2012 IL App (1st) 100373-U

No. 1-10-0373

SIXTH DIVISION
April 20, 2012

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. 07 CR 13826
	)	
OBED TORRES,	)	The Honorable
	)	Thomas Hennelley,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Garcia and Palmer concurred in the judgment.

O R D E R

¶ 1 *HELD*: The trial court did not abuse its discretion in publishing to the jury and admitting autopsy photographs of the victim where those photographs were used to assist the medical examiner's testimony. The State did not commit prosecutorial error during closing arguments.

¶ 2 Following a jury trial, defendant, Obed Torres, was found guilty of first degree murder and, after a hearing in aggravation and mitigation, was sentenced to 42 years' imprisonment. On appeal, defendant contends he is entitled to a new trial where: (1) the trial court erred in allowing

the admission of prejudicial autopsy photographs; and (2) the State presented prejudicial closing arguments. Based on the following, we affirm.

¶ 3 FACTS

¶ 4 On June 4, 2007, 14-year-old Enrique Chavez took the keys to his uncle's green van and picked up two of his friends, Blas Andrew Tijerina and Jimmy Hernandez. The boys drove to an area inhabited by three gangs near 49th Street and Loomis Boulevard in Chicago, Illinois, where the rival territory was divided by a viaduct and train tracks. The LaRaza gang's territory was to the north of the tracks and the Latin Kings and the Black P. Stones gangs' territory was to the south. The Latin Kings and the Black P. Stones worked in cooperation against the LaRaza street gang. Following a car accident in the gang infested territory near 50th and Racine, Tijerina and Hernandez fled the area and Chavez was beaten and killed.

¶ 5 Tijerina testified that the boys were driving in the green van at approximately 12:30 p.m. When they entered the Latin Kings and Black P. Stones territory, gunshots were fired at the van from both sides of the street. According to Tijerina, Chavez sped away, turning the vehicle in the direction from which they came, and the van collided with another car. The green van flipped over and ended up resting on the driver's side in a vacant lot. Chavez notified the other two boys that "they [were] coming." Tijerina, who was seated in the front passenger seat, climbed out of the window, as did Hernandez, who was seated in the back passenger seat. Chavez climbed out of the van last. Tijerina and Hernandez both ran toward a fence at the end of the lot, while Chavez ran in a different direction. Tijerina and Hernandez then climbed over the fence and ran up a hill where the train tracks stood. When he reached the train tracks, Tijerina heard two

gunshots. Tijerina's view of the area was blocked by trees. Tijerina continued to run and eventually stopped a driver to ask for a ride to Tijerina's house. Tijerina was bleeding from his eye at that point. When he arrived home, Tijerina told his mother to call the police because he thought Chavez had been shot. According to Tijerina, none of the boys were gang members and did nothing to provoke the attack.

¶ 6 Lincoln Stout testified that he was a member of the Black P. Stones in the neighborhood in question. According to Stout, he and defendant had been friends for 18 years. Defendant was a member of the Latin Kings street gang. As of June 2007, Stout had been dating Simone Guzman for approximately five months. Prior to dating Guzman, Stout was on the "front line" of the turf war in the neighborhood; however, by June 2007, he had reduced the amount of time he spent with his gang because the members did not like Guzman or her family.

¶ 7 Stout testified that, on June 4, 2007, around the "middle of the day," he and Guzman were walking to the neighborhood store when they heard a car crash. Stout ran to the accident sight and observed three individuals running from the car toward the train tracks. Stout caught one of the individuals and knocked him down because the three men had been shouting "Razas," which Stout interpreted as antagonistic to his gang. The other two individuals fled the area. Stout then began punching the individual that he knocked down, whom he described as a Latino boy appearing to be 17 years old and weighing between 140 pounds and 150 pounds. Stout punched the boy approximately 10 times.

¶ 8 Meanwhile, a large number of Black P. Stones and Latin Kings members approached and began kicking the boy. At that point, Stout stepped about 10 feet away from the scene. Stout

testified that he witnessed Jose Guttierez, who was a Latin King that he had known for a large number of years, Darius McSwain, a member of the Black P. Stones that Stout had known for five years, and Sergio Cornejo, a member of the Latin Kings that Stout had known for five years, participate in the beating of the boy. The boy was kicked for approximately 10 minutes and tried to protect himself by moving around while saying "I ain't no gang banger." Stout also observed defendant among the group. Defendant was holding a "big piece of brick." Defendant dropped the brick on the boy's head and the boy stopped moving. Then, Cornejo approached with a "long silver gun" and pointed it downward. At that point, Stout turned from the scene and ran. As he was fleeing, Stout heard two or three gunshots. Stout observed Cornejo run from the scene with Guttierez. Stout retreated with Guzman to his house.

¶ 9 Stout was arrested on June 11, 2007, in relation to the offense. Stout testified that, when he was first interviewed, he did not tell the police the truth regarding the events in question. According to Stout, he and Guzman agreed to lie to the police. However, after being charged with first degree murder, Stout entered a negotiated guilty plea in which he agreed to testify truthfully in defendant's trial in exchange for his charge being reduced to attempted murder. Prior to entering his guilty plea, defendant warned Stout not to "get down on him" or defendant was "going to f*** [Stout] up."

¶ 10 McSwain testified that around 7 p.m. or 8 p.m. on June 3, 2007, a man appeared in the Black P. Stones' territory shouting, "King killer, Stone killer, LaRaza love" and began firing a handgun. McSwain and his friends took cover. Then, around 8 a.m. or 9 a.m. on June 4, 2007, McSwain was standing on the same corner in the Black P. Stones' territory when a green van

came speeding at him. McSwain ran for protection and noticed multiple people in the van shouting "Stone killer, King killer, LaRaza love" and throwing gang signs. McSwain then went to a friend's house nearby and sat on the porch. While on the porch, McSwain noticed that the green van "kept circling around" and shouting gang slogans. A little while later, McSwain heard a gunshot and then a car crash. McSwain watched a large number of people run to the scene of the crash. McSwain walked over as well. McSwain testified that he was angry, so he approached the individual on the ground and started kicking and stomping on the person. After kicking the individual a few times, McSwain went into the individual's pockets to rob him. At that point, the individual was moving around. McSwain then planned to leave the scene when he noticed defendant holding a big brick over his head. McSwain was two or three feet from defendant and attempted to grab defendant's arm, but defendant "yanked away" and dropped the brick on the individual's head. The individual became motionless. According to McSwain, Cornejo approached holding a gun pointed toward the ground. In response, McSwain started to run from the scene, as did defendant. As he was running, McSwain heard gunshots. McSwain did not see the gun being fired.

¶ 11 McSwain testified that he was arrested in connection with the offense. McSwain admitted that he lied to the police when he was initially interviewed. Specifically, McSwain told the police that he did not know the name or address of the individual that dropped the brick on the victim's head and that the Latin Kings delivered the beating, not the Black P. Stones. McSwain further admitted that he presented the police with a fabricated alibi. McSwain, however, testified that he eventually changed his story during the interview such that he was

standing outside of the group delivering the victim's beating. McSwain was charged with the victim's murder.

¶ 12 Guzman testified that she was serving 30 months' probation for an unrelated arson conviction. On the date in question, Guzman lived with Stout. After hearing the car accident, Guzman watched Stout chase after the third individual that climbed out of the green van. Stout grabbed the individual's shirt and threw him to the ground. Meanwhile, a crowd of approximately 30 people had formed in the empty lot near 50th and Racine, and people began beating the individual. Guzman stood about 30 feet away from the crowd, but heard the individual saying that he was not a gang member. Guzman testified that she recognized defendant in the crowd. Guzman knew defendant from the neighborhood and was aware that defendant was a member of the Latin Kings. Guzman witnessed defendant pick up a brick and drop the brick on the victim's head and left side of his face. Moments later, Guzman observed Cornejo stand over the victim and fire four or five gunshots. Cornejo then gave the gun to Guttierez. The group fled after the shots were fired.

¶ 13 Guzman testified that she lied to the police when she was first contacted in order to protect Stout. According to Guzman, she and Stout had agreed on a story they would tell the police. However, at some point while in custody, Guzman provided the police with the accurate details of what she had observed. After telling the truth, Guzman identified defendant as the person who dropped the brick on the victim. Guzman again identified defendant as having dropped the brick on the victim during her grand jury testimony the following day.

¶ 14 Jermaine Stidhum testified that, on the date in question, he was not a member of a gang, but spent time with the Black P. Stones. During the morning of June 4, 2007, Stidhum observed a green van repeatedly driving around the neighborhood "throwing gang signs." At some point, he was outside of Marquette Vaughn's house when the pair heard a car accident. Stidhum and Vaughn walked toward the crash sight and observed a group of approximately 30 people fighting "whoever was in the van." Stidhum observed McSwain kick the individual and search the individual's pockets. Stidhum testified that he identified a photograph of defendant, telling the police it "could possibly be the person who dropped the brick" on the victim. Stidhum also identified a picture of Cornejo as a person that "possibly could have shot" the victim. Stidhum testified that he heard three gunshots from the direction of the lot and then observed Guttierez carrying a book bag with a gun inside. Stidhum was impeached with a handwritten statement he provided to the police in which he identified defendant as having dropped a brick on the victim. Stidhum further admitted that he testified before the grand jury that defendant dropped the brick on the victim and Cornejo shot the victim with a .357.

¶ 15 Vaughn testified that he was a member of the Black P. Stones at the time in question. According to Vaughn, he heard a gunshot before the accident; heard the car crash; observed the crowd run to the lot; while standing 20-30 feet away from the group, observed the victim rolling around in an attempt to protect himself from the crowd; observed defendant drop a brick on the victim; observed Cornejo shoot the victim; and observed Guttierez running from the scene with a book bag.

¶ 16 Detective Paulette Wright testified that she recovered a handgun from a sewer on Guttierez's property and recovered a concrete block from the scene. The concrete block was recovered on June 7, 2007, once she became aware of its significance through interviews. Detective Wright additionally testified that Cornejo remained at large on an outstanding warrant.

¶ 17 Valerie Arangelovich testified that she performed an autopsy on the victim. Prior to her testimony, defense counsel objected to the admission of five autopsy photographs. A hearing was held outside of the jury's presence and the trial court overruled defense counsel's objection based on Arangelovich's opinion that the photographs were necessary to explain her testimony. Arangelovich testified that the victim suffered two gunshot wounds, one on the left side of his head and one on the top of his head. Two bullets and bullet fragments were recovered. Arangelovich also observed two large gaping lacerations on the victim's head, one on each side of his scalp, which were caused by blunt force trauma. According to Arangelovich, the lacerations appeared to have resulted from the victim being struck with the same object two times. Arangelovich testified that the lacerations were consistent with injuries caused by a concrete block such as the one recovered from the scene. The lacerations were wide and deep enough to see the victim's skull and skull fractures, as well as the victim's brain. Arangelovich testified that the victim's brain was bloody, bruised, swollen, and detached due to his injuries. The victim also had multiple bruises and abrasions consistent with being punched and kicked. Arangelovich opined that the victim died of multiple gunshot wounds with cranial cerebral blunt force injuries significantly contributing to his death. According to Arangelovich, it was possible for the victim to have survived had he not been shot, but his survival was highly unlikely due to

the severity of the injuries.

¶ 18 The parties stipulated that the gun recovered from the sewer at Guttierez's house was a Rossi .357 Magnum revolver and one of the bullets and two of the bullet fragments recovered from the victim's skull were fired from the same revolver.

¶ 19 The jury found defendant guilty of first degree murder. Defendant's motion for a new trial was denied. Following a hearing in aggravation and mitigation, defendant was sentenced to a 42-year prison term. Defendant's motion to reconsider his sentence was denied. This appeal followed.

¶ 20 DECISION

¶ 21 I. Autopsy Photographs

¶ 22 Defendant first contends the trial court erred in publishing to the jury and admitting into evidence prejudicial autopsy photographs. Defendant argues that the gruesome photographs depicting the victim's skull and brain injuries were viewed and admitted into evidence only to inflame the passion of the jury where the victim's cause of death was not disputed. The State responds that defendant forfeited review of his contention, and, forfeiture aside, the photographs were properly viewed and admitted where they were used to assist the medical examiner's testimony.

¶ 23 At the outset, we note that the State's forfeiture argument lacks citation to authority or a supportive argument in violation of Supreme Court Rule 341(h)(7) (eff. July 1, 2008). Moreover, we find defendant sufficiently preserved his contention where defense counsel objected to the use of the photographs at issue prior to the medical examiner's testimony and also

raised a challenge to the admission of the photographs in his posttrial motion. See *People v. Enoch*, 122 Ill. 2d 176, 186, 522 N.E.2d 1124 (1988) (to preserve an issue for appellate review, a defendant must raise an objection at trial and include the alleged error in a posttrial motion).

¶ 24 The admission of evidence is within the sound discretion of the trial court and will not be disturbed absent an abuse of that discretion. *People v. Maldonado*, 402 Ill. App. 3d 411, 416, 930 N.E.2d 1104 (2010). An abuse of discretion will not be found unless the trial court's ruling was arbitrary, fanciful, unreasonable, or where no reasonable person would have taken the trial court's view. *Id.*

¶ 25 The supreme court has provided the relevant law:

> "Whether or not a jury is allowed to see photographs of a decedent is a decision made by a trial judge in the exercise of his discretion. [Citation.] If photographs are relevant to prove facts at issue, they are admissible and can be shown to the jury unless their nature is so prejudicial and so likely to inflame the jurors' passions that their probativeness is outweighed. [Citations.] Moreover, when a defendant in a murder trial pleads not guilty, th prosecution is allowed to prove every element of the crime charged and every relevant fact, even if the defendant offers to stipulate to those same facts. [Citation.] Among the valid reasons for admitting photographs of a decedent is to prove the nature and extent of injuries and the force needed to inflict them; the position, condition, and location of the body; the manner and cause of death; to corroborate a defendant's confession; and to aid in understanding the testimony of a pathologist or other

witness. [Citations.]" *People v. Henderson*, 142 Ill. 2d 258, 319-20, 568 N.E.2d 1234 (1990) (*declined to follow on other grounds*, *People v. Terry*, 183 Ill. 2d 298, 700 N.E.2d 992 (1998)).

¶ 26 Prior to Arangelovich's testimony, defense counsel objected to the use of five autopsy photographs. In response, the following exchange took place outside the presence of the jury:

"THE COURT: People's 78 through 82. Are there any other exhibits that you have to use other than those to explain the nature of the injuries that you observed and the basis of your opinion?

MS. ARANGELOVICH: I would need those.

THE COURT: All right. Am I correct, State, that there were other exhibits that were viewed by you and Mr. Johnson [defense counsel] that you declined to present to the doctor because of the gruesomeness?

[Assistant State's Attorney (ASA)] CARTER: Yes, Judge, and there were some not viewed by Mr. Johnson, but Doctor Arangelovich and I viewed them and took out half a dozen of the more gruesome photographs so as not to replicate what's in these pictures.

THE COURT: It is a murder trial. I heard there's injuries, blunt trauma, gunshot injuries that will assist the doctor in explaining the nature of the injuries, cause and manner of death. Over the defendant's objection I will allow her to testify to these things, and the jury will be allowed to view those photographs. All right."

¶ 27 It is clear from the record that the trial court properly exercised its discretion in determining the photographs at issue would aid in understanding Arangelovich's testimony. See Henderson, 142 Ill. 2d at 319-20. The fact that defendant was not challenging the victim's cause of death or nature of the victim's injuries does not amount to an abuse of discretion where it was the State's burden to prove every element of its case and it is well established that autopsy photographs are admissible, despite their gruesome nature, if they tend to prove any relevant fact. People v. Bounds, 371 Ill. 2d 1, 46-47, 662 N.E.2d 1168 (1995). The autopsy photographs in this case demonstrated the extent of the victim's injuries and supported Arangelovich's testimony that the victim died as a result of multiple gunshot wounds and blunt force trauma, and not as a result of being kicked or from injuries suffered during the car crash.

¶ 28 We recognize that a trial court must engage in an analysis of whether the relevant photographs are "so prejudicial and so likely to inflame the jury that their probative value is outweighed." People v. Richardson, 401 Ill. App. 3d 45, 52, 929 N.E.2d 44 (2010). The record demonstrates the trial court did just that in this case. During a discussion outside the presence of the jury, the trial court learned that the State and Arangelovich decided not to use additional photographs that were increasingly gruesome or duplicative. The photographs published and admitted to the jury admittedly were bloody and gruesome, in that they depicted the victim's skull pulled back, a piece of skull, and a piece of brain; however, the photographs were representative of the injuries the victim suffered as a result of defendant's actions. We conclude that the trial court did not abuse its discretion.

¶ 29 II. Closing Arguments

¶ 30 Defendant next contends he is entitled to a new trial because of the State's improper and prejudicial closing arguments. Defendant concedes that he failed to preserve his contention by failing to object at trial and include the error in his posttrial motion (*Enoch*, 122 Ill. 2d at 186); however, he requests that we review the contention under the doctrine of plain error.

¶ 31 This court may review forfeited errors under the doctrine of plain error in two narrow instances:

> "First, where the evidence in a case is so closely balanced that the jury's guilty verdict may have resulted from the error and not the evidence, a reviewing court may consider a forfeited error in order to preclude an argument that an innocent person was wrongly convicted. [Citation.] Second, where the error is so serious that defendant was denied a substantial right, and thus a fair trial, a reviewing court may consider a forfeited error in order to preserve the integrity of the judicial process." *People v. Herron*, 215 Ill. 2d 167, 178-79, 830 N.E.2d 467 (2005).

It is the defendant's burden to establish plain error. *People v. Woods*, 214 Ill. 2d 455, 471, 828 N.E.2d 247 (2005). However, before we can apply the doctrine of plain error, we first must find that the trial court committed error. *People v. Piatkowski*, 225 Ill. 2d 551, 565, 870 N.E.2d 403 (2007).

¶ 32 The standard of review for closing arguments continues to be unclear. See, *e.g., People v. Cosmano*, 2011 IL App (1st) 101196, ¶52; *People v. Salas*, 2011 IL App (1st) 091880, ¶102;

People v. Woods, 2011 IL App (1st) 091959, ¶10. In *People v. Raymond*, 404 Ill. App. 3d 1028, 938 N.E.2d 131 (2010), this court noted that the supreme court in *People v. Wheeler*, 226 Ill. 2d 92, 121, 871 N.E.2d 778 (2007), applied a *de novo* standard of review; however, a number of other supreme court cases applied an abuse of discretion standard. *Raymond*, 404 Ill. App. 3d at 1059-60. This court repeatedly has taken the approach that we need not determine the appropriate standard of review where the result, as in this case, would be the same under either standard of review. *Cosmano*, 101196, ¶53; *Salas*, 091880, ¶102; *Woods*, 091959, ¶10 (and cases cited therein).

¶ 33 Prosecutors are offered great latitude in making closing arguments. *Salas*, 091880, ¶101. Closing arguments are proper when they are based on the record and reasonable inferences drawn therefrom. *Id.* Closing arguments should be reviewed in context, in light of both the prosecutor's comments and the defense counsel's comments. *Maldonado*, 402 Ill. App. 3d at 422. A prosecutor's comments will constitute reversible error only if they created "substantial prejudice" such that "the improper remarks constituted a material factor in a defendant's conviction." *Id.*

¶ 34 Defendant challenges four "anti-gang" prosecutorial comments, one prosecutorial comment that implied defendant should have been convicted because he did not testify or present exculpatory evidence, one prosecutorial comment encouraging the jury to sympathize with the victim, and one prosecutorial comment improperly arguing that a codefendant remained at large. We address each comment in turn.

¶ 35 Defendant first takes issue with the following four "anti-gang" comments:

"You know, when [defense counsel] got up here at the beginning of this

trial, he told you that this wasn't a time or place for a referendum on gangs in the city, that this just wasn't it. I disagree with him. This is the time, and this is the place. It's time for you to say to the defendant you're not getting away with this. If not you, who? And if not now, when? Find him guilty because he is."

"And do you know something? My partner was right. Now is exactly the time for you to voice your opinion, your opinion about the actions of Obed Torres, the other Latin Kings that he's responsible for, the Black P-Stones that he's responsible for. Calling your alderman and complaining about what happened at 50th and Racine is fine, but it doesn't do justice a damn bit of good."

"The scene at 50th and Racine, Ladies and Gentlemen, was one of complete and utter savagery. Did Obed Torres and the Latin Kings and the Black P-Stones give Enrique Chavez a fair trial? Obed Torres gets from our system of justice what he was unwilling to give out there on the corner of 50th and Racine."

"Obed Torres wants a reward from you for having his gang-banger friends [come] in here and testify for committing this murder in front of them. Don't reward him, Ladies and Gentlemen."

¶ 36 These comments were based on the evidence and reasonable inferences drawn therefrom. It is undisputed that the victim died because he was a suspected rival gang member in the wrong territory. The State's comments encouraged the jurors to execute their duties by finding this defendant guilty based on the evidence of this crime. "A prosecutor may comment unfavorably on the evil effects of the crime and urge the jury to administer the law without fear, when such

argument is based upon competent and pertinent evidence." People v. Nicholas, 218 Ill. 2d 104, 121-22, 842 N.E.2d 674 (2006). The State did not invite the jury to make an example out of defendant where the facts did not support the conviction. Moreover, the State did not ask the jury to "send a message," right the wrongs of crime in general, or take a stand as "us" against "them." People v. Johnson, 208 Ill. 2d 53, 78-80, 803 N.E.2d 405 (2004). In addition, the State's comments that related to the witnesses being gang members and to defendant's accountability were responsive where defense counsel repeatedly attempted to discredit the State's witnesses due to their gang affiliations and argued that defendant was not responsible for his fellow gang members' actions. See Cosmano, 101196, ¶ 63. We decline to address defendant's brief, speculative, and completely unsupported insinuation that the dismissal of two jurors could have tainted the jury. We, therefore, conclude the State's "anti-gang" arguments were permissive comments based on the evidence.

¶ 37 Defendant next argues that the State improperly commented on defendant's failure to testify or present exculpatory evidence. Defendant takes issue with the following two comments: "[i]t is not possible that the witnesses are lying to you about these things. The physical evidence makes it impossible" and "[b]ut, when somebody is going to get up there and argue something like that, they at least ought to be able to back it up."

¶ 38 As is necessary when reviewing prosecutorial comments for error, we have reviewed the record and the context within which the comments were made. See *Maldonado*, 402 Ill. App. 3d at 422. The challenged comments were made during the State's rebuttal argument. During defense counsel's closing argument, he questioned the ability of the eyewitnesses to view

defendant drop the concrete block on the victim when the facts established that a large crowd surrounded the victim and a number of the witnesses testified that they were situated outside of the crowd. Defense counsel said, "[t]hey don't have to say they lied before. They're lying." Defense counsel specifically called into question Stidhum, Guzman, and Vaughn. Defense counsel additionally called into question the quality of the physical evidence where the cinder block was not recovered from the scene for a "few days." In rebuttal, the prosecutor stated:

> "It is not possible that the witnesses are lying about all these things. The physical evidence makes it impossible. Did these people lie to the police? Oh, yeah, they did. Most of them. Marquette Vaughn didn't as far as we know, but, you know, Marquette Vaughn – from the defense perspective they wouldn't get much use of him. You saw the cross.
>
> Today when we talk about Marquette Vaughn, don't pay attention to Marquette Vaughn. Do you know what? Pay attention to Marquette Vaughn. Pay attention to all the witnesses in this case, Ladies and Gentlemen. Listen to what Marquette Vaughn said. The only person in here that's saying that Marquette Vaughn didn't see this is sitting on that side of the room.
>
> And don't make a mistake, Ladies and Gentlemen, the People of the State of Illinois have the burden in this case from the time that you were impaneled until the time you reach your verdict. It never leaves me, never. We have it. But, when somebody is going to get up here and tell you something like that they at least ought to be able to back it up."

¶ 39 It is clear from reading the challenged comments in context that the State was responding to defense counsel's attack on Vaughn's credibility. Specifically, the State maintained that defense counsel was unable to discredit Vaughn during cross-examination. In that vein, the State argued that defense counsel was unable to "back it up" such that his closing argument attacked Vaughn's credibility, but the cross-examination did not call into question Vaughn's credibility. In other words, the State commented on defendant's unsupported argument, yet reminded the jury that the State maintained the burden of proof. See *People v. Bell*, 343 Ill. App. 3d 110, 116, 796 N.E.2d 1114 (2003). Contrary to defendant's brief argument, the challenged comments were not designed to direct the jury's attention to the fact that defendant decided not to testify. Cf. People v. Edgecombe, 317 Ill. App. 3d 615, 620-21, 739 N.E.2d 914 (2000) (a prosecutor may not "cross the line" by commenting that the defendant was the only person that could challenge uncontradicted evidence). We, therefore, find the challenged comments were responsive and based on the evidence, and conclude there was no error. See Cosmano, 101196, ¶ 63.

¶ 40 Defendant further contends the State improperly encouraged the jury to sympathize with the victim. Defendant challenges the following comments:

> "Ladies and Gentlemen, Enrique Chavez might have been a LaRaza. He might have been a LaRaza wannabee. Unfortunately we can't ask him because Obed Torres and his Latin King buddies and the Black P-Stones made that somewhat impossible. Enrique was 14. He has the rest of his life to turn it around, to figure out, Ladies and Gentlemen, that gang-banging is not the way to go. The rest of his life. Grow up, go to school, get married, have kids, get a job.

He was robbed of that opportunity by Obed Torres, Sergio Cornejo, Jose Guttierez, Darius McSwain, Lincoln Stout and other idiots out there on 50th and Racine in the course of gang justice."

¶ 41 Although a prosecutor may not use closing arguments to inflame the passion of the jury without throwing any light on the issues (*Wheeler*, 226 Ill. 2d at 128-29), the challenged comments were not of the nature reputed in *People v. Mapp*, 283 Ill. App. 3d 979, 990-91, 670 N.E.2d 852 (1996), as cited by defendant, where the prosecutor in that case blatantly appealed to the jury's emotion by repeatedly referring to the family "left behind." The challenged comments here were based on the evidence that the victim was a young boy believed to be a rival gang member by his offenders and was murdered for that reason. To the extent the comment regarding the victim's lost opportunities was inflammatory, the comment was limited and did not constitute a material factor in defendant's conviction. See *Wheeler*, 226 lll. 2d at 123. We, therefore, again find that the challenged comments did not constitute error.

¶ 42 Defendant finally contends the State improperly commented on the fact that Cornejo, the shooter, had not been arrested only to inflame the passion of the jury. Without citation to authority, in violation of Rule 341(h)(7) (eff. July 1, 2008), defendant argues that the comment "would obviously make it more likely that the jury would convict Defendant to make sure that at least one of the most culpable participants is punished." Reading the comment in context, the prosecutor remarked on each of the participants involved in the incident, *i.e.,* Stout caught and knocked the victim down, McSwain kicked the victim and went through his pockets, defendant dropped the cinder block on the victim, and Cornejo "who's still out on an arrest warrant who

picks up this gun and shoots [the victim]." The challenged comment was based on the evidence and inferences drawn therefrom. We, therefore, find no error.

¶ 43 Because we do not find any of the challenged comments constituted error, we need not engage in a plain error analysis or consider the effect of cumulative error. See *People v. Garmon*, 394 Ill. App. 3d 977, 991, 916 N.E.2d 1191 (2009) (cumulative error first requires a showing of individual error).

¶ 44 CONCLUSION

¶ 45 We conclude that the challenged autopsy photographs were properly published to the jury and admitted into evidence, and that the challenged prosecutorial closing arguments were proper.

¶ 46 Affirmed.