2011 IL App (1st) 092263-U
No. 1-09-2263

FIFTH DIVISION
June 30, 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. 08 CR 12943
	)	
RANDY VAUGHN,	)	Honorable
	)	Stanley Sacks,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.

Justices Joseph Gordon and Howse concurred in the judgment.

O R D E R

HELD: The evidence supported defendant's conviction of first degree murder despite his contention the prosecution witnesses were unreliable; and defendant's claim of alleged prosecutorial misconduct in rebuttal argument was forfeited where no prejudicial error occurred and the evidence was not closely balanced.

¶ 1 Following a jury trial, defendant Randy Vaughn was convicted of first degree murder and sentenced to 65 years in prison. On appeal, defendant contends he was not proven guilty beyond a reasonable doubt because the testimony of the State's witnesses was unreliable and contradictory, and the State's improper rebuttal arguments denied him a fair trial. We affirm.

¶ 2 On December 9, 2007, at about 5:30 a.m., Terrance Woods was shot to death outside his mother's home at 11352 South Edbrooke in Chicago, death resulting from six gunshot wounds to his chest, back, and right arm. Both Terrance and defendant sold drugs in the same neighborhood, and testimony indicated defendant wanted to eliminate his business competitor.

¶ 3 Eighteen-year-old Ciera White testified that she had been Terrance's girlfriend for three years and assisted him in selling drugs in the neighborhood. Ciera knew defendant from the neighborhood. Defendant and Terrance did not get along because defendant did not want Terrance to sell drugs on his block. On the evening of December 8, 2007, Terrance instructed Ciera to "serve" (sell) some cocaine to Flo, one of his customers. Terrance kept his supply of cocaine in a cellar window on the gangway side of the Woods house on Edbrooke. When Ciera and a friend drove to the Woods house to meet Flo, a red car driven by defendant pulled in front of their van. Defendant was angry and told Ciera that she and Terrance had to stop "serving on this

block." He told her, "You and Terrance, aw-ight." Ciera testified that "aw-ight" meant, "I'm gonna get you."

¶ 4 Kim Miller testified that she had purchased drugs in the past from both Terrance and defendant. She admitted she had a 2004 conviction for possession of a controlled substance and served 18 months in prison for a probation violation, and at the time of trial she had a pending forgery case. At about 5 a.m. on December 9, 2007, Kim, Michele Bulloch, and a third person were in Michele's car on the way to purchase drugs from a man named Tank. Thinking Tank was at the home of his grandmother, Miss Woods[1], at 11352 South Edbrooke, they drove to that address. When they were still two houses away from that address, Kim heard two shots. Kim had ingested cocaine around midnight and had been "crack drunk" and nodding her head, but when she heard the gunshots she "got some coherence." Michele dimmed the headlights and pulled the car over. Kim heard two more gunshots and saw the sparks from the gun. Michele drove south to the T intersection where Edbrooke ended at 14th Place and parked the car eastbound on 14th Place near Tank's mother's home. Kim saw a man emerge southbound from an alley that ran parallel to and east of Edbrooke. The man wore a black hoody, black jeans, and black gym

[1] Dorothy Woods testified that the shooting victim, Terrance Woods, was her son, and that at the time of his death he lived at the Edbrooke address with her and other family members.

shoes. He stopped beneath a street light, put the hoody up, and bent over with his hands on his knees "like he was tired, looking around." The man was two houses away and Kim recognized him as defendant. Then he looked at Michele's car and ran back northbound through the alley.

¶ 5 Tank came up to the car and Michele purchased cocaine from him. Then Michele drove the car east to Indiana and turned north. Near the intersection of Indiana and 113th Street, they saw a red car being driven by Ramone, defendant's brother. A woman was in the passenger seat and a man was in the rear seat. Kim did not see the face of the man in the rear seat, but he was wearing the same black hoody she had just seen defendant wearing; the man was taking off the hoody and putting on something white. Kim heard that man say to Ramone, "Hurry up. Go. Pull off."

¶ 6 On January 7, 2008, Kim and Michele were at a gas station at 11th and State when a car containing defendant pulled up next to them. Kim heard defendant say to Michele angrily, "Bitch, why are you going around telling people that I murdered Terrance Woods? *** Bitch, it's on." On the next day Kim went to the police station and identified photographs of defendant and his brother Ramone. Kim had not come forward earlier about the shooting of Terrance because she was afraid.

¶ 7 Michele Bulloch testified that she had also previously purchased drugs from both defendant and Terrance. Michele had

prior convictions for possession of a controlled substance and forgery. At about 5 a.m. on December 9, she was driving her car southbound on Edbrooke with Kim Miller and another passenger. Kim was in the front passenger seat, dozing on and off; she would wake up and respond as the conversation demanded. Michele was to buy cocaine from Tank in front of his house, but she thought he was staying at the home of his grandmother, Miss Woods. As she coasted up to Miss Woods' house, she heard two gunshots, "saw the flares, saw the sparks," and saw a man standing by the shrubs of the house. Then she drove south to where Edbrooke ended at a T intersection at 14th Place and parked the car at Tank's house at the T. She heard four more shots and saw the person who had been standing at the shrubs run east across Edbrooke. At that point she recognized the man as defendant. He was wearing a dark hoody and dark blue jeans. Defendant briefly disappeared from her view and then emerged from an alley about 40 feet from Michele. He was standing bent over in the middle of the street beneath a street light with his hands on his knees and he was breathing hard. Michele testified that defendant was "up under the streetlight. I saw him good." As Michele stepped out of her car, defendant put his hood over his head and ran back into the alley from where he had come.

¶ 8 Tank approached Michele's car and she bought a bag of drugs. Then Michele drove east to Indiana, turned left, and drove north

to 113th Street. She saw Ramone driving down 113th Street toward King Drive in a red car. A young lady was in the front passenger seat. Defendant was in the back seat. At that time defendant was wearing white. When defendant saw Michele, he ducked down and said, "Go, go, go," and Ramone "took off, real fast."

¶ 9 Michele drove to her home with Kim. At about 8 a.m. that same morning, Michele received a phone call from someone identifying himself as Terrance but she did not recognize the voice or the number called from. The caller insisted that Michelle bring $20 to Roseland within 30 minutes. She asked, "Who did you say this is?" She thought the request was unusual.

On January 7, 2008, Michele and Kim were at a gas station at 111th and State Street when defendant approached and said to Michelle, "Bitch, I'll kill you." He told her she had messed up his life, that he had no friends or customers any more because of her and could not make money any more. He said she had accused him of killing Terrance. The next day she went to the police station and selected photos of defendant and Ramone from a photo array.

¶ 10 Phillip Mitchell testified that in December 2007 he resided at 11332 South Edbrooke, about five houses north of the Woods house. Mitchell had purchased marijuana from defendant in the past. Mitchell also knew Terrance, who sold crack cocaine. Terrance did not "hang with" defendant. Late on December 8,

2007, Mitchell was in his residence when he heard an argument outside. He looked out and saw Ciera White in Terrance's van. Ciera was arguing with defendant, who was in a tan Malibu. Defendant was hostile, telling Ciera she could not be selling drugs over there.

¶ 11 Around 5:30 the following morning, when Mitchell took his dog out, he saw defendant's tan Malibu going down the street, but he could not see who was driving it. Mitchell heard shots fired from the direction of the Woods house. He walked to the front of his house where he heard about five more shots and saw the flashing of the muzzle of a gun. Nothing obstructed his view. The man firing the shots was standing on the parkway near the curb in front of the Woods house. When the man turned and ran, the hood came off his head and Mitchell recognized defendant. Mitchell saw defendant run east across Edbrooke and between the houses toward the alley that ran parallel to and east of Edbrooke. Mitchell did not see Michele's car on the street; he was not paying attention to any cars. When Mitchell went to his back yard to get his dog, he saw a red car belonging to Ramone, defendant's brother, going south down the alley to the west of Edbrooke. Later that day he saw the police outside and heard Terrance had been shot, but he did not tell the police much at that time. He did tell what he had seen to his cousin Danny who lived with him. A couple of days later, Mitchell saw defendant

at the Auto Zone store. Defendant told Mitchell, "You don't know nothing. You ain't seen nothing." A couple of days after that, Mitchell saw defendant again. Defendant told Mitchell, "You don't want your house burned down. Ced burn [*sic*] people's houses down. We don't want nobody [*sic*] doing it to your family." Mitchell saw Ced and defendant together a couple of weeks later.

¶ 12 In late March 2008, Mitchell was arrested in Hammond, Indiana, on a misdemeanor charge and after four days in jail he told the Hammond police about the shooting of Terrance. Chicago police came to Hammond and took him back to Chicago. Mitchell told Chicago police officers about the shooting and identified defendant and Ramone from a photo array. He told the police he had seen Ramone behind Terrance's house after defendant ran off.

¶ 13 The parties stipulated that if Detective McVicker were called as a witness, he would testify that he interviewed Ciera White on December 9, 2007, and that her statement to him on that occasion conflicted with her trial testimony on several points.

¶ 14 In closing argument to the jury, the prosecutor stated in rebuttal that the State's burden was to prove defendant guilty beyond a reasonable doubt but not beyond all doubt or beyond a shadow of a doubt. The prosecutor stated that people have doubt in their lives, about what color car to buy or what to order in a restaurant, but not enough doubt to prevent them from making

decisions. The prosecutor used the example of a jigsaw puzzle, that even if a couple of pieces are missing at the end, "you can still see the picture." The prosecutor conceded that some of the pieces were missing, such as the murder weapon, because only defendant knew what he did with the gun. She alluded to the mysterious phone call Michele received hours after the shooting and defendant's threat to Mitchell at the Auto Zone days after Mitchell had told his cousin Daniel about the shooting.

¶ 15 The jury found defendant guilty of first degree murder and he was sentenced to 65 years in prison.

¶ 16 On appeal, defendant asserts the evidence was not sufficient to establish his guilt beyond a reasonable doubt. He contends Kim, Michele and Mitchell were not credible witnesses where their testimony was contradictory and inconsistent.

¶ 17 In reviewing a claim of insufficiency of the evidence, the relevant inquiry is 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. *People v. Rowell*, 229 Ill. 2d 82, 98 (2008). Under this standard, a reviewing court will not substitute its judgment for that of the trier of fact on issues of the weight of the evidence or the credibility of witnesses. *People v. Cooper*, 194 Ill. 2d 419, 431 (2000). It is the responsibility of the trier of fact to "fairly * * * resolve conflicts in the

testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

¶ 18 Defendant contends that he was not proven guilty beyond a reasonable doubt because of inconsistencies in the testimony of Kim, Michele, and Mitchell. Defendant asserts that Mitchell claimed he saw defendant's tan Malibu on Edbrooke before the shooting but Kim and Michele's testimony made no mention of seeing it while Mitchell made no mention of seeing Michele's car on Edbrooke during the shooting, that Mitchell and Michele disagreed as to where the shooter was standing when the shots were fired, that Mitchell could not have had an unobstructed view from his home to where the shooter stood, and that Mitchell and Ciara's testimony conflicted as to details about the argument between defendant and Ciara on the day before the shooting. Defendant also asserts Michele and Kim contradicted each other as to the exact location of Michele's car when the first shots and the last shots were fired as well as to the exact number of shots each testified she heard, that Kim and Michele disagreed as to where Michele parked the car on 14th Place and as to which direction defendant was running when he emerged from an alley, how far Michele's car was from defendant as he stood under the street light or where and in which direction Ramone's red car was

traveling on 113th Street, and whether Kim and Michele later went to the police station separately or in Michele's car.

¶ 19 Defendant's contentions are no more than an attack on the witnesses' credibility and the weight to be assigned to their testimony. In reviewing a challenge to the sufficiency of the evidence, it is not the function of this court to retry the defendant. *People v. Cunningham*, 212 Ill. 2d 274, 279 (2004). The reviewing court must carefully examine the record evidence while bearing in mind that it was the fact finder who saw and heard the witnesses. *Cunningham*, 212 Ill. 2d at 280. For example, it was for the jury, aided by an aerial photo of the area and other photographic evidence, to decide whether Mitchell could have viewed the shooter from where he stood in front of his own home on Edbrooke and whether Michele was in a position to look back up Edbrooke and see the shooter cross the street. Other alleged contradictions and inconsistencies were minor in nature and fully explored at trial, and they do not, by themselves, create a reasonable doubt as to defendant's guilt. See *People v. Leak*, 398 Ill. App. 3d 798, 818 (2010).

¶ 20 Defendant further contends that Kim, Michele, and Mitchell were not credible because each had delayed many weeks before coming to the police with their information and because Kim and Michele were drug addicts who had previous criminal convictions and had ingested crack cocaine just hours before the shooting.

We note that crack cocaine addiction is an important consideration in passing on the credibility of a witness. *People v. Herman*, 407 Ill. App. 3d 688, 705 (2011). However, the addiction of Kim and Michele does not necessarily render their testimony unworthy of belief, and it was for the jury to weigh this factor in its consideration of the evidence. *Herman*, 407 Ill. App. 3d at 705. It was also the jury's responsibility to determine their credibility in light of their criminal records. ¶ 21 Similarly, the jury was made aware of the witnesses' delay in coming forward with their testimony. Kim testified she delayed going to the police because she was afraid. Both Kim and Michele testified that, after a confrontation with defendant at a gas station where defendant threatened Michele, both of them went to the police on the following day. Mitchell also offered a reason for his delay in reporting the shooting to the police. It was for the jury to assess the impact on the credibility of the witnesses of their delay in coming forward about the shooting. ¶ 22 Defendant also asserts the evidence was not sufficient to support the jury's guilty verdict where the identification of defendant by Kim, Michele, and Mitchell is questionable because of the poor viewing conditions. In a criminal case, the State must prove the identity of the offender beyond a reasonable doubt, and vague or doubtful identification testimony is patently insufficient. *People v. Stanley*, 397 Ill. App. 3d 598, 610-11

(2009). The credibility of an identification witness and the weight accorded his testimony rests with the trier of fact. *People v. Tabb*, 374 Ill. App. 3d 680, 692 (2007). Here, the jury heard testimony concerning the available lighting and other conditions relevant to its determination as to the accuracy of the identification testimony. Mitchell testified he did not immediately recognize the shooter as the gun was being discharged although his view was unobstructed, but that when the shooter turned and ran east across Edbrooke, his hoody fell down and Mitchell recognized defendant. Mitchell testified that the night was clear, the street lights were lit, and "it was real [*sic*] pretty bright right there." Michele also recognized defendant when he ran from the Woods house across Edbrooke. Both Michele and Kim testified they had a clear view of defendant as he emerged from an alley two or three houses away from them because defendant stood beneath a street light and adjusted his hoody to reveal his face. Michele testified, "Where I was parked, I looked him dead in the face." Significantly, all three witnesses had previously known defendant for years. The identification testimony was well within the realm of the jury's province, and the jury's determination must stand. See *People v. Jordan*, 282 Ill. App. 3d 301, 307 (1996).

¶ 23 Defendant's final attack on the sufficiency of the evidence assails the lack of physical evidence linking defendant to the

crime, together with evidence of an alternative motive for the crime and impeachment of Ciera's testimony. The lack of physical evidence does not raise a reasonable doubt where an eyewitness has positively identified defendant as the perpetrator of the crime. *People v. Reed*, 396 Ill. App. 3d 636, 649 (2009). Defendant also posits that the evidence suggested a possible alternative motive that could not be attributed to him, namely, theft of Terrance's cache of drugs which Ciera testified he kept in a window well on the side of his house. There was no testimony that the alleged drug stash had or had not been disturbed during the crime. Defendant's argument is purely speculative. Defendant also maintains Ciera's trial testimony was impeached on several points by the stipulated testimony of Detective McVicker concerning his interview of her after the crime. Ciera, who did not witness the shooting, was not a key State witness. Her testimony related to the motive for the crime, but motive is not an essential element that the State was required to prove in order to sustain a murder conviction. *People v. Gonzalez*, 388 Ill. App. 3d 566, 586 (2008). We do not deem the impeachment of Ciera as significant.

¶ 24 The evidence of defendant's guilt was overwhelming where three eyewitnesses testified that they observed defendant at the crime scene under reasonable viewing conditions, each witness had known defendant before the shooting, and each subsequently

identified him in a photo array. After viewing the evidence in the light most favorable to the prosecution, we conclude that any rational fact-finder could have found defendant guilty beyond a reasonable doubt.

¶ 25 Defendant's second issue on appeal is that the State's rebuttal argument was improper and denied him a fair trial in that it inappropriately defined reasonable doubt, referenced inadmissible evidence, and advanced unfounded arguments based on speculation. The State responds that defendant has forfeited review of this contention. In the alternative, the State contends its closing argument to the jury was proper. No objection was made at trial to any of the allegedly improper comments, nor was the claimed error mentioned in defendant's written posttrial motion. Consequently, the issue was forfeited on appeal. *People v. Bannister*, 378 Ill. App. 3d 19, 36 (2007).

¶ 26 Conceding that his claim was not preserved for review, defendant asks us to review this issue as plain error. Under the plain-error doctrine, we may review unpreserved error only where either "(1) the evidence in a criminal case is closely balanced or (2) the error is so fundamental and of such magnitude that the accused was denied a right to a fair trial." *People v. Byron*, 164 Ill. 2d 279, 293 (1995). Defendant argues that the first prong of this analysis is applicable here. Under that prong, the defendant must prove prejudicial error, *i.e.*, that there was

clear or obvious error and that the evidence was so closely balanced that the error threatened to tip the scales of justice against defendant. *People v. Piatkowski*, 225 Ill. 2d 551, 564-65 (2007). The threshold step in a plain-error analysis is to determine whether an error occurred. *People v. Lewis*, 234 Ill. 2d 32, 43 (2009).

¶ 27 A prosecutor has wide latitude in making closing argument and may comment on the evidence and draw all fair and reasonable inferences therefrom. *People v. Brazziel*, 406 Ill. App. 3d 412, 432 (2010). A closing argument must be viewed in its entirety, and the challenged remarks must be viewed in their context. *People v. Glasper*, 234 Ill. 2d 173, 204 (2009). Statements will not be held improper if they were invited or provoked by defense counsel's argument. *Glasper*, 234 Ill. 2d at 204. We note that prior to closing arguments, the trial court cautioned the jurors that what the lawyers might say during their arguments was not evidence and was not to be considered as evidence. The court repeated this caveat in the subsequent jury instructions.

¶ 28 We reject defendant's contention that the State's rebuttal argument minimized the reasonable doubt standard and reduced the State's burden of proof. The prosecutor argued that the State's burden was to prove defendant guilty beyond a reasonable doubt but not beyond all doubt or beyond a shadow of a doubt. She likened the State's case as a jigsaw puzzle and argued that even

if a couple of pieces were missing at the end, "you can still see the picture." She also made references to the decision-making in choosing a meal or the color of a car. An attempt to define the reasonable doubt standard is reversible error only if it causes substantial prejudice to the defendant. *People v. Speight*, 153 Ill. 2d 365, 374 (1992). Here, the reference to a puzzle and other images were legitimate argument that the State did not have the burden of proving defendant's guilt beyond *any* doubt. See *People v. Carroll*, 278 Ill. App. 3d 464, 467 (1996). The prosecutor's comments did not suggest that the State had no burden of proof nor attempt to shift the burden to the defendant nor reduce the State's burden of proof to a minor or *pro forma* detail. See *People v. Howell*, 358 Ill. App. 3d 512, 524 (2005).

¶ 29 Defendant also argues the prosecutor improperly commented in rebuttal that a mere idea of who killed Terrance would suffice as proof beyond a reasonable doubt. The prosecutor had told the jury: "When you came in for jury selection, you had no idea who killed Terrance Woods. But now you do. That means we proved it, and you know it." Defendant takes this quote out of context of the prosecutor's argument, which was that the State's evidence had put together the pieces of defendant's guilt like a puzzle. Defendant also asserts that another statement by the prosecutor in rebuttal, that only defendant knew the location of the gun, was also improper. Taken in context, the comment was also part

of the prosecutor's "puzzle" argument, that the State had sustained its burden even though one of the pieces of the picture was missing. The comment was no more than a concession to the fact, as defense counsel had pointed out in his closing argument, that the State had not produced the murder weapon.

¶ 30 Defendant also assigns error to the prosecutor's reference to the mysterious phone call Michele received hours after the shooting. The defense had not objected to Michele's testimony about the phone call. However, the comment was not proper where the evidence of the phone call was irrelevant to whether defendant was guilty or innocent. See *People v. Schneider*, 375 Ill. App. 3d 734, 755 (2007). Nevertheless, the impropriety does not warrant reversal of defendant's conviction where it was not so prejudicial as to constitute a material factor in his conviction or otherwise deprive him of a fair trial. See *People v. Williams*, 295 Ill. App. 3d 456, 468 (1998).

¶ 31 Finally, defendant contends the prosecutor's rebuttal argument impermissibly speculated that defendant threatened Mitchell at the Auto Zone because Mitchell's cousin Daniel had told defendant Mitchell had viewed the shooting. This comment was invited by defense counsel's own closing argument in which he had sarcastically labeled Mitchell the State's "star witness" who "came up with this story" four months after the event. In rebuttal, the prosecutor reminded the jury of Mitchell's

testimony that within a day of the shooting, not months later, he told his cousin Daniel what he had seen. She posited that defendant's threatening comment to Mitchell a week later was in response to Daniel's "big mouth" in passing on what Mitchell had told him, confirming that Mitchell's testimony about witnessing the shooting was not concocted months after the event. Although Daniel did not testify, the prosecutor's inference that defendant's threat was a result of Mitchell telling Daniel what he knew was a proper and logical inference based on the evidence.

¶ 32 We conclude that defendant has failed to satisfy the first prong of the plain-error doctrine where the prosecutor's rebuttal arguments either did not constitute error or did not so prejudice defendant as to require reversal of his conviction, and where the evidence of defendant's guilt was overwhelming. Consequently, defendant's forfeiture of this issue may not be excused on the basis of plain error.

¶ 33 For all of the foregoing reasons, the judgment of the trial court is affirmed.

¶ 34 Affirmed.