2014 IL App (1st) 111699-U

SIXTH DIVISION
August 22, 2014

No. 1-11-1699

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.	)	96 CR 29589
	)	
COREY TRAINOR,	)	Honorable
	)	Reginald H. Baker,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Rochford and Justice Lampkin concurred in the judgment.

ORDER

HELD: The State's closing and rebuttal arguments did not deprive defendant of a fair trial. The trial court did not erroneously instruct the jury regarding attempt first-degree murder. Defendant was not deprived of a fair trial by the trial court's response to questions posed by the jury during its deliberations. And defendant's sentences were not excessive.

¶ 1 Defendant, Corey Trainor, along with three codefendants not parties to this appeal, were charged in a multi-count indictment with, among other offenses, first-degree murder in the drive-by shooting death of Isidro Arce. The State prosecuted the first-degree murder charge under three different theories of murder: intentional or knowing, strong probability, and felony murder predicated on aggravated discharge of a firearm. Defendant and codefendants were also each charged with three counts of attempt first-degree murder of Alejandro Ramirez, Orlando Pizano, and Juan Villareal, and three counts of aggravated discharge of a firearm involving the same three individuals.

¶ 2 Following a jury trial, defendant was found guilty of one count of first-degree felony murder, one count of attempt murder, and one count of aggravated discharge of a firearm. On July 10, 1997, he was sentenced to 60 years' imprisonment for first-degree murder, to be served concurrently with 30 years for attempt murder, and 15 years for aggravated discharge of a firearm.

¶ 3 On August 29, 1997, defendant filed a notice of appeal, but later withdrew it based on the erroneous advice from then-appellate counsel who advised defendant that his concurrent sentence was unlawful and if he appealed, the court would impose a consecutive sentence. On July 18, 2000, defendant moved for postconviction relief, alleging the erroneous advice constituted ineffective assistance of counsel that deprived him of his right to direct appeal. The trial court granted defendant postconviction relief by allowing him to file a late notice of appeal. The notice of appeal was filed June 10, 2011.

¶ 4 Defendant now contends on appeal that: (1) the State's improper remarks during closing and rebuttal arguments deprived him of a fair trial, and alternatively, his trial counsel was ineffective for failing to preserve the issue for review; (2) the trial court erroneously instructed

the jury regarding attempt murder where the instruction stated that the target of the offense was an "individual," rather than specifically naming the individuals allegedly targeted; (3) he was deprived of a fair trial by the trial court's response to questions posed by the jury during its deliberations; and (4) his sentences were excessive. For the reasons that follow, we affirm.

¶ 5 The following is a brief summary of the evidence presented at trial. Mrs. Gavina Arce testified that on April 20, 1996, she and her husband, Isidro Arce, lived at 199 E. 23rd Street, in Chicago Heights, Illinois. On that date, at about 6 p.m., she was in her kitchen finishing a telephone conversation. As she hung up the phone, she heard what sounded like firecrackers going off in rapid succession. Mrs. Arce looked out the front door of her living room and saw three boys (the alleged targets of the drive-by shooting), who had been standing in front of her house, run west a short distance and then south across 23rd Street, towards 24th Street, where they were joined by another boy who had come from the west.

¶ 6 Mrs. Arce turned to her husband, who was sitting on the couch, and asked him why he had not got up to see what happened. She then noticed he was bleeding from the right side of his head. She also noticed the front door had a hole in it not there previously. The parties stipulated that if called to testify, the medical examiner would opine that the victim died from a single gunshot wound to the head.

¶ 7 The State's theory of the case, which was supported by, among other things, the defendant's statements to police, was that defendant and codefendants, who were members of the Gangster Disciples (GD) street gang, participated in the planning and execution of a drive-by shooting targeting members of the Latin Kings street gang, but resulting in the death of the victim.

¶ 8 Defendant gave police three statements (all published to the jury), which, in combination established that defendant, his girlfriend, and a man named Leroy drove to a small grocery store called the La Rosita Bakery located near the intersection of 22nd Street and Butler Street, in Chicago Heights. Defendant's girlfriend went inside the store while defendant and Leroy remained in the car. Three Latin Kings gang members who were standing outside the store, approached the car and threw up gang signs at defendant. Defendant drove away with Leroy, leaving his girlfriend behind in the store.

¶ 9 Defendant dropped Leroy off and then rounded up four other GDs to return to the store. On the way to the store, one of the men pulled out two firearms, a .25 caliber handgun and a .380 semiautomatic handgun. Defendant learned about the guns because he asked who was carrying the firearms. Defendant stated he knew there would be trouble because the GDs and Latin Kings were rival gangs. Defendant drove up to the store and one of his cohorts went inside the store to get defendant's girlfriend. She was not there. After the cohort got back into the car, defendant spotted some Latin Kings in an alley behind the store.

¶ 10 Defendant drove around the store where he saw some Latin Kings running through a yard toward 23rd Street. He drove up 23rd Street and saw Latin Kings ducking down and hiding. As defendant was driving past the hiding Latin Kings, the men in his car were yelling "get those Kings." One of the men in defendant's car fired 2-3 gunshots at the Latin Kings as defendant continued driving down the block. Defendant then drove away from the area.

¶ 11 Al Jay Fulton, Jr., testified that on the date of the incident, he had left work around 5:30 p.m., and was driving near 22nd Street and Butler Street in Chicago Heights. While stopped at a stop sign, he saw a "goldish rust-color" car parked eastbound in the street near the La Rosita store. There were four black males in the car, and a man was standing next to the car waving a

chrome-plated handgun. The man was pointing the gun in the direction of a group of Hispanic men standing near the mouth of an alley. Fulton heard the driver of the car tell the man waiving the gun to "come on, come on." The man responded, "I'm not going anywhere till my boy comes." A young black male then exited the store carrying a brown paper bag and jumped into the gold car. The man waiving the gun got into the car as well. The gold car sped off eastbound on 22nd Street.

¶ 12 After the gold car left, Fulton parked his car and spoke to some people who had gathered outside the grocery store. Fulton asked a lady what happened and she told him that someone was waving a gun and pointing it at Hispanics near the alley. Fulton then drove south on Butler toward 23rd Street. As Fulton approached the intersection of 23rd Street and Butler, he heard three or four gunshots. He did not see the gold car at the time he heard the shots. Fulton testified that about 4 to 5 minutes passed between the time he saw the gold car drive east on 22nd Street to the time he heard the gunshots. Fulton identified defendant in a lineup and at trial as the driver of the gold car.

¶ 13 Julio Arce, one of the victim's son, testified that on the date of the shooting, at about 6 p.m., he was outside in the backyard of his parents' house with family members, when he saw 3 to 4 young teenage Mexican males walking east in the alley behind his parents' house toward 23rd Street. Julio had seen the young men in the neighborhood on previous occasions. Julio saw the young men cut through a gangway about 2-3 houses down from the Arce house. Julio then heard 3 or 4 gunshots, and saw the young men running back in a westerly direction. Julio claimed he never saw anyone chasing the young men and did not see a tan or gold car following them. Julio also testified he never saw any of the occupants in a gold car shoot at anyone.

¶ 14 Julio's mother, came out of the house and yelled for him to come see that his father had been shot. She told Julio the young men had run west. Julio and his brothers took two cars and went looking for the young men. Driving near 25th Street, Julio saw one of the young men in a group of 4-5 guys. Julio approached the young man, attempting to speak with him, but a struggle ensued and they both fell to ground where Julio held him until the police arrived and took him into custody.

¶ 15 Juan Ruiz testified that on April 20, 1996, at about 6 p.m., he was standing in the parking lot next to the La Rosita store talking to a girl when he saw a car with some black males park on the corner near the store. He was standing about two cars from the parked car. One of the men exited the car and entered the store with a gun in his hand. One of the other occupants in the car also had a gun, which he pointed at Ruiz, asking him where the "Kings" were. Ruiz responded he did not know. Ruiz denied being a gang member, but thought the man in the car waving the gun at him suspected he was a King. At this time, Ruiz saw a group of people walking through an alley. The man who had entered the store carrying the handgun exited the store and got back into the car. The car sped off down 22nd Street and then it came up 23rd Street. Ruiz testified that after the car came up 23rd Street, he heard 3 or 4 gunshots. He did not see who fired the gunshots.

¶ 16 Alejandro Ramirez testified he is a member of the Latin Kings. The Latin Kings and GDs were rivals. Ramirez testified that approximately 15 to 20 minutes before the shooting occurred, he was walking on Butler on his way to the La Rosita grocery store when he saw a gold car with two people in it drive by on Butler. He recognized the car as belonging to the GDs. Ramirez had seen defendant in the neighborhood on previous occasions and knew him to be a GD. Ramirez made an in-court identification of defendant as the driver of the gold car.

¶ 17 Ramirez went into the La Rosita grocery store, made a purchase, and then exited the store. Outside the store, he met up with Orlando Pizano, Juan Villareal, and Fernando Martinez. While standing in the parking lot of the store, Ramirez saw the gold car drive by a second time. This time, the car was full of men. The car slowed down as it drove past, and Ramirez made eye contact with some of the men in the car. Ramirez told his friends there might be trouble and advised them to leave the area. Ramirez and his friends started to walk down an alley toward 23rd Street. As the group was walking down the alley, one of Ramirez's friends caught up with the group and informed them that a couple of minutes earlier, a man with a gun had entered the La Rosita grocery store looking for them.

¶ 18 When the group reached 23rd Street, Ramirez saw the gold car fast approaching. Once the car reached the group, its passenger-side back door flew open and Ramirez saw a shiny object he believed was a weapon. He took cover behind some parked cars in a lot next to the Arce house and then heard 3 or 4 gunshots. The gold car was adjacent to the Arce house when the shots were fired. After the shooting, Ramirez ran from the area.

¶ 19 Two days after the shooting, Ramirez accompanied police to an address in Chicago Heights where he identified a car in the driveway as the same car involved in the drive-by shooting. Ramirez also saw defendant walking in the area and identified him to police.

¶ 20 Juan Villarreal testified that on April 20, 1996, at about 6 p.m., he and Orlando Pizano were walking up Butler Street to purchase cigarettes from a store located across the street from the La Rosita grocery store. Villarreal claimed he was not a Latin King. Villarreal testified that while he was waiting outside the store for Pizano, he saw Ramirez across the street and went to talk with him. After the conversation, Villarreal called Pizano outside and told him that they should leave the area because Ramirez said there was going to be trouble. Villarreal and Pizano

left the area, cutting through an alley between 22nd and 23rd Streets. Minutes later, Ramirez and Fernando Martinez jogged past. Villarreal and Pizano followed behind. The men stopped jogging, and walked through a gangway leading out to 23rd Street. When the group reached 23rd Street, they started walking toward Butler Street.

¶ 21 Villarreal testified that as he and his friends neared Butler Street, he saw a "goldish car" approaching. Ramirez and Martinez, who were walking a few yards ahead , stopped and looked at the car, and then broke away, scattering to the side. The car's rear passenger-side door was open, and Villarreal saw what looked like a chrome weapon sticking out the door. Villarreal testified he dropped to the ground and took cover behind a van. He then heard 3 or 4 gunshots coming from the direction of the car. The victim's house was located on the same side of the street where he took cover. After the shooting, Villarreal ran from the area.

¶ 22 Two days after the shooting, Villarreal accompanied police to an address in Chicago Heights where he identified a car in the driveway as the same car involved in the drive-by shooting. Villarreal acknowledged he did not see who fired the gunshots. Villarreal denied telling police he was a Latin King or that he knew defendant was a GD.

¶ 23 Orlando Pizano's testimony regarding the events leading up to the shooting was substantially similar to Villarreal's testimony. Pizano acknowledged he is a member of the Latin Kings. Pizano testified that as the gold car approached, he saw that the car's rear passenger-side door was open and a pistol was sticking out of the open door. Pizano dove to the ground and took cover behind a car. He then heard 3 or 4 gunshots coming from the direction of the car. Pizano admitted he did not see who fired the gunshots. After the shooting, Pizano ran from the area. Two days later, he went to a parking lot with police and identified the car involved in the shooting.

¶ 24 Detective Bryan Howard of the Chicago Heights Police Department, assisted by Sargent John Murphy, took two separate written statements from defendant in which he confessed his involvement in the shooting. An assistant State's Attorney subsequently took a third written inculpatory statement from defendant. Prior to each statement, defendant was advised of his *Miranda* rights and he executed a waiver of rights. Defendant's corrected, initialed, and signed statements were published to the jury and admitted into evidence.

¶ 25 The defense presented the testimony of Pamela Bridges. Bridges testified that on the date of the shooting incident, she lived three houses east of the victim's house. She testified that on that date, at approximately 6:00 p.m., she was in her bedroom watching television when she heard a gunshot. She heard a second gunshot as she ran to her living room. When she entered her enclosed porch and looked out the window, she heard a third gunshot. Bridges saw a group of Hispanic individuals, a couple of girls and about four or five men standing on the sidewalk in front of the victim's house. A man wearing an American flag jacket walked down the steps of the victim's house, walked out of the yard and through the gate and joined the group.

¶ 26 Bridges testified she then heard her roommate pull his car up in front of her house. He got out of the car, opened the hood, and began "tinkering with the battery." The man wearing the American flag jacket left the group, crossed the street, and then took off running. The rest of the group took off running as well. The group ran west and then south through a vacant lot toward 24th Street. Bridges testified that when the group was out-of-sight, she heard screeching wheels from a car driving south on Butler Street. The car ran a stop sign and turned right onto 24th Street, traveling the wrong way on the one-way street. The driver was a male with a long black ponytail.

¶ 27 On cross-examination, Bridges acknowledged she did not see anyone with a gun. She also acknowledged that the car she saw speeding down Butler Street was a "goldish," boxy-looking car. The defense rested following Bridges's testimony.

¶ 28 In rebuttal, the State called the victim's son, Ramone Arce, to impeach Bridges's testimony. Ramone testified he was in the backyard of his parents' house with his brothers when he saw four Hispanic males walk by the house. Moments later, he saw the same four men run past his house through the alley toward 25th Street. Ramone then heard 3 or 4 gunshots. After his mother told him his father had been shot, Ramone jumped into his gold Chrysler New Yorker and drove south on Butler Street, running the stop sign at 23rd and Butler Streets.

¶ 29 Ramone saw one of the men he was chasing run inside a house. Ramone testified he spoke to a man named Chin Cho, who lived in the house. Cho told him the gunshots were fired from a passing car and that a man named Rick Trevino was involved in the shooting.

¶ 30 The jury found defendant guilty of one count of first-degree felony murder, one count of attempt murder, and one count of aggravated discharge of a firearm. He was sentenced to 60 years' imprisonment for first-degree murder, to be served concurrently with 30 years for attempt murder, and 15 years for aggravated discharge of a firearm. Defendant now brings this direct appeal.

¶ 31 ANALYSIS

¶ 32 Defendant first contends the State's improper remarks during closing and rebuttal arguments deprived him of a fair trial. In the alternative, he argues his trial counsel was ineffective for failing to preserve the issue for appellate review. Defendant urges us to consider the matter as plain error.

¶ 33 The plain-error doctrine permits a reviewing court to consider forfeited claims of error if either: (1) the evidence is closely balanced and the jury's guilty verdict may have resulted from the error; or (2) the error was so fundamental and of such magnitude that the defendant was denied a fair trial and the error must be remedied to preserve the integrity of the judicial process. *People v. Hudson,* 228 Ill.2d 181, 191 (2008). A defendant has the burden of persuasion under both prongs of the plain-error analysis. *People v. Lewis,* 234 Ill. 2d 32, 43 (2009). Defendant requests we review the alleged errors under both prongs of the plain-error analysis. We must decline the request because we find no error.

¶ 34 The first step of the plain-error analysis is to determine whether any error has occurred. *People v. Thompson,* 238 Ill. 2d 598, 613 (2010). If we find no error in the prosecutor's comments, then it necessarily follows that the comments cannot amount to plain error. *People v. Green,* 225 Ill. 2d 612, 622 (2007).

¶ 35 A reviewing court will not reverse a jury's verdict on the basis of improper remarks made during closing argument unless the comments resulted in substantial prejudice to the defendant and constituted a material factor in his conviction. *People v. Alvine*, 173 Ill. 2d 273, 292-93 (1996). Although the appropriate standard of review on this issue is unsettled (see *People v. Maldonado,* 402 Ill. App. 3d 411, 421-22 (2010)), we find that under either standard, *de novo* or abuse of discretion, there was no error. We find no error by the prosecutor during closing or rebuttal arguments.

¶ 36 "The purpose of closing arguments is to give the parties a final opportunity to review with the jury the admitted evidence, discuss what it means, apply the applicable law to that evidence, and argue why the evidence and law compel a favorable verdict." *People v. Nicholas,* 218 Ill. 2d 104, 121 (2005), quoting T. Mauet & W. Wolfson, Trial Evidence 439 (2nd ed. 2001).

"In presenting a closing argument, the prosecutor is allowed a great deal of latitude and is entitled to argue all reasonable inferences from the evidence." *People v. Nieves,* 193 Ill. 2d 513, 532-33 (2000).

¶ 37 In the instant case, the complained-of errors in closing argument can be separated into three categories. In the first category are remarks made by the prosecutor referencing gang culture. We find that the prosecutor's remarks regarding gang culture were not inappropriate but were within the scope of permissible closing argument. Here, both defendant and the State presented gang-related evidence during the trial and referenced gang-related activity during closing arguments. Thus, any references to gang culture during the prosecutor's closing argument were legitimate inferences from the facts and circumstances of the case. See *People v. Rainone,* 176 Ill. App. 3d 35, 42 (1988) (prosecution's closing arguments concerning defendant's gang affiliation legitimate inferences from the facts and circumstances of the case where both defendant and State referred to gang membership of the defendant and various witnesses during trial).

¶ 38 The second category of alleged improper remarks concern the public safety of families in relation to gang activity. Defendant takes issue with several comments made by the prosecutor during closing arguments, such as: "There was a time when families could walk down the streets, feel safe, no problems. That time has long since passed," "You are not even safe on your front porch anymore," "So, a man is in his living room watching TV, but the gangs and the drive-by shootings come into his living room," "Legal responsibility is a principle to protect the little children who run around the streets," and "These streets make up a neighborhood where people live, where people work, where people raise their families, their children."

¶ 39 Again, we find that the prosecutor's remarks were not inappropriate but were within the scope of permissible closing argument. "The prosecutor has the right to comment on the evidence and to draw all legitimate inferences deducible therefrom, even if they are unfavorable to the defendant." *People v. Simms*, 192 Ill. 2d 348, 396 (2000). In addition, a "prosecutor may comment unfavorably on the evil effects of the crime and urge the jury to administer the law without fear, when such argument is based upon competent and pertinent evidence." *People v. Nicholas*, 218 Ill. 2d 104, 121-22 (2005).

¶ 40 In this case, the evidence presented at trial established that the victim was fatally shot during a gang-related drive-by shooting as he sat on a couch in his living room with his grandchild on his lap, his wife a few feet away, and his sons and other grandchildren playing in the yard. Thus, the second category of challenged remarks was based on reasonable inferences from the evidence and were not improper. See, *e.g.*, *People v. Owens*, 102 Ill. 2d 88, 105-06 (prosecutor's closing argument that "It's a sad commentary on modern America that people all too often become prisoners in their homes at night. They are afraid to walk the streets because they fear exactly what happened to [the victim] would happen to them," held not improper since a prosecutor may comment on the evidence and the evil effects of the crime).

¶ 41 The third and final category of alleged improper remarks concern references to the victim and his family. Defendant takes issue with the following comments made by the prosecutor during closing arguments: "That is his home. A simple man, a simple life. Worked in the steel company for about seventeen years. Disabled. Vision problems," "That is him at the morgue with the bullet hole in the side of his head and all he was doing was watching TV in his living room with his grandchildren running around," "Mr. Arce had a right to be in his living room with his grandchildren running around," "Now, Mrs. Arce is left without a husband, alone. The

children are left without a father and the grandchildren without a grandfather," "Now, when you go through all of these exhibits, you are going to come to a photograph, a small snapshot of the deceased, the man that was murdered, the man that was killed, Acedro Arce, who was taken away from his wife of thirty-seven years. Who was taken away from his nine children. Who is taken away from his 18 grandchildren, and grandchildren unborn yet. The man who raised his kids working at a steel mill."

¶ 42 Viewed in the context of all the evidence presented at trial, as well as in the context of the entirety of the State's closing argument, we do not find that the prosecutor's remarks were improper. Our supreme court has recognized that "[c]ommon sense tells us that murder victims do not live in a vacuum and that, in most cases, they leave behind family members." *People v. Hope*, 116 Ill. 2d 265, 275-76 (1986) (quoting *People v. Free*, 94 Ill. 2d 378, 415 (1983)). As a result, it is well settled that not every mention of a murder victim's family will *per se* entitle defendant to a new trial. *People v. Johnson*, 149 Ill. 2d 118, 143 (1992). In certain cases, depending upon how the evidence is introduced, such statements can be harmless, particularly when the death penalty is not imposed. *People v. Williams*, 196 Ill. App. 3d 851, 865 (1990). The instant case is not a death penalty case.

¶ 43 As mentioned, the evidence presented at trial established that the victim was fatally shot in a gang-related drive-by shooting as he sat in his living room with his grandchild on his lap, his wife a few feet away, and his sons and other grandchildren playing in the yard. Therefore, some reference to the victim's family was inevitable to explain the circumstances surrounding the shooting. See *People v. Ward*, 154 Ill. 2d 272, 302 (1992). Review of the record shows that the prosecutor's remarks were primarily drawn from the testimony of Mrs. Gavina Arce, the victim's wife, who testified as a "life and death" witness and supplied the foundation for admission of

pictures of the victim. The prosecutor's remarks were within the wide range of argument permitted during closing argument as they were based upon the evidence and not merely appeals for sympathy. In the context of the prosecutor's entire closing argument, the complained-of remarks were not improper. We find no error in the prosecutor's comments.

¶ 44 Moreover, before closing arguments began, the trial court preemptively cautioned the jury: "What the lawyers say during their arguments is not evidence and should not be considered by you as evidence." The trial court repeated this caveat in instructing the jury. As a reviewing court, we assume the jury followed the trial court's instructions. *People v. Bernard*, 149 Ill. App. 3d 684, 695 (1986). In sum, we cannot say that the prosecutor's comments during closing argument denied defendant a fair trial.

¶ 45 As we have found no error here, there can be no plain error to excuse defendant's forfeiture of this issue. *People v. Bannister*, 232 Ill. 2d 52, 79 (2008). In addition, since we have found no error with respect to the prosecutor's statements during closing argument, we cannot hold that trial counsel was ineffective for failing to object to these statements, as without error there was no prejudice. If a reviewing court finds that a defendant claiming ineffective assistance of counsel did not suffer prejudice, it need not decide whether counsel's performance was constitutionally deficient. *People v. Bull*, 185 Ill. 2d 179, 203 (1998).

¶ 46 Defendant next contends the trial court erroneously instructed the jury regarding attempt first-degree murder. Whether the trial court properly instructed the jury is a question of law subject to *de novo* review. *People v. Herron*, 215 Ill. 2d 167, 174 (2005).

¶ 47 Defendant maintains the trial court erred when it instructed the jury that in order to find him guilty of attempt first-degree murder, it need only find that the offense was committed against an "individual." In this case, the trial court gave the standard definitional instruction for

attempt first-degree murder (Illinois Pattern Jury Instructions, Criminal, No. 6.05X (4th ed. 2000)) (hereinafter IPI Criminal 4th No. 6.05X), which states in relevant part:

> "A person commits the offense of attempt first degree murder when he, with the intent to kill an individual, does any act which constitutes a substantial step toward the killing of an individual."

The jury was further instructed pursuant to a modified IPI, Criminal, No. 6.07X (4th ed. 2000)) (hereinafter IPI Criminal 4th No. 6.07X). The issues instruction provided that to sustain the charge of attempt first-degree murder, the State was required to prove the following propositions:

> "That the defendant, or one for whose conduct he is legally responsible, performed an act which constitutes a substantial step towards the killing of an individual, and
>
> That the defendant, or one for whose conduct he is legally responsible did so with the intent to kill an individual."

¶ 48 During the instruction conference and in his post-trial motion, defense counsel objected to the issues instruction's use of the phrase "an individual." Defense counsel argued that since there were three attempt murder victims and because proof of a specific intent to kill is an element of attempt first-degree murder, then it followed that the issues instruction must specifically name the alleged targets of the offense. The trial court rejected these arguments, noting that the court's general policy was not to deviate from the IPI. The trial court also determined that the instruction was not misleading. We do not believe the trial court erred in this regard.

¶ 49 We do not agree with defendant that the use of the phrase "an individual" in IPI Criminal 4th No. 6.07X confused or mislead the jury as to the intended victims of the attempt murder.

"The purpose of jury instructions is to provide the jury with the correct legal principles applicable to the evidence, so that the jury may reach a correct conclusion according to the law and the evidence." *Bannister*, 232 Ill. 2d at 81. Supreme Court Rule 451(a) provides that where an applicable Illinois Pattern Instruction (IPI) exists, it "shall be used, unless the court determines that it does not accurately state the law." Ill. S. Ct. R. 451(a) (eff. Apr. 8, 2013).

¶ 50 In this case, IPI Criminal 4th No. 6.07X properly stated the law applicable to the case and was supported by the evidence. "A person commits the offense of attempt when, with intent to commit a specific offense, he or she does any act that constitutes a substantial step toward the commission of that offense." 720 ILCS 5/8-4(a) (West 2012). The offense of attempted murder is shown when the State proves, beyond a reasonable doubt, that the defendant, with the specific intent to kill, commits any act which constitutes a substantial step toward the commission of murder. *People v. Valentin*, 347 Ill. App. 3d 946, 951 (2004). Two elements must be proven beyond a reasonable doubt to find a defendant guilty of attempt first-degree murder: (1) defendant performed an act which constituted a substantial step toward the commission of the crime; and (2) he possessed the specific intent to kill the victim. *People v. Carroll*, 260 Ill. App. 3d 319, 329 (1992). Intent to kill may be inferred from the circumstances surrounding the commission of the offense. *People v. Parker*, 311 Ill. App. 3d 80, 81 (1999).

¶ 51 The State presented evidence that defendant had the specific intent to shoot and kill any Latin Kings he encountered, the specific identities of the intended targets was immaterial provided they were Latin Kings. The State also presented evidence that defendant took a substantial step toward commission of the offense when his cohorts fired multiple gunshots into the group of Latin Kings. These facts support a conviction for attempt murder without the addition of named victims. See *People v. Bailey*, 265 Ill. App. 3d 262, 273 (1994) (defendant's

conduct in shooting down a breezeway in which several people were running was sufficient evidence of a specific intent to kill beyond a reasonable doubt; and "[t]o sustain a charge of attempt murder, it is sufficient to discharge a weapon in the direction of another individual, either with malice or total disregard for human life."); *People v. Gonzales*, 40 Ill. 2d 233, 241-42 (1968) (not necessary to show defendant formed an intent to kill any particular person where evidence established he intentionally fired shotgun into group of men standing in front of a tavern). Here, there was no instructional error as it was appropriate for the trial court to give IPI Criminal 4th No. 6.07X because the victims were all in close proximity to each other, defendant had the specific intent to kill any one of them or all of them, and his cohorts fired at them at the same time.

¶ 52 The decision in *People v. Anderson*, 2012 IL App (1st) 103288, regarding an identical IPI issues instruction does not compel a different result because the decision was limited to the "narrow set of facts" in that case. In *Anderson*, the defendant was charged with first-degree murder in the shooting death of Darryl Hart and with attempt first-degree murder of Ozier Hazziez. *Id*. ¶ 1. At trial, Hazziez testified that the defendant and Hart engaged in a verbal altercation outside a small sandwich restaurant just prior to the fatal shooting. *Id*. ¶ 7. He did not know either man. According to Hazziez, the victim was approximately 5 feet away from defendant when he was shot; Hazziez claimed he was about 10 feet away from defendant when the shooting occurred. Hazziez jumped in his car and drove away from the scene. As he was driving away, he heard three more gunshots, but was not sure in which direction the shots were fired. After driving for approximately 20 minutes, Hazziez exited his vehicle to check for bullet holes. He found none. *Id*. ¶ 8.

¶ 53 The jury was instructed with a similar IPI issues instruction for attempt first-degree murder at issue in this case. *Id*. ¶ 58. Following the jury trial, defendant was found guilty of the charges. On appeal, defendant challenged the instruction, arguing that the trial court's failure to specify in the instruction that the "individual" referred to in the attempt murder charge was Hazziez, confused the jurors and may have allowed them to convict him of attempt murder based on a finding that he attempted to kill, and then succeeded in killing Hart, the murder victim, rather than Hazziez. *Id*. ¶ 59.

¶ 54 The reviewing court agreed with defendant. The court determined that because the evidence was closely balanced as to whether defendant actually fired his gun at Hazziez, in order to avoid potential jury confusion as to the target of the attempt murder charge, the trial court should have specified in the instruction that the "individual" referred to in the charge was only Hazziez. *Id*. ¶ 61. The *Anderson* court stated, "we find that the confusing nature of the jury instruction, which failed to specify that the subject of the attempted murder charge was only Hazziez, rendered the instruction erroneous under the narrow set of facts of this case." *Id*. ¶ 64.

¶ 55 The holding in *Anderson* does not support defendant's position because we have already determined that under the circumstances in this case, the use of the phrase "an individual" in IPI Criminal 4th No. 6.07X did not confuse or mislead the jury as to the intended victims of the attempt murder. Alejandro Ramirez, Orlando Pizano, and Juan Villareal, the alleged targets of the attempt murder, gave credible and consistent testimony regarding the shooting and there is no indication the jury was confused as to whom the victims of the attempt murder were or confused as to what evidence was relevant to the respective charges of attempt murder and murder. There was no instructional error. See, *e.g.*, *People v. Malone*, 37 Ill. App. 3d 185, 190-91 (1976) (no

error in trial court's failure to give jury instruction specifying name of alleged victim of attempt murder where evidence indicated jury was not confused as to the identity of the victim).

¶ 56 We also find that the note the jury sent to the trial court during jury deliberations does not demonstrate the jury was misled or confused by the use of the phrase "an individual" in IPI Criminal 4th No. 6.07X. As in this case, when a trial court decides to answer a jury's question, it must do so correctly and must not misstate the law. *People v. Gray,* 346 Ill. App. 3d 989, 994 (2004). We review this issue *de novo*. *Id*. at 994.

¶ 57 Here, the relevant jury note stated as follows:

> "We need clarification. (1) Is the distinction between First degree and Attempt based upon the death of an individual? (2) Does 'intent' imply a factor to sustain a First Degree Murder charge?"

In regard to the first question, defense counsel argued the trial court should answer "No." The State responded that such an answer would be an inaccurate statement of the law and would confuse the jury. Following a discussion in chambers, and over defense counsel's objection, the trial court instructed the jury as follows:

> "It's the Court's understanding that Attempt First Degree Murder applied to victims other than Mr. Arcy [sic]. That is Mr. Ramarez [sic], Mr. Razano [sic], and Mr. Villaria [sic]. That is who the attempt murder applied to. Therefore, it's the Court's position, over Defense objections, to answer the first question like this: 'Attempt First Degree Murder applies to an alleged victim other than the deceased.'

> As to the second question regarding the intent, 'The Court is of the position that the question regarding intent has been addressed in your proposition instructions, on first degree murder. Please read that instruction.' " [1]

¶ 58 We find nothing improper in the trial court's response to the jury's first question. Under the circumstances in this case, the trial court's response that attempt murder applies to an alleged victim other than the deceased was a correct response to the jury's question and alleviated the potential that the jury could have found defendant guilty of the attempt first-degree murder of Isidro Arce, the murder victim, which is precisely the potential confusion addressed by the reviewing court in *Anderson*. The trial court's response to the jury's first question properly addressed the difference between the offenses as applied to the victims in this case, thereby avoiding potential jury confusion allegedly wrought by the use of the phrase "an individual" in IPI Criminal 4th No. 6.07X.

¶ 59 Moreover, because we conclude the trial court's response to the jury's question was proper and did not prejudice defendant's case, we necessarily reject defendant's contention that his trial counsel was ineffective for failing to object to the court's response to the question. See *People v. Holmes*, 397 Ill. App. 3d 737, 745 (2010) (defense counsel will not be deemed ineffective for failing to make a futile objection).

¶ 60 Defendant finally contends his concurrent sentences of 60 years' for murder, 30 years' for attempt murder, and 15 years' for aggravated discharge of a firearm are excessive because they do "not meet the legislative goal of rehabilitation." Defendant further contends his sentences are grossly disparate to the concurrent 20-year murder sentence and 6-year attempt murder sentence imposed on codefendant Oskari Calhoun.

[1] There was no defense objection to the trial court's response to the second jury question.

¶ 61 Imposition of a sentence is a matter of judicial discretion. *People v. Perruquet*, 68 Ill. 2d 149, 153 (1977). Where a defendant's sentence is within statutory limits, a reviewing court will not alter the sentence absent an abuse of that discretion. *People v. Cabrera*, 116 Ill. 2d 474, 494 (1987). In the instant case, defendant acknowledges his sentences fall within the applicable statutory ranges.

¶ 62 Where an imposed sentence is within the statutory range, it will not be found excessive unless there is an affirmative showing that the sentence varies greatly from the spirit and purpose of the law or manifestly violates constitutional guidelines; the spirit and purpose of the law are promoted when a sentence reflects the seriousness of the crime and gives adequate consideration to defendant's rehabilitative potential. *People v. BoClair*, 225 Ill. App. 3d 331, 335 (1992).

¶ 63 In the present case, there is nothing in the record which indicates the trial court ignored defendant's rehabilitative potential or any mitigating factors before he imposed his sentence. The record indicates that at defendant's sentencing, the trial court acknowledged the presentence investigation report, which raises the presumption that the court took into account defendant's potential for rehabilitation. See *People v. Wilburn*, 263 Ill. App. 3d 170, 185 (1994). Our review of the record shows the trial court considered both mitigating and aggravating factors and arrived at a balance between society's need for protection and defendant's rehabilitative potential.

¶ 64 In addition, defendant's sentences are not grossly disproportionate when compared to the sentences imposed on codefendant Calhoun. Unlike defendant, Calhoun had no criminal history. The trial court noted that defendant was the motivating force behind the shooting, that Calhoun's participation was limited, and that defendant induced and facilitated Calhoun's conduct. The trial court determined that Calhoun was unlikely to commit another crime; the car involved in the drive-by shooting was not his; the guns were not his; and he did not do any of the shooting.

¶ 65 Accordingly, for the reasons set forth above, we affirm the judgment of the circuit court of Cook County.

¶ 66 Affirmed.