No. 1-10-0478

FIFTH DIVISION
June 29, 2012

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ANTONIO PARKER, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Cook County. No. 07 CR 22391 Honorable John P. Kirby, Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Epstein and Justice McBride concurred in the judgment.

ORDER

¶ 1 *HELD:* Defendant's murder conviction affirmed because the evidence at defendant's trial was sufficient to prove his guilt beyond a reasonable doubt.

¶ 2 Following a jury trial in the circuit court of Cook County, defendant Antonio Parker was convicted of first degree murder (720 ILCS 5/9-1(a) (West 2008)) and with personally

discharging a weapon that caused the death (730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2008)). Defendant was sentenced to a term of 55 years in the Illinois Department of Corrections.

¶ 3 On appeal, defendant claims the trial court erred because: (1) the State failed to prove his guilt beyond a reasonable doubt, (2) his trial counsel was ineffective, and (3) the State made inappropriate remarks in closing argument.

¶ 4 I. BACKGROUND

¶ 5 The body of victim Eddie Thomas, also known as "Little Eddie," was found on September 17, 2002, in a stairwell of a building located at 1230 North Burling, in Chicago's Cabrini Green Public Housing Project (Cabrini Green). On October 19, 2007, defendant Antonio Parker was arrested for murder by the cold case squad of the Chicago Police Department. Following a jury trial, Parker was found guilty of first degree murder and personally discharging the weapon which caused the death. Parker was sentenced to 30 years in the Illinois Department of Corrections for the murder and to a consecutive 25-year term for personally discharging the firearm.

¶ 6 At trial, Chicago Police Officer Lawrence J. Aiken testified for the State that he was assigned to the 18th District police station which encompassed Cabrini Green, including two high-rise buildings located at 1230 North Burling and 714 West Division. Both buildings have since been demolished. At the time of the murder, each building was 15 stories high with

stairwells located on either side of the structures. In the early morning hours on September 17, 2002, Officer Aiken and his partner found a body lying on the fifth floor stairs in the Burling building.

¶ 7 State's witness, forensic investigator, James Shader testified that he found five cartridge cases at the scene. He noted several fresh bullet strikes on the walls and recovered metal bullet fragments. He found a fired bullet in the victim's clothing. He and his partner photographed the scene, collected and inventoried the physical evidence.

¶ 8 He testified the recovered cartridges all came from the same type of weapon – a .380 semi-automatic. Although four of the five cartridges were from the same manufacturer, the fifth was from a different maker.

¶ 9 State's witness, chief medical examiner of Cook County, Dr. Nancy Jones, testified that she performed the autopsy on the victim on September 17, 2002. There was no objection to her testifying as an expert in the area of forensic pathology. She testified that the victim's body was received at the medical examiner's office wearing a black doo-rag, a black hooded sweat jacket, black jeans, black shoes and a long-sleeved white t-shirt.

¶ 10 External examination of the body revealed a close range gunshot wound with entrance directly above the right side of the upper lip. Doctor Jones testified she knew it was a close range

wound because of stippling or tattooing present around the wound. Internal examination of the body revealed the bullet went through the upper lip, knocked out two teeth, fractured the upper jaw, and went through the tongue from front to back and then went into the spinal column. Doctor Jones recovered a medium caliber jacketed bullet from the spinal column at the level of the third cervical vertebra. The bullet was sealed in an envelope and turned over to a police evidence technician.

¶ 11 There was also a through and through gunshot wound to the lower right leg with no evidence of close range firing.

¶ 12 The body had a laceration on the right side of the head above the right ear along with an area of abrasion surrounded by a hematoma, a bruise type area with swelling. During the internal examination of the head and brain, Dr. Jones found bruises on the under surface of the scalp on the right side where the laceration had occurred. She found the brain to be very swollen, a condition called cerebral edema. She also found abrasions or bruises on the left side of the brain. The bottom of the brain had a clotted layer of blood. Dr. Jones also observed an abrasion on Thomas's right hip and some scabbing on his knee.

¶ 13 Dr. Jones testified the victim Eddie Thomas died as a result of multiple gun shot wounds. Contributing to his death were cerebral injuries due to blunt force trauma. The manner of death was homicide.

¶ 14 On cross examination, Dr. Jones testified that close range firing means from 18 to 24 inches or two feet or less. Dr. Jones testified the laceration to the head and the blunt trauma injury could have resulted from someone punching or kicking the victim or resulted from his head hitting concrete. She testified the laceration was ante mortem, or before death. The swelling and hematoma formation indicated a slightly longer period of time between the injury and death.

¶ 15 Dr. Jones testified that the path of the bullet in the gunshot wound to the face was from front to back, parallel to the ground, within 18 to 24 inches away.

¶ 16 Forensic scientist Aaron Horn was qualified as an expert witness for the State in the area of firearms identification without objection. He compared the bullet recovered by Dr. Jones during the autopsy to the bullet recovered from the victim's clothing and determined the bullets were fired from the same firearm. He also determined that four of the five recovered cartridge casings had been fired from the same firearm. He could not eliminate or identify the fifth casing made by another manufacturer. No firearm was recovered in this case.

¶ 17 State's witness Royce Hatter, who goes by the nicknames "Rico" and "Lo-Rico," testified he lived in the Burling building at the time of the murder. He knew defendant and defendant's brother Mario for several years. They hung around the building together on a daily basis. The victim lived in the 714 W.

Division building at the time of the shooting.

¶ 18 Around 2:30 a.m. on September 17, 2002, Hatter was hanging out and drinking on the sixth floor stairwell of the Burling building with defendant and three other men named L-Dog, Wheezy and Nightfall. Defendant and L-Dog left up the stairs for a while and returned with the victim, Little Eddie. Hatter heard defendant say, "you are the one that stuck my brother up."

¶ 19 Hatter heard scuffling and observed defendant and Little Eddie tussling. Hatter observed defendant hit Little Eddie with a closed fist and Little Eddie swung back and hit defendant. Hatter observed defendant push Little Eddie down the stairs between the fifth and sixth floor landing. Hatter testified that he, Nightfall, Wheezy and L-Dog came down the stairs to the landing and kicked Little Eddie for about a minute "just to be doing something." After that, Wheezy and L-Dog went back up the stairs while Nightfall left down the stairs, leaving only Hatter, defendant, and Little Eddie on the landing. Hatter heard defendant say "you're the one that stuck my brother up." Hatter testified he tried to help Little Eddie get up when defendant pulled a gun out of his waist and pointed it towards Little Eddie's face. Defendant was about two to three feet from Little Eddie. Hatter testified he told defendant "you don't need to shoot him, it ain't worth it." Defendant said "fuck that *** he once stuck up my brother."

¶ 20 Defendant pulled the trigger and the gun went off.

Hatter testified he was scared, he let Little Eddie go and ran to the 15th floor. As he was making his way to the 15th floor, where he could cross the ramp without being observed, he heard three more shots. He then observed defendant, Wheezy and L-Dog on the 15th floor but did not observe where they went. Hatter testified he went directly down the stairs to the back of the Burling building and left in his auto for his girlfriend's house. Hatter testified that he did not observe defendant again for two to two-and-a-half months.

¶ 21 Hatter testified that the stairs and landings were made of concrete.

¶ 22 On cross examination, Hatter testified that prior to his testimony before the Grand Jury on September 24, 2007, he was picked up by police and held at Area 3 for three days and not permitted to go home. Hatter testified that he was not under arrest by the police but was under investigation. He spoke with investigators from the cold case division. He told investigators that he, Nightfall, L-Dog and Wheezy all "whooped Little Eddie's ass." Hatter testified that he kicked, punched and helped beat up Little Eddie. Hatter testified he was never charged for his part in the beating of Little Eddie. When defendant shot Little Eddie, Hatter was in the process of helping Little Eddie up but he could barely stand due to being "discombobulated" from having been beaten so hard.

¶ 23 Hatter testified he had a criminal history and used

alias names in the past to stay out of jail. He testified his younger brother used his name in the past.

¶ 24 On redirect, Hatter testified that he met with detectives and an assistant state's attorney at Area 3 on December 21, 2002, and again returned to Area 3 and met with detectives on September 24, 2007. He testified that on each of these occasions, he told police that defendant was the person who shot Little Eddie. He testified that he never denied his participation in the beating of Little Eddie.

¶ 25 State's witness Yvette Broughton testified she lived in the Burling building at the time of the shooting and knew defendant by his nickname, Pooka, for at least 15 years. Defendant and her son grew up together and were schoolmates. Defendant had previously been to her home. She also knew the victim for a month or two.

¶ 26 Broughton testified that at the time of the shooting, she and her sister-in-law, Kathy Broughton, were going downstairs to look for crack cocaine to purchase. As they walked down the stairs, they stopped at the 8th floor because she heard people arguing in the hallway – at least three loud voices coming from below. She stopped, looked down the stairwell and observed defendant along with the top of someone's white tennis shoes. Defendant was standing there talking to whoever was wearing the tennis shoes. She could observe the side of defendant and noticed he had a pistol in his hand, holding it down along his

leg. She heard defendant say, "I want my money." She did not hear anyone respond to defendant. The next thing she heard was a gunshot.

¶ 27 The assistant state's attorney (ASA) questioning Broughton noted that Broughton made a motion and brought her arm up while explaining what she observed. The ASA asked Broughton whether she observed defendant make that motion with the gun. Broughton testified she did not observe defendant do that, she was only stating what she heard. Broughton testified she heard a boom and observed a light and a sparkle. She testified the gunshot came from where defendant was standing. Broughton observed feet falling, then Little Eddie laying back, head up, with his feet on the stairs.

¶ 28 Broughton testified she heard two gunshots but was not watching defendant because she took off running to the other end of the hallway. She went down to the ground floor and left the building for 10 to 15 minutes.

¶ 29 Broughton testified she went back inside the building "with everybody else." She went directly to the stairwell and observed Little Eddie with blood splattered all over the ground. She testified she told the police what she witnessed that day.

¶ 30 Broughton spoke with police on December 14, 2004, and then testified in front of the grand jury. She also met with ASA Risa Lanier. Broughton testified that she told ASA Lanier that she heard defendant tell Little Eddie that he was going to shoot

him in the head. She also testified that she told ASA Lanier that she actually observed defendant raise the gun up and point it at Little Eddie's face. She testified that she told ASA Lanier that she heard a gunshot, saw a flash of light and smoke coming from the gun in defendant's hand and that she observed Little Eddie's body move back and fall to the ground. She testified that she told ASA Lanier that she could hear what sounded like another gunshot coming from the opposite direction from which she was running.

¶ 31 Broughton testified that just prior to her testimony before the grand jury, she reiterated what she had witnessed to ASA Michelle Patsy. Broughton testified that she told the grand jury that she was on the stairs where she could observe Little Eddie and the defendant. She told the grand jury that Little Eddie and the defendant were separated by two or three feet. She also told the grand jury she heard defendant say, "Where is my shit," then, "Stop lying or I'm going to shoot you in your face."

¶ 32 Broughton testified that she did not tell the grand jury that she heard defendant tell Little Eddie to open his mouth. She testified that she told the grand jury that she observed defendant take the gun and aim it at Little Eddie's mouth and shoot him. Broughton testified that Little Eddie was unarmed.

¶ 33 At the time of the shooting, Broughton was on the landing of the eighth floor and she could view down to the fifth

floor through the railings. Broughton testified that the stairs did not block her view.

¶ 34 Broughton testified that she has been sober for the past year and a half. In the past, she used crack cocaine practically every day. She testified that she was not high at the time of the shooting. After the shooting, she got high on crack.

¶ 35 She testified she did not realize it was Little Eddie that was shot and that the shooter was one step higher than Little Eddie. Broughton learned the identity of the victim after she ran back into the building and observed the body.

¶ 36 Broughton testified that she did not want to be at the trial but had been ordered by the court to appear. She was sober when she testified before the grand jury. When she left the grand jury, she got high. Broughton testified that she did not observe the defendant's face at the time of the shooting, she observed the defendant from the side, holding the gun at his side and recognized his voice.

¶ 37 ASA Risa Lanier testified for that State that on December 14, 2004, she was assigned to the felony review unit of the state's attorney's office. She was assigned to proceed to Area 3 regarding the 2002 homicide of Eddie Thomas. She met with the detectives on the case, met Broughton and interviewed her for nearly one hour.

¶ 38 ASA Lanier testified that she asked Broughton if she

would agree to allow her to write out a summary of her statement with Broughton having an opportunity to make any changes or corrections to the statement. ASA Lanier wrote out the statement then went over it line by line with Broughton. They made corrections and both signed each page.

¶ 39 ASA Michelle Papa testified for that State that she interviewed Broughton on December 15, 2004. After the interview, ASA Papa presented Broughton to the grand jury. ASA Papa testified that when she asked Broughton what she observed, Broughton testified before the grand jury that "I happened to see Little Eddie and Antonio Parker standing there."

¶ 40 Before the grand jury, ASA Papa asked Broughton if Little Eddie responded to defendant. Broughton testified that Little Eddie told defendant he "didn't have his stuff" and "Antonio said for him to open his mouth."

¶ 41 Witness Erica Coleman, who lived in the 714 W. Division building at the time of the murder, testified for the State that she was friends with defendant and knew him for about nine years. Coleman knew Little Eddie for three or four years. She was also friends with Laquanda White, nicknamed Stormy, who lived in the Burling building. Coleman testified that her apartment was across from Stormy's and that she could view into Stormy's apartment when the kitchen lights were on. Coleman testified that the apartments were close enough that they could holler back and forth to each other.

¶ 42 Coleman testified that on September 15, 2002, she was in the parking lot with Little Eddie getting ready to take him out for his birthday when defendant's brother Mario approached the group. Coleman testified that she was aware Mario had been robbed and shot. Mario had a cast on his arm and began to yell at Little Eddie, accusing him of being the person who shot him. Mario and Little Eddie went to the side and talked. Coleman testified that her boyfriend Dwayne Jones told Mario that Little Eddie did not have anything to do with the robbery and the three left.

¶ 43 Coleman testified that the next night, September 16, she woke up between 10 and 11 p.m., went to her window and observed defendant, L-Dog and Little Eddie in Stormy's apartment. Later, Coleman woke up Jones and he went down to the parking lot and hollered for Little Eddie to come down. Little Eddie did not answer.

¶ 44 Coleman then heard one or two gun shots. She did not observe anyone in Stormy's apartment at this point.

¶ 45 Coleman testified that she observed three individuals going across the 14th floor of the Burling building, across the ramps that go from one end of the building to the other. The ramps were covered in black fencing, but one can still see through them. Coleman testified she observed defendant, L-Dog and "Lo-Rico" running by the elevator and crossing the ramp. Coleman testified the three went down the north stairwell and she

observed Nightfall come out of the building, enter his motor vehicle and leave. She then observed Lo-Rico come out, enter his motor vehicle and leave. She also observed defendant and his girlfriend Aja leave. Coleman testified that she went downstairs where she heard someone holler that a man was shot dead in the hallway. She ran up the south stairwell with a crowd and observed Little Eddie lying in the hallway on the 5th or 6th floor. Coleman testified that Little Eddie had been shot, there was blood all over his face and his teeth on one side were gone. She testified that the police arrived and ordered everyone to leave.

¶ 46 On cross-examination, Coleman testified that she received 36 months probation on a charge relating to drugs in 2002. She testified that her drug case did not have anything to do with the murder of Little Eddie and that the police did not make any deals with her. She was no longer on probation when she talked to police about the murder.

¶ 47 Seneca Williams testified for the State that he was a friend of defendant's and knew him all his life. Williams testified that one night, a couple months before defendant's arrest in this case, he overheard a conversation between defendant and an individual named Maniac. They were in the lobby of the Burling building where Williams was standing about 20 feet from defendant and Maniac. Williams testified that he overheard defendant say, "Keep on playing with me, I do you like I done

Little Eddie."

¶ 48 On cross examination, Williams testified that he had previously been convicted of two felony narcotics cases and was currently out on bond on a federal case. He testified he was cooperating with federal authorities and testifying against several individuals regarding drug dealing around Cabrini Green. Williams testified that the deal he had worked out in his federal case was not contingent on his testimony in this case.

¶ 49 Chicago police detective Thomas Johnson, of the cold case squad, testified for the State that he was assigned to work the homicide of Eddie Thomas. Detective Johnson and his partner continued to look for witnesses as late as the week before trial. Their investigation had been hampered by the demolition of the 714 West Division building and the relocation of all of its residents. Detective Johnson testified that on October 19, 2007, he and his partner arrested defendant for the murder of Eddie Thomas. Detective Johnson testified that the Burling building was located about 100 feet away from the 714 West Division building prior to the demolition of both buildings.

¶ 50 At the close of the State's case, the defendant filed a motion for a directed verdict, which was denied. The defendant rested his case without presenting any evidence. The jury found defendant guilty of first degree murder as well as the firearm enhancement. Defendant filed a posttrial motion for a new trial, which was denied.

¶ 51 Prior to sentencing, defendant advised the court that he felt his counsel was ineffective because: (1) she did not call Aja Worthy, the mother of his child, to testify; (2) defendant wanted a bench trial, not a jury; (3) his attorney did not address the lack of bruising on the body of the victim; and (4) his counsel did not spend any time with him in preparation for the trial.

¶ 52 Based on these allegations, the trial court conducted a *Krankel* inquiry (*People v. Krankel*, 102 Ill. 2d 181 (1984)). Defense counsel told the court that defendant did not know how to spell Aja's last name and that she made numerous attempts to locate her but to no avail. Defense counsel stated that even though she could not locate Aja, defendant insisted on demanding trial. Defense counsel stated that she met with defendant on court dates and also had him brought to court several times when the case was not on the call. Defense counsel told that court that she was unable to visit defendant in the jail because she could not climb stairs due to a medical condition. She also stated that she had advised defendant to take a jury trial and that defendant had agreed. She told the court that during cross-examination, she addressed the issue of lack of bruising on the body of the victim.

¶ 53 The trial court found that the threshold for ineffectiveness was not met, stating: "As a matter of record I found that counsel tried this case professionally and she was

aggressive in all facets of the case, in pre-trial motions and motions *in limine* and the trial itself and even today at sentencing."

¶ 54 The trial court then sentenced defendant to 30 years in the Illinois Department of Corrections for the murder and an additional 25 years for the firearms enhancement, for a total term of 55 years. Defendant's posttrial motion for reconsideration of his sentence was denied. Defendant filed this timely appeal.

¶ 55 II. ANALYSIS

¶ 56 A. Sufficiency of the Evidence

¶ 57 Defendant argues that the State failed to prove him guilty beyond a reasonable doubt of first degree murder.

¶ 58 Due process requires that a person may not be convicted in a criminal proceeding "except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004). When this court considers a challenge to a criminal conviction based upon the sufficiency of the evidence, it is not our function to retry the defendant. *People v. Hall*, 194 Ill. 2d 305, 329-30 (2000). 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). 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. Sherrod*, 394 Ill. App. 3d 863, 865 (2009) (citing *People v. Maggette*, 195 Ill. 2d 336, 353 (2001)).

¶ 59 To sustain a conviction for first degree murder, the prosecution is required to prove: (1) the defendant intended to kill or do great bodily harm to that individual, or knows that such acts will cause death to that individual; or (2) the defendant knows that such acts create a strong probability of death or great bodily harm to that individual; or (3) the defendant is attempting or committing a forcible felony other than second degree murder. 720 ILCS 5/9-1(a) (West 2008).

¶ 60 The defendant claims the testimony from the two eyewitnesses, Yvette Broughton and Royce Hatter, was not credible.

¶ 61 Where the jury's determination is dependent upon eyewitness testimony, its credibility determinations are entitled to great deference and will be upset only if unreasonable. *People v. Tabb*, 374 Ill. App. 3d 680, 692 (2007). The jury may believe as much, or as little, of any witness' testimony as it sees fit. *Id.* Whether eyewitness testimony is trustworthy is typically within the common knowledge and experience of the average juror. *Id.* Thus, we will not substitute our judgment for that of the fact finder on what weight is given to the

evidence presented or the credibility of the witnesses. *Id.*

¶ 62 Defendant claims that Broughton could not have witnessed the shooting because the stairs blocked her view, as is demonstrated by a photographic exhibit the State admitted into evidence.

¶ 63 However, Broughton testified that she was on the 8th floor looking down to the 5th floor where defendant and Little Eddie were located. She testified that she witnessed the shooting through the railings from above. The photographic exhibit depicts the entrance to the stairwell on the 5th floor, not the view from the 8th floor where Broughton was located. Therefore, we cannot say the photographic exhibit is an accurate representation of Broughton's view of the shooting and the photograph does not support the defendant’s argument.

¶ 64 Next, defendant claims that Broughton's trial testimony varied greatly from her grand jury testimony and written statement. Broughton's trial testimony dealt with minor detail on whether she observed the defendant actually raise his arm prior to shooting Little Eddie. She testified at trial that she did not observe the defendant raise his arm. She then testified that she told ASA Lanier she did observe defendant raise his arm. She told the grand jury that defendant aimed his gun at Little Eddie’s mouth and shoot him. There is some variance in her testimony but the only detail is whether she observed the defendant raise his arm up. Her credibility as to this testimony

is a question for the jury. *Tabb*, 374 Ill. App. 3d at 692. We will not substitute our judgment for that of the fact finder on what weight is given to the evidence presented or the credibility of the witnesses. *Id.*

¶ 65 Moreover, her grand jury testimony that she observed defendant raise a gun and shoot Little Eddie, is corroborated by the testimony from Royce Hatter, Erica Coleman, Seneca Williams and the physical evidence.

¶ 66 Hatter testified that he observed defendant shoot Little Eddie in the head. Coleman testified, like Broughton, that she observed the victim with the defendant just prior to the shooting and then observed defendant flee the scene after the shooting. Williams testified he overheard a conversation where defendant admitted killing Little Eddie. The physical evidence established the victim was shot at close range with a semi-automatic pistol, as both eyewitnesses Broughton and Hatter had testified.

¶ 67 Defendant claims Hatter provided a totally different account than Broughton. We do not find this claim persuasive. Broughton testified she heard an argument then observed defendant shoot Little Eddie in the head. Hatter testified that he was trying to help Little Eddie to his feet when defendant pulled out a gun, ignored his protests not to shoot, then shot defendant in the head. We cannot say it was unreasonable for the jury to infer that the argument Broughton heard was the argument between

defendant and Little Eddie before the shooting or Hatter pleading with defendant not to shoot Little Eddie. However, Broughton and Hatter, who both knew the defendant and Little Eddie for several years before the shooting, testified they saw defendant shoot Little Eddie in the head. Based on the record, we cannot say Broughton's or Hatter's testimony was improbable or that the jury's credibility determination was unreasonable. *Tabb*, 374 Ill. App. 3d at 692.

¶ 68 Defendant claims that both Broughton's and Hatter's testimony was inconsistent with the firearms evidence recovered from the crime scene and with the medical examiner's testimony. Defendant notes that forensic investigator James Shader testified that he recovered five cartridge casings from the crime scene – more than the two gunshots Broughton testified that she heard and more than the four gunshots that Hatter heard.

¶ 69 However, both Broughton and Hatter testified that they immediately ran away after defendant fired his first shot. Hatter testified that he was scared. Thus, we cannot say it was unreasonable for the jury to afford little weight to the inconsistency in the testimony regarding the exact number of shots heard by the witnesses. Moreover, it is for the jury to resolve any inconsistencies in testimony and to ultimately determine the facts. *People v. Steidle*, 142 Ill. 2d 204, 226 (1991). It is not necessary that the jury disregard the inferences which naturally flow from the evidence, nor is the

trier of fact required to search out a series of potential explanations compatible with innocence and elevate them to the status of a reasonable doubt. *People v. Porter*, 96 Ill. App. 3d 976, 981 (1981).

¶ 70 Next, defendant claims that Little Eddie's injuries do not support Hatter's testimony that he beat Little Eddie with help from three others. We do not find this argument persuasive. Dr. Jones testified that Little Eddie's body had a laceration on the right side of the head above the right ear along with an area of abrasion surrounded by a hematoma, a bruise type area with swelling. During the internal examination of the head and brain, Dr. Jones found bruises on the under surface of the scalp on the right side where the laceration had occurred. Dr. Jones found the brain to be very swollen, a condition called cerebral edema. She also found abrasions or bruises on the left side of the brain. The bottom of the brain had a clotted layer of blood. There were also contusions to the victim's hip and knee.

¶ 71 Dr. Jones testified that cerebral injuries due to blunt force trauma contributed to Little Eddie's death. Dr. Jones testified the laceration to the head and the blunt trauma injury could have resulted from someone punching or kicking the victim. She testified the laceration was ante mortem, or before death, and the fact there was swelling and hematoma formation indicated a slightly longer period of time between the injury and death.

¶ 72 We cannot say that Dr. Jones' testimony is insufficient

to establish that Little Eddie received a severe beating.

¶ 73 Next, defendant claims that Broughton's and Hatter's criminal backgrounds call into doubt the veracity of their testimony.

¶ 74 In respect to Broughton, there is no evidence in the record that she has a criminal conviction, but there was evidence she was addicted to illegal drugs. Defendant claims that Broughton's severe drug habit casts serious doubt on her testimony. It is well settled that drug addiction goes only to the credibility of the witness (*Id.* at 984) and a witness's credibility is a question for the trier of fact (*Tabb*, 374 Ill. App. 3d at 692). We will not disturb a decision based on witness credibility unless the testimony was unreasonable. *Id.* Here, Broughton's testimony is corroborated by the testimony of Hatter, Coleman, Williams and the forensic evidence. Therefore, we cannot say Broughton's testimony was unreasonable. *Id.*

¶ 75 In respect to the criminal background of Hatter, the record shows that the jury did not hear any specifics about Hatter's criminal history because he did not have any felony convictions within the past 10 years, or convictions that were admissible under *People v. Montgomery,* 47 Ill. 2d 510 (1971). The jury heard that Hatter used alias names in the past to keep from going to jail. Based on Hatter's testimony, the jury was free to determine the veracity of Hatter's testimony. *Tabb*, 374 Ill. App. 3d at 692.

¶ 76 Next, defendant claims the testimony of Erica Coleman and Seneca Williams is implausible. We find this argument unpersuasive.

¶ 77 Coleman's testimony is corroborated by the testimony from Hatter. Coleman testified she heard gun shots, observed three men run across the 14th floor, and observed Hatter come out of the building and leave in his vehicle. Hatter testified defendant shot Little Eddie in the face and he heard more shots as he ran across the 15th floor. Hatter testified he observed the others running across the 15th floor. He also testified that from the 15th floor he went to the ground floor and left in his vehicle, just as Coleman described in her testimony.

¶ 78 Defendant claims Coleman's testimony is belied by geography and that her claim that the Burling and Division buildings were 15 feet apart is refuted by Detective Johnson, who testified that the buildings were closer to 100 feet apart. However, the record shows that when defense counsel asked Coleman whether the buildings were 15 feet apart, she responded, "Ma'am, I don't know how many feet exactly it is. You asked me a question. And I assumed that's how many feet. I don't know how many feet it actually is from my building to 1230 Burling. I don't know Ma'am." Accordingly, we cannot say that Coleman's testimony is belied by geography.

¶ 79 Defendant claims Coleman was motivated to lie because she was friends with Little Eddie. However, Coleman testified

that she was friends with the defendant as well and she had been friends with defendant longer than she was friends with Little Eddie.

¶ 80 Defendant also claims that Coleman's testimony is unbelievable because she testified that she looked through Stormy's kitchen window from her apartment and observed Little Eddie put on a white t-shirt over a black long-sleeved shirt. Dr. Jones testified that Little Eddie was wearing a long-sleeve white t-shirt under a black hoodie. However, we cannot say Coleman's entire testimony is unreliable because she did not accurately describe the clothing Little Eddie put on in Stormy's apartment, about 100 feet away from her own apartment. This discrepancy is in the realm for the jury to weigh and determine Coleman's credibility. *Steidle*, 142 Ill. 2d at 226. The same goes for her testimony that she observed three men run across the 14th floor ramps, as opposed to Hatter's testimony that he and the others ran across the 15th floor. As a result, we cannot say Coleman's testimony was improbable or unreasonable. *Tabb*, 374 Ill. App. 3d at 692.

¶ 81 Defendant claims Seneca Williams testimony is also unreliable. Williams testified he overheard defendant say to Maniac, "Keep on playing with me, I do you like I done Little Eddie." Defendant claims Williams testimony is unreliable because he could not recall when or at what time of year this conversation took place and he told Chicago police detectives

that he overheard this statement after he was arrested on federal drug charges. However, he testified that the deal he had worked out on his federal case was not contingent on his testimony in this case. Defendant is essentially asking us to make a credibility determination, which we cannot do. *Tabb*, 374 Ill. App. 3d at 692.

¶ 82 In sum, two eyewitnesses who knew the defendant for several years before the offense was committed, testified that they observed defendant shoot Little Eddie at close range. The medical examiner testified that Little Eddie was shot at close range. Coleman testified she observed the defendant with Little Eddie shortly before she heard gunshots. Williams testified he overheard defendant admit to killing Little Eddie.

¶ 83 When we consider the evidence to support a criminal conviction, 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. *Woods*, 214 Ill. 2d at 470.

¶ 84 After viewing the evidence in the light most favorable to the prosecution, we cannot say that the record does not support defendant's conviction beyond a reasonable doubt. *Id.*

¶ 85 B. Ineffective Assistance of Counsel

¶ 86 Defendant claims his trial counsel was ineffective when she failed to object to hearsay testimony from witness Erica Coleman and elicited hearsay testimony from her on cross

examination. Defendant claims Coleman's testimony established a motive for the shooting and corroborated Hatter's testimony that the victim robbed the brother of the defendant, which provided a motive for shooting Little Eddie. The State argues that Coleman's testimony was merely cumulative of Hatter's testimony.

¶ 87 To prevail on a claim of ineffective assistance of counsel, a defendant must show: (1) his attorney's actions constituted errors so serious as to fall below an objective standard of reasonableness, and (2) counsel's deficient performance prejudiced the defense because without those errors, there was a reasonable probability his trial would have resulted in a different outcome. *People v. Ward*, 371 Ill. App. 3d 382 (2007); *Strickland v. Washington*, 466 U.S. 668, 687-94 (1984). A "reasonable probability" is a probability sufficient to undermine confidence in the outcome of the proceedings. *Strickland*, 466 U. S. at 694.

¶ 88 Courts "must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Strickland*, 446 U.S. at 689; *People v. Edwards*, 195 Ill. 2d 142, 163 (2001). Mistakes in strategy or tactics alone do not normally amount to ineffective assistance of counsel nor does the fact that another attorney may have handled things differently. *Ward*, 371 Ill. App. 3d at 434 (citing *People v. Palmer*, 162 Ill. 2d 465, 476 (1994)). It is the defendant's burden to affirmatively prove prejudice. *Strickland*, 466 U.S. at

693.

¶ 89 A defense counsel's decision not to object to the admission of purported hearsay testimony involves a matter of trial strategy and, typically, will not support a claim of ineffective assistance of counsel. *People v. Theis*, 2011 IL App (2d) 091080, ¶40.

¶ 90 In her opening statement, defense counsel presented the theory that the police framed the defendant and that defendant and his brother were singled out.

> "I suppose my duty right now is to tell you what the State didn't tell you. And, true, we do not agree about certain events. The evidence will show you that at Cabrini Green at approximately 2002, this is when in fact that event happened. It happened in 2002. There was a motive. This is one of the reasons. And we'll call them the Parker brothers, who in fact were singled out."

¶ 91 On direct examination Coleman testified that she knew defendant had a brother, Mario, and that while she was in the parking lot with Little Eddie, Mario approached with a cast on his arm and accused Little Eddie of being responsible for robbing and shooting him. Counsel did not object during Coleman's testimony regarding her testimony about the victim robbing Mario Parker. On cross-examination, defense counsel elicited from Coleman that Mario came out of the building, "yelling and

screaming" accusations at Little Eddie.

¶ 92 In her closing remarks, defense counsel stated:

> "*** Cabrini Green at that particular time was like a little village. Everyone knew everyone else's business and everyone knew who, in fact, everyone else is. Why does that become important? Because that's what gave the cold case squad something to work on in 2007. Because that's when, in fact, this crime supposedly was solved.
>
> What did they know? As we promised in *** opening statements, we would show you that, in fact, there is a group, there was a group of police reports that was passed on and passed on and passed on.
>
> The interesting thing is that the reason that the cold case people picked this man is because his brother was robbed by Little Eddie. This is only the achievable motive that, in fact, was shown that they could bring to you."

¶ 93 Defense counsel was aware that the alleged robbery of Mario Parker by Little Eddie would come into evidence through Hatter. Defense counsel's strategy was to show that the State formulated its case against the defendant five years after the

murder. Counsel alleged the basis of the alleged police framing of her client was the allegation that Mario Parker, defendant's brother was allegedly robbed by the victim. Counsel further alleged the police identified defendant as the perpetrator based on accounts from unreliable witnesses that the victim robbed the defendant's brother. Defense counsel attempted to turn Hatter's damaging testimony about the robbery of defendant's brother by Little Eddie to defendant's advantage. Coleman's testimony concerning the robbery of Mario Parker by Little Eddie did corroborate Hatter's testimony that defendant believed Little Eddie robbed his brother. However, Coleman's testimony was also cumulative of Hatter's account and was used by counsel to form the basis of a police frame-up defense.

¶ 94 There is a strong presumption trial counsel's actions were a matter of trial strategy -– to show the alleged robbery of Mario Parker by Little Eddie was the reason her client was framed for the murder 5 years after it occurred. Mistakes in strategy or tactics alone do not normally amount to ineffective assistance of counsel nor does the fact that another attorney may have handled things differently. *People v. Ward*, 371 Ill. App. 3d 382, 434 (2007) (citing *People v. Palmer*, 162 Ill. 2d 465, 476 (1994)). Therefore, we cannot say defendant's trial counsel was ineffective. *Theis*, 2011 IL App (2d) 091080, ¶40.

¶ 95 Moreover, even if we were to find that defense counsel's performance was objectively unreasonable we cannot say

defendant could satisfy the second prong of *Strickland* because of the abundant evidence of defendant's guilt. Two eyewitnesses who knew defendant for several years before the murder occurred testified that they observed defendant aim a gun at Little Eddie's head and shoot him. A third witness, Williams, testified that he overheard a conversation where defendant later told Maniac, "I do you, like I done Little Eddie." The evidence against defendant was overwhelming, therefore, we cannot say there was a reasonable probability his trial would have resulted in a different outcome but for Coleman's testimony. *Strickland*, 466 U.S. at 687-94.

¶ 96 C. Closing Arguments

¶ 97 Defendant claims the State made improper remarks in closing when it argued: (1) that witness Broughton's action of lifting up her arm during her testimony supported its theory that she observed defendant raise the gun up, despite Broughton's repeated denials that she observed defendant raise his arm; and (2) that Broughton's and Hatter's testimonies were "exactly alike."

¶ 98 Whether statements made by a prosecutor at closing argument were so egregious that they warrant a new trial is a legal issue this court reviews *de novo*. *People v. Wheeler*, 226 Ill. 2d 92, 121 (2007). However, " '[t]he regulation of the substance and style of the closing argument is within the trial court's discretion, and the trial court's determination of the

propriety of the remarks will not be disturbed absent a clear abuse of discretion.' " *People v. Blue*, 189 Ill. 2d 99, 128 (2000) (quoting *People v. Byron*, 164 Ill. 2d 279, 295 (1995)). An abuse of discretion occurs only when the trial court's ruling is arbitrary, fanciful, or unreasonable or where no reasonable person would take the view adopted by the trial court. *People v. Santos*, 211 Ill. 2d 395, 401 (2004).

¶ 99 It is well established that the State is allowed a great deal of latitude in closing argument. *Id.* at 122. A State's closing will lead to reversal only if the prosecutor's remarks created "substantial prejudice." *Id.* at 123. Substantial prejudice occurs "if the improper remarks constituted a material factor in a defendant's conviction." *Id.* If the jury could have reached a contrary verdict had the improper remarks not been made, or the reviewing court cannot say that the prosecutor's improper remarks did not contribute to the defendant's conviction, a new trial should be granted. *Id.*

¶ 100 When reviewing claims of prosecutorial misconduct in closing argument, a reviewing court will consider the entire closing arguments of both the prosecutor and the defense attorney, in order to place the remarks in proper context. *Id.* at 122.

¶ 101 The act of sustaining an objection and properly admonishing the jury is usually viewed as sufficient to cure any prejudice. *People v. Moore*, 171 Ill. 2d 74, 105-06 (1996).

¶ 102 1. Prosecutor's Argument That Broughton Lifted Up Her Arm

¶ 103 Defendant claims the State's rebuttal argument was improper because it was not based on the record. At trial, Broughton testified she saw defendant with a gun and then saw him shoot Little Eddie. During this testimony Broughton raised her arm up. The State attempted to elicit testimony from Broughton that she saw defendant raise his arm with the gun to Little Eddie’s head just before he was shot. However Broughton testified she did not see defendant raise his arm.

¶ 104 Broughton testified that she told the grand jury that she observed defendant aim the gun at Little Eddie's mouth and shoot him. Broughton admitted at trial that she told ASA Lanier that she saw defendant raise his arm and shoot the victim. Broughton also testified she did not want to come to court and testify in this case.

¶ 105 In its rebuttal argument, the State said:

> "[Broughton] saw him raise that gun up. And she slipped a little because when she was saying I never saw it, you saw actually she put her arm up.
>
> ***
>
> When she was talking to the police in 2004, and by the way, the first time she said this was not in 2007, as I think counsel stated earlier, she talked to them in 2004.

> And she told them she saw this defendant in the stairwell with a gun. She saw him raise the gun up, point it at Eddie Thomas and pull the trigger, a flash of light, Eddie fell back and she took off running."

¶ 106 Defense counsel objected to these remarks. The trial court overruled the objection. However, the trial court instructed the jury that closing remarks are not evidence and any statements or arguments made at closing that are not based on the evidence should be disregarded.

¶ 107 As an initial matter, we address the State's contention that the defendant has forfeited this claim by failing to include it in his posttrial motion. To preserve alleged improper statements during closing argument for review, a defendant must object to the offending statements both at trial and in a written posttrial motion. *People v. Wheeler*, 226 Ill. 2d 92, 122 (citing *People v. Enoch*, 122 Ill. 2d 176, 186 (1988)). We find that defendant has forfeited this claim because although defense counsel objected to the statements at trial this issue was not specifically addressed in a motion for a new trial. Therefore, we will examine this claim under plain error review.

¶ 108 Under the plain error doctrine, a reviewing court may consider unpreserved error when: (1) a clear or obvious error occurs, and the evidence is so closely balanced that the error alone threatens to tip the scales of justice against the

defendant, regardless of the seriousness of the error; or (2) a clear or obvious error occurs and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence. *People v. Walker*, 392 Ill. App. 3d 277, 286 (2009). In order to find plain error, this court must first find that the trial court committed some error. *People v. Rodriguez*, 387 Ill. App. 3d 812, 821 (2008).

¶ 109 Broughton testified she did not see defendant raise his arm before shooting Little Eddie. However, she testified she told the grand jury she saw defendant aim the gun and shoot Little Eddie in the head. Broughton testified she previously told ASA Lanier she saw defendant raise his arm and shoot Little Eddie.

¶ 110 Arguments and statements based upon the facts in evidence, or upon reasonable inferences drawn therefrom, are within the scope of proper closing argument. *People v. Terry*, 99 Ill. 2d 508, 517 (1984). Broughton stated she did not want to testify in this case. The State's argument that Broughton's arm motion was in mimic of what she saw defendant doing just before he shot Little Eddie is a reasonable inference based upon Broughton's stated reluctance to testify coupled with her prior statements on the issue. Accordingly, the evidence supports the argument made by the State. Therefore, the trial court did not err when it overruled defendant's objection. Since there is no

error, there is no plain error.

¶ 111 Assuming, *arguendo,* that an error occurred, we cannot say the error is so serious that it affected the fairness of the defendant’s trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence. *Walker*, 392 Ill. App. 3d at 286.

¶ 112 Both Broughton and Hatter testified that they knew the defendant for several years before the murder and they both observed the defendant shoot the victim in the head at close range. Coleman testified she observed the defendant with the victim, later heard gunshots and observed the defendant flee the building. The medical examiner testified that the victim was shot at close range. Williams testified he heard defendant tell Maniac that he was going to "do him like he done Little Eddie." Based on the overwhelming evidence of defendant's guilt, we cannot say that in the absence of the State's mention of Broughton's arm movement in closing, that a contrary verdict would have been reached. *Wheeler*, 226 Ill. 2d at 123.

¶ 113 2. State's Claim Witness Testimony Was 'Exactly Alike'

¶ 114 In rebuttal, the State claimed that Broughton's and Hatter's testimony was "exactly alike." Defense counsel objected to the statement. The trial court overruled the objection. This claim was preserved with a timely objection and raised in the posttrial motion. Defendant alleges the State improperly bolstered the testimony of its own witnesses with this argument.

¶ 115 The testimony from these witnesses was substantially similar because they both observed the defendant shoot the victim in the head. We cannot say the trial court abused its discretion here because even though the aforementioned testimony was not exactly the same it was substantially similar because they both saw defendant shoot Little Eddie in the head on a stairway.

¶ 116 In addition, we cannot say the State's characterization of Broughton's and Hatter's testimony, as "exactly alike," prejudiced the defendant or that he did not receive a fair trial because of the statement. *Wheeler*, 226 Ill. 2d at 123. As we stated previously, the trial court instructed the jury that closing argument is not evidence. *Moore*, 171 Ill. 2d at 105-06. The jury also heard the testimony from these witnesses and was free to formulate their own opinions as to the truth of the matter. Most importantly, the evidence of guilt is overwhelming because two people observed the defendant shoot and kill the victim. There is no doubt that absent these remarks, the verdict would have been the same. Therefore, the defendant is not entitled to a new trial.

¶ 117 CONCLUSION

¶ 118 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County. Affirmed.