2013 IL App (4th) 110207-U

NO. 4-11-0207

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
August 26, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Sangamon County
DENNIS PETITT,	)	No. 09CF270
Defendant-Appellant.	)	
	)	Honorable
	)	Leo J. Zappa, Jr.,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Presiding Justice Steigmann and Justice Pope concurred in the judgment.

ORDER

¶ 1 *Held*: Because of the failure to make a contemporaneous objection and to reiterate the objection in a posttrial motion, defendant's contentions of error are forfeited, and because the alleged errors are not plain error, the trial court's judgment is affirmed.

¶ 2 Defendant, Dennis Petitt, appeals from his conviction of the first degree murder (720 ILCS 5/9-1(a)(1) (West 2008)) of his brother, Anthony Petitt, a conviction for which he is serving a sentence of 30 years' imprisonment.

¶ 3 Defendant makes two arguments in his appeal: (1) the prosecutor went beyond rebuttal by introducing a new theory in his rebuttal closing argument, thereby depriving defendant of a fair opportunity to respond with a counterargument; and (2) the prosecutor misrepresented the expert testimony in his rebuttal closing argument.

¶ 4 We find both of these arguments to be forfeited because of the lack of a

contemporaneous objection and because of the failure to reiterate the objection in a posttrial motion. The doctrine of plain error does not avert the forfeitures. Therefore, we affirm the trial court's judgment.

¶ 5 I. BACKGROUND

¶ 6 A. The Essential Issue in the Jury Trial

¶ 7 It is undisputed that on March 30, 2009, in Springfield, defendant killed Anthony Petitt by hitting him in the forehead with an oxygen tank. The oxygen tank belonged to David Georges, who was ill and with whom defendant and Anthony Petitt were living at the time. (Georges died before the trial.)

¶ 8 It likewise is undisputed that a few weeks earlier, Anthony Petitt beat defendant up, breaking his nose.

¶ 9 Essentially, the issue in the jury trial (held in November and December 2010) was whether defendant should be found not guilty on the ground of self-defense (720 ILCS 5/7-1(a) (West 2008)) or whether, alternatively, he should be found guilty of the lesser included offense of second degree murder (720 ILCS 5/9-2(a)(2) (West 2008)).

¶ 10 B. What the Police Found Upon First Arriving at the Scene

¶ 11 Police officers were the first to arrive at the scene. They arrived at Georges' trailer at about 1:15 a.m. on March 30, 2009. Defendant opened the door of the trailer and told them, "I killed him." He pointed at Anthony Petitt, who was lying on his back, on a love seat, with his head on a pillow and his legs bent at the knees so as not to dangle over the end of the love seat. He was covered in a quilt from his chest to his feet, and his arms were folded over his torso, with the quilt tucked beneath his right arm and his right hand resting

on top of the quilt. His left hand rested on his chest, under the quilt. He was dead.

¶ 12 There was a wound, a depression, in the left side of his forehead. There was blood on his head and face; on the pillow beneath his head; on the end table close to his head; and on the carpet, between the love seat and the end table.

¶ 13 About six feet away from the love seat was a rack of six oxygen tanks. One of the tanks, weighing approximately eight pounds, had blood on it, and long dark hair was stuck to it. On the floor, next to the oxygen tanks, was another bloodstained pillow.

¶ 14 Defendant smelled of alcohol and had several lacerations on his forehead, a bruised right eyelid, and blood on his hands. There were two small bloodstains on one of the legs of his blue jeans. He explained that he and Anthony Petitt had been fighting.

¶ 15 A paramedic, Louis Rogers, asked defendant if he needed medical care. Defendant answered that "he did not, that the injuries were sustained earlier in the day, and that he didn't have any active bleeding or anything like that going on." It did not appear to Rogers that defendant needed medical care.

¶ 16 C. Defendant's Statement to the Police

¶ 17 Later in the morning of March 30, 2009, defendant waived his *Miranda* rights (*Miranda v. Arizona*, 384 U.S. 436 (1966)) and gave a 90-minute statement to two police officers, Rodney Vose and Cheryl Williams. The statement was audio-recorded as well as video-recorded.

¶ 18 In his statement, defendant told the police officers that he and Anthony Petitt had been living with Georges for about a month. His former girlfriend, he said, had been concerned that he and Anthony were living together, considering that, three or four weeks

ago, Anthony beat him up, breaking his nose. Defendant had warned Anthony that he was not going to put up with such physical abuse any longer and that Anthony would not "get away with it" if he beat him up again.

¶ 19 On March 29, 2009, defendant, Anthony Petitt, and Georges had been drinking all day. Defendant admitted that he and Anthony fought when they drank together. He said that, on this day, he and Anthony were drunk and sitting on the "little couch" when Anthony "got up" and began hitting him. Anthony knocked him down, punched him in the eyes and mouth with his fist, and generally "kicked [his] ass." Defendant said, "And I got tired of it, this is the second time he's done it to me." Given that he could not "whoop" Anthony, who was younger, taller, and "tougher" than he, defendant picked up an oxygen tank and hit Anthony in the head, while Anthony was "over the top of him," in Georges's living room. Vose asked defendant how Anthony ended up on the love seat, and defendant answered, "Cause I knocked him down on it." Vose asked defendant if Anthony was standing up when defendant hit him. Defendant replied, "No he was sitting down. He done fell down. He'd sat on the couch when I hit him (unintelligible). Oh. Then laid down and I fucking was sorry I hit him."

¶ 20 At first, defendant told Vose and Williams that he had hit Anthony only once in the head with the oxygen tank: "You know what I mean, one time (unintelligible) bam and he went down on the couch and I knew he was dead." But then Vose questioned him further:

"DETECTIVE VOSE: So he was on top of you?

DEFENDANT: Yeah. I knocked him on the couch.

DETECTIVE VOSE: Okay.

DEFENDANT: No he was coming towards me and I hit him. This is the second time, he beat me up earlier, second time then I hit him with the fucking canister and he went in the couch.

DETECTIVE VOSE: Okay when he when he got on the couch what'd he do?

DEFENDANT: He went to pass out and then I killed him I guess.

DETECTIVE VOSE: Okay.

DEFENDANT: I hit him twice with that canister.

DETECTIVE VOSE: Okay.

DEFENDANT: And I don't know fuck. I don't know man, I didn't mean to kill my own brother you know what I mean. Fuck I didn't mean to kill him. I just got tired of him beating me up this is the second time he's beat me up broke my nose last time. You know. I'm going to jail huh? Okay.

* * *

DEFENDANT: He beat my ass knocked me down. Then when got, tired beating on me I grabbed a canister and hit him in the head, knocked him down, I hit him twice.

* * *

DEFENDANT: I hit him standing up, I'm strong. Too

goddamn strong.

DETECTIVE VOSE: Was it like a baseball swing?

DEFENDANT: Yeah, the first one was, the second one was a stroke. But I hit him in the head both times he bled like a motherfucker then I got down on him I begged him to wake up he wouldn't wake up you know. I begged him to wake up.

DETECTIVE VOSE: So the first time you hit him you're standing up, that's.

DEFENDANT: And he went down.

DETECTIVE VOSE: Okay on the couch?

DEFENDANT: And then I hit him again yeah then I hit him again, I hit him twice, and I loved my brother man, I shouldn't of fucking hit him at all, man, I just got tired of him beating my ass. Second time, last last time he broke my fucking nose and shit. He beat my ass tonight too. Why I don't know, we were drinking vodka and shit. I'm not that drunk though. You know what I mean?"

¶ 21 Defendant explained that his hands were bloody "[f]rom picking [Anthony] up." He summed up: "All I can say it was self defense but you know what I mean it ain't right. It ain't right, I should never of hit him that hard."

¶ 22 D. Bowman's Testimony

¶ 23 Jessica Bowman, the forensic pathologist who had performed the autopsy, testified that Anthony Petitt had died from blunt force trauma to the top left side of his head,

which had fractured his skull and had torn the brain tissue. The curvature of the fracture in the forehead was compatible with the curvature of the end of the blood-spattered oxygen tank. She opined that he would have lost consciousness within seconds after the blow and that he would have died within minutes. According to her, the blow could have been delivered while he was standing, sitting, or lying down. The blow had descended "in a head-to-toe direction, through the top of the head fracturing the skull." The upper gum abrasions and fragmented dentures in the his mouth were consistent with the transfer of force from the top of the head and into the jaw.

¶ 24 At his death, Anthony Petitt had a blood-alcohol content of 0.238. A byproduct of cocaine, benzoylecgonine, also was in his blood.

¶ 25 E. Carter's Testimony

¶ 26 The State also called David Carter, a bloodstain pattern analyst. On the basis of his examination of the autopsy photographs as well as the photographs of the crime scene and of Anthony Petitt's clothing, Carter opined that Anthony was lying on his back, "face up," at the time of the bloodshed. The dark area of blood on the pillow under his head suggested the blood had flowed "downward and away from the area on the scalp": an indication that he was lying "face up" at the "onset" of the blood-shedding event.

¶ 27 The two small circular bloodstains on the pillow were impact blood spatters, produced by impact with a surface that already was bloody. Thus, Carter opined that there "had to be at least two impacts" to Anthony's skull. One impact "initiated *** the flow of blood," and the second impact projected blood.

¶ 28 Carter explained that the blood dripping from Anthony's forehead, nose, and

mouth toward the sides of his head and face was due to the force of gravity—more evidence that he was lying on his back at the time of the bloodshed. If he had been standing when his head was struck, the blood would have flowed vertically down his face and onto his clothing, depending on how long he remained standing.

¶ 29 The "wipe pattern" bloodstain on Anthony's face was made when a second source moved an already existing bloodstain. There was a contact bloodstain on Anthony's left hand, which was consistent with his using his hand to wipe his face.

¶ 30 The "massive blood pools" on the end table were a "continuation of the blood flow" from the head.

¶ 31 The collar of Anthony's sweatshirt was saturated with contact bloodstains, indicating his collar had been in "constant contact" with the blood source—further confirmation that he was supine at the time of the blood-shedding event.

¶ 32 There were a couple of drops of human blood and a contact bloodstain on the front of Anthony's blue jeans. Carter could not determine when those stains were deposited.

¶ 33 The small bloodstains on defendant's clothing appeared to be blood spatter. The bloodstains on his shirt suggested his right shirt sleeve was close to the blood source at the time of the blood-shedding event.

¶ 34 F. Character Evidence

¶ 35 Defense counsel called a couple of witnesses—Derek Needham and Greg Petitt—to testify regarding Anthony Petitt's reputation in the community. They testified that Anthony was widely regarded as "extremely violent" when "he was drinking" and as someone who "got mean when he drank" and who "didn't want to stop once he started

fighting."

¶ 36 On cross-examination, the prosecutor asked Needham:

"MR. MAGNUSON: Did Dennis Petitt have the same type of reputation, sir.

MR. COSTELLO [(defense counsel)]: Objection.

THE COURT: Sustained.

THE WITNESS: No.

THE COURT: The jury should disregard that answer."

¶ 37 G. Defense Counsel's Closing Argument and the Prosecutor's Rebuttal Closing Argument

¶ 38 In his closing argument, defense counsel argued to the jury: "[There was] blood on the pants of Tony Petitt. If, in fact, Tony Petitt was lying down with a blanket covering his pants, how did the blood get there? It's inescapable, ladies and gentlemen of the jury, and when he was hit with that canister, he was standing up, because the blood could not have dripped through that qui[l]t.

* * *

The State will probably say [Anthony Petitt] was asleep because his hands were around his neck. Well, they weren't around his neck, they were down here, and how did they get down here across? What do you do when you're in a frenzy trying to help someone, you pull a blanket up, you cross their hands, hold their head. That's how his

hands were crossed.

* * *

Tony Petitt was not lying down asleep when he was hit with the canister. He was hit while standing up, knocked back to the couch, came at him again and was hit the second time. Fell back on the couch, and that's how this happened. *Not when Tony Petitt was asleep*.

* * *

If you would take this and his head was level with this table, right here, and you crack it, is it not going to leave a mark on that table? Is forensic not going to find a mark? *That's another inescapable fact that he was not asleep or laying down when he was cracked*." (Emphases added.)

¶ 39 In his rebuttal closing argument, the prosecutor argued to the jury: "There's no Second Degree here. There's no unreasonable belief. Unreasonable belief that what, *a sleeping man is going to attack him*, but first before he attacks him, he's going to wrap himself in a blanket." (Emphasis added.)

¶ 40 H. The Posttrial Hearing

¶ 41 On December 6, 2010, defendant filed a "Second Post Trial Motion," in which he accused the jury foreman, Chris Garner, of failing to be truthful during *voir dire*. According to defendant, Garner knew two of the witnesses in the case, Troy Petitt and Joseph Bentley. Garner did not disclose this during *voir dire*.

¶ 42 Additionally, a prosecution witness, Derek Needham, averred in an affidavit that on January 3, 2011, Garner approached him at a retirement party and told him the following:

> "10. Chris Garner stated to me that he knew Judge Zappa, who was the Judge on my uncle's (Dennis Petitt) case.
>
> 11. Chris Garner stated to me that he had told the Judge he knew me, my Uncle Troy Petitt, and Joe Bentley, owner of Knuckleheads bar and witness for the defense.
>
> 12. Chris Garner stated to me that several Jurors wanted to watch the Defendant's statement again, and had asked the Judge to view it, but Judge Zappa told them no.
>
> 13. Chris Garner further stated that he felt rushed in his decision making process and the verdict he chose because the Judge had stated to the jury that he wanted a quick verdict.
>
> 14. That Chris Garner stated to me that he didn't feel the Defendant was guilty of First Degree Murder and felt it was Involuntary Manslaughter but he felt pressured to make a decision."

¶ 43 On January 26, 2011, the trial court held an *in camera* conference with Garner, the prosecutor, and defense counsel, to investigate the allegations in Needham's affidavit.

¶ 44 In this *in camera* conference, Garner testified that, as the owner of a sports complex and bar, he knew Needham "by face." In his line of business, he got to know "a lot

of people by face only." He also had played against Needham in a billiards league, but they were not "close friends."

¶ 45 Garner admitted that at the retirement party on January 3, 2011, he had a "small discussion" with Needham about the Dennis Petitt trial, in which Garner had served as the jury foreman. In this discussion, Garner told Needham he merely recognized Judge Zappa, not that he knew him personally. Garner denied having any conversation with Judge Zappa during the trial, and he denied that any juror asked Judge Zappa to see defendant's videotaped statement again. He denied that Judge Zappa ever came into the jury room or that Judge Zappa ever came into contact with anyone in the hallway. He denied that Judge Zappa ever said he wanted a quick verdict. He denied feeling pressured in any way to find defendant guilty of first degree murder instead of "Involuntary Manslaughter."

¶ 46 On cross-examination by defense counsel, Garner testified: "I said [to Needham] it wasn't easy to come up with a decision."

¶ 47 Garner admitted being superficially acquainted with Joseph Bentley. He knew he was the owner of Knuckle Heads Bar. But Garner had never known his last name.

¶ 48 Defense counsel asked Garner:

"Q. *** Mr. Garner, did you tell Needham that several jurors wanted to watch the Defendant's statement again and had asked the Judge to view it, but Judge Zappa told them no; is that true?

A. Not in those words, no.

Q. Well, what kind of words?

THE COURT: Mr. Costello, the transcript from the trial itself

shows that this Court, with you in this courtroom, told the jury that they were about to see the taped statement of the Defendant, to please pay particular attention to it because they would not receive it back in the jury room, but if they wanted to see it again, it would be done so in open court, and that's in the written record.

MR. COSTELLO: Yes, sir. I'm just asking if this is accurate as to what he told Needham.

THE COURT: All right.

* * *

Q. ***

Did you tell Derek—did you tell Needham that you felt rushed in your decision-making process?

A. No. Actually what I—you know, I can't remember the whole conversation, but what I did tell him is I didn't want to be there, I didn't feel comfortable with it. Nobody in the jury room felt good about it, but the evidence gave what it gave, and there was some people who were voting for Second Degree Murder in the beginning, but went to First Degree by the time the definitions were hashed out.

Q. That's fair.

And this—you have to answer, also you told Needham that the verdict you chose was because the judge had stated to the jury that he wanted a quick verdict.

You didn't say that, did you, sir?

A. No, I did not say that.

THE COURT: Nor did the judge.

* * *

Q. Chris, did you state to Needham that you didn't feel the Defendant was guilty of First Degree Murder and felt that it was Involuntary Manslaughter because you felt pressured to make a decision?

Did you state that to Needham?

A. No. Actually, if you want to hear the conversation—

Q. I do.

A. —because it would be real simple.

He said they were offered a plea bargain of Second Degree Murder before it went to trial, and I said to him, 'I don't know how he would have thought he would ever get off on manslaughter when the guy was laying down asleep getting hit in the head with a cylinder without being able to defend himself,' and that, you know, we just didn't feel comfortable with First Degree ever, because who wants to sentence a man to First Degree Murder.

Q. And I take it that the blood spatter expert was rather persuasive to the jury?

THE COURT: Well, wait a minute, now you're in the

province of the jury and their discussions.

MR. COSTELLO: Yes, Your Honor, you're right. I withdraw that question.

THE COURT: All right. The case law is very clear on how far you can go."

¶ 49 At the conclusion of the *in camera* conference, the prosecutor moved to strike Needham's affidavit recounting his conversation with Garner, considering that, in Garner's testimony in the conference, he had denied saying to Needham just about everything Needham had claimed he had said. The trial court asked defense counsel:

"THE COURT: You'll object for the record?

MR. COSTELLO: I would object.

THE COURT: I'm granting the motion. This Court had had no contact—I didn't know Chris Garner until he walked in the door, so somewhere the lines of communication between Mr. Garner and Mr. Needham got—

MR. COSTELLO: Crossed.

THE COURT: —confused, but this Court finds it to be inappropriate, so it's stricken."

¶ 50 II. ANALYSIS

¶ 51 A. Defendant's Contention That the Prosecutor Went Beyond Rebuttal in the State's Rebuttal Closing Argument

¶ 52 Defendant argues that by waiting until the State's rebuttal closing argument

to argue to the jury that Anthony Petitt was sleeping when defendant hit him with the oxygen tank, the prosecutor denied the defense an opportunity to respond to that argument and the prosecutor undermined the fairness and reliability of the trial.

¶ 53 In a footnote in his brief, defendant acknowledges that defense counsel never made this objection during the State's rebuttal closing argument and that defense counsel never included this objection in the posttrial motion. See *People v. Enoch*, 122 Ill. 2d 176, 190 (1988) (both a contemporaneous objection and the inclusion of the objection in a posttrial motion are necessary to preserve the objection for appeal). Even so, defendant asserts in the footnote: "Appellate review is nonetheless appropriate under the plain-error doctrine," and he then cites *People v. Jackson*, 2012 IL App (1st) 102035, followed by this phrase in parentheses: "prosecutor's improper closing argument reviewed as 'plain error' "—whereupon the footnote ends.

¶ 54 Any discussion of the plain-error doctrine should begin with the two circumstances in which plain error can exist. "The plain error doctrine allows reviewing courts to address forfeited errors if (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." (Internal quotation marks omitted.) *Id.*, ¶ 16. Then, after stating those two circumstances, the defendant should clearly signify which of the two circumstances the defendant believes to exist in his or her case. Then the defendant should provide a reasoned argument for that belief. Defendant does none of that. One might infer, from his citation of *Jackson*, that he considers the evidence to be close, because that is the circumstance the appellate court found to exist in *Jackson* (*id.*, ¶ 20).

¶ 55 "In addressing a defendant's plain-error argument, we first consider whether error occurred at all." *People v. Hudson*, 228 Ill. 2d 181, 191 (2008). We find no error at all in the State's rebuttal closing argument, because when the prosecutor argued it would have been unreasonable of defendant to believe "a sleeping man [was going] to attack him," the prosecutor merely was responding to an argument that defense counsel had made, repeatedly, in his closing argument. Four times during his closing argument, defense counsel argued that Anthony Petitt was not "asleep," but that instead he was standing up, when defendant hit him with the oxygen tank. The purpose of a rebuttal closing argument is to respond to defense counsel's closing argument. *United States v. Sarmiento*, 744 F.2d 755, 765 (11th Cir. 1984); 75A Am. Jur. 2d *Trial* § 450. That is what the prosecutor did. Defense counsel argued Anthony Petitt was not asleep when defendant hit him; the prosecutor responded that, on the contrary, he was asleep. "The prosecutor is entitled to comment on arguments raised by the defense in its closing argument ***." *United States v. Olsen*, 487 F.2d 77, 83 (8th Cir. 1973).

¶ 56 B. Defendant's Contention That, in the State's Rebuttal Closing Argument, the Prosecutor Misrepresented the Expert Testimony

¶ 57 Defendant says that by making the "killed-in-his-sleep claim" in the State's rebuttal closing argument, the prosecutor "[m]isrepresent[ed] expert testimony." Defendant cites *People v. Linscott*, 142 Ill. 2d 22, 28-41 (1991), for the proposition that a defendant can be "denied a fair trial by the prosecutor's misrepresentations of the expert testimony in closing argument."

¶ 58 The prosecutor never represented to the jury, however, that *an expert had*

testified Anthony Petitt was asleep when defendant hit him. Rather, the *prosecutor himself* drew that inference in his rebuttal closing argument. So, again, we find the alleged error to be nonexistent, and hence we find no plain error. See *Hudson*, 228 Ill. 2d at 191.

¶ 59 C. The State's Motion To Strike References to Garner's Testimony

¶ 60 In the posttrial hearing, the jury foreman, Chris Garner, testified: "I don't know how [the defendant] would have thought he would ever get off on manslaughter when the guy was laying down asleep ***."

¶ 61 The State has filed with us a motion to "strike" the references, in defendant's brief, to Garner's testimony regarding the jury's deliberations. The State cites *People v. Sullivan*, 2011 IL App (4th) 100005, ¶ 21, in which this court observed: "In general, a jury verdict may not be impeached by the testimony of the jurors."

¶ 62 One might note that the prosecutor never made this objection in the *in camera* conference. But the prosecutor never really had an occasion to make this objection, because, by the question that defense counsel put to Garner, he did not intend impeach the verdict by probing into the jury's deliberative processes. Instead, defense counsel asked Garner if he had told Needham he had "felt pressured to make a decision"—and in this context, "pressure" evidently means external pressure, such as a judge's telling a jury to hurry up with the verdict. See *id.* ("An exception to this rule [against impeaching the verdict by the testimony of jurors] is made in situations where proof of improper *external* influence on the jury is shown." (Emphasis in original.)). One might infer, from Garner's answer, that the impetus to find defendant guilty of first degree murder instead of second degree murder came not from any external source but, rather, from the evidence that Anthony Petitt was asleep when

defendant hit him with the oxygen tank. So, in the context of the *in camera* conference, the tendency of this portion of Garner's testimony was to validate the jury's verdict (as driven by the evidence) rather than to impeach it (as driven by external pressure).

¶ 63 In this appeal, by contrast, defendant puts Garner's testimony to a different use; he *is* trying to impeach the verdict by reference to Garner's thought processes. Defendant insists, on the contrary, that, by his references to Garner's testimony, he is "not seeking to impeach the jury's verdict" but rather he is merely "addressing the prejudicial impact of the prosecution's improper argument."

¶ 64 To "impeach" a verdict means to "call into question [its] integrity or validity." The New Oxford American Dictionary 851 (2001). Defendant calls into question the validity of the verdict by arguing it was the product of "the prosecution's improper argument," as evidenced by Garner's rationale against second degree murder, as he recounted it in the *in camera* conference. We are not supposed assess the validity of a verdict by considering "posttrial juror testimony showing the motive, method or process by which the jury reached its verdict" (Internal quotation marks omitted)—unless the motive was external pressure. *Sullivan*, 2011 IL App (4th) 100005, ¶ 21. Arguments by counsel are not external pressure, and, besides, as we have already discussed, the question of whether Anthony Petitt was asleep was fair game in the State's rebuttal closing argument, considering that defense counsel had just finished arguing, in his closing argument, that Anthony was *not* asleep. Garner's view—and, by inference, his fellow jurors' view—that it was undesirable to convict defendant of the lesser included offense of second degree murder ("manslaughter"), considering that he had killed Anthony while Anthony was asleep, shows the jury's "motive"

in finding defendant guilty of first degree murder. So, we find the rule in *Sullivan* to be applicable, and we grant the State's motion to strike, from defendant's brief, the references to Garner's testimony in the posttrial hearing (interpreting "striking" the references as meaning "disregarding" them).

¶ 65 III. CONCLUSION

¶ 66 For the foregoing reasons, we affirm the trial court's judgment, and we assess $50 in costs against defendant.

¶ 67 Affirmed.