

No. 1-13-0545

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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 21078
)	
STESHAWN BRISCO,)	Honorable
)	Stanley J. Sacks,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LIU delivered the judgment of the court.
Justices Neville and Pierce concurred in the judgment.

ORDER

¶ 1 *HELD:* Defendant's convictions for first degree murder and aggravated battery with a firearm affirmed where the State presented sufficient evidence to sustain the convictions, the court did not commit plain error in admitting prior out-of-court statements of trial witnesses, and no prejudice resulted from the prosecutor's closing argument or the admission of an autopsy photograph into evidence. Defendant's sentences affirmed where the court did not abuse its discretion by imposing a total of 75 years' imprisonment, after considering defendant's prior criminal history and probation status at the time he committed the offenses.

¶ 2 Following a jury trial, defendant Steshawn Brisco was convicted of first-degree murder and aggravated battery with a firearm. The trial court sentenced him to consecutive terms of 55 years' imprisonment for first-degree murder and 20 years' imprisonment for aggravated battery with a firearm. On appeal, defendant contends that: (1) the State failed to present sufficient evidence to prove him guilty beyond a reasonable doubt; (2) the court erred in admitting certain prior inconsistent statements of witnesses; (3) he was denied a fair trial because the prosecutor's comments during closing argument and the admission of an autopsy photograph were prejudicial; and (4) his sentences are grossly disproportionate to the sentences imposed on the codefendant, who was convicted of the same charges. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 On the evening of August 10, 2010, Tanaja Stokes, an eight-year old girl, was shot in the head and killed as she played outside in front of her house at 10716 South Indiana Avenue in Chicago, Illinois. Ariana Jones, a seven-year old girl who had been playing with Tanaja, was also struck in the head by a bullet. Despite suffering a skull fracture and subarachnoid hemorrhage from the bullet wound, Ariana survived the shooting. The police investigation revealed that the gunshots had been directed at a group of young men standing on the corner of 107th Street and South Indiana Avenue. Witnesses identified defendant and Marcus Cocroft, the codefendant, as the perpetrators on the shooting.¹

¶ 5 The day after the shooting, defendant surrendered at the police station and was arrested. He was 17 years old at the time. Cocroft was arrested after the police apprehended him in Rockford, Illinois two months later. The State charged defendant and Cocroft with multiple felony counts, but ultimately proceeded to trial on two counts of first-degree murder and one count of aggravated battery with a firearm against each of them, and *nolle prosequied* the

¹ Marcus Cocroft, the codefendant in the trial, is not a party to this appeal.

remaining counts. Defendant and Cocroft were tried as adults in the same trial but with separate juries.

¶ 6

A. Occurrence Witnesses

¶ 7 During the trial, the State presented testimony from occurrence witnesses who were outside on the street near the scene of the shooting when it occurred. The testimony of four of these witnesses—Amos Wise, Raphael White, Justin Wise, and Charles Huntley—are at issue in this appeal.

¶ 8

1. Amos Wise

¶ 9 Amos Wise testified that he lived at 10716 South Indiana with several other residents, including his brother Justin, his cousin Deborah Thomas, and her daughter Tanaja Stokes. Amos explained that the Roseland area of Chicago contains two neighborhoods referred to as "up the hill" and "down the hill," the latter also known as "D block." He lived in the "down the hill" neighborhood, whereas Cocroft lived in the "up the hill" neighborhood. Amos knew Cocroft from previous altercations with him. Between 7 p.m. and 8 p.m. on the night of the shooting, Amos and Justin were standing on a sidewalk across the street from their house. With them were Amos' friends, Raphael White, Phillip White, and Charles Hunley, all of whom were from "down the hill." From where he was standing, Amos could see the intersection at 107th Street and Indiana Avenue. He testified that it was still light out when he saw two men on bikes heading towards the corner where he and his friends were standing. Both men were wearing black pants, black short-sleeved shirts, and red baseball caps. They appeared to be coming from "up the hill" and were near the middle of the intersection when Amos saw them point their guns and begin shooting in his direction. Amos began to run, but was able to observe the shooters for about ten seconds. He identified the men on bikes as defendant and "Little Marcus" Cocroft. The

next day, Amos spoke with police officers and identified Cocroft from photos. A day or two later, he identified defendant as the other shooter from a lineup. Subsequently, Amos also identified Cocroft from a lineup.

¶ 10 At the time of the trial, Amos was serving prison sentences for convictions of robbery and aggravated fleeing and eluding police. During cross-examination, he admitted that he knew Cocroft, but did not know defendant at the time of the shooting. He also denied having identified defendant as the person firing the gun, and, instead, explained that he "saw the flame coming from both [defendant's and Cocroft's] direction" and that "[b]oth of them was next to each other."

¶ 11 2. Raphael White

¶ 12 Raphael White testified that, in August 2010, he was living at 10632 South Indiana in the "down the hill" neighborhood with his grandfather and his cousin Phillip White. He recalled that, on the night of the shooting, he had been hanging out with two girls from "up the hill," but the girls left after a disagreement and returned to their neighborhood. Later, at around 7 p.m. or 8 p.m., Raphael saw "[t]wo dudes riding on bikes" at the corner of the block, who then pointed their guns south and started shooting in his direction. Raphael recognized Cocroft as one of the shooters. During questioning at the police station the next day, Raphael identified Cocroft through his photograph. Months later, Raphael also identified Cocroft from a lineup. At trial, Raphael acknowledged that he had originally identified a man named "Dahve" as the other shooter. He admitted, however, that he did not actually see Dahve or the other shooter's face; he merely assumed that Dahve was with the man with Cocroft because "they always was together."

¶ 13 3. Justin Wise

¶ 14 Justin Wise, Amos' brother, testified that he lived with Amos and others at 10716 South Indiana Avenue. On the night of the shooting, he was walking to a friend's house—which was a

few houses down from his, when he noticed two men, both wearing red baseball caps, riding on bikes a block away from Indiana Avenue. As he was returning back to his house, Amos saw the two men at the corner of 107th Street and Indiana Avenue. They were pointing their guns and shooting. Justin recognized Cocroft but did not see the other shooter's face. He later identified Cocroft from both a photo array and a lineup.

¶ 15

4. Charles Hunley

¶ 16 Charles Hunley testified that Deborah Thomas, Amos, and Justin are his cousins. Around 8 p.m. on the night of the incident, Hunley was outside near 10716 South Indiana Avenue with Justin, Amos, and Phillip. Shortly before 8 p.m., he saw Raphael arguing with some girls. A few minutes later, Hunley saw two men who started shooting in his direction. He recognized Cocroft as one of the shooters. They had known each other since grammar school but were not friends. The next day, at the police station, Hunley identified Cocroft from a photo array. During cross-examination, Hunley admitted that in his initial conversation with detectives and his handwritten statement, he had stated that he was not sure whether the second man had a gun. He further admitted that in his grand jury testimony, he answered "no" when asked if he saw a gun in the second man's hand.

¶ 17

B. Overhear Witnesses

¶ 18 The State also presented testimony from three witnesses who purportedly overheard defendant and Cocroft discussing a shooting later in the evening: Marwin Sanders, Marcquette Verner, and Beverly Vaughn.

¶ 19

1. Marwin Sanders

¶ 20 Marwin Sanders testified that he lived in the "up the hill" neighborhood and knew both defendant and Cocroft. He recalled seeing them in the "up the hill" neighborhood at around 7:00

p.m. or 7:30 p.m. on the night of the shooting. Defendant and Cocroft were talking to a group, which included Sanders, about "what just went down, what happened." Sanders testified that he heard defendant refer to "D Block" and say, "We went down there. We did a hit" and "yeah, mother****ers we just did that hit." While he initially denied that defendant said "we just killed one of them n****ers," Sanders admitted, upon further questioning, that he had previously told the grand jury that defendant "was like, man, we just did it to them" and that defendant was "quiet, and happy about it too, like, yeah, we just went down there and did a hit, man. We just killed one of them n****ers."

¶ 21 Sanders also testified that while defendant was talking, Cocroft was next to him, nodding his head and smiling when defendant said they had done "a hit." Sanders subsequently admitted that he had told the grand jury that he heard both Cocroft and defendant talking about the shooting, but that Cocroft "starting talking **** when [defendant] started kicking it up." He denied telling the grand jury that he overheard Cocroft saying that he "just did it to them boys, just killed some people **** just went down there and did a hit, woo, woo, woo like that." However, he admitted that he had told the grand jury that Cocroft said, "[W]e did it to them, man. This is what we do. I just did a hit, woo, woo, woo like that."

¶ 22 2. Marcquette Verner

¶ 23 Like Sanders, Marcquette Verner was in the "up the hill" neighborhood on the night of the shooting. Verner testified that he knew Cocroft and defendant by their nicknames, and saw them riding around on bikes, wearing black shirts and red hats, around 8 p.m. on the night of August 10. He testified that although he did not personally speak to defendant or Cocroft, he observed their conversation with Sanders and some other men. Initially, Verner testified that he "wasn't too close" to Cocroft and defendant and could not hear what was being said, but he also

testified that he heard defendant say that "something [that] [s]ounded like he said he air somebody out or something."

¶ 24 Despite giving the foregoing testimony, Verner admitted that on the day after the shooting, he told detectives that both defendant and Cocroft were "gloating," and that he heard defendant say that they "aired out D block" and "Yeah, yeah, we got down on those ni**as on 107th Street. We let loose on them." Verner explained to the detectives that that "got down" meant "shot at them" and that "aired out D block" meant that "they shot up 107th and Indiana." He also admitted that in his grand jury testimony, he said he heard defendant say "they aired out D block."

¶ 25 On cross examination, Verner admitted that he currently had a contempt charge pending against him. He testified that he gave statements about defendant to the detectives at the police station because he wanted "to go home." He then explained that, at the time he overheard defendant's statements, he had been across the street from defendant and was not engaged in a conversation with him. On redirect examination, however, Verner confirmed that he heard defendant saying "they aired out D block."

¶ 26 Chicago Police Detective Brian Forberg was called as an impeachment witness and confirmed that Verner had said the foregoing to him during an interview. Detective Forberg had investigated the shooting and interviewed Verner about the incident prior to the trial. According to Detective Forberg, Verner identified both Cocroft and defendant and told Forberg that they "were gloating, yeah, yeah, yeah, we got down on those ni**s on 107th, we let loose on them," and that they said that they "aired out the D block."

¶ 27 The State also called assistant State's Attorney (ASA) Jamie Santini to testify about the grand jury testimony that Verner had given prior to the trial. ASA Santini recounted that Verner

told the grand jury that he heard defendant “bragging, talking about what they did” and saying that “they aired out down the hill. They aired out D Block,” and that this meant “that they shot up the block.”

¶ 28 3. Beverly Vaughn

¶ 29 Beverly Vaughn testified that that she lived in the "up the hill" neighborhood in 2010 and knew both defendant and Cocroft. On the day after the shooting, Vaughn spoke with police officers at her school and again at the police station later with her parents present. She left the station after giving a handwritten statement prepared by the ASA. She also testified before the grand jury about the statements that she heard from defendant.

¶ 30 At trial, she testified that on August 10, she and her friend, Marlina, were walking back home from "down the hill" when she heard gunshots. They continued walking and met up with two other girls. Defendant approached the group of girls and, as Vaughn described, was "sweating," breathing "heavy," and "looked tired." He told the group of girls, "[M]e and Little Marcus just went down and aired them out." When Vaughn and Marlina asked defendant whom he meant, he responded, "D Block." When they asked him whether “the girls [were] down there”—referring to "older girls" who had been in the area earlier that night, defendant answered, "I don't care. We just let the whole 40 clip go."

¶ 31 C. The State's Firearms and Medical Evidence

¶ 32 Dana Inempolides, a State of Illinois firearms expert, examined the bullet and the cartridge casings recovered from the scene. She testified that the bullet was fired from either a .40 caliber or 10 mm automatic firearm. She further testified that all of the recovered cartridge casings were fired from the same firearm.

¶ 33 Dr. Mitra Kalelkar, a former Cook County deputy chief medical examiner, testified that

she performed an autopsy on Tanaja Stokes. She testified that the bullet that struck Stokes caused "an extensive laceration of [Stokes'] brain" and that this gunshot wound caused her death. Dr. Kalelkar identified certain autopsy photographs to explain her conclusion that Tanaja's death was caused by a homicide.

¶ 34 D. Instructions, Verdict and Sentence

¶ 35 Following the State's presentation of its case, Defendant rested without presenting any evidence. The trial court denied defendant's motion for a mistrial, and instructed the jury on circumstantial evidence and accountability. Following deliberation, the jury found defendant guilty of first-degree murder and aggravated battery with a firearm. A separate jury found Cocroft guilty of the same offenses. On January 15, 2013, the trial court sentenced defendant to consecutive terms of 55 years' imprisonment for first degree murder and 20 years' imprisonment for aggravated battery with a firearm. Cocroft was sentenced to consecutive prison terms of 37 ½ years and 17 ½ years for his convictions.

¶ 36 Defendant appeals, and we have jurisdiction pursuant to Illinois Supreme Court Rules 603 and 606 (eff. Feb. 6, 2013).

¶ 37 ANALYSIS

¶ 38 In this direct appeal, defendant raises several issues. First, he contends that the State failed to prove his guilt beyond a reasonable doubt. Second, he maintains that the trial court erred in admitting Verner's out-of-court statements to police either as impeachment or substantive evidence. Third, defendant asserts that he was denied his right to a fair trial due to the inflammatory comments made by the prosecutor during closing arguments and by the admission of photographs depicting the murder victim's injuries. Finally, defendant contends that his sentences are grossly disproportionate to that of his codefendant. We affirm.

¶ 39

A. Sufficiency of the Evidence

¶ 40 Defendant contends that the State failed to prove him guilty of first degree murder and aggravated battery with a firearm beyond a reasonable doubt. He argues that Amos Wise was lacking in credibility and had a limited opportunity to view the shooters. He also argues that the witnesses who allegedly overheard him lacked credibility and gave inconsistent testimony. Finally, he argues that there was no physical evidence showing that more than one gun was used in the shooting.

¶ 41 "When a defendant challenges the sufficiency of the evidence," we do not "retry the defendant." *People v. Evans*, 209 Ill. 2d 194, 209 (2004). Rather, we "must determine 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." *Id.* It is the responsibility of the trier of fact to determine the credibility of the witnesses and the weight to be given their testimony, to resolve any inconsistencies and conflicts in the evidence, and to draw reasonable inferences therefrom. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). We will not reverse a criminal conviction "unless the evidence is so unreasonable, improbable or unsatisfactory that it raises a reasonable doubt of defendant's guilt." *Evans*, 209 Ill. 2d at 209.

¶ 42 To prove defendant guilty of first degree murder, the State must prove that defendant either intended to kill or do great bodily harm to the victim, or knows that such acts will cause death to that individual or another (720 ILCS 5/9-1(a)(1) (West 2010)), or knows that such acts create a strong probability of death or great bodily harm to that individual or another (720 ILCS 5/9-1(a)(2) (West 2010)). To prove defendant guilty of aggravated battery with a firearm, the

State must establish that defendant knowingly or intentionally discharged a firearm, causing injury to another person, while committing a battery. 720 ILCS 5/12-4.2(a)(1) (West 2010).²

¶ 43 Defendant was tried by the State on a theory of accountability. Under this theory, a defendant may be deemed legally accountable for another's conduct and convicted for the charged offense when “[e]ither before or during the commission of an offense, and with the intent to promote or facilitate that commission, he or she solicits, aids, abets, agrees, or attempts to aid that other person in the planning or commission of the offense.” 720 ILCS 5/5–2(c) (West 2010); *People v. Jones*, 364 Ill. App. 3d 740, 747 (2006). A defendant's mental state is generally shown circumstantially by inferences reasonably drawn from the evidence. *Jones*, 376 Ill. App. 3d at 383. Furthermore, “[a]ctive participation has never been a requirement for the imposition of criminal guilt upon the theory of accountability.” *People v. Ruiz*, 94 Ill. 2d 245, 254-55 (1982). A defendant's presence at a crime scene, knowledge that a crime is being committed, voluntary attachment to and close affiliation with his companion before and after the crime was committed, failure to report the crime and flight from the scene are all circumstances which may be considered to determine if a defendant shared a common criminal design or agreement with a principal. *People v. Taylor*, 164 Ill. 2d 131, 140-41 (1995).

¶ 44 We find sufficient evidence in the trial record to support defendant's convictions. The evidence adduced at trial established that on the evening of August 10, 2010, defendant was at the scene of the shooting when it occurred, that he was with Cocroft prior to after the shooting occurred, and that he told other people about the shooting later on the same evening. Amos, Justin and White each testified that there were two shooters. Four occurrence witnesses identified Cocroft as one of the shooters. Amos testified that he saw defendant with Cocroft during the shooting and that they both had guns. Although Amos did not testify that the gunfire was from

² This offense is now codified at 720 ILCS 5/12–3.05(e)(1) (West 2012).

defendant's gun, he testified that he saw "flames coming from" the defendant's and Cocroft's direction during the shooting. Verner and Sanders testified that they observed defendant with Crocroft the evening of the shooting after the incident. Verner, Sanders, and Vaughn further testified that they heard defendant bragging about a shooting that had just occurred in "D Block." At the time these three witnesses saw defendant, he was with Cocroft and both of them acknowledged that there had been an incident in the "down the hill" neighborhood.

¶ 45 The State presented abundant evidence of defendant's acts, during and after the shooting incident, from which a rational trier of fact could reasonably infer that he possessed the requisite mental intent to facilitate the crime, and aided, abetted or attempted to aid another person in the commission of the crime. 720 ILCS 5/5-2(c) (West 2010); *Jones*, 376 Ill. App. 3d at 383. See also *People v. Stanciel*, 153 Ill. 2d 218, 234 (1992) ("the intent to promote or facilitate a crime may be shown by evidence that the defendant shared the criminal intent of the principal, or by evidence that there was a common criminal design"). Furthermore, we have no reason to doubt the jury's understanding of the court's instructions on circumstantial evidence and accountability. Nothing in the record shows any objection or challenge from the defendant regarding these instructions. Viewing this evidence in the light most favorable to the State, we cannot conclude that no rational juror could have found defendant guilty beyond a reasonable of murder and personal discharge of a firearm under the accountability theory.

¶ 46 Defendant also notes, without elaboration, that the State did not present any physical evidence that more than one gun was used in the shooting. We reject this "argument" because defendant does not explain why this lack of evidence would be a basis for a new trial (see Ill. S.Ct. R. 341(h)(7) (eff. Feb.6, 2013) (requiring a clear statement of contentions with supporting citation of authorities)), nor does he challenge the jury instruction on accountability that was

given by the court (see People's Instruction No. 13). In any event, defendant's point is unavailing because culpability based on 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." (Emphasis added). *In re W.C.*, 167 Ill. 2d at 338

¶ 47 Defendant takes issue with Amos' testimony regarding his identification of defendant as one of the shooters. According to the record, only one witness—Amos—actually witnessed the shooting and identified defendant as one of the shooters. It is settled, however, that the credible and positive testimony of a single witness is sufficient to convict. *People v. Siguenza–Brito*, 235 Ill. 2d 213, 228 (2009). See also *People v. Lewis*, 165 Ill. 2d 305, 356 (1995) (even "[a] single witness' identification of the accused is sufficient to sustain a conviction if the witness viewed the accused under circumstances permitting positive identification.").

¶ 48 Defendant further maintains that Amos had only a limited opportunity to view the shooter. When assessing the reliability of identification testimony, factors to consider include: "(1) the opportunity the [witness] had to view the criminal at the time of the crime; (2) the witness' degree of attention; (3) the accuracy of the witness' prior description of the criminal; (4) the level of certainty demonstrated by the [witness] at the identification confrontation; and (5) the length of time between the crime and the identification confrontation." *People v. Slim*, 127 Ill.2d 302, 307–08 (1989). "An identification may be positive even though the witness viewed the accused for a short period of time," and any doubts regarding "[t]he sufficiency of the opportunity to observe [are] for the trier of fact to determine." *People v. Wehrwein*, 190 Ill. App. 3d 35, 39 (1989). Here, Amos observed the shooters for about 10 seconds as shots were being fired. Considering that it was still light out at the time, we find this to be a sufficient amount of time to identify defendant. Courts have often upheld identifications that occurred in only a matter

of seconds. See *e.g. People v. Herrett*, 137 Ill. 2d 195, 204 (1990) (finding eyewitness had sufficient opportunity to view defendant where he observed his face for "several seconds" at close range); *People v. Negron*, 297 Ill. App. 3d 519, 530-31 (1998) (finding no reasonable doubt where victims had "several seconds" to view their attackers). Amos also gave a description of defendant's clothes and mode of transportation—black shirt, red baseball cap, on a bike—that was later corroborated by another witness, Verner, who saw defendant that night. Two days after the shooting, Amos positively identified defendant, lending additional support for the reliability of his identification. There is no indication that Amos has ever expressed doubt that defendant was one of the shooters. Under the circumstances, we find that the jury could have rationally relied on his identification testimony when reaching its verdict.

¶ 49 Defendant argues that many of the State's witnesses were, nonetheless, lacking in credibility. He contends that Amos' credibility is suspect because he was a convicted criminal, was related to the victims, and was biased due to his history of altercations with Cocroft as well as other "up the hill" residents. Additionally, defendant argues that Verner lacked credibility because he was facing a contempt charge at the time he testified and his trial testimony was inconsistent with his grand jury testimony. He also challenges Sanders' credibility because Sanders testified that the conversation he overheard took place between 7:00 p.m. and 7:30 p.m. (approximately 30 minutes to an hour before the shooting) and his testimony was inconsistent with Verner's. Finally, he argues that Vaughn lacked credibility because her version of events differed from Sanders' and Verner's testimony and she did not come forward with information until the police arrived at her school the next day.

¶ 50 "A conviction shall not be reversed simply because the defendant claims a witness was not credible." *People v. Diaz*, 297 Ill. App. 3d 362, 369 (1998); see *People v. Rodriguez*, 187 Ill.

App. 3d 484, 491 (1989) (noting that "guilty verdicts are unassailable to the extent that they reflect a credibility determination"). "The trier of fact is best equipped to judge the credibility of witnesses" and its "findings concerning credibility are entitled to great weight." *People v. Wheeler*, 226 Ill. 2d 92, 114-15 (2007). The weight of the evidence and credibility of the State's witnesses was a question for the jury, not a question for this court to second-guess on appellate review. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009). Additionally, whether the minor inconsistencies between the recollections of Amos, Justin, Raphael and Charles irreparably undermined their credibility was a matter for the jury to decide. *People v. Rouse*, 2014 IL App (1st) 121462, ¶ 53. We have previously held that "[s]light discrepancies do not destroy the credibility of an eyewitness but only go to the weight to be given his testimony" and that "it is within the province of the trier of fact to determine what effect these minor discrepancies have upon the witness' credibility." (Internal citations omitted.) *People v. Gregory*, 43 Ill. App. 3d 1052, 1055 (1976). Therefore, the jury was "free to accept or reject as much or as little as it please[d]" of the witness' testimony in this case. *People v. Logan*, 352 Ill. App. 3d 73, 80-81 (2004). Given the deferential standard of review and the lack of any physical evidence that contradicts the testimony of the witnesses, we cannot say that the evidence was so unreasonable, improbable or unsatisfactory that it raises a reasonable doubt of defendant's guilt. We therefore find no reason to disturb the verdict reached by the jury.

¶ 51 B. Admissibility of Prior Inconsistent Statements

¶ 52 Defendant next contends that the trial court erred in allowing certain impeachment evidence against Verner.³ First, he argues that it was improper to allow the State to impeach

³ In his opening brief, defendant also argued that Beverly Vaughn's handwritten statement, prepared by the ASA, was improperly admitted into evidence. In his reply brief, however, defendant affirmatively withdrew this argument, conceding that the record indicates that Vaughn's written statement was not actually entered into evidence.

Verner at trial with his testimony admitting that, during his August 11, 2010 interview with the detectives, he informed them that he heard defendant saying "Yeah, Yeah, we got down on those ni**as on 107th. We let loose on them" and "[they] aired out D Block." Second, he argues that Detective Forberg's testimony that Verner told him defendant made these statements should not have been admitted. According to defendant, this impeachment evidence was inadmissible because Verner's trial testimony did not affirmatively damage the State's case. Defendant concedes that the plain-error standard applies because he failed to properly preserve this issue for appellate review. In the alternative, defendant contends that his trial counsel was ineffective for failing to preserve this issue.

¶ 53 The State maintains that this testimony was admissible, under section 115-10.1 of the Code of Criminal Procedure of 1963, as a prior inconsistent statement. 725 ILCS 5/115-10.1 (West 2012)) Alternatively, the State asserts, even if the statements were admitted in error, defendant cannot show the requisite prejudice to demonstrate either plain error or ineffective assistance of counsel. Because we agree with the State that defendant cannot establish the requisite prejudice, we limit our analysis to that issue.

¶ 54 Where, as here, a defendant's ineffective assistance of counsel claim is predicated on an evidentiary error, our analysis is similar to our plain-error review under the "closely-balanced-evidence prong" (*i.e.*, the first prong) "insofar as a defendant in either case must show that he was prejudiced[.]" *People v. White*, 2011 IL 109689, ¶ 133. The defendant must demonstrate "that the evidence is so closely balanced that the alleged error alone would tip the scales of justice against him" (plain-error test); "or that there was a 'reasonable probability' of a different result had the evidence in question been excluded" (ineffective assistance of counsel test). *Id.* ¶ 133 (quoting *Strickland v. Washington*, 466 U.S. 668, 694 (1984)). If a "defendant cannot show

prejudice," "[t]here is no reason to go further for purposes of either an ineffective assistance analysis or one founded upon the closely balanced prong of plain error." *Id.* ¶ 134.

¶ 55 In this case, even if we were to assume that the admission of Verner's out-of-court statements was error, it was not prejudicial because the statements were "merely cumulative" of other admitted evidence whose admission defendant has not challenged on appeal. See *People v. Munson*, 171 Ill. 2d 158, 185 (1996) (finding defendant could not show witness' testimony concerning defendant's admissions was prejudicial because it was "merely cumulative" of evidence "properly admitted" through the testimony of other witnesses). For example, apart from the challenged evidence, Verner affirmatively stated during his trial testimony that he heard defendant say that they "aired out D block." See *Rodriguez*, 187 Ill. App. 3d at 491 (stating that "a trier of fact is free to accept one part of a witness' testimony and reject another.") Likewise, Sanders' and Vaughn's testimony related similar admissions. According to Sanders, he overheard defendant talking about "D Block" and saying "[w]e went down there. We did a hit," and "Yeah, motherf***ers just did that hit." And Vaughn testified that defendant told her that they "aired them out" in "D Block." Thus, even assuming that evidence of Verner's out-of-court statements to the police was erroneously before the jury, it was cumulative of other testimony, including Verner's, and accordingly it was not prejudicial. See *Munson*, 171 Ill. 2d at 185.

¶ 56 For this same reason, defendant cannot satisfy the second prong of the plain-error test under the circumstances of this case. Based on our determination that the evidence of Verner's statements did not prejudice defendant, he likewise cannot demonstrate the alleged error was "so serious that it affected the fairness of defendant's trial and challenged the integrity of the judicial process[.]" *Naylor*, 229 Ill. 2d at 593 (quoting *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007)). Accordingly, the admission of Verner's statements does not warrant a new trial.

¶ 57

C. Right to Fair Trial

¶ 58 Defendant also argues that certain remarks during the prosecutor's closing argument, coupled with the admission of photographic evidence of the murder victim's injuries, were prejudicial and denied him of his right to a fair trial. We disagree.

¶ 59

1. Closing argument

¶ 60 As an initial matter, the parties disagree on the proper standard of review for defendant's claim of prosecutorial misconduct: defendant contends that the standard of review is *de novo* while the State maintains that it is an abuse of discretion. We acknowledge that authority supports both positions. Compare *People v. Wheeler*, 226 Ill. 2d 92, 121 (2007) ("Whether statements made by a prosecutor at closing argument were so egregious that they warrant a new trial is a legal issue this court reviews *de novo*."), with *People v. Macri*, 185 Ill. 2d 1, 51 (1998) ("The trial court is in the best position to determine the prejudicial effect of a remark made during closing argument, and, therefore, absent a clear abuse of discretion, its ruling should be upheld."). Here, however, we need not resolve this conflict, because under either standard, our result is the same.

¶ 61 A "defendant faces a substantial burden in attempting to achieve reversal based upon improper remarks made during closing argument." *People v. Byron*, 164 Ill. 2d 279, 295 (1995). The State generally has "wide latitude" in the content of its closing arguments. *People v. Perry*, 224 Ill. 2d 312, 347 (2007). Indeed, the State may comment on the evidence and any fair and reasonable inferences to be drawn, even when those "inferences reflect negatively on the defendant." *Nicholas*, 218 Ill. 2d at 121. While "[a] closing argument must serve a purpose beyond inflaming the emotions of the jury," the prosecutor nevertheless "may comment unfavorably on the evil effects of the crime and urge the jury to administer the law without fear,

when such argument is based upon competent and pertinent evidence." *Id.* at 121-22. We "consider the closing argument as a whole, rather than focusing on selected phrases or remarks." *Perry*, 224 Ill. 2d at 347. We will only find reversible error "if a defendant can identify remarks of the prosecutor that were both improper and so prejudicial that 'real justice [was] denied or that the verdict of the jury may have resulted from the error.'" *Evans*, 209 Ill. 2d at 225 (quoting *People v. Jones*, 156 Ill. 2d 225, 247-48 (1993)).

¶ 62

a. Inflammatory statements

¶ 63 Defendant first focuses on allegedly "inflammatory" statements from the prosecutor's closing argument. For example, defendant highlights the prosecutor's repeated description of the victims as "little" and the statement: "Because of the hate and avarice of Steshawn Brisco and Marcus Cocroft, eight-year-old Tanaja is gone and seven-year-old Ariana Joes will never be the same. The image of her dead cousin will haunt her for the rest of her days." Defendant also identifies the prosecutor's following appeals to the juror's sense of justice: "Brisco wants justice. He wants justice now? What justice did Ariana and Tanaja get back then," and "What [defendant] wants is to not be responsible for what he did."

¶ 64 Defendant further cites to the prosecutor's statement that the evidence was "screaming" at the jury as well as his question about whether it would make them "a little sick" to find defendant not guilty. Finally, defendant relies on the prosecution's request for a "reckoning" for defendant's behavior and his appeal to the jury, cautioning them against returning a "not guilty" verdict: "After the last week of evidence, my point is this, how could you do such a thing?"

¶ 65 These statements, however, were not properly preserved for appellate review. "[B]oth a trial objection *and* a written post-trial motion raising the issue are required for alleged errors that could have been raised during trial" to preserve the issue for appeal. (Emphases in original.)

People v. Enoch, 122 Ill. 2d 176, 186 (1988). Based on our review of the record, defendant's counsel did not object to many of these challenged statements. Nor were any of the statements adequately identified in defendant's Amended Motion for a New Trial. Rather, the motion merely alleges that "[t]he state made improper remarks in both opening statement and closing remarks," without specifying any of the challenged statements. Such cursory allegations do not suffice. *People v. Moss*, 205 Ill. 2d 139, 168 (2002) (holding that motion "alleg[ing] generally that the prosecutor 'made prejudicial, inflammatory, and erroneous statements in closing argument designed to around the prejudices and passions of the court,' was 'insufficient to preserve' statements in the prosecutor's closing argument for appellate review). We find that defendant has forfeited this issue and therefore review the prosecutor's statements for plain error. *Id.*

¶ 66 As an initial matter, the trial court actually sustained defense counsel's objection to the "What justice did Ariana and Tanaja get back then?" and the "a little sick" statements and instructed the jury to disregard them, thereby curing any potential error. See *People v. Bartell*, 98 Ill. 2d 294, 317 (1983) ("The immediate objection by the defense counsel which was sustained by the trial court and the instructions to the jury [to disregard the remarks] cured any error in the prosecution's attempt to admit this testimony."). Although "[i]n some cases, sustaining an objection and appropriate instructions to the jury may not be sufficient to cure an error," here, the accused statements were not "so inflammatory or prejudicial that a proper instruction did not cure any error." *Id.*

¶ 67 With respect to the remaining challenged statements, we likewise find no reversible error. As to the prosecution's repeated description of the victims as "little," these statements were a proper commentary on the evidence—the underlying offenses were the murder and aggravated battery of two young girls—rather than a plea to the jurors to base their verdict on their

sympathies. Courts have rejected similar challenges to the prosecutor's closing arguments. See *People v. Childress*, 158 Ill. 2d 275, 299-301 (1994) (rejecting defendant's argument that prosecution's remarks "improperly stressed the family status of the victim, the youthfulness of her son, and the human suffering produced by these crimes"), *overruled by statute on other grounds*, 720 ILCS 5/19-1, 19-3 (West 2002); *People v. Bell*, 343 Ill. App. 3d 110, 115 (2003) (holding that prosecutor's comments during closing argument that the defendant—who was charged with selling drugs across the street from a church—was a " 'businessman' whose work 'destroys our children, our family,' and 'our lives' " were not error).

¶ 68 Moreover, throughout closing arguments, the prosecution repeatedly exhorted the jurors to rely on the evidence and the law, not their sympathies. For example, the prosecutor stated:

"I'm not asking you to find him guilty just because I'm asking you to. And I'm not asking you to find him guilty just because you feel bad for those little girls. His Honor will tell you that neither sympathy nor prejudice shall guide your verdict. I'm asking you to find this defendant guilty because the evidence that you heard and the law that you will receive demands it."

¶ 69 During rebuttal, the prosecutor once again instructed the jury to focus on the evidence:

"No, you don't convict Steshawn Brisco because Tanaja was seven years old or eight years old. You don't convict Steshawn Brisco because Ariana was nine years old and you feel bad that two little girls got killed. That's not why you convict Steshawn Brisco. You convict Steshawn Brisco because the evidence says he is guilty. It is screaming at you, ladies and gentlemen."

¶ 70 When viewed in the context of the entire closing argument, the prosecutor's references to the victims' ages were neither improper nor prejudicial and, accordingly, do not rise to the level of reversible error. *People v. Ford*, 113 Ill. App. 3d 659 (1983), cited by defendant, is distinguishable. There, in contrast to this case, the prosecutor's statement that the defendant preyed on "poor, innocent, susceptible children in our community who are tempted and forced by peer pressure" was unrelated to the defendant's charged offense (unlawful delivery of cannabis) and the evidence presented at trial. *Id.* at 662. And also significant, the court in *Ford* acknowledged that it "would be reluctant to order a new trial based on any one of the errors standing alone"; rather, the court relied on the "cumulative impact" of the prosecution's improper statements during closing arguments, which included arguing that a witness was more credible because she was a police officer and making "repeated references" to her police officer status, to hold that the improper comments warranted a new trial. *Id.* at 662-63.

¶ 71 We reach a similar conclusion as to the remaining statements: all of the remarks either fall within the scope of permissible argument concerning the strength of the evidence (see *People v. Cloutier*, 178 Ill. 2d 141, 171 (1997) (recognizing that prosecutor's closing argument can include "permissible comment on the strength of the evidence")), the evil effects of defendant's crime (see *Nicholas*, 218 Ill. 2d at 121-22), or encouragement to the jury to apply the law and provide justice (see *id.*; *People v. Desantiago*, 365 Ill. App. 3d 855, 864 (2006) ("A prosecutor does not engage in misconduct *** simply because the prosecutor dwells upon the evils results of the crime and urges the fearless administration of justice.")). Ultimately, these statements did not result in reversible error.

¶ 72 b. Misstatement of the evidence

¶ 73 Next, defendant contends that the prosecutor misstated the evidence twice during closing

arguments. Because these alleged misstatements of evidence were not identified in defendant's amended motion for a new trial, like the above statements, they too are forfeited. *Moss*, 205 Ill. 2d at 168. We review them only for plain error.

¶ 74 First, defendant identifies the prosecutor's description of Beverly Vaughn's conversation with defendant, arguing that the prosecutor misstated Vaughn's trial testimony. At trial, Vaughn testified that after defendant told her that they "aired them out" in "D Block," she asked defendant, "Weren't the girls down there?," referring to "older girls." According to Vaughn, defendant responded: "I don't care. We just let the whole 40 clip go." During closing arguments, the prosecutor paraphrased Vaughn's testimony, replacing "girls" with "kids," saying: "[T]he kids were right there *** jumping rope, doing cheerleading and playing, and Steshawn Brisco just didn't care. Beverly asked him, Weren't there *kids* out there? I don't care. We just let the whole 40 clip go." (Emphasis added.)

¶ 75 Defendant argues that the prosecutor mischaracterized Vaughn's testimony to improperly argue that defendant did not care whether any kids were shot. We disagree. Whether "kids" or "girls," the thrust of the prosecutor's argument was that defendant did not care who was shot—a reasonable inference to draw from Vaughn's testimony that defendant responded to her question, "I don't care. We just let the whole 40 clip go."

¶ 76 Second, defendant argues that the prosecutor misstated the evidence by suggesting that two separate sets of witnesses identified defendant *as the shooter*. But contrary to defendant's characterization, the prosecutor properly recalled that "two different, completely different sets of witnesses identified Steshawn Brisco," which was consistent with the evidence: namely, that (1) Amos Wise, who was on the scene of the shooting, identified defendant as a shooter; and (2) additional witnesses identified defendant as bragging later that same night about a shooting in "D

Block." Because these statements were consistent with the evidence, we find no reversible error.

¶ 77 Finally, defendant argues that the prosecutor improperly shifted the burden of proof to defendant in arguing that defendant had the same subpoena power as the State and could have subpoenaed witnesses.⁴ Again, we disagree.

¶ 78 During closing arguments, defense counsel raised the State's failure to call certain individuals as witnesses and suggested the State was hiding evidence from the jury:

"Let's talk about the investigation briefly. You heard names Trey Wade, Dahve, Ashanta, Ashmere Walker. You heard these names more than once. Where are they? The State didn't bring them here to tell you what, if anything, they knew. Why not? What are they trying to keep from you? Maybe the truth."

¶ 79 During rebuttal, the prosecutor responded to this argument:

"MR. DARMAN [ASA]: *** I'll tell you something else, counsel has the same subpoena power that I do.

MS. CARBELLOS [defense counsel]: Objection.

THE COURT: Just a moment. The burden stays on the State all the way through the entire case. Each side can call witnesses however.

MR. DARMAN: Absolutely, ladies and gentlemen. The burden is mine. **** [A]nd it never is removed from us. However, they have the same subpoena power that we do. You want to hear from

⁴ Defendant arguably preserved this issue for appeal by objecting to this line of argument and raising the issue, albeit in a cursory manner, in his Amended Motion for a New Trial. Because the State has not explained why defendant has fallen short of preserving this issue, we consider it properly before us on appeal.

Id. If sufficiently probative, a photograph "may be admitted in spite of its gruesome or disgusting nature." *Id.* The State may rely on photographs of a deceased victim "to prove the nature and extent of the injuries, the force necessary to inflict the injuries, the position, location, and condition of the body, and the manner and cause of death; to corroborate a defendant's confession; and to aid in understanding the testimony of a pathologist or other witness." *Id.*

¶ 84 On appeal, defendant identifies one photograph as being improperly admitted by the trial court. This photograph, which we have reviewed, depicts the inside of the victim's skull and the trajectory of the bullet through her brain; it does not reveal the victim's face or disclose gruesome, external images of her head wounds. As the trial court explained, it admitted the photograph into evidence to corroborate the doctor's testimony, finding it was "unpleasant" but not "unduly prejudicial":

"The one photograph—we limited it down to one out of the three. The doctor can testify through the photograph the course of the wound. **** So I'm going to have one photograph of the course of the wound to corroborate the doctor's testimony[.] **** The photograph is unpleasant. It's not unduly prejudicial. Anything in a murder case is prejudicial to some extent because it tends to prove a person committed a crime. The State has to establish the manner and cause of death. The photograph tend[s] to show the course of the wound, how the wound entered, how it exited, and how it went through unfortunately the little girl's head. I limited it to one photograph. I limited it down to one of the three."

Additionally, prior to admitting the photographs, the court admonished the jury as follows:

"[Y]ou will be seeing some photographs shortly that Dr. Kalelkar just talked about. The photographs you will be seeing are unpleasant. However, just keep in mind that you as jurors decide the case based on the evidence and the law and not to give any person sympathy, bias, or prejudice for anyone."

¶ 85 Based on our review of the photograph and the deference we afford to the trial court's decision, we cannot say that the court abused its discretion. The trial court concluded that the evidence was admissible to corroborate the doctor's testimony concerning the manner and cause of the victim's death. The State established that the medical examination and X-rays revealed that Tanaja's skull had been fractured but there was no bullet in the skull. Dr. Kalelkar testified that "the cause of death of Tanaja Stokes was a single gunshot wound that entered the right side of her ear, *** fractured the skull, lacerated the brain, and exited on the left side of her face; and the manner of death was homicide." While unpleasant, the photograph was relevant to corroborate medical examiner's testimony as to the cause of death and trajectory of the bullet. Moreover, after limiting the photographic evidence to only one of the three proposed exhibits, the court cautioned the jury that the photographic evidence it was about to see was "unpleasant" but that they should "decide the case based on the evidence and the law and not to give any person sympathy, bias or prejudice for anyone." The admission of this evidence does not warrant a new trial.

¶ 86 *People v. Garlick*, 46 Ill. App. 3d 216 (1977), cited by defendant, is distinguishable. In *Garlick*, unlike here, the court described the erroneously admitted evidence as "a gruesome, color photograph of the deceased's massive head wound," which "could serve no purpose other than to inflame and prejudice the jury in the grossest manner." *Id.* at 224. The admitted

photograph in the present case does not rise to this level of offensiveness.

¶ 87 In sum, neither the prosecutor's statements during closing argument nor the admission of the autopsy photograph—whether considered individually or in the aggregate—denied defendant of his right to a fair trial.

¶ 88 D. Sentencing Disparity

¶ 89 Defendant lastly contends that the trial court abused its discretion in sentencing him to consecutive terms of 55 years' imprisonment and 20-years' imprisonment for his convictions. We review the trial court's imposition of a sentence for an abuse of discretion. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). The trial court abuses its discretion if "the sentence is 'greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense.'" *Id.* (quoting *People v. Stacey*, 193 Ill. 2d 203, 210 (2000)). "The trial court has broad discretionary powers in imposing a sentence, and its sentencing decisions are entitled to great deference." *Id.* We must afford deference to the trial court's judgment, because it " 'has a far better opportunity to consider' " the relevant sentencing factors including " 'the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age.' " *Id.* at 212-13 (quoting *Stacey*, 193 Ill. 2d at 209).

¶ 90 Defendant maintains that the 20-year sentencing disparity between his and Cocroft's sentences was unwarranted. According to defendant, Cocroft was more culpable than defendant in the underlying offense because all of the eyewitnesses identified Cocroft as the shooter, and the State's firearms evidence did not establish that a second gun was fired. Further, defendant argues that his background did not warrant his lengthier sentence because he had only a prior juvenile adjudication for burglary and one adult conviction for unlawful use of a handgun, whereas Cocroft had prior arrests (but no juvenile adjudications or adult convictions) for

criminal trespass and residential burglary, possession of cannabis, and possession of ammunition without a FOID card. In addition to the sentencing disparity, defendant also argues that his sentence was excessive because the trial court refused to consider whether he had any rehabilitative potential, his background, or the attributes of his youth as required by *Miller v. Alabama*, 132 S. Ct. 2455 (2012). These errors, defendant contends, require that we remand this case for resentencing.

¶ 91 "Although an arbitrary and unreasonable disparity between the sentences of codefendants is impermissible [citation omitted], the mere fact that one defendant receives a substantially longer sentence than another does not, by itself, establish a violation of fundamental fairness." *People v. Kline*, 92 Ill. 2d 490, 508. A sentence will not be disturbed if the disparity results from "differences in the nature and extent of the concerned defendants' participation in the offense" (*People v. Godinez*, 91 Ill. 2d 47, 55 (1982)) or "the relative character and history of the codefendants, the degree of culpability, rehabilitative potential, or a more serious criminal record" (*People v. Martinez*, 372 Ill. App. 3d 750, 760 (2007)).

¶ 92 In this case, the trial court's sentencing decision demonstrates a careful consideration of the relevant factors, including defendant's criminal history and overall character, which justified longer sentences than those imposed on Crocroft. The trial court specifically took into account the defendant's prior offenses and commented on his criminal record: "Probation as a juvenile for burglary. As a young guy, probation on a weapons violation charge, Class IV felony, and then in two months the murder. So he has a significant prior history." The court also noted that while defendant "was only 17 or 18 at the time," he had already been on probation as both a juvenile

and an adult, and "then something jumps off in the jail."⁵ Crocroft, in contrast, did not have any juvenile adjudications or criminal convictions. Moreover, unlike Cocroft, defendant offered no witnesses who offered character or rehabilitation testimony as mitigation. The court took into account defendant's age and turbulent childhood, but concluded that neither supported mitigation of his sentence: "I know his come up wasn't the best way to come up. He was in foster homes, things of that nature, but it hardly is an excuse. It is hardly a justification or a mitigation to go and shoot up the D block with people all over the place."

¶ 93 Finally, the record reflects the trial court's consideration of defendant's character and his apparent lack of remorse for the deadliness of the crimes. The court noted that the evidence showed that defendant "didn't care who got shot, the teenaged girls who were out there, the guys he was shooting at or, in this case, unfortunately, the little kids that got shot as well. *** The way he was talking about it with the witnesses was like, give me an Academy Award, I did a great job, I shot up the D block." The transcript of the sentencing hearing further reveals defendant's combative attitude when the court said that the residents in D Block would not have to worry about him shooting up the neighborhood, to which defendant responded, "I'll be back."

¶ 94 The trial court is in the best position to observe a defendant's overall credibility, demeanor, rehabilitative potential, and moral character, among other qualities. See *Alexander*, 239 Ill. 2d at 212-13. Based on the record, the trial court's sentencing decisions reflects a careful deliberation of the underlying offenses as well as defendant's criminal history, rehabilitative potential, demeanor, age and other relevant sentencing factors. Accordingly, we find that the court did not abuse its discretion in sentencing defendant to terms which exceeded those imposed on his codefendant.

⁵ While in custody awaiting his trial, defendant was charged with aggravate battery after allegedly spitting in a correctional officer's face. During the sentencing hearing, defendant testified that he had been punched and beaten by the officer after the officer accused him of "kill[ing] little girls."

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¶ 95

CONCLUSION

¶ 96 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 97 Affirmed.