NOTICE
This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2022 IL App (4th) 200653-U

NO. 4-20-0653

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
July 26, 2022
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
TYJUAN J. BRUCE,	)	No. 19CF14
Defendant-Appellant.	)	
	)	Honorable
	)	Scott D. Drazewski,
	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Justices Cavanagh and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court did not abuse its discretion by denying defendant's motion to continue, admitting surveillance video evidence under the "silent witness" theory, and admitting evidence related to a Louis Vuitton belt.

(2) Defendant was not denied his right to a fair trial due to the State's allegedly improper comments made during its closing arguments.

(3) Any error by the trial court in allowing the image of defendant wearing jail clothing to be published to the jury was harmless.

(4) The State presented sufficient evidence to prove defendant guilty of first degree murder predicated on defendant's accountability for the actions of the shooter or shooters.

(5) Defendant was not denied the effective assistance of his trial counsel.

¶ 2 Following a jury trial in August 2020, defendant, Tyjuan J. Bruce, was convicted of two counts of first degree murder (720 ILCS 5/9-1(a)(3) (West 2018)), one count of home

invasion (720 ILCS 5/19-6(a)(3) (West 2018)), and one count of robbery (720 ILCS 5/18-1(a) (West 2018)). In December 2020, the trial court sentenced defendant to 45 years' imprisonment. Defendant filed a timely motion to reconsider the sentence, which the court subsequently denied.

¶ 3 Defendant appeals, alleging the trial court abused its discretion by (1) denying his motion to continue, (2) "admitting the testimony of Jerell Dudley," (3) admitting surveillance video evidence under the "silent witness" theory, and (4) admitting evidence related to a Louis Vuitton belt. Defendant further contends (5) his due process rights were violated when the jury viewed an image of him wearing "jail garb," (6) he was denied his right to a fair trial after the State made allegedly inappropriate comments during its closing argument, (7) the State failed to prove him guilty beyond a reasonable doubt, and (8) he was denied the effective assistance of his trial counsel. We affirm.

¶ 4 I. BACKGROUND

¶ 5 A. The State's Charges and Pretrial Motions

¶ 6 In January 2019, a grand jury indicted defendant with four counts of first degree murder (counts I-IV) (720 ILCS 5/9-1(a)(3) (West 2018)), one count of home invasion (count V) (720 ILCS 5/19-6(a)(3) (West 2018)), one count of armed robbery (count VI) (720 ILCS 5/18-2(a)(2) (West 2018)), one count of robbery (count VII) (720 ILCS 5/18-1(a) (West 2018)), and one count of residential burglary (count VIII) (720 ILCS 5/19-3(a) (West 2018)).

¶ 7 On August 6, 2020, defendant filed a motion to continue the trial. At the hearing on defendant's motion, defense counsel argued it was impossible to ensure everyone's safety due to the ongoing COVID-19 pandemic and "a cautious approach ***would be to reschedule this [trial] until a safer time." Counsel further argued the pandemic might limit the jury pool in such a manner that he could not get a fair trial. The State objected to the continuance, arguing the

"Eleventh Circuit has gone to great lengths to make sure *** social distancing is provided," and defendant's position regarding the quality of the venire was speculative. Following the parties' arguments, the trial court noted defendant's motion was "based upon the generic criteria relating to whether it would be in the interests of justice that the trial be continued." The court then stated it was denying the continuance due to the successes in conducting trials "from start to finish," despite the pandemic, and found counsel's concern regarding the quality of the venire to be "total speculation."

¶ 8 On August 10, 2020, the State filed a motion to nolle-pros counts II, IV, VI, and VIII, which the trial court granted.

¶ 9 B. Jury Trial

¶ 10 1. *The Crime Scene*

¶ 11 On August 11, 2020, defendant's jury trial commenced. The State's case against defendant was based on circumstantial evidence defendant was part of a plot to rob Egerton Dover on December 5, 2018. According to the State, when defendant broke into Dover's residence, Dover was shot and killed.

¶ 12 The State's evidence revealed Bloomington police officers were dispatched to Dover's residence at 816 West Jefferson Street around 4:45 a.m. on December 5, 2018, after a reported shooting. Responding officers observed the front door of the residence had been kicked in and Dover had been shot and killed. Cannabis was found in plain view in both a bedroom and a walkway near the living room. The police also found three spent shell casings—two .380-caliber casings and one 9-millimeter casing—in the home. No fingerprints were found on the shell casings. Further, the State never recovered the weapon or weapons used in the shooting.

¶ 13 Outside the home, the police noticed footprints in the snow between Dover's residence and Jefferson Street. They also found what appeared to be more than one set of footprints going around Dover's home, a set of footprints between the residence and a vehicle parked just outside the home, and vehicle tire tracks in the street.

¶ 14 2. *Autopsy*

¶ 15 Dr. Scott Denton, a forensic pathologist working at the McLean County coroner's office, testified Dover was shot three times. Denton recovered a "medium-caliber, copper-jacketed bullet" lodged behind Dover's liver. The doctor indicated two bullets passed completely through Dover's body.

¶ 16 3. *The Victim's Activity Prior to His Murder*

¶ 17 Louis Rodriguez testified he and Blake Dunn went to Bloomington the evening of December 4, 2018. After picking up Dover, Rodriguez dropped Dover and Dunn off at the Lancaster Heights apartment complex in Normal, Illinois. Rodriguez then went to donate plasma. He later picked up Dover, Dunn, and Alex "Weezy" Williams from Lancaster Heights and took them to Dover's house.

¶ 18 After Rodriguez took his girlfriend to work, he picked up Dover, Dunn, and Williams at Dover's house and drove them to Champaign, Illinois. In Champaign, Rodriguez dropped Dover and Williams off at a house. Rodriguez and Dunn then went to get food. Approximately 45 minutes later, Rodriguez and Dunn picked up Dover and Williams and headed back to Bloomington-Normal, specifically Lancaster Heights. At the apartment complex, Rodriguez and Dunn stayed in the car. Dover and Williams got out and returned about 10 minutes later. The four men then returned to Dover's house. Later, Rodriguez, Dunn, and Dover

began driving to El Paso, Illinois, before turning around and dropping Dover off at his house a "little after three" in the morning.

¶ 19 4. *Events at Hannah Newble's Apartment Prior to Dover's Murder*

¶ 20 Hannah Newble testified she lived at Lancaster Heights in December 2018. On December 4, 2018, Newble, Demarius Young, and defendant were hanging out at her apartment. Around 6 p.m., Newble started drinking wine. She "ended up going to bed and going into [her] room and shutting the door" at approximately 9 p.m. Newble had not given defendant or Young permission to allow anyone else in the apartment. Later that evening, she found additional people in her apartment, including Anthony "Spiro" Grampsas, Kobe "Kado" Harris, and Dylan "DY" Messerole. Newble stayed in the living room with Harris while some of the others hung out in a walk-in closet where a table was set up.

¶ 21 According to Newble, around midnight, Dover and Williams arrived at the apartment. Williams and Grampsas went into the walk-in closet, and Dover told Newble he came bearing gifts. Newble "pulled [Dover] into the kitchen," and Dover gave Newble a gram of marijuana from his bag. Newble then asked Dover to leave because she "didn't really know the people that were at [her] house or trust them," and she felt uncomfortable with Dover being around them.

¶ 22 A few minutes after Dover left, some of the other people came out of the walk-in closet "just to talk," but the conversation eventually "shifted to where did [Dover] go." After realizing Dover was gone, Williams also left. According to Newble, neither Dover nor Williams came back to her apartment that night. After Dover and Williams left, the mood in the apartment changed. Defendant began making vulgar comments about Dover and criticized him for leaving, claiming Dover "didn't want to bring out the weed because everybody was around." Grampsas,

Harris, and one unknown African American male were present for defendant's verbal outbursts. According to Newble, defendant stated he wanted to rob Dover.

¶ 23 Newble told the men they needed to leave multiple times. Eventually, defendant, Grampsas, Harris, and the unknown African American man all left together. Newble observed Grampsas with car keys. She was surprised defendant left her apartment "because [she] thought he was staying the night until [her] boyfriend got back." No one from that group of men returned to Newble's apartment that night. Newble learned Dover had been killed the morning of December 5, 2018, but could not recall "the exact way in which [she] found out." On cross-examination, Newble stated defendant had been staying at the apartment for at least three days prior to Dover's murder.

¶ 24 Young testified he was 21 years old and said the State had not made him any promises as to his other pending charges if he testified. He and Dover were previously acquainted through high school football. Young stated he would see Dover "here and there" and was eventually reintroduced to him by Newble's boyfriend, Chris Atchison. Both Young and defendant had been staying at Newble's apartment when Dover was killed. On December 4, 2018, Dover and Williams came to Newble's apartment when Young, defendant, and Newble were present. Dover and Williams indicated they were going to Champaign to get marijuana and would come back. After they left, other people started arriving at the apartment.

¶ 25 At some point, Young heard "a rumbling" in the apartment. He left the bedroom to see what was happening and saw Grampsas, Harris, Messerole, Bryce Crose, and defendant in the living room. According to Young, there had been an altercation between Messerole and another unknown individual, who left. At some point, defendant slapped Crose and told him to

leave the apartment. Young testified the people remaining at the apartment were defendant, Grampsas, Harris, Messerole, Newble, and himself.

¶ 26 Dover and Williams later returned to the apartment. Young let them in and went with Dover "to the kitchen to see [Newble]." Dover gave Newble a small amount of cannabis but did not sell or share marijuana with anyone else. Dover then left the apartment. Williams stayed about "five to seven minutes" more and left. Young testified defendant was "furious" over not being provided any cannabis. Grampsas and Harris then took Messerole home, which left only Newble, defendant, Young, and Young's girlfriend at the apartment. Grampsas and Harris returned to Newble's apartment with Curtis Hairston, whom Young knew as "BD Lord." Hairston showed Young a video of himself and Messerole with guns. Young recognized the video was taken in the bathroom of Newble's apartment. Defendant, Grampsas, Hairston, Harris, Young, and Newble continued hanging out in the walk-in closet until the conversation turned to robbing Dover. Young told defendant robbing Dover "wasn't a good idea" because Dover had people backing him. Defendant responded that "[h]e didn't care," and "[a]t the end of the day, he didn't care what [Young] was saying."

¶ 27 Around 4 or 4:30 a.m., defendant, Grampsas, Hairston, and Harris left the apartment together. Defendant left a firearm in the one of the bedrooms. Only Newble, Young, and his girlfriend remained at the apartment. Neither defendant, Grampsas, Hairston, nor Harris returned. The next morning, Young learned from Atchison that Dover had been killed.

¶ 28 Messerole testified he agreed to cooperate with the State in exchange for not being prosecuted for a firearm offense. He went to Newble's apartment the night of December 4, 2018, intending to get drunk. Newble, defendant, and Young were present when Messerole arrived. Others, including Grampsas, Harris, and Hairston, came later. While at the apartment,

Hairston and Messerole had an argument "about some shoes." Not long after, Hairston stole Messerole's G2C Taurus 9-millimeter from him and quickly fled the apartment. Messerole continued to drink and was present when Dover and Williams showed up for 10 to 15 minutes. Messerole believed Grampsas, Harris, and defendant gave him a ride home at some point but could not recall exactly what time.

¶ 29 5. *After the Shooting*

¶ 30 a. New Year's Eve

¶ 31 Tyshon Fanning testified he attended a New Year's Eve party in 2018 at the KushKoma Club in Decatur, Illinois, with defendant, Hairston, Grampsas, and several others. Fanning had been introduced to defendant "[t]hrough a friend" not long before the party. That night was the first time defendant and Fanning hung out together. At some point during the party, defendant brought up Dover's shooting and explained it was supposed to be a robbery. Fanning did not know Dover but was aware of his murder. Defendant "implied" it was his idea to rob Dover and, according to Fanning, defendant stated Hairston was with him when the shooting occurred. When the prosecutor asked what the purpose of the robbery was, Fanning answered, "[m]arijuana."

¶ 32 b. Surveillance Video Evidence

¶ 33 As part of their investigation, the police obtained surveillance video footage from various public safety cameras and establishments near the area where Dover lived.

¶ 34 i. *R&R Automotive*

¶ 35 Rick Ramirez testified he was the owner of R&R Automotive, located at 911 Washington Street. R&R Automotive was equipped with "six or seven" surveillance cameras which continuously recorded "[t]wenty-four hours a day." Ramirez recalled the surveillance

cameras working properly in December 2018. He also explained the video footage from the cameras was accessible and stored "on a hard drive on the database *** that all the cameras go into."

¶ 36 Bloomington police officer Joshua Swartzentruber accessed R&R Automotive's security system on either December 5 or 6, 2018. Once Swartzentruber arrived, he identified and retrieved surveillance footage within a specific date range, which "would have been December 5th from 2:00 a.m. to 5:00 a.m." When Swartzentruber "put the date range into the machine, it *** copied the video out onto [his] flash drive." Swartzentruber also used "a laptop computer that's assigned to [him] by the Secret Service *** to make sure that the actual video files that [he] put on [the flash drive] are working and were actually on there."

¶ 37 ii. *914 Washington Street*

¶ 38 Rudy Ramirez, the owner of the building located at 914 Washington Street, testified the building was equipped with six surveillance cameras "all around it." The cameras continuously operated 24 hours a day, and the recorded video footage was stored on a server for "four or five days." Ramirez specifically recalled the cameras working properly in December 2018.

¶ 39 After retrieving the video footage from R&R Automotive, Swartzentruber "walked *** across the street" to the building at 914 Washington Street to access its surveillance system. Swartzentruber explained he "stuck the thumb drive in the DVR. [He] put in the relevant time frame that [he] was requested to get, and [he] extracted the information onto [his] flash drive." Swartzentruber then "took the flash drive back to the lab" and "plugged it in to make sure that the information or the time frame that [he] had downloaded *** was actually there."

¶ 40 iii. *Project Oz*

¶ 41 Cheris Larson, a program manager at Project Oz located at 1105 West Front Street, testified Project Oz was equipped with eight surveillance cameras. Larson was familiar with the security system, and she stated the surveillance footage was stored on a server "located in [the] server room," approximately "200 feet away from [the] front desk." She also explained there was a monitor "up front *** so you can replay the videos from wherever you want. And once you have the information that you want, you go back to the server to pull it if you would like to keep it."

¶ 42 Swartzentruber testified he was "allowed *** into the back room" to retrieve video footage from Project Oz's surveillance system. Swartzentruber stated, "The server *** and the computer that runs it is near the front desk." He "manipulated the mouse, got the timeframe that [he] wanted set, and it downloaded onto [his] flash drive which was put into the DVR." While reviewing the footage, Swartzentruber determined the timestamping was running approximately 55 minutes fast. On cross-examination, Swartzentruber explained he documented the discrepancy by "compar[ing] it with the time that was on screen and the time that was on [his] cell phone."

¶ 43 iv. *Jeffrey Alan's*

¶ 44 Patricia Fry testified she previously worked at Jeffrey Alan's located at 711 Towanda Avenue but had retired as of August 2019. Fry stated the store had a closed-circuit surveillance system equipped with multiple security cameras which operated 24 hours a day. Fry was "very familiar" with how the system functioned and explained the stored video footage was accessible by passcode. Although the cameras recorded motion only, passing traffic caused the system to activate and record. When Fry met with Bloomington police officers in December 2018, she "entered the passcode for them and identified the footage."

¶ 45 Bloomington police officer Clayton Arnold testified he located the surveillance system at Jeffrey Alan's "in the stockroom at the rear of the building." As he reviewed the surveillance footage, Arnold noted the timestamping was "one hour, forty-nine seconds ahead of real time." Arnold documented the discrepancy and "took a photograph of a departmental cell phone as it displayed the exact time to the system display exact time so [he] could see at the moment the photo was taken what the exact differential was down to the second." Arnold then located the relevant videos related to his investigation, exported the footage to a "USB thumb drive," and uploaded it to the Bloomington Police Department's secure cloud storage service for preservation.

¶ 46 v. *Franzetti's Pantry Plus*

¶ 47 Minesh Patel, the manager at Franzetti's Pantry Plus, located at 801 East Washington Street, testified the business was equipped with motion-activated security cameras which "constantly run[ ] 24 hours." Patel explained the recordings were accessible and, when necessary, he could "go back and *** look at the recording." Officer Arnold testified the store's surveillance system was operable at the time he accessed it and the timestamping "was accurate when compared to [his] working cell phone." Arnold then exported and preserved the relevant surveillance footage from Franzetti's in the same manner as he did with the footage from Jeffrey Alan's. He further stated the footage "pointed toward the north out toward Washington and captured the intersection also with Clinton." However, he "didn't find a view that was beneficial."

¶ 48 vi. *Salvation Army Safe Harbor*

¶ 49 Robert Holland, a case manager at the Salvation Army Safe Harbor (Safe Harbor), located at 208 North Oak Street, testified the shelter had 32 surveillance cameras. Holland was

familiar with how the cameras operated and stated the video footage was stored on a hard drive at Safe Harbor. The camera feeds were visible on a monitor near it, and Holland stated the cameras recorded "constantly 24 hours."

¶ 50 Bloomington police officer Curt Maas testified he collected surveillance video footage from Safe Harbor on December 6, 2018. Holland "allowed [Maas] to navigate through the system," which was on a metal rack in the storage room and equipped with "a monitor and device that just links to the hard drive to old storage." Maas testified he was "looking for internal video surveillance loop footage of specifically Jefferson Street and Washington Street," as well as surveillance footage around the building. Maas "extracted surveillance footage from 4 a.m. to 5:30 a.m. on December 5 and loaded that on the USB drive." He also "observed that the time stamp was seven minutes faster than [the] real time video surveillance stamp" by "taking out [his] cell phone and observ[ing] network time." After retrieving the surveillance footage, Maas "took the USB drive back to the police department and loaded the footage off of the USB drive onto [his] work station on [his] computer at work." He then "loaded that footage into [the Bloomington Police Department's] digital base storage system."

¶ 51 vii. *McLean County Jail*

¶ 52 The State also called Nicholas Hitchens, a correctional officer and second-shift supervisor at the McLean County jail, to authenticate surveillance video footage which recorded a fight between defendant and Jerell Dudley in June 2019. Defense counsel objected on the basis the video was "being published to some of the jurors" without having the proper foundation laid, which the trial court sustained. During a recess, counsel argued the video was "probative *** of absolutely nothing at least until Mr. Dudley testifies, and highly, highly prejudicial to [defendant] given the fact that he is *** dressed in a jail jumpsuit." The State responded the

"purpose of showing the video was only to identify the individuals *** on the video," and it was not the State's intention to play it until Dudley testified. The court found because Dudley would testify later, there was no reason to play the video at that time. The court also granted the State's request to allow Hitchens to identify the individuals from a still image taken from the video because Hitchens had already "identified defendant as being housed within the McLean County detention facility." However, the State later declined to call Dudley due to his noncooperation, and the court instructed the jury to not consider "any testimony that was elicited from *** Hitchens," as well as the image of defendant wearing jail clothing.

¶ 53 c. Evidence Regarding a Toyota Camry

¶ 54 Detective Jared Roth identified People's exhibit Nos. 39-46 as the surveillance videos retrieved from R&R Automotive, 914 Washington Street, Project Oz, Jeffrey Alan's, Franzetti's Pantry Plus, Safe Harbor, and the City of Bloomington public safety cameras. In reviewing the surveillance footage, the police identified a gray Toyota Camry with what appeared to be a bubble mirror. Shortly before 4:45 a.m., a gray Camry was observed near Dover's residence at 816 West Jefferson Street. Footage from other cameras also showed a gray Toyota Camry in the area where Dover was killed. Roth testified there was almost no traffic that night, which allowed the police to track the vehicle from where they "first picked it up at Jeffrey Alan[']s to the crime scene with relative ease." However, the police could not obtain a license plate number on the car, see any emblems on the car, or see who was driving or occupying the vehicle. The Pantagraph, a Bloomington newspaper, published photographs of the crime scene on December 5 or 6, 2018. These pictures showed shoe prints and tire impressions.

¶ 55 The police seized Grampsas's grandmother's Toyota Camry, which also had an aftermarket bubble mirror. On December 14, 2018, the police examined the tires on the Camry

and determined it had nonmatching tires in two different sizes. The tires on the Camry did not match the tracks left at the crime scene. The tracks at the crime scene appeared to have all been made with the same type of tire.

¶ 56 The State presented evidence Grampsas's grandmother, Jane Hoobler, purchased her gray 2009 Toyota Camry from Custom Auto Sales in July 2018. Peter Hettinger, owner of Custom Auto Sales, testified he received that Camry in June 2018. Before selling the car, he replaced all the tires with new Firestone 215/60R16 Champion Fuel Fighter tires at Don Owen Tire in Bloomington. The invoice from Don Owen Tire for the four tires stated they were installed on June 22, 2018, on a beige 2001 Camry, but Hettinger said the tires were installed on a gray 2009 Camry. Hettinger wrote "2009 Camry Gray" on the invoice. Hettinger sold the 2009 Camry to Hoobler on July 9, 2018. Suzanne Schwoerer, part owner and bookkeeper of Don Owen Tire, testified a technician indicated through a handwritten note on the work order that the car brought to the shop was a gray 2009 Camry, not a beige 2001 Camry. According to Schwoerer, the salesman who created the invoice neglected to add the correction. The police obtained an impression of the track from a Firestone 215/60R16 Champion Fuel Fighter tire. The impression made by the tires on the car when Hoobler purchased the vehicle was consistent with the tire tracks left at the crime scene.

¶ 57 d. Weapons Evidence

¶ 58 The police conducted searches after Dover's murder. During a search of Newble's apartment, the police located two BB guns and a .25-caliber handgun. The State also presented evidence someone using Hairston's Facebook account posted pictures of a Hi-Point LCP .380-caliber handgun in the week prior to Dover's murder. At around midnight on the night of Dover's murder, someone posted a video to Hairston's Snapchat account of Hairston and

Messerole pointing guns at a bathroom mirror. Hairston posed with the G2C Taurus 9-millimeter while Messerole held the Hi-Point LCP .380. Another photograph showed Hairston holding up two guns. In yet another photograph, two guns could be seen, including a Hi-Point LCP .380-caliber and a G2C Taurus 9-millimeter.

¶ 59 Dustin Johnson, a forensic scientist at the Illinois State Police Morton Forensic Science Laboratory, testified as an expert in firearms identification. Regarding the cartridge cases and bullets he was provided by the Bloomington Police Department, Johnson determined two fired .380 auto caliber cartridges were fired by the same gun. He also examined three bullets/bullet fragments and determined they were .380/.38-class caliber bullets and were fired by the same gun. The bullets exhibited "nine lands and grooves, left-hand twist," which is a characteristic unique to a .380-caliber Hi-Point firearm. Johnson was not given a .380-caliber Hi-Point firearm to determine if it fired the bullets. As noted earlier, the State was not able to find the weapon or weapons used to kill Dover.

¶ 60 e. Dover's Belt

¶ 61 During a consent search of defendant's iPhone, police found deleted waypoint directions to Dover's address. The police also retrieved a video of someone holding a red and white Louis Vuitton/Supreme-branded belt with the caption, "This b*** official." The video was saved to defendant's iPhone on December 8, 2018, three days after the shooting.

¶ 62 Jordan Simon, one of Dover's high school football friends, testified Dover possessed a "Louis Vuitton Supreme belt." Simon described the belt as "red and white" with "Supreme and Louis Vuitton symbols all over it." Simon believed the belt was worth approximately $1000.

¶ 63 Likewise, Trevon McGee testified he and Dover went to Chicago in the late summer or early fall of 2018, and Dover bought a belt from a "pop-up shop" on Michigan Avenue. The strap of the belt was Louis Vuitton/Supreme-branded and red and white. McGee last saw the belt at Dover's residence on December 4, 2018, when Dover asked him to place the belt on the kitchen table. However, when police returned to Dover's residence to recover the belt on December 12, 2018, they were unable to locate it.

¶ 64 6. *Closing Arguments*

¶ 65 During its closing argument, the State discussed how the circumstantial evidence satisfied the elements of each offense. The State also highlighted the fact Hairston and Messerole took photographs of themselves in Newble's bathroom holding firearms. The State pointed out Hairston possessed "a Hi-Point .380 semi-automatic" and asserted he robbed Messerole of his G2C Taurus 9-millimeter at gunpoint. The State further suggested Hairston's Hi-Point LCP .380 "turns out to be our murder weapon. And we know this because we heard from Dustin Johnson." The State then argued as follows:

> "[Johnson] explained to you that he was called upon to analyze the shell casings and the bullet fragments both from 816 West Jefferson as well as the one bullet *** recovered from Egerton Dover during *** the autopsy. And [Johnson] explained that *** these bullets, including the fragments, all had a unique configuration to them. He *** explained *** lands and grooves and rifling and what it does. But, ultimately, the most important thing that we find from Mr. Johnson is that that configuration of nine lands and grooves with a left-hand twist is found in one

> firearm and one firearm only, a Hi-Point .380. The exact same gun that Curtis Hairston had in his possession when he showed up at the Lancaster Apartments on December 4th, of 2018."

The State also suggested defendant took Dover's missing Louis Vuitton/Supreme-branded belt as a trophy and stated:

> "We know that this belt *** was purchased by Egerton Dover sometime in July/August according to Trevon McGee, along Michigan Avenue at a pop-up shop. And that *** on *** December 4th, 2018, [McGee] had been at [Dover's] house while they were cleaning up. *** And [McGee] explain[ed] to you how in the process of cleaning up he, in fact, picked up this belt and placed it on the kitchen table in [Dover's] house."

Ultimately, the State argued, "[t]he circumstantial evidence in this case clearly proves beyond a reasonable doubt that the defendant is responsible for the death of Egerton Dover," and it ended its closing argument by asking the jury for guilty verdicts.

¶ 66 In his closing argument, defense counsel vigorously attacked the State's case as circumstantial and requested the jury "use [their] common sense and experiences in life in evaluating the testimony of the witnesses." Counsel asserted, "the pieces of evidence don't come anywhere near proving that [defendant] had any involvement in this" and were "devoid of anything that shows [defendant] aided or abetted anybody." Counsel further argued Messerole was "the only person we can conclusively say had a Hi-Point .380 that day." Counsel added, "He had the gun. He had the means. *** How do we know he didn't go to Egerton Dover's?"

¶ 67 Counsel also urged the jury to "separate the electronics from the people." Counsel reasoned anyone "can send a text message, social media *** from somebody else's account, from somebody else's phone and it certainly looks like *** one person sent it when really another person sent it." Regarding the evidence pertaining to Dover's missing Louis Vuitton/Supreme belt, counsel remarked Simon and McGee "contribute[d] absolutely nothing to solving this puzzle. There's absolutely no proof other than their word that [Dover] ever had such a belt." Counsel stated, "We don't have any fingerprint evidence linking *** [defendant] *** to the shooting. We don't have any tire tracks. We don't have any footprints or any shoe prints that link [defendant] to the shooting."

¶ 68 Prior to deliberations, the trial court provided instructions to the jury which included instructions on judging the credibility of the evidence presented. The court also informed the jury closing arguments were not to be considered evidence.

¶ 69 After deliberations, the jury found defendant guilty of first degree murder involving home invasion, count I; first degree murder involving robbery, count III; home invasion, count V; and robbery, count VII. The jury also found defendant or one for whose conduct he was legally responsible was armed with a firearm.

¶ 70 C. Posttrial Motions and Sentencing

¶ 71 On August 31, 2020, defendant mailed a letter to the trial court, raising multiple *pro se* claims of ineffective assistance of trial counsel. In October 2020, the court conducted a hearing pursuant to *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984). Defendant's trial counsel was also present. The court allowed defendant to explain each of his claims, which the court extensively reviewed. In relevant part, defendant asserted he was denied the effective

assistance of his trial counsel because counsel failed to file a motion *in limine* that would have prohibited the photographs of the Hi-Point LCP .380 from being shown to the jury.

¶ 72 Defendant's trial counsel responded, given the lack of any direct evidence of defendant's guilt, "it was the theory of the defense that in a circumstantial case such as this the State [was] required to *** provide circumstantial evidence and circumstantial evidence that excludes every other possible suspect." It was counsel's position the State "did not and could not exclude every other suspect including Dylan Messerole." As a result, counsel wanted the evidence "show[ing] Dylan Messerole with the very instrumentality that was used to cause Mr. Dover's death *** to come in." Counsel's strategy was to focus the jury's attention on the other guns to try to point to other suspects and sow confusion about the guns and who owned them. The trial court found each of defendant's claims lacked merit, as they were "conclusory, misleading, legally immaterial, and/or pertaining to issues of trial strategy."

¶ 73 In December 2020, defendant filed an amended posttrial motion, alleging multiple errors by the State and the trial court, as well as ineffective assistance of trial counsel. At the hearing on defendant's motion, the parties rested on their written arguments. However, defense counsel conceded the City of Bloomington public safety cameras were previously admitted into evidence without objection and thus, "the foundational argument wouldn't be pertinent to that set of videos." Ultimately, the trial court denied defendant's posttrial motion. Thereafter, the court sentenced defendant to consecutive prison sentences of 40 years on count I and 5 years on count VII.

¶ 74 This appeal followed.

¶ 75 II. ANALYSIS

¶ 76 On appeal, defendant claims the trial court abused its discretion by (1) denying his motion to continue, (2) "admitting the testimony of Jerell Dudley," (3) admitting surveillance video evidence under the "silent witness" theory, and (4) admitting evidence related to Dover's Louis Vuitton belt. Defendant further contends (5) his due process right were violated when the jury viewed an image of himself wearing "jail garb," (6) he was denied his right to a fair trial after the State made allegedly inappropriate comments during its closing argument, (7) the State failed to prove him guilty beyond a reasonable doubt, and (8) he was denied the effective assistance of his trial counsel. We address each of defendant's arguments in turn.

¶ 77 A. Defendant's Motion-to-Continue Claim

¶ 78 Defendant first argues the trial court abused its discretion in denying his motion to continue the trial. Specifically, defendant complains the court should have granted his motion, "[g]iven the issues *** defense counsel had preparing for trial due to COVID, the complexity of the evidence, the seriousness of the charges, and the lack of prejudice to the [State]."

¶ 79 "It is well settled that the granting or denial of a continuance is a matter resting in the sound discretion of the trial court, and a reviewing court will not interfere with that decision absent a clear abuse of discretion." *People v. Walker*, 232 Ill. 2d 113, 125, 902 N.E.2d 691, 697 (2009); see also *People v. Norris*, 214 Ill. 2d 92, 104-05, 824 N.E.2d 205, 213 (2005). Factors a trial court may consider in determining whether to grant a continuance include the movant's diligence, the interests of justice, the history of the case, the complexity of the matter, docket management, judicial economy, and inconvenience to the parties. *Walker*, 232 Ill. 2d at 125-26.

¶ 80 Here, we find the circumstances in *Walker*, upon which defendant relies, distinguishable from this case. In *Walker*, the defendant's counsel requested a continuance because she was not prepared for trial. *Walker*, 232 Ill. 2d at 117. She informed the trial court she

had the wrong trial date in her calendar and had been on trial the past two evenings in front of a different judge. *Walker*, 232 Ill. 2d at 117. Our supreme court held the trial court abused its discretion where the court summarily denied the defendant's motion to continue by simply stating, " 'this has been set,' " without considering any of the relevant factors. *Walker*, 232 Ill. 2d at 117, 126. Our supreme court noted the trial court, in that case, made no comment concerning any pattern of delay, the interests of justice, the severity of the charges, docket management, judicial economy, or inconvenience to the parties, and it never even afforded the defendant an opportunity to inform the court as to the length of the continuance sought. *Walker*, 232 Ill. 2d at 126-27. Such is not the case in the instant matter.

¶ 81 Notably, defense counsel made no claim he was unprepared for trial, or any claim related to "the complexity of the evidence, the seriousness of the charges, and the lack of prejudice to the [State]." Rather, defense counsel argued the trial court should grant the motion to continue because it was impossible to ensure everyone's safety due to the ongoing COVID-19 pandemic and "a cautious approach *** would be to reschedule this [trial] until a safer time." Counsel further alleged the pandemic might limit the jury pool in such a manner that defendant could not get a fair trial. The record indicates the court considered the facts and circumstances of this case and permitted counsel to state his reasons why the matter should be continued. The court also noted the motion was "based upon the generic criteria relating to whether it would be in the interests of justice that the trial be continued." While the supreme court in *Walker* listed various factors a court "may consider" when ruling on a motion for continuance, it did not mandate that a trial court must consider every factor. See *Walker*, 232 Ill. 2d at 125-26. After counsel had an opportunity to present his reasons, the court stated it was denying the continuance due to the successes in conducting trials "from start to finish," despite the ongoing COVID-19

pandemic, and found counsel's concern regarding the quality of the venire to be "total speculation." The court explained:

> "People get deferrals all the time. They get deferrals not only because of their work[-]related situation, they get—because of vacations, because of families ***. But I don't believe that a basis has been shown other than an opinion, speculation, that we are going to have *** jurors who would have secondary in their minds their concerns about personal safety as it relates to [COVID-19] and/or that the jury pool is skewed because we have a higher percentage *** of individuals who are asking for deferrals because of the pandemic."

Accordingly, we cannot characterize the trial court's ruling as anything other than rational and well-balanced for purposes of review. Based on the circumstances of this case, we conclude the trial court did not abuse its discretion by denying defendant's motion to continue. See *People v. McDonald*, 2016 IL 118882, ¶ 32, 77 N.E.3d 26 (stating "an abuse of discretion occurs where the trial court's decision is arbitrary, fanciful, or unreasonable to the degree that no reasonable person would agree with it").

¶ 82 B. "Jail Garb"

¶ 83 Defendant contends his due process right were violated when the jury viewed the image of him wearing "jail garb" during Hitchens's testimony. We disagree.

¶ 84 "A defendant's right to a fair trial is violated when he is forced to appear before the jury in readily identifiable jail clothing." *People v. Steinmetz*, 287 Ill. App. 3d 1, 6, 678 N.E.2d 89, 93 (1997) (citing *Estelle v. Williams*, 425 U.S. 501, 505-06 (1976)). Both the United

States Supreme Court and Illinois courts have recognized that, because the wearing of a prison uniform may prejudice the defendant in the eyes of the jury, the State may not compel the defendant to attend trial in identifiable prison attire. See *People v. Wilkes*, 108 Ill. App. 3d 460, 466, 438 N.E.2d 1385, 1389 (1982). However, " 'the right not to be tried in jail clothing is, like many other rights of criminal defendants, subject to harmless-error analysis.' " *People v. Bowman*, 2012 IL App (1st) 102010, ¶ 62, 973 N.E.2d 970 (quoting *Steinmetz*, 287 Ill. App. 3d at 6-7). An evidentiary error is harmless when no reasonable probability exists the jury would have acquitted defendant absent the error. *In re E.H.*, 224 Ill. 2d 172, 180, 863 N.E.2d 231, 235 (2006); see also *People v. Stull*, 2014 IL App (4th) 120704, ¶ 104, 5 N.E.3d 328.

¶ 85 Initially, we note defendant does not dispute "the fact that the jury knew that he was in jail for his offense." Although we agree with defendant that the publishing of the still image depicting him in jail clothing was error, it amounted to harmless error. It is doubtful the jury's viewing of the image showing defendant wearing jail clothing contributed to his conviction because Hitchens, during direct examination, informed the jury defendant was in custody at the McLean County jail without objection. Hence, any information conveyed by the image would have been merely duplicative, and defendant suffered no prejudice resulting from the State's attempt to introduce Dudley's potential testimony defendant called him a "snitch" during a fight in the McLean County jail because the jury never heard it. The court never allowed Dudley to testify.

¶ 86 Moreover, after Dudley refused to cooperate, the trial court offered to admonish the jury to disregard Hitchens's testimony in its entirety, as well as the still image of defendant wearing jail clothing, if the parties so desired. The parties agreed, and the court gave the following instruction to the jury:

> "[A]t this time the testimony of Correctional Officer Nicholas Hitchens, who testified earlier in this case, has been ordered stricken. So as a result you are not to consider any testimony that was elicited from Correctional Officer Hitchens. You are to strike it from your memory as well. Further, *** People's exhibit 1-J 23 which is a still photograph that was displayed during his testimony, was not admitted and you are also not to consider it as evidence in this case in any way, shape or form."

Here, counsel, having agreed with the State in deciding how to proceed, cannot now claim error. See *People v. Peel*, 2018 IL App (4th) 160100, ¶ 45, 115 N.E.3d 982 (quoting *People v. Villarreal*, 198 Ill. 2d 209, 227, 761 N.E.2d 1175, 1184 (2001)) (stating, "to allow counsel to ask the trial court to proceed in a certain manner and then seek to claim error on review 'would offend all notions of fair play' "). "[T]he jury is presumed to follow the instructions given to it by the trial court" (*People v. Mims*, 403 Ill. App. 3d 884, 897, 934 N.E.2d 666, 678 (2010)), and we see no reason to set aside that presumption in this case. Defense counsel did not move for a mistrial, formally object, or claim any deficiency in the curative instruction defendant now alleges was insufficient on appeal. Thus, any alleged insufficiency with the curative instruction has been waived.

¶ 87 Because we reject the above claim for the reasons given, defendant's contention trial counsel rendered ineffective assistance by his alleged "fail[ure] to object to officer Hitchen's testimony" is without merit. Defendant acknowledged the jury was aware of his incarceration. Any error by the trial court in permitting the jury to view the still image of defendant wearing jail clothing was harmless, and thus, no reasonable probability exists the

outcome of the proceeding would have been different. See *People v. Evans*, 209 Ill. 2d 194, 219-20, 808 N.E.2d 939, 953 (2004).

¶ 88 C. Evidence Related to Dover's Belt

¶ 89 Next, defendant argues the evidence submitted by the State regarding Dover's Louis Vuitton/Supreme-branded belt "was more prejudicial than probative and too speculative to shed light on whether [defendant] possessed the belt."

¶ 90 To be admissible, evidence must be relevant. See Ill. R. Evid. 402 (eff. Jan. 1, 2011). Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Ill. R. Evid. 401 (eff. Jan. 1, 2011). Even if relevant, however, "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Ill. R. Evid. 403 (eff. Jan. 1, 2011). "[E]videntiary rulings are within the trial court's sound discretion and will not be disturbed on review unless the court has abused that discretion." *People v. Daniel*, 2022 IL App (1st) 182604, ¶ 107. "An abuse of discretion will be found only where the trial court's decision is arbitrary, fanciful or unreasonable or where no reasonable [person] would take the trial court's view." (Internal quotation marks omitted.) *People v. Morgan*, 197 Ill. 2d 404, 455, 758 N.E.2d 813, 842-43 (2001).

¶ 91 Here, we find the trial court did not abuse its discretion in admitting the evidence related to Dover's missing belt. Simon recalled Dover possessing a "red and white" belt with "Supreme and Louis Vuitton symbols all over it." McGee testified he was with Dover when Dover bought a belt from a "pop-up shop" on Michigan Avenue in Chicago. McGee last saw the

belt, which was Louis Vuitton/Supreme-branded and red and white, on December 4, 2018, after he placed it on Dover's kitchen table. Their testimony, coupled with the video from defendant's iPhone showing someone holding a red and white Louis Vuitton/Supreme belt, and the fact police were unable to locate Dover's belt at his residence on December 12, 2018, supported the State's theory defendant stole the belt at the time of Dover's murder and possessed it three days later. Clearly circumstantial, this is evidence which tends to prove a fact in controversy or renders a matter at issue more probable. Ill. R. Evid. 401 (eff. Jan. 1, 2011). Defendant's argument is more one of weight than admissibility, all of which he argued to the triers of fact. Hence, the evidence was relevant.

¶ 92 In addition, defendant alleges the evidence pertaining to the missing belt was "highly prejudicial." Although the evidence related to Dover's missing belt may be considered prejudicial, all evidence offered at trial is prejudicial. *People v. Zimmerman*, 2018 IL App (4th) 170695, ¶ 120, 107 N.E.3d 938. "Rule 403 only prohibits *unfairly* prejudicial evidence, and even then, only when the probative value is *substantially outweighed* by that prejudice." (Emphases in original.) *Zimmerman*, 2018 IL App (4th) 170695, ¶ 120. The testimony of Simon and McGee, the video on defendant's iPhone, and the evidence police were unable to locate the belt at Dover's residence aided in showing the circumstances under which Dover's belt went unaccounted for. Thus, we find the probative value not substantially outweighed by the danger of unfair prejudice. See *People v. Balfour*, 2015 IL App (1st) 122325, ¶ 44, 30 N.E.3d 1141.

¶ 93 D. "Silent Witness" Theory

¶ 94 Defendant next argues the trial court improperly admitted surveillance video footage under the "silent witness" theory after the State failed to lay the proper foundation for admission of the videos.

¶ 95 This court reviews a trial court's admission of a videotape under the abuse of discretion standard. *People v. Taylor*, 2011 IL 110067, ¶ 27, 956 N.E.2d 431. Courts may admit videos as substantive evidence as long as a proper foundation is laid. *Taylor*, 2011 IL 110067, ¶ 32. Generally, video evidence is admitted under the "silent witness" theory. *Taylor*, 2011 IL 110067, ¶ 32. Under that theory, a witness need not testify to the accuracy of the image depicted in the video evidence "if the accuracy of the process that produced the evidence is established with an adequate foundation." *Taylor*, 2011 IL 110067, ¶ 32.

¶ 96 Our supreme court has found the following factors may be considered in determining the reliability of a video:

> "(1) the device's capability for recording and general reliability; (2) competency of the operator; (3) proper operation of the device; (4) showing the manner in which the recording was preserved (chain of custody); (5) identification of the persons, locale, or objects depicted; and (6) explanation of any copying or duplication process." *Taylor*, 2011 IL 110067, ¶ 35.

However, the supreme court emphasized the aforementioned list of factors was nonexclusive and "[e]ach case must be evaluated on its own." *Taylor*, 2011 IL 110067, ¶ 35. "[D]epending on the facts of the case, some of the factors may not be relevant or additional factors may need to be considered." *Taylor*, 2011 IL 110067, ¶ 35. Our supreme court held, "[t]he dispositive issue in every case is the accuracy and reliability of the process that produced the recording." *Taylor*, 2011 IL 110067, ¶ 35; see also *Daniel*, 2022 IL App (1st) 182604, ¶ 113 (stating the dispositive issue in each case is the accuracy and reliability of the process that produced the recording,

regardless of the factors used). Thus, we follow our supreme court's instruction in *Taylor* and evaluate this claim on its own particular facts.

¶ 97 Here, we find the evidence provided sufficient indicia of accuracy and reliability to satisfy the foundational requirements for admission of the surveillance videos.

¶ 98 Rick Ramirez testified he owned R&R Automotive located at 911 Washington Street. R&R Automotive had "six or seven" surveillance cameras, which continuously recorded "[t]wenty-four hours a day." Ramirez specifically recalled the surveillance cameras working properly in December 2018, and he explained the video footage from the cameras was stored "on a hard drive on the database *** that all the cameras go into." Officer Swartzentruber testified he accessed R&R Automotive's security system on either December 5 or 6, 2018. Once Swartzentruber arrived, he identified and retrieved surveillance footage within a specific date range, which "would have been December 5th from 2:00 a.m. to 5:00 a.m." He "put the date range into the machine" and "copied the video out onto [his] flash drive." Swartzentruber used "a laptop computer that's assigned to [him] by the Secret Service *** to make sure that the actual video files that [he] put on [the flash drive] are working and were actually on there."

¶ 99 Rudy Ramirez, the owner of the building located at 914 Washington Street, testified his building was equipped with six surveillance cameras "all around it." The cameras continuously operated 24 hours a day, and the recorded video footage was stored on a server for "four or five days." Ramirez specifically recalled the cameras working properly in December 2018. After retrieving the video footage from R&R Automotive, Swartzentruber "walked *** across the street" to the building at 914 Washington Street to access its surveillance system. He plugged his flash drive into the server, "put in the relevant time frame that [he] was requested to get, and [he] extracted the information onto [his] flash drive." Swartzentruber then "took the

flash drive back to the lab" and "plugged it in to make sure that the information or the time frame that [he] had downloaded *** was actually there."

¶ 100 Cheris Larson, a program manager at Project Oz, located at 1105 West Front Street, testified the premises were equipped with eight surveillance cameras. Lawson was familiar with the security system and testified the surveillance footage was stored on a server "located in [the] server room," approximately "200 feet away from [the] front desk." She also explained there was a monitor "up front *** so you can replay the videos from wherever you want. And once you have the information that you want, you go back to the server to pull it if you would like to keep it." Additionally, when Swartzentruber retrieved the surveillance footage from Project Oz, he shored up the apparent time discrepancy in the video. After he "compared it with the time that was on screen and the time that was on [his] cell phone," Swartzentruber determined the timestamping in the video was running approximately 55 minutes ahead of real time.

¶ 101 Patricia Fry testified she previously worked at Jeffrey Alan's, located at 711 Towanda Avenue, but had retired as of August 2019. Fry stated the store had a closed-circuit surveillance system equipped with multiple security cameras, which ran 24 hours a day. Fry was "very familiar" with how the system operated and explained the stored video footage was accessible by passcode. Although the cameras recorded motion only, passing traffic caused the system to activate and record. When Fry met with Bloomington police officers in December 2018, she "entered the passcode for them and identified the footage." Officer Arnold explained he exported the surveillance footage from Jeffrey Alan's to a "USB thumb drive" and uploaded it to the Bloomington Police Department's secure cloud storage service for preservation. Arnold also documented a discrepancy in the timestamping of the surveillance footage. He "took a

photograph of a departmental cell phone as it displayed the exact time to the system display exact time so [he] could see at the moment the photo was taken what the exact differential was down to the second." Arnold determined the timestamping of the relevant footage taken from Jeffrey Alan's was "one hour, forty-nine seconds ahead of real time."

¶ 102 Minesh Patel, the manager at Franzetti's Pantry Plus located at 801 East Washington Street, testified the store was equipped with motion-activated security cameras which "constantly run[ ] 24 hours." Patel explained the recordings were accessible and, when necessary, he could "go back and *** look at the recording." Additionally, Arnold testified the store's surveillance system was operable at the time he accessed it and the timestamping "was accurate when compared to [his] working cell phone." The camera footage "pointed toward the north out toward Washington and captured the intersection also with Clinton." Arnold exported and preserved the relevant surveillance footage from Franzetti's in the same manner as he did with the footage from Jeffrey Alan's.

¶ 103 Robert Holland, a case manager at Safe Harbor, located at 208 North Oak Street, testified the shelter had 32 surveillance cameras. Holland was familiar with how the cameras operated and stated the video footage was stored on a hard drive at Safe Harbor. The camera feeds were visible on a monitor near the server, and Holland stated the cameras recorded "constantly 24 hours." According to Officer Maas, Holland "allowed him to navigate through the system," which was on a metal rack in the storage room and equipped with "a monitor and device that just links to the hard drive to old storage." Maas testified he was "looking for internal video surveillance loop footage of specifically Jefferson Street and Washington Street," as well as surveillance footage around the building. Maas "extracted surveillance footage from 4 a.m. to 5:30 a.m. on December 5 and loaded that on the USB drive." He further "observed that the time

stamp was seven minutes faster than [the] real time video surveillance stamp." Maas "did that by taking out [his] cell phone and observ[ing] network time, which was 12:35 ***. And then the surveillance video showed 12:42 making the video seven minutes faster than actual real network time." Maas downloaded the footage from the server onto his USB drive and "took the USB drive back to the police department and loaded the footage off of the USB drive onto [his] work station on [his] computer at work." He then "loaded that footage into [the Bloomington Police Department's] digital base storage system."

¶ 104 Finally, although defendant asserts the State failed to lay an adequate foundation for the admission of the City of Bloomington's public safety cameras, we note defense counsel explicitly conceded the public safety camera footage was previously admitted into evidence without objection and thus, "the foundational argument wouldn't be pertinent to that set of videos." Accordingly, the issue is waived and we decline to address it.

¶ 105 As stated *supra*, "[t]he dispositive issue in every case is the accuracy and reliability of the process that produced the recording." *Taylor*, 2011 IL 110067, ¶ 35. Based on the totality of the evidence presented, we find the State set forth sufficient proof of the reliability of the processes which produced the surveillance video recordings. The devices used to record the surveillance videos were clearly operational and capable of recording sufficiently that the relevant video clips were retrievable. In fact, perhaps the best evidence of the videos' reliability is the fact the police, having identified a particular vehicle at or about the time of the shooting, were able to follow it through different cameras to the location of the shooting at the relevant time. Moreover, the police eventually tracked down a vehicle substantially matching the one seen, owned by a relative of one of the suspected participants, which had at one time tires matching the imprints found at the scene. Such evidence is sufficient to adequately demonstrate

the security cameras were able to record and generally operating properly. See *People v. Reynolds*, 2021 IL App (1st) 181227, ¶ 55, 184 N.E.3d 344 (stating "[t]he existence of the recordings *** establishes the capability of the recording device and the competency of its operator"); *People v. Viramontes*, 2017 IL App (1st) 142085, ¶ 71, 69 N.E.3d 446 (stating the fact the recording exists at all is evidence the recording instrument was functional and operating properly). Further, Officers Swartzentruber, Arnold, and Maas each explained the manner in which the recordings were preserved, as well as any methods of copying the surveillance footage from the respective servers, and we note defendant presented no evidence of tampering, substitution, or contamination. Thus, "[a]ny deficiencies go to the weight rather than the admissibility of the evidence." *Daniel*, 2022 IL App (1st) 182604, ¶ 114.

¶ 106 Accordingly, defendant fails to persuade us the trial court abused its discretion in admitting the surveillance footage into evidence under the "silent witness" theory. See *Taylor*, 2011 IL 110067, ¶ 27 (stating a trial court abuses its discretion when the "court's ruling is fanciful, unreasonable or when no reasonable person would adopt the trial court's view").

¶ 107 E. Closing Arguments

¶ 108 Defendant also contends he was denied his right to a fair trial due to allegedly improper comments made by the State during closing arguments. Specifically, defendant complains the State "overstated the evidence regarding the Louis Vuitton belt and Hi-Point .380."

¶ 109 We consider whether a prosecutor's comments during closing argument are sufficiently egregious to require a new trial as a legal issue subject to *de novo* review. *People v. Anderson*, 2018 IL App (4th) 160037, ¶ 47, 102 N.E.3d 260. Prosecutors are afforded wide latitude during closing arguments and may properly comment on the evidence presented and

reasonable inferences drawn therefrom, "even if the suggested inference reflects negatively on the defendant." *People v. Jackson*, 2020 IL 124112, ¶ 82, 162 N.E.3d 223. Reversal and retrial are not warranted unless the improper remarks "constituted a material factor in a defendant's conviction." *People v. Wheeler*, 226 Ill. 2d 92, 123, 871 N.E.2d 728, 745 (2007).

¶ 110 Closing arguments are to be viewed in their entirety and remarks claimed to be improper must be considered " 'within the context in which they were conveyed.' " *Anderson*, 2018 IL App (4th) 160037, ¶ 48 (quoting *People v. Lewis*, 2017 IL App (4th) 150124, ¶ 67, 78 N.E.3d 527). "Just as the jury is entitled to draw inferences from the evidence that are reasonable [citation], the attorneys—including the prosecutor—may argue those inferences." *People v. Dunlap*, 2011 IL App (4th) 100595, ¶ 29, 963 N.E.2d 394. Stated differently, "if a jury could reasonably draw certain inferences from the evidence before it, then no attorney—including the prosecutor—commits error by urging the jury to draw those inferences." (Internal quotation marks omitted.) *People v. Custer*, 2020 IL App (4th) 180128, ¶ 35, 156 N.E.3d 1173.

¶ 111 Regarding the State's alleged mischaracterization of the evidence concerning Dover's belt, we conclude the State permissibly argued reasonable inferences to be drawn from the evidence presented. Simon and McGee identified a belt appearing in a video taken from defendant's iPhone three days after the shooting as looking like a particularly unusual and possibly expensive belt known to have been owned by Dover. The belt was present in Dover's residence the day before he was shot. Missing when police looked for it days later, the police retrieved the video from defendant's iPhone showing someone holding the belt with a caption, "This b*** official."

¶ 112 Based on the evidence presented, the jury could reasonably infer defendant took Dover's belt at the time of the murder and recorded a video of himself holding it three days later,

essentially broadcasting his possession of the belt as a trophy. Thus, the State was free to argue that inference in closing, just as defense counsel was free to—and did—argue alternative inferences to be drawn, such as the possibility (1) the belt never actually existed and (2) someone else recorded the video found on defendant's phone. See *Custer*, 2020 IL App (4th) 180128, ¶ 35.

¶ 113 Likewise, the State's comments regarding the "murder weapon" which defendant alleges to be improper were all reasonable inferences to be drawn from the evidence. The evidence showed someone using Hairston's Facebook account posted pictures of a Hi-Point LCP .380-caliber handgun in the week prior to Dover's murder. On the night of Dover's murder, someone posted a video to Hairston's Snapchat account of Hairston and Messerole pointing guns at a bathroom mirror in Newble's apartment. Another photograph showed Hairston holding up two guns. In yet another photograph, two guns could be seen, including a Hi-Point LCP .380-caliber and a G2C Taurus 9-millimeter. Defendant, Grampsas, Hairston, and Harris all left Newble's apartment together and did not return after defendant made threats to rob Dover. Johnson determined two fired .380 auto caliber cartridges were fired by the same gun. He also examined three bullets/bullet fragments and determined they were .380/.38-class caliber bullets and were fired by the same gun. The bullets exhibited "nine lands and grooves, left-hand twist," which is a characteristic unique to a .380-caliber Hi-Point firearm.

¶ 114 Further, at some point during a New Year's Eve party defendant and Hairston attended together, defendant, speaking to someone at the party, brought up Dover's shooting, explained it was supposed to be a robbery, and stated Hairston was with him when the shooting happened. This context supports the State's inference in closing that Hairston possessed the weapon used to murder Dover, and the prosecutor's remarks were nothing more than vigorous

argument based upon what the State believed the evidence showed. See *Dunlap*, 2011 IL App (4th) 100595, ¶ 29. Defense counsel vigorously attacked the State's case and witnesses, and we should expect no less vigor from the prosecutor.

¶ 115 Moreover, the trial court instructed the jury, both at the beginning of the trial and again after closing arguments, that both opening statements and closing arguments were not evidence and to disregard any statement or argument made by counsel that did not comport with their recollection of the evidence. See *People v. Kallal*, 2019 IL App (4th) 180099, ¶ 35, 129 N.E.3d 621 (stating erroneous statements may be cured by telling the jury arguments are not evidence and should be disregarded if unsupported or by sustaining an objection). The State's comments, when viewed in the context of its entire closing, did not overcome the court's instructions, and nothing in the record suggests the jury ignored the law pursuant to those instructions. Accordingly, we reject defendant's argument the State's allegedly improper remarks rose to the level of misconduct.

¶ 116 Because we conclude defendant's claim related to the prosecutor's remarks during closing arguments is meritless, we reject any notion trial counsel rendered ineffective assistance by failing to object to the State's complained-of comments. See *People v. Bradford*, 2019 IL App (4th) 170148, ¶ 14, 123 N.E.3d 1285 (stating defense counsel cannot be deemed ineffective for failing to make a futile objection).

¶ 117 F. Defendant's Remaining Ineffective Assistance of Counsel Claim

¶ 118 Defendant also alleges he was denied the effective assistance of trial counsel in that the State "never provided notice that it intended to introduce the Facebook and Snapchat records into evidence [pursuant to Illinois Rule of Evidence 902(13) (eff. Sept. 28, 2018)], and defense counsel was ineffective when they failed to object to their admission."

¶ 119 The sixth amendment guarantees a defendant the right to effective assistance of counsel at all critical stages of a criminal proceeding. U.S. Const., amend. VI; *People v. Hughes*, 2012 IL 112817, ¶ 44, 983 N.E.2d 439. A defendant's claim of ineffective assistance of counsel is analyzed under the two-pronged test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Veach*, 2017 IL 120649, ¶ 29, 89 N.E.3d 366. To prevail, "a defendant must show that counsel's performance was (1) deficient and (2) prejudicial." *People v. Westfall*, 2018 IL App (4th) 150997, ¶ 61, 115 N.E.3d 1148. "Failure to satisfy either prong negates a claim of ineffective assistance of counsel." *People v. Hibbler*, 2019 IL App (4th) 160897, ¶ 88, 129 N.E.3d 755.

¶ 120 To establish deficient performance, the defendant must show "counsel's performance 'fell below an objective standard of reasonableness.' " *People v. Valdez*, 2016 IL 119860, ¶ 14, 67 N.E.3d 233 (quoting *Strickland*, 466 U.S. at 688). A defendant is only entitled to competent, not perfect representation. *Bradford*, 2019 IL App (4th) 170148, ¶ 14. "[A] court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy. [Citation.]" (Internal quotation marks omitted.) *People v. Manning*, 241 Ill. 2d 319, 334, 948 N.E.2d 542, 551 (2011) (quoting *Strickland*, 466 U.S. at 689). "As a general rule, trial strategy encompasses decisions such as what matters to object to and when to object." *People v. Pecoraro*, 144 Ill. 2d 1, 13, 578 N.E.2d 942, 947 (1991). "Counsel's strategic choices are virtually unchallengeable on appeal" (*People v. Sturgeon*, 2019 IL App (4th) 170035, ¶ 83, 126 N.E.3d 703), and this court will not use hindsight "to second-guess trial counsel's strategy or the ways in which he implemented that strategy." *People v. Mabry*, 398 Ill. App. 3d 745, 753, 926

N.E.2d 732, 739 (2010). "Mistakes in trial strategy or tactics do not necessarily render counsel's representation defective." *People v. Stevens*, 2018 IL App (4th) 150871, ¶ 23, 112 N.E.3d 609.

¶ 121 "We review a defendant's claim of ineffective assistance of counsel in a bifurcated fashion, deferring to the trial court's findings of fact unless they are contrary to the manifest weight of the evidence, but assessing *de novo* the ultimate legal question of whether counsel was ineffective." *People v. Manoharan*, 394 Ill. App. 3d 762, 769, 916 N.E.2d 134, 141 (2009). In resolving issues related to counsel's performance, reviewing courts must consider the totality of counsel's conduct, not just an isolated incident. *People v. Hamilton*, 361 Ill. App. 3d 836, 847, 838 N.E.2d 160, 170 (2005).

¶ 122 Here, any alleged error concerning the admission of the social media evidence was invited by defendant's own trial tactics. See *In re Detention of Swope*, 213 Ill. 2d 210, 217, 821 N.E.2d 283, 287 (2004) (stating under the doctrine of invited error, "a party cannot complain of error which that party induced the court to make or to which that party consented"). Based on the record before us, it is clear defense counsel made the strategic decision to allow the Facebook and Snapchat records into the case. At the October 2020 *Krankel* hearing, counsel offered a plausible reason—given the lack of any direct evidence of defendant's guilt, the State "did not and could not exclude every other suspect including Dylan Messerole." Counsel explained, "it was the theory of the defense that in a circumstantial case such as this the State [was] required to *** provide circumstantial evidence and circumstantial evidence that excludes every other possible suspect." As a result, counsel wanted the evidence "show[ing] Dylan Messerole with the very instrumentality that was used to cause Mr. Dover's death *** to come in." At defendant's trial, counsel further argued in closing, "[Messerole] had the gun. He had the means. *** How do we know he didn't go to Egerton Dover's?"

¶ 123 Accordingly, we find nothing unreasonable or irrational with defense counsel's chosen trial strategy, even though it proved unsuccessful. See *Stevens,* 2018 IL App (4th) 150871, ¶ 23. Considering the circumstantial nature of the State's case against defendant, as evidenced by the fact the State dismissed several of the felony murder counts against defendant just before trial, counsel's decision not to object to the admission of the social media records in an effort to focus the jury's attention on other suspects and sow confusion about the guns and who owned them was sound trial strategy. Therefore, we conclude counsel's performance was not objectively unreasonable under prevailing professional norms. *Valdez*, 2016 IL 119860, ¶ 14.

¶ 124 G. Sufficiency of the Evidence

¶ 125 Finally, defendant argues the State failed to prove him guilty beyond a reasonable doubt of first degree murder predicated on home invasion and robbery via the State's accountability theory.

¶ 126 When a defendant challenges the sufficiency of the evidence to convict, a reviewing court determines whether any rational trier of fact could have found the required elements of the crime beyond a reasonable doubt when the evidence presented at trial is viewed in a light most favorable to the prosecution, with all reasonable inferences drawn in favor of the State. *People v. Newton,* 2018 IL 122958, ¶ 24, 120 N.E.3d 948. It is not a function of this court to retry a defendant when reviewing a challenge to the sufficiency of the evidence. *People v. Nere*, 2018 IL 122566, ¶ 69, 115 N.E.3d 205. Rather, it is the role of the trier of fact "to determine the credibility of witnesses, to weigh their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from the evidence." *People v. Williams*, 193 Ill. 2d 306, 338, 739 N.E.2d 455, 472 (2000).

¶ 127 According to our supreme court, a jury can consider inferences which flow from the evidence before it and need not search out explanations consistent with innocence and then raise those explanations to a level of reasonable doubt. *Newton*, 2018 IL 122958, ¶ 24. "[A] trier of fact is allowed to consider the evidence in light of his or her own knowledge and observations in the affairs of life." *Newton*, 2018 IL 122958, ¶ 28. This court will not reverse a conviction unless the evidence is so unsatisfactory, improbable, or unreasonable as to create a reasonable doubt of the defendant's guilt. *Newton*, 2018 IL 122958, ¶ 24.

¶ 128 Defendant was convicted via his accountability for the murder of Dover. Pursuant to section 5-2(c) of the Criminal Code of 2012 (720 ILCS 5/5-2(c) (West 2018)):

> "A person is legally accountable for the conduct of another when:
>
> * * *
>
> (c) either before or during the commission of an offense, and with the intent to promote or facilitate that commission, he or she solicits, aids, abets, agrees, or attempts to aid that other person in the planning or commission of the offense.
>
> When 2 or more persons engage in a common criminal design or agreement, any acts in the furtherance of that common design committed by one party are considered to be the acts of all parties to the common design or agreement and all are equally responsible for the consequences of those further acts. Mere presence at the scene of a crime does not render a person accountable for an offense; a person's presence at the scene of a

> crime, however, may be considered with other circumstances by the trier of fact when determining accountability."

¶ 129 We note "active participation has never been a requirement for the imposition of criminal guilt under an accountability theory." *People v. Taylor*, 164 Ill. 2d 131, 140, 646 N.E.2d 567, 571 (1995). "One may aid and abet without actively participating in the overt act." *Taylor*, 164 Ill. 2d at 140. As our supreme court has explained:

> "A defendant may be deemed accountable for acts performed by another if defendant shared the criminal intent of the principal, or if there was a common criminal plan or purpose. [Citations.] Words of agreement are not necessary to establish a common purpose to commit a crime. The common design can be inferred from the circumstances surrounding the perpetration of the unlawful conduct. [Citations.] Proof that defendant was present during the perpetration of the offense, that he maintained a close affiliation with his companions after the commission of the crime, and that he failed to report the crime are all factors that the trier of fact may consider in determining the defendant's legal accountability. [Citation.] Defendant's flight from the scene may also be considered in determining whether defendant is accountable. [Citation.] Evidence that defendant voluntarily attached himself to a group bent on illegal acts with knowledge of its design also supports an inference that he shared the common

purpose and will sustain his conviction for an offense committed by another. [Citation.]" *Taylor*, 164 Ill. 2d at 140-41.

¶ 130 Based on the evidence presented and the inferences naturally flowing from it, a rational trier of fact could have found defendant guilty based on accountability. Newble and Young testified defendant made overtures about robbing Dover because Dover left without sharing his marijuana with the other individuals attending the party. Defendant, Grampsas, Hairston, and Harris all left Newble's apartment together and did not return after defendant made threats to rob Dover. Newble observed Grampsas with car keys. The jury could have determined defendant was furious and decided to rob Dover with Grampsas, Hairston, and Harris in Grampsas's grandmother's gray Toyota Camry. None of the men from that group returned to Newble's apartment, and Newble found it surprising defendant left and did not return. Not long after the four left Newble's apartment, multiple security cameras recorded a gray Toyota Camry with an add-on bubble mirror in the area of Dover's home around the time he was killed. Grampsas's grandmother's Toyota Camry had an add-on bubble mirror. While the tires on the Camry when it was seized did not match the tire tracks left at the scene of Dover's murder, the State introduced evidence the tires on the Camry when it was sold to Grampsas's grandmother were consistent with the tire tracks left at the scene. Further, Hairston showed Young a video of himself and Messerole with guns on the night of Dover's murder. That same night, someone posted a video to Hairston's Snapchat account of Hairston and Messerole pointing guns at a bathroom mirror in Newble's apartment. Another photograph showed Hairston holding up two guns. In yet another photograph, two guns could be seen, including a Hi-Point LCP .380-caliber and a G2C Taurus 9-millimeter. Johnson determined two fired .380 auto caliber cartridges were fired by the same gun. He also examined three bullets/bullet fragments and determined they were

.380/.38-class caliber bullets and were fired by the same gun. The bullets exhibited "nine lands and grooves, left-hand twist," which is a characteristic unique to a .380-caliber Hi-Point firearm.

¶ 131 Defendant also admitted it was supposed to be a robbery at the New Year's Eve party he attended with Fanning. Considering the estimated value of Dover's belt and defendant's threats to rob Dover, the jury could have determined defendant stole Dover's red and white Louis Vuitton/Supreme-branded belt at the time of Dover's murder and created a video of himself holding it on December 8, 2018. The belt was last seen on December 4, 2018, on Dover's kitchen table, and police were unable to locate the belt anywhere in Dover's residence when they returned on December 12, 2018.

¶ 132 Additional evidence consistent with consciousness of guilt and an effort to destroy evidence was presented to the jury through testimony revealing phone directions to Dover's address had been deleted from defendant's iPhone. The fact that tires—which were only five months old—had been replaced with mismatching tires was also consistent with efforts to destroy evidence and was a reasonable consideration for the jury. Finally, the jury heard evidence defendant continued to associate with Grampsas and Hairston after the shooting, made comments about how "it was only supposed to be a robbery," and stated Hairston had been with him when the shooting occurred.

¶ 133 In sum, although circumstantial, there was substantial evidence defendant was at least directly involved if not the primary catalyst for the decision to confront Dover for leaving Newble's apartment without sharing some of his recently purchased marijuana. We conclude the evidence was not so unreasonable, improbable, or unsatisfactory that it leaves a reasonable doubt of defendant's guilt, and we therefore reject defendant's challenge to the sufficiency of the evidence. See *Newton*, 2018 IL 122958, ¶ 24.

¶ 134 III. CONCLUSION

¶ 135 For the foregoing reasons, we affirm the trial court's judgment.

¶ 136 Affirmed.