No. 1-09-0512

FIFTH DIVISION
May 20, 2011

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. 98 CR 11291 (02)
	)	
ARTURO ARROYO,	)	Honorable
	)	Rickey Jones,
Defendant-Appellant.	)	Judge Presiding.

JUDGE EPSTEIN delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Joseph Gordon concurred in the judgment.

ORDER

Held: Where defendant's confession was voluntary, the trial court correctly denied his motion to suppress statements; defendant forfeited review of the trial court's admission of gang evidence to show motive; and defendant forfeited review of the prosecutor's comments on defendant's guilt.

Following a jury trial, defendant, Arturo Arroyo, was convicted of first degree murder and attempt murder. He was sentenced to a prison term of 20 years for the first degree murder and 6 years for the attempt murder, to be served concurrently. On appeal, defendant claims: (1) the trial court erred in denying the motion to suppress his statements; (2) the trial court erred in admitting gang evidence unrelated to motive; and (3) the State's comments during closing

argument misstated the law on the presumption of innocence. For the reasons below, we affirm.

BACKGROUND

On June 19, 1998, 14-year-old Glenn Garcia was shot and killed near Lituanica Avenue and West 31st Street in Chicago while walking with his friend, Baltazar Barrera. Co-defendant Gustavo Cardenas fired the gunshots as defendant allegedly acted as a lookout. A week later, defendant was arrested after the police spoke to a witness, Olga Fields. Defendant, who was then 15 years old, subsequently confessed. He was charged by indictment with the first degree murder of Glenn Garcia and the attempt first degree murder of Baltazar Barrera.

Suppression Hearing

Before trial, defendant sought to suppress his oral and handwritten statements, claiming he was not advised of, and did not understand, his *Miranda* rights. He further claimed the police used mental coercion to produce the statements by refusing to allow him to speak to his father, holding him overnight until he agreed to sign a handwritten statement, and promising to let him go if he signed the statement.

During the hearing on defendant's amended motion to suppress statements, Detective John Halloran testified for the State that after defendant was arrested on June 26, 1998, he was brought to the Area One Violent Crimes police station at 51st Street and Wentworth Avenue. Because defendant was 15 years old, the police telephoned his home. After learning the family could speak only Spanish, a Spanish speaking patrolman, Officer Fernandez from the 12th District, contacted defendant's father, Arturo Arroyo, Sr. He told him his son was in custody for the shooting and requested he go to the police station at 51st Street and Wentworth Avenue. At

3:30 a.m., Officer Hernandez notified Detective Halloran that Mr. Arroyo was coming. Mr. Arroyo did not arrive until 5:30 a.m. Detective Halloran testified he spoke to defendant at 5 a.m. Also present, were Detective Carroll, and Youth Officer Rochowicz. Detective Halloran advised defendant of his *Miranda* rights by reading them from the FOP handbook, stopping after each one to ask defendant if he understood. Detective Halloran also informed defendant that, because the crime was a murder, he would be tried and sentenced as an adult. Defendant stated he understood. Detective Halloran testified that he then had a conversation with defendant. When defendant's father arrived, Detective Halloran, met him at the desk together with Assistant State's Attorney David Navarro, who spoke Spanish. With ASA Navarro interpreting, they informed Mr. Arroyo that his son was in custody for murder, he had already made a statement, and they wanted to interview his son with Mr. Arroyo present. They then allowed Mr. Arroyo to meet with his son, alone. Afterwards, at approximately 5:45 a.m., Detective Halloran and ASA Navarro went into the room. Detective Halloran testified that ASA Navarro told defendant that he was a prosecutor and a lawyer, but not defendant's lawyer, again advised defendant of his *Miranda* rights and told defendant that he would be tried and sentenced as an adult because the crime was murder and because of his age. Detective Halloran testified that defendant indicated he understood. Detective Halloran stated that ASA Navarro also spoke to defendant's father in Spanish. ASA Navarro prepared a handwritten statement, while Detective Halloran and defendant's father were both was present. Defendant, his father, ASA Navarro, and Detective Halloran initialed and signed each page of the statement. Detective Halloran testified that neither he nor ASA Navarro told defendant that if he signed the statement he could go home.

ASA David Navarro also testified for the State that, as he and defendant read the handwritten statement together, ASA Navarro interpreted each part in Spanish for defendant's father. Defendant asked ASA Navarro to add one sentence to the statement. At no time did defendant say that he did not understand his rights or complain that he could not speak with his father. ASA Navarro testified that defendant was never promised anything, and neither defendant or his father was ever told that defendant could go home if he signed the statement.

Dr. Diane Stone, a school psychologist testified as an expert witness regarding defendant's ability to understand his *Miranda* rights. She evaluated defendant in July 1998. Dr. Stone opined that defendant had a severe learning disability, but he was not mentally retarded. She testified that defendant's reading comprehension was at a fourth grade, nine month level, and agreed that the *Miranda* rights are written at a fourth grade level. Dr. Stone testified defendant could understand most of the words in the typewritten *Miranda* warning portion of the statement if "special strategy or techniques" were used such as reading one sentence at a time. She admitted defendant would understand his *Miranda* rights, if they were presented one at a time.

Edgar Santos, defendant's friend, testified he was living with the Arroyo family on June 27, 1998. He went to the police station at 51st and Wentworth with Mr. Arroyo, who did not speak English. When they arrived, Mr. Arroyo went into a room, while Mr. Santos waited outside. Mr. Arroyo later took him home and Mr. Arroyo returned to the station. Mr. Santos was not certain of the exact times the events took place that night.

Mr. Arroyo also testified at the suppression hearing. He stated that his wife told him that a Spanish-speaking police officer called to speak with him and said his son was being detained.

Mr. Arroyo testified he arrived at the police station at 3 a.m. with Edgar Santos, who spoke English. From 3:30 a.m. until 5 a.m., he was in the conference room with his son and three men. He testified that one of the men spoke Spanish, but never spoke to him. He said he was never told his son was a suspect in a homicide case, he was never shown any handwritten documents, and he did not understand what they were saying to his son. It was his understanding that his son was a witness in two cases and was going to testify voluntarily. His son told him he was going to be going home as soon as he was done testifying. Mr. Arroyo said he took Edgar Santos home at 4:45 a.m., returned to the station at approximately 5:15 a.m., and was in the room with his son until 6 a.m. During cross-examination, Mr. Arroyo admitted ASA Navarro let him sit with his son the entire time he was at the police station. He admitted ASA Navarro spoke to him in Spanish, but stated it was "not too good," and he did not understand. He admitted the police never threatened his son or made any promises to his son. He stated that he signed the statement because his son signed it. Following arguments, the circuit court denied defendant's amended motion to suppress his statements.

Trial

Defendant does not challenge the sufficiency of the evidence at trial. Therefore, we include here only the trial testimony necessary to an understanding and resolution of the issues raised on appeal.

The State's first witness was Baltazar Barrera, the attempt murder victim. He testified that, at about 10:30 p.m. on June 19, 1998, he and Glenn Garcia were leaving Baltazar's house near 31st Street and Lituanica Avenue. Baltazar saw two men come around the corner of 31st

Street and run into the middle of the street. One of the men pulled out a gun and pointed it at them. The other man looked around, left and right, while in a crouched position a few feet from the man with the gun. Baltazar identified defendant as the other man. Baltazar testified that four gunshots were fired, and after the first, Baltazar grabbed Glenn's head and the two fell to the sidewalk. Baltazar was not injured but had blood on his face, shoes and clothing. He saw that Glenn had been shot in the head. Although Baltazar recognized defendant and had known him for two years, he said he did not provide the police with defendant's name because he was afraid that he might be killed. Eight days later, on June 27, 1998, Baltazar went to the police station and identified defendant and codefendant in a line-up.

ASA Navarro's trial testimony was similar to his testimony during the suppression hearing. In addition, ASA Navarro read defendant's handwritten statement, which is summarized as follows. On the night of the murder, shortly before 10 p.m., defendant met with "Trigger" (co-defendant's nickname). Trigger, who was a Latin King was going to shoot some "D's" which defendant knew to be Satan Disciples. Trigger asked defendant to watch out for "five-0" which defendant knew meant the police. Trigger showed defendant an outline of a gun that he had in his waistband. Defendant and Trigger walked down 31st Street towards Lituanica Avenue when they saw some "D's." Defendant walked down 31st Street toward Morgan Street to watch for the police. He saw Trigger fire his gun four or five times at some "D's" who were across the street. Defendant then started to run toward Morgan Street. Trigger handed him the chrome-plated .380 caliber semi-automatic gun, and defendant threw it over a fence. They saw a police car on 31st Street and told the police that someone had been shooting at them. Defendant

then ran to Olga Fields's house, told her what happened, and then ran home. Defendant stated he was a future member of the Latin Kings and he knew Trigger was going to shoot some Satan Disciples when he asked defendant to go with him. Defendant knew his job was to watch for the police. Defendant stated he had been treated well by the police, his father was present during his questioning and his statement, he was giving the statement voluntarily, he could read and write English, and he was allowed to make corrections to the statement.

Olga Fields then testified for the State. In June 1998, she lived on Morgan Street with two members of the Latin King gang. She associated with the Latin Kings and knew that the rival gang was the Satan Disciples. Ms. Fields testified regarding her knowledge of the two gangs. The Latin Kings colors were black and gold and their symbol was a five-point star and crown. The five points stood for honor, respect, courage, and defend the "hood,"but Ms. Fields could not remember the fifth. The Satan Disciples' colors were black and blue and their symbol was a pitchfork and "they ride under the six point star." A Latin King or a Satan Disciple would show disrespect to a member of the other gang by "flipping" the other gang's hand sign, *i.e.* displaying it upside down. Ms. Fields was familiar with the structure of the Latin Kings and had attended 10-15 of their weekly one-hour meetings. The "Inca" was the person at the top who "calls the shots, tells the soldiers what to do." Ms. Fields knew his name and his nickname. The second person in charge was called the "Casinga." She knew his name and nickname. Next was the "Enforcer" who was the one who would hand out any punishments; she knew his name. She testified that the next in the line of command would be the "Treasurer" whose role was to collect weekly dues, and that the "soldiers' job was defending the [neighborhood]."

Ms. Fields further testified that she had known defendant for approximately one month before the murder, and he had been at her house "5 or 10 times" with co-defendant, "Trigger" who was a member of the Latin Kings. On the night of the shooting, defendant and Trigger were at her house along with the two Latin Kings who lived there. Trigger told defendant that, because the Satan Disciples would be near the bank, it would be better to do "security" in that area. "Security" referred to gangs defending their neighborhood against other gangs. Defendant asked Trigger if he could go with him and Trigger said, "Yes." The security shift normally ran from 9 p.m. to 4 a.m., but Trigger told defendant they could get off early if they did a "burn" which Ms. Fields stated meant "sneak down to the other gang's territory and wait for the other gang to come out and shoot at them." Ms. Fields explained that "[i]t would get them off security earlier because the cops would be like all around so they would have to leave the neighborhood." The two left Ms. Fields's house at about 9:30 p.m. Trigger was armed with "a shiny gun with a black handle" that he put in his front waistband.

Ms. Fields testified that defendant returned to her house at 10:45 p.m., "sweaty, out of breath, very anxious" and "nervous." He told her a "D" had been shot and then defendant left. Trigger arrived 5 or 10 minutes later and "[h]e was also sweaty and out of breath and hyped up." Ms. Fields testified that defendant had previously been know as "Little Trigger" because he "hung out with Trigger." After the murder, defendant wanted to choose "Gunner" as his nickname.

On June 26, 1998, the police came to Ms. Fields's house and took her to the police station. She told them that she needed to speak to someone about what happened. Ms. Fields

moved out of the neighborhood the following day. She testified that, even though she had grown up in the neighborhood and had lived and associated with the Latin Kings, she came forward to the police because she "was tired of all the killing, because on June 21st [her] uncle was also murdered."

Chicago Police Officer John Harms testified that, on the night of the shooting, while working patrol in a marked squad car, he and his partner heard shots. As they turned onto 31st Street from Morgan Street, they saw two Hispanic males running. One of them approached the car and told his partner that they were being shot at. The two males ran westbound and the police officers drove to Lituanica Street where they found Glenn Garcia laying on the sidewalk.

The jury found defendant guilty of the first degree murder of Glenn Garcia and the attempt murder of Baltazar Barrera. On October 16, 2000, defendant was sentenced to twenty years in prison for the first degree murder and 6 years for the attempt murder, with the sentences to be served concurrently. On October 9, 2003, defendant filed a post-conviction petition that was granted, allowing him to file a late notice of appeal on February 11, 2009.

ANALYSIS

I. Motion to Suppress

Defendant argues the oral and written statements he made at the police station inculpating himself should be suppressed because: (a) his *Miranda* waiver was not knowing and intelligent because of his age and learning disabilities; and (b) the statements were not voluntary because of his age and learning disabilities, as well as his lack of prior criminal experience, the time of day of his interrogation, and the lack of a meaningful opportunity to consult with a concerned adult

prior to his confession.

We apply a bifurcated standard of review to the trial court's decision that a statement was voluntary. *In re G.O.*, 191 Ill. 2d 37, 50 (2000); *People v. Valle*, 405 Ill. App. 3d 46, 56-57 (2010). In applying this standard, we accord great deference to the trial court's factual findings, which will be reversed only if they are against the manifest weight of the evidence. *In re G.O.*, 191 Ill. 2d at 50. We will, however, review *de novo* the ultimate question of whether the confession was voluntary. *Id.* For this bifurcated standard of review to function as intended, trial courts must exercise their responsibility to make clear any factual findings upon which they are relying. *Id.* The trial court here fulfilled its responsibility and provided a lengthy, detailed discussion of its findings of fact, including its credibility determinations. In denying defendant's amended motion to suppress his statements, the trial court found defendant's testimony incredible and found that his contention that he did not understand his *Miranda* rights was contradicted by overwhelming credible evidence. The court found that the defendant was given *Miranda* warnings repeatedly. The trial court concluded that, under the totality of the circumstances, as presented by the evidence introduced in the hearing, defendant's statement was voluntary. There being no legal basis to conclude that the statement was involuntary, the court denied defendant's amended motion to suppress.

A. Validity of Defendant's Waiver of *Miranda* Rights

We first address defendant's argument that his waiver of *Miranda* rights was not valid because it was not "knowing and intelligent" because of his age and learning disabilities. We disagree. The trial court found defendant's testimony incredible. As the court stated, the

"credible evidence overwhelmingly establishe[d]" that defendant had been given his *Miranda* rights, that each right had been broken down for him and he said understood each, that he was not held overnight and that no promises were made to defendant in exchange for his statement. The record shows that at 5 a.m., after waiting for at least 90 minutes for defendant's father to come to the police station, Detective Halloran contacted Youth Officer Rochowicz and conducted an interview of defendant, after advising defendant of his *Miranda* rights, one at a time. The trial court found that ASA Navarro had presented the rights "warning by warning" and had interpreted them in Spanish for Mr. Arroyo. The court stated "there is not one shred of credible evidence in this record of any inability of the defendant to have been advised of his constitutional rights *** or any indication that he ever was unable to understand or indicated an inability to understand his constitutional rights." The trial court additionally noted that defendant had "absolutely no difficulty whatsoever understanding his attorney's questions concerning the various *Miranda* rights when he testified." Our review of the record shows that the trial court's determination that defendant understood his *Miranda* rights was not against the manifest weight of the evidence. We conclude that defendant's waiver of his *Miranda* rights was valid.

B. Voluntariness of Defendant's Statement

Having determined defendant's waiver of his *Miranda* rights was valid, we next consider defendant's argument that his statement was nevertheless inadmissible because it was not voluntary. "The benchmark for voluntariness is not whether the defendant would have confessed in the absence of interrogation but, rather, whether the defendant's will was overborne at the time of the confession." *People v. Brown*, 169 Ill. 2d 132, 144 (1996); see also *People v. Richardson*,

234 Ill. 2d 233, 253 (2009) (test for voluntariness is whether the defendant made the statement freely, voluntarily, and without compulsion or inducement of any sort, or whether the defendant's will was overcome at the time he confessed). As our supreme court has explained:

> "In determining whether a statement is voluntary, a court must consider the totality of the circumstances of the particular case; no single factor is dispositive. Factors to consider include the defendant's age, intelligence, background, experience, mental capacity, education, and physical condition at the time of questioning; the legality and duration of the detention; the presence of *Miranda* warnings; the duration of the questioning; and any physical or mental abuse by police, including the existence of threats or promises. (Citations.)" *People v. Richardson*, 234 Ill. 2d 233, 253-54 (2009).

Additionally, where, as here, the defendant is a juvenile "the greatest care must be taken to assure that the statement was not coerced or suggested, and that the statement was not the result of ignorance of rights or of adolescent fantasy, fright, or despair. (Citations.)" *Id.* Thus, the court must consider the "concerned adult" factor, which is whether the juvenile, either before or during the interrogation, had an opportunity to consult with a concerned adult. *Id.* The court must also take into account whether the police prevented a parent from conferring with the juvenile. *Id.*

Applying these principles to the present case, we conclude defendant's statements were voluntary. Our review of the record shows no evidence of coercion and no evidence that defendant's will was overborne.

First, there is no evidence that the police refused to allow defendant to speak to his father.

To the contrary, when he arrived at the police station, Mr. Arroyo was immediately allowed to talk to his son alone. He remained in the room with his son while the handwritten statement was prepared by ASA Navarro and both defendant and his father signed the statement.

Second, with respect to defendant's oral statement, it was made in the presence of a youth officer. Moreover, the police had contacted defendant's father and had waited approximately 90 minutes before speaking to defendant and obtaining the oral statement.

Third, defendant's claim that he was held overnight until he agreed to sign a handwritten statement is not supported by the evidence. Defendant testified that the police stopped him out on the street at approximately 1:30 a.m., even though it was well past the curfew time for persons his age. Detective Halloran testified that he arrested defendant at 2 a.m. The handwritten statement was prepared the same day at 6:15 a.m. by ASA Navarro.

Finally, there was no evidence supporting defendant's claim that the police promised to let him go if he signed the statement. Defendant's father never testified that any promises had been made. Detective Halloran and ASA Navarro stated that they never made any promises to defendant that if he signed the statement he could go home. Under the totality of the circumstances of this case, defendant's statement was voluntary. Thus, the trial court's denial of defendant's amended motion to suppress statements was supported by the evidence.

II. Admission of Gang Evidence

Defendant next argues that the trial court erred in allowing the State to introduce "extraneous, irrelevant, and prejudicial gang evidence." Prior to trial, defendant filed a motion *in limine* to exclude reference to gangs. The State objected and argued that the motivation for the

murder was an initiation into the Latin Kings gang. The trial court denied the motion *in limine* and defendant does not now challenge the ruling. He concedes that gang-related evidence may be admissible at trial to establish a defendant's motive. See, *e.g.*, *People v. Patterson*, 154 Ill. 2d 414, 458 (1992). He acknowledges that Ms. Fields's testimony regarding "the territory of each gang helped demonstrate the rivalry in the area of the shooting." Defendant further concedes that her testimony regarding "the colors and symbols of the Latin Kings had a bearing on whether [he and the co-defendant] were members." Defendant contends, however, that the remainder of her testimony, including the structure of the Latin Kings gang, the names and positions of several members of the Latin Kings, and the hand signs of the Latin Kings and Satan Disciples gangs, did not have any bearing on whether there was a gang-related motive for the shooting or whether defendant or the codefendant were associated with the Latin Kings.

A trial court's decision to admit gang evidence will not be overturned on appeal unless a clear abuse of discretion is shown. *People v. Colon*, 162 Ill. 2d 23, 30 (1994). To preserve an issue for review, however, a defendant must raise it before the trial court in a motion *in limine* or an objection at trial, and *also* in a post-trial motion. *People v. Johnson*, 238 Ill. 2d 478, 484 (2010); *People v. Hudson*, 157 Ill. 2d 401, 434 (1993). Defendant has forfeited this issue by failing to raise it in his post-trial motion. Nonetheless, where a defendant forfeits review, the reviewing court can consider an issue under the doctrine of plain-error. *People v. Herron*, 215 Ill. 2d 167, 178-79 (2005). Plain-error applies only

> "when (1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the

> defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Piatkowski,* 225 Ill. 2d 551, 565 (2007).

Under both prongs of the plain-error doctrine, " 'the burden of persuasion remains with the defendant.' " *Id.*, quoting *People v. Herron*, 215 Ill. 2d at 187. Defendant argues that "plain error occurred in this case because the evidence was closely balanced." Before a defendant is entitled to application of the plain-error doctrine, the court must consider whether any error occurred at all. *People v. Hudson*, 228 Ill. 2d 181, 191 (2008).

Defendant argues that the instant case is similar to *People v. Mason*, 274 Ill. App. 3d 715 (1995), where the court reversed defendant's conviction after deciding that a large portion of the State's gang evidence was irrelevant and inflammatory. The *Mason* court concluded that evidence regarding the organizational structure of the defendant's gang was relevant to prove the defendant's motive for killing a fellow gang member, but the additional evidence – the numerous gangs that operate in Chicago, the two umbrella organizations for the Chicago gangs, gang rivalries, defendant's own gang's drug operations, how members signal each other, and the defendant's tattoos – was not relevant to motive.

Mason is distinguishable, since the instant case involved a motive derived from gang rivalry. Instead, the instant case is similar to *People v. Garrett*, 276 Ill. App. 3d 702 (1995). As the *Garrett* court noted:

> "In *Mason*, it was not necessary to present evidence outside the gang involved

> because the defendant there killed a member of the same gang. In the present case, the gang-related evidence was not excessive and was relevant to the crime and the defendant's motive. The State did not present comprehensive evidence of the gangs that operate in Chicago or other irrelevant information. * * * Here, the killing involved two gangs and the evidence admitted at trial related to those gangs and their rivalry. This evidence helped the jury understand the defendant's motivation for the killing and did not unduly prejudice the defendant." *People v. Garrett*, 276 Ill. App. 3d at 710-11 (1995).

Thus, the trial court here committed no error in allowing the State to introduce gang related evidence to show motive. The additional evidence here regarding the structure of the Latin Kings was not extraneous but was instead relevant to the gang rivalry about which Ms. Fields had testified. As there was no error, in the first instance, the plain-error doctrine is inapplicable. Defendant has forfeited review of this issue.

III. Prosecutor's Comment During Closing Argument

Defendant next argues that the prosecutor's comment during closing argument regarding defendant's presumption of innocence misstated the law. Defendant concedes that he forfeited review of this issue by failing to object during trial and failing to include the issue in his posttrial motion. He contends, however, that the error is reversible under the first prong of the plain error doctrine. The State contends that defendant's argument can be summarily dismissed by this court because the evidence here was not closely balanced. Nonetheless, we first consider whether there was error in the first instance.

During closing argument, the prosecutor stated:

> "Another one of my favorite statements by defense counsel at the beginning of this trial. If the evidence was so clear we wouldn't be here. Ladies and gentlemen, the evidence is crystal clear. The only reason that we are here is that this defendant like every other defendant in this building has the right to be proven guilty after a trial. He exercised that right, that's why we're here and at the beginning of the case, yup, he was presumed innocent. But now, he sits here proven guilty and bravo for Arturo Arroyo, bravo for him because he went out there and he earned himself a nickname, he shot a 14-year-old boy in the head, bravo for him, now people are calling him Gunner instead of Little Trigger. He's finally gotten out of the shadow of his gang banger big brother, Gustavo Cardenas. Well bravo for him.
>
> Ladies and gentlemen, when you go back in that jury room you're going to have a chance to give this defendant a nickname that he deserved and the nickname that we have proved in this case. You can call him murderer because that is what he is. Please go back there, follow the law that you have sworn to follow and find this defendant guilty of murder and attempt first degree murder."

Citing *People v. Keane*, 169 Ill. 2d 1, 26 (1995), defendant correctly notes that "the presumption of innocence remains with the defendant until the jury finds the defendant guilty during its deliberations." In *Keane*, the State referred to the defendant's presumed "cloak of innocence" as having been "shredded and ripped and pulled [off]" to reveal guilt. *Keene*, 169 Ill. 2d 1, 24

(1995). The court decided that "the theatrical description of the stripping away of Keene's presumption of innocence" was wrong. *Keene*, 169 Ill. 2d at 25. Nonetheless, the court concluded that the extent of harm caused by the one comment had been ameliorated because the State did not repeat the reference.

The comment in the instant case, as well as any impact on the jury, falls well short of those made by the prosecutor in *Keene*. The comment was made during opening closing and, as in *Keene*, was not repeated. More importantly, taken in context, the prosecutor's comment that defendant had been "proven guilty" referred to the State's burden of proving defendant guilty beyond a reasonable doubt and to the prosecutor's argument that the State had done its job. As the State notes, during closing arguments, both prosecutors, as well as the defense attorney, told the jury to follow the law. The jury understood that it's role was to determine whether the State had met its burden. Certainly the jury was aware that its role was not to find the defendant guilty based on the prosecutor's personal belief that the State had done its job or met its burden. While we do not approve of the language of the prosecutor which permitted the defense to later claim that it misstated the presumption of innocence, we conclude that there was no error here. Defendant has forfeited his argument that the State committed reversible error by its comment.

CONCLUSION

For the foregoing reasons, we affirm defendant's conviction.

Affirmed.