2012 IL App (5th) 100098-U

NO. 5-10-0098

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Randolph County.
	)	
v.	)	No. 09-CF-120
	)	
DANIEL J. POOLE,	)	Honorable
	)	Richard A. Brown,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE WEXSTTEN delivered the judgment of the court.
Justices Welch and Stewart concurred in the judgment.

ORDER

¶ 1 *Held*: The State proved the defendant's guilt beyond a reasonable doubt, and the allegations of error that he raises on appeal are without merit.

¶ 2 On appeal from his convictions for residential burglary, the defendant, Daniel J. Poole, argues that the State (1) failed to prove his guilt beyond a reasonable doubt, (2) improperly bolstered the credibility of two of its key witnesses, and (3) made impermissible comments in its closing argument to the jury. The defendant seeks an outright reversal of his convictions or, alternatively, a new trial on the underlying charges. For the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 On June 9, 2009, the State filed an information charging the defendant with two counts of residential burglary (720 ILCS 5/19-3(a) (West 2008)) and two counts of theft over $300 (720 ILCS 5/16-1(a)(1)(A) (West 2008)). On January 11, 2010, the cause proceeded

to a jury trial, where the following evidence was adduced.

¶ 5 Thomas Diercks testified that he lived on West Houston Road in Sparta, and on May 14, 2009, his home was burglarized while he was away. Diercks testified that numerous items, including jewelry and firearms, had been taken and that some of the stolen property had later been recovered.

¶ 6 Jewell Henry testified that she lived on East Springview Road in Baldwin, and on May 14, 2009, her home was burglarized while she was away. Henry testified that numerous items, including coins, jewelry, and firearms, had been taken and that some of the stolen property had later been recovered. Henry indicated that one of the stolen firearms was a Smith & Wesson handgun, serial number B54782.

¶ 7 John Yallaly testified that he lived down the road from Diercks on West Houston Road in Sparta. Yallaly testified that on May 14, 2009, as he was heading home for lunch around noon, he saw the defendant and another man, who he later identified as Dustin Middendorf, by a white Ford Taurus that was parked near a creek crossing. Yallaly testified that as he passed by the crossing, the defendant "was throwing something in the water." Yallaly observed the defendant and Middendorf for "probably 30 seconds" and was close enough to make "eye contact" with both of them. During direct and cross-examination, Yallaly acknowledged that although he had later been able to identify Middendorf from a "photo lineup," he had not been able to likewise identify the defendant. Yallaly testified that the defendant had hair on May 14, 2009, but in the lineup picture, his hair was "shaved off" and he looked "significantly different."

¶ 8 Middendorf testified that on May 14, 2009, he and the defendant had burglarized "a couple of homes in Randolph County." Middendorf further testified that they had used his 2001 Ford Taurus for transportation and that Ashley Jones had accompanied and assisted them. When shown photographs of the houses, Middendorf indicated that Diercks' house and

Henry's house were the two homes that he and the defendant had broken into. Middendorf further indicated that the goal was to steal things that could later be sold in East St. Louis for money to buy crack cocaine. Middendorf identified firearms and other items as property that was taken during the break-ins.

¶ 9 Middendorf testified that just prior to the commission of the burglaries, he had parked his car at a bridge near the Diercks residence, and he and the defendant had gotten out and smoked some crack. Middendorf could not recall whether the defendant had thrown anything into the water. Middendorf stated that after the burglaries, they had gone to his father's house "[t]o sort everything out." They then drove to East St. Louis, where they purchased some crack and tried to sell the guns they had stolen. During an ensuing traffic stop, the police discovered the guns and other stolen property, and Middendorf, Jones, and the defendant were arrested.

¶ 10 Middendorf testified that following his arrest, he had discussed the burglaries with law enforcement officials from the East St. Louis police department, the St. Clair County sheriff's department, and the Bureau of Alcohol, Tobacco, Firearms, and Explosives. On multiple occasions, he also spoke with Detective Donnie Krull of the Randolph County sheriff's department. Acknowledging that he had made several false and inconsistent statements during his numerous interviews, Middendorf indicated that what he had told Krull during an October 2009 interview was "pretty much" what he had testified to at trial. Middendorf also acknowledged that before testifying, he had pled guilty to charges stemming from his involvement in the burglaries and had been sentenced to serve a seven-year term of imprisonment.

¶ 11 When cross-examined, Middendorf was thoroughly impeached with his prior inconsistent statements, and he admitted, *inter alia*, that in most of the statements, he had "tried to pin this all on [the defendant]." He also agreed that he had "a history of not being

truthful to the investigators" and had "lied to them all at first." Middendorf admitted that he had drug and alcohol problems and a criminal history that included felony convictions for drug and weapons offenses. He further admitted that when he "took a plea deal in this case," he was motivated by self-serving interests. When asked whether the jurors should believe his trial testimony or his previous "lies" about the burglaries, Middendorf replied, "I don't care what they believe."

¶ 12 Jones testified that she had been "high on crack for three days" when she participated in the Diercks and Henry burglaries but could nevertheless recall "most of" what had occurred. She further testified that she "rang the doorbell" at both houses "[t]o see if anybody was home." Stating that Middendorf had broken into and first entered both residences, Jones suggested that the defendant had reluctantly helped Middendorf carry various items out of the homes. Jones testified that she had previously dated and lived with the defendant, but "it was more of a drug relationship" than anything. Jones testified that she had "worked out a deal" with the State and that her trial testimony was consistent with what she had told Detective Krull in a pretrial interview.

¶ 13 When cross-examined, Jones acknowledged that following her arrest, she had lied to investigators from several law enforcement agencies. She further acknowledged that she was a drug addict and had "smoked crack all night" before telling Krull that she and Middendorf had participated in the burglaries. Jones testified that she takes medication to control her borderline personality disorder. Jones admitted that she had "used drugs since [her] plea deal" and had used days before testifying at the defendant's trial. Jones further admitted that pursuant to her deal with the State, she had "avoided jail time" and would instead be entering drug treatment. Jones indicated that she had difficulties recalling her various inconsistent statements to the police. When asked whether the jury should believe her past lies about the burglaries or the "lies" she was telling at the defendant's trial, Jones indicated that she did not

know.

¶ 14 Sergeant Andre Williams and Officer Kendall Perry of the East St. Louis police department testified regarding the events that led to the defendant's arrest. Perry explained that on the evening of May 14, 2009, he had stopped Middendorf's vehicle for traffic offenses, and Williams had soon arrived as backup. During the stop, Williams found Henry's Smith & Wesson handgun in the defendant's left shoe. That discovery led to a search of Middendorf's car, where additional property taken during the Diercks and Henry burglaries was recovered. A crack pipe and a small bag of crack were also found during the search. Middendorf's car was inventoried and towed, and he, Jones, and the defendant were arrested at the scene.

¶ 15 Krull testified that he "did the follow-up investigation on the burglaries" and took custody of the stolen property recovered by Williams and Perry. On cross-examination, when asked whether he had interviewed the defendant, Jones, and Middendorf during the course of his investigation, Krull indicated that he had only interviewed Middendorf and Jones, because the defendant had "requested an attorney" during a previous interview with another law enforcement agency. Krull further indicated that a few weeks before the defendant's trial, he had spoken with the defendant at the defendant's request, with defense counsel present. During that conversation, the defendant intimated that he had not participated in the burglaries.

¶ 16 The defendant testified that he had not participated in the burglaries and "was home all day on May 14, 2009." The defendant stated that Jones and Middendorf had lied to the various law enforcement officials they had spoken to and had further lied when testifying at his trial. The defendant maintained that he did not use drugs and had never "lied about this case." The defendant further maintained that he had "wanted to make a statement about this case since May 14, 2009." The defendant testified that after asking "[s]everal times" if he

could speak with Detective Krull, Krull eventually agreed to meet with him in December 2009. The defendant stated that Krull had asked him several questions but had not let him "make a statement."

¶ 17 The defendant testified that on May 14, 2009, he lived with his buddy, Josh, and Josh's mother, Misty, at Misty's farmhouse in Waterloo. The defendant testified that sometime around 3 p.m., Middendorf and Jones had stopped by and sold him a Smith & Wesson handgun and a "bag of silver coins and $2 bills." The defendant explained that although he had suspected that Middendorf and Jones were going to use the money that he had given them for "drugs or something," he had nevertheless accompanied them to East St. Louis, where Jones paid her "dealer, slash, pimp" some money she owed him. The defendant testified that going to East St. Louis was a "bad decision" and that Jones and Middendorf had "left [him] out in the car *** for two hours while they [were in the dealer's] house getting high, *** and–it was in an all-black neighborhood." The defendant testified that bringing his recently purchased handgun along was admittedly "wrong." When Middendorf got pulled over, Sergeant Williams found the gun, and the defendant was placed under arrest. The defendant testified that for eight months he had "been waiting to tell someone about what happened on May 14, 2009," and that his trial testimony was the "first statement [he] got to make about this case." The defendant maintained that he was innocent of the charges against him.

¶ 18 When cross-examined, the defendant acknowledged that he had spoken to investigators from the East St. Louis police department following his arrest and had not told them what he had testified to at trial. Claiming that the investigators had never asked him to tell his "side of the story," the defendant testified that he had told them that he wanted a lawyer when he "didn't know anything about" the questions they were asking. The defendant indicated that while incarcerated for months thereafter, he had attempted to speak to other

law enforcement officers about the case but had not been allowed to do so until his attorney had arranged for him to meet with Detective Krull in December 2009. Repeatedly announcing that he "did not commit these burglaries," the defendant accused the State of "trying to twist it around for the jury."

¶ 19 Misty Lang testified that she lived in a farmhouse in Waterloo, and since October 2008, the defendant had lived in "the family room in the basement." Misty testified that the defendant had spent the night of May 13, 2009, in her basement and that on the morning of May 14, 2009, she had awoken him so that he could "get started on the grass." The defendant spent the rest of the day mowing and trimming. At approximately 3:30 p.m., Jones and Middendorf showed up at the house, and Middendorf offered to sell Misty some yard equipment, *i.e.*, a "nice chainsaw and a weed-eater and a leaf blower," that he had in the trunk of his car. Misty did not have the money to buy the equipment, and she was angry because Jones and Middendorf were not supposed to be on her property. When Jones and Middendorf subsequently left, the defendant went with them. Misty testified that she had not spoken with the defendant since his arrest, but he was a "good boy" and her "kids' friend," and she thought about him often.

¶ 20 Ashley Pegg testified that in May 2009, she lived at Misty's farmhouse with Misty, the defendant, and Misty's children, Zach, Matt, Hannah, Jake, and Josh. Pegg testified that the defendant had spent the night of May 13, 2009, at Misty's house and had spent the following day outside doing yard work. At approximately 3:30 p.m., Jones and Middendorf stopped by to see the defendant, and from a distance, Pegg watched as Misty approached Middendorf's car, the trunk of which was open. The defendant subsequently left with Middendorf and Jones, and Pegg testified that she had not seen the defendant since. Pegg acknowledged that Josh was her boyfriend and a friend of the defendant's.

¶ 21 During closing arguments, maintaining, *inter alia*, that lawyer or no lawyer, an

"innocent person" would have proclaimed their innocence "first thing" and would not have waited until the eve of trial before arranging to speak with a law enforcement officer, the State vigorously challenged the defendant's claims that since his arrest, his trial had been the only opportunity he had been given to tell his side of the story. The State also questioned the credibility of the defendant's alibi witnesses, noting, *inter alia*, that the East St. Louis police should have found the aforementioned yard equipment in Middendorf's car given that the defendant never explained the equipment's absence. The State acknowledged that Middendorf and Jones were high on crack when the burglaries took place and had both subsequently made deals with the State. The State further acknowledged that Jones's testimony suggested that Middendorf was more criminally culpable than the defendant. The State characterized Yallaly as an unbiased witness with no direct interest in the case.

¶ 22 In response, reminding the jury that Yallaly had been unable to identify the defendant from a photo lineup shortly after the burglaries, defense counsel argued that "miraculously," Yallaly had an "improved memory" by the time of the defendant's trial. Assailing Middendorf's and Jones's credibility, counsel suggested that the "lies" they had told at trial were no more believable than the false statements they had made to the various investigators following their arrest. Referring to Middendorf and Jones as the State's "two star witnesses," counsel emphasized that both were self-described drug users who had accepted plea deals before offering testimony supporting the State's theory of guilt. Counsel noted that Misty and Pegg had corroborated the defendant's version of events and that the defendant had admittedly "made some mistakes." Contending that before testifying, the defendant had never been given "the chance to tell his story," counsel argued that no one had wanted to "hear the truth" during the defendant's pretrial incarceration. Asserting that Middendorf and Jones were "liars *** trying to save themselves," counsel implied, *inter alia*, that the State was attempting to convict the defendant of "crimes that he didn't do." Counsel argued that

the State had failed to prove the defendant's guilt beyond a reasonable doubt and, no less than five times, reiterated that the burden of proof was the State's to carry. During the State's rebuttal argument, the prosecutor conceded that the State had the burden of proving the defendant's guilt beyond a reasonable doubt, and before and after the parties' closing arguments, the trial court instructed the jury that such was the case.

¶ 23 After deliberating for approximately 30 minutes, the jury returned a verdict finding the defendant guilty on all four counts of the State's information. The trial court later merged the two theft convictions into the two burglary convictions and sentenced the defendant to serve two concurrent 6½-year terms of imprisonment. The defendant filed a timely notice of appeal.

¶ 24 DISCUSSION

¶ 25 Sufficiency of the Evidence

¶ 26 The defendant first argues that the State failed to prove his guilt beyond a reasonable doubt. Offering numerous reasons why no rational jury should have found him guilty, the defendant contends that his convictions must be reversed because his alibi defense was supported by two corroborating witnesses who were more credible than Middendorf and Jones. Noting, *inter alia*, that "[t]here is nothing in the defendant's brief that the jury did not hear," the State counters that the evidence presented at trial was more than sufficient to sustain the jury's verdict. We agree with the State.

¶ 27 To convict the defendant of the residential burglary charges in the present case, as to each count, the State was required to prove that the defendant knowingly and without authority entered into the dwelling place of another with the intent to commit a theft therein. 720 ILCS 5/19-3(a) (West 2008). When reviewing the sufficiency of the evidence supporting a criminal conviction, it is not the function of the reviewing court to retry the defendant. *People v. Ward*, 215 Ill. 2d 317, 322 (2005). Rather, "[t]he relevant inquiry is

whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id*. Under this standard, a reviewing court "will not reverse a conviction unless the evidence is so unreasonable, improbable or unsatisfactory that it raises a reasonable doubt of [the] defendant's guilt." *People v. Evans*, 209 Ill. 2d 194, 209 (2004).

¶ 28 "[T]he testimony of an accomplice witness, whether corroborated or uncorroborated, is sufficient to sustain a criminal conviction if it convinces the jury of the defendant's guilt beyond a reasonable doubt." *People v. Tenney*, 205 Ill. 2d 411, 429 (2002). Additionally, "the testimony of but one witness is sufficient to convict where the witness is credible and viewed the accused under conditions permitting a positive identification to be made." *People v. English*, 403 Ill. App. 3d 121, 138 (2010).

¶ 29 Here, the jury heard from not one, but two accomplice witnesses, and their testimony was corroborated by Yallaly, who the State aptly describes as a "neutral bystander whose testimony undercut the alibi witnesses." Moreover, when Middendorf, Jones, and the defendant were arrested in East St. Louis, not only did the police discover proceeds from the burglaries in Middendorf's car, Henry's stolen Smith & Wesson handgun was found in the defendant's shoe, further supporting the jury's finding that the defendant had participated in the crimes. See *People v. Parham*, 377 Ill. App. 3d 721, 728 (2007) (noting that while not an actual element of the offense, possession of burglary proceeds constitutes "evidence of burglary"). The jury was fully aware that Yallaly had been unable to identify the defendant from a photo lineup, and by finding the defendant guilty, the jury necessarily rejected the defendant's testimony, as well as the testimony offered by his alibi witnesses. "It is the jury's function to assess the credibility of witnesses, weigh the testimony, and resolve conflicts and inconsistencies in the evidence," and "[w]e will not question the jury's determination" (*People v. Nugen*, 399 Ill. App. 3d 575, 584 (2010)) or "reverse a conviction simply because

the evidence is contradictory [citation] or because the defendant claims that a witness was not credible" (*People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009)). Accordingly, we reject the defendant's claim that the State failed to prove him guilty beyond a reasonable doubt.

¶ 30 Alleged Trial Errors

¶ 31 The defendant next contends that the State denied him a fair trial by improperly bolstering Middendorf's and Jones's credibility with references to their prior consistent statements and by making impermissible comments during closing arguments regarding his "post-arrest silence" and request for counsel. The defendant acknowledges that he raises these issues for the first time on appeal, but to circumvent his procedural default of the claims (see *People v. Enoch*, 122 Ill. 2d 176, 186 (1988)), the defendant asks that we review them under the plain error doctrine or as claims of ineffective assistance of trial counsel. Either way, we agree with the State's assessment that the defendant's arguments are without merit.

¶ 32 To succeed on a claim of ineffective assistance of trial counsel, a defendant must satisfy the two-pronged test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Patterson*, 217 Ill. 2d 407, 441 (2005). "Under *Strickland*, a defendant must prove not only that defense counsel's performance fell below an objective standard of reasonableness, but also that this substandard performance caused prejudice by creating a reasonable probability that, but for counsel's errors, the trial result would have been different." *People v. Johnson*, 218 Ill. 2d 125, 143 (2005). "Because [a] defendant must satisfy both prongs of the test, the failure to satisfy either element precludes a finding of ineffective assistance of counsel under *Strickland*." *People v. Shaw*, 186 Ill. 2d 301, 332 (1998).

¶ 33 "[T]he plain-error doctrine 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, 186-87 (2005). "In both instances, the burden of persuasion remains with the defendant" (*Id*. at 187), and in any event, "[t]he initial step in conducting plain-error analysis is to determine whether error occurred at all" (*People v. Walker*, 232 Ill. 2d 113, 124 (2009)). Such is the case because "in the absence of error, there can be no plain error." *People v. Brant*, 394 Ill. App. 3d 663, 677 (2009); see also *People v. Williams*, 193 Ill. 2d 306, 349 (2000).

¶ 34 The defendant contends that by eliciting that Jones and Middendorf had both made pretrial statements to Detective Krull that were consistent with their trial testimony, the State improperly bolstered their credibility. We disagree.

¶ 35 "In general, pretrial statements used to corroborate trial testimony are inadmissible." *People v. Ursery*, 364 Ill. App. 3d 680, 687 (2006). "An exception to this rule applies when it is suggested that the witness recently fabricated the testimony or had a motive to testify falsely and the prior statement was made before the motive to fabricate arose." *Id*.

¶ 36 Here, in his opening statement to the jury, defense counsel suggested that Middendorf and Jones, who had both "made several statements to the police over the months," would testify falsely against the defendant, because they had both "taken plea deals with the State." When later impeaching Jones and Middendorf and again, in his closing argument, counsel further suggested that the lies both witnesses had previously told were no more believable than the "lies" they had told at trial. Under the circumstances, to rebut the inference that their testimony had been recently fabricated and that they were motivated to testify falsely, it was permissible for the State to reference that Jones and Middendorf had each given a prior consistent statement to Detective Krull. *Id*. We also note that the contents of the statements were not discussed and that by acknowledging making a pretrial statement that was consistent with the State's theory of guilt, each witness had "merely stated the obvious." *Id*. In any event, the defendant is unable to establish plain error or deficiency in counsel's

performance with respect to this issue. *Id*. at 687-88.

¶ 37 The defendant lastly asserts that he was denied a fair trial by improper remarks that the State made during closing arguments. Specifically, the defendant contends that with its "innocent person" observations, the State "improperly shifted the burden of proof to the defense" and in violation of *Doyle v. Ohio*, 426 U.S. 610 (1976), improperly commented on his "post-arrest silence" and request for counsel. When considered in their proper context, however, the complained-of remarks were within the bounds of acceptable argument.

¶ 38 "It is well established that prosecutors are afforded wide latitude in closing argument, and improper remarks will not merit reversal unless they result in substantial prejudice to the defendant." *People v. Kitchen*, 159 Ill. 2d 1, 38 (1994). "A prosecutor's comments must be considered in the context of the parties' arguments as a whole and their relationship to the evidence." *People v. Hall*, 194 Ill. 2d 305, 350 (2000). "Arguments based on facts or reasonable inferences drawn from the facts are within the scope of proper argument even where they reflect unfavorably on the accused." *People v. Manley*, 222 Ill. App. 3d 896, 907 (1991). Additionally, "the credibility of a witness is a proper focus of closing argument if it is based on the evidence or reasonable inferences drawn from the evidence." *People v. Dresher*, 364 Ill. App. 3d 847, 859 (2006).

¶ 39 The defendant contends that the State's remarks in closing arguments "improperly shifted the burden of proof to the defense" by suggesting that the defendant "was required to prove his innocence." We find that this contention is without merit. Our supreme court "has long held that it is impermissible for the prosecution to attempt to shift the burden of proof to the defense." *People v. Phillips*, 127 Ill. 2d 499, 527 (1989). "Indeed, the defense is under no obligation to present any evidence; 'the prosecution has the burden of proving beyond a reasonable doubt all the material and essential facts constituting the crime.' " *Id*. (quoting *People v. Weinstein*, 35 Ill. 2d 467, 470 (1966)). The court "has never said or

implied, however, that once a defendant does present certain evidence it is beyond the reach of appropriate comment by the prosecution." *Phillips*, 127 Ill. 2d at 527. Such is the case because "[t]here is a great deal of difference between an allegation by the prosecution that defendant did not prove himself innocent and statements questioning the relevance or credibility of a defendant's case." *Id*.

¶ 40 Here, viewing the remarks at issue in light of the evidence adduced at trial and the parties' arguments as a whole, the prosecution did not shift the burden of proof to the defense but rather challenged the believability of the defendant's claim that despite his efforts and desire to do so, he had been unable to tell "his side of the story" before trial. As previously noted, prosecutors are afforded wide latitude in closing argument, and the State was free to attack the credibility of the defendant's testimony and defense. See, *e.g.*, *People v. Anderson*, 407 Ill. App. 3d 662, 677 (2011); *People v. Harris*, 288 Ill. App. 3d 597, 607 (1997).

¶ 41 Having reviewed the record, we find that the defendant's claim that the prosecutor's remarks violated the rule set forth in *Doyle v. Ohio*, 426 U.S. 610 (1976), is also without merit. "Under *Doyle*, the prosecution may not impermissibly comment on the defendant's silence when he has invoked the right to remain silent." *People v. Patterson*, 217 Ill. 2d 407, 444 (2005). Because "*Doyle* rests on the fundamental unfairness of implicitly assuring a suspect that his silence will not be used against him and then using his silence to impeach an explanation subsequently offered at trial" (*Greer v. Miller*, 483 U.S. 756, 763 (1987) (internal quotation marks omitted)), however, "*Doyle* applies only when a defendant invokes his right to remain silent" (*Patterson*, 217 Ill. 2d at 445). Here, the defendant did not invoke his right to remain silent when he was interviewed following his arrest. *People v. Hostetter*, 384 Ill. App. 3d 700, 708-09 (2008). "The *Doyle* rule, therefore, does not apply in this instance" (*Patterson*, 217 Ill. 2d at 445; see also *People v. Velez*, 388 Ill. App. 3d 493, 508 (2009); *People v. King*, 384 Ill. App. 3d 601, 609-10 (2008)), at least with respect to what the

defendant refers to as his "post-arrest silence." Moreover, even assuming *arguendo* that the *Doyle* rule did apply, we would conclude that the prosecutor's remarks fell within the rule's impeachment exception.

¶ 42 The impeachment exception to the *Doyle* rule applies where a defendant's trial testimony is inconsistent with statements he made following his arrest. *People v. Adams*, 403 Ill. App. 3d 995, 1007 (2010) (and cases cited therein), *appeal allowed*, 238 Ill. 2d 654 (2010); see also *People v. Purrazzo*, 95 Ill. App. 3d 886, 899-900 (1981). Under the impeachment exception, "[i]f a defendant's trial testimony is inconsistent with statements made to the police, the prosecution may impeach his trial testimony by using his failure to give the same statements to the police." *People v. Ridley*, 199 Ill. App. 3d 487, 493 (1990). The impeachment exception encompasses situations such as where a defendant makes a general denial of guilt and then later testifies "as to a specific defense" (*Adams*, 403 Ill. App. 3d at 1008) or "provides a statement to police and that version of events omits vital facts later included at trial" (*People v. Biro*, 260 Ill. App. 3d 1012, 1019-20 (1994)).

¶ 43 Here, suggesting that no one had wanted to hear the truth while he was incarcerated, the defendant testified that he had been wanting to tell his "side of the story" since his arrest but had not been afforded the opportunity to do so until he met with Detective Krull in December 2009. Acknowledging that he had spoken to investigators from the East St. Louis police department following his arrest and had not told them what he had testified to at trial, the defendant further testified that he had told the investigators that he wanted a lawyer because he "didn't know anything about" the questions they were asking. Under the circumstances, assuming *arguendo* that the defendant did invoke his right to remain silent, the State could properly use the defendant's "post-arrest silence" to impeach his trial testimony. See *People v. Jones*, 240 Ill. App. 3d 213, 221-23 (1992) (and cases cited therein). "Although the prosecutor's statements were comments on [the] defendant's silence,

they 'challenge[d] the defendant's testimony as to his behavior following arrest' " and were thus permissible. *Adams*, 403 Ill. App. 3d at 1008 (quoting *Doyle*, 426 U.S. at 619 n.11). "The *Doyle* rule also applies to a defendant's post-*Miranda*-warning request for an attorney" (*People v. Graham*, 206 Ill. 2d 465, 475 (2003)), and because the State's references to the defendant's request for a lawyer likewise challenged the defendant's testimony regarding his behavior following his arrest, they also fell within *Doyle*'s impeachment exception.

¶ 44 When considered in their proper context, the comments that the defendant maintains denied him a fair trial were within the bounds of proper closing argument. The defendant is thus unable to establish plain error or prevail on his ineffective-assistance-of-counsel claim. *People v. Kuntu*, 196 Ill. 2d 105, 129-30 (2001). We lastly note our agreement with the State's observation that the excerpt from the prosecutor's closing argument that the defendant twice quotes in his brief "omits critical portions of the prosecutor's commentary," which give context to the remarks that the defendant complains of on appeal.

¶ 45 CONCLUSION

¶ 46 The State proved the defendant's guilt beyond a reasonable doubt, and whether reviewed under the plain error doctrine or as ineffective-assistance-of-counsel claims, the allegations of trial error that the defendant raises on appeal are without merit. Accordingly, the defendant's convictions and sentences are hereby affirmed.

¶ 47 Affirmed.