SECOND DIVISION
March 26, 2013

No. 1-11-0420

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
	)	the Circuit Court
Plaintiff-Appellee,	)	of Cook County
	)	
v.	)	No. 09 CR 15590
	)	
QUOVOTIS HARRIS,	)	Honorable
	)	Nicholas R. Ford
Defendant-Appellant.	)	Judge Presiding.

JUSTICE QUINN delivered the judgment of the court.
Presiding Justice Harris and Justice Connors concurred in the judgment.

O R D E R

¶ 1 *HELD*: Judgment entered on defendant's conviction of possession of contraband in a penal institution affirmed over his claims that the trial court violated his right to present a defense, and that the State misstated the law in closing argument.

¶ 2 Following a jury trial, defendant Quovotis Harris was found guilty of possession of contraband in a penal institution, then sentenced to five years' imprisonment. On appeal,

defendant contends: (1) that the trial court violated his right to present a defense where it prevented him from introducing the disciplinary and criminal background of an inmate who threatened to kill him if he did not hold onto the subject contraband; and (2) that the State erroneously argued in closing that possession of contraband in a penal institution is a strict liability offense. For the following reasons, we affirm.

¶ 3 The record shows, in relevant part, that defendant was charged with one count of possession of contraband in a penal institution after Cook County correctional officers recovered a "shank" from his prosthetic leg. He subsequently maintained that another inmate, Melvin Wilson, threatened to kill him if he did not hold onto the shank for him.

¶ 4 On the day before trial, defense counsel filed a motion for a continuance stating that defendant sought to assert a compulsion defense, but had been "so afraid of the person that threatened him *** that he only recently revealed his true identity." The motion alleged that Wilson had "a plethora of arrests, convictions and infractions in jail" that were relevant under *People v. Lynch*, 104 Ill. 2d 194 (1984),[1] and that counsel had not had time to obtain the necessary reports or talk to the witnesses in those incidents.

¶ 5 The next day, prior to *voir dire*, the court heard argument on the motion. At that time, counsel noted that he had visited Wilson in jail and that Wilson denied making the alleged threats, but he argued that under *Lynch*, "the violent character and violent behavior of Melvin Wilson is admissible to show *** whether or not this person actually threatened [defendant], and

[1] In *Lynch*, 104 Ill. 2d at 200, the supreme court held that "when the theory of self-defense is raised, the victim's aggressive and violent character is relevant to show who was the aggressor."

whether or not he was reasonable in his belief that that person would use deadly force against him." The court disagreed that *Lynch* applied in the context of defendant's compulsion defense, however, and remarked:

> "I struggle with the idea, struggle profoundly with the idea that a person could feel truly compelled or threatened in a circumstance in which they are handed a weapon which they could then themselves use to defend, or to, you know, do whatever they wanted to do with it.
>
> You know, and I'm still allowing you to present, despite its illogical nature, but I can tell you that the background of the person that he is alleging made this threat is inadmissible. Lynch is not admissible in this status defense case.
>
> Any continuance or any information you want to offer about Mr. Wilson, what he said or did, would be inadmissible beyond what he said or did to the Defendant immediately at the time that he gave him the shank, and that as I understand it right now only comes from the Defendant's mouth."

The court then asked counsel if he had any other corroborating witnesses, and counsel responded, "I do not, and I do not believe that a continuance would allow me to find anyone that would." When counsel further informed the court that he would be seeking to introduce evidence that Wilson had once been found outside of his cell with a "popper," *i.e.*, a device preventing the cell

door from closing, the court noted that such an incident was irrelevant and collateral to the case. The court then denied defendant's motion for a continuance.

¶ 6 Following *voir dire*, the court offered to hear any motions *in limine*, and counsel again argued for the introduction of *Lynch* evidence with respect to Wilson, namely, his infractions while incarcerated, and his arrests and convictions involving violence. Counsel also sought to introduce that Wilson was disciplined for being out of his cell with a "popper," which he argued was relevant to the imminency of the alleged threat. After hearing argument, the court found that the proposed *Lynch* evidence was inadmissible and collateral to the case. The court ruled:

> "If [defendant] is saying he was forced to possess [the shank], that defense will either sink or swim based on direct evidence whether or not that's true.
>
> That evidence can come in in two forms. He can say it, someone who was there when he was threatened can say it, or the person who threatened him can say it. That's the limitation on the defense in this case."

¶ 7 At trial, Officer Abraham Yasin of the Cook County sheriff's department testified that on August 17, 2009, he was working at Cook County jail when he received information that defendant was in possession of contraband. After notifying his sergeant, they met in the hallway outside division 10, tier 4C, where defendant was housed, and Officer Yasin entered the tier and approached defendant's cell. He informed defendant that he was being taken to the dispensary, so as not to alert the other inmates of what was happening, then walked him to the hallway

outside the tier. There, Officer Yasin pulled up a chair for defendant and gave him an opportunity to turn over any contraband in his possession. When defendant did not turn anything over, Officer Yasin instructed him to remove his prosthetic leg and found a six-inch long black metal object that had been sharpened on one end, *i.e.*, "a jailhouse knife commonly known as a shank," between a few layers of socks and the leg.

¶ 8 On cross-examination, Officer Yasin stated that he knows of an individual named Melvin Wilson, *aka* "the Dog," on tier 4C. The court sustained the State's objection to counsel's question regarding whether Wilson was a member of the gangster disciples.

¶ 9 Sergeant Jack Farris of the Cook County sheriff's department testified that he was present during the search of defendant, and he identified the shank recovered from defendant's prosthetic leg. On cross-examination, counsel inquired into previous "shakedowns" on tier 4C, but when counsel began to ask, "And specifically two days earlier was there –," the court sustained the State's objection to the question.

¶ 10 Defendant testified on his own behalf that on August 16, 2009, he was called to the cell of a gangster disciple named Melvin Wilson, aka "Duv," who was "a lieutenant or something like that" in the gang. Wilson asked defendant questions about his leg, which was amputated when he was younger, and also whether he had seen what happened to another inmate named "Astro." Wilson then told defendant that if he did not hold a knife, the same thing that happened to Astro would happen to him. Although the court sustained objections to counsel's questions regarding what happened to Astro, defendant testified that he took this to mean that Wilson was going to kill him. He further testified that Wilson "said I wasn't going to make it. I was going to die. He

was going to kill me." At that point, Wilson put a popper in his door, and defendant agreed to put the knife in his leg.

¶ 11 The State subsequently called two witnesses in rebuttal. Then, during closing argument, the State made the following remarks:

> "Now let's move on to the next part of the first proposition. That the defendant knowingly possessed contraband. This next part is extremely important. That regardless, regardless of the intent with which he possessed it, it does not matter at all why this defendant was in possession of the shank."

Counsel objected to this argument, but was overruled, and the State continued, "All that matters is the location of the shank." In rebuttal, the State further argued:

> "Who knows what [the shank] was made from? This shows the imagination of those in the jail how they can fashion a weapon out of anything. That's why it is a strict liability case. That's why the law says without regard to the intent to which they possess it. You possess it in the penal institution without regard because for safety reasons, for those guards and for the people housed there, no one can have a weapon inside the jail, not the guards because it could get taken away and certainly not the inmates in the jail. There are safety concerns. That is why this is a strict liability case.
>
> * * *

> [Defendant's] choice, his decision was to possess that shank while he was in the custody of the Cook County jail. And that rule is there for the protection of those guards who are outnumbered, outmanned, 1 to 48 possibly, and it's here for his protection as well. That's why it's strict liability case. That's why you cannot possess any type of homemade weapon like that."

Prior to deliberations, the jury was instructed on the defense of compulsion as follows:

> "It is a defense to the charge made against the defendant that he acted under the compulsion of threat or menace of the imminent infliction of death or great bodily harm, if he reasonably believed death or great bodily harm would be inflicted upon him if he did not perform the conduct with which he is charged."

The jury ultimately returned a verdict finding defendant guilty of possession of contraband in a penal institution.

¶ 12 In this appeal from that judgment, defendant first contends that the trial court violated his right to present a defense by preventing him from introducing evidence of Wilson's disciplinary and criminal background, namely, that Wilson had been found with contraband similar to that with which defendant was found, had escaped from his cell several times, and had attacked other inmates and officials. Defendant also claims that the court erred by limiting his testimony and counsel's cross-examination of State witnesses, and by denying his motion for a continuance.

¶ 13 The State responds that the trial court correctly found Wilson's criminal background and

disciplinary record inadmissible because specific incidents of his character were collateral to the issue in defendant's case. The State further responds that the disciplinary records were hearsay, and that a continuance would have been futile.

¶ 14 We observe that "[a] defendant has the right to present a defense, present witnesses to establish a defense and to present his version of the facts to the trier of facts." *People v. Wright*, 218 Ill. App. 3d 764, 771 (1991), citing *People v. Manion*, 67 Ill. 2d 564 (1977). That said, the admissibility of evidence at trial is ultimately within the sound discretion of the trial court, and we will not overturn the court's decision absent a clear abuse of discretion, *i.e.*, where the court's decision is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the court. *People v. Illgen*, 145 Ill. 2d 353, 364 (1991).

¶ 15 Defendant initially maintains that the trial court abused its discretion in excluding Wilson's arrest and disciplinary reports because they were relevant to his compulsion defense. The State responds that these reports were inadmissible hearsay, citing *People v. Smith*, 141 Ill. 2d 40 (1990). In *Smith*, 141 Ill. 2d at 74, the supreme court held that "prison incident reports are not admissible under the business records exception to the rule against hearsay when offered to prove the particulars of disciplinary infractions or of confrontations between prison employees, or law enforcement personnel and prison inmates." In reply, defendant claims that the reports would not have been offered for their truth, but rather, that "counsel would have used the reports to show the jury that Wilson was capable of doing exactly what Harris said he did: threaten him to take a shank while a popper was in his cell door."

¶ 16 Hearsay is an out-of-court statement offered to prove the truth of the matter asserted and

is generally inadmissible at trial. *People v. Donegan*, 2012 IL App (1st) 102325, ¶ 33. In the case at bar, the parties appear to agree that Wilson's arrest and disciplinary reports meet the first part of the hearsay definition as out of court statements; the sole dispute is whether they would have been offered for their truth. According to defendant's brief, the reports at issue:

> "[D]escribe how correctional officers found [Wilson] with shanks, found a 'popper' *** in his cell, and found him out of his cell when he was not allowed; they describe him choking and punching a case worker, attacking another detainee, and screaming 'Fuck you, motherfucker' at a correctional officer."

Although defendant claims that counsel would have introduced the reports to show that Wilson was capable of threatening him to take a shank, and not for their truth, we perceive no distinction between these purposes. The only ostensible reason a jury would find Wilson capable of making the alleged threats based on the reports would be if the facts in those reports were offered for their truth. We therefore find no abuse of discretion by the trial court in preventing defendant from introducing the arrest and disciplinary reports of Wilson. *Smith*, 141 Ill. 2d at 67-74*; Donegan*, 2012 IL App (1st) 102325, ¶ 33.

¶ 17 Defendant next claims that the trial court violated his right to present a defense where it erroneously limited his testimony on direct examination and counsel's cross-examination of State witnesses. He specifically objects that the court (1) prevented him from testifying to Wilson's gang affiliation and rank, and what happened to "Astro"; (2) prevented counsel from cross-examining Officer Yasin regarding Wilson's gang affiliation; and (3) prevented counsel from

cross-examining Sergeant Farris regarding a shakedown two days before the incident in question.

¶ 18 At the outset, we find no merit to defendant's claim that the trial court erroneously limited his testimony. First, defendant's claim that the trial court prevented him from testifying to Wilson's gang affiliation and rank is belied by the record, which shows that defendant testified, without objection, that Wilson was a gangster disciple with the rank of "lieutenant or something like that" in the gang. Second, with respect to his claim that the trial court erred in preventing him from testifying to what happened to "Astro," we find that such testimony was properly excluded as irrelevant.

¶ 19 It is well settled that " '[a]ll relevant evidence is admissible, except as otherwise provided by law. Evidence which is not relevant is not admissible.' " *People v. Dabbs*, 239 Ill. 2d 277, 289 (2010), quoting Ill. R. Evid. 402 (eff. Jan. 1, 2011). "Evidence is considered 'relevant' if it has any tendency to make the existence of any fact that is of consequence to the determination of an action more or less probable than it would be without the evidence." *Illgen*, 145 Ill. 2d at 365-66.

¶ 20 Here, defendant testified that Wilson threatened him that if he did not hold the shank, the same thing that happened to an individual named "Astro" would happen to him. When counsel attempted to elicit from defendant what happened to Astro, the court sustained objections to counsel's questions, but then allowed defendant to testify that he interpreted Wilson's statement to mean that Wilson was going to kill him.

¶ 21 Defendant claims that his knowledge and observations of the alleged beating of Astro were relevant because they "made [his] belief that Wilson could carry out the threat more

reasonable." However, he has cited no evidence that Wilson was involved in the alleged beating. The particulars of that event, therefore, would not tend to make the reasonableness of his belief that Wilson could personally carry out the alleged threat more or less probable, as he now claims. *Illgen*, 145 Ill. 2d at 365-66. Therefore, the trial court did not abuse its discretion in excluding the proffered evidence. *Dabbs*, 239 Ill. 2d at 289.

¶ 22 We also find no merit to defendant's claim that the trial court improperly limited counsel's cross-examination of Officer Yasin regarding Wilson's gang affiliation, and of Sergeant Farris regarding a shakedown two days before the incident in question. Defendant has a constitutional right to cross-examine witnesses. *People v. Velez*, 2012 IL App (1st) 101325, ¶ 62, citing *People v. Ramey*, 152 Ill. 2d 41, 67 (1992). However, "[c]ross-examination is generally limited in scope to the subject matter of the direct examination of the witness and to matters affecting the credibility of the witness." *Velez*, 2012 IL App (1st) 101325, ¶ 62, citing *People v. Terrell*, 185 Ill. 2d 467, 498 (1998). " 'It is not error for a trial court to refuse to permit a cross-examiner to go beyond the scope of the direct examination in an effort to present his theory of the case.' " *Velez*, 2012 IL App (1st) 101325, ¶ 62, quoting *People v. Hosty*, 146 Ill. App. 3d 876, 882-83 (1986). The scope of cross-examination is within the sound discretion of the trial court, and we will not disturb its ruling unless there has been a clear abuse of discretion resulting in manifest prejudice to defendant. *Velez*, 2012 IL App (1st) 101325, ¶ 62, citing *People v. Kliner*, 185 Ill. 2d 81, 130 (1998).

¶ 23 Here, even though Officer Yasin's testimony on direct examination was limited to the recovery of the shank from defendant and made no reference to Wilson, defendant claims that

counsel's question to Officer Yasin on cross-examination, regarding whether Wilson was a gangster disciple, was relevant because "it went to the imminency of Wilson's threat and the reasonableness of [his] belief of that threat." Likewise, even though Sergeant Farris did not testify on direct examination about an alleged shakedown at the jail two days before the incident in question, defendant claims that counsel's question to Sergeant Farris on cross-examination about that alleged event was relevant because "it buttressed [his] testimony and helped advance his compulsion defense." Defendant overlooks the fact that the relevancy of a question on cross-examination is not the only consideration for the trial court in determining admissibility. In the case at bar, counsel's questions clearly "went beyond the scope of the original direct examination in an effort to inject defendant's theory of the case into cross-examination." *Velez*, 2012 IL App (1st) 101325, ¶ 64. We therefore find no abuse of discretion in the preclusion of those inquiries by the court. *Velez*, 2012 IL App (1st) 101325, ¶ 62.

¶ 24 Defendant further claims that the trial court violated his right to present a defense when it erroneously denied his motion for a continuance. "The decision whether to grant or deny a request for a continuance is committed to the sound discretion of the trial court." *People v. Weeks*, 2011 IL App (1st) 100395, ¶ 30, citing *People v. Walker*, 232 Ill. 2d 113, 125 (2009). " 'Factors a court may consider in determining whether to grant a continuance request by a defendant in a criminal case include the movant's diligence, the defendant's right to a speedy, fair and impartial trial and the interests of justice.' " *Weeks*, 2011 IL App (1st) 100395, ¶ 30, quoting *Walker*, 232 Ill. 2d at 125-26.

¶ 25 As the State correctly notes, the memorandum of orders reflects that there were 13

continuances prior to the date on which defendant's case was first set for trial. Notwithstanding this ample time for defendant to participate in his defense and inform counsel that Wilson had threatened him to possess a shank, counsel filed his motion for a continuance on the day before trial, asserting that defendant had only "recently" identified Wilson as the individual who had threatened him. Although counsel requested additional time to obtain reports and interview witnesses in connection with Wilson's arrest and disciplinary history, which, he claimed, was relevant under *People v. Lynch*, he subsequently acknowledged at the hearing on his motion that a continuance would not aid him in finding a witness to corroborate defendant's compulsion defense.

¶ 26 It is well settled that "[a] reviewing court can affirm the trial court on any basis supported by the record." *People v. Dobbey*, 2011 IL App (1st) 091518, ¶ 46, citing *People v. Durr*, 215 Ill. 2d 283, 296 (2005). Here, it is clear from the record that defendant failed to exercise adequate diligence in preparing his defense where he knew from the start that Wilson was the perpetrator of the alleged threat against him, but did not inform counsel of his identity until just prior to the start of trial. Given that counsel also acknowledged that a continuance would not aid him in finding a witness to corroborate defendant's compulsion defense, we cannot say that the trial court abused its discretion in denying defendant's motion for a continuance. *Weeks*, 2011 IL App (1st) 100395, ¶ 30.

¶ 27 Defendant lastly claims that *People v. Ganus*, 148 Ill. 2d 466 (1992) and *People v. Pelate*, 49 Ill. App. 3d 11 (1977) support his claim that the trial court violated his right to present a defense. In *Ganus*, 148 Ill. 2d at 471, defendant claimed that trial counsel was ineffective for

eliciting prejudicial gang testimony to support a compulsion defense which was not available to him. The supreme court found that counsel's strategy was legitimate where "defense counsel was faced with the predicament of formulating a defense for a client who face[d] the death penalty by reason of his own detailed, Mirandaized statement, but who refuse[d] to testify in his own defense." *Ganus*, 148 Ill. 2d at 471-72. In *Pelate*, 49 Ill. App. 3d at 15, defendants were charged with escape and claimed that they were denied a fair trial where the court ruled that they could not present evidence of compulsion and necessity to the jury. This court remanded the cause for a new trial because the trial court had believed that all of the conditions set forth in *People v. Lovercamp*, 43 Cal. App. 3d 823 (1974) had to be present before defendants could present evidence relating to a necessity defense to the jury, a requirement which was rejected by the supreme court in *People v. Unger*, 66 Ill. 2d 333 (1977). *Pelate*, 49 Ill. App. 3d at 16-17.

¶ 28 *Ganus* is clearly distinguishable from the case at bar considering that defendant did not face the death penalty in this case and has not alleged that trial counsel was ineffective for raising a compulsion defense that was not available to him. *Pelate* is also distinguishable because that case concerned the availability of a necessity defense in a prosecution for escape. We further note that neither *Ganus* nor *Pelate* stand for the proposition that evidence of compulsion may be admitted in any manner and at any time, and, thus, those cases do not affect our findings here. In sum, we conclude that the trial court did not violate defendant's right to present a defense.

¶ 29 Defendant next contends that the State repeatedly misstated the law in closing argument by characterizing possession of contraband in a penal institution as a strict liability offense, contrary to the supreme court's holding in *People v. Farmer*, 165 Ill. 2d 194 (1995). He claims

that these misstatements prejudiced him by misleading the jury as to the potential viability of his affirmative defense.

¶ 30 Initially, the parties dispute the proper standard of review to be applied in a challenge to comments made during closing argument. While defendant claims that the propriety of closing remarks should be reviewed *de novo*, the State claims that the weight of authority favors review under an abuse of discretion standard. This court has previously noted that due to an apparent conflict between two supreme court cases, *People v. Wheeler*, 226 Ill. 2d 92, 121 (2007) and *People v. Blue*, 189 Ill. 2d 99, 128 (2000), the proper standard of review to be applied when reviewing improper remarks made during closing arguments is unclear. *People v. Woods*, 2011 IL App (1st) 091959, ¶ 38. We need not determine the proper standard of review in this case, however, because the same result would obtain under either a *de novo* or an abuse of discretion standard. *Woods*, 2011 IL App (1st) 091959, ¶ 38.

¶ 31 The parties also dispute whether defendant has properly preserved this issue for review. The State maintains that defendant has forfeited his claim with the exception of one comment to which he objected. Defendant replies that where the trial court wrongly overrules an objection, additional objections to the same error are not necessary to preserve it for review, citing *People v. Was*, 22 Ill. App. 3d 859, 865 (1974).

¶ 32 Here, defendant challenges two sets of remarks made by the State. He challenges the State's comments in the first portion of its closing argument that "regardless of the intent with which [defendant] possessed [the shank], it does not matter at all why this defendant was in possession of the shank," and that "[a]ll that matters is the location of the shank." He also

challenges the State's three comments in rebuttal referring to possession of contraband in a penal institution as a "strict liability case." We find that defendant has not forfeited his claim with respect to the first set of comments since he properly objected and raised the issue in a post-trial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). However, we agree with the State that defendant did not properly object to the latter comments so as to preserve the alleged error for review. *People v. Wheeler*, 226 Ill. 2d 92, 122 (2007) ("To preserve claimed improper statements during closing argument for review, a defendant must object to the offending statements both at trial and in a written posttrial motion."). Although defendant attempts to bootstrap his objection to the first set of remarks to those comments that were made later, we note that the latter comments were clearly unique in that they specifically contained the language "strict liability." See *Farmer*, 165 Ill. 2d at 203 (noting the distinction between the concept of *mens rea* and the statutory definition of "intent"). Unlike *Was*, 22 Ill. App. 3d at 865, where the court found that further objection by counsel would have been futile, we cannot be certain that an objection to the State's "strict liability" comments would have been overruled.

¶ 33 We will nonetheless review the forfeited comments under the plain error doctrine which " 'allows a reviewing court to consider unpreserved error when (1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred 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. Naylor*, 229 Ill. 2d 584, 593 (2008), quoting *People v. Piatkowski*, 225 Ill.

2d 551, 565 (2007). Under both prongs of the plain error doctrine, defendant bears the burden of persuasion (*Naylor*, 229 Ill. 2d at 593), and if he fails to meet that burden, the procedural default will be honored (*People v. Hillier*, 237 Ill. 2d 539, 545 (2010)).

¶ 34 In this case, the State maintains that its comments in closing argument were proper when read in context. "It is well settled that an attorney may not misstate the law in closing argument." *People v. Ramsey*, 239 Ill. 2d 342, 441 (2010). However, "[a] State's closing will lead to reversal only if the prosecutor's remarks created 'substantial prejudice.' " *People v. Land*, 2011 IL App (1st) 101048, ¶ 153, citing *People v. Wheeler*, 226 Ill. 2d 92, 123 (2007). "Substantial prejudice occurs 'if the improper remarks constituted a material factor in a defendant's conviction.' " *Land*, 2011 IL App (1st) 101048, ¶ 153, quoting *Wheeler*, 226 Ill. 2d at 123. "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 context." *Land*, 2011 IL App (1st) 101048, ¶ 154, citing *Wheeler*, 226 Ill. 2d at 122. We note that the State has wide latitude during closing argument. *Land*, 2011 IL App (1st) 101048, ¶ 154, citing *Wheeler*, 226 Ill. 2d at 123.

¶ 35 The first closing remarks challenged by defendant are the State's comments that "regardless of the intent with which [defendant] possessed [the shank], it does not matter at all why this defendant was in possession of the shank," and that "[a]ll that matters is the location of the shank." The State's comments here were clearly a paraphrase of the applicable statute, which states: "A person commits the offense of possessing contraband in a penal institution when he possesses contraband in a penal institution, *regardless of the intent with which he possesses it*."

(Emphasis added.) 720 ILCS 5/31A-1.1(b) (West 2008). Defendant objects that the State was asking the jury to understand this language in a way that obviated his affirmative defense. However, the State had every right to ask the jury to consider the statute under which defendant was charged, even if it did obviate his affirmative defense. We thus find no error in these remarks.

¶ 36 The remaining closing remarks challenged by defendant concern the State referring to possession of contraband in a penal institution as a "strict liability case." In *Farmer*, 165 Ill. 2d at 206-07, the supreme court held that possession of contraband in a penal institution is not a strict liability offense and requires a mental state of knowledge.

¶ 37 Although defendant makes much of the fact that the State referred to his prosecution as a "strict liability case," we note that there was never any dispute at trial regarding whether he knowingly possessed the shank in question. Defendant, himself, admitted to that fact, testifying that Wilson "gave me the knife and told me, said to take and put it in my leg and that's what I did," but that he only took it because he had been threatened. Since defendant's *mens rea* was never at issue in the case at bar, we find that he was not substantially prejudiced by the State's "strict liability" remarks (*Land*, 2011 IL App (1st) 101048, ¶ 153); and, as a result, he has failed to establish a clear or obvious error warranting plain error review (*Naylor*, 229 Ill. 2d at 593).

¶ 38 In reaching this conclusion, we have considered *People v. Buckley*, 282 Ill. App. 3d 81 (1996) and *People v. Marinez*, 196 Ill. App. 3d 316 (1990), cited by defendant, and find them distinguishable from the case at bar. In *Buckley*, 282 Ill. App. 3d at 89-90, the court granted a new trial where defendant was prejudiced by the State's closing remarks which misstated the law

as to the requisite state of mind for involuntary manslaughter. In *Marinez*, 196 Ill. App. 3d at 318-19, the court granted a new trial where the State's closing remarks misstated the law regarding the defense of intoxication. Here, unlike *Buckley* and *Marinez*, defendant's *mens rea* was not in issue at trial, and thus the State's remarks concerning that element did not cause him to suffer prejudice. Under the circumstances, we have no basis for granting defendant a new trial.

¶ 39 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 40 Affirmed.