2012 IL App (1st) 100706-U

No. 1-10-0706

SIXTH DIVISION
March 2, 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 3643
	)	
FREDERICK SMITH,	)	Honorable
	)	Thomas V. Gainer,
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*: (1) The evidence was sufficient to support defendant's conviction; (2) statements by the prosecutor during closing argument were not improper; (3) the trial court satisfied its obligation to question prospective jurors regarding the presumption of innocence and other

fundamental principles of law; and (4) defendant's mittimus must be corrected to reflect a conviction of one count of murder.

¶ 2 Following a jury trial, defendant Frederick Smith was convicted of two counts of first degree murder and sentenced to consecutive terms of 30 and 25 years in prison. On appeal, he contends: (1) the State failed to prove his guilt beyond a reasonable doubt because its case relied on the testimony of three witnesses who lacked credibility and gave factually irreconcilable accounts of the shooting; (2) defendant was denied a fair trial because the prosecutor made comments not based on the record and opined about witness credibility; (3) the trial court committed reversible error when it failed to ensure that all the prospective jurors understood certain fundamental principles of law concerning the presumption of innocence and burden of proof; and (4) the trial court erroneously sentenced him to two counts of first degree murder where there was only one victim.

¶ 3 For the reasons that follow, we affirm defendant's conviction and correct the mittimus to reflect a conviction of one count of first degree murder and a sentence of 55 years in prison.

¶ 4 I. BACKGROUND

¶ 5 The State charged defendant with multiple counts of first degree murder and unlawful use of a weapon by a felon in connection with the May 7, 2006 shooting and subsequent death of Lamar Goodwin.

¶ 6 When jury selection began, the trial judge divided the venire into three panels and stressed to the venire that it was "absolutely essential *** that each of you understand and embrace these fundamental principles of law." Then, the judge explained the presumption of

innocence, the State's burden of proof, and defendant's right not to testify or present evidence on his behalf. Before individual questioning began, the judge addressed each of the three panels, restated the first *Zehr* principle, and asked if anyone disagreed with that particular principle and, if so, to raise a hand. No one raised a hand. The judge repeated this same mode of inquiry for the other three *Zehr* principles, and, again, no one ever raised a hand. Thereafter, the judge asked each prospective juror individually about defendant's right not to testify. Some were asked if they would "abide by" that principle, and the others were asked if they would "hold it against" defendant if he chose not to testify.

¶ 7 At trial, Kathy Goodwin, the victim's aunt, testified that she lived in a public housing building on West 13th Street in Chicago and on May 7, 2006, many relatives were visiting her third-floor apartment. Those relatives included the victim, Tanisha Goodwin, and Lenwood Thomas. Some of the visiting relatives went outside the building. About 7 p.m., Kathy heard a gunshot, and then a friend ran up to her apartment and told her the victim had just been shot. Everyone ran outside the main entrance, and Kathy saw the victim coming toward the building holding his side. His leg was swollen. His sister Tanisha and brother Oscar Goodwin were with him. His cousin Lenwood and a lot of other people were also around. The victim was able to speak, and people were talking to him. Those people included Annyce Brown, who was the building security guard and a Chicago police officer, and the paramedics. Eventually the ambulance took the victim to the hospital. Kathy visited him at the hospital over the next three months but was never able to communicate with him. He died in the hospital on August 18, 2006.

¶ 8 Tanisha Goodwin testified that, at the time of the offense, she was standing by herself outside the main entrance of the building and off to the side while she waited for a friend. A crowd of other people were standing in the area because it was a nice day. The victim, who was Tanisha's older brother, was standing about 20 feet away from her and in front of the building. He was talking with defendant, who wore a white t-shirt, beige pants and black shoes. Tanisha's cousin Lenwood was also in the area, and Natasha Jackson was standing in the area in front of the building. Tanisha had known Natasha for some time because Tanisha's oldest brother Oscar had children with Natasha's sister. At the time, those children were living with Tanisha's mother because Natasha's sister was incarcerated.

¶ 9 Tanisha heard defendant tell the victim to give defendant "his shit," and the victim responded that he did not have it. Defendant walked into the building lobby while the victim leaned against the railing of the wheelchair ramp. Thirty seconds later, defendant exited the building, walked up to the victim and pulled out a silver gun. Defendant again told the victim to give defendant his "shit," and the victim denied having it. Defendant shot the victim, who screamed, "Ah, he shot me." Defendant ran toward 13th street and tried to tuck the gun inside his shirt.

¶ 10 Tanisha ran to the victim, and security guard Brown came out of the building to assist the victim. No other family members were around yet. The victim said to Tanisha,"Lil sister, I swear I ain't take his shit. I don't know why he shot me." To ensure that she correctly recognized the shooter, Tanisha asked the victim who shot him, and he named defendant. Tanisha had known the defendant for about ten years. Tanisha did not know if Brown was right there while

Tanisha was talking to the victim. Lenwood was around but Tanisha did not recall him being right there. Tanisha's brother Oscar arrived at the scene followed by their aunt Kathy. Tanisha stood with the victim and became nauseous. Police officers arrived about ten minutes after the shooting, and the paramedics arrived about 15 minutes after the shooting. Tanisha did not talk to Brown. Although Brown was at the scene while the victim was talking and hollering about defendant, Tanisha did not know whether Brown heard the victim. Tanisha talked to the police officers but did not tell them that she saw defendant shoot the victim.

¶ 11 Tanisha walked to the hospital. Oscar was also at the hospital and told Tanisha not to tell the police what she saw because Oscar "was gonna take matters into his hands." Furthermore, their family initially thought that the victim would recover from the shooting. Consequently, when Tanisha talked with police detectives at the hospital, she did not tell them what she saw. Instead, she told the detectives that some people told her that defendant shot the victim and Tanisha would contact the detectives later and give them the names of those people.

¶ 12 However, as a result of a conversation her grandmother, mother and aunt Kathy had with Oscar, Oscar agreed to let the police handle the matter. Tanisha did not remember whether Oscar told her that he went to the police on May 18, 2006. On June 8, 2006, Tanisha went to the police station with Oscar, Lenwood, and Natasha. Tanisha spoke with Detective Matias, and told him what she saw. On June 10, 2006, police officers took Oscar, Tanisha, and Natasha to the police station. Lenwood also went to the police station. They spoke with an assistant State's attorney (ASA) separately and signed written statements.

¶ 13 Lenwood Thomas, the victim's cousin, testified that he was currently incarcerated for robbery and criminal damage to property and had two prior convictions for delivery of a controlled substance. Before the shooting, he, Tanisha, and the victim were standing outside the building and talking. Lenwood knew defendant and had socialized with him briefly. Defendant called the victim over, so the victim walked away about 35 feet to talk to defendant. Lenwood continued to talk to Tanisha, but later he heard the victim raise his voice and tell defendant, "I don't know what you talking about, I ain't on that." The victim repeated that statement loudly, so Lenwood looked over and saw defendant quickly pull a silver gun from his waist area and shoot the victim. The victim fell to the ground, and defendant fled. Tanisha screamed, and Lenwood ran back into the building. He explained that he was on parole at the time, "couldn't chance really being there," and was gone when the police arrived.

¶ 14 Lenwood testified that he and his relatives later concluded that they should talk to the police. Consequently, on June 8, 2006, Oscar's girlfriend drove Oscar, Tanisha and Lenwood to the police station. Lenwood did not know Natasha Jackson, and she was not with them. When Lenwood spoke to detectives, he told them what he saw. He also identified defendant from a photo array as the offender. On June 10, 2006, Oscar's girlfriend, Oscar and Tanisha picked Lenwood up and went to the police station again. Natasha was not with them.

¶ 15 Lenwood acknowledged that he spoke with defense counsel and an investigator about this case in September 2009. Lenwood, however, denied telling them that he ran to the aid of the victim after the shooting but the victim was unconscious and unable to speak.

¶ 16 Oscar Goodwin testified that in 1997 he had three convictions for possession of drugs. Shortly before the shooting, he was walking toward his aunt's building to meet the victim for drinks. He was at the side of the building when he heard a gunshot. He paused to avoid any crossfire and then went to the front of the building. He saw defendant run from the scene with his hand fumbling under his white t-shirt and holding something. People scattered from the scene, and Oscar heard a lot of hollering. At the front of the building, he saw Tanisha holding and talking to the victim, who was hollering that defendant had shot him. Oscar asked what happened and the victim said that defendant shot him and the victim could hardly believe it. The victim said that defendant accused him of having his "shit" and shot him with the silver .357 that was kept at the building. Oscar had known defendant for over 10 years. Moreover, the victim and defendant dated sisters, so they were together frequently. Oscar saw Lenwood at the scene but did not remember seeing security guard Brown there.

¶ 17 Oscar did not stay at the scene to talk to the police. However, before he left, he told Tanisha not to say anything to the police because he was "gonna take care of it [himself]." He was upset and planned "on taking situations into [his] own hands" to get revenge. Oscar walked to the hospital and talked to the victim before he went in for surgery. The victim was never able to speak after the surgery and died in August while still in the hospital. On May 18, 2006, Oscar went to the police station by himself. He explained at trial that his family had convinced him to let the police handle the matter, noting that he had children to live for and his mother could not handle losing another son. On May 18, 2006, Oscar told the police that he saw defendant running with the silver .357 in his hand; however, at trial Oscar acknowledged that he never

actually saw defendant holding the gun but had told the police that fact based on the victim's statement to Oscar at the scene. On June 8, 2006, Oscar went to the police station with Tanisha and Lenwood and told detectives what he saw. Oscar saw Natasha at the station but did not know how she got there. When Oscar, Tanisha and Lenwood went to the police station on June 10, 2006, Oscar told an ASA what he saw. Natasha was also there, but Oscar did not bring her there. Oscar denied offering Natasha money and custody of her sister's children to implicate defendant.

¶ 18 Chicago police officer Annyce Brown testified that at the time of the shooting she was working part time as a security guard at the building in question. She also worked full time as a patrol officer. At 7 p.m., she was in the enclosed, glass security office, which was in the lobby of the building and within a couple of feet of the main entrance. From there, she would be able to see people coming into the building from the front door. Nobody came in the building within five minutes before the shooting. When she heard the shot, she ran about 15 feet to the front door. Outside the building, she saw the victim bent over the railing of the handicap entrance ramp and holding his stomach. She did not see anybody else with the victim. She ran to him and told him not to talk, but he said, "Ma, I'm shot," and said that it hurt. Brown explained that all the residents called her by her nickname, Ma. Brown saw a black male wearing a white t-shirt run from the scene, but she only saw his back. Brown stayed with the victim and called an ambulance on her cell phone. Over 20 people approached them and talked to the victim, but Brown tried to keep the crowd away. The victim's family came near him, and he talked to them. Brown then moved away from the victim but stayed in the area and tried to keep the crowd away.

Brown never asked the victim who shot him. She did not hear him say anything about the incident other than that he was shot and it hurt. Later, Brown viewed a lineup which included defendant but Brown was not able to identify anyone as the offender.

¶ 19 Brian Parr, a forensic scientist, testified as an expert in firearms identification. He explained that fired projectiles have specific class characteristics–like caliber, the width and number of lands and grooves, and the direction of twist of the rifling–that allow them to be categorized into different groups. Parr examined the fired bullet fragment in this case and opined that it was a .38, .357 caliber. That type of bullet typically comes from a .38 Special or .357 Magnum cartridge. Parr, however, did not know the type of firearm from which the bullet was fired.

¶ 20 Chicago police officer Stephen Anderson testified that on May 18, 2006, Oscar Goodwin came to the police station to relay information about the shooting. Officer Anderson testified that "[Oscar] said he had observed the subject of–several subjects fleeing from the building holding a firearm." Oscar gave Officer Anderson specific information about one individual, then viewed a photo array and identified the same individual as the subject he had witnessed.

¶ 21 Chicago Police Detective Chris Matias was assigned to investigate the shooting and arrived at the scene about 7:20 p.m. He spoke with security guard Brown, who said she asked the victim who shot him. Then, Matias went to the hospital and spoke with Tanisha. He learned the next day that the victim was in a coma. On May 18, 2006, Detective Matias was informed that Oscar went to the police station and gave some information. When Matias returned from his scheduled vacation, he contacted Oscar on June 8, 2006. Oscar came to the police station for an

interview with Tanisha and Lenwood Thomas. During Tanisha's interview, she told Matias that Natasha had also witnessed the shooting, so Matias made arrangements to interview Natasha later that same day. Lenwood identified defendant as the shooter from a photo array. On June 10, 2006, Matias asked Oscar, Tanisha, and Lenwood to return to the police station for interviews with an ASA. After defendant was arrested, a line-up procedure was conducted with security guard Brown, but she was unable to make an identification.

¶ 22 Dr. Joseph Lawrence Cogan testified as an expert in forensic pathology and performed the autopsy on the victim in August 2006. There was a gunshot entrance wound over the victim's left hip, and the bullet struck the pelvis, entered the abdomen, hit the right side of the pelvis and came to rest behind the victim's right femur bone. According to the medical records, the victim was conscious when he arrived at the hospital, but he remained in a medically-induced coma from his surgery on the date of the shooting and until his death. The cause of death was a gunshot wound to the hip.

¶ 23 The defense called Deborah Talbert, an investigator with the public defender's office. In September 2009, she and defense counsel interviewed Lenwood Thomas about the shooting while he was in custody and restrained in the lock-up area of the court. Lenwood said that, after the shooting, he went to aid the victim, who was lying on the ground and unconscious. Talbert acknowledged that the date on her report concerning the interview was not accurate.

¶ 24 Natasha Jackson testified that she had known defendant since she was eight years old and had known the victim and his family since 1998. At the time of the shooting, Natasha and her friend were riding their bicycles in the area. Natasha did not see defendant in the area. When she

saw him earlier that day, he was wearing jeans. Natasha heard the gunshot and froze. She was about 20 feet away from the victim and saw him fall. Many people who were outside the building ran, and Natasha took off on her bicycle. She rejoined her friend, and they rode their bicycles to the back of the building–where Natasha had seen Tanisha three minutes earlier–to tell Tanisha that the victim had been shot. Then, Tanisha ran to the front of the building, and Natasha rode away. She was under the influence of drugs when the shooting occurred and did not tell the police what she saw that day.

¶ 25 Natasha testified that people in her neighborhood said the police were looking for her and showing her photograph. Tanisha confirmed that she had given the police Natasha's name and asked Natasha to talk to Oscar. About June 6, 2006, Tanisha took Natasha to meet Oscar in an alley. Oscar asked Natasha to tell the police that she saw defendant shoot the victim with a silver revolver. Natasha initially refused, but agreed after Oscar offered to pay her $1,000 and return his two children with Natasha's sister to Natasha's mother. On June 8, 2006, Oscar called the police, who came and took Oscar, Tanisha and Natasha to the police station. Lenwood was not there. Natasha told the detectives what Oscar had asked her to report.

¶ 26 Natasha testified that on June 10, 2006, Tanisha picked her up from a party, and they met Oscar, who took them to the police station. Oscar, Tanisha, Lenwood, the victim's girlfriend, and Natasha and her daughter were all present at the police station. While they waited to talk with the police, they sat in the hallway and put together the story they would tell the police. At that time, Oscar told Natasha to say that: defendant wore a white t-shirt and gray jogging pants; he "cuff[ed]" the gun up under his shirt after the shooting; Lenwood was in the area at the time of

the shooting; after the shooting the victim screamed that he did not have defendant's money; and Natasha did not want to stay in the area after the shooting because she was afraid of defendant and his friends. An ASA wrote Natasha's statement, and Natasha, who was under the influence of drugs at the time, signed it.

¶ 27 According to that written statement, Natasha was riding her bicycle and initially saw defendant, the victim, and two other people huddled together in front of the building but she could not hear what they were talking about. Natasha rode her bike through the complex and talked to a woman for about 5 or 10 minutes. When Natasha rode back to the front of the building, she saw defendant and the victim standing together next to the wheelchair ramp. Natasha parked her bike at the end of the fence. The victim had one foot on the wheelchair railing, and defendant was standing at the victim's left side. Natasha heard one shot and saw defendant holding the gun. Then, defendant "cuff[ed] up" or hid the gun under his shirt and fled. The victim started screaming that he did not have defendant's money. Tanisha ran up to the victim, and Lenwood was also there. After the shooting, Natasha rode around and then went home. She did not want to be in the area and talk to the police because she was afraid of defendant and his friends. She decided to talk to the police because she knew the victim, she spoke with his brother, and she felt bad because the victim was brain dead.

¶ 28 Natasha testified that she was subpoenaed to appear in front of the grand jury in January 2007. The first time she went to the courthouse, she was told that she could leave. When Natasha returned a second time, she was accompanied by her mother. Natasha refused to go in front of the grand jury and told the ASA that her written statement was lie. The ASA sent her

home. Natasha got defense counsel's business card from defendant's mother. Natasha, however, was unable to reach defense counsel by telephone to tell her that Natasha's statement implicating defendant was a lie. Natasha had contact with defendant's friends and family because his friends were her friends.

¶ 29 Natasha testified that, in October 2007, she was walking down the street and one of defendant's friends, whose name Natasha did not know, drove up in a car and gave her a blank affidavit form. He said he had been looking for her because he heard that she had changed her story. He said she could, if she chose, write that recantation down and give it to defendant's lawyer. The notary public's October 4, 2007 signature was already on the form. Natasha took the form home and wrote on it that her May 2006 statement was false, she did not witness the incident, and the police pressured and harassed her to say that she witnessed the crime. Her affidavit did not mention Oscar or his bribe. Natasha did not sign the affidavit before a notary. She gave the affidavit back to defendant's friend when she saw him on her block the next day or a few days later. She never saw him again.

¶ 30 At trial, Natasha acknowledged that the police did not force her to give her written statement. She also testified that although she did see four males huddled together in front of the building and facing the victim, she did not see their faces and defendant was not among them. She also acknowledged that many of the facts in her written statement to the ASA, like where Natasha rode her bicycle, who she stopped and talked to, and how the victim was standing on the wheelchair ramp with one leg up on the railing, were true. Moreover, after the shooting, she heard the victim scream, "I ain't got your money."

¶ 31 Officer Elizabeth Montoya testified that when she arrived at the scene of the shooting, it was chaotic. More than 50 people surrounded the victim, who was on the ground. She asked the people to clear the area so the ambulance could make its way in, tried to control the scene, and then tried to talk to the victim. She asked the victim what happened. He said that he heard a gunshot and realized he had been shot but did not see anybody. Officer Montoya did not hear the victim say or yell anything else.

¶ 32 Paramedic Fred Costello was at the scene after the shooting, but had no recollection of responding to that call. Costello had signed a report that was written by his retired partner and indicated that the victim stated that he heard only one shot.

¶ 33 In the State's rebuttal case, Detective Matias testified that the police were not looking for Natasha until June 8, 2006, after Tanisha had revealed during her interview that Natasha was a potential witness. Furthermore, Matias did not believe that Natasha was under the influence of drugs or alcohol when they spoke on June 8, 2006. Moreover, Natasha arrived at the police station two hours after Oscar, Tanisha and Lenwood.

¶ 34 ASA Maryanna Planey testified that when she took Natasha's statement on June 10, 2006, Natasha showed no signs of being high or intoxicated.

¶ 35 ASA Maria Augustus testified that on January 25, 2007, her receptionist informed her that Natasha came in with the grand jury subpoena, dropped it off, and left. Augustus then contacted Natasha and told her she had to come back to the grand jury. On January 29, 2007, Natasha came to Augustus's office alone. When Augustus said she wanted to talk about the shooting, Natasha crossed her arms, looked away and did not respond. Augustus terminated the

interview and told Natasha she could go home. Because Natasha was not cooperative, she was not called before the grand jury.

¶ 36 Defendant did not testify.

¶ 37 The jury found defendant guilty of first degree murder and also found the additional fact that defendant personally discharged a firearm that proximately caused death. He was sentenced to consecutive terms of 30 and 25 years in prison. Defendant appealed.

¶ 38 II. ANALYSIS

¶ 39 On appeal, defendant contends: (1) his conviction must be reversed because the State's case relied upon the testimony of Tanisha, Lenwood and Oscar, and their accounts of the shooting were factually irreconcilable and lacked credibility; (2) defendant was denied a fair trial because the prosecutor made comments during closing argument that were not based on the record and opined about witness credibility; (3) the trial court failed to ensure that the jurors understood and accepted fundamental principles of law; and (4) the trial court erroneously sentenced defendant on two counts of first degree murder.

¶ 40 A. Sufficiency of the Evidence

¶ 41 Defendant argues the State's case rested entirely upon the biased, impeached, inconsistent and contradictory testimony of Tanisha and Oscar Goodwin and Lenwood Thomas and no rational trier of fact could deem their testimony satisfactory for purposes of conviction. Moreover, Natasha Jackson had disavowed her prior statement to the police about the shooting, and no physical evidence linked defendant to the crime.

¶ 42 Criminal convictions are not to be overturned on review unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). The test to be employed on review 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. *Id.* The jury is charged with the responsibility of weighing the credibility of witnesses and resolving any conflicts and inconsistencies in their testimony, and the jury's determination of a defendant's guilt or innocence is entitled to great deference. *People v. Schott*, 145 Ill. 2d 188, 206 (1991); *People v. Parker*, 234 Ill. App. 3d 273, 274 (1992). After reviewing the evidence in the light most favorable to the State, we find that a rational trier of fact could have found defendant guilty beyond a reasonable doubt.

¶ 43 Defendant claims that the testimony of Tanisha, Oscar, and Lenwood was unbelievable and tainted by both their love for a deceased family member and their desire for revenge against the person they thought or heard had shot the victim. Defendant argues that discrepancies among the testimony of the State's witnesses raised a reasonable doubt concerning whether Tanisha and Lenwood witnessed the shooting. For example, prior to the shooting, Lenwood said that he stood next to Tanisha and talked with her, but Tanisha said that she was standing alone and Lenwood was in the area. Concerning the argument between defendant and the victim, Lenwood heard the victim say, "I don't know what you talking about, I ain't on that," whereas Tanisha heard him say, "I ain't got your shit." Tanisha claimed that defendant went inside the building for 30 seconds before he shot the victim, but Lenwood never mentioned that and Brown, who was on duty in the

glass security office that was 15 feet from the front door, did not see anyone enter or exit the building five minutes before the shooting.

¶ 44 Although Tanisha said she was near the front of the building and ran to the victim after the shooting, Brown said she sprinted out the front door after she heard the gunshot and saw only the victim leaning on the railing. In contrast to Tanisha and Oscar's testimony that the victim was hollering, yelling and screaming that defendant shot him, Brown testified that the victim said only that he was shot and it hurt. Moreover, when Officer Montoya asked the victim what happened, he said he heard a gunshot and realized he had been shot, but did not see anybody. The paramedic also testified that a report concerning the incident indicated that the victim heard a gunshot. Whereas Lenwood testified that he left the scene after the gunshot and before the police arrived, the defense investigator claimed Lenwood told her that he rushed to the victim, who was unconscious. Some witnesses stated that the victim fell to the ground, whereas other witnesses said he was standing. In addition, according to Tanisha's initial statement to the police at the hospital, she said that she merely had heard that defendant was the shooter.

¶ 45 Defendant also argues that Natasha contradicted Tanisha's alleged eyewitness testimony. Specifically, Natasha said neither defendant nor Tanisha were near the front entrance of the building at the time of shooting. According to Natasha, defendant was not at the scene at all, and Tanisha was at the back of the building and did not know the victim was shot until Natasha rode her bike to the back of the building and told her. Furthermore, defendant asserts that Natasha satisfactorily explained why she falsely implicated defendant in her prior written statement and then recanted that statement.

¶ 46 The jury was faced with some conflicting testimony among the various witnesses, and the record indicates that the jury, during its deliberations, requested and received Natasha's affidavit and transcripts of the testimony of Tanisha, Lenwood, and Oscar. Viewing the evidence in the light most favorable to the State, we cannot conclude that the State's evidence was so unreasonable, improbable or unsatisfactory that it raises a reasonable doubt of defendant's guilt. All the witnesses testified consistently that many people were in the area around the front of the building because it was a nice day but they scattered when the gunshot was fired and the scene was chaotic. Unlike Tanisha, Lenwood did not pay attention to the victim and defendant until they argued loudly, and then Lenwood left the scene after the gunshot because he was on parole. Contrary to defendant's argument on appeal, a careful reading of the transcript reveals that Tanisha never actually testified that she reached the victim before Brown. The jury could have concluded that Brown and Tanisha reached the victim almost simultaneously, and then the victim's family gathered around him 5 to 10 minutes later. Brown said she told the victim not to talk and never asked him who shot him. When she used her cell phone to call for help, she could have been distracted while the victim spoke to Tanisha. Moreover, Tanisha was distressed and nauseous and was not paying attention to the whereabouts of Brown or Lenwood.

¶ 47 Consistent with Tanisha's testimony, Brown said that the victim's family surrounded him and he talked to them while Brown tried to keep the rest of the crowd away. Similarly, Officer Montoya acknowledged that when she arrived at the scene, she was not investigating the shooting but, rather, was trying to clear people from the area, control the scene and protect the victim until the ambulance arrived. The paramedic did not remember the case and simply

verified that he signed a report that was written by someone else.

¶ 48 The variances among the witnesses' accounts of the shooting and its aftermath does not destroy the credibility of Tanisha, Oscar, and Lenwood but, rather, indicates that they saw the event from different vantage points with varying degrees of attention and under a great amount of stress. Furthermore, Tanisha, Oscar, and Lenwood testified consistently that they did not cooperate with the police initially because they thought the victim would recover and they agreed with Oscar to impose their own form of justice on defendant. However, the family matriarchs intervened and convinced Oscar to relent and go to the police.

¶ 49 In addition, Natasha's assertion that Oscar bribed her to incriminate defendant and told everyone what to say to the police was severely impeached at trial. Tanisha told Detective Matias her eyewitness account of the shooting on June 8, 2006, and Matias did not know Natasha was a potential witness until that conversation. Tanisha's account of the shooting and Natasha's June 10, 2006 written statement were factually consistent. Even at the trial, Natasha acknowledged that many of the facts in her June 10, 2006 written statement were true. This cast serious doubt on Natasha's claim that Oscar told her what to say on June 10 while they waited in the hallway for the arrival of the ASA and attempted to get their story straight. Oscar did not witness the shooting, and if–as Natasha claims–Lenwood and Tanisha did not witness the shooting, it would have been remarkable for Oscar to give Natasha so many accurate facts to include in her statement to the ASA.

¶ 50 Finally, Natasha's recantation of her June 10 written statement lacked credibility. Specifically, she claimed that she was unable to contact defense counsel to timely recant her

written statement but some mysterious friend of defendant, who had heard that she had recanted, appeared to both offer her a blank but already notarized affidavit form and retrieve that document after Natasha wrote her statement. Notably, that October 2007 affidavit never mentioned Oscar or his alleged bribe but, rather, blamed the police for harassing Natasha into falsely implicating defendant.

¶ 51 The record indicates that the jury was well aware of the conflicts in the testimony and resolved them before concluding beyond a reasonable doubt that defendant was guilty of murder. The trier of fact is free to accept or reject as much or as little of a witness's testimony as it pleases. *People v. Logan*, 352 Ill. App. 3d 73, 81 (2004). The conflicts in the testimony of Tanisha, Lenwood, and Oscar were not so remarkably different, numerous, confusing and contradictory as to render their accounts beyond belief and raise a reasonable doubt of defendant's guilt. *People v. McCarter*, 2011 IL App (1st) 092864 ¶ 28. Taking all the evidence in the light most favorable to the prosecution, we cannot say that no rational trier of fact could have found the essential portions of Tanisha's, Lenwood's, and Oscar's testimony credible and consistent with the other incriminating testimony and concluded that the essential elements of murder were proved beyond a reasonable doubt.

¶ 52 B. Closing Argument

¶ 53 Next, defendant contends that he was denied his right to a fair trial based on the prosecutor's erroneous comments during closing argument. Defendant concedes that he has forfeited this issue by failing to both object at trial and include the issue in his posttrial motion. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Defendant urges us to consider this issue as

plain error.

¶ 54 The plain error doctrine allows errors not previously challenged to be considered on appeal if either: (1) the evidence is closely balanced and the jury's guilty verdict may have resulted from the error; or (2) the error was so fundamental and of such magnitude that the defendant was denied a fair trial and the error must be remedied to preserve the integrity of the judicial process. *People v. Hudson*, 228 Ill. 2d 181, 191 (2008); *People v. Herron*, 215 Ill. 2d 167, 177 (2005). The first step of plain error analysis is deciding whether any error has occurred. *People v. Thompson*, 238 Ill. 2d 598, 613 (2010); *People v. Durr*, 215 Ill. 2d 283, 299 (2005).

¶ 55 A prosecutor is allowed wide latitude during closing arguments. *People v. Nieves,* 193 Ill. 2d 513, 532-33 (2000). A prosecutor may comment on the evidence presented at trial, as well as any fair, reasonable inferences therefrom, even if such inferences reflect negatively on the defendant. *People v. Nicholas*, 218 Ill. 2d 104, 121 (2005). Remarks made during closing arguments must be examined in the context of those made by both the defense and the prosecution, and must always be based upon the evidence presented or reasonable inferences drawn therefrom. *People v. Coleman*, 201 Ill. App. 3d 803, 807 (1990). The character and scope of closing argument are left largely to the discretion of the trial court, and we will not disturb its decision absent an abuse of discretion. *People v. Aleman*, 313 Ill. App. 3d 51, 66-67 (2000). We will only reverse a conviction on the ground of improper argument if the challenged comments constituted a material factor in the conviction, without which the jury might have reached a different verdict. *Id.*

¶ 56 First, defendant claims the prosecutor misstated the evidence when commenting on the victim's condition after he had been shot. Specifically, the prosecutor said the victim was taken to the hospital and stayed there for three months, in a coma, which he never came out of. Defendant complains that the State failed to present evidence that the victim remained in a comatose state until his death three months after the shooting. Contrary to defendant's argument, however, the record establishes a clear evidentiary basis for the prosecutor's comments. Specifically, the victim's aunt Kathy and brother Oscar testified that the victim was unable to talk or communicate after he was taken in to surgery on May 7, 2006, and until he died in August 18, 2006. Detective Matias explained that he could not interview the victim because he was in a coma. Furthermore, the medical examiner testified that the victim was in a medically induced coma that rendered him unconscious. Even Natasha stated that she felt sorry for the victim when she heard that he was brain dead.

¶ 57 Second, defendant argues the prosecutor improperly speculated in rebuttal that security guard Brown was not paying attention when defendant entered and exited the building just before the shooting. According to the record, defense counsel argued that Tanisha's testimony–that defendant went inside the building for 30 seconds and returned and shot the victim with a gun–was not credible because Brown, who was responsible for and trained to watch who came in the front door and who left, testified that she did not see anyone enter the building 5 minutes prior to the shooting. In response, the prosecutor stated that Brown's security guard job was her part-time work in addition to her full-time job as a Chicago police officer and maybe she was not paying attention because it was unlikely that, at about 7 pm, not one person passed by her desk

for 5 minutes on such a nice day in a large building that was 14 stories tall and had three wings.

¶ 58 The prosecutor's comment was not improper. A prosecutor may comment on the credibility of the witnesses, particularly when the testimony is conflicting, and comment on the evidence and draw legitimate inferences therefrom. *People v. Johnson*, 149 Ill. 2d 118, 145 (1992); *People v. Williams*, 289 Ill. App. 3d 24, 35 (1997); *People v. Williams*, 249 Ill. App. 3d 102, 103-04 (1993); *People v. Billups*, 318 Ill. App. 3d 948, 959 (2001). Here, the prosecutor properly commented on the portion of Brown's testimony that conflicted with Tanisha's testimony.

¶ 59 Third, defendant argues the prosecutor improperly argued that the reason no one came forward after the shooting was because of "street justice." Defendant complains that the prosecutor's comment essentially presented her own testimony that witnesses fail to come forward immediately after shootings in Chicago housing projects.

¶ 60 According to the record, defense counsel argued that Oscar had a drug conviction, knew how the streets operated, and took matters into his own hands to get revenge on someone he heard had hurt his family. Defense counsel also argued that Oscar bribed Natasha because he wanted to make the case a little better and get street justice on his own.

¶ 61 In response, the prosecutor argued that it was not reasonable to conclude that the Goodwin family just wanted somebody to pay and it did not matter who. The prosecutor also said it was not shocking that, after the victim was shot at a Chicago housing project, nobody came forward to reveal the identity of the shooter. The prosecutor said:

"That's not a shock. Happens every day. Street justice, in the housing project in Chicago."

¶ 62 The prosecutor's comment was not improper. Contrary to defendant's assertion on appeal, the prosecutor did not speculate about the conduct of public housing residents in general but, rather, commented on this shooting at this housing project. In response to the defense arguments that the Goodwin family was seeking street justice both when they initially did not talk to the police and when they later fabricated their testimony against defendant, the prosecutor properly responded that street justice was not uncommon or shocking and Oscar admitted that he initially sought to exact street justice until his family prevailed upon him to change his mind. In addition, the prosecutor properly commented on the evidence where Tanisha, Lenwood, and Natasha testified that many people were at the scene but scattered once the gunshot was fired; however, no one reported the identity of the shooter to the police until Oscar went the police station eleven days later.

¶ 63 Finally, defendant argues the prosecutor improperly interjected her personal opinion about the veracity of Natasha's in-court testimony by asserting that a witness's first statement was always the most reliable.

¶ 64 According to the record, defense counsel argued that Brown's testimony was credible whereas Tanisha's testimony was not. Defense counsel argued that Brown's testimony at trial was consistent with what she had said at the scene whereas Tanisha initially told the police she merely had heard that defendant was the shooter. Defense counsel remarked:

> "What happens first is most reliable. What happens in the heat of a situation, something unexpected, what people say then is the most believable part of what you have heard in this case."

In rebuttal, the prosecutor discussed Natasha's credibility and remarked:

> "The first statement always is the most reliable. Always the most reliable, right. Well, the first statement that Natasha said is that he did it. She gave a handwritten statement."

¶ 65 The prosecutor's comment was properly based on the evidence concerning Natasha's credibility after she implicated defendant in a handwritten statement to the police in June 2006, recanted her statement in an affidavit in October 2007, and recanted her statement again when she testified at trial. See *People v. Shief*, 312 Ill. App. 3d 673, 678 (2000) (a prosecutor may comment on a witness's credibility if the remarks are based on fair inferences from the evidence).

¶ 66 The complained-of remarks by the prosecutor were clearly based on the evidence adduced at trial and in response to defense counsel's comments in closing arguments. We conclude that the complained-of comments were not error.

¶ 67 C. Compliance with Supreme Court Rule 431(b)

¶ 68 Defendant argues his conviction must be reversed and this case remanded for a new trial because the trial court failed to fully comply with Illinois Supreme Court Rule 431(b) (eff. May 1, 2007). We review the trial court's compliance with a supreme court rule *de novo*. *People v. Suarez*, 224 Ill. 2d 37, 41-42 (2007).

¶ 69 Rule 431(b) codified our supreme court's holding in *People v. Zehr*, 103 Ill. 2d 472, 477 (1984), that four inquiries must be made of potential jurors in a criminal case to determine whether a particular bias or prejudice would deprive the defendant of his right to a fair and impartial trial. Rule 431(b) requires the trial court to issue the *Zehr* admonitions and inquiries *sua sponte*. Specifically, the trial court must ask each potential juror, individually or in a group, whether that juror understands and accepts the following principles: (1) that the defendant is presumed innocent; (2) that the State must prove him guilty beyond a reasonable doubt; (3) that he is not required to present evidence on his own behalf; and (4) that his decision not to testify may not be held against him. However, no inquiry of a prospective juror is made into the defendant's failure to testify when the defendant objects. Ill. S. Ct. R. 431 (eff. May 1, 2007). Although Rule 431(b) is designed to help ensure that defendants are tried before a fair jury, the *Zehr* questioning under that rule is not indispensable to a fair trial. *Thompson*, 238 Ill. 2d at 613-14.

¶ 70 Defendant acknowledges that the trial court sufficiently asked the potential jurors if they *accepted* the four *Zehr* principles; however, defendant argues the trial court committed reversible error because it failed to also ask all the prospective jurors whether they *understood* all four principles. We do not agree.

¶ 71 There is no special magic language that must be used to determine whether the potential jurors understand and accept the four *Zehr* principles. *People v. Ware*, 407 Ill. App. 3d 315, 356 (2011); *People v. Raymond*, 404 Ill. App. 3d 1028, 1056 (2010). Here, the trial court complied with Rule 431(b) when it admonished the venire regarding the four *Zehr* principles and gave the

venire an opportunity to disagree with them. The court's questions for each *Zehr* principle were sufficiently broad so that if any juror had raised a hand in response to the question, it would have shown that he failed to understand or accept that particular principle. See *People v. Magallanes*, 409 Ill. App. 3d 720, 729-30 (2011) (although the judge erred by failing to question the venire about the fourth *Zehr* principle, the judge satisfied Rule 431(b) concerning the three other principles by asking if anyone disagreed with those principles and, if so, to raise his hand); *Ware*, 407 Ill. App. 3d at 356 (court's inquiry as to whether venire members had "any difficulty" with the *Zehr* principles was sufficient compliance with Rule 431(b)); *People v. Davis*, 405 Ill. App. 3d 585, 589 (2010) (trial judge's inquiry as to whether venire members had "a problem" with the *Zehr* principles was sufficient compliance with Rule 431(b)). We find that the trial court's inquiry of the venire here satisfied Rule 431(b).

¶ 72 D. Correction of the Mittimus

¶ 73 Finally, the parties agree that the trial court erred in sentencing defendant on two counts of first degree murder where only one murder occurred.

¶ 74 Defendant was charged by indictment with six counts of first degree murder. He was convicted of first degree murder and the jury signed a special verdict form finding beyond a reasonable doubt that he personally discharged a firearm that proximately caused death. The trial court imposed a 30-year sentence on count I based on intentional and knowing first degree murder and acknowledged that under count V, based on intentional and knowing first degree murder and the personal discharge of a firearm that proximately caused death, the court was required to impose an additional 25-year sentence. The mittimus, however, reflects two murder

convictions and two sentences. Specifically, the mittimus indicates a conviction under count I for first degree murder with a 30-year sentence and a conviction under Count V for first degree murder with a 25-year sentence.

¶ 75 We direct the clerk of the circuit court to correct the mittimus to reflect only one conviction under count V for first degree murder based on defendant's commission of murder and personal discharge of a firearm that proximately caused death and a 55-year sentence of imprisonment. *People v. Thomspson*, 354 Ill. App. 3d 579, 594 (2004).

¶ 76 III. CONCLUSION

¶ 77 Accordingly, we affirm the judgment of the trial court and order the mittimus corrected.

¶ 78 Affirmed; mittimus corrected.