THIRD DIVISION
March 16, 2011

No. 1-09-2283

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Cook County, Illinois
Plaintiff-Appellee,	)	
	)	
v.	)	No. 07 CR 661218
	)	
JAYNE FAIR-WALTON,	)	
	)	Honorable Michele M. Simmons,
Defendant-Appellant.	)	Judge Presiding

Justice Murphy delivered the judgment of the court.

Presiding Justice Quinn and Justice Steele concurred in the judgment.

ORDER

HELD: The State proved defendant guilty beyond a reasonable doubt of arson where its evidence was not contrary to human nature and did not defy common sense.

HELD: The State's comments in closing argument did not result in substantial prejudice to the defendant or constitute a material factor in her conviction.

HELD: The trial court did not coerce a verdict when it refused the jury's request for their cell phones.

After a jury trial, defendant, Jayne Fair-Walton, was convicted of arson (720 ILCS 5/20-1 (West 2006)) and sentenced to probation and community service. On appeal, defendant contends that: (1) the State failed to prove her guilty beyond a reasonable doubt of arson, (2) the State's closing arguments were improper, and (3) the trial court improperly coerced the jury's verdict. We affirm.

I. BACKGROUND

A. State's Case

Ismael Torres testified that he rented the upstairs apartment of his two-flat located at 415 22nd Street in Chicago Heights, Illinois, to Sean Wheeler. Wheeler stopped paying his rent in May and agreed to leave. On July 14, 2007, Torres and his fiancée, Martha Adkins, drove their Ford Econoline conversion van to the building; they arrived at 1 p.m. and parked in front of the building next door. At 8:20 p.m., Torres was cleaning and repairing the apartment when Wheeler and three other men arrived to discuss the possibility of continuing to rent the apartment.

While Torres and Adkins were at the back door talking to Wheeler, a "big guy," who stood approximately 6' 8", and his fiancée, whom Torres identified as defendant, showed up. Torres and Adkins had seen defendant before, when she picked up Wheeler in her Cadillac Escalade. Defendant was carrying a large hammer and a bottle with a rag on top in her hands. Defendant, referring to Torres's fiancée, said, "Who is that white bitch?" and continued, "You don't want to mess with this black Italian bitch." Torres sent Adkins back upstairs in anticipation of a confrontation. Defendant and the "big guy" then walked down the stairs and

turned the corner.

Adkins corroborated Torres's version of events. She testified that she went upstairs and called the police because she thought something was going to happen. After she returned upstairs, she looked out the front window and saw defendant and the man she was with walk toward the driver's side of Torres's van. Adkins heard glass break and saw defendant throw her plastic bottle into the van. Flames broke out on the passenger seat. She screamed to Torres, who ran to the front of his the building, where he saw his van burning. Torres did not see defendant, but he did see Wheeler and his friends getting into Wheeler's car. Torres and Adkins separately identified defendant in a lineup on July 17, 2007.

Chicago Heights police detective Joseph Bruni testified that when he arrived on the scene of the van fire, Torres came up to him and said that Wheeler and his friends should be arrested for starting his van on fire. Bruni detained Wheeler and the other people that were with him. On July 15, after talking to Torres, Adkins, and Wheeler and his friends, Bruni began looking for defendant. He went to her residence, but she was not home; later, she came to the police station to see why the police were looking for her. She consented to a search of her vehicle, a white Cadillac Escalade. He found a blue paper towel and matches in the front console of her car.

B. Defendant's Case

Sean Wheeler testified on defendant's behalf. He stated that defendant was a very close friend, not his girlfriend, and he never told anyone that she was his fiancée. On July 14, 2007, at 3 or 3:30 p.m., he went to his apartment with three friends to move out. While he and Torres spoke on the back porch about the possibility of Wheeler staying one more day, a man came up

the stairway and had a loud discussion with Torres "about some issue he was having at his place."

After the man left, defendant arrived with James Walton, her ex-husband. Wheeler had known defendant for 20 years, and he had plans to meet her and other friends at Brunswick Zone that night. Wheeler did not see anything in defendant's hands. Adkins came downstairs and started interjecting into Torres and Wheeler's conversation; when Torres told her to shut up and go upstairs, she started loudly ranting. She then lashed out at Wheeler and defendant. Defendant and Walton left without saying anything. Adkins returned upstairs and Torres and Wheeler continued talking until Torres stated that Adkins was calling the police. Wheeler decided to leave. He passed Torres's van, which looked fine, and told Adkins, who was standing at the front window, that he would return to take the rest of his belongings. When he started his car, one of his friends noted that the van was on fire. The windows of the van burst when Wheeler was in his truck. At this point, defendant had been gone for at least an hour. Police cars surrounded his truck, and he and his friends were arrested for arson. He was detained at the police station for four days but not charged with a crime.

James Walton, defendant's ex-husband, testified that he maintains a good relationship with defendant. On July 14, 2007, he and defendant left her home at 2:30 p.m. to run errands before they planned to attend a bowling party at the Brunswick Zone, where his daughter worked, at 6 p.m. At 2:30 or 3 p.m., they went to Sean Wheeler's apartment to drop off boxes. As they walked to the rear of the building, he heard arguing and someone walked past them. Defendant had a bottle of spring water in her hand; she bought that water by the case and kept it in her

garage. When they got to the back of the building, a white woman was arguing with Wheeler, so he and defendant left. Defendant did not say anything to the woman. When they passed by the front of the house, he did not notice a van. Defendant and Walton ran another errand and arrived at Brunswick Zone at 6:30 or 7 p.m. He left at 2 a.m., and defendant was with him the whole time.

James Fair, defendant's 76-year-old father, testified that a family bowling party was scheduled for 7:30 p.m. on July 14, 2007. Walton and defendant were at his home that afternoon and left together at 2:30 or 3 p.m. The next evening, two detectives came to his house asking for defendant. One of the detectives left his card and asked that defendant get in touch with him or he would have a warrant sworn out for her arrest. Defendant arrived home a half hour later and tried several times to call the detective. When defendant could not reach the detective, she and her father went to the police station, where she spoke to Detective Bruni. While Fair waited in the next room, he heard the detective raise his voice and defendant crying.

The next day, Bruni arrived at the Fair house with a consent from defendant to search her car. Fair took Bruni to the garage, where the police searched defendant's car. They found a half-full bottle of water. Bruni said that he was really looking for a hammer with a yellow handle, so Fair allowed Bruni to look through his tools. The police did not find a blue piece of paper or matches. Bruni told Fair and his wife, "I know she didn't do it, but she knows who done it, and if she don't tell me who done it, I am going to charge her."

Vincente Cruz was a friend of Wheeler's who helped him get his apartment in Chicago Heights. Torres had been Cruz's landlord, and they did not like each other. Cruz testified that on

July 14, 2007, he rode by 22nd and Wentworth on his bicycle. After the van fire, Torres accused him of being involved.

Lee Edmonds testified that on July 14, 2007, he arrived at Brunswick Zone between 7:45 and 8:15 p.m. and was there continuously until 12:30 and 1 a.m. He was not part of defendant's party, but he saw her "constantly" starting 10 to 15 minutes after he arrived. He testified that every time he looked over, defendant was talking on her cell phone.

Defendant testified that on July 14, 2007, Walton, her ex-husband, came to her house at 2:30 or 3 p.m. and the two left together in her white Cadillac Escalade. They ran errands and stopped at Wheeler's apartment to drop off some boxes. Wheeler was a friend of hers for more than 20 years, but he was not her boyfriend. Defendant had a bottle of water in her hand; she buys the water in cases. As they approached the back of the building, she heard a man and a woman yelling. When she got to the back of the house, two men were yelling, and a man came down the stairs and walked past them. Then a woman came outside and started yelling that she hated Wheeler and questioning why he had all of his friends there. Defendant responded that "we are not in this" and left. She did not know what type of car Torres or Adkins drove and did not notice Torres's van on the street. Defendant stated that she is not Italian and did not refer to herself as Italian or a "bitch."

Defendant was at the Brunswick Zone from 7:30 p.m. to 2 or 2:30 a.m. Between 6:45 and 10 p.m., she made 15 or 20 phone calls for work. The next evening, her father told her that a detective wanted to speak to her, so she tried to call him three or four times. When she did not hear back from him, she and her father went to the police station and waited until Bruni returned.

Bruni brought her to a room, where he hit his hand on the desk and yelled at her. He left the room and when he came back, he said that Wheeler said that she started a fire somewhere. She denied knowing anything about the fire. She told Bruni that she was at Brunswick Zone with her ex-husband. Bruni searched her car and said he found nothing. The police told her that they knew she did not do this but if she told them that one of the guys did it, she could go home. Defendant was at the police station for four days.

C. State's Rebuttal

Bruni testified in rebuttal that during his interview of defendant, he did not scream at her or ask her about a pit bull ring. She stated that Wheeler was her boyfriend. When she was at the apartment, she had a brief conversation with the landlord about Wheeler's situation and left. She did not state that she was bowling with her family at Brunswick Zone at the time of the fire. Bruni did not tell her that the search of her Escalade came back clean, nor did he tell her that if she said that Wheeler did it, she could go home.

Bruni further testified that he interviewed Wheeler on July 14, 2007, when Wheeler was in custody for the investigation of arson. Wheeler stated that he was behind on his rent and went to the apartment to try to work things out with Torres. Wheeler brought three friends with him in case he had to move. Wheeler stated that he was talking to Torres at the back of the building when defendant, his girlfriend, and another man arrived. Defendant became upset, told Torres that nobody is going to speak to her boyfriend like that, and walked away. Wheeler talked to Torres and then walked back to his car right after defendant left because he was going to return for his belongings another time. Wheeler did not say that defendant left at least an hour before

he saw the van on fire.

D. Verdict and Sentencing

The jury found defendant guilty of arson. The trial court sentenced her to 30 days of probation, 80 hours of community service at a burn unit, and restitution in the amount of $250. This appeal followed.

II. ANALYSIS

A. Sufficiency of the Evidence

When a court considers a challenge to a criminal conviction based on the sufficiency of the evidence, its function is not to retry the defendant. *People v. Milka*, 211 Ill. 2d 150, 178 (2004). Rather, 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. Woods*, 214 Ill. 2d 455, 470 (2005). Under this standard, a reviewing court must draw all reasonable inferences from the record in favor of the prosecution. *People v. Bush*, 214 Ill. 2d 318, 326 (2005). A court of review will not overturn the fact finder's verdict unless "the proof is so improbable or unsatisfactory that there exists a reasonable doubt of the defendant's guilt." *People v. Maggette*, 195 Ill. 2d 336, 353 (2001).

Defendant contends that the State failed to prove her guilty beyond a reasonable doubt of arson because its evidence "is contrary to human nature and defies common sense." See *People v. Dawson*, 22 Ill. 2d 260, 265 (1961); *People v. Coulson*, 13 Ill. 2d 290, 296-97 (1958). Specifically, defendant argues that: (1) there was no evidence that she knew Torres or what kind of vehicle he drove; (2) Torres did not see defendant when he ran toward his burning van and he

accused Wheeler and his friends of starting the fire; (3) Adkins was unable to demonstrate how defendant could have broken the window and lit the bomb with two hands; (4) according to defendant, the Molotov cocktail was actually a bottle of water; (5) her father testified that the police determined her car was "clean" after a search; and (6) she had a credible, supported alibi.

The State presented evidence that defendant's boyfriend, Wheeler, was forced to leave the apartment he rented from Torres after getting behind on his rent. Defendant arrived with a man standing 6' 8" at the same time that Wheeler was unsuccessfully attempting to convince Torres to let him stay at the apartment. Defendant had a heated discussion with Torres and Adkins, stating, "You don't want to mess with this black Italian bitch" before leaving. Both Torres and Adkins testified that defendant was carrying a large hammer and a bottle with a rag on top, and Adkins stated that she saw defendant and the man she was with walk toward the driver's side of Torres's van. Adkins heard glass break and saw defendant throw her plastic bottle into the van. Detective Bruni testified that during a search of defendant's car, he found a blue paper towel and matches.

While defendant's father testified that the police stated her car was "clean" after a search, Bruni specifically denied that the van came back clean; he testified that he found matches and a blue paper towel in her front console. Further, although defendant presented evidence supporting her alibi, Torres's and Adkins's testimony was that defendant was at the apartment at the time she claimed to be a Brunswick Zone. Indeed, Bruni testified that when he interviewed defendant, she never said that she was bowling with her family at Brunswick Zone at the time of the fire. In addition, according to Bruni, during his July 14, 2007, interview of Wheeler, Wheeler did not say that defendant left at least an hour before he saw the van on fire.

"[I]t is the function of the jury as the trier of fact to assess the credibility of the witnesses, the weight to be given their testimony, and the inferences to be drawn from the evidence." *People v. Tenney*, 205 Ill. 2d 411, 428 (2002). It is also for the trier of fact to resolve conflicts or inconsistencies in the evidence, and a " 'conviction will not be reversed "simply because the defendant tells us that a witness was not credible." ' " *Tenney*, 205 Ill. 2d at 428, quoting *People v. Brown*, 185 Ill. 2d 229, 250 (1998), quoting *People v. Byron*, 164 Ill. 2d 279, 299 (1995). "[T]his court will not substitute its judgment for that of the jury on questions involving the weight of the evidence or the credibility of the witnesses." *Tenney*, 205 Ill. 2d at 428. The jury was entitled to believe the State's witnesses.

Viewing the evidence in the light most favorable to the prosecution, we find that the proof is not so improbable or unsatisfactory that there exists a reasonable doubt of the defendant's guilt. See *Maggette*, 195 Ill. 2d at 353.

B. State's Closing Argument

Next, defendant asserts that the prosecutor's closing rebuttal argument was improper and sufficiently prejudicial to warrant a new trial. "[D]efendant faces a substantial burden in attempting to achieve reversal [of her conviction] based upon improper remarks made during closing argument." *People v. Williams*, 332 Ill. App. 3d 254, 266 (2002). Prosecutors enjoy wide latitude in closing arguments. *People v. Caffey*, 205 Ill. 2d 52, 131 (2001). In reviewing comments made at closing arguments, this court asks whether they "engender substantial prejudice against a defendant such that it is impossible to say whether or not a verdict of guilt resulted from them." *People v. Wheeler*, 226 Ill. 2d 92, 123 (2007). A reviewing court will not

reverse a jury's verdict based on improper remarks made during closing arguments unless the comments resulted in substantial prejudice to the defendant and constituted a material factor in her conviction. *People v. Brooks*, 345 Ill. App. 3d 945, 951 (2004).

Defendant, however, forfeited this issue by failing to object at trial or raise the issue in her posttrial motion. To preserve a question for appellate review, both a trial objection and a written posttrial motion raising the issue are required. *People v. Pinkney*, 322 Ill. App. 3d 707, 715 (2000). The doctrine of plain error serves as a "narrow and limited exception" to the general rule of procedural default. *People v. Szabo*, 113 Ill. 2d 83, 94 (1986). The plain-error doctrine bypasses normal forfeiture principles and allows a reviewing court to review a "clear and obvious error" when either (1) the evidence is close, regardless of the seriousness of the error, or (2) the error is serious, regardless of the closeness of the evidence. *People v. McLaurin*, 235 Ill. 2d 478, 489 (2009). Under the first prong, "the defendant must prove 'prejudicial error.' That is, the defendant must show that the evidence is so closely balanced that the error alone threatened to tip the scales of justice against him." *Herron*, 215 Ill. 2d at 187. Under the second prong, "the defendant must prove that there was plain error and that the error was so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process." *Herron*, 215 Ill. 2d at 187. "In both instances, the burden of persuasion remains with the defendant." *Herron*, 215 Ill. 2d at 187. We must first consider whether error occurred at all because "[a]bsent reversible error, there can be no plain error." *People v. Harris*, 225 Ill. 2d 1, 31 (2007); *People v. Naylor*, 229 Ill. 2d 584, 602 (2008).

Defendant first argues that the State argued facts not in evidence when it suggested that

defendant and Wheeler were there to commit other crimes. Specifically, the prosecutor stated, "Do we have any idea what she was planning to do in that apartment? No. Were they planning to trash the place and leave that for Ishmael [*sic*] Torres? Maybe. *** Maybe they were planning to burn it up. We don't know. Maybe that's why the Molotov cocktail and the sledge hammer were coming." Defendant asserts that there was "unrebutted testimony" about why she and Wheeler were at the apartment: Wheeler was there to request additional time on his lease, his friends were there to help him move, and defendant was there to bring him boxes.

"In closing arguments, the prosecution is allowed to comment on the evidence and draw reasonable inferences from it." *People v. Miller*, 363 Ill. App. 3d 67, 78 (2005). While defendant claims that there was "unrebutted testimony" regarding the reasons for her visit, the evidence was not unrebutted, as Torres and Adkins testified that defendant came to the apartment carrying a hammer and what appeared to be a Molotov cocktail.

People v. Clark, 335 Ill. App. 3d 758 (2002), which defendant relies on, is distinguishable. In that case, the State argued in closing that "something else would have likely happened out of this incident if" the victim had opened her eyes and looked up at her attacker. *Clark*, 335 Ill. App. 3d at 767. The court noted that while "this argument was arguably based on the evidence, it served no purpose other than to inflame the passion of the jury. That her attacker may have committed another crime is not probative as to whether defendant committed the crimes he was charged with." *Clark*, 335 Ill. App. 3d at 767. The court, however, refused to decide whether individual errors were sufficiently prejudicial to require reversal; instead, it considered the cumulative effect of the State's improper impeachment of the defendant by his

silence after his arrest and its closing arguments that the defendant and his alibi witnesses frequented bars, attempting to evoke sympathy for the victim based on her age, and "intimat[ing] a potential that defendant would have committed further, and more violent, crimes." *Clark*, 335 Ill. App. 3d at 767-68. Here, we do not find that the trial court made any errors, let alone cumulative errors, and "trash[ing] the place" is not a "more violent" (see *Clark*, 335 Ill. App. 3d at 768) crime than arson.

Next, defendant argues that the State improperly shifted the burden of proof to her by accusing the defense of alleging a conspiracy among the State's witnesses. The prosecutor argued that Adkins, "if you want to believe counsel's version of this, is the criminal [genius] trying to put a case on this innocent woman." The assistant State's Attorney made numerous other references to a "frame up" and argued that "this is the worst frame job I have ever seen in my whole entire life." Further, "So, to believe the defendant, you would have to believe that all three of these people are conspiring to have her committed--accused of a crime that she did not commit. And for what reason?" Defendant contends that the State went beyond making reasonable inferences from the evidence and instead ridiculed her, "distorting the defense and the burden of proof."

Defendant cites *People v. Miller*, 302 Ill. App. 3d 487 (1998), in support of her argument. In *Miller*, the prosecutor argued in closing argument that "[t]o believe that Sydney Miller did not commit this murder *** you have to think that *** [the State's witnesses] are lying, trying to put a case on Sydney Miller and let the real killer go free." *Miller*, 302 Ill. App. 3d at 496. This court noted that it "is generally improper for a prosecutor to argue that in order to believe the

defendant or to acquit the defendant the jury must believe that the State's witnesses are lying." 497. It held that the comments violated the proscription against misstatements of law that, in effect, distort the burden of proof. *Miller*, 302 Ill. App. 3d at 497. Under the circumstances of that case, the statement was "particularly misleading" because none of the State's witnesses claimed to have actually seen the shooting and the defendant contended that one of the witnesses was mistaken rather than lying, which would have been consistent with the defendant's innocence; however, the State argued that "[t]hey're not mistaken, you have to believe that they're lying."

In *People v. Coleman*, 158 Ill. 2d 319 (1994), our supreme court "drew a distinction between situations where a prosecutor permissibly argues that a jury would have to believe the State's witnesses were lying in order *to believe* the defendant's version of events and where a prosecutor improperly argues that a jury would have to believe the State's witnesses were lying in order *to acquit* defendant." (Emphasis in original.) *People v. Banks*, 237 Ill. 2d 154, 184-85 (2010). In *Banks*, the prosecutor argued that " '[t]hey would have you believe that each of those witnesses that testified from the jury box, from the witness stand, got in here and lied to put a case on [defendant].' " *Banks*, 237 Ill. 2d at 185. Our supreme court found this comment to be "a direct response to a defense attack on the credibility of the State's witnesses" and not a misstatement of the law or an attempt to distort the burden of proof. *Banks*, 237 Ill. 2d at 185. The court distinguished *Miller* because in that case, the prosecutor improperly distorted the burden of proof by incorrectly intertwining the burden with the jury's credibility determinations. *Banks*, 237 Ill. 2d at 185.

In *People v. Sims*, 358 Ill. App. 3d 627 (2005), the State argued in closing arguments that "if you believe the [d]efense, [defendant] is the unluckiest man in the world" because the State's witnesses came to court to "lie against him." *Sims*, 358 Ill. App. 3d at 636. Like the court in *Banks*, the *Sims* court found that the State's comments were not improper because they were a response to defense counsel's remarks challenging the credibility of the witnesses. *Sims*, 358 Ill. App. 3d at 637. "The prosecutor in rebuttal countered defense counsel's theories of how and why the state's witnesses were lying." *Sims*, 358 Ill. App. 3d at 637.

Similarly, here, the State did not argue that the jury would have to believe the State's witnesses were lying in order to acquit defendant. Rather, the State argued that the jury would have to conclude the State's witnesses were lying in order to "believe counsel's version of this" or "to believe defendant." Further, the State's argument was an appropriate response to defendant's comments challenging the credibility of the State's witnesses. Indeed, defendant herself argued what the jury "had to believe" in order to accept the State's version of events: "To believe the State's case, you have to believe the proposition that Jayne Fair-Walton left home that day going to a family gathering with her ex-husband. And she must be mighty liberal if Sean Wheeler is her boyfriend, because she took her ex-husband with her to meet her--what the State says is her boyfriend."

Nor did the prosecutor improperly vouch for the credibility of Torres when she stated, "That's how he thinks, because he was telling the truth." In *People v. Roach*, 213 Ill. App. 3d 119 (1991), the case defendant relies on, the prosecutor argued in closing that "I just got a feeling that [the witness] was sincere," "I think they were sincere," "I didn't get the feeling when [the

witness] was on the witness stand that he was a liar," "I can't buy anything he says," and "I got this feeling in my stomach as soon as he lied." The court found these comments improper, as "the prosecutor clearly and repeatedly stated his personal feelings about the witnesses' credibility." *Roach*, 213 Ill. App. 3d at 124. In addition, the prosecutor's opinions were not based on the record; rather, "they were the sort of intuitive judgments that lie within the province of the jury." *Roach*, 213 Ill. App. 3d at 124. Here, the prosecutor did not state her personal feelings about Torres's credibility.

Finally, defendant argues that the State improperly maligned defense counsel and defendant by accusing them of being manipulative for putting defendant's 76-year-old father on the stand and accusing Walton of lying. The State argued, "The defendant's father. It is manipulative to take your seventy-six-year-old father to court, and to bring him to court and put him on the stand when he has nothing to offer your case. But she has a nice father who wants to held [*sic*]. He is a nice man who wants to help his daughter." As to Walton, the State argued,

> "He doesn't want to see anything bad happen, because that would upset his daughter. So, he comes into court to try and help. The only problem is nobody told him what he was supposed to be helping with, because, if anything, this man was completely unhelpful to the defense.
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> * * *
>
> So, is James Walton, is he a bad guy? No. Was he trying to come here and just tell you something to help out? Yes. Did he need a little bit more training about what he was supposed to say? Absolutely."

Defendant cites *People v. Johnson*, 208 Ill. 2d 53 (2003), in support of her argument. In *Johnson*, the prosecutor incorrectly advised the jury that the defendant's state of mind was irrelevant to his guilt or innocence and proceeded, "That's the law. They don't want you to read the law." Later, the prosecutor argued, "Now, defense counsel asked all sorts of other questions." The court noted, "Unless predicated on evidence that defense counsel behaved unethically, it is improper for a prosecutor to accuse defense counsel of attempting to create reasonable doubt by confusion, misrepresentation, or deception." *Johnson*, 208 Ill. 2d at 82. As a result of these and numerous other comments, the court concluded "the coalescence of improper, emotionally-laden evidence, and inflammatory argument obviously designed to exploit that evidence, created a synergism of parallel errors." *Johnson*, 208 Ill. 2d at 83. Here, the prosecutor's comment did not constitute a "pervasive pattern of unfair prejudice" (*Johnson*, 208 Ill. 2d at 84); indeed, the comments about defendant's father were invited, since defendant commented in closing, "Here's a man seventy-seven years old seeing his daughter charged with a crime she didn't commit. And he knew she was innocent, and he told the police that."

We conclude that the State's comments in closing argument did not result in substantial prejudice to the defendant or constitute a material factor in her conviction. *Brooks*, 345 Ill. App. 3d at 951.

C. Coercion of Jury Verdict

Defendant's final argument is that her trial counsel was ineffective for proposing a response to a jury question that coerced the jury verdict. Ineffective-assistance-of-counsel claims are judged by the standard set forth in *Strickland v. Washington*, 466 U.S. 668, 686, 80 L. Ed. 2d

674, 693, 104 S. Ct. 2052, 2064 (1984). A defendant alleging ineffective assistance of counsel must demonstrate that (1) counsel's representation fell below an objective standard of reasonableness and (2) the deficient performance resulted in prejudice. *Strickland*, 466 U.S. at 686, 80 L. Ed. 2d at 693, 104 S. Ct. at 2064. A failure to satisfy either prong precludes a finding on ineffective assistance. *People v. Patterson*, 192 Ill. 2d 93, 107 (2000). There is a strong presumption that counsel's performance fell within a wide range of professional assistance. *Strickland*, 466 U.S. at 694, 80 L. Ed. 2d at 698, 104 S. Ct. at 2065.

The jury began deliberating at 3:20 p.m. At 5:45, the jury sent out a note indicating that they could not agree, and at 6:05 the trial court responded, with the agreement of the parties, that the jury should continue to deliberate. At 6:10, the jury sent out another note reading, "Judge, can we please have our phones to notify our families we are still here?" Defense counsel stated, "I suggest you say no, they are to continue to deliberate," and the State responded, "We, for once, concur with Mr. Edwards." The court recited, "No. Please continue to deliberate until you have reached a unanimous verdict," and defense counsel stated, "That is the thing about Fridays, like you said, Judge, there's a problem." The jury reached a verdict at 6:53 p.m. Defendant now argues that "through a combination of ineffective assistance of counsel and the wording of the judge's response to the jury, the verdict was improperly coerced."

Whether a jury should continue to deliberate after it has indicated that it is deadlocked is within the discretion of the trial court. *People v. Harris*, 294 Ill. App. 3d 561 (1998). An instruction to a deadlocked jury is improper if it hastens a verdict, coerces a juror to make a determination in conflict with the juror's views, or otherwise interferes in deliberations such that

a defendant is prejudiced. *People v. Kegley*, 227 Ill. App. 3d 48, 57 (1992). In determining the propriety of the trial court's comments to the jury, the test is whether, upon examination of the totality of the circumstances, the language used actually interfered with the jury's deliberations and coerced a jury verdict. *People v. Fields*, 285 Ill. App. 3d 1020, 1029 (1996). "Since coercion is a highly subjective concept that does not lend itself to precise definition or testing, the reviewing court's decision often turns on the difficult task of ascertaining whether the challenged comments imposed such pressure on the minority jurors that it caused them to defer to the conclusions of the majority for the purpose of expediting a verdict." *Fields*, 285 Ill. App. 3d at 1029.

Defendant likens this situation to cases where a verdict is returned quickly after a sequestration warning. However, as the State notes, sequestration is a bigger intrusion into jurors' lives than prohibiting them from using their cell phones, especially when they were advised before retiring to the jury room that they could not use their cell phones during deliberations.

In addition, even assuming, *arguendo*, that the court's response were analogous to a sequestration warning, simply informing the jury that it will be sequestered is not necessarily coercive in nature. *Fields*, 285 Ill. App. 3d at 1029. Further, although "extremely brief" deliberations after a reference to sequestration may invite an inference that the reference coerced the jury to render its verdict, the subsequent time of deliberation is not by itself a conclusive indication of coercion. *Fields*, 285 Ill. App. 3d at 1029. In *People v. Friedman*, 144 Ill. App. 3d 895, 903 (1986), the case that defendant relies on, the jury was deliberating for more than four

hours before the judge informed them that overnight accommodations would be ready for them in a half hour. The jury returned a verdict on all four counts five minutes later. *Friedman*, 144 Ill. App. 3d at 903. Here, the jury was deliberation for less than three hours before requesting their cell phones, and they continued to deliberate for approximately 40 minutes after their request was refused.

We find that defendant did not suffer ineffective assistance of counsel when her trial counsel suggested that the jury be ordered to continue to deliberate.

III. CONCLUSION

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

Affirmed.