2012 IL App (1st) 102102-U

THIRD DIVISION
February 29, 2012

No. 1-10-2102

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	
	)	No. 08 CR 11452
BRANDON ZARESKI,	)	
	)	
Defendant-Appellant.	)	Honorable
	)	Joseph Kazmierski,
	)	Judge Presiding.

ORDER

JUSTICE SALONE delivered the judgment of the court.
Presiding Justice Steele and Justice Murphy concurred in the judgment.

HELD: Evidence was sufficient to prove that defendant committed first degree murder; evidence is not sufficient to reduce defendant's offense to second degree murder; trial counsel did not provide ineffective assistance; and trial counsel did not commit an accumulation of errors that denied defendant a fair trial.

¶ 1 Following a jury trial, defendant was convicted of two counts of first degree murder in

the death of Jonathan Nieves. The court merged Count II with Count I, and sentenced defendant to 24 years' imprisonment. On appeal, defendant contends that: (1) the State failed to prove him guilty of first degree murder beyond a reasonable doubt; (2) in the alternative, that the trial court erred in failing to reduce his conviction to second degree murder because he acted under an unreasonable belief that the use of deadly force was justified; (3) his attorney provided ineffective assistance of counsel; and (4) his attorney committed an accumulation of trial errors that denied him a fair trial. For the following reasons we affirm.

¶ 2 BACKGROUND

¶ 3 On April 15, 2008, the victim, Jonathan Nieves (Nieves), was fatally shot in the head on the street in front of his apartment building. Defendant was subsequently charged with five counts of first degree murder. 720 ILCS 5/9-1(a)(1); (a)(2) (West 2008).

¶ 4 At trial, Orlando Crespo testified that he was at the victim's apartment on the night of April 15, 2008. Crespo had only known the victim for three to four weeks and they planned on going to a local bar later in the evening. The victim's girlfriend, Krystle LaBombard, and their three children were in their bedrooms while Crespo and the victim browsed on the Internet. Shortly before midnight, they heard some, "commotion outside, like people talking." The victim went to the window and began arguing with defendant about gang-related issues. Thereafter, the victim ran down the stairs, but Crespo did not immediately follow. Before the victim left the apartment, he stated "that's Brandon down there that used to be a four." Once Crespo got downstairs, he saw defendant shooting at the victim as the victim attempted to run back to the building. Crespo testified that he turned around and went back upstairs because defendant was

shooting in his direction. As he ran upstairs, the gunshots continued and pieces of the wooden door were flying in the air. Crespo was at the top of the stairwell when the gunshots stopped. He looked over the balcony of the stairs and saw the victim lying on the ground. Crespo testified that LaBombard came out of the bedroom and asked, "[W]here is Jonathan? Where is Jonathan?" Crespo replied, "he just got shot." According to Crespo, LaBombard "went hysterical and started ripping blinds off the window, crying, trying to call his mom and family members."

¶ 5 Thereafter, the police arrived. Crespo told the police that defendant had tattoos of old English numbering, either "9, 6" or "9, 4" on his hands. He further stated that while he was standing in the hallway of the downstairs door, he noticed a charcoal gray Malibu with its lights off heading east on Roscoe. Crespo also testified that defendant wore a "white or light gray sweater with like patches of color on it." After viewing a photo array and physical lineup, Crespo made a positive identification of defendant as the shooter.

¶ 6 On cross-examination, Crespo testified that defendant flashed gang signs to the victim, and the victim responded by yelling, "duece killer." Crespo was then impeached about his statement to the police that he ran up and down the stairs two times. Crespo explained that he ran down the stairs following the victim, but immediately turned around when the shots were fired. He then went down the stairs a second time and upon reaching the doorway he saw the victim lying on the ground. Crespo further testified that he did not see the victim with a gun.

¶ 7 Krystle LaBombard testified that she was in her bedroom sleeping on the night of April 15, 2008 when she heard "people talking back and forth." She then heard what sounded like the victim running down the stairs. Upon hearing two gunshots, LaBombard left the bedroom and

ran into Crespo as he was coming into the apartment. She asked Crespo, "where is Jonathan?" Crespo replied that he was downstairs, so LaBombard went to the window in the living room and saw defendant shoot a gun towards the front door of the apartment building. LaBombard testified that after seeing sparks fly from the gun, she saw a dark, four door car with its lights off driving slowly in an easterly direction on Roscoe. She further testified that defendant then walked towards the car. LaBombard then stuck her body out of the window and saw the victim lying on the ground at which point she "yank[ed]" the blinds out of the windows and ran downstairs. Subsequently, she told the police that defendant wore a "white hoodie with designs on it" and that his nickname was "Grumpy." Thereafter, LaBombard viewed a photo array and physical lineup and identified defendant as the shooter.

¶ 8 On cross-examination, LaBombard stated that Crespo was in the apartment when she ran downstairs. Once there, she saw the gun lying next to the victim on the ground. She told the officers that she had never seen the gun before nor had she seen the victim with a gun that day. LaBombard admitted that she only observed the defendant get in the car, and never saw him actually get out of the car.

¶ 9 Officer Hallinan testified that shortly before midnight on the night of April 15, 2008 he heard gunshots while driving his patrol car through the intersection of Laramie Avenue and Roscoe Street. He then observed the victim lying face down on the sidewalk with a gun beside him in front of a building located at 3405 North Laramie. The gun was not loaded and there were no bullets in the chamber.

¶ 10 Shelley Wright, a City of Chicago paramedic, testified that the victim was lying face

down on the sidewalk with a lot of blood. She stated that the victim had, "a very large hole in the back of his head." Wright further stated that she pronounced the victim dead on arrival.

¶ 11 Detective Nicholas Spanos testified that LaBombard gave them information that the shooter had the number "9" tattooed on his left hand and the nickname "Grumpy" on his lower right arm. Using this information, they conducted a computer search which provided them with defendant's information. Thereafter, the police conducted a photo array which included defendant.

¶ 12 Sergeant Brian Holy testified that he conducted a search of defendant's home. In the garage, they found a 2006 gray four-door Chevy Malibu registered to defendant's parents, matching the description of the car given to them by Crespo and LaBombard.

¶ 13 By way of stipulation, the State introduced the following evidence. A semi-automatic handgun was found lying on the ground next to the victim. It was determined that the handgun was inoperable due to a broken safety lever and firing pin. Additionally, a bullet was recovered from the wall of the building. The victim had gunshot wounds to the back of the head and the back of the calf, with no sooting or stippling. Bullet fragments were recovered from the victim's brain and left tibia. The bullet recovered from the wall was compared to the bullet fragments found in the victim, and it was determined that they were not fired from the gun found at the crime scene. None of the items recovered revealed latent impressions suitable for comparison. A gunshot residue kit was administered on the victim's hand. The test determined that the residue was "from the discharge of a firearm or an environmental source, but * * * cannot say within a reasonable degree of scientific certainty which has occurred."

¶ 14 The State rested its case-in-chief. Defendant moved for a directed finding of not guilty, which the trial court denied.

¶ 15 Defendant did not testify on his own behalf or call any witnesses. The only evidence was presented by way of stipulation:

> "Orlando Crespo previously stated that the victim Jonathan Nieves had an argument out the window with the defendant Brandon Zareski.
>
> Orlando stated that before the victim went downstairs, he said he was going to [']fuck with him[''] and then ran out of the apartment door."

¶ 16 Defendant then rested his case. Thereafter, the court held a jury instruction conference. Instructions were submitted for the offense of first-degree murder and self-defense. The court then asked defendant if he also wanted a second-degree murder instruction, which he declined to request.

¶ 17 The trial then proceeded to closing argument.

¶ 18 During jury deliberations, the jurors asked the following question, which was read in open court:

> "[C]an we legally infer from the fact that the defense's case is self-defense that the defense concedes that Brandon shot Jonathan?"

After the question was read, the record reflects the following exchange:

"MS. RAVIN [State]: I think that they have the evidence, and they should continue their deliberations.

MR. O'BYRNE [Defense]: Judge, I think the answer should be yes.

THE COURT: That's how you want me to answer it?

MR. O'BYRNE [Defense]: Yes, your Honor.

THE COURT: Any problem with that?

MS. RAVIN [State]: No, Judge.

THE COURT: I will answer the question you may draw that inference. Leaving it up to them one way or the other if they wish to do so or not.

MR. O'BYRNE [Defense]: We think it's a good response."

¶ 19 Defendant was found guilty of first-degree murder. Thereafter, defendant hired a new attorney for the filing of his post-trial motion for new trial. On June 11, 2010, defendant's motion was denied.

¶ 20 The court then sentenced defendant to 24 years' imprisonment, with count 2 merging with count 1. This timely appeal followed.

¶ 21 Additional facts will be set forth as needed in the analysis portion of our discussion.

¶ 22 DISCUSSION

¶ 23 Defendant has raised the following issues on appeal: (1) whether the State proved defendant guilty of first-degree murder beyond a reasonable doubt; (2) whether defendant's

offense should be reduced to second-degree murder if there was sufficient evidence that he was not reasonable in using deadly force; (3) whether defendant's trial counsel provided ineffective assistance; and (4) whether trial counsel committed an accumulation of errors that denied defendant a fair trial.

¶ 24 *Sufficiency of the Evidence*

¶ 25 Defendant first contends that there was insufficient evidence to prove him guilty of first degree murder beyond a reasonable doubt. Specifically, he argues that Crespo and LaBombard's testimony was inconsistent with each other, rendering them biased and incredible witnesses. Defendant further contends that the evidence demonstrated that he acted in self-defense whereby he was justified in shooting the victim.

¶ 26 The State asserts that there was overwhelming evidence to support a guilty finding because both Crespo and LaBombard positively identified defendant as the shooter. They maintain that the testimony of Crespo and LaBombard was consistent and corroborated by physical evidence.

¶ 27 When reviewing a challenge to the sufficiency of the evidence, the critical 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. Cunningham*, 212 Ill. 2d 274, 278-280 (2004). Under this standard, a reviewing court must allow all reasonable inferences from the record in favor of the prosecution. *Cunningham*, 212 Ill. 2d at 278-280. This standard of review applies to direct and circumstantial evidence. *People v. Gilliam*, 172 Ill. 2d 484, 515 (1996). We will not reverse a conviction unless the

evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985).

¶ 28 In order to prove defendant guilty of first degree murder, the State must establish the following:

> "(a) a person who kills an individual without lawful justification commits first-degree murder if, in performing the acts which cause the death:
>
> (1) he either intends to kill or do great bodily harm to that individual or another, or knows that such acts will cause death to that individual or another; or
>
> (2) he knows that such acts create a strong probability of death or great bodily harm to that individual or another; or
>
> (3) he is attempting or committing a forcible felony other than second-degree murder."
>
> 720 ILCS 5/9-1(a)(1) (West 2008).

¶ 29 We initially note, that defendant fails to cite to authority in support of his argument, in violation of Illinois Supreme Court Rule 341 (h)(7) (eff. Jul. 1, 2008). The appellate court is not a repository into which appellant may transfer the burden of argument and research. *New v. Pace Suburban Bus Service*, 398 Ill. App. 3d 371, 384 (2010). We have the authority to hold that defendant forfeited his argument. *Orzel v. Szewczyk*, 391 Ill. App. 3d 283, 287 (2009). Nevertheless, in spite of defendant's disregard of the supreme court rule, we shall address his

individual claims of error.

¶ 30 Defendant contends that the inconsistencies between the testimony of the State's two main witnesses, Crespo and LaBombard, rendered them biased and incredible. Minor inconsistencies in testimony does not render a determination of guilt so unreasonable, improbable, or unsatisfactory to justify a reversal of a conviction. *People v. Rodriguez*, 408 Ill. App. 3d 782, 794 (2011). The jury as the trier of fact is to resolve inconsistencies in testimony and make determinations on witness credibility. *Rodriguez*, 408 Ill. App. 3d at 794.

¶ 31 We find that the majority of the testimony was consistent. Initially, we note that both Crespo and LaBombard positively identified the defendant as the shooter after viewing a photo and physical lineup. Subsequently at trial, they again positively identified defendant as the shooter. A single eyewitness identification is sufficient to support a guilty conviction as long as the witnesses viewed the accused under circumstances permitting a positive identification. *People v. Brazziel*, 406 Ill. App. 3d 412, 422-23 (2010); citing *People v. Slim*, 127 Ill. 2d 302, 307-08 (1989). Here, Crespo testified that he saw defendant shoot the victim as the victim was attempting to run back to the apartment building. Likewise, LaBombard testified that she saw "sparks" fly from the gun as defendant shot in the direction of the front door of the apartment building. Later, Crespo told the police that defendant wore a "white or light gray sweater with like patches of color on it." Similarly, LaBombard testified that defendant was wearing a "white hoodie with designs on it." When the police arrived on the scene, Crespo indicated that defendant had "9,6" or "9,4" tattooed on his hands. LaBombard told the police that defendant's name was "Brandon" and that his nickname was "Grumpy."

¶ 32 Defendant further contends that Crespo and LaBombard were biased witnesses because they were active members of a rival gang. Defendant specifically refers to a photograph that was attached to the motion for new trial showing Crespo and LaBombard using gang signs. However, these photographs were not part of the trial record. A reviewing court may only consider evidence that was presented at trial. *People v. Steidl*, 142 Ill. 2d 204, 226 (1991). We additionally note, that the record shows that Crespo testified at trial that he did not "gang bang," while there was no questioning of LaBombard on her alleged gang involvement. As such, we shall not address defendant's reference to any matters that are not in the trial record.

¶ 33 We further find that the testimony of Crespo and LaBombard was corroborated by physical evidence. At trial, Crespo and LaBombard testified that they observed a car with its lights off driving east on Roscoe. Crespo also noted that the car was a "Malibu," charcoal gray in color, while LaBombard indicated that she saw a four door car, dark in color. When the officers conducted a search of defendant's parents' home, they found a gray Chevy Malibu in the garage, matching the description given to them by Crespo and LaBombard. Later, when defendant was taken into custody, detective Spanos noted that defendant had a tattoo of the number "9" on his left hand, and a tattoo of the nickname "Grumpy," consistent with the testimony of both Crespo and LaBombard. At trial, Crespo's testimony indicated that pieces of the doorway were flying in the air as he ran up the stairs which was consistent with the bullets that were recovered from the door and wall of the apartment building.

¶ 34 After a careful review of the record we find that the State proved every element of first degree murder beyond a reasonable doubt. It is undisputed that defendant killed the victim.

Crespo and LaBombard each saw defendant firing the gun at the victim. Moreover, when the jury asked if they could legally infer that defendant shot the victim, defendant's counsel answered "yes." The intent to kill can be inferred from the defendant firing a gun at another person because the natural tendency is to destroy another person's life. *People v. Garcia*, 407 Ill. App. 3d 195, 201-02 (2011).

¶ 35 Defendant nevertheless contends that he was justified in shooting the victim because the victim yelled threatening gang slogans at him. Self-defense is an affirmative defense, and once raised the State has the burden to prove beyond a reasonable doubt that the defendant did not act in self-defense. *People v. Jeffries*, 164 Ill. 2d 104, 127 (1995). The elements of self-defense are that: (1) unlawful force is threatened against a person; (2) the person threatened is not the aggressor; (3) the danger of the harm is imminent; and (4) the use of force was necessary. *People v. White*, 293 Ill. App. 3d 335, 338 (1997). If the State negates any one of these elements, then the defendant's claim of self-defense fails. *People v. Shields*, 298 Ill. App. 3d 943, 947 (1998).

¶ 36 In the case at bar, the record shows that the victim and defendant were shouting "gang related stuff" at each other. However, our supreme court has found that "threats alone will not justify the use of deadly force in a killing." *People v. Everette*, 141 Ill. 2d 147, 161 (1991). We also note that there is conflicting trial testimony relating to who was the initial aggressor. The record shows that defendant was flashing gang signs at the victim, while the victim was shouting "deuce killer" through the open window. Where there are conflicting theories and testimony relating to an occurrence of events, the trier of fact must consider the probability or improbability of the evidence, the circumstances surrounding the event, and all the witnesses' testimony.

People v. Garcia, 407 Ill. App. 3d at 708-09.

¶ 37 Here, there is overwhelming evidence in support of the jury's guilty finding. Crespo testified that the victim did not have a gun when he ran out of the apartment. Although gunshot residue was recovered from the victim's hand, the expert was unable to conclusively determine whether it was from the firing of a gun or from his hand being in the environment of a fired gun. However, most significant here, is the physical evidence that the victim was shot in the back of the head. Even if we were to assume that the victim was the initial aggressor, the bullet in the back of his head distinctly proves that he abandoned the confrontation. Although self-defense may justify the use of force, it will not justify the killing of an original aggressor as an act of retaliation or after the aggressor has abandoned the argument. *People v. DeOca*, 238 Ill. App. 3d 362, 368 (1992). As such, we find that the State proved beyond a reasonable doubt that defendant's actions were not reasonable, thereby defeating defendant's claim of self-defense. We conclude that there was sufficient evidence to support the jury's verdict that defendant committed the offense of first degree murder.

¶ 38 *Second Degree Murder Instruction*

¶ 39 In the alternative, defendant contends that we should reduce his conviction to second degree murder because the evidence establishes that he acted under an unreasonable belief that the use of deadly force was justified. Specifically, defendant requests that we vacate the conviction for first degree murder and remand with instructions to enter a finding of second degree murder.

¶ 40 On appeal, a reviewing court may "reduce the degree of the offense of which the

appellant was convicted." Ill. Sup. Ct. R. 615 (b)(3). The degree of an offense may be reduced where: (1) a lesser-included offense is involved; (2) there is an evidentiary weakness with regard to an element of the offense charged; and (3) the trial judge has expressed dissatisfaction with imposing the mandatory minimum sentence. *People v. Hooker*, 249 Ill. App. 3d 394, 403 (1993). However, the power to reduce a conviction of first degree murder to second degree murder should be exercised cautiously. *Hooker*, 249 Ill. App. 3d at 403.

¶ 41 As stated, in order to prove defendant guilty of first degree murder, the State must establish the following:

> "(a) a person who kills an individual without lawful justification commits first-degree murder if, in performing the acts which cause the death:
>
> (1) he either intends to kill or do great bodily harm to that individual or another, or knows that such acts will cause death to that individual or another; or
>
> (2) he knows that such acts create a strong probability of death or great bodily harm to that individual or another; or
>
> (3) he is attempting or committing a forcible felony other than second-degree murder."
>
> 720 ILCS 5/9-1(a)(1) (West 2008).

¶ 42 In contrast, second degree murder is defined as follows:

> "(a) A person commits the offense of second degree murder when he commits the offense of first degree murder * * * and

> either of the following mitigating factors are present:
>
> (1) At the time of the killing he is acting under a sudden and intense passion resulting from serious provocation by the individual killed or another whom the offender endeavors to kill, but he negligently or accidentally causes the death of the individual killed; or
>
> (2) At the time of the killing he believes the circumstances to be such that, if they existed, would justify or exonerate the killing * * * but his belief is unreasonable."
>
> 720 ILCS 5/9-2 (West 2008).

¶ 43 Here, defendant contends that Illinois courts have held that second degree murder is a lesser included offense of first degree murder. However, our supreme court has clearly established that "second degree murder is a lesser mitigated offense of first degree murder." *People v. Parker*, 223 Ill. 2d 494, 504 (2006).

¶ 44 In the case at bar, we find no evidentiary weakness to suggest that we should reverse defendant's first degree murder conviction. The evidence sufficiently established that defendant had a gun and fired it several times at the victim. Moreover, the testimony shows that the victim was fleeing while the defendant was shooting at him, which is corroborated by the gun shot wound to the back of the victim's head. It is hardly plausible for this court to accept the proposition that defendant believed that the circumstances required him, although unreasonably, to shoot the victim in the back of the head. We therefore decline to reduce defendant's

conviction to second degree murder.

¶ 45 *Ineffective Assistance of Counsel*

¶ 46 Defendant next contends that his attorney provided ineffective assistance of counsel in several respects: (1) by introducing evidence that helped the State's case; (2) by failing to question the State's witnesses, Crespo and LaBombard, about their gang membership in order to demonstrate bias against defendant; (3) by failing to interview and call as witnesses two neutral eyewitnesses to the shooting; (4) by failing to introduce photographs of the victim holding firearms in order to demonstrate the victim's violent and aggressive character; and (5) by conceding that defendant was the shooter in response to the jury's question.

¶ 47 In response, the State maintains that defendant's claims of ineffective assistance of counsel are without merit. It contends that counsel's decisions were based on sound trial strategy relating to the facts and circumstances of defendant's case. The State further contends that defendant cannot demonstrate prejudice because there is no reasonable probability that without the alleged errors, defendant's case would have a different outcome.

¶ 48 To establish a claim for ineffective assistance of counsel, a defendant must demonstrate that his counsel was deficient and that he was prejudiced by that deficiency. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984). To establish deficiency, the defendant must overcome the strong presumption that the challenged action or inaction might have been the product of sound trial strategy. *People v. Simms*, 192 Ill. 2d 348, 361 (2000). The second prong of *Strickland* requires defendant to show that but for counsel's deficient performance, the result of the proceeding would have been different. *Simms*, 192 Ill. 2d at 362. A defendant must

satisfy both prongs of the *Strickland* test. However, if the ineffective assistance claim can be disposed of on the ground that defendant did not suffer prejudice, then the court need not address the deficiency of counsel's performance. *People v. Griffin*, 178 Ill. 2d 65, 75 (1997).

¶ 49 Keeping these principles in mind, we shall now address defendant's claims of error. Even if we assume that trial counsel's performance was deficient, we find that defendant cannot prove that he suffered prejudice. Thus, we will address defendant's claims under the second prong of *Strickland.*

¶ 50 Defendant argues five separate claims of error committed by his trial counsel. First, defendant contends that his attorney provided ineffective assistance for introducing evidence that was helpful to the State. Specifically, he argues that his attorney bolstered the testimony of LaBombard by introducing into evidence her prior consistent statement to detective Bruno that she saw defendant fire two shots. Defendant further contends that his counsel was ineffective for introducing evidence that LaBombard saw defendant get into the getaway car after the shooting. We note that this argument is inconsistent with the position taken by defendant earlier in this appeal. Earlier, defendant attempted to argue that there was insufficient evidence to support a first-degree murder conviction because the testimony of Crespo and LaBombard was inconsistent and incredible.

¶ 51 Second, defendant contends that his mother gave photographs of Crespo and LaBombard flashing gang signs to defense counsel and he failed to investigate them.

¶ 52 Third, defendant contends that his trial counsel was ineffective for failing to interview and call as witnesses two "neutral" eyewitnesses to the shooting. Juan Granados and Ashley

Bruno provided an affidavit describing what they observed on the night of the murder. The affidavits were attached to the motion for new trial. In their affidavits, Granados and Bruno stated that they did not observe defendant at the scene of the crime, and subsequently they both left the scene after the shooting. There was no indication that they contacted the police to report what they witnessed that night. In fact, Granados admitted that he spoke to the police when they came to his home, but did not provide them with any information on the shooting.

¶ 53 Fourth, defendant contends that this trial counsel was ineffective for failing to introduce a photograph of the victim holding a gun. He specifically argues that this photograph whould have demonstrated the victim's violent and aggressive tendencies to the jury relevant to his self-defense claim.

¶ 54 Finally, defendant contends that his trial counsel was ineffective when the jury asked whether they could legally infer that defendant shot the victim, and trial counsel responded, "yes."

¶ 55 Even if we were to assume that counsel commited these alleged errors at trial, we remain unconvinced that the presentation of this additional evidence would have created the requisite "reasonable probability" that the outcome of the trial would have been different. As stated previously, both Crespo and LaBombard positively identified defendant as the shooter. A gray Malibu was found in the garage of defendant's parents' home, matching the description given to the police by Crespo and LaBombard. The evidence further showed that the bullets found in the doorway and wall of the apartment building were not fired from the inoperable gun lying next to the victim. Most significantly, the victim died of a gunshot wound to the back of

the head which overwhelmingly defeats defendant's claim of self-defense. As such, we conclude that defendant was not prejudiced by his trial counsel's alleged errors. Accordingly, we reject the argument that counsel rendered ineffective assistance.

¶ 56 *Accumulation of Errors*

¶ 57 Defendant further contends that his trial counsel committed an accumulation of errors that denied him a fair trial. We note that we have already concluded that defendant was not prejudiced by his trial counsel's alleged errors.

¶ 58 Having already concluded that trial counsel did not provide ineffective assistance, we find that taken as a whole, the claims of error did not rise to the level of prejudice. This court will not reverse a defendant's conviction unless it appears that a substantial right has been affected resulting in a fundamentally unfair trial for the defendant. *People v. Blue*, 189 Ill. 2d 99, 138 (2000). Our supreme court in *People v. Williams*, 147 Ill. 2d 173, 250 (1991), concluded that the "sheer multiplicity of allegations does not translate into error." Here, defendant received a fair and impartial trial, and there was overwhelming evidence of his guilt. Accordingly, we decline to reverse defendant's conviction.

¶ 59 CONCLUSION

¶ 60 For the foregoing reasons, we affirm the judgment of the trial court.

¶ 61 Affirmed.