SIXTH DIVISION
September 5, 2014

No. 1-13-1466

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. 03 CR 5116
	)	
SHERRY HALLIGAN,	)	Honorable
	)	John J. Hynes
Defendant-Appellant,	)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hall and Reyes concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for first-degree murder is affirmed, where defendant was: (1) proven guilty beyond a reasonable doubt; (2) not convicted based upon improperly introduced evidence; (3) not prejudiced by the State's questioning or arguments; and (4) not provided ineffective assistance of counsel.

¶ 2 Following a bench trial, defendant-appellant, Sherry Halligan, was convicted of first-degree murder and sentenced to a term of 45 years' imprisonment. On appeal, defendant raises several challenges to her conviction. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 We summarize here only those facts necessary to an understanding of our disposition of this appeal.

¶ 5 The record reflects that the victim, Dennis Campbell, was shot and killed on or about January 31, 2003. On February 1, 2003, defendant and her attorney met with police officers at the LaGrange police department. Defendant, with her attorney present, gave both verbal and videotaped statements in which she admitted to shooting and killing the victim in her LaGrange home.

¶ 6 In February of 2003, defendant was charged by indictment with multiple counts of first-degree murder, all of which generally alleged that defendant shot and killed the victim on or about January 31, 2003. Shortly thereafter, defendant was examined by Dr. Jonathan Kelly, a staff forensic psychologist employed by Cook County's Forensic Clinical Services division. Dr. Kelly found that defendant was both fit to stand trial and legally sane at the time of the offense.

¶ 7 On April 21, 2004, defendant failed to appear in court and a warrant was issued for her arrest. It was not until July of 2010 that defendant was located by authorities. Defendant was living in Palos Hills under an assumed name, with a different hair color, and in possession of various forms of identification which identified her as "Katherine White." Defendant thereafter remained in custody throughout these proceedings, which included a number of pretrial matters relevant to the issues raised in this appeal.

¶ 8 Specifically, both the State and defendant filed a number of pretrial motions regarding the evidence to be admitted at trial. First, the State filed a motion requesting that it be permitted to introduce evidence regarding defendant's disposal or destruction of evidence following the shooting, her flight from prosecution, her use of an assumed name, and her possession of false identification documents. The trial court granted this motion, concluding that this evidence was admissible as proof of defendant's consciousness of guilt. The court further concluded that the probative value of this evidence outweighed any possible prejudicial effect.

¶ 9 Second, the State also filed a motion *in limine* to present evidence of the victim's peaceful character in its case-in-chief and/or in rebuttal, should defendant attempt to reference or rely upon evidence of the victim's abusive nature and contend that she suffered from battered woman syndrome (BWS), during her opening statements or in her defense case. This motion was also granted.

¶ 10 Finally, defendant filed a motion *in limine* seeking to preclude the introduction of any evidence regarding Dr. Kelly's 2003 fitness evaluation of defendant. Specifically, defendant noted that it had been revealed that two of the State's expert witnesses, Dr. Christofer Cooper and Dr. Peter Lourgos, who had conducted psychiatric evaluations of defendant in preparation of challenging any possible defense based upon BWS or post-traumatic stress disorder (PTSD), had obtained Dr. Kelly's report during the course of completing their evaluations. While the trial court initially granted defendant's motion, following the filing of the State's motion to reconsider and the pretrial *voir dire* testimony of Dr. Cooper and Dr. Lourgos, the trial court reconsidered and ruled that the State's experts could refer to Dr. Kelly's report at trial. The trial court based this ruling upon the testimony of both Dr. Cooper and Dr. Lourgos that their opinions were based entirely upon their own analysis, and not on Dr. Kelly's prior report.

¶ 11 Thereafter, this matter proceeded to a bench trial in January and February of 2013. At trial, the issues of whether or not defendant shot and killed the victim, or whether or not he died of multiple gunshot wounds were uncontested, with defendant's inculpatory statements being entered into evidence by the State and defendant herself admitting to shooting the victim during her trial testimony. Defense counsel stipulated to the foundational proof and chain of custody for a number of the State's evidentiary exhibits, including her statements to police and other physical

and forensic evidence. Thus, we need not restate all of the evidence entered at trial with respect to these issues.

¶ 12 What was disputed at trial was the significance of the evidence regarding what occurred before and after the shooting. Specifically, the evidence and arguments of defendant and the State primarily related to the defense theory—first introduced during defendant's opening statement—that she suffered from both BWS and PTSD and acted in self-defense.

¶ 13 The State presented evidence during its case-in-chief, in the form of defendant's statements, that defendant and the victim had an intimate relationship prior to the shooting and that the victim lived in Florida. In January of 2003, the victim was traveling to Illinois for work, and he, defendant, and the victim's employer, Mickey Kovacs, had dinner on the night of January 30, 2003. Thereafter, all three traveled to a hotel where the victim and his employer were staying. In the victim's room, defendant and the victim had an argument, one that continued as the victim drove defendant home. There, the argument continued until defendant shot the victim with a gun she had at her residence.

¶ 14 Thereafter, defendant returned the victim's car to his hotel and returned to her home. She then covered the victim's body with a sheet, changed clothes, and placed her old clothes and the gun in a white plastic bag. Defendant drove for two hours south on Interstate 55 before throwing the white bag out of the window. After making a number of stops, defendant began her return trip. She thereafter contacted her brother, who contacted an attorney. On January 31, 2003, defendant and her attorney met with LaGrange police officers and she provided the statements introduced at trial.

¶ 15 The State also introduced evidence regarding defendant's flight from prosecution and her ultimate arrest in Palos Hills living under an assumed name with false identification. Finally, the

State introduced evidence—through the testimony of Jessie McQueen, the victim's former long-time girlfriend in Florida—that the victim had a reputation for peacefulness and had never been violent or abusive during their relationship.

¶ 16 In response, defendant testified that her father was abusive toward her mother when defendant was a child and that she had been involved in a number of violent and physically abusive relationships as an adult. These included her relationship with the victim, who would force her to have sexual relations with him. Defendant further testified that the argument she and the victim were having on the night of the shooting involved the victim's demand that she have sex with Mr. Kovacs. At the hotel, that argument became so heated that security was called to the victim's room. That argument continued as the victim drove her home, and it was there that she shot the victim with a gun she had in her home after he physically assaulted her and threatened to kill her. On cross-examination, defendant acknowledged numerous inconsistencies between her trial testimony and her prior statements, including whether or not her argument with the victim was sex-related, and whether or not he actually threatened to kill her.

¶ 17 Defendant also presented the testimony of two expert witnesses, Dr. Karla Fisher and Dr. Steven Rothke. Dr. Fisher was a psychologist and was qualified as an expert in psychological effects of domestic violence. Dr. Rothke was a licensed clinical psychologist and was qualified as an expert in clinical psychology and neuropsychology. Dr. Fisher diagnosed defendant with BWS and Dr. Rothke diagnosed her with cognitive disorder due to traumatic brain injury as well as features of post-concussion syndrome. Neither of defendant's expert witnesses diagnosed her with PTSD. Finally, while both experts had independently evaluated defendant, they each relied upon defendant's self-reporting and did not review any of her prior medical history or other records.

¶ 18 In rebuttal, the State presented the testimony of Dr. Cooper and Dr. Lourgos, employees of Cook County's Forensic Clinical Services division. Dr. Cooper and Dr. Lourgos were qualified as experts in, respectively, forensic psychology and clinical psychiatry. Each of the State's expert witnesses testified that they had evaluated defendant personally, and had also reviewed her prior medical records. In the opinion of both Dr. Cooper and Dr. Lourgos, defendant did not suffer from BWS or PTSW.

¶ 19 At the conclusion of the trial, the trial court found defendant guilty of first-degree murder and further concluded that she had personally discharged a firearm during the commission of that offense. The trial court specifically noted that there was no dispute that defendant had actually shot and killed the victim, and that "[t]he only issue here is whether or not she intended to kill the victim or whether she was under a reasonable belief that her life was in danger in which case she would be found not guilty by reason of self-defense or whether or not she was under an unreasonable belief that her life was in danger, and if so, then she would be guilty of something less than first-degree murder." In resolving those questions, the trial court concluded that the State's expert witnesses were more reliable than those presented by the defense, and that defendant herself was not a credible witness. The trial court further concluded that defendant's actions immediately after the shooting and in fleeing from prosecution were not consistent with her claims of self-defense and having suffered from BWS.

¶ 20 Defendant thereafter filed a motion for a new trial, which was denied. The trial court then sentenced defendant to a total term of 45 years' imprisonment, which included 20 years for first-degree murder and a 25-year sentencing enhancement for her use of a firearm. Defendant's motion to reconsider that sentence was denied, and she has now appealed.

¶ 21 II. ANALYSIS

¶ 22 As noted above, defendant has raised a number of challenges to her conviction on appeal. We address each in turn.

¶ 23 A. Sufficiency of the Evidence

¶ 24 Defendant first contends that she was not proven guilty of first-degree murder beyond a reasonable doubt.

¶ 25 It is not the function of this court to retry defendant when presented with such a challenge; rather, we review the evidence in the light most favorable to the State to determine whether any rational trier of fact could have found the elements of the crime proven beyond a reasonable doubt. *People v. Evans*, 209 Ill. 2d 194, 209 (2004); *People v. Collins*, 106 Ill. 2d 237, 261 (1985). The trier-of-fact's findings are entitled to great weight, given that it is in the best position to judge the credibility and demeanor of the witnesses. *People v. Wheeler*, 226 Ill. 2d 92, 114-15 (2007). As such, a reviewing court will not substitute its judgment for that of a trier of fact on issues involving the weight of evidence or the credibility of witnesses. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009). A reversal is warranted only if the evidence is so improbable, or unsatisfactory, it leaves a reasonable doubt regarding defendant's guilt. *Evans*, 209 Ill. 2d at 209.

¶ 26 Defendant was convicted and sentenced under count 1 of the indictment, which alleged that she had committed the offense of first-degree murder in violation of section 9-1(a)(1) of the Criminal Code of 1961 (Criminal Code). 720 ILCS 5/9-1(a)(1) (West 2002). A person commits a violation of this section when he or she kills an individual without lawful justification and, in performing the acts which cause the death of another, he or she either intends to kill, or do great bodily harm to that individual or another, or knows that such acts will cause death to that individual or another. *Id.* On appeal, defendant does not raise any serious challenge to the

sufficiency of the State's evidence with respect to proving the elements of this offense, and she specifically concedes that she shot and killed the victim.

¶ 27 Indeed, defendant's only real challenge to this evidence on appeal consists of: (1) noting that there was no evidence of deliberation or premeditation prior to the shooting; and (2) contending that the evidence of her efforts to evade prosecution were improperly considered by the trial court in determining her guilt. However, no evidence of deliberation or premeditation was necessary to support a conviction for first-degree murder under section 9-1(a)(1) of the Criminal Code. See *People v. Davis*, 95 Ill. 2d 1, 33 (1983) (recognizing that there is "no definition of murder which encompasses the concept of premeditation"). Rather, evidence of deliberation or premeditation is considered only as an aggravating factor for sentencing purposes. See 720 ILCS 5/9-1(b)(11) (West 2002). Moreover, and as it will be discussed more fully below, the evidence of defendant's subsequent attempts to avoid prosecution and her use of an assumed name was properly considered as proof of consciousness of her guilt. *People v. Hommerson*, 399 Ill. App. 3d 405, 410 (2010) (citing *People v. Harris*, 225 Ill.2d 1, 23 (2007)). Thus, we conclude that the evidence produced at trial established all of the elements of the offense of first-degree murder beyond a reasonable doubt.

¶ 28 Despite this conclusion, we further note that defendant's primary argument on appeal contends that the evidence established that she suffered from BWS, that she acted in self-defense, and that she could, therefore, not be convicted of first-degree murder. We disagree.

¶ 29 First, we find that defendant's arguments in this regard are not well-formulated or supported by any relevant authority. Other than broad general statements, she fails to demonstrate—via citation to any relevant authority—exactly how the above contentions necessarily required a finding of not guilty. "A reviewing court is entitled to have the issues

clearly defined with pertinent authority cited and is not simply a depository into which the appealing party may dump the burden of argument and research." *People v. Hood*, 210 Ill. App. 3d 743, 746 (1991).

¶ 30 This failure aside, we further note that all of defendant's arguments in this regard essentially contend that her expert witnesses were more credible than those presented by the State, and that the trial court did not fully consider defendant's own testimony after finding her to be an incredible witness Thus, all of these arguments ask this court to do exactly what we are not permitted to do; *i.e.*, substitute our judgment for that of the trier of fact on issues involving the weight of evidence and the credibility of witnesses. *Siguenza-Brito*, 235 Ill. 2d 224-25. Again, "[t]he weight to be given the witnesses' testimony, the credibility of the witnesses, resolution of inconsistencies and conflicts in the evidence, and reasonable inferences to be drawn from the testimony are the responsibility of the trier of fact." *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). Furthermore, it was the trial court's role as the trier of fact to evaluate the testimony of the expert witnesses and assess their credibility, and the trial court was not obligated to accept the opinions of defendant's expert witnesses over those opinions presented by the State. *People v. Dresher*, 364 Ill. App. 3d 847, 855-56 (2006).

¶ 31 In light of this authority, we decline defendant's invitation to retry her on appeal. Having reviewed the evidence presented below, we conclude that defendant's arguments on appeal have not demonstrated that the evidence is so improbable or unsatisfactory, that it leaves any reasonable doubt that she did not act in self-defense or due to the effects of suffering from BWS, and was, therefore, properly convicted of first-degree murder. *Evans*, 209 Ill. 2d at 209.

¶ 32 B. Improper Admission of Evidence

¶ 33 Next, we consider defendant's contention that she was prejudiced because the State was erroneously allowed to introduce improper evidence.

¶ 34 We first address defendant's contention that the circuit court improperly granted the State's motion *in limine*, and allowed the introduction of evidence of her flight and use of an assumed name to obtain fraudulent identification cards. On appeal, defendant contends that this evidence was admitted to show her propensity to commit crimes and that the prejudicial effect of such evidence outweighed any possible probative value. We disagree.

¶ 35 Evidence of other crimes is admissible if it is relevant for any purpose other than to show the defendant's propensity to commit crimes. *People v. Aguilar*, 396 Ill. App. 3d 43, 55 (2009) (citing *People v. Wilson*, 214 Ill. 2d 127, 135 (2005)). Evidence of flight and the use of an assumed name may be properly admissible under this rule for the purpose of proving consciousness of guilt. *Aguilar*, 396 Ill. App. 3d at 56 (citing *Harris*, 225 Ill.2d at 23). Nevertheless, even if other-crimes evidence is admissible for such a purpose, the trial court still can exclude it if the prejudicial effect of the evidence substantially outweighs its probative value. *People v. Donoho*, 204 Ill. 2d 159, 170 (2003). The determination as to the admissibility of other-crimes evidence rests within the sound discretion of the trial court and will not be disturbed absent an abuse of that discretion. *People v. Colin*, 344 Ill. App. 3d 119, 127 (2003). An abuse of discretion "occurs when the court's decision is arbitrary, fanciful, or unreasonable." *People v. Gwinn*, 366 Ill. App. 3d 501, 515 (2006).

¶ 36 Here, the record reveals that evidence of defendant's flight and use of an assumed name to obtain fraudulent identification cards was admitted to prove her consciousness of guilt, a purpose well-recognized as being proper. It was not, as defendant contends on appeal, admitted or used to establish defendant's propensity to commit crimes. Moreover, the trial court

specifically concluded that the probative value of this evidence outweighed any prejudicial effect. Other than contending that "[c]learly" the opposite conclusion was correct, defendant has not asserted any reason why the trial court's admission of this evidence was an abuse of discretion. Indeed, our own review of the record reveals that the trial court's decision should not be disturbed, as that decision can in no way be said to have been arbitrary, fanciful, or unreasonable under these circumstances. *Id*. at 515.

¶ 37 Defendant also contends that the trial court improperly allowed the State to introduce into evidence the written reports of Dr. Kelly, Dr. Lourgos, and Dr. Cooper, where those reports included opinions regarding defendant's sanity at the time of the shooting. Defendant contends that this was improper, because her sanity was not raised as a defense at trial. There are several problems with this argument.

¶ 38 First, the record clearly reflects that these written reports were not actually introduced into evidence at trial. Rather, they were only considered by the trial court prior to trial in the context of ruling on the motion *in limine* regarding whether, and to what extent, Dr. Lourgos and Dr. Copper would be allowed to testify at trial as to the basis of their conclusions regarding their evaluations of defendant.

¶ 39 Second, the record also reflects that the *only* testimony regarding defendant's sanity actually introduced at trial was procured by defense counsel. It was only in defense counsel's cross-examination of Dr. Cooper that any such testimony was briefly introduced, and only in response to defense counsel's specific questioning. It is well recognized that, "[u]nder the invited error doctrine, a defendant is barred from claiming error in the admission of improper evidence where the defendant procured, invited, or acquiesced to the admission." *People v. Alvarado*, 2013 IL App (3d) 120467, ¶ 11 (citing *People v. Harvey*, 211 Ill.2d 368, 286 (2004)).

¶ 40 Third, we reject any contention that the trial court's pre-trial exposure to such opinions, or the brief discussion of them during Dr. Cooper's cross-examination, caused defendant to suffer any possible prejudice. Pretrial involvement by a trial court judge does not disqualify the judge from later presiding over the defendant's trial. *People v. Cunningham*, 2012 IL App (3d) 100013, ¶ 15. Moreover, in a bench trial it is presumed the trial judge considered only competent evidence in reaching a verdict, unless the record affirmatively demonstrates the contrary. *Id*. ¶ 14. Here, there is no indication that the trial court relied upon any evidence regarding defendant's sanity in reaching its verdict. As such, we find no basis to overturn the presumption that defendant's conviction resulted from only the competent, properly admitted evidence produced at trial.

¶ 41 C. Prosecutorial Misconduct

¶ 42 Defendant next asserts that she was prejudiced by a number of comments made by the State during the course of the trial. We find that a number of defendant's contentions have been forfeited, while the remainder are either meritless or do not demonstrate any prejudice.

¶ 43 First, we address defendant's argument that the State improperly: (1) shifted the burden of proof during closing argument when, while noting that defendant had no obligation to testify, it argued that defendant had failed to establish that she had a reasonable or unreasonable belief that she acted in self-defense; (2) made certain "sarcastic" comments that "served only to inflame the Court"; (3) questioned the credibility of defendant's experts on the basis that they were paid for their opinions; (4) cross-examined defendant regarding her flight from prosecution; and (5) misstated the evidence regarding the condition of the victim's clothing following the shooting.

¶ 44 However, the record reflects that defendant never objected to these comments at trial, nor did she challenge them in her posttrial motion. Therefore, defendant has not preserved these

issues for appeal. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (to preserve a claim for review, a defendant must both object at trial and include the alleged error in a written posttrial motion).

¶ 45 Defendant could ask this court to review these comments for plain error. The plain error doctrine "bypasses normal forfeiture principles and allows a reviewing court to consider unpreserved error ***." *People v. Herron*, 215 Ill. 2d 167, 186 (2005). The plain-error doctrine is applied where "(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). In either circumstance, the burden of persuasion remains with the defendant. *Herron*, 215 Ill. 2d at 182.

¶ 46 However, defendant's briefs on appeal are completely devoid of any attempt to apply the plain-error doctrine to these allegedly improper comments. As our supreme court has recognized, "when a defendant fails to present an argument on how either of the two prongs of the plain-error doctrine is satisfied, [s]he forfeits plain-error review." *People v. Hillier*, 237 Ill. 2d 539, 545-46 (2010).

¶ 47 Even if we were to overlook defendant's forfeiture of any review of her unpreserved assertions of prosecutorial misconduct, we would conclude that no plain error occurred in this matter. With respect to the first prong of the plain error doctrine, we note again that the overall record clearly reflects that the evidence of defendant's guilt was overwhelming. Defendant admitted to shooting and killing the victim. Moreover, with respect to defendants' contentions regarding BWS and PTSD, the trial court properly and permissibly concluded that the State's

expert witnesses were more credible and that defendant herself was not a credible witness. The evidence against defendant also included her actions immediately after the shooting to conceal evidence of the shooting, and her efforts to avoid prosecution, both of which the trial court properly concluded were inconsistent with her claims of having a reasonable or unreasonable belief that she acted in self-defense. We certainly do not think that the evidence was so closely balanced that defendant has demonstrated that any of the unpreserved assertions of improper statements by the State—notably, statements made in the context of a bench trial as opposed to a jury trial—"threatened to tip the scales of justice against the defendant." *Piatkowski*, 225 Ill. 2d at 565.

¶ 48 As to the second prong, we note that "[e]rror under the second prong of plain error analysis has been equated with structural error." *People v. Cosmano*, 2011 IL App (1st) 101196, ¶ 78. "Structural errors have been recognized in only a limited class of cases including: a complete denial of counsel; trial before a biased judge; racial discrimination in the selection of a grand jury; denial of self-representation at trial; denial of a public trial; and a defective reasonable doubt instruction." *Id*. Here, defendant does not allege, nor does the record reflect, that any such structural error occurred. We, thus, conclude that even if defendant had argued that plain error occurred with respect to the allegedly improper comments referenced above, any such argument would prove unsuccessful. We, therefore, need not further consider these assertions of error on the merits.

¶ 49 Nevertheless, defendant did properly preserve two other assertions of prosecutorial misconduct by timely objecting at trial and including them in her posttrial motion. Specifically, defendant has properly raised arguments on appeal that the State improperly: (1) made additional improper sarcastic remarks during its cross-examination of defendant by commenting "Lucky for

you." and "Oh. Wow." in response to her testimony; and (2) shifted the burden of proof during closing arguments by noting that defendant herself could have subpoenaed Mr. Kovacs and obtained his testimony in her defense case. However, we conclude that these assertions are either meritless or did not prejudice defendant in any way.

¶ 50 First, we note again that in a bench trial it is presumed the trial judge considered only competent evidence in reaching a verdict, unless the record affirmatively demonstrates the contrary. *Cunningham*, 2012 IL App (3d) 100013, ¶ 14. Here, there is no indication that the trial court relied upon any of these allegedly improper comments in reaching its verdict. Furthermore, following one of the purportedly improper comments made by the State during its cross-examination ("Lucky for you."), the trial court sustained defendant's objection. It is well recognized that any possible error resulting from the State's comments is usually cured when the trial court sustains an objection. *People v. Dunlap*, 2011 IL App (4th) 100595, ¶ 24. With respect to the other allegedly improper, sarcastic remark, we do not believe that defendant has demonstrated that such an isolated, unrepeated comment prejudiced her in any way. See, *e.g.*, *People v. Hayes*, 409 Ill. App. 3d 612, 625 (2011) (brief and isolated comments during closing arguments are typically not prejudicial).

¶ 51 We also conclude that the State's comments regarding defendant's ability to present the testimony of Mr. Kovacs at trial were properly made in response to arguments made by defense counsel. It is well recognized that "[t]he prosecution may fairly comment on defense counsel's characterizations of the evidence and may respond in rebuttal to statements of defense counsel that noticeably invite a response." *People v. Willis*, 2013 IL App (1st) 110233, ¶ 110 (citing *Evans*, 209 Ill. 2d at 225); see also *People v. Willis*, 409 Ill. App. 3d 804, 812 (2011) ("Remarks made during closing arguments must be examined in the context of those made by both the

defense and the prosecution ***."). Here, it was defense counsel that first raised the issue of the State's failure to present Mr. Kovacs as a witness during closing arguments. In rebuttal, the State merely responded to this argument by noting that—while defendant had no obligation to present any evidence—defendant could also have presented Mr. Kovacs as a witness herself.

¶ 52 D. Ineffective Assistance of Counsel

¶ 53 Finally, we consider the numerous allegations of ineffective assistance of counsel raised by defendant on appeal.

¶ 54 A claim of ineffective assistance of counsel is judged according to the two-prong test established in *Strickland v. Washington*, 466 U.S. 668 (1984). See *People v. Lawton*, 212 Ill. 2d 285, 302 (2004). In order to obtain relief under *Strickland*, a defendant must prove defense counsel's performance fell below an objective standard of reasonableness and that this substandard performance caused defendant prejudice by creating a reasonable probability that, but for counsel's errors, the trial result would have been different. *People v. Wheeler*, 401 Ill. App. 3d 304, 313 (2010).

¶ 55 While the defendant must establish both prongs of this two-part test, a reviewing court need not address counsel's alleged deficiencies if the defendant fails to establish any prejudice. See *Strickland*, 466 U.S. at 687; *People v. Edwards*, 195 Ill. 2d 142, 163 (2001). Our supreme court has held that "*Strickland* requires actual prejudice be shown, not mere speculation as to prejudice." *People v. Bew*, 228 Ill. 2d 122, 135 (2008). A defendant has the burden of establishing any such prejudice. *People v. Glenn*, 363 Ill. App. 3d 170, 173 (2006).

¶ 56 It must also be noted that effective assistance of counsel refers to competent, not perfect, representation. *People v. Palmer*, 162 Ill.2d 465, 476 (1994). Thus, a defendant must overcome the presumption that the challenged conduct should be considered sound trial strategy under the

circumstances. *People v. Mims*, 403 Ill. App. 3d 884, 890 (2010). Moreover, it is well recognized that "'[n]either mistakes in strategy nor the fact that another attorney with the benefit of hindsight would have handled the case differently indicates the trial lawyer was incompetent.'" *Smith*, 2012 IL App (1st) 102354, ¶ 86 (quoting *People v. Negron*, 297 Ill. App. 3d 519, 538 (1998)).

¶ 57 First, we consider defendant's contention that her trial counsel was ineffective for stipulating to "the admission of a plethora of prosecution submissions, thereby obviating the necessity of formal proof, opportunity to cross examine and waiving defendant's constitutional right to due process." We disagree.

¶ 58 It is well recognized that "[t]he mere use of stipulations does not establish ineffective assistance of counsel. [Citation.] An incorrect or erroneous stipulation may establish the first prong of the *Strickland* test. [Citations.] However, in order to establish that counsel was ineffective for entering into a stipulation, a defendant must still satisfy the prejudice prong of *Strickland* and overcome the strong presumption that counsel's actions arose from trial strategy. [Citations.]" *People v. Smith*, 326 Ill. App. 3d 831, 851 (2001).

¶ 59 Here, defendant does no more than reference six, separate stipulations entered into by her trial counsel and complain that her trial counsel, thus, failed to test the foundational proof or admissibility of this evidence, resulting in prejudice. However, defendant makes no further effort to establish exactly why entering into these stipulations was not a valid trial strategy. More importantly, defendant has offered no evidence or argument to establish exactly how she was prejudiced by these stipulations or how the admissibility of any of the evidence contained therein could have been successfully challenged at trial. Again, defendant has the burden of establishing any prejudice resulting from the use of a stipulation (*id.*), and proof of any such

prejudice cannot be based on mere conjecture or speculation (*Palmer*, 162 Ill. 2d at 481). That burden has not been met here.

¶ 60 Next, defendant complains that her trial counsel was ineffective for not making more objections during the State's direct examination of its witnesses, and further faults her trial counsel for failing to further cross-examine a number of those witnesses. However, these arguments fail to satisfy the first prong of the *Strickland* test. Our supreme court has "noted on several occasions that decisions regarding 'what matters to object to and when to object' are matters of trial strategy." *People v. Perry*, 224 Ill. 2d 312, 344 (2007). Similarly, " '[t]he manner in which to cross-examine a particular witness involves the exercise of professional judgment which is entitled to substantial deference from a reviewing court.' " *People v. Lacy*, 407 Ill. App. 3d 442, 461 (2011) (quoting *People v. Pecoraro*, 175 Ill. 2d 294, 326-27 (1997)). And again, defendant has completely failed to present any argument or evidence that she was prejudiced by any failure of her trial counsel to make more objections or to cross-examine the State's witnesses. Defendant cites to no specific testimony that could have been successfully objected to, and she points to no specific areas of the testimony of the State's witnesses that could have been successfully challenged by more thorough cross-examination.

¶ 61 We separately address two similar arguments raised by defendant. First, she contends that her trial counsel was ineffective for failing to object to the direct testimony of the victim's former girlfriend, Ms. McQueen, that the victim had a peaceful character and had never been violent or abusive. Defendant complains that her trial counsel should have objected to this testimony because it should not have been offered—if at all—until after she offered evidence of having acted in self-defense. However, as the State correctly notes on appeal, defense counsel asserted a theory of self-defense in opening statements, premised upon the argument that

defendant had suffered BWS as a result of the victim's actions. Therefore, the testimony of Ms. McQueen was properly entered into evidence during the State's case-in-chief to refute this argument. See *People v. Dunlap*, 315 Ill. App. 3d 1017, 1022 (2000) ("the rule that the prosecution may put on reputation evidence to prove the victim's peaceful character only if defendant has *first* attacked the victim's character for peacefulness must apply to statements made in defendant's opening statement." (Emphasis in original.)). And, while defendant also complains that her trial counsel's cross-examination of Ms. McQueen was "perfunctory and meaningless," she once again offers no argument as to how that cross-examination fell below an objective standard of reasonableness or caused her any prejudice.

¶ 62 Second, defendant contends that, during cross-examination of Dr. Cooper, her trial counsel improperly elicited the opinion that she was legally sane at the time of the shooting. Even assuming that this action was improper, defendant has not cited to—nor does the record contain—any evidence that she was prejudiced by the introduction of this evidence. Specifically, there is nothing in the record to indicate that the trial court relied upon this evidence in any way in reaching its verdict.

¶ 63 Next, defendant faults her trial counsel for failing to present the testimony of the victim's former employer, Mr. Kovacs, or of the hotel security employees that responded to the disturbance on the night of the shooting. She also contends that her trial counsel should have presented evidence of her own reputation for peacefulness. However, "[d]ecisions involving what evidence to present and which witnesses to call fall within the broad category of trial strategy and are not subject to a claim of ineffective assistance unless they deprive a defendant of a meaningful adversary proceeding." *People v. Smith*, 2012 IL App (1st) 102354, ¶ 86 (citing *People v. Hamilton*, 361 Ill. App. 3d 836, 847 (2005)).

¶ 64 Moreover, while defendant generally contends that the failure to present evidence supportive of a defense's theory constitutes ineffective assistance, nowhere in defendant's brief, nor in the record on appeal, is there any indication that the potential testimony cited by defendant would actually have been beneficial to her defense. Again, the decision not to present such evidence is presumed to be sound trial strategy under the circumstances (*Mims*, 403 Ill. App. 3d at 890), and the burden of overcoming that presumption and of proving incompetence rests with defendant, not the State. *People v. Bryant*, 391 Ill. App. 3d 228, 238 (2009). A defendant fails to meet his burden to establish a reasonable probability that a different result would have obtained, if only her trial counsel had presented a potential witness, where there is nothing in the record to indicate that a potential witness's trial testimony would have been favorable to a defendant. *Glenn*, 363 Ill. App. 3d at 173-74 (citing *People v. Holman*, 132 Ill. 2d 128, 167 (1989), and *People v. Markiewicz*, 246 Ill. App. 3d 31, 47 (1993)).

¶ 65 In two related arguments, defendant finally contends that her statements to the police following the shooting, including the videotaped statement, were given unknowingly and involuntarily in light of the "emotional and exhausting" events of the previous days. She further contends that the attorney representing her at that time—one different than her trial counsel—was "grossly ineffective" and that her trial counsel was, therefore, ineffective for failing to: (1) present a motion to suppress those statements; or (2) "explore" at trial defendant's "physical and emotional inability to function" at the time the statements were made.

¶ 66 Once again, defendant's arguments on appeal are unconvincing. She has again improperly failed to cite any authority in support of these contentions. *Hood*, 210 Ill. App. 3d at 746. Furthermore, both the decision of whether to file a motion to suppress (*People v. Campbell*, 2014 IL App (1st) 112926, ¶ 38), and decisions regarding what evidence to present and which

witnesses to call fall within the broad category of trial strategy (*Smith*, 2012 IL App (1st) 102354, ¶ 86). With respect to the argument that a motion to suppress should have been filed, defendant must show "that a reasonable probability existed that the motion would have been granted and the outcome of the trial would have been different had the evidence been suppressed." *Campbell*, 2014 IL App (1st) 112926, ¶ 38. Defendant's briefs on appeal make no effort to make such a showing. Furthermore, defendant's argument regarding her trial counsel's failure to further "explore" her physical and emotional state at the time of the statements assumes, without any proof, that she was prejudiced because such an exploration would have lead to evidence supportive of her defense. As we have noted above, proof of prejudice cannot be based on mere conjecture or speculation. *Palmer*, 162 Ill. 2d at 481.

¶ 67 III. CONCLUSION

¶ 68 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 69 Affirmed.