SIXTH DIVISION
December 27, 2013

No. 1-11-0666

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. 09 CR 1485
	)	
DONALD HONDRAS,	)	Honorable
	)	Carol M. Howard,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hall and Reyes concurred in the judgment.

ORDER

& 1 *Held*: Defendant's convictions for first degree murder and aggravated discharge of a firearm are affirmed, where defendant was not prejudiced by the State's closing arguments.

& 2

& 3After a jury trial, defendant-appellant, Donald Hondras, was convicted of first degree murder and aggravated discharge of a firearm. He was then sentenced to concurrent terms of 50 and 6 years' imprisonment, respectively. On appeal, defendant contends that the State made improper and prejudicial remarks during its closing arguments. For the following reasons, we reject defendant's arguments on appeal and affirm his convictions.

& 4 I. BACKGROUND

& 5In December of 2008, defendant was charged by indictment with multiple counts of first degree murder, attempted first degree murder, aggravated discharge of a firearm, unlawful use of a weapon by a felon, and being an armed habitual criminal. This matter proceeded to a jury trial in September of 2010, where the State proceeded on two counts of first degree murder and one count of aggravated discharge of a firearm. In those counts, the State generally alleged that, on or about October 10, 2008, defendant shot and killed Joseph Hallom (victim) with a firearm and discharged a firearm in the direction of Levettia Lewis.

& 6At trial, the State presented the testimony of four eyewitnesses to the shooting: (1) the victim's wife, Levettia Lewis, (2) the victim's cousin, Lucian Baldaras, (3) the victim's nephew, Ernest Hallom, and (4) Earnest Hallom's wife, Kendra Gates. All four testified that on the evening of October 10, 2008, the victim had been in a parking lot near a now-demolished public housing development. The victim had been visiting some family and had been drinking alcohol with them. Ms. Gates testified that marijuana was also present, although she did not see anyone smoking it.

& 7All four eyewitnesses also testified that they observed defendant arrive on the scene and begin shooting a firearm repeatedly in the direction of the victim and his family. Ms. Lewis testified that, at the time, she was sitting in her automobile and the victim was standing on the passenger side. A bullet shattered the passenger window of the vehicle. Earnest Hallom and Lucian Baldaras testified that, after the victim fell to the ground, they saw defendant stand over him and continue shooting his weapon until he had fired all the bullets in the firearm. All four witnesses also testified that, following the shooting, a large crowd gathered, the police arrived, and there was a great deal of confusion and commotion. Ms. Gates admitted to being "hysterical," and she and Earnest Hallom testified that Ms. Gates and another woman were ultimately arrested.

& 8While Ms. Lewis, Mr. Baldaras, and Earnest Hallom identified defendant as the shooter and had all known defendant for years at the time of the shooting, Ms. Gates was not familiar with him at that time. However, Ms. Gates ultimately identified defendant as the shooter in a photo array, in a physical lineup, and in court. Additionally, both Ms. Lewis and Mr. Baldaras testified regarding a prior incident involving the victim and defendant, in which the victim inadvertently hit defendant in the face with a baseball bat during an altercation involving other individuals. This blow caused defendant significant injuries. Finally, Mr. Baldaras admitted that he had used heroin on the day before the shooting and had consumed some unprescribed Vicodin and some alcohol on the day of the shooting, and Ms. Lewis testified that she later gave the police four cartridge cases that another family had given to her two days after the shooting.

& 9Officer Mathew Augle testified that he and his partner responded to the scene of the shooting after they heard the gunshots. There, Officer Augle observed the victim lying on the ground near the passenger side of a vehicle and surrounded by bullet shell casings. There was also a crowd of people, one that grew in size as Officer Augle and his partner checked the victim, found him to be unresponsive, called an ambulance, and began to protect the crime scene. The crowd became "unruly" and "combative" and Officer Augle called for backup. Members of the crowd were screaming at the police and at each other. Some of them began to fight with the police. Officer Augle was not injured, but some other officers were and some of the members of the crowd were arrested. Officer Augle did not recall specifically who was arrested.

& 10Detective Donald Hill testified that he and his partner also responded to the crime scene. Detective Hill called for a forensic investigator. He also subsequently spoke with all four of the eyewitnesses, and specifically testified that, following defendant's arrest, Ms. Gates identified

defendant as the shooter in both a photo array and a physical lineup.

& 11Forensic Investigator Peter Larcher testified that he and his partner responded to the crime scene. There, they collected physical evidence which included cartridge casings, fired bullets, metal bullet fragments, clothing, cans of malt liquor, and blood evidence. They also took photos and a video of the crime scene. Detective Hill was subsequently given a fired bullet by Officer Nora Garza, who had recovered this bullet from the victim's hospital gurney. Detective Hill inventoried, packaged, and stored all the physical evidence he recovered.

& 12Dr. James Filkins testified that he performed an autopsy on the victim. The victim was mildly intoxicated at the time of his death, but his cause of death was a homicide caused by multiple gunshot wounds. Specifically, the victim had suffered six gunshot wounds, primarily to his back. While Dr. Filkins testified that some of the victim's wounds were consistent with having been shot from above while laying on the ground, he could not be absolutely certain that this is what actually happened.

& 13Finally, the State presented testimony from Illinois State Police forensic scientist Melissa Nally. She testified that she examined 5 fired bullets, 11 fired cartridge cases, and 2 metal fragments inventoried in this case. All five bullets were fired from the same gun, and all 11 cartridge cases were fired from the same gun. However, while the bullets could have been fired from the same gun that fired the cartridge cases, without a gun for comparison it was impossible to finally determine that this is what happened. The metal fragments were not suitable for analysis.

& 14After his motion for a directed finding was denied, defendant presented three witnesses. Brothers Antonio and Angelo Chavours testified that they had known defendant for years, and

that he had a reputation in the community as a peaceful person. They were also both familiar with the Hallom family and were somewhat familiar with the victim. Both of the Chavours brothers testified that they were reluctant to testify, with Angelo saying he felt

"caught in the middle" and Antonio saying that he had "a great deal of respect for both sides." Antonio also testified that defendant's reputation for peacefulness did not change after he was injured in the prior incident involving the victim.

& 15Victor Boyd, defendant's cousin, also testified that defendant had a reputation for peacefulness. With respect to the prior incident involving the victim and defendant, Mr. Boyd testified that the victim had swung a baseball bat just as defendant "happen[ed] to be walking right there." The blow broke defendant's jaw and rendered him unconscious. The victim then left the scene, and did not attempt to assist defendant.

& 16With respect to the night of the shooting, Mr. Boyd testified that he was nearby and heard the gunshots, but he did not see the shooter and did not see defendant. Mr. Boyd did see a man running away from the scene, but he did not recognize that person and it was not defendant. Mr. Boyd testified that, thereafter, there was "so much going on" and that he saw members of the Hallom family fighting with police and among themselves. Mr. Baldaras, Ernest Hallom, and Ms. Gates all appeared to be intoxicated. Mr. Boyd testified that he saw Ms. Gates get arrested. Mr. Boyd also testified that, while he later learned that defendant was arrested for the victim's murder, he never told police that defendant was not the shooter.

& 17 After closing arguments, the jury found defendant guilty of first degree murder, of personally discharging a firearm that proximately caused death, and of aggravated discharge of a firearm. The trial court thereafter denied defendant's motion for a new trial, which in part

challenged portions of the State's closing arguments. Defendant was then sentenced to concurrent terms of 50 years' imprisonment for first degree murder and 6 years' imprisonment for aggravated discharged of a firearm. Defendant thereafter filed a timely appeal.

& 18 II. ANALYSIS

& 19On appeal, defendant asserts that he was denied a fair trial due to a number of purportedly improper comments and arguments made by the State in its closing arguments. We address each of defendant's specific challenges to the State's closing arguments in turn, after laying out the legal framework that will guide our analysis.

& 20 A. Legal Framework and Standard of Review

& 21 A defendant "faces a substantial burden in attempting to achieve reversal of his conviction based upon improper remarks made during closing argument." *People v. Moore*, 358 Ill. App. 3d 683, 693 (2005). As this court has recognized:

> & 22 "A prosecutor is allowed wide latitude during closing arguments. [Citation.] 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. [Citation.] Remarks made during closing arguments must be examined in the context of those made by both the defense and the prosecution ***." *People v. Willis*, 409 Ill. App. 3d 804, 813 (2011).

& 23"A reviewing court will not reverse a jury's verdict based on improper remarks made during closing arguments unless the comments resulted in substantial prejudice to the defendant and constituted a material factor in his conviction." *People v. Cox*, 377 Ill. App. 3d 690, 706 (2007).

& 24We also note that in *People v. Wheeler*, 226 Ill. 2d 92, 121 (2007), our supreme court

reviewed the issue of allegedly improper prosecutorial statements during closing arguments *de novo*. *Id*. at 121. In *People v. Blue*, 189 Ill. 2d 99 (2000), which was cited by *Wheeler*, our supreme court applied an abuse of discretion standard to this issue. *Id*. at 128. We need not resolve this conflict, as we find no reversible error in this case under either standard.

& 25 B. Shifting the Burden of Proof

& 26Defendant first contends that the State improperly shifted the burden of proof in two separate instances during its closing arguments.

& 27Defendant is certainly correct that the " 'prosecution has the burden of proving beyond a reasonable doubt all the material and essential facts constituting the crime. [Citations.] The burden of such proof never shifts to the accused, but remains the responsibility of the prosecution throughout the trial.' " *People v. Giraud*, 2011 IL App (1st) 091261, ¶ 42 (quoting *People v. Weinstein*, 35 Ill. 2d 467, 470 (1966)). Defendant also correctly notes that "it is impermissible for the prosecution to attempt to shift the burden of proof to the defendant." *People v. Yonker*, 256 Ill. App. 3d 795, 799 (1993). However, "comments that would be otherwise constitute an inappropriate shifting of burden are not improper when the comments are an invited response to insinuations by the defendant or defense counsel[.]" *People v. Bakr*, 373 Ill. App. 3d 981, 990 (2007) (citing *People v. Watkins*, 220 Ill. App. 3d 201, 209 (1991)). Thus, "a prosecutor is permitted to comment on a defendant's failure to produce evidence where a defendant with equal access to the evidence assails the prosecutor's failure to produce that evidence." *People v. Curry*, 2013 IL App (4th) 120724, ¶ 80 (citing *People v. Jackson*, 399 Ill. App. 3d 314, 319 (2010)).

& 28Defendant initially claims that the State improperly shifted the burden of proof when,

referring to a video of the crime scene taken by the Investigator Larcher, the State made the following comments in rebuttal:

& 29"[PROSECUTOR]: There was plenty of light out there that night. ***

& 30 ***

& 31 Counsel got up here over and over again, and it's dark out, it's dark out. No one can see.

& 32 And go back there and deliberate. This photograph shows a street light directly over the scene of the crime, directly over the top.

& 33If this video was pitch black, you would have seen it ladies and gentlemen."

& 34Defendant contends that these statements improperly commented on the defendant's failure to introduce the video as evidence. However, it is clear from the record that these statements were made in direct response to the following comments made by defense counsel during her closing arguments:

& 35"[DEFENSE COUNSEL]: ***

& 36* * *

& 37 For instance, the video, that video that Forensic Investigator Larcher created.

& 38 * * *

& 39 We know that that was inventoried. The State chose not to bring that.

& 40 That is a significant loss to you to really get an idea, clean and sober, people with good judgment, able to think this through, unlike the eyewitnesses,

> and to determine whether they had an opportunity, whether they had an opportunity to observe because of the lighting conditions."

& 41Defense counsel then stated, "I suppose [the State] may say, why didn't [defense counsel] bring the video?" Answering her own rhetorical question, defense counsel stated that the defendant "has no burden of proof." Moreover, it was defense counsel that first raised the issue of the video during her cross-examination of Investigator Larcher.

& 42Thus, the record reflects that defendant himself was the first party to introduce the issue of the video through the cross-examination of Investigator Lecher. Furthermore, defense counsel's own closing argument revealed that she was aware that the video had been inventoried, and, thus, it was as available to the defense as it was to the State. Indeed, defense counsel did not indicate that defendant would not be introducing the video into evidence because it was unavailable, but simply because defendant had no burden to do so. Finally, defense counsel's closing argument clearly assailed the State's failure to produce the video at trial, insinuating that the video would actually have supported the defense theory that it was too dark at the time of the shooting for the State's eyewitnesses to have positively identified defendant as the shooter. On this record, the State's comments regarding the video were both invited by, and a proper response to, defense counsel's own argument. *Bakr,* 373 Ill. App. 3d at 990; *Curry,* 2013 IL App (4th) 120724, ¶ 80.

& 43Defendant next contends that the State improperly shifted the burden of proof in its rebuttal when it responded to defense counsel's closing argument that the State's eyewitnesses were far too intoxicated at the time of the shooting to provide reliable testimony about their observations. Defendant specifically complains that the State acted improperly when, in response to that

argument, it first noted that Detective Hill did not testify that the eyewitness appeared to be intoxicated and that Detective Hill was subject to cross-examination. The prosecutor then asked rhetorically: "Was there any testimony from the detective that he thought these witnesses were drunk? And why didn't that question get asked?"

& 44While defendant contends that these comments improperly implied that defendant had an obligation to present evidence to support his claim of innocence, the State contends that they were merely a direct response to defendant's attack on the credibility of the eyewitnesses. We need not resolve this dispute as "improper arguments can be corrected by proper jury instructions, which carry more weight than the arguments of counsel. [Citations.] Moreover, any possible prejudicial impact is greatly diminished by the court's instructions that closing arguments are not evidence." *Willis*, 409 Ill. App. 3d at 814. Here, the record reflects that the jury was properly instructed on the burden of proof following closing arguments, and was admonished and instructed before, during, and after trial that arguments were not evidence. Indeed, the defense counsel herself repeatedly indicated during her own closing argument that the State had the burden of proof and the prosecutor specifically stated in rebuttal that "[t]his burden of proof that counsel talks to you about, I welcome it. We welcome it." On this record, any possible error in the State's closing argument with respect to this issue was cured by the admonishments and other jury instructions given by the trial court. *Id*. (any possible shift in the burden of proof cured by proper jury instructions).

& 45 C. Disparagement of Defense Counsel, Defendant, and Defense Witnesses

& 46Defendant next asserts that, on two separate occasions during its rebuttal, the State improperly disparaged defense counsel, defendant, and the defense witnesses, and made

improperly sarcastic remarks.

& 47Defendant initially takes issue with the following comments made by the State with respect to the character witnesses presented by defendant, the two Chavours brothers. The State first commented that "[a]nyone, any defendant accused of any crime, no matter how vile, can always find someone to vouch for their character." The State then stated:

> & 48 "[PROSECUTOR]: All I am doing, ladies and gentlemen, is commenting on the quality of the character witnesses you saw.
>
> & 49 You think that the better the character someone has, that the better their character witnesses would be.
>
> & 50* * *
>
> & 51 *** Think about it.
>
> & 52 If Mother Theresa were on trial, she'd have the Pope and world leaders testifying for her character.
>
> & 53 Atilla [*sic*] the Hun on trial? Not so much.
>
> & 54 What you have here, ladies and gentlemen, the [Chavours] brothers, that is the bottom of the barrel, the bottom of the barrel."

& 55On appeal, defendant contends that these comments justify a new trial "because the prosecutor implied that the Chavours brothers were lying, essentially described Hondras as 'vile,' and sarcastically implied that he is as bad of a person as Attila the Hun." We disagree.

& 56First, we reject defendant's assertion that the State implied that the Chavours brothers were liars and, thus, "effectively charged defense counsel with fabricating a defense and directing witnesses to testify accordingly." Defendant is certainly correct that it is "well settled that it is

improper for the State to suggest that defense counsel fabricated a defense theory, used trickery or deception, or suborned perjury." *People v. Glasper*, 234 Ill. 2d 173, 207 (2009). However, none of the comments defendant cites to on appeal even mention his defense counsel.

& 57Moreover, the record reflects that the State specifically disclaimed any insinuation that the Chavours brothers were untruthful when, just prior to the comments defendant challenges on appeal, the prosecutor stated the following:

& 58 "[PROSECUTOR]: ***

& 59* * *

& 60 The [Chavours] brothers came in here, tell the truth. I'm not saying they did. I'm not saying they didn't, but let's make that assumption.

& 61 Let's give that one to the defense.

& 62 What does their testimony mean? Nothing, absolutely nothing. At most it means that the defense found two young men who knew the defendant who can say hey, he's got a good reputation for peacefulness."

& 63Thus, rather than imply that the Chavours brothers lied at the behest of defense counsel, we find that the record supports the prosecutor's statement at trial that "[a]ll I am doing, ladies and gentlemen, is commenting on the quality of the character witnesses you saw." Of course, " '[t]he credibility of a witness is a proper subject for closing argument if it is based on the evidence or inferences drawn from it.' " *People v. Gorosteata*, 374 Ill. App. 3d 203, 223 (2007) (quoting *People v. Hudson*, 157 Ill. 2d 401, 445 (1993)). The credibility and quality of the Chavours brothers as character witnesses is just what the State commented on—properly—in the statements challenged by defendant. *Glasper*, 234 Ill. 2d at 207 ("it is not error for the State to

challenge a defendant's credibility or the credibility of his theory of defense when evidence exists to support the challenge").

& 64Second, we also reject the argument that the State acted improperly by describing defendant as "vile." As noted above, the State used this description while arguing that "[a]nyone, any defendant accused of any crime, no matter how vile, can always find someone to vouch for their character." Initially, we note that it is not entirely clear from this comment if the State was describing "any defendant" or "any crime" as "vile." Moreover, on its face, this comment did not specifically reference defendant or his alleged crimes *at all*. Rather, this comment appears to have been nothing more than a generalized comment, based upon common knowledge, about the likelihood that "any defendant" accused of "any crime" could nevertheless present favorable character witnesses to a jury. The State may properly "discuss subjects of common experience or common sense in closing argument." *People v. Runge*, 234 Ill. 2d 68, 146 (2009); see also *People v. Beard*, 356 Ill. App. 3d 236, 242 (2005) ("a prosecutor is permitted to discuss subjects of general knowledge, common experience, or common sense in closing argument.").

& 65Even if we were to consider this comment to have been a specific statement about either defendant or the offenses for which he was tried, we would not find it to have been so prejudicial as to warrant a new trial. To the extent that this comment referred to defendant's criminal conduct, we note that "commenting unfavorably on the evils of crime do[es] not constitute error." *Blue*, 189 Ill. 2d at 129 (2000); see also *Vile Definition*, MERRIAM-WEBSTER.COM, http://www.merriam-webster.com/dictionary/vile (last visited December 13, 2013) (defining "vile" as "evil or immoral"). Here, defendant was prosecuted for murdering the victim by shooting him multiple times in the back. It was absolutely permissible for the State to comment

on the vileness or evilness of such criminal activity.

& 66To the extent that this comment was in fact a reference to defendant himself, we acknowledge that "a prosecutor may not characterize the defendant as an 'evil' person" (*People v. Nicholas*, 218 Ill. 2d 104, 121 (2005)), and reiterate that "vile" has been defined to mean "evil." However, even if we accepted defendant's argument that the State improperly disparaged him by specifically referring to him as vile, "such a characterization will not result in reversible error unless it substantially prejudiced the defendant." *People v. Hudson*, 157 Ill. 2d 401, 457 (1993) (collecting cases).

& 67Here, the State did not directly characterize defendant as vile. Rather, and as defendant himself acknowledges on appeal, at most the State "essentially described Hondras as 'vile' " in an indirect manner. Moreover, the evidence of defendant's guilt in this case—which included the testimony of numerous eyewitnesses and corroborating physical evidence—was overwhelming. On such a record, we conclude that any possible impropriety in this comment did not result in substantial prejudice to defendant or constitute a material factor in his conviction. *Cox*, 377 Ill. App. 3d at 706.

& 68Third, we reject defendant's contention that he is entitled to a new trial because the State improperly and "sarcastically implied that he is as bad a person as Attila the Hun." First, we note that—and again, as defendant himself acknowledges on appeal—the State did not directly refer to him as Attila the Hun. Rather, in the context of making the general argument that "the better character someone has, *** the better their character witnesses would be," the State simply illustrated its point by hypothesizing that Mother Theresa would likely be able to present better character witnesses than Attila the Hun.

& 69Even if we did agree with defendant's assertion that the State "sarcastically implied that he is as bad a person as Attila the Hun," we would find that "[t]hough we do not condone the prosecutor's unnecessary use of sarcasm, 'it is entirely proper for a prosecutor to denounce a defendant's wickedness, engage in some degree of invective, and draw inferences unfavorable to the defendant if such inferences are based upon the evidence.' " *People v. Burton*, 338 Ill. App. 3d 406, 418 (2003) (quoting *People v. Gutirrez*, 205 Ill. App. 3d 231, 261 (1990)). Again, defendant was prosecuted for the premeditated murder of the victim, and the evidence showed that defendant shot the victim six times in the back while he was in a group of other bystanders. While accepting that sarcastically comparing defendant to Attila the Hun may have been improper, defendant "could not be prejudiced by prosecutorial remarks that were not out of proportion to what the jury properly considered as evidence." *Id*. at 418-19; see also *People v. Andersch*, 107 Ill. App. 3d 810, 817 (1982) (prosecutor's "ill-advised" reference to Attila the Hun during closing argument not prejudicial, where comment did not result in substantial prejudice or constitute a material factor in defendant's conviction).

& 70Lastly, we are not persuaded by defendant's argument that the State committed error with respect to comments it made about Mr. Baldaras and the State's other eyewitnesses. During its rebuttal, the State made the following comment that is challenged on appeal:

& 71 "[PROSECUTOR]: ***

& 72* * *

& 73 Lucien Baldaras may be a lot of things, but he is not a liar, ladies and gentlemen.

& 74 We didn't slap a fancy suit on our witnesses, put a tie on them, and try to

pretend that they are something that they are really not.

& 75* * *

& 76You saw our witnesses for who they really are."

& 77As he did below, defendant contends on appeal that this comment was improper because it "could have been construed by the jury that Hondras was pretending to be someone who he is not due to his wearing a suit at tie." We disagree.

& 78Anticipating an attack on the credibility and character of its eyewitnesses, the State initial closing argument included the observation that "the witnesses are who they are in this case. The State's Attorneys [*sic*] office did not pick out these witnesses did not create this scenario. This defendant is the one that created this scenario." During her closing arguments, defense counsel did in fact challenge the character and credibility of Mr. Baldaras and the other eyewitnesses presented by the State, referring to them as "drunk and disorderly" and calling attention to Mr. Baldaras' admission of drug and alcohol use and his demeanor on the witness stand.

& 79In addition, anticipating an attack on the *defense witnesses* during the State's rebuttal argument, defense counsel made the following comments about the Chavours brothers:

& 80 "[DEFENSE COUNSEL]: ***

& 81 *** It's pretty clear they don't want to be here.

& 82 I mean, if they wanted to come and help their friend, could they maybe have found a shirt with a collar or they maybe would have tucked their shirt in the pants.

& 83 If they were taking direction from Donald Hondras' side, this is what we'd like you to do. Wouldn't they have been a little bit more presentable? That is as presentable as they care to be."

& 84Defense counsel then implored the jury that, with respect to the defense witnesses, "even if you don't like them because they are working class, because they are reluctant to be here, because they don't speak loud enough, whatever. Please don't hold that against Donald Hondras." It was only after these observations by defense counsel that the State commented that "[w]e didn't slap a fancy suit on our witnesses, put a tie on them, and try to pretend that they are something that they are really not."

& 85Thus, it is apparent that both the State and defense counsel made arguments to the jury that their respective witnesses should be believed despite the fact that—at least according to the State and defense counsel—they did not present as ideal witnesses at trial. Moreover, it was *defense counsel* that first argued that the Chavours brothers should be believed despite their less than "presentable" appearance. The State simply responded by making a similar argument in favor of its own witnesses. "The prosecution may fairly comment on defense counsel's characterizations of the evidence and may respond in rebuttal to statements of defense counsel that noticeably invite a response." *People v. Willis*, 2013 IL App (1st) 110233, ¶ 110 (citing *People v. Evans*, 209 Ill. 2d 194, 225 (2004)); see also *Willis*, 409 Ill. App. 3d at 813 ("Remarks made during closing arguments must be examined in the context of those made by both the defense and the prosecution ***."). We, therefore, find nothing in the record to support defendant's contention that the State's comment on the character and credibility of its *own witnesses* could somehow be interpreted as an improper comment about defendant himself, who notably did not testify at trial.

& 86 D. Misstatements of the Evidence

& 87Finally, defendant contends that he is entitled to a new trial due to several instances in which the State misstated the evidence during its closing arguments.

& 88First, defendant contends that the State misstated the evidence when it suggested that Mr. Boyd was the only witness to testify that the State's witnesses were "essentially drunks and rowdy people that cause riots." Defendant contends that this statement was incorrect because Officer Augle also testified that he met with an "unruly" and "combative" crowd when he responded to the scene of the shooting and that some arrests were made.

& 89However, as the State correctly notes on appeal, Officer Augle never specifically testified that any of the State's eyewitnesses themselves acted in such a manner. Thus, the State did not in fact misstate the evidence in making this comment. Moreover, even if this comment was a misstatement of the evidence, the record reflects that the trial court immediately thereafter responded to defendant's objection by reminding the jury that any statements not based on the evidence should be disregarded. As noted above, "improper arguments can be corrected by proper jury instructions, which carry more weight than the arguments of counsel. [Citations.] Moreover, any possible prejudicial impact is greatly diminished by the court's instructions that closing arguments are not evidence." *Willis*, 409 Ill. App. 3d at 814. And again, the jury in this case was properly admonished and instructed before, during, and after trial that arguments were not evidence. We, therefore, conclude that defendant has not demonstrated any possible prejudice resulting from this comment.

& 90Next, defendant argues that the State incorrectly argued that: (1) Dr. Filkins testified that the victim's gunshot wounds "were inflicted while he was lying on the ground and someone was standing over him firing a weapon," where Dr. Filkins actually testified only that the wounds were "consistent" with such an explanation, and (2) Angelo Chavours "couldn't even give you the address of where he worked," where the witness actually testified that he knew the "location,

but [he] did not know the name."

& 91However, defendant never objected to these comments at trial, nor did he challenge them in his posttrial motion. Therefore, defendant has not preserved this issue for appeal. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (to preserve a claim for review, a defendant must both object at trial and include the alleged error in a written posttrial motion). Defendant, thus, asks this court to review these comments for plain error.

& 92The plain error doctrine "bypasses normal forfeiture principles and allows a reviewing court to consider unpreserved error ***." *People v. Herron*, 215 Ill. 2d 167, 186 (2005). The plain-error doctrine is applied where "(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. Piatkowski*, 225 Ill. 2d 551, 565 (2007). In either circumstance, the burden of persuasion remains with the defendant. *Herron*, 215 Ill. 2d at 182.

& 93With respect to the first prong of the plain error doctrine, we note again that the overall record clearly reflects that the evidence of defendant's guilt—including the testimony of four eyewitnesses identifying defendant as the shooter, the testimony regarding defendant's motive, and the corroborating evidence—was overwhelming. We certainly do not think that the evidence was so closely balanced that defendant has demonstrated that any possible misstatements with respect to the testimony of Dr. Filkins and Angelo Chavours "threatened to tip the scales of justice against the defendant." *Piatkowski*, 225 Ill. 2d at 565.

& 94As to the second prong, we note that "[e]rror under the second prong of plain error analysis has been equated with structural error." *People v. Cosmano*, 2011 IL App (1st) 101196, ¶ 78. "Structural errors have been recognized in only a limited class of cases including: a complete denial of counsel; trial before a biased judge; racial discrimination in the selection of a grand jury; denial of self-representation at trial; denial of a public trial; and a defective reasonable doubt instruction." *Cosmano*, 2011 IL App (1st) 101196, ¶ 78. However, "[e]rror in closing argument does not fall into the type of error recognized as structural." *Cosmano*, 2011 IL App (1st) 101196, ¶ 78. Thus, we conclude that defendant has not demonstrated plain error with respect to these comments.

& 95 E. Cumulative Error

& 96Defendant finally asserts that the cumulative effect of the individual errors he has claimed with respect to the State's closing arguments also requires reversal. We disagree.

& 97We have already rejected the majority of defendant's assertions of error on the merits and concluded that the rest did not amount to prejudicial, reversible error. "Where the alleged errors do not amount to reversible error on any individual issue, there generally is no cumulative error. *People v. Moore*, 358 Ill. App. 3d 683, 695 (2005). Therefore, we find no reversible error based on the State's closing arguments.

& 98Moreover, while defendant cites to *Blue*, and *People v Johnson*, Ill. 2d 53 (2004), in support of his contention that he is entitled to a new trial, we find each case to be distinguishable. While in each case our supreme court found that a defendant was entitled to a new trial in light of cumulative error, and regardless of the strength of the State's evidence, this was only because each case revealed a "pervasive pattern of unfair prejudice." *Blue*, 189 Ill. 2d at 139; *Johnson*,

Ill. 2d at 84. Again, here we have concluded that most of defendant's claims of error are unfounded, and that the rest were not prejudicial.

& 99 III. CONCLUSION

& 100 For the foregoing reasons, we affirm the judgment of the circuit court.

& 101 Affirmed.