2015 IL App (1st) 123139-U

FIRST DIVISION
March 30, 2015

No. 1-12-3139

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ROBERT SANSBERRY, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Cook County. No. 10 CR 5495 Honorable Jorge Luis Alonso, Judge Presiding.

PRESIDING JUSTICE DELORT delivered the judgment of the court.
Justices Connors and Harris concurred in the judgment.

ORDER

¶ 1 ***Held:*** The State's closing argument did not create reversible error. The trial court did not err in admitting a witness's prior inconsistent statements, defendant was not prejudiced by a police witness's statement that he contacted a gang enforcement unit during his investigation, and the cumulative effect of those alleged errors did not deny defendant a fair trial. In addition, defendant's sentence is not excessive, and we reject defendant's claim that the automatic transfer statute is unconstitutional. We therefore affirm the judgment of the trial court.

¶ 2 Following a jury trial, defendant Robert Sansberry was found guilty of aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1) (West 2010)), and sentenced to 20 years' imprisonment. On appeal, he makes the following contentions of error: (1) the State's closing argument was

improper; (2) the trial court erred in allowing a witness's prior inconsistent statements, and the State improperly elicited testimony suggesting defendant was a member of a gang; (3) the cumulative effect of the errors denied defendant a fair trial; (4) defendant's sentence is excessive; and (5) the automatic transfer statute is unconstitutional. We affirm.

¶ 3 BACKGROUND

¶ 4 Defendant was indicted on multiple counts of attempted murder (720 ILCS 5/8-4 (West 2010); 720 ILCS 5/9-1(A)(1) (West 2010)) and one count of aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1) (West 2010)) in connection with the shooting of Ondelee Perteet. Defendant was 15 years old at the time of the offense but was prosecuted as an adult under section 5-130 of the Juvenile Court Act of 1987 (705 ILCS 405/5-130(1)(a)(iii) (West 2010)) (the "automatic transfer statute").

¶ 5 Defendant's trial began on October 13, 2011. After empaneling the jury, the trial court advised it that opening statements are not evidence and are "merely statements of what the lawyers expect the evidence to show so as to assist you in understanding the evidence as it is introduced." The trial court further told the jury that closing arguments also are not evidence.

¶ 6 During its opening statement, the State described the victim's injuries as a result of the shooting but then told the jury the victim was not present because he was paralyzed; instead, the State said, "You're here because [defendant] has to be held accountable and responsible for shooting [the victim]. Because that's what he is charged with, aggravated battery with a firearm. That is the charge." The State further informed the jury that they would see "the pressures that are brought to bear on people who *** come forward in cases like this." The following evidence was then adduced at trial.

¶ 7 Between 7 and 9 p.m. on September 5, 2009, fourteen-year-old Ondelee Perteet arrived at a party that his sisters, Trealmia Perteet and Johnnia Estes, were having at their apartment at 1027 North Laramie Avenue in Chicago. The apartment building was on the east side of Laramie, and a school (bordered by lots on both sides) was located on the west side of the street. The party began with just family and a few friends, including Shamika Qualls.

¶ 8 At around 10 p.m., however, as many as 50 people were there, including at one point defendant and Terrance Bingham, and the party became "rowdy," with people drinking, smoking, standing on furniture, and showing "gang signs." Ondelee testified that he told people to calm down, but that defendant responded with profanity. Ondelee and defendant then began to argue, but Estes separated them, and Trealmia told defendant to leave. Defendant did leave, and both Ondelee and Trealmia saw defendant sitting on a fire hydrant in front of their apartment building talking on his phone. About an hour later, there was another altercation at the party. Trealmia and Estes ended the party, and the fighting that began inside at the party continued on the street in front of their apartment. Ondelee went outside to break up a fight between Estes and another woman, but a group of people began beating him.

¶ 9 At some point, Ondelee and his uncle went to help his cousin's best friend, who was also being beaten. After they tried pulling the best friend into the house, they went back outside to help Ondelee's cousin, who was also getting beaten. Ondelee said that he was shot when he stepped outside. Trealmia testified that she was trying to help Estes and saw Ondelee on the ground. Neither Ondelee nor Trealmia saw the shooter.

¶ 10 Qualls testified that she arrived at the party "late" with her brother and a friend. Qualls said that she parked her car and saw a group of people fighting, so she stayed in her car. While seated in her car, Qualls saw defendant leave the fighting, retrieve a gun from across the street,

cross back to the other side of the street, fire the gun, and then run through the school lot. Qualls confirmed that she had an unobstructed view. Qualls stated that, after the shooting, she gave the police her name and contact information, but did not tell them who shot the victim. On cross-examination, however, Qualls admitted that she told an officer that she saw the shooting and who shot the victim, as well as where the shooter ran. Also on cross-examination, Qualls conceded that, in February 2006, she had been convicted of heroin possession, which she said she had been selling, received a sentence of probation, and violated her probation when she was convicted of forgery, for which she received additional probation.

¶ 11 Terrance Bingham testified that he had heard about the party and was there at the time of the shooting. Bingham said that he was standing across the street from the apartment building and near the school, and that he saw several people fighting. Bingham then said that he saw defendant start shooting. Bingham said he only got a "glance" at the shooter's face, but he knew it was defendant. Bingham stated that the victim was on the same side of the street as Bingham, *i.e.*, across the street from the apartment building.

¶ 12 Chicago police detective Sheamus Fergus testified that he was assigned to investigate the shooting. After arriving on the scene, Fergus stated that he and other detectives performed a "canvass" of the area to ensure area residents were unharmed and attempt to locate additional eyewitnesses, but they did not locate any additional eyewitnesses. Fergus testified that blood evidence indicated that the victim was shot on the sidewalk in front of the apartment building. Fergus later said that, based upon everything he had learned about this incident, and after speaking with Bingham, King, and Qualls, he then attempted to locate defendant. The following colloquy then occurred:

"Q. [The State] And how did you attempt to find him?

A. [Fergus] We contacted the Gang Enforcement Unit of the Chicago Police Department and there was—

Q. Did you ask other officers in other units to help you?

A. Yes.

Q. And there are some units in the police department that are especially assigned to just look for people?

A. Yes.

Q. And were you yourself driving around the area looking for him?

A. Not actively, no ***.

Q. You had basically asked other units to help you do that part of the case, correct?

A. Correct."

¶ 13 Fergus also testified that, two days after the shooting, the victim's mother, Deetreena Perteet, told him that the victim's cousin, Eric Langham, had been receiving threatening phone calls. Fergus learned that the calls originated from Bingham's cell phone, and located Bingham on September 12, 2009. According to Fergus, Bingham agreed to accompany Fergus and another officer to the station. There, Bingham told the officers that, on the night of the party, he saw defendant raise a gun and shoot. Bingham identified defendant from a photographic array. Bingham, however, testified that he was handcuffed and did not go to the station voluntarily. Bingham claimed that the officers threatened to "throw him under the bus" and warned him not to "get caught up" in this case. Bingham conceded that he did not fear being charged in connection with the shooting, but he was afraid he would be charged with some other offense.

Bingham nonetheless agreed that he told the police that defendant was the shooter because it was the truth. Bingham also conceded that, at the time he made a written statement, he told an assistant state's attorney that he saw defendant shoot the victim. He also admitted that he never told the assistant state's attorney that he had been threatened or otherwise mistreated by anyone. Bingham denied making any threatening phone calls, explaining that he had allowed defendant to use his phone a few days after the shooting.

¶ 14 Fergus stated that he had interviewed Bingham in December 2009, while Bingham was in jail on an unrelated matter. Bingham informed Fergus that, during a previous interview in October 2009 with other detectives, Bingham denied knowing anything about the shooting because he had been "pulled out" in front of other people in the neighborhood and he feared retaliation. Bingham conceded that he had been arrested for contempt of court for his failure to appear and testify in this case. Bingham further agreed on cross-examination that, a week after signing his written statement, the trial judge dismissed his unrelated drug case for lack of probable cause.

¶ 15 Fergus stated that, after having another conversation with the victim's mother on October 9, 2009, he was directed to Qualls. The following day, Fergus met with Qualls at her home, where she identified defendant as the shooter out of a photo array. In February 2010, Fergus, another officer, and Assistant State's Attorney Sharon Cantor interviewed Qualls a second time at her home because Qualls did not want to go to the police station. Cantor stated that Qualls appeared frightened and feared being identified because of her bright red hair. Cantor obtained Qualls's written statement recounting the events surrounding the shooting and identifying defendant as the shooter.

¶ 16 Cantor noted that, several months after her interview with Qualls, Qualls left a message with Cantor asking about a reward. Cantor said that she responded to Qualls that she knew nothing about a reward. Fergus stated that the victim's mother had told him about a local church offering a reward and had indicated that she wanted to post fliers regarding the reward. Fergus and Cantor both confirmed that they never discussed the possibility of a reward with Qualls. Qualls, however, testified that she only learned of the reward when Cantor went to Qualls's house, but she told Cantor she wasn't interested in the reward. Qualls said she also mentioned the reward to Assistant State's Attorney Karen Kerbis, but only in the hope that she would not have to testify in this case.

¶ 17 Qualls also testified that, when she met with Kerbis before trial, she refused to review her written statement and claimed that she had forgotten everything and no longer wanted to testify or to have anything to do with the case out of fear of retaliation. Qualls, however, refused Kerbis's offer of witness relocation, instead asking whether she could testify from another location via television, which Kerbis refused. Qualls testified that she then told Kerbis that she could not testify because she had been using a lot of drugs and her mind was "clouded" due to her daily drug use. Qualls, however, noted that, when Kerbis asked if Qualls had said that because she was afraid to testify in court, Qualls said, "Yes." Qualls reiterated that she had hoped that she would not have to come to court by refusing to cooperate. Qualls also confirmed that she was not on drugs either at the time of her testimony, when she made her statement, or when she met with Kerbis two days before trial.

¶ 18 King's Prior Inconsistent Statements

¶ 19 King testified as a witness for the State. King, however, denied telling Detective Fergus on both October 4, and December 22, 2009, that she had heard defendant admit to shooting the

victim while she walked home with defendant's cousin, Iesha Brown,[1] whom King described as her closest friend and who had known Brown for about 14 years. King also denied telling Fergus that she called 9-1-1 in September 2009 from her cousin Starcy Fort's phone after defendant tried to run her over with a van; instead, King said that Fort had made the call. Fergus, however, testified that King did tell him both that defendant admitted shooting the victim and that she called 9-1-1. King also denied that, on December 22, 2009, she told Assistant State's Attorney Mike Pekara that defendant admitted shooting the victim while she was walking home from school with Brown. In addition, King denied stating that Brown told defendant that he should be in hiding. King conceded that she had signed a statement that Pekara had written, in which King stated that defendant admitted to Brown that defendant shot the victim following an altercation and that defendant subsequently tried to run King over in a van by driving at her and then driving up on the curb when King was on the sidewalk. King's statement further provided that she decided to call 9-1-1 and state that defendant shot the victim because he "just kept doing wrong things." King, nonetheless, denied hearing defendant confess and denied stating that defendant tried to run her over. Pekara, however, testified that King had stated that defendant had confessed and tried to run her over (prompting her call to 9-1-1), and that these facts were memorialized in the statement. King further admitted that she reviewed her statement prior to her grand jury testimony and told Assistant State's Attorney Angel Essig that "everything in that statement was true." King also stated that she was truthful in her grand jury testimony, in which she repeated her statement regarding defendant's admission and his attempt to run her over. Finally, King acknowledged that, at the time she met defendant while walking home with Brown, King was on "home monitoring" in connection with a charge of robbery and aggravated

[1] In the record on appeal, Brown's first name is also spelled "Aisha."

battery, and King added that she received a sentence of probation for aggravated battery in February 2011.

¶ 20 Assistant State's Attorney William Delaney testified that, during a conversation he witnessed between King and Kerbis in March 2011, King confirmed to Kerbis that defendant had tried to run her over and that King remembered her statements about the shooting. Delaney also testified that King indicated she would refuse to testify against defendant.

¶ 21 The State rested, and the defense presented its case-in-chief. Brown denied walking home with King, during which time defendant admitted shooting the victim. Brown also agreed that she had the name "Cassandra" tattooed on her wrist, but explained that it did not refer to King; rather, it referred to Cassandra Bryant, her "significant other" of three years, and in response to the State's question, she said that she knew "quite a few Cassandras." Brown further admitted that, at the time of her testimony, she was in prison for possession of a stolen motor vehicle, and at the time of the alleged meeting with defendant while walking home with King, Brown had been on house arrest for a prior possession of a stolen motor vehicle conviction.

¶ 22 The defense also called Chicago police officer Riga to testify, who stated he was one of the first officers to respond to the scene. Riga said that Qualls approached him but told him that she was not present at the time of the shooting, and that she only "heard" that an individual shot the victim in the face and ran southbound on Laramie.

¶ 23 Defendant then testified and denied having a gun or shooting anyone at the party. Defendant stated that he was at the party and that another individual asked him, "What the fuck I was looking at," to which defendant responded, "What the fuck you looking at." According to defendant, at that point a woman got between them and told defendant to leave. Defendant said he left and tried to get a ride to his grandfather's house. Eventually, however, defendant said he

went home, which he could get to by running through the school yard across the street from the apartment building where the party took place. Finally, defendant denied meeting Brown and King while they were walking home from school and admitting to Brown that he shot someone.

¶ 24 Closing Arguments

¶ 25 After the close of the evidence, the cause proceeded to closing arguments, at which point the trial court admonished the jurors that closing arguments are not evidence and should not be considered as such, and that they should disregard any argument that is not based on the evidence or a reasonable inference drawn from the evidence.

¶ 26 During its initial closing argument, the State made the following comments:

> "Ladies and gentlemen, there is nothing new about a fight breaking out at a party especially where there is a lot of people involved ***. Most of us have been to college, been to a bar, been to a supporting [*sic*] event, we've all seen it happen, it's a matter of time sometimes when alcohol is involved with a large group of people. But the difference nowadays with these parties that break out in fights, the difference nowadays is that they don't just end in fist fights, they end in gunshots."

¶ 27 During defendant's closing argument, defense counsel stated, "Just because the policeman gets somebody to repeat the same story three or four times and then get a state's attorney in here to write it down and put it before the grand jury doesn't make it true." Defense counsel then questioned the nature of the party, and observed, "you don't have a birthday party for your relatives and all of a sudden let 60 people in your house. *** You don't have a birthday for your family and charge admission to get into the place." Defense counsel further

advised the jury, "Now, one thing you got to realize is people have a tendency to tell people what they think they want to hear." Defense counsel then challenged the victim's account of the shooting, recounting defendant's testimony that the victim started the confrontation and asserting that the victim "had to make it look like it was [defendant's] fault that the argument started."

¶ 28 Defense counsel then turned to the testimony of Qualls, highlighting the inconsistency between her testimony and Officer Riga's. Defense counsel specifically recounted Qualls's testimony that she told the police everything that she had seen, even pointing to where "they ran to and everything," but defense counsel argued, "we know that's not true because Officer Riga says, '[N]o, that's not what she said. I didn't even see the shooting.[']" Defense counsel then opined, "I would think being a good friend of the family there she would have told the police right away, hey this is what I saw."

¶ 29 Defense counsel also questioned why the police did not immediately obtain a statement from Bingham at the first interview. Defense counsel asked, "What did he say that first time that they weren't happy about? * * * Now, I'm sure Detective Fergus is not real happy that Terrance has recanted his original story to some other detectives."

¶ 30 Defense counsel then argued that the reason the police wanted to interview Qualls was not because they thought she knew anything; rather, it was because the victim's mother called the police and told them that Qualls wanted to talk to them. Specifically, counsel argued: that Qualls spoke to the victim's mother, who called the police and told her a friend of hers wanted to talk to them about the shooting; and that detectives went to Qualls's house, where she identified defendant from a photographic array. Defense counsel added, "[W]e know that she made the calls, has talked to [the victim's] mother numerous times before she ever talks to the police." In

addition, defense counsel challenged Qualls's testimony that she did not know of a reward for information on the shooting until much later.

¶ 31 During its rebuttal argument, the State commented that the "name of this case" was not "the People versus Ondelee Perteet, for going to his sister's party and trying to help his sister out of the party that [was] turning *** from a party into a melee. But you listen to that and that's what he wants you to think." The State then argued that the "name of this case" was not "the People versus Trealmia Perteet, for having a party that got out of hand."

¶ 32 Continuing its argument with respect to Bingham, the State said that the name of the case was not the People versus "[Assistant State's Attorney] Karen Kerbis. When Terrance Bingham had to be arrested to come to court, it wasn't for contempt of Karen. *** It's contempt of court. You were served with a subpoena to come to court. You did not come to court. That is contemptuous of the court's order."

¶ 33 With respect to the police investigation that defense counsel commented upon, the State replied that that case was not entitled the People versus "Detective Fergus because they didn't take statements as quickly as the [d]efense would have liked. And I guarantee you, if the detectives would have taken those statements as quickly as he said they should have, if that would have happened, he would [be] saying it's a rush to judgment ***. Instead what you had here was a slow and methodical and careful investigation."

¶ 34 Turning to defense counsel's arguments regarding the credibility of the State's witnesses, the State asked the jury, "And if you remember nothing else from this trial, you remember that they've called Ondelee and his sister liars." The State continued:

> "I want to talk about the witnesses of whom much has been said. You know, if you ever watch TV shows about Chicago or

> read anything about Chicago, it seems like every piece of travel literature or something starts out with 'Chicago is the City of Neighborhoods.' ***
>
> *** But there are other neighborhoods in this city, ladies and gentlemen, and it is a city of neighborhoods, and they are neighborhoods that people are held hostage in, that are held in by fear. And if you have seen nothing else, you have seen, as we told you when we opened up this case, you will see the influence and the pressure brought to bear on witnesses in some of these neighborhoods.
>
> We can look at the news all day long and see people a [*sic*] suffering abroad or we can look in our own backyards and see people suffering here and we can see the people that suffer."

¶ 35 The State also discussed Bingham's reluctance to testify, arguing in pertinent part:

> "[Defendant] felt perfectly comfortable shooting in front of Terrance Bingham and all of those other people because he was counting on one thing. He was counting on them not coming forward, he was counting on them following that code of silence and not cooperating in the police station and staying hostage to fear and terror and crime on their block.
>
> That is some block ***. You've seen exactly what goes on. You've see[n] how terrified people are to come forward, how

> they will do anything not to come forward, even get arrested to not come to court. [Defendant] counts on that."

¶ 36 The State then argued that King's reluctance to testify was because defendant was her best friend's cousin, conceding that King stated that she did not want to testify. The State, however, also pointed out that King never said that her prior statements implicating defendant were false, and that King admitted that her prior sworn testimony to the grand jury was true. The State then made the following argument:

> "You know, ladies and gentlemen, we all know something. If this shooting had happened in front of the Apple store last week *** on Michigan Avenue ***, do you think the police would have such a hard time solving it or do you think everybody would be raising their hand, pick me, pick me, I saw what happened, *** I saw the murder.
>
> Michigan and wherever that store is *** unlike Laramie and Augusta, is not a neighborhood held in fear. But the law recognizes, and you're going to get this instruction, that sometimes witnesses succumb to pressure and because they do succumb to pressure, they sometimes try to change their testimony.
>
> You're going to get the instruction, but it begins with 'the believability of a witness may be challenged by evidence that on some former occasion he made a statement that was not consistent with his testimony in this case.' *** 'However, you may consider a witness's earlier inconsistent statement as evidence without this

limitation when the statement was made under oath at a proceeding.'

Now, what that means is this: The statement—when Cassandra King testified she tried to say a couple of times, no, I didn't say it ***. Remember the Assistant State's Attorney Mike Pekara had to testify to say no, she did say these things and the detective had to testify and say, no, she did say these things. But remember, I asked her about her grand jury testimony where she was under oath and she said, yes, I did say those things at the grand jury. That's a statement that's made under oath at a proceeding and this instruction tells you that you can consider that just as if she said it on the witness stand right in front of you.

* * *

Cassandra King sat right here and I asked her everything that she said in the grand jury. Most importantly, 'Did you tell the police that you were walking home from school with Iesha Brown when the defendant said he shot the victim? Were you asked that question in the grand jury and did you answer yes'? And she said, 'Yes, I did.'

She said it on the witness stand and it's as if she said it again. She has never claimed that [s]he didn't say it. ***.

Terrance Bingham is another example of that. Remember, first he said, no, I never saw him shoot. But then when I

> confronted him with his [prior] statement he said, yes, I did tell the state's attorney I saw him shoot. *** And he believed he was going back to jail because he did go back to jail until we moved to dismiss that contempt because he had testified. ***
>
> *** And again, the law tells you you can consider his prior statements as if he was saying them right from that witness stand because the law recognizes that people sometimes just cave to that pressure ***."

¶ 37 The State returned to Qualls's credibility, arguing in relevant part as follows:

> "And, by the way, *** the Defense has those grand jury transcripts [of Qualls's testimony]. If she said anything important between the time she was under oath when she testified here and the time she testified under oath two years ago in the grand jury, they could have asked her that. They didn't because she *** never wavered in her identification of the defendant as the person that she saw shoot [the victim]."

¶ 38 Next, the State discussed testimony that Brown told defendant that he should be hiding:

> "[Defendant's] not hiding from anybody and he felt perfectly comfortable telling Iesha Brown who, by the way, has the name Cassandra tattooed on her wrist. Now, she claims it's some other Cassandra and she knows like a hundred other Cassandras. You know what that means. That was Cassandra King, her best friend."

¶ 39 After recounting the witnesses' reluctance to testify and the crime scene photographs, the State discussed defendant's appearance in court, arguing as follows:

> "I'm just going to ask you one more thing. I'm going to ask you for a minute or two to not see him as he sits there today in his fancy shirt and tie, how he looks nice, with that nice Argyle sweater vest, quietly, hands folded in front of him, seeing him as he is now, we're talking about the night of September 5, 2009, see him as he was that night, ***.
>
> Watch him get wind of this party and go to the party, *** pay his two dollars to get into that party, dance, talk to girls, do what you're supposed to do ***. Watch him as his behavior escalates. Watch him now as he's behaving badly ***.
>
> Watch him as he gets out of hand [and] *** gets thrown out of that party. He's not so nice anymore, he's not so quiet ***. He's not sitting there with his little hands folded in front of him like butter would me[l]t in his mouth.
>
> *** Watch him as he gets a gun from somewhere, and watch as he sees [the victim] outside trying to break up a couple of girls from fighting ***.
>
> Watch him as he's watching and stalking and stalking his prey. ***

> Terrance Bingham watches him stalk [the victim]. He doesn't know who he's about to shoot, but he sees him with that gun.
>
> Watch him with that gun, wait and get his chance and shoot that gun at [the victim] and then go running right through that school yard home ***.
>
> He gets rid of that gun somewhere and he's home, and the police don't get wind of him until sometime later. Watch him as he was that night ***."

¶ 40 The trial court then instructed the jury that neither opening statements nor closing arguments were evidence, and that any statement or argument not based on the evidence should be disregarded. The trial court also instructed the jury that defendant was charged by indictment, which was a formal way of placing defendant on trial but is not evidence against defendant. The trial court then read the following instruction to the jury:

> "The believability of a witness may be challenged by evidence that on some former occasion he made a statement that was not consistent with his testimony in this case. Evidence of this kind may ordinarily be considered by you only for the limited purpose of deciding the weight to be given the testimony you heard from the witnesses in this courtroom.
>
> However, you may consider a witness's earlier inconsistent statement as evidence without this limitation when the statement was made under oath at a proceeding, ***."

At the conclusion of jury instructions, the jury deliberated and eventually found defendant guilty of aggravated battery. The cause then proceeded to a sentencing hearing.

¶ 41 At defendant's sentencing hearing, the trial court stated that it considered the statutory factors in mitigation and aggravation, finding that, "over the State's objection," he would consider as mitigation the fact that defendant did not have a "history of prior delinquency or criminal activity." The trial court further disagreed with both the State's argument that defendant was beyond rehabilitation, and also the victim's statement that defendant had no remorse. It also stated that defendant's "extreme youth" precluded a sentence in excess of 20 years. The trial court, however, noted that the crime was "senseless," "completely unnecessary," likely premeditated, and that its results on the victim were "cruel." The victim also read his victim impact statement to the trial court. His statement provided in relevant part that, as a result of the shooting, he is only able to walk a few steps with a cane or crutches, he will likely be confined to a wheelchair for the rest of his life, and that he still suffers urinary tract infections and must wear a diaper because of continuing incontinence that he suffers. When the hearing concluded, the trial court sentenced defendant to 20 years' incarceration.

¶ 42 This appeal followed.

¶ 43 ANALYSIS

¶ 44 The State's Closing Argument

¶ 45 Defendant first contends that he was denied a fair trial based upon the State's "pervasive misconduct" during closing arguments. Specifically, defendant argues that the State's closing arguments: (1) put defense counsel on trial, (2) inflamed fears of witness intimidation, (3) inaccurately told the jury that the law recognizes that witnesses "flip-flop," (4) undermined the presumption of innocence while repeatedly using the indictment against defendant, (5) shifted

the burden of proof, (6) argued outside the record, and (7) used defendant's in-court behavior and attire against him. Defendant acknowledges that none of these claims were raised at trial or in a post-trial motion and are therefore forfeited. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Defendant, however, asks that we review this issue under the plain error doctrine, or alternatively, asserts that trial counsel was ineffective for failing to lodge an objection.

¶ 46 The plain error rule bypasses normal forfeiture principles and allows a reviewing court to consider unpreserved error when either: (1) the evidence is close, regardless of the seriousness of the error; or (2) the error is serious, regardless of the closeness of the evidence. *People v. Herron*, 215 Ill. 2d 167, 185-87 (2005). In the first instance, the defendant must prove "prejudicial error." *Id.* at 187. By contrast, in the second instance, prejudice to the defendant is presumed because of the importance of the right involved, regardless of the strength of the evidence. *Id.* In the latter situation, the defendant must prove that "there was plain error and that the error was so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process." *Id.* However, before considering whether the plain-error exception applies, we must first determine whether any error occurred. *Id.*

¶ 47 The State is given considerable latitude in making closing arguments, and it may respond to comments that clearly invite a response. *People v. Hall*, 194 Ill. 2d 305, 346 (2000). Furthermore, we must review the arguments of both the State and the defense in their entirety, with the challenged portions placed in their proper context. *People v. Cisewski*, 118 Ill. 2d 163, 175-76 (1987). In addition, we must presume, absent a showing to the contrary, that the jury followed the trial judge's instructions in reaching a verdict. *People v. Simms*, 192 Ill. 2d 348, 373 (2000). Finally, even if a prosecutor's closing remarks are improper, "they do not constitute reversible error unless they result in substantial prejudice to the defendant such that absent those

remarks the verdict would have been different." *People v. Hudson*, 157 Ill. 2d 401, 441 (1993). While the issue of which standard of review should apply is unsettled (compare *People v. Wheeler*, 226 Ill. 2d 92, 121 (2007) (*de novo*) with *People v. Hudson*, 157 Ill. 2d 401, 441 (1993) (abuse of discretion)), we need not resolve this apparent conflict because under either standard, defendant's claim fails.

¶ 48 Defendant first claims that the State put defense counsel on trial when it argued that (1) had Detective Fergus taken statements "as quickly as the [d]efense would have liked," defense counsel would have claimed it was a "rush to judgment"; (2) the case was not "People versus Mrs. Perteet [the victim's mother]" and the fact that the State did not "charge" the victim's mother rendered defense counsel's argument like "every other" defense argument, namely, "it's someone else's fault"; and (3) defense counsel called the victim and his mother liars. During defendant's closing argument, however, defense counsel argued in part that Fergus failed to obtain a statement from Bingham at the first interview and rhethorically asked what Bingham said at the first interview that the police "weren't happy about." Moreover, defense counsel's general theory throughout his closing argument was that defendant was misidentified as the shooter, in other words, it *was* someone else who shot the victim. Defense counsel supported this theory with a robust challenge to the credibility of the State's witnesses, including an implicit claim that the victim's mother told Qualls about the reward and induced Qualls to implicate defendant. Defense counsel further questioned the veracity of the victim's account of the events, suggesting that the victim initiated the argument. Viewing the State's closing argument in its entirety, we find no impropriety; the State merely responded to defense counsel's closing argument, which is permissible. See *Hall*, 194 Ill. 2d at 346.

¶ 49 Defendant further claims that the State inflamed fears of witness intimidation and argued outside of the record when it: (1) claimed in its opening statement that it "seems" that "every" party now goes from arguing inside to fighting outside; (2) argued in its initial closing argument that, although "[m]ost of us" who have been to college have seen fights break out when there is a large group of people and alcohol involved, fights that break out at parties "nowadays" end in gunshots; and (3) claimed in its opening statement and in its closing argument that witnesses felt pressure not to testify and defendant relied upon their reluctance. There was nothing inappropriate about the State's comments. Regarding the results of fights occurring at parties now, the State observed in its opening statement only that it "seems" that gunshots punctuate parties now. It never stated that all disputes at parties erupt in gunfire. Similarly, the State's closing comment that fights at parties "nowadays" end in gunfire compared to those witnessed by most people who have gone to college did not result in any meaningful prejudice to defendant: it was undisputed in this case that there was a fight at the party that ended in gunfire. Finally, the State's argument regarding the witnesses' reluctance to testify was a well-supported inference from the evidence, namely, Qualls's, King's, and Bingham's recantations of prior statements implicating defendant, and Fergus's testimony that, despite having conducted a canvass of the immediate area, he could locate no eyewitnesses out of the 70 people estimated to have attended the party.

¶ 50 We must also reject defendant's claim that the State inaccurately told the jury that the law recognizes that witnesses "flip-flop." Immediately after the State's argument, the State recited the jury instruction—that was later read to the jury—regarding prior inconsistent statements, including the provision that, where a witness makes a prior inconsistent statement under oath, there is no limitation to considering that statement solely with respect to the credibility of the

witness's in-court testimony. See Illinois Pattern Jury Instructions, Criminal, No. 3.11 (4th ed. 2000); see also 725 ILCS 5/115-10.1 (West 2012). Moreover, the trial court thoroughly instructed the jury that closing arguments are not evidence and should not be considered as such, and that they should disregard any argument that is not based on the evidence or a reasonable inference drawn from the evidence. Defendant offers nothing to counter the presumption that the jury followed the judge's instructions. See *Simms*, 192 Ill. 2d at 373. Therefore, defendant's argument on this point is unavailing.

¶ 51 Next, defendant argues that the State undermined the presumption of innocence while repeatedly using the indictment against defendant. Specifically, defendant challenges the State's comment during its opening statement that the jury was there because defendant had to be "held accountable and responsible" for the victim's shooting. Defendant also complains that the State improperly argued to the jury that the "name of the case" was not "People versus" various of its witnesses. Neither challenge survives closer scrutiny.

¶ 52 At the outset, the purpose of an opening statement is to apprise the jury of what each party expects the evidence to prove, and it may include a discussion of the expected evidence and reasonable inferences therefrom. *People v. Kliner*, 185 Ill. 2d 81, 127 (1998). While it is true that the State may not claim anything in its opening statement that it cannot or does not intend to prove, reversible error only occurs (1) if the State's opening statement is attributable to the "deliberate misconduct of the prosecutor" and also (2) results in "substantial prejudice to the defendant." *Id.* Here, defendant cannot meet either prong of this test. The State's specific comment was a reasonable inference from what it believed the expected evidence would show, and it certainly did not claim anything that it did not intend to prove. See *id.*

¶ 53 With respect to the State's use of the "People versus" rhetorical device, we do not agree with defendant that this improperly "bolstered" the State's case. To the contrary, the State was responding in each instance to defense counsel's challenge to the State's witnesses' credibility. As noted above, the State is entitled to respond to defense counsel's closing argument. See *Hall*, 194 Ill. 2d at 346. Furthermore, *United States v. Sardelli*, 813 F.2d 654, 657 (5th Cir. 1987) is distinguishable because there, the trial court admitted the defendant's entire indictment as evidence "ostensibly to establish that Sardelli knew he was on probation," which was an element of the prosecution's case. No such error occurred here. Similarly, defendant's reliance upon *People v. Adams*, 2012 IL 111168, ¶ 25, is misplaced because, in that case, the State bolstered a police officer's testimony by referring to the officer's police report and the potential corroborating testimony of his fellow officers, neither of which were presented at trial. Here, the State's arguments were not made to bolster its witnesses; rather, they responded to defendant's arguments, or as the State describes it, they rehabilitated their witnesses.

¶ 54 Next, defendant asserts that the State shifted the burden of proof with respect to Qualls's testimony and that it argued "outside the record" on various grounds. First, defendant claims that the State shifted the burden of proof when it argued that defense counsel did not question Qualls regarding anything she may have said between the time of her grand jury testimony and her testimony at trial. We note, however, that defense counsel repeatedly challenged Qualls's credibility, specifically with respect to the inconsistency between her testimony at trial (that she told Officer Riga that she saw who shot the victim and where the shooter fled) and Riga's (that Qualls only told him that she had "heard" about the shooting but did not see who shot the victim). As such, the State's argument was a response to defense counsel's challenge to Qualls's credibility, which is permissible. *Hall*, 194 Ill. 2d at 346. *People v. Clark*, 186 Ill. App. 3d 109

(1989), upon which defendant relies, is factually distinguishable. In *Clark*, the State erroneously argued that the defendant *failed to produce evidence* (namely, taxi cab receipts) to support his alibi defense. *Id.* at 115. Here, a reasonable inference from the challenged remarks is that there was no discrepancy in Qualls's identity of defendant as the shooter between the time of her grand jury testimony and her testimony at trial. We find that to be a fair summary of the evidence. Moreover, the trial court instructed the jury that it was solely the State's burden to prove defendant guilty and the defendant was not required to prove his innocence. We must therefore reject defendant's contention of error.

¶ 55 Second, defendant claims that the State argued outside the record on three occasions: when it argued that (1) defendant "stalked his prey [the victim]"; (2) defendant disposed of the weapon; and (3) Brown's "Cassandra" tattoo referred to King. Each of these comments, however, is a reasonable inference from the evidence presented at trial. The argument about defendant stalking the victim was supported by Bingham's testimony that prior to the shooting, he was watching the fighting take place in front of the apartment building when defendant shot the victim. Qualls also testified that defendant left the fighting to retrieve a gun, returned to the scene, and shot the victim. Defendant complains that the State's remark was only made in reference to Bingham's testimony, but it is well established that we may not review the alleged improper arguments in a vacuum: rather, we must review them as a whole and in light of all of the evidence produced at trial. *People v. Glasper*, 234 Ill. 2d 173, 204 (2009). In addition, the specific content of the challenged remarks are within the bounds of argument based upon well-established precedent. See, *e.g.*, *People v. Armstrong*, 183 Ill. 2d 130, 146 (1998) (prosecutor's rebuttal comment that the defendant "was treating [the murder victim] like she was a baby seal and [the defendant] was competing for poacher of the year" was not improper; in context, "it is

clear that the prosecution's remarks were not improper" but were instead "designed to rebut the defense claim that the defendant lacked an intent to kill."); *People v. Kitchen*, 159 Ill. 2d 1, 38 (1994) (holding that, where defense counsel repeatedly insinuated during his closing argument that the defendant's statement to the police had been obtained illegally, there was no reversible error in the prosecutor's comment that the trial judge had previously ruled that the statement was admissible and erroneously suggesting that the judge had found the statement to be factually reliable).

¶ 56 For these same reasons, the State's argument that defendant "[got] rid of the weapon" and Brown's tattoo referred to King and not some other Cassandra were fair inferences from the evidence at trial. The gun was never recovered and testimony established that only defendant used a gun at the party but was never seen with it again. As to Brown's tattoo, King's statement indicated that Brown was defendant's cousin and King testified that Brown was her "closest" friend and had known her for over 14 years. Defendant cites *People v. Davis*, 278 Ill. App. 3d 532 (1996), in support of his assertion that a "reasonable inference *** requires a chain of evidentiary antecedents." His reliance upon *Davis*, however, is puzzling: *Davis* concerned a challenge to the sufficiency of the evidence, *not* a challenge to the State's closing argument. See *id.* at 533. Since *Davis* is unrelated to the claim at issue here, defendant's argument is meritless.

¶ 57 Finally, defendant argues that the State improperly used defendant's in-court behavior and attire against him when it asked the jury not to see defendant as he sat there at that time "in his fancy shirt and tie, how he looks nice, with that nice Argyle sweater vest, quietly, hands folded in front of him," and "with his little hands folded in front of him like butter would me[l]t in his mouth [*sic*]." Defendant asserts that these comments wrongfully stoked the jury's anger. It is well established, however, that "[c]ommenting on a defendant's appearance during closing

argument is implicitly recognized as falling within the bounds of legitimate argument." *People v. Jackson*, 391 Ill. App. 3d 11, 44 (2009) (citing *People v. Byron*, 164 Ill. 2d 279, 296-97 (1995)), *appeal denied*, 233 Ill. 2d 579 (2009). In any event, the State did not commit reversible error because these isolated comments did not result in such "substantial prejudice to the defendant such that absent those remarks the verdict would have been different." *Hudson*, 157 Ill. 2d at 441. Defendant's claims of error are therefore without merit, and we must honor defendant's forfeiture.

¶ 58 Moreover, even assuming, *arguendo*, that the State committed error, defendant's claim would fail under both the plain error doctrine and as an ineffective assistance of counsel claim. To begin, the first prong of the plain error doctrine does not apply because, contrary to defendant's assertion, the evidence was not close. Qualls and Bingham both testified that they saw defendant shoot the victim; King testified that she overheard defendant admit to Brown (defendant's cousin and King's best friend) that he shot the victim because the victim became angry with defendant; and the victim and his sister, Trealmia, testified that, about an hour before the shooting, the victim and defendant got into a heated verbal dispute that resulted in Trealmia ejecting defendant from their apartment where the party was taking place (and which the defendant paid to enter). Although the evidence was not overwhelming, we nonetheless cannot hold that the evidence was close. Thus, the first prong of the plain error doctrine is inapplicable.

¶ 59 Furthermore, the second prong of the plain error doctrine does not arise here because, regardless of whether the State's improper arguments can ever satisfy the second prong of plain error review, we do not consider the alleged errors in this case to be so serious that they "affected the fairness of the defendant's trial and challenged the integrity of the judicial process." *Herron*, 215 Ill. 2d at 187. The trial court instructed the jury, *inter alia*: (1) to base its verdict only on

the evidence (and reasonable inferences therefrom); (2) that the State had the burden to prove defendant guilty; and (3) when it could consider a prior inconsistent statement substantively. As noted above, defendant provides nothing to rebut the presumption that the jury followed the judge's instructions. See *Simms*, 192 Ill. 2d at 373. The second prong of the plain error doctrine is therefore inapplicable. See *People v. Glasper*, 234 Ill. 2d 173, 215 (2009) ("Even though the remark was improper, we do not find that the error was so serious that the second prong of the plain-error test is satisfied.").

¶ 60 Claims of ineffective assistance of counsel are governed by the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), and adopted by the supreme court in *People v. Albanese*, 104 Ill. 2d 504 (1984). *People v. Petrenko*, 237 Ill. 2d 490, 496 (2010). To establish ineffective assistance, a defendant must show both that (1) counsel's performance was deficient and (2) the deficient performance prejudiced the defendant. *Id.* (citing *Strickland*, 466 U.S. at 687). Deficient performance is performance that is objectively unreasonable under prevailing professional norms, and prejudice is found where there is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 496-97; *Strickland*, 466 U.S. at 690, 694. The failure to establish either prong of the *Strickland* test is fatal to the claim. *People v. Clendenin*, 238 Ill. 2d 302, 317-18 (2010) (citing *Strickland*, 466 U.S. at 697).

¶ 61 In this case, defendant cannot show prejudice. As noted above, there was substantial evidence supporting defendant's guilty verdict. Qualls and Bingham saw defendant shoot the victim, the victim and his sister established defendant's motive (an altercation and then ejectment from the party), and King established defendant's admission that he shot the victim because the victim became angry with defendant. On these facts, even if defense counsel had successfully

objected to the challenged remarks by the State, there is no reasonable probability that the result of the proceeding would have been different. *Petrenko*, 237 Ill. 2d at 496-97; *Strickland*, 466 U.S. at 690, 694. Since defendant cannot establish both prongs of the *Strickland* test, his claim necessarily fails. *Clendenin*, 238 Ill. 2d at 317-18 (citing *Strickland*, 466 U.S. at 697).

¶ 62 Prior Inconsistent Statements and Gang-Related Testimony

¶ 63 Defendant next contends that he is entitled to a new trial because of the State's repetition of King's prior inconsistent statements and Detective Fergus's unsolicited reference to contacting a gang unit during the investigation to locate defendant. Although the claim regarding King's prior inconsistent was preserved for review, defendant acknowledges that his claim regarding Fergus's statement about contacting the Gang Enforcement Unit was not preserved. As with his contention centering on the State's closing argument, defendant seeks to rescue this forfeited issue by asking for plain error review on the basis that the evidence was close, or in the alternative, by alleging trial counsel's ineffectiveness.

¶ 64 We first consider the alleged repetitive testimony regarding King's prior inconsistent statements. Evidence is cumulative when it "adds nothing to what was already before the jury." *People v. Ortiz*, 235 Ill. 2d 319, 335 (2009). It is important to note, however, that even testimony that is "unnecessarily repetitive" is not, *ipso facto*, reversible error. See, *e.g.*, *People v. Fields*, 285 Ill. App. 3d 1020, 1028 (1996) (holding no prejudice to the defendant where the evidence at trial revealed, on seven prior occasions, that a witness's prior inconsistent statement was: made orally to a detective; made in writing to an assistant state's attorney; made to the grand jury; testified to by a detective; testified to by an assistant state's attorney; read verbatim from the written statement; and read verbatim from the grand jury testimony), *appeal denied*, 175 Ill. 2d 537 (1997). "The admission of evidence is within the sound discretion of a trial court,

and a reviewing court will not reverse the trial court absent a showing of an abuse of that discretion." *People v. Becker*, 239 Ill. 2d 215, 234 (2010). "An abuse of discretion exists only where the trial court's decision is arbitrary, fanciful, or unreasonable, such that no reasonable person would take the view adopted by the trial court." *People v. Ramsey*, 239 Ill. 2d 342, 429 (2010) (citing *People v. Donoho*, 204 Ill. 2d 159, 182 (2003)).

¶ 65 In this case, there was no abuse of discretion. The evidence at trial revealed that King had made prior statements that defendant admitted shooting the victim and then tried to run her over after the shooting. She made these statements to Detective Fergus on both October 4, and December 22, 2009, and to Assistant State's Attorney Pekara on December 22, 2009, after which she executed a written statement memorializing what she said to Pekara. At trial, however, King denied making any of those statements on either occasion. The State therefore called Fergus and Pekara to testify that King had indeed made those statements. In addition, although King conceded that she signed the written statement, she persisted in her denial of hearing defendant confess and witnessing defendant's attempt to run her over. As a result, the State called Pekara to testify that King made those statements, and were memorialized in her written statement. Lastly, the State elicited an admission from King that she had reviewed her statement prior to her grand jury testimony and told an assistant state's attorney that the statement was true, and also that she was truthful in her grand jury testimony. This evidence was not cumulative since King recanted each and every statement (both oral and written statements across multiple days and to multiple people), and the State presented the witnesses' testimony to re-establish that King did make those prior statements. Moreover, even if the evidence was cumulative, defendant was not prejudiced by it because the State did not solely rely upon King's testimony, for which needless repetition would bolster an otherwise weak case. Defendant's conviction was also supported by

testimony from Bingham, Qualls, the victim, and Trealmia (the victim's sister). Finally, we note that defendant has not cited any case holding that the prejudicial effect of a substantively admitted prior inconsistent statement substantially outweighed its probative value simply because it was repetitive. See, *e.g.*, *Fields*, 285 Ill. App. 3d at 1028, *appeal denied*, 175 Ill. 2d 537 (1997). In sum, we cannot hold that the trial court's failure to bar this evidence was arbitrary, fanciful, or unreasonable, such that no reasonable person would have taken the view adopted by the trial court. *Ramsey*, 239 Ill. 2d at 429. Therefore, the trial court did not abuse its discretion, and we may not reverse its decision. *Becker*, 239 Ill. 2d at 234.

¶ 66 With respect to Fergus's unprompted statement about contacting the Gang Enforcement Unit in order to locate defendant, defendant has forfeited this claim because he did not object at trial nor did he raise this issue in his post-trial motion. *Enoch*, 122 Ill. 2d at 186. Defendant seeks plain error review, but only claims that the first prong applies because the evidence here was close. We disagree. As noted above, there were multiple witnesses who identified defendant as the shooter. Although their testimony contained inconsistencies, we find that the evidence in this case, while perhaps not overwhelming, was nonetheless substantial. We must therefore reject defendant's request for plain error review.

¶ 67 Moreover, defendant's assertion of ineffective assistance of counsel similarly fails. In addition to objectively unreasonable performance, defendant must show prejudice, *i.e.*, that there is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Petrenko*, 237 Ill. 2d at 496-97; *Strickland*, 466 U.S. at 690, 694. Fergus's comment was unprompted, only being given in response to the State's question as to how Fergus attempted to locate defendant. It was the only instance in which Fergus mentioned that unit, and the State interrupted his question and redirected its questioning

to get Fergus to explain to the jury that he had asked "other units" to assist, including those "that are especially assigned to just look for *people*." The State further had Fergus confirm that he was not "actively" out looking for defendant at that time. Fergus did not state that defendant was a suspected member of a gang. Fergus's isolated reference—a few words in 113 pages of direct, cross-, and multiple redirect and recross-examinations—would not reasonably have prejudiced the jury. Since there is no probability that, had counsel objected to this isolated comment, the result of defendant's trial would have been different, defendant cannot establish both prongs of the *Strickland* test, and his claim necessarily fails. *Clendenin*, 238 Ill. 2d at 317-18 (citing *Strickland*, 466 U.S. at 697). Defendant's contention of error is therefore unavailing.

¶ 68 The Cumulative Effect of the Alleged Errors

¶ 69 The defendant also contends that, even if the errors he claims do not individually warrant a new trial, the cumulative effect of them does. Individual trial errors may have the cumulative effect of denying a defendant a fair trial. *People v. Hall*, 194 Ill. 2d 305, 350-51 (2000). Here, however, we have rejected defendant's claims of error with respect to the State's closing arguments and the use of King's prior inconsistent statements, as well as defendant's claim of prejudice regarding Detective Fergus's fleeting and isolated reference to contacting the Gang Enforcement Unit to ascertain the shooter's identity. Accordingly, defendant request for a new trial on the basis of cumulative error is without merit. See *id.*

¶ 70 Defendant's Sentence

¶ 71 In addition, defendant claims that his 20-year prison term is excessive for various reasons. Defendant observes that, while there "results of his crime were severe, his actions were typical for those convicted of aggravated battery with a firearm." Defendant also argues that, before the crime, he was "barely" 15 years old, with no juvenile or adult criminal record, and he

received good grades. In addition, defendant notes that, after his arrest, he was "a constructive, positive presence" in the juvenile detention facility. Defendant asks that we reduce his sentence to "something closer" to a minimum six-year term of imprisonment.

¶ 72 In imposing a sentence, the trial court must balance relevant factors, such as the nature of the offense, the protection of the public, and the defendant's rehabilitative potential. *People v. Alexander*, 239 Ill. 2d 205, 213 (2010). The trial court has a superior opportunity to evaluate and weigh a defendant's credibility, demeanor, character, mental capacity, social environment, and habits. *Id.* In addition, a trial court is not required to expressly outline its reasoning for sentencing, and absent some affirmative indication to the contrary (other than the sentence itself), we must presume that the court considered all mitigating factors on the record. *People v. Perkins*, 408 Ill. App. 3d 752, 762-63 (2011). Since the most important sentencing factor is the seriousness of the offense, the court is not required to give greater weight to mitigating factors than to the seriousness of the offense, and the presence of mitigating factors neither requires a minimum sentence nor precludes a maximum sentence. *Alexander*, 239 Ill. 2d at 214.

¶ 73 A sentence within statutory limits is reviewed for an abuse of discretion, and we may only alter such a sentence when it varies greatly from the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. *Id.* at 212. So long as the trial court does not ignore pertinent mitigating factors or consider either incompetent evidence or improper aggravating factors, it has wide latitude in sentencing a defendant to any term within the applicable statutory range. *Perkins*, 408 Ill. App. 3d at 762-63. This broad latitude means that this court cannot substitute its judgment simply because it might have weighed the sentencing factors differently. *Alexander*, 239 Ill. 2d at 212-13.

¶ 74 In this case, the trial court did not abuse its discretion. The sentencing range for aggravated battery with a firearm 6 to 30 years' imprisonment. See 720 ILCS 5/12-4.2(b) (West 2010) (aggravated battery with a firearm under subsection 12-4.2(a)(1) is a Class X felony); 730 ILCS 5/5-4.5-25(a) (West 2010) (6- to 30-year sentencing range for Class X felonies). Since defendant's sentence falls within the sentencing range, we may only disturb the sentence if it varies greatly from the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. *Alexander*, 239 Ill. 2d at 212. Neither exception applies in this case.

¶ 75 Here, the trial court stated that it considered the statutory factors in mitigation and aggravation, finding that, "over the State's objection," it would consider as mitigation the fact that defendant did not have a "history of prior delinquency or criminal activity." The trial court further disagreed with both the State's argument that defendant was beyond rehabilitation, and also the notion that defendant had no remorse. It also stated that defendant's "extreme youth" precluded a sentence in excess of 20 years. The trial court, however, noted that the crime was "senseless," "completely unnecessary," likely premeditated, and that its results on the victim were "cruel." The victim testified that, as a result of the shooting, he is only able to walk a few steps with a cane or crutches, he will likely be confined to a wheelchair for the rest of his life, and that he still suffers urinary tract infections and must wear a diaper because of incontinence. Under these circumstances, no reasonable argument can be made that the trial court's 20-year sentence, which was just above the midpoint of this range, "varies greatly from the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense." See *id.* Therefore, defendant's sentence was not excessive, and his contention of error on this point is meritless.

¶ 76 The Constitutionality of the Automatic Transfer Statute

¶ 77 Next, defendant contends that the mandatory transfer provision of the Juvenile Court Act of 1987 (705 ILCS 405/5-130(1)(a) (West 2012)) is unconstitutional because it violates the Eighth Amendment of the United States Constitution (U.S. Const. Amend. VIII, XIV)), and the due process clauses of the state and federal constitutions (U.S. Const. Amends. V, XIV; Ill. Const. 1970, art. I, § 2)). Defendant acknowledges that our supreme court rejected due process challenges to the predecessor statute 30 years ago (see *People v. J.S.*, 103 Ill. 2d 395, 405 (1987)), but defendant argues that *J.S.* "cannot survive" in the wake of the United States Supreme Court's decisions in *Roper v. Simmons*, 543 U.S. 551 (2005), *Graham v. Florida*, 560 U.S. 48 (2010), and *Miller v. Alabama*, 567 U.S. ___, 132 S. Ct. 2455 (2012).

¶ 78 Our supreme court, however, has rejected precisely these arguments. See *People v. Patterson*, 2014 IL 115102, ¶¶ 98, 106.[2] Accordingly, defendant's claim must be rejected.

¶ 79 CONCLUSION

¶ 80 For these reasons, we find that the State's closing arguments were not improper. The trial court did not err in admitting a witness's prior inconsistent statements, defendant was not prejudiced by a police witness's statement that he contacted a gang enforcement unit during his investigation, and the cumulative effect of those errors did not deny defendant a fair trial. In addition, defendant's claim that the trial court imposed an excessive sentence on him is without merit. Finally, we reject defendant's constitutional challenge to the automatic transfer statute. Accordingly, we affirm the judgment of the trial court.

¶ 81 Affirmed.

---

[2] *Patterson* was issued after the filing of defendant's opening brief but before the filing of his reply brief. In his reply brief, defendant only states that he "has preserved this issue for further review."