FIRST DIVISION
November 24, 2014

No. 1-12-3666
2014 IL App (1st) 123666-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 14049
	)	
JAMES GALAMBOS,	)	
	)	Honorable Stanley Sacks,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Delort and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant was not denied effective assistance of counsel where he agreed with counsel's decision to call a witness who implicated defendant; counsel was not ineffective for failing to properly challenge prior consistent statements; counsel's closing argument was not deficient; defendant failed to show cumulative error; affirmed and mittimus corrected.

¶ 2 Following a jury trial, defendant James Galambos was convicted of first degree murder and attempted first degree murder and sentenced to consecutive prison terms of 50 and 26 years. On appeal, defendant contends he was denied effective assistance of counsel because his counsel: (1) called a witness against him; (2) failed to object to multiple prior consistent

statements; and (3) presented a nonsensical closing argument. Defendant additionally asserts that the cumulative effect of counsel's errors established sufficient prejudice to require a new trial. Lastly, defendant contends, and the State concedes, that his mittimus should be corrected to reflect that attempted first degree murder is a Class X offense and that he is entitled to an additional two days of presentence credit. We affirm and correct the mittimus.

¶ 3 I. BACKGROUND

¶ 4 The evidence reveals that defendant was alleged to have shot Sergio Torres and Francisco Rueda near a park on the afternoon of July 22, 2011. Torres died from his injuries. Torres and Rueda had been part of a group of people that defendant confronted, several of whom identified defendant as the shooter and testified at trial. The defense theory at trial was that members of Torres and Rueda's group were members of the Latin Kings gang, had weapons, and one of the group members accidentally fired shots at Torres and Rueda. The events recounted at trial occurred at three parks: Green Briar, Legion, and Hollywood. It was alleged that the victims' group began at Green Briar Park, walked to Hollywood Park, and then intended to return to Green Briar Park. On the way, the group passed Legion Park, where defendant and his friends were purportedly located.

¶ 5 At trial, the State asserted in its opening statement that defendant ran up to a group of young people, took out a gun, and fired repeatedly. The State further asserted that the victims' group was unarmed and was not threatening anyone in the area. The State acknowledged that some of the group members may or may not have been associated with the Latin Kings, and stated that defendant was a member of a rival gang, the Simon City Royals.

¶ 6 In his opening statement, defense counsel contended that on the date of the incident, Torres brought a lead pipe and approximately 20 Latin Kings to beat up someone named

Alphonso Martinez. Defense counsel suggested that other members of Torres and Rueda's group were also armed, and that the evidence could show that some of the group members fired back at the alleged offender and perhaps shot the victim. Defense counsel maintained that defendant was not the shooter and was not in a gang.

¶ 7 Francisco Rueda, the surviving victim, testified that on July 22, he was part of a group of 10 to 12 people in Hollywood Park. Initially, the group had gone to fight someone named Alphonso, but Rueda and the group left when they could not find him. When the group was near Legion Park, Rueda observed defendant running towards them. Rueda described defendant as a "white guy with long puffy hair" whose face was covered with a white shirt. Additionally, defendant's hand was in his pocket and he was with another man on a bike. When defendant was 10 to 15 feet away from the group, defendant dared someone to "throw up the crown," which was a gang sign for the Latin Kings. Rueda did not see anyone display the symbol and tried to keep walking. According to Rueda, the people he was with did not have weapons and did not point anything at defendant. After Rueda observed defendant pull something out, Rueda began walking and then heard six to eight gunshots, eventually noticing that he had been shot in the armpit. Subsequently, the police arrived and Rueda was taken to a hospital, where he identified defendant in a photo spread. Later, on July 29, Rueda viewed a line-up and identified defendant as the person who shot at his group.

¶ 8 On cross examination, Rueda denied that his friends were Latin Kings, though he acknowledged that he did not ask each person about his membership on the day of the incident. Rueda stated that he did not see Torres with a pipe in his hand or down his shorts, but also admitted that he did not search every person in the group for weapons.

¶ 9 Jose Herrera, who had also been with Torres and Rueda, testified that the group had initially been in Green Briar Park before deciding to go to Hollywood Park to "see if anybody was there." After spending a short time in Hollywood Park, the group headed back to Green Briar Park. On the way, defendant approached on foot along with another man on a bike. Herrera described defendant as a white man with long hair who had a white shirt covering his face from the nose down. Defendant said something that Herrera could not hear and to which Herrera's friends did not respond. Defendant then reached into his pocket and pulled out a gun that he pointed at some of Herrera's friends, whereupon Herrera saw sparks come out of the gun and heard three shots. Herrera ran across the street and eventually observed that Torres was lying on the sidewalk. At the time of the incident, Herrera did not see anyone in his group with weapons, including a gun, and had not seen anyone with a weapon while at Green Briar Park. Later, in the early morning hours of July 23, Herrera identified defendant as the shooter in a photo array. Additionally, about a week after the incident, Herrera identified defendant as the shooter in a line-up.

¶ 10 On cross-examination, Herrera stated that he did not see a chain hanging from a tree, did not see Torres with a pipe, and did not see anyone in his group with a steak knife. Herrera denied that some of the people in his group were Latin Kings. Additionally, Herrera admitted he knew the Latin Kings sign, but would not display it in court because it was not the "right thing to do in here."

¶ 11 Benilli Mora[1] testified that after he met around seven of his friends on July 22, the group walked to Hollywood Park. After a short stay, the group decided to go to Green Briar Park. On the way, Mora stopped to tie his shoe, and when he looked up, he observed defendant approaching on foot along with another man who was on a bike. Defendant had a white shirt

[1] Benilli Mora is referred to elsewhere in the record as Benji Mora.

covering half of his face from the nose down. As defendant ran towards the group, Mora heard a sound as if defendant was talking, but he could not understand what defendant was saying. Mora did not hear his friends say anything to defendant and Mora did not see any weapons in his friends' hands. Mora also observed defendant "throwing down the crown," which was a sign of disrespect to the Latin Kings, though Mora denied that he or his friends were members of that gang. Defendant then pulled out a gun and fired a shot, causing Mora's friends to run away. Mora did not see anyone in his group fire a gun back at defendant. In total, Mora heard six shots, and when the shots were finished, he turned around and observed defendant and the man on the bike head south. Subsequently, Mora observed Torres collapsed on the sidewalk. On July 23, Mora identified defendant in a photo array and on July 29, he identified defendant in a line-up.

¶ 12 On cross-examination, Mora acknowledged that there were at least 10 people in his group. Mora denied that he saw Torres with a lead pipe and stated that he did not see a pipe in Torres's hands or down Torres's shorts. Mora acknowledged that when he ran away, he was not looking at defendant. Mora further admitted that he did not search his friends and could not tell from his own observations whether some or all of his friends had guns. Mora also stated that his friends were not in the same room as him when the line-up occurred and denied that he had talked to his friends about the case.

¶ 13 Samuel Crawford, another member of Torres and Rueda's group, testified that the group had intended to engage in a fist fight with Alphonso in Hollywood Park. After the group left, two men approached, one on a bike and the other, identified as defendant, had blond curly hair and a white t-shirt over his face from the nose down. Crawford testified that defendant "threw up" the Latin Kings sign, asked if the group members were Latin Kings, and said something that

Crawford could not hear. Defendant then pulled out a gun from his pocket and shot once towards Crawford's friends. Crawford ran away, hearing four more shots as he ran. Crawford observed Torres fall, whereupon he called 911. Later, Crawford identified defendant as the shooter in a photo array.

¶ 14 On cross-examination, Crawford denied that he saw any chains hanging from a branch or that he saw anybody with a gun or steak knife. Crawford maintained that none of his friends had a weapon. In response to defense counsel's question about whether Crawford knew what his friends were doing while he was running, Crawford stated he would have known if his friends had "guns or something."

¶ 15 Alexis Garza joined Torres and Rueda's group as it walked back from Hollywood Park. While walking, Garza observed defendant and another man approaching. Garza had seen defendant before in Hollywood Park and recognized him even though he was wearing a t-shirt below his eyes. Garza also knew the man on a bike that defendant was with, whose name was John. As defendant approached, he said, " 'what you is. What you is. Throw up the crown, I dare you.' " According to Garza, some members of her group probably "[claimed] the label" of being Latin Kings, but were "probably just wannabes." While Garza's head was turned to see if anyone had reacted to what defendant said, she heard a shot. Garza then observed defendant shooting "all crazy," as if he could not control the gun. Garza left and caught up to Torres, who had fallen and was unconscious. Later that day, Garza identified defendant in a photo array as the person who shot Torres and Rueda. A week later, Garza identified defendant in a line-up.

¶ 16 On cross-examination, Garza stated that she did not see anyone with a chain and did not see Torres with a pipe. Garza also stated that she did not see anyone point anything at defendant, but admitted that she did not see everybody in her group the whole time.

¶ 17 Jesus Vargas testified that after about 10 of his friends gathered at Green Briar Park, the group walked to Hollywood Park to look for Alphonso, who had beaten up Torres the day before. When they could not find Alphonso, the group decided to go back to Green Briar Park. On the way, defendant, who had blond hair and was wearing a white shirt that covered his face below his nose, ran toward the group, yelled out gang signs, and pulled out a gun from his pocket and started shooting. In total, Vargas heard six shots. Vargas ran across the street, and when he turned back, he saw Torres fall. On July 29, Vargas identified defendant in a line-up as the shooter.

¶ 18 Vargas also testified about whether his friends had weapons. Vargas stated that while at Green Briar Park, he did not see any of his friends with a gun and although he saw a chain on a tree, he did not remember whether anyone took the chain to Hollywood Park. When the State asked, "[W]hen you walked towards Hollywood Park, you know if anyone in your group had a weapon?", Vargas responded, "No." Vargas also stated that no one had a gun and that he did not see anyone with a gun when the group was approached by defendant.

¶ 19 On cross-examination, Vargas denied that he discussed the incident with anyone between the day it occurred and when he viewed the line-up a week later. Additionally, Vargas stated that the plan was that the group would look for Alphonso, but Torres would fight him alone. Defense counsel and Vargas then had the following colloquy:

> "Q. As a matter of fact, when you go over there, some of the guys have weapons, don't they?
>
> A. No.
>
> Q. One guy has a chain, doesn't he?
>
> A. I don't know.

Q. One guy has a steak knife, doesn't he?

A. No."

Defense counsel confronted Vargas with his grand jury testimony, which Vargas acknowledged that he gave:

"Q. Do you remember this question being asked of you and this answer being given ***. Question. 'Oh, I mean, anybody in your group of friends?' Answer. 'Well, like two of them.' Question. 'Okay. What was that?' Answer. 'It was like a chain, a little chain and like a steak knife, a knife steak.'

¶ 20 When then asked again if there was "a guy with a chain," Vargas responded that he did not know "if he took the chain with him or not." In response to defense counsel's next questions whether "[t]here was a guy with a chain" and "a guy with a steak knife," Vargas answered "[y]es."

¶ 21 On redirect, Vargas acknowledged that he had been asked a series of questions before the grand jury. The State then asked about other portions of Vargas's grand jury testimony relating to weapons, apart from what had been brought up by defense counsel:

"Q. Line 14. 'Did you see anybody in your group take anything out? Answer. 'No.' Were you asked that question and did you give that answer?

A. Yes.

Q. Line 17. 'Did you see anybody with a gun?' Answer. 'No.' Were you asked that question and did you give that answer?

MR. CARROLL [defense counsel]: I object, Judge.

THE COURT: Overruled.***

A. Yes.

Q. Were you asked this question. 'Did anybody in your group that you saw, point anything at this guy?' Answer. 'No.' Were you asked that question and did you give that answer?

A. Yes.

Q. Question. 'Did you see anybody with a weapon at any point that day?'

MR. CARROLL: I object to this.

THE COURT: That part he could answer, but asked about a knife or chain. Overruled. Ask the question again, State.

Q. Were you asked this question. 'Did you see anybody with a weapon on that [*sic*]?' Answer. 'No.'

A. Yes.

Q. Were you asked that question and did you give that answer?

A. Yes.

Q. And then you were asked the two questions that counsel asked you about. After that, *** question. [']Did you see anybody take that out at the time of this incident?' Answer. 'No.' Were you asked that question and did you give that answer?

A. Yes.

Q. And that was in reference to a chain or a knife steak or a steak knife, correct?

A. Yes.

Q. And were you asked this question. 'When was the last time that you saw that?' Answer. 'See what?' Were you asked that question and did you rephrase the question, at that point?

A. Yes.

MR. CARROLL: I have a continuing objection.

THE COURT: Clarify about the chain and knife. Ask the question, State, please.

Q. Answer. 'I didn't see them after that.' Were you asked that question and did you give that answer?

A. Yes.

Q. Okay. 'Did you see them at any time earlier that day?' Answer. 'When we were at Green Briar.' Were you asked that question and did you give that answer?

A. Yes.

Q. 'At that point, did you see anybody take any of that out?' Answer. 'No.' Were you asked that question and did you give that answer?

A. Yes.

¶ 22 On recross, Vargas stated that he did not know if his friends brought the chain or knife with them. Vargas also stated that he did not search the people in his group and did not know if anyone had a gun. Additionally, Vargas stated he was standing in the middle of his group and agreed it was fair to say that he could not see the people behind him and whether they were holding something.

¶ 23 The State also called as witnesses two people who had been with defendant that day—Dre'von Brown and Gusti Korotkov. Brown testified that he had known defendant for about three years and was with a group that included defendant in Legion Park just prior to the incident. There, while Brown prepared to smoke marijuana, he observed a group of about eight or nine people outside the park. Defendant or his friend, John, said " 'there go some flakes,' " referring to rival gang members, and defendant jogged to the group while John biked. At the time, defendant and John were members of the Simon City Royals. No one in the other group approached defendant or John and Brown did not observe anyone in the other group with any sort of weapon. When defendant and John were about 10 feet from the other group, defendant assumed a firing stance, with his legs spread apart and his hands in front of his body. At this point, Brown had a view of defendant's back and could not see what defendant had in his hands. Almost instantly, Brown heard five or six gunshots coming from defendant's direction. Afterwards, defendant ran towards Brown and then left the scene. Brown had not seen anyone from the other group point any weapons at defendant either before or after the gunshots.

¶ 24 On cross-examination, Brown stated that after defendant turned back around, Brown did not see defendant with a mask on or with a pistol in his hand. Brown also stated that when defendant approached the other group, Brown did not see defendant take anything out of his pocket.

¶ 25 Korotkov testified that he had known defendant for three or four years and on July 22, had been with Brown, John, defendant, and others in Legion Park. Korotkov stated that defendant had arrived on a bicycle. Korotkov also stated that he had smoked marijuana that day. At one point, Korotkov heard defendant and John talking about a group of people outside the park, but he could not understand what they were saying. When asked whether defendant and

John said, " 'where those flakes go?' ", Korotkov replied, "I believe so." Defendant and John then rode bicycles towards the street. When asked whether defendant stayed on his bike, Korotkov stated, "I believe so. I don't know. Did I say no on the statement?", before stating that defendant stayed on his bike.

¶ 26 Korotkov further testified that he did not hear defendant yell gang slogans at the group or engage in conflict with them. Korotkov also did not see defendant make gang signs or do anything with his hand in relation to the group. Once defendant and John reached the group, Korotkov heard a little noise, "like a little firework." Subsequently, the group and defendant and John went in opposite directions. Korotkov had not seen anyone from the group point as if they were shooting towards the park and according to Korotkov, the group members did not have weapons.

¶ 27 The State confronted Korotkov with a statement he had made to an assistant State's Attorney and detective about the incident. According to this statement, defendant walked to the group. Additionally, Korotkov admitted that he told the assistant State's Attorney that he heard defendant or John yelling gang slogans to the group, but could not hear exactly what was being said. Defense counsel objected, stating "[t]hat's not impeachment," but the objection was overruled. Korotkov further admitted that he told the assistant State's Attorney and detectives that he saw defendant making what Korotkov believed were gang signs as he approached the group, that he heard popping noises, and that he never saw anyone from the group outside the park pointing like they were shooting towards defendant or John.

¶ 28 The State also confronted Korotkov with portions of his grand jury testimony, in which he acknowledged telling the grand jury the following:

- Korotkov heard conflict coming from defendant and John before the pops or firecracker noises.
- When defendant was approaching the group, defendant moved his hands.
- Korotkov did not see anybody in the group point a gun or weapon of any sort at defendant or John. Additionally, Korotkov did not see anyone in the group fire a weapon or gun at defendant or John, and Korotkov did not see anyone from the group with guns or weapons.

Additionally, the State asked Korotkov how many firecracker noises he heard. Korotkov responded, "I don't recall. What did I say in the statement?" The State presented Korotkov with a portion of his grand jury testimony, and Korotkov acknowledged that he said that he heard a firecracker noise, he did not know what it was, and did not know it was " 'a gun or anything.' " Korotkov then told the grand jury that he heard " 'like one or two' " and " 'two' " noises.

¶ 29 On cross-examination, Korotkov admitted that he told the grand jury that on the day of the incident, he had been under the influence of drugs or alcohol. Defense counsel noted that according to Korotkov's statement, it was John who said " 'there goes some flakes.' " When defense counsel asked if that was indeed what John did, Korotkov stated, "That's what the statement says?", and after he was told "yes," Korotkov replied, "Then yes, I said that." In response to the question of whether his memory was better at trial or "back then," Korotkov stated, "I'm smoking now and back then, regardless."

¶ 30 The State also presented the testimony of Detective Juan Morales, who described the line-ups that were conducted. On July 29, Benji Mora, Francisco Rueda, Stephen Smith, and Jose Herrera viewed line-ups at 12:01 a.m., 12:08 a.m., 12:11 a.m., and 12:15 a.m., respectively. The witnesses were kept separately from each other both before and after they viewed the line-

ups and all four of the witnesses identified defendant. Later that day, Jesus Vargas and Alexis Garza viewed line-ups at 7:20 p.m. and 7:45 p.m., respectively. Vargas and Garza were not kept in the same room before and after the line-ups and both identified defendant.

¶ 31 On cross-examination, Detective Morales did not recall defendant changing his t-shirt for every line-up, but stated that defendant changed positions. Detective Morales acknowledged that when he was in the viewing room for the line-up, he was not able to see what the other witnesses were doing.

¶ 32 Dr. Lauren Moser Woertz, an assistant medical examiner, testified that she performed Torres's autopsy. In her opinion, the cause of death was a gunshot wound to the back and the manner of death was homicide.

¶ 33 After the State finished presenting its witnesses, the court and parties discussed the prospect of the defense calling as a witness Lookman Muhammed, who had been part of Torres and Rueda's group. Just prior to trial, the State had disclosed that it had interviewed Muhammed, and during this interview, Muhammed indicated that just after defendant approached the group, one of his friends said "bust a cap in him." Muhammed also indicated that after defendant fired at him and the victims, Torres was trying to remove a pipe from his pants.

¶ 34 At trial, the court inquired whether Muhammed implicated defendant either in his direct testimony or in statements he gave. When the State replied that he did, defense counsel said, "We are not bringing him for that. We are bringing him for one specific thing, to impeach what other witnesses have said ***." Defense counsel further explained that "[w]e are going to focus on the incident right at the time of the shooting. We are not going to ask him anything else." The court referenced Muhammed's recent statement that Torres supposedly dropped a pipe, and asked defense counsel how he could "limit it to just that one question, when he got shot did he

drop a pipe? *** What about before the guy got shot? *** All I am saying is if it is a question of trial strategy, that's fine, but I think the State can ask him who shot the person or whatever." Defense counsel responded, "That's fine." The court inquired whether defense counsel was calling a witness against his own client, and defense counsel responded he was "calling the witness to impeach these other witnesses." The court asked, "But at what cost?" and then engaged in the following colloquy with defendant:

"THE COURT: Mr. Galambos, you[r] lawyer indicates as a matter of trial strategy he wishes to call a person named Lookman Muhammed, who apparently, at least in some of his testimony, implicates you as having been the person that shot Sergio Torres. Do you understand that?

DEFENDANT: Yes.

THE COURT: You wish your lawyer to do that, to impeach whatever evidence he thinks he can impeach or discredit, but what may come out is that he supposedly saw you shoot the man?

DEFENDANT: Yes, your Honor.

THE COURT: Okay. You cannot claim later on, if you are found guilty, your lawyer is ineffective for doing that. Do you understand that?

DEFENDANT: Yes, sir.

THE COURT: Because you are agreeing to it. Is that right?

DEFENDANT: Yes.

THE COURT: [Defense counsel], I am not saying you should or should not do things, but keep in mind the risk you are running there. Your client says it

is okay with him. If it is okay with him and that's what you want to do, that's what you do. It could be a significant risk. ***"

¶ 35 Following this discussion, Muhammed testified that just before Torres was shot, Muhammed observed a man with a white cloth covering his face from the nose down approach with a gun. Before the shooting, someone in Muhammed's group said, "Bust that s***, bust that b***," which means "[i]f you got the balls, shoot your gun or whatever." Defense counsel asked if before Muhammed saw Torres lying on the ground "or wherever you saw him [lying]," Torres pulled anything from his shorts. Muhammed answered that Torres was trying to pull out a pole or pipe, "which is the reason he was shot, because he couldn't run in time to get away."

¶ 36 On cross-examination, Muhammed stated that the man who approached his group was defendant, who said something that Muhammed did not hear, and to which no one in Muhammed's group responded. One of Muhammed's friends said that defendant had a gun. Muhammed looked at defendant in the eye, froze, and saw defendant with a gun in his hand. Muhammed also observed defendant shoot three times before Muhammed ran and eventually saw Torres fall.

¶ 37 The State also inquired about weapons. Muhammed stated that Torres tried to get the pipe out so that he could run and that Torres did not display the pipe when defendant approached because "[w]hat's a pipe against a gun?" Further, Muhammed confirmed that no one displayed a weapon "prior to that point" and stated that he did not see anybody with a gun or weapon when he was in Green Briar Park, nor did he see any guns when he went to Hollywood Park. The State asked if, when he told defense counsel that he saw Torres with a pipe or pole, "are you saying that's the first time you ever saw anything like that?", to which Muhammed replied "[y]es."

¶ 38 The State then asked questions about Muhammed's grand jury testimony, which also related to weapons. Muhammed acknowledged that he told the grand jury that he did not see anybody in his group brandish any weapons or point any weapons at defendant, and that the group did not know that defendant meant any harm. Defense counsel objected, stating "[t]hat's not impeaching," but the objection was overruled. After the court sustained defense counsel's objection to Muhammed's grand jury testimony that he did not see anybody in the group with a gun, the State then recalled another portion of his grand jury testimony:

> "Q. Question: Did you see anybody in your group pull out a gun or point anything at this individual that you identified?
>
> MR. CARROLL [Defense counsel]: Objection.
>
> THE COURT: He is not saying that today either. Sustained.
>
> MR. BOERSMA [assistant State's Attorney]: I need the answer, Judge.
>
> THE COURT: Ask it again. We will see. Go on.
>
> MR. BOERSMA: No. We had no weapons.
>
> THE COURT: Overruled now. Go on. Overruled.
>
> Q. Were you asked that question and did you give that answer?
>
> A. Yes, I did."

¶ 39 Muhammed also stated that shortly after midnight on July 23, he identified defendant as the shooter in a photo array and about a week later, he identified defendant in a line-up.

¶ 40 On redirect, Muhammed stated that some of the people with him that day wanted to be Latin Kings, but none were officially Latin Kings. Muhammed also stated that he did not search any of the people he was with for weapons, but if someone did have a weapon, "they probably would have pulled it out when somebody walked out of the park with a weapon." Muhammed

stated that he did not see a chain hanging from a branch and did not see anyone with a chain or steak knife.

¶ 41 Following a jury instruction conference, the parties presented closing arguments. The State contended that it was clear who killed Torres and the case was "no longer and never really has been a who done it ***." The State pointed out that nine witnesses testified that defendant was the shooter. The State additionally asserted that every witness that was a friend of Torres's had no prejudice, motive, or interest against defendant and that defendant was also identified as the shooter by his own friends, Brown and Korotkov. After noting a jury instruction about how the jury could consider prior inconsistent statements, the State asserted that when Muhammed told the jury "something about [Torres] trying to pull the pipe out of his pants and before he said we had no weapons, you can consider that like he said it directly today." The State concluded by contending the evidence was "so loud and clear" and that there were nine positive identifications of defendant as the person who shot and killed Torres and wounded Rueda.

¶ 42 In his closing, defense counsel began by stating that "[j]ustice in this country is a fair and impartial judge, courageous state's attorneys that are fair and honest and good defense attorneys. We have had that here today." Defense counsel also described the State's Attorneys as "good people" who had invited him and his co-counsel to their office to look through their file, which "is the law, but they went out of their way." Defense counsel further stated that the trial was not a contest between the defense attorneys and the State's Attorneys, but rather, "[w]e are trying to find out the facts." Defense counsel then referenced the Salem witch trials, in which women had to prove they were not witches, and stated that "we have developed now the theory, and as Judge Sacks tells you, we believe that every person accused of a crime is presumed innocent. It is not the burden of the defendant."

¶ 43 Defense counsel discussed the victims' friends who testified, stating that "[t]he thing that you perhaps have noticed with all these gangbangers that testified *** is how sweet and innocent they all looked." Defense counsel also noted that all of the line-ups were conducted on the same day, and asserted that "these folks certainly had an opportunity to talk to each other." Defense counsel asked, "What do you think the odds are that if they had seen a person without a mask *** and they saw him for 10 seconds, 20 seconds, that each and every person would pick him out? Does that seem strange to you?" Defense counsel quoted the movie *Philadelphia*, in which a character said "talk to me like I'm a six-year old," and asked for someone to "talk to me as to how these nine people can pick out a guy who wears a mask." Defense counsel asserted "[i]t has to be a pretend thing they are doing." Defense counsel contended that the time between the incident and the line-up was "[s]even days for these little rascals to get together and talk and figure out a strategy." Defense counsel also pointed out that in the line-up, defendant was wearing a Rolling Stones t-shirt.

¶ 44 Defense counsel further recalled that Garza and Muhammed stated they were "wannabe Latin Kings," and asserted that becoming a Latin King requires a person to "do something vicious so they will allow me in." Defense counsel also noted that Muhammed testified that when the group stopped, one of his friends said, "let's cap that b*** or whatever," which means "let's shoot him." Defense counsel stated that Torres was shot in the back, "which is consistent with Juan or Miguel or one of those other mutants pulling out a gun to shoot at the white boy and they happen to clip Sergio. It is called *** friendly fire." Defense counsel referred to Torres's group as "gangbangers" who have no self-respect and "have to find it with this mutant group." Defense counsel further stated "[t]hey are dangerous because they are so stupid." Defense

counsel suggested that the witnesses had a motive to lie against somebody to "make somebody pay" after "[o]ne of their own people gets whacked."

¶ 45 Defense counsel further contended that there was weak evidence of defendant's gang membership. Defense counsel also asserted that if a gun had been in defendant's hand, then Brown or Korotkov, "in his fog," would have so stated. Defense counsel suggested that there was a third person "out there with a [t]-shirt on, and it is not this kid." Defense counsel then drew a contrast between a hypothetical scenario where his co-counsel's husband asked defense counsel to provide an alibi for a night away, wherein defense counsel would give him the benefit of the doubt, and the members of Torres and Rueda's group who stated they went to the park to "see if we can find some friends with these chains and the knives and pipes and bad intentions." Defense counsel also recalled the story of the boy who cried wolf, which took away the boy's credibility. Defense counsel then asserted that because it was not true that the witnesses had intended "to have a barrel full of fun and not bother anybody," other pieces of their testimony might not be true either. Defense counsel contended that defendant "was the patsy" and "the guy, for whatever reason, they decided."

¶ 46 In rebuttal, the State asserted that there was no evidence that anyone displayed weapons to defendant, including a chain or knife, or made any threats to defendant or anyone at Legion Park. Addressing defense counsel's theory about a "supposed witch hunt," the State asserted "[t]hat works until you consider the fact that *** Rueda made his identification *** in the hospital." The State additionally contended that the witnesses picked out defendant "because they were fixed on him. They were able to observe him. They watched him as he walked or jogged up to them, as he pulled out that gun, as he shouted gang slogans at them ***."

¶ 47 The State also noted that three of the witnesses, Brown, Korotkov, and Garza, knew defendant and had seen him before. The State contended that even if the witnesses who were friends with the victims could not have identified defendant, Brown knew defendant and clearly recognized him. Referring again to the instruction about prior inconsistent statements, the State explained that the jury could consider what Korotkov said to the grand jury and the assistant State's Attorney "as if that is what he said when he was sitting in this chair." Specifically, the State went on, the jury could consider that Korotkov told the grand jury and assistant State's Attorney that defendant said "there those flakes go," that the victims' group had no weapons, that defendant shouted gang slogans and flashed gang signs at the group, and that Korotkov heard what sounded like firecrackers and saw defendant flee. The State additionally asserted that the jury could convict defendant based on the circumstantial evidence provided by Brown and Korotkov. As to Brown, the State recalled his testimony that Brown watched defendant stand in front of the victims' group, and although he could not see the shooting, he heard gunshots and saw defendant flee. The State further noted that Korotkov did not see the shooting either, but saw defendant approach the group, heard defendant shout gang slogans and flash gang signs to the group, and then heard what he thought were firecrackers and saw defendant flee the park. The State contended that the testimony of Brown and Korotkov was circumstantial evidence of defendant's guilt, which coupled with the other eyewitness testimony proved that defendant was guilty.

¶ 48 Following deliberations, the jury found defendant guilty of first degree murder, attempted first degree murder, and aggravated battery with a firearm. After a sentencing hearing, defendant was sentenced to consecutive 50 and 26-year prison terms for first degree murder and attempted murder, which included firearm enhancements because defendant was found to have personally

discharged a firearm that proximately caused death to another person in the first degree murder count and personally discharged a firearm in the attempted murder count.

¶ 49 II. ANALYSIS

¶ 50 On appeal, defendant contends he was denied effective assistance of counsel because his counsel called a witness against him, failed to object to the improper admission of multiple prior consistent statements, and presented a nonsensical closing argument. Defendant raises these alleged errors individually and additionally argues that considered together, counsel's errors allowed the jury to consider inadmissible evidence, resulting in verdicts that lack the confidence and reliability to ensure that defendant received a fair trial. We address each of defendant's claimed errors in turn.

¶ 51 A. Calling Lookman Muhammed to Testify

¶ 52 Defendant first contends that his counsel was ineffective for calling Lookman Muhammed as a witness. Defendant argues that Muhammed's testimony only strengthened the State's case against defendant and contends that no reasonable attorney would have called such a witness. According to defendant, Muhammed's testimony added nothing to defendant's case and Muhammed's identification of defendant as the shooter affirmatively damaged the defense's claim that defendant was not the shooter. Additionally, defendant asserts that his acquiescence to his attorney's unreasonable strategy should not preclude him from challenging the soundness of that strategy.

¶ 53 To prevail on a claim of ineffective assistance of counsel, a defendant must show that: 1) his counsel's performance was deficient in that it fell below an objective standard of reasonableness; and 2) the deficient performance prejudiced the defense, in that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding

would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984). A reasonable probability is a probability sufficient to undermine confidence in the outcome. *Id*. at 694. In determining the adequacy of counsel's representation, we consider the totality of the circumstances. *People v. Valladares*, 2013 IL App (1st) 112010, ¶ 52. Further, both prongs of the *Strickland* test must be met to succeed on an ineffective assistance claim. *People v. Harris*, 206 Ill. 2d 1, 59 (2002).

¶ 54 Decisions about whether to call certain witnesses on a defendant's behalf are matters of trial strategy that are reserved to the discretion of trial counsel. *People v. Enis*, 194 Ill. 2d 361, 378 (2000). Although strategic decisions are generally immune from claims of ineffective assistance of counsel, this is not the case where counsel's strategy was so unsound that no meaningful adversarial testing was conducted. *Id.*

¶ 55 Regardless of whether any meaningful adversarial testing was conducted, defendant may not challenge his counsel's decision to call Muhammed as a witness because defendant agreed to that decision. Where a party acquiesces in proceeding in a given manner, he is not in a position to claim he was prejudiced thereby. *People v. Villarreal*, 198 Ill. 2d 209, 227 (2001). Before Muhammed was called as a witness, the court engaged in a lengthy discussion with defendant about the potential harm from Muhammed's testimony—specifically, that Muhammed would name defendant as the shooter. Defendant indicated that he understood the potential consequences and twice stated that he agreed to counsel calling Muhammed as a witness regardless. Moreover, Muhammed's testimony that someone said to shoot a gun and that Torres had a pipe supported the defense theory that the group had weapons and that Torres was perhaps shot accidentally by someone else. Although on cross-examination the State elicited harmful testimony, we note that a defendant is entitled to competent, not perfect representation, and the

fact that in retrospect a tactic proved unsuccessful does not demonstrate incompetence. *People v. Gonzalez*, 238 Ill. App. 3d 303, 332 (1992). Under the circumstances, we do not find that counsel was ineffective for calling Muhammed as a witness.

¶ 56 B. Prior Consistent Statements

¶ 57 Next, defendant challenges his counsel's actions related to the prior consistent statements admitted through three witnesses: Muhammed, Korotkov, and Vargas.

¶ 58 1. Lookman Muhammed

¶ 59 Defendant contends that his counsel was objectively unreasonable where he failed to properly challenge the State's improper introduction of Muhammed's prior consistent statements to bolster his in-court testimony. Defendant asserts that although defense counsel objected to the inadmissible statements, he did not do so on the correct grounds, which allowed the State to present inadmissible hearsay to the jury and bolster the already-damaging testimony of defendant's only substantive witness.

¶ 60 Generally, statements made prior to trial are inadmissible for the purpose of corroborating trial testimony or rehabilitating a witness because the trier of fact is likely to unfairly enhance a witness's credibility simply because the statement has been repeated. *People v. McWhite*, 399 Ill. App. 3d 637, 641 (2010). However, prior consistent statements are admissible where: 1) the prior consistent statement rebuts a charge that a witness is motivated to testify falsely, and 2) the prior consistent statement rebuts an allegation of recent fabrication. *People v. House*, 377 Ill. App. 3d 9, 19 (2007). The parties do not urge that either exception applies here.

¶ 61 Before we consider defendant's contention, we briefly summarize the relevant part of Muhammed's testimony. Muhammed testified that Torres tried to pull a pipe from his shorts as

he ran away, Torres did not display the pipe when defendant approached, no one displayed a weapon before then, he did not see anyone with a gun or weapon when he was in Green Briar Park, and he did not see any guns when he went to Hollywood Park. Additionally, Muhammed testified that the first time he saw a pipe or similar object was when Torres was trying to run away.

¶ 62 With this testimony in mind, defendant points to three instances where the State elicited prior consistent statements. In the first, Muhammed acknowledged that he told the grand jury that he did not see anyone in his group brandish any weapons, pull out any weapons, or point any weapons at the shooter and did not know the shooter meant any harm. Defendant objected, stating "[t]hat's not impeaching," and the objection was overruled. In the second instance, Muhammed acknowledged that he told the grand jury that he did not see anyone in his group with a gun. This time, defense counsel's objection was sustained. In the third instance, Muhammed acknowledged that he told the grand jury that he did not see anybody in his group pull out a gun or point anything at the shooter and the group had no weapons.

¶ 63 Because counsel’s objection to the second grand jury statement was sustained, only counsel’s actions surrounding the first and third statements are at issue. The State asserts that these were prior inconsistent statements that were properly admitted as substantive evidence pursuant to section 115-10.1 of the Code of Criminal Procedure (725 ILCS 5/115-10.1 (West 2010) (prior statement is admissible as substantive evidence if it is inconsistent with the witness's testimony at trial, the witness is subject to cross-examination about the statement, and the statement was made under oath at a trial, hearing, or other proceeding)). Whether these grand jury statements were prior inconsistent statements or prior consistent statements is unclear. To be considered "inconsistent," the prior statement need not directly contradict testimony given at

trial, and further, prior inconsistent statements are not limited to direct contradictions but also include evasive answers, silence, or changes in position. *People v. Martinez*, 348 Ill. App. 3d 521, 532 (2004). In contrast, prior consistent statements harmonize with the witness's testimony. *People v. Smith*, 139 Ill. App. 3d 21, 32 (1985). Although the grand jury testimony differs in that it indicates that no one had weapons and Muhammed testified that Torres had a pipe, the grand jury testimony is also consistent with Muhammed's testimony that no one displayed a pipe or similar object before Torres ran. We also note that counsel did not state specific grounds for his objections, except to state that the first statement at issue was "not impeaching." Objections should be sufficiently specific to inform the court of the ground for the objection. (Internal quotation marks omitted.) *People v. Donegan*, 2012 IL App (1st) 102325, ¶ 46. Moreover, a general objection raises only the question of relevance. (Internal quotation marks omitted.) *People v. Villanueva*, 382 Ill. App. 3d 301, 304-05 (2008).

¶ 64 Regardless, even if the statements at issue were prior consistent statements that counsel should have specifically objected to, defendant has failed to show how he was prejudiced by the admission of the two prior consistent statements. The most critical factor to consider in determining whether bolstering deprived a defendant of a fair trial is whether the statement had a bearing on his guilt or innocence. *People v. Dupree*, 2014 IL App (1st) 111872, ¶ 53. Here, Muhammed's grand jury statements indicating that the victims' group had no weapons were insignificant compared to the overwhelming evidence of defendant's guilt. Four other witnesses—Herrera, Mora, Crawford, and Vargas—testified that they observed the key moments of the incident unfold, where defendant approached the group, pulled out a gun, and fired shots, though we note that Herrera testified that he saw sparks. Six other members of the victims' group identified defendant as the shooter in a photo array, line-up, or both. There was little

evidence that the victims' group did anything other than flee. Based on the overwhelming evidence of defendant's guilt, there was not a reasonable probability of a different outcome if counsel had properly objected to Muhammed's prior consistent statements. Having failed to establish prejudice, counsel was not ineffective on this basis.

¶ 65 2. Gusti Korotkov

¶ 66 Defendant next contends that his counsel was ineffective for failing to object when the State introduced prior consistent statements made by Korotkov. Defendant argues that there is no sound trial strategy that would have prevented defense counsel from objecting to the statements, which were inadmissible and from a key witness who was defendant's friend. Defendant asserts that the State repeatedly argued in closing that the jury could consider the inadmissible statements as substantive evidence and used the bolstered testimony to corroborate the testimony from the victims' friends. Defendant also notes that the State told the jury that it could convict defendant based on Korotkov's prior grand jury testimony. As a result, according to defendant, it is not unreasonable to conclude that the jury followed the State's argument and convicted defendant based in large part on Korotkov's inadmissible prior statements.

¶ 67 Again, we briefly summarize the relevant parts of Korotkov's testimony. Korotkov testified that he did not hear defendant yell gang slogans at members of the victims' group or engage in conflict with them and that he heard a "little firework" when defendant and John reached the group. Korotkov also testified that he had not seen anyone from the group point as if they were shooting towards the park and the group members did not have weapons.

¶ 68 Defendant asserts that the State elicited four prior consistent statements. The first occurred when Korotkov acknowledged that he told an assistant State's Attorney that he heard popping noises and that he never saw anyone from the victims' group point as if they were

shooting at defendant or John. We agree with defendant that this was a prior consistent statement, as Korotkov testified that he heard a "little firework" and that he did not see anyone from the group point as if they were shooting towards the park. Since Korotkov was in the park and the group was outside the park, and defendant and John approached the group, this is consistent with stating that the group did not point as if they were shooting at defendant or John. See *Smith*, 139 Ill. App. 3d at 32.

¶ 69 The second statement at issue was elicited when Korotkov told the grand jury that he heard conflict from defendant and John. We find that this was a prior inconsistent statement, as Korotkov testified that he did not hear defendant yell gang slogans or engage in conflict with the group. It could be admitted substantively because it was inconsistent with Korotkov's trial testimony, Korotkov was subject to cross-examination concerning the statement, and it was made under oath at a grand jury proceeding. See 725 ILCS 5/115-10.1 (West 2010).

¶ 70 The third statement at issue occurred when Korotkov acknowledged he told the grand jury that he did not see anyone in the victims' group point or fire a weapon of any sort at defendant or John and did not see anyone in the victims' group with weapons when they passed in front of him. We agree that this was a prior consistent statement, entirely consistent with his trial testimony he had not seen anyone from the group point as if they were shooting towards the park and that the group members did not have weapons. Lastly, the fourth statement at issue occurred when Korotkov acknowledged he told the grand jury that he heard one or two firecracker noises. This, too, is consistent with Korotkov's trial testimony, where he stated he heard a "little firework."

¶ 71 It is unclear why defense counsel did not object to any of the three prior consistent statements, especially since he objected to prior consistent statements from other witnesses, such

as Muhammed. Yet, failing to object can be a matter of trial strategy and does not necessarily establish deficient performance. *People v. Graham*, 206 Ill. 2d 465, 478-79 (2003). Counsel suggested on cross-examination that Korotkov had a poor memory, which was evident from Korotkov's questions about whether his other statements answered various questions and his admission that he was "smoking now and back then, regardless." By asking about his prior statements and admitting drug use, Korotkov may have undermined his own testimony, and counsel may have wanted to let Korotkov's faulty memory stand on its own. Overall, we cannot say that "no meaningful adversarial testing" was conducted by counsel as to Korotkov. See *People v. Cooper*, 2013 IL App (1st) 113030, ¶ 72.

¶ 72 Nonetheless, even if counsel was deficient for not objecting, defendant has failed to show that he was prejudiced by the three prior consistent statements. As noted above, the evidence against defendant was overwhelming where multiple witnesses testified that defendant was the shooter. Further, we disagree that the State so emphasized Korotkov's testimony that it deprived defendant of a fair trial. Although in closing, the State told the jury it could consider substantively some of Korotkov's prior consistent statements, it never told the jury that it could convict defendant based solely on Korotkov's prior consistent statements. The State considered Brown's and Korotkov's testimony together as providing circumstantial evidence that supported other witnesses. Moreover, Korotkov was not a key witness, as his faulty memory likely undermined his value to the trier of fact. See *Dupree*, 2014 IL App (1st) 111872, ¶ 53 (improper bolstering of a witness's credibility is reversible error where trial testimony of that witness is crucial).

¶ 73 3. Jesus Vargas

¶ 74 Next, defendant contends that his counsel was deficient when he failed to properly challenge the State's improper bolstering of Vargas's testimony with prior consistent statements from his grand jury testimony. Defendant argues the prior consistent statements were inadmissible, and although defense counsel objected, he never stated any basis for the objections. Defendant further contends that the introduction of Vargas's prior consistent statements, in conjunction with Muhammed's prior consistent statements, lent significant credibility to his in-court testimony and corroborated other witness's testimony. According to defendant, the improperly admitted evidence likely tainted the jury's deliberations, even if unconsciously, so as to render the guilty verdicts unreliable.

¶ 75 By way of summary of his relevant testimony, Vargas testified that no one had a gun and he did not see anyone with a gun when the group was approached by defendant. Additionally, Vargas testified that he saw a chain on a tree when he was at Green Briar Park, although he did not remember whether anyone took the chain to Hollywood Park. When the State asked, "[W]hen you walked towards Hollywood Park, you know if anyone in your group had a weapon?", Vargas responded, "No," which could mean either that no one had a weapon or he did not know if anyone had a weapon. On cross-examination, Vargas initially stated that he did not know if someone had a chain and that no one had a steak knife. After being confronted by part of his grand jury testimony, Vargas stated that one person had a chain and one person had a steak knife, though exactly when was unclear.

¶ 76 Defendant points to five statements that the State introduced on redirect examination. In these statements, Vargas told the grand jury that: 1) he did not see anyone in his group take anything out; 2) he did not see anyone with a gun; 3) no one in his group pointed anything at defendant; 4) he did not see anyone take out a chain and steak knife at the time of the incident;

and 5) he last saw the chain and steak knife when his group was at Green Briar Park. Defense counsel objected at various points, but did not state a basis for his objections.

¶ 77 Although only one of the grand jury statements was directly elicited by the State previously—that no one had a gun—we nonetheless find that the statements are prior consistent statements because they harmonize with Vargas's testimony that either no one had weapons or he did not know if anyone had weapons and with his unclear timeline for when someone had a chain and steak knife. Prior consistent statements may not be admitted merely because a witness's testimony has been discredited, or to rebut a charge of mistake, poor recollection, or inaccuracy. *McWhite,* 399 Ill. App. 3d at 641.

¶ 78 The State appears to agree that it elicited prior consistent statements, but maintains these statements were properly elicited under the curative admissibility doctrine to correct the false impression left by defense counsel during cross-examination that the victims' group was armed with a knife and chain when the shooting took place. We disagree that the curative admissibility doctrine applies here. The doctrine states that where a door to a particular subject is opened by defense counsel on cross-examination, the State may, on redirect, question the witness to clarify or explain matters brought out during, or to remove or correct unfavorable inferences left by, the previous cross-examination. *People v. Manning*, 182 Ill. 2d 193, 216 (1998). Importantly, the doctrine is limited in scope, is merely protective, and goes only as far as is necessary to shield a party from unduly prejudicial inferences raised by the other side. *People v. Liner*, 356 Ill. App. 3d 284, 293 (2005).

¶ 79 Here, even assuming that counsel's questions on cross-examination raised the possibility that someone had a steak knife and someone had a chain when the group left Green Briar Park, this suggestion was far from unduly prejudicial. This was not a self-defense or second degree

murder case, where the fact that someone else was armed with a chain or steak knife would be a significant issue that could harm the State's case. Defense counsel's own theory at trial was that someone shot the victims, not that a steak knife or chain caused the injuries. Additionally, the State went well beyond the matter of the steak knife and chain by introducing prior consistent statements about weapons generally. The State may not, under the guise of curative admissibility, violate the rules of evidence under the rationale of neutralizing an inference which is favorable to the accused. *People v. Williams*, 240 Ill. App. 3d 505, 506-07 (1992). The prior consistent statements were improperly admitted and counsel should have voiced a specific objection to them. See *Donegan*, 2012 IL App (1st) 102325, ¶ 46 (" 'objections should be sufficiently specific enough to inform the court of the ground for the objection' ").

¶ 80 However, defendant cannot show that he was prejudiced by the admission of Vargas's prior consistent statements. As we have stated, the evidence of defendant's guilt was overwhelming. Further, the issue of whether the victims' group was armed with a chain or steak knife was not significantly related to defendant's guilt. See *Dupree*, 2014 IL App (1st) 111872, ¶ 53 (most critical factor to consider in determining whether bolstering deprived the defendant of a fair trial is whether the statement had a bearing on his guilt or innocence). Regardless of whether the victims' group was armed with these or other items to beat up Alphonso, the evidence overwhelmingly showed that defendant approached and fired at the victims' group unprovoked. Moreover, Vargas was not a key witness, and the State did not make significant mention of Vargas in closing argument. Under these circumstances, defendant was not prejudiced by Vargas's prior consistent statements and his ineffective assistance claim on this basis fails.

¶ 81 C. Closing Argument

¶ 82 Defendant next contends that his defense counsel's closing argument failed to challenge the State's evidence in any meaningful way. Defendant asserts that counsel's praise of the prosecutors was an inexplicable strategy and the remainder of his closing argument consisted of nonsensical ramblings on topics completely unrelated to defendant's case. Defendant further argues that counsel's disparaging remarks about gang members were problematic where the primary evidence of gang membership at trial was that defendant and his friend, Brown, were in gangs. According to defendant, any challenges to the State's case were rendered meaningless by counsel's rambling, incoherent, and nonsensical closing argument. As to prejudice, defendant contends that his counsel's closing argument compounded his other deficiencies throughout the trial.

¶ 83 We do not find that counsel performed deficiently during his closing argument. Placing defense counsel's remarks in context, he praised the State's Attorneys to deflect the notion that the jury had to pick a side and to emphasize that the jury's role was to sort out the facts. Defense counsel referred to the Salem witch trials to explain the presumption of innocence. Further, defense counsel's theory throughout the trial was that members of the victims' group were Latin Kings, and they were the target of counsel's remarks about gang members. In contrast, defense counsel denied that defendant was in a gang. Though unorthodox, defense counsel's remarks were made to highlight a point or draw an analogy. Defense counsel consistently challenged the State's evidence, pointing out that the shooter was wearing a mask, contending the witnesses were not credible, and calling into question the identifications that were at the heart of the case. Counsel's approach was a far cry from *People v. Morgan*, 187 Ill. 2d 500 (1999), and *People v. Redmond*, 50 Ill. 2d 313 (1972), both cited by defendant. In *Morgan*, counsel made "no effort to focus on any mitigating evidence" at a sentencing hearing and his argument consisted of

irrelevant and incoherent religious references and nonsensical pleas. *Morgan*, 187 Ill. 2d at 555-56. In *Redmond*, counsel conceded his client's guilt, which did not occur here. *Redmond*, 50 Ill. 2d at 316. Overall, counsel did not perform deficiently and was not ineffective on this basis.

¶ 84 D. Cumulative Error

¶ 85 Defendant also contends that the cumulative effect of defense counsel's various errors established sufficient prejudice to require a new trial. Defendant argues that the improper evidence bolstered the credibility not only of Muhammed, Korotkov, and Vargas, but also all of the State's witnesses. Defendant asserts that the improper evidence corroborated the testimony of other witnesses.

¶ 86 The vast majority of the improper statements related to whether someone in the victims' group was armed, an issue that was relatively insignificant compared to the strong evidence that defendant was the shooter. Multiple witnesses consistently testified that defendant approached the group, pulled out a gun, and shot at the group. Another witness, Brown, did not see defendant fire the actual shots, but saw defendant assume a firing stance and then heard gunshots from defendant's direction. Brown did not see anyone point weapons at defendant before or after the gunshots. Additionally, although cumulative error may deprive a defendant of a fair trial, there must first be a showing of individual error. *People v. Garmon*, 394 Ill. App. 3d 977, 991 (2009). Having found that none of the alleged errors warrant a new trial, we reject the claim of cumulative error.

¶ 87 E. Mittimus

¶ 88 Lastly, defendant contends, and the State concedes, that his mittimus should be corrected to reflect 397 days of presentence custody and to indicate that his conviction for attempted first degree murder is a Class X offense. Pursuant to Illinois Supreme Court Rule 615(b)(1) (eff.

Aug. 27, 1999), we direct the clerk of the circuit court to correct defendant's mittimus accordingly.

¶ 89 III. CONCLUSION

¶ 90 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 91 Affirmed; mittimus corrected.