the right to counsel of choice against the needs of fairness [citation] and against the demands of its calendar.' " *Baez*, 241 Ill. 2d at 106 (quoting *Gonzalez-Lopez*, 548 U.S. at 152). "The denial of a motion for continuance to obtain new counsel is not an abuse of discretion 'if new counsel is not specifically identified or does not stand ready, willing, and able to make an unconditional entry of appearance *instanter*.' " *Antoine*, 335 Ill. App. 3d at 580 (quoting *People v. Burrell*, 228 Ill. App. 3d 133, 142 (1992)).

¶ 74 The record in this case shows that the trial court weighed defendant's right to counsel of choice against the efficient administration of justice. The court was mindful of the age of the case as well as defendant's actions in seeking new representation and the continuances such counsel would seek. The record establishes that the case had been pending for nearly four years

while defendant had been represented by five attorneys. Defendant was out on bond while the case remained pending. Further, the trial court had already allowed a continuance of the trial date to June 9 for Hill to prepare. On May 29, 2014, less than two weeks before trial was set to begin, defendant asked to represent himself with assistance from Spence, who was not present in court. The trial court discussed the ramifications of appearing *pro se* with defendant, who waived his right to counsel. Spence never appeared in court on defendant's behalf, but indicated to the court via telephone after jury selection on June 10, that if he was retained, then he would need a continuance to prepare. No attorney appeared ready, willing, and able to appear for defendant to begin trial.

¶ 75 Defendant argues that the trial court's requirement that a new attorney be ready for trial was unreasonable and an abuse of discretion. Defendant relies on *People v. Brisco*, 2012 IL App (1st) 101612, for support. In that case, a new attorney sought to substitute as counsel for posttrial proceedings, but requested additional time to supplement a previously filed motion for a new trial. The trial judge stated that it would allow the substitution if the attorney was ready to proceed in two weeks as the judge was retiring in a month. The judge also noted that the trial transcript would not be ready in that timeframe. *Brisco*, 2012 IL App (1st) 101612, ¶ 39-40.

¶ 76 The reviewing court observed that the new attorney appeared at the first posttrial date and there was no evidence the defendant had previously continued the case. *Id.* ¶ 44-45. Further, the reviewing court noted that "the trial court made no finding that defendant's request was dilatory or lacking in good faith." *Id.* ¶ 42. "While counsel did request additional time to become prepared, this fact, standing alone, has never been held a sufficient basis to effectively deny a motion to substitute." *Id.* ¶ 47. The reviewing court concluded that under the circumstances present in that case, the trial court's decision was an abuse of discretion. *Id.* ¶ 48.

¶ 77 In contrast to *Brisco*, the trial court specifically found that defendant was engaging in dilatory tactics in an attempt to delay trial. The record shows that defendant had been released on bond while the case pended for trial and had repeatedly indicated conflicts with his attorneys. The trial court's decision was not based solely on the potential attorneys' requests for additional time, but on the entire history of the case and defendant's actions therein.

¶ 78 Defendant also cites *Childress*, 276 Ill. App. 3d 402, for support. The reviewing court in *Childress* described the circumstances as follows.

> "On the day the case was set for trial, private counsel appeared before the court asking to file an appearance on defendant's behalf. Counsel was not aware that trial was scheduled for that day and, therefore, was unprepared to begin trial. The trial court denied his request for a continuance, finding that there were no extraordinary grounds warranting a continuance at such a late date, particularly because the public defender had worked the case up diligently and all witnesses were present in court. The trial court did state, however, that it did not find defendant's request dilatory." *Id.* at 410.

¶ 79 In distinguishing the circumstances in the defendant's case from authority cited by the State, the reviewing court specifically noted that the trial court had not found the defendant's action to be a delay tactic, the defendant was not out on bond, and the case had been pending less than a year. *Id.* at 211-12. In finding that the defendant's right to counsel outweighed the State's interest, the reviewing court observed that the previous 14 continuances had been at the request of the State. *Id.* at 213.

¶ 80 None of those distinguishing factors are true in this case, rather the opposite is true: the court found defendant to be dilatory, he was on bond, and the case had been pending over three, almost four, years. Unlike the defendants in *Brisco* and *Childress*, the record shows that the trial court found defendant was attempting to delay trial. The right to counsel of choice is limited when the defendant engages in behavior "attempts to thwart justice, delay, or embarrass the effective administration of justice." *Id.* at 213. Here, under the circumstances of this case, the trial court's decision, to deny a continuance before new counsel could appear, was not an abuse of discretion.

¶ 81 Defendant next argues that the trial court erred in denying his request for a continuance to subpoena witnesses. Specifically, defendant asserts that on June 3, 2014, he indicated to the trial court that he intended to call Terry Gatherings, a classmate he was with on the train, and Motoya Marsha, a former teacher, as alibi witnesses and he needed more time to subpoena them. Defendant contends the trial court abused its discretion in denying his request.

¶ 82 However, the transcript of the proceedings on June 3, 2014, does not reflect a request for a continuance to subpoena witnesses by defendant. On that date, the trial court asked defendant what defense he intended to present at trial. Defendant indicated his defense would be reasonable doubt and alibi. The court then asked defendant for the specific details of his alibi defense, including any alibi witnesses. The following colloquy occurred while discussing defendant's alibi.

> "THE COURT: Okay. Were you on the El train with anybody?
>
> DEFENDANT: Yes, ma'am.
>
> THE COURT: Who were you with?

DEFENDANT: Terry Gatherings. He was a former classmate of mines [*sic*] in summer school.

THE COURT: Are you planning on calling him at trial?

DEFENDANT: Yes, ma'am.

THE COURT: Do you have him under subpoena?

DEFENDANT: No, ma'am.

THE COURT: Is he going to be here on Monday when we're going to jury trial?

DEFENDANT: I'll make sure that he's here.

THE COURT: All right. Sir, this case is a ten years old – it's a 10 CR case so it's four years old. You've had four years to be able to gather these witnesses and such –

DEFENDANT: I've been doing that. That's why I have been through so many lawyers because they never understood my story, and it's like they just wanted me, you know, to pled guilty [*sic*] to a crime that I didn't commit, your Honor –"

¶ 83 The trial court then continued to discuss the details of the alibi defense with defendant. Defendant later disclosed his summer school teacher as an alibi witness.

"DEFENDANT: I got a teacher. Her name is Motoya Marsha. She was a summer school teacher at Crane. She actually at Chicago State University now. I've been in touch with her, and she said she'd come and testify for me at trial.

THE COURT: That you were at school?

DEFENDANT: Yes, ma'am.

THE COURT: All right –

DEFENDANT: My lawyer told that that they didn't have any records stating that I went to school that day, and I actually did go to school –

THE COURT: Okay. And do you have her under subpoena for next Monday?

DEFENDANT: Nah, I don't have her under subpoena, but I can have her come in –

THE COURT: All right. Well, I just want to remind you this is your trial. You are representing yourself. You're going to decide how you want to go ahead with this case. These witnesses need to all be here because we're going to trial next week.

DEFENDANT: How do I put them under subpoena?

THE COURT: And remember how we talked about this that you wanted to be the one who –

DEFENDANT: I wanted the lawyer to represent me, and I just wanted someone who were going to be loyal –

THE COURT: You've had four lawyers.

DEFENDANT: It's just a constant trail [*sic*], Your Honor. It wasn't that I was trying to delay, I didn't like them, it wasn't none of that, your Honor. They just wasn't telling me the right thing that

I wanted to hear. I'm innocent. I just want to be proven innocent[.]"

¶ 84 Defendant then continued discussing his witnesses, including his first attorney and his codefendant Velasquez, whom the State agreed to issue a writ from the Department of Corrections. The case was continued to June 9, with the intention to begin the jury trial.

¶ 85 Contrary to defendant's argument on appeal, he made no request for additional time or a continuance to issue subpoenas for his alibi witnesses. Our reading of the transcript for that date does not disclose any suggestion by defendant for more time. The trial court asked defendant if his alibi witnesses, Gatherings and Marsha, were under subpoena, and defendant responded in both instances that they were not, but he would have them appear for trial. Further, this court has reviewed the transcripts from the previous court date on June 2 to verify that no request was made regarding a continuance for witnesses on that date and found none. On June 2, 2014, defendant was given the State's discovery and informed that he would need to disclose his defense and witnesses. Defendant complained of his lack of representation and his desire to have Spence participate in the case, but informed the court that he had not raised sufficient funds to pay Spence for his representation. Since the record provides no basis for defendant's claim that the trial court erred in denying his request for continuance to subpoena witnesses, we find this claim is without merit and will not be considered.

¶ 86 Next, defendant contends that the trial court erred in granting the State's motion *in limine* to preclude the introduction of evidence regarding defendant's character at trial. According to defendant, this ruling precluded him from "introducing testimony through his mother that he was a peaceful and law abiding person or that he had a reputation for being peaceful and law abiding."

¶ 87 "Generally, character evidence is inadmissible when a party's character is not in issue." *People v. Lucas*, 151 Ill. 2d 461, 483 (1992). Rule 404 of the Illinois Rules of Evidence provides an exception: "Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except: (1) Character of Accused. In a criminal case, evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same." Ill. R. Evid. 404(a)(1) (eff. Jan. 1, 2011). "Where it is admissible, evidence of character is confined to proof of general reputation at or prior to the alleged offense. It should also be confined to a time not very remote from the date of the alleged offense. The personal opinion of a witness and evidence of specific acts are not proper." *Lucas*, 151 Ill. 2d at 484. " 'Generally, evidentiary motions, such as motions *in limine*, are directed to the trial court's discretion, and reviewing courts will not disturb a trial court's evidentiary ruling absent an abuse of discretion.' " *People v. Patrick*, 233 Ill. 2d 62, 68 (2009) (quoting *People v. Harvey*, 211 Ill. 2d 368, 392 (2004)).

¶ 88 Defendant's argument on this issue consists of three paragraphs, citations to the Illinois Rule of Evidence and a single case, but fails to provide reasoned argument detailing what the excluded character evidence was and how the trial court's decision was an abuse of discretion. Defendant offers only a conclusion that the trial court precluded him from offering testimony from his mother that he was peaceful and law abiding. We find that defendant has forfeited this claim by failing to comply with Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2008). Supreme Court Rule 341(h)(7) requires appellants' brief to include "[a]rgument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). " '[A] reviewing court is entitled to have the issues on appeal clearly defined with pertinent authority

cited and a cohesive legal argument presented. The appellate court is not a depository in which the appellant may dump the burden of argument and research.' " *In re Marriage of Auriemma*, 271 Ill. App. 3d at 72 (quoting *Thrall Car Manufacturing*, 145 Ill. App. 3d at 719).

¶ 89 Moreover, even if defendant had not forfeited this issue, the State points out that defendant failed to make an offer of proof regarding what character evidence his mother would have offered before the trial court granted the State's motion *in limine*. " 'It is well recognized that the key to saving for review an error in the exclusion of evidence is an adequate offer of proof in the trial court.' " *People v. Burgess*, 2015 IL App (1st) 130657, ¶ 147 (quoting *People v. Andrews*, 146 Ill. 2d 413, 420-21 (1992)). " 'The purpose of an offer of proof is to disclose to the trial judge and opposing counsel the nature of the offered evidence and to enable a reviewing court to determine whether exclusion of the evidence was proper.' " *Id.* (quoting *Andrews*, 146 Ill. 2d at 421). " '[I]n making the offer of proof, counsel must explicitly state what the excluded testimony would reveal and may not merely allude to what might be divulged by the testimony.' " *Id.* (quoting *Andrews*, 146 Ill. 2d at 42). " 'The failure to make an adequate offer of proof results in a waiver of the issue on appeal.' " *Id.* (quoting *Andrews*, 146 Ill. 2d at 421).

¶ 90 Here, defendant represented himself and was required to make an offer of proof regarding the intended character evidence he wanted to present. "[D]efendant, acting as his own attorney, must comply with the rules of procedure required of attorneys, and a court will not apply a more lenient standard to *pro se* litigants." *People v. Allen*, 401 Ill. App. 3d 840, 854 (2010). Defendant, appearing *pro se*, was not excused from the required offer of proof. Without an offer of proof as to what the excluded character evidence would have been, defendant waived this issue on appeal.

¶ 91 Finally, defendant argues that the trial court erred in sustaining the State's hearsay objection to defendant's testimony about statements from a police officer. Specifically, defendant stated during his direct testimony that an unnamed officer told defendant that he had been arrested because defendant "was a black man in the vicinity" of an armed robbery. The State objected to this testimony and the trial court sustained the objection.

¶ 92 The hearsay rule generally prohibits the introduction of an out-of-court statement used to prove the truth of the matter asserted. *People v. Spicer*, 379 Ill. App. 3d 441, 449 (2007). Under Illinois Rules of Evidence, Rule 803(a) provides an exception to the general hearsay rule for "[a] statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health)[.]" Ill. R. Evid. 803(3) (eff. Apr. 26, 2012). Defendant contends that the exception under Rule 803(3) is applicable to show the unnamed officer's state of mind and to explain the course of the police investigation.

¶ 93 The State first responds that defendant failed to make an offer of proof in the trial court regarding the contents of this excluded evidence. As we have previously discussed, an offer of proof is required to preserve an alleged error in the exclusion of evidence and the failure to explicitly detail the excluded evidence waives the issue on appeal. See *Burgess*, 2015 IL App (1st) 130657, ¶ 147. Defendant made no such offer of proof as to this excluded evidence in the trial court, and, therefore, this claim has been waived.

¶ 94 Forfeiture aside, defendant's claim lacks merit. First, defendant's claim of an exception for state of mind is not properly supported. "Statements that indicate the declarant's state of mind are admissible as exceptions to the hearsay rule when the declarant is unavailable to testify, there is a reasonable probability that the proffered hearsay statements are truthful, and the

statements are relevant to a material issue in the case." *People v. Caffey*, 205 Ill. 2d 52, 91 (2001). Defendant has failed to offer any argument as to how there was a reasonable probability that this statement was truthful. Based on the record before this court, we have very limited information with nothing to indicate the probability of the statement's truthfulness when defendant only refers to an unnamed police officer with no further information. Defendant has failed to sufficiently demonstrate that the trial court abused its discretion in excluding this statement.

¶ 95 Defendant also contends the statement is admissible as showing the course of the police investigation. The course of investigation exception does not apply to defendant. "Police officers may testify to information they received during the course of an investigation to explain why they arrested a defendant or took other action." *In re Jovan A.*, 2015 IL App (1st) 103835, ¶ 28. "Such testimony is not hearsay, because it is offered to show the steps an officer took rather than for the truth of the matter asserted." *Id.* However, this course of investigation exception only applies to the testimony of police officers, not laypersons, such as defendant. Accordingly, the trial court properly sustained the State's objection to this testimony as hearsay.

¶ 96 Based on the foregoing reasons, we affirm the decision of the circuit court of Cook County.

¶ 97 Affirmed.