ILLINOIS OFFICIAL REPORTS

Appellate Court

***People v. Legore*, 2013 IL App (2d) 111038**

Appellate Court Caption	THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. NATHANIEL R. LEGORE, Defendant-Appellant.
District & No.	Second District Docket No. 2-11-1038
Filed	September 11, 2013
Held (*Note: This syllabus constitutes no part of the opinion of the court but has been prepared by the Reporter of Decisions for the convenience of the reader.*)	Defendant's conviction for the first-degree murder of his father was upheld over his contentions that the indictment was secured by false testimony, that he was not proven guilty beyond a reasonable doubt, and that the State shifted the burden of proof in rebuttal closing argument, since no false testimony was presented during the grand jury proceedings, defendant's right to due process was not violated, defendant's motion to dismiss the indictment was properly denied, the circumstantial evidence was sufficient to support defendant's conviction, and a rational trier of fact could have found defendant guilty beyond a reasonable doubt, and the State's repeated reference to defendant's only witness as being "uncorroborated" did not improperly shift the burden of proof to defendant.
Decision Under Review	Appeal from the Circuit Court of Lake County, No. 10-CF-4062; the Hon. George Bridges, Judge, presiding.
Judgment	Affirmed.

Counsel on Appeal	Thomas A. Lilien and Vicki P. Kouros, both of State Appellate Defender's Office, of Elgin, for appellant. Michael G. Nerheim, State's Attorney, of Waukegan (Lawrence M. Bauer and Marshall M. Stevens, both of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.
Panel	JUSTICE SPENCE delivered the judgment of the court, with opinion. Justices McLaren and Schostok concurred in the judgment and opinion.

OPINION

¶ 1 Following a jury trial, defendant, Nathaniel R. Legore, was convicted of the first-degree murder (720 ILCS 5/9-1(a) (West 2008)) of his father, Guillermo Legore. Guillermo was found shot to death in his home in North Chicago. On appeal, defendant argues that: (1) the indictment should have been dismissed with prejudice because it was secured by false testimony; (2) he was not proven guilty beyond a reasonable doubt; and (3) he is entitled to a new trial because the State improperly shifted the burden of proof in rebuttal closing argument. We affirm.

¶ 2 I. BACKGROUND

¶ 3 On December 29, 2010, a Lake County grand jury indicted defendant for Guillermo's murder. On May 23, 2011, defendant filed a motion to dismiss the indictment. Defendant alleged, in relevant part, that the prosecution presented false testimony that an electrician saw him near the house where the murder occurred, whereas there actually was no such eyewitness identification. The trial court denied the motion after an evidentiary hearing on June 30, 2011. It stated that, while the presentation to the grand jury was "sloppy" and "careless," the State did not use perjured testimony to obtain the bill of indictment.

¶ 4 Defendant's jury trial began on July 25, 2011. We summarize the evidence presented by the State. On March 2, 2009, Guillermo worked as a security guard at a Waukegan middle school. Just before 11 a.m. that day, a coworker who was leaving for lunch volunteered to bring back food for Guillermo, and he asked for a shake. At about 11 a.m., Guillermo received a cell phone call and told the assistant principal that he had to go home for a family emergency and would be right back. At about 11:30 or 11:45 a.m., the coworker returned with Guillermo's shake and called him on his walkie-talkie but could not find him.

¶ 5 At about 4:30 p.m. the same day, police and paramedics were called to Guillermo's home at 2331 Honore in Waukegan. There were no signs of forced entry to the house. Phyllis

Curry, Guillermo's live-in girlfriend, directed the police to Guillermo, who was facedown in a closet and deceased. There was blood on the closet wall.

¶ 6 Forensic pathologist Manuel Montez, who worked as a consultant for the Lake County coroner's office, testified that he relied on the deputy coroner's report, which indicated that rigor mortis and lividity (pooling of the blood) in Guillermo's body were in their early stages at about 5:30 or 5:40 p.m. on March 2. Rigor mortis and lividity begin four to six hours after death. However, rigor mortis could take longer if the ambient temperature were cooler. Montez opined that the cause of Guillermo's death was an "execution-style" gunshot wound to the back of the head. He further opined that when Guillermo was shot he was kneeling with his head down. A .32-caliber bullet was recovered from the body.

¶ 7 Larry Carley, a pipefitter for North Shore Gas, testified that he was working on a service call at 2333 Honore on March 2, 2009. It was cold outside. Around 11:15 a.m., he saw a person walking south on Honore, toward Carley's truck. Carley got up to make sure the doors were locked because his truck was full of tools. The individual walked passed Carley, and Carley returned to his work. Carley did not observe the gender or race of the individual. However, he observed that the person was wearing jeans and a dark jacket, with the hood up. Carley described the jacket as a "[w]inter parka, the puffy type now with fur around the head, face of the hood." The North Chicago police showed Carley a photograph of a person walking down a sidewalk (State's exhibit 46), and Carley testified that it could have been the person he saw.

¶ 8 The State additionally presented evidence regarding defendant's whereabouts. Defendant lived in Boston with his second cousin, Timothy Smith, in Smith's apartment beginning sometime around February 2008. Defendant was not employed and did not help with the bills. In February 2009, Smith lost his job and said that defendant needed to move out. On February 22, 2009, defendant, accompanied by Smith, dropped off personal belongings at his grandmother's home in Boston, telling her that the apartment was being painted. Defendant previously told Smith not to tell his grandmother that he was not living with Smith anymore. Parts of the apartment were being painted, according to Smith, but that was not why defendant was moving his things. The belongings that defendant dropped off included a bracelet and watch he wore "[a]ll the time," according to a different cousin, as well as two driver's licenses and an expired gun license. After dropping his things off, defendant asked Smith to drop him off at a Panera Bread that was near a bus and train station. Defendant was wearing a tan, puffy coat with a hood. Defendant did not tell his grandmother that he was going to Chicago.

¶ 9 Business records showed that defendant checked into the Great Lakes Navy Lodge, a hotel for military personnel and their families, on February 27, 2009. He checked out on March 3, 2009. He made the $65-per-night payments for the room in cash.

¶ 10 Cell phone records indicated that the last call Guillermo answered on his cell phone was at 11:06 a.m. on March 2, 2009, and that it came from a number traced to a pay phone at the Great Lakes train station. Surveillance video showed a man in a tan coat at the Great Lakes train station platform, in the area where the pay phones are located, at 11:04 a.m. Another surveillance video showed defendant entering the Naval Base at 11:47 a.m.

¶ 11 On March 3, 2009, defendant went to the police station. He asked why Guillermo's house was boarded up and said that the police should not have Guillermo's car, because he was not killed in it.

¶ 12 Defendant's half-sister ran into defendant on March 6, 2009. He had all of his belongings with him in a duffel bag. She offered to let defendant stay with her, and he did so for two nights. Defendant told her that he was in Chicago when a friend told him that Guillermo's house was on fire, and he came to North Chicago to see what had happened. Defendant also mentioned numerous times that he wanted to get into the house. Defendant next stayed for two or three weeks with a family he knew in Guillermo's neighborhood, and he said that he would like to live in Guillermo's house and pay the mortgage on it.

¶ 13 Nathan Legore, defendant's twin brother, testified that after defendant moved to Boston in October 2006 he had a conversation with him. Defendant was very upset with Guillermo because Guillermo was supposed to sell defendant's furniture in Illinois but never gave defendant the money from the sale. When Nathan was talking to defendant on the phone a few days after Guillermo died, defendant said that he could not have been the perpetrator because he had given Nathan the key to Guillermo's house. Nathan denied having a key. Nathan identified the coat pictured in State's exhibit 46 as the type of coat that defendant owned. Nathan agreed that he was a convicted felon and that, prior to his testifying in this case, outstanding warrants against him were dismissed.

¶ 14 The North Chicago police interviewed defendant three times. The first interview occurred on March 7, 2009. During the first interview, defendant said that he did not remember where he was on March 2, when his father was killed. He also said that he did not care what happened to his father, and that the last person who spoke to Guillermo would probably know something.

¶ 15 Defendant's second interview took place on January 14, 2010, and was audio-recorded. Defendant again stated that he did not know where he was on the day of Guillermo's death. He said that he found out about the murder on March 3, 2009, from a childhood friend, who said that his house was boarded up. Defendant then called another friend, who told him what had happened. Defendant said that he had a brown goose-down jacket when he came to Illinois from Boston, but he could not remember what happened to it. The police showed defendant State exhibit 49, an image from surveillance video taken at the Veterans Administration (VA) hospital, and defendant identified himself in the image and the jacket that he owned. Defendant denied having a key to Guillermo's house or killing Guillermo.

¶ 16 Defendant's third interview occurred on December 6, 2010, and was video-recorded. Defendant agreed that the only family members Guillermo had in the area on March 2, 2009, were himself and Curry. Defendant had arranged about one week earlier to meet his father for lunch, but he later texted Guillermo to cancel. Defendant did not remember if he had called Guillermo from the train station on March 2. When the detectives told defendant that a camera showed him calling Guillermo from a pay phone at the station, defendant did not deny making the call but said that he did not remember what he talked to Guillermo about.

¶ 17 Terell Price testified for the defense that in March 2009 he worked second shift at the middle school where Guillermo was employed. Price called Guillermo at about 11 a.m. on

March 2, 2009, because it was Casimir Pulaski day and Price was not sure if it was a school holiday. Guillermo said that the school was open. Price came into school at about 1 p.m. and saw Guillermo there.

¶ 18 We summarize the State's closing argument on the topic of defendant's motive. Defendant hated Guillermo, as shown by Nathan's testimony that defendant was angry at Guillermo for not giving him the money from his furniture sale and by defendant's statement to police, five days after the murder, that he did not care what happened to Guillermo. After defendant had to leave his cousin's house in Boston, he had no job and no place to live. He decided to come to Chicago and kill Guillermo to get Guillermo's house and money, so he did not tell anyone about his travel plans or about his presence until after the murder. The following day, he went to the police station asking about Guillermo's house and car, and he also talked to the neighbor and his sister about getting the house.

¶ 19 The jury found defendant guilty of first-degree murder, and the trial court sentenced him to 50 years' imprisonment. Following the denial of his motion to reconsider the sentence, defendant timely appealed.

¶ 20 II. ANALYSIS

¶ 21 A. Grand Jury

¶ 22 Defendant first argues that he was denied his right to due process because the State presented false testimony to the grand jury. Specifically, defendant argues that a police officer testified before the grand jury that there was an eyewitness identification placing defendant near the scene of the crime, whereas utility worker Carley could only describe the coat of the person he saw.

¶ 23 The grand jury's role is to determine whether probable cause exists that a person has committed a crime, which would warrant a trial. *People v. DiVincenzo*, 183 Ill. 2d 239, 254 (1998). Prosecutors advise the grand jury by informing it of the proposed charges and pertinent law. *Id.* Generally, a defendant may not challenge the validity of an indictment that a legally constituted grand jury returns, but a defendant may challenge an indictment procured through prosecutorial misconduct. *Id.* at 255. To obtain the dismissal of the indictment, a defendant must show that the prosecutorial misconduct affected the grand jury's deliberations and rose to the level of a deprivation of due process or a miscarriage of justice. *Id.* at 257. "The due process rights of a defendant may be violated if the prosecutor deliberately or intentionally misleads the grand jury, uses known perjured or false testimony, or presents other deceptive or inaccurate evidence." *Id.* The prosecutor's deception need not be intentional. *People v. Oliver*, 368 Ill. App. 3d 690, 696 (2006). The defendant must show that the denial of due process is "unequivocally clear" and resulted in prejudice that is "actual and substantial." *Id.* at 695. Prosecutorial misconduct resulting in a due process violation is actually and substantially prejudicial only if the grand jury would not have otherwise indicted the defendant. *Id.* at 696-97. Where the facts about what occurred at a grand jury proceeding are undisputed, as in this case, we review *de novo* the question of whether the State prejudicially denied the defendant due process. *People v. Sampson*, 406 Ill. App. 3d 1054, 1057 (2011).

¶ 24 The testimony in question took place during the grand jury proceeding on December 29, 2010. Detective Donald Florence testified that an electrician[1] was working at the house one or two doors down from Guillermo's house on March 2, 2009. Florence testified:

> "[H]e identified a male subject walking away from the house and described the clothing and jacket which matches the description of the individual we see on the video again making the phone call and leaving the Navy Lodge and walking on Buckley. It all appears to be the same person."

¶ 25 Toward the end of the proceeding, a grand juror asked:

> "Is there any evidence directly tying him [defendant] to the crime? I mean that he was here, that he was there, he was in town, they didn't get along? I'm looking for the one thing that is of evidence that just ties him to it?"

¶ 26 Detective Florence responded:

> "There is no physical evidence on the scene that says that our defendant was in the house at the time. There's no DNA, there's no fingerprints. There's nothing like that. The only evidence is–which is circumstantial based on the video surveillance of the time frame of where he was, the phone call, and then *the individual being the electrician who sees him outside that house* and Nathaniel the whole time denies that he was even in North Chicago at that time." (Emphasis added.)

¶ 27 A different grand juror subsequently asked if there was any video surveillance "that actually shows his [defendant's] face at all that you could positively say that was him?" Detective Florence responded that there was no video showing defendant's face on the date of the murder but there was a video from the VA hospital from a prior date that clearly showed defendant's face and the jacket and shoes he was wearing. The jacket and shoes matched those worn by the individual in the videos from March 2, 2009.

¶ 28 Defendant argues that Carley's trial testimony shows that he never identified defendant as the person he saw walking in the neighborhood, but Detective Florence intimated to the grand jury that the one thing that tied defendant to the crime was Carley's identification of him outside the house. Defendant maintains that the State's use of this falsehood in the grand jury proceedings denied him his right to due process.

¶ 29 The State argues that Detective Florence did not misinform the grand jury, because, after accurately informing it that the identification was through circumstantial evidence, particularly the similarity of clothing worn by defendant and the person shown in the surveillance videos, he summarized the previous evidence by stating that it showed that defendant was the person seen by the utility worker outside Guillermo's house.

¶ 30 We agree with the State. Detective Florence testified that the utility worker described the clothing of a person he saw walking away from Guillermo's house, and that the description matched the images from the surveillance videos. Thus, the grand jury was clearly informed that there was no direct identification of defendant by Carley. Later, when asked if there was

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[1]As noted, the worker in question, Carley, testified at trial that he worked as a pipefitter for North Shore Gas.

anything directly tying defendant to the crime, Detective Florence said that there was no physical evidence showing that defendant was in the house. Detective Florence continued by saying that the evidence was circumstantial, which he summarized as being the video surveillance, the phone call to Guillermo, and the "individual being the electrician who sees him outside that house." It is clear from the context of Detective Florence's testimony that he was describing the circumstantial evidence against defendant, including the inference that the person Carley saw was defendant, rather than communicating that Carley made an eyewitness identification of defendant. The fact that the grand jury was not misled is further shown by the subsequent question of a different grand juror, who asked if there was any video surveillance showing defendant's face. We agree with the State that the question demonstrates that the grand jurors understood that defendant's identification was through clothing rather than Carley's actually having seen defendant's face. Although it would have been better practice for the State to have Detective Florence repeat, after his summary of the evidence, that Carley did not actually identify defendant, its failure to do so did not render Detective Florence's testimony false, as it is clear from a review of all of the testimony that no eyewitness identification was made. *Cf. DiVincenzo*, 183 Ill. 2d at 258-59 (even if some of the prosecutors' comments improperly stated the law, it would not warrant the indictment's dismissal because the prosecutors repeatedly and correctly stated the pertinent statutory law and definitions). As the State did not present false testimony during the grand jury proceeding, there was no due process violation, and the trial court did not err in denying defendant's motion to dismiss the indictment. Based on our resolution of this issue, we need not discuss whether the alleged violation caused actual and substantial prejudice.

¶ 31 B. Sufficiency of the Evidence

¶ 32 Defendant next argues that there was insufficient evidence to prove him guilty beyond a reasonable doubt. When faced with a challenge to the sufficiency of the evidence, we must determine whether, after 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. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *People v. Collins*, 106 Ill. 2d 237, 261 (1985). The trier of fact has the responsibility to assess witnesses' credibility, weigh their testimony, resolve inconsistencies and conflicts in the evidence, and draw reasonable inferences from the evidence. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). We will not set aside a criminal conviction unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 225 (2009).

¶ 33 Defendant argues that the State's circumstantial evidence showed that he may have had the opportunity to commit the crime, but it otherwise failed to connect him to the murder, and it therefore did not prove him guilty beyond a reasonable doubt. Defendant challenges the State's evidence in many areas. First, he acknowledges that, although he did not deny calling Guillermo from the Great Lakes train station pay phone at 11:06 a.m. on March 2, Guillermo's phone records revealed that he received a message at 11:01 a.m. from another phone number, which Guillermo called back at 11:04 a.m. Guillermo made another call at 11:05 a.m. Defendant argues that this evidence shows that he was among at least two other

people who were the last ones to talk to Guillermo before he was shot, and any of the calls could have been the reason why Guillermo left work to go home.

¶ 34 Defendant further argues as follows. While the State claimed that he was on Guillermo's street when Guillermo was shot, Carley did not identify the person, or even the person's race or sex. Rather, Carley just described the coat the person was wearing as a dark winter parka with the hood pulled up. The State argued that Carley's description of the coat matched defendant's coat, but the surveillance videos show defendant's jacket to be a tan or light-colored jacket, rather than the dark jacket Carley described. The videos also show that his tan jacket has a black stripe down the center of the hood, which is a distinctive and prominent feature that Carley would have mentioned if the jacket he saw was defendant's. Citing *People v. Lovelace*, 221 Ill. App. 3d 20, 24 (1991), defendant argues that the fact that he was in the North Chicago area and had the opportunity to commit the crime did not prove that he did so. See *id.* (an opportunity to commit a crime will not sustain a conviction unless the evidence shows no one else had the opportunity to commit the crime). Defendant maintains that, even if the State's evidence showed that he was on Guillermo's street when Guillermo was shot, it did not prove that defendant shot him, because presence alone does not establish guilt beyond a reasonable doubt. See *People v. Howard*, 74 Ill. App. 3d 870, 877 (1979).

¶ 35 Defendant also argues that the State's timeframe for the shooting was suspect. The State claimed that Guillermo was shot around 11:30 a.m., the window of time for which there was no surveillance video of defendant. The doctor testified that rigor mortis usually begins within four to six hours after death and had begun in Guillermo at 5:30 or 5:40 p.m. Defendant argues that, because the onset of rigor mortis is variable, Guillermo could have been shot as late as 1:30 p.m., which would have been consistent with Price's testimony that he saw Guillermo at the school at about 1 p.m. Defendant notes that surveillance video showed that he was back at the naval base at 11:47 a.m., and there was no evidence that he left the base again that day.

¶ 36 On the subject of motive, defendant argues that the State's theory that he wanted to kill his father out of greed or financial hardship was contradicted by the evidence. First, he was able to afford the $65-per-day room charge at the military hotel. Second, his cousin found jewelry among the possessions he left in his grandmother's basement, which he could have pawned if he was destitute. Defendant argues that the fact that he talked to friends and family about his father's house proved little other than that he stood to inherit the house as an heir. Defendant argues that Nathan's testimony that defendant was mad at Guillermo for not giving him the money from the sale of his furniture was incredible for several reasons: (1) Nathan was a convicted felon, making his testimony highly suspect; (2) the State dismissed all of Nathan's outstanding warrants, suggesting that it had leverage over him; and (3) other evidence contradicted the negative characterization of the relationship between defendant and Guillermo, as the two had planned to meet for lunch before defendant had to cancel. Defendant contends that, even if Nathan's testimony was believable, it was unreasonable to conclude that defendant killed his father in March 2009 over a perceived slight that happened back in October 2006.

¶ 37 Finally, defendant argues that part of the State's theory, that he came to North Chicago

in secret because he was planning to kill Guillermo, was contradicted by evidence that they had exchanged texts about meeting for lunch around a week before Guillermo was shot. Defendant argues that, if he had wanted to come to North Chicago to kill his father, he would not have made the plans to meet and then canceled them. Therefore, according to defendant, there was little significance to the fact that he did not tell his grandmother that he was coming to North Chicago. Defendant argues that the finding of guilt is necessarily based on only possibility and conjecture, which is not proof beyond a reasonable doubt.

¶ 38 Although there was no direct evidence pinpointing defendant as the attacker, a " 'conviction can be sustained upon circumstantial evidence as well as upon direct, and to prove guilt beyond a reasonable doubt does not mean that the jury must disregard the inferences that flow normally from the evidence before it.' " *People v. Patterson*, 217 Ill. 2d 407, 435 (2005) (quoting *People v. Williams*, 40 Ill. 2d 522, 526 (1968)). Viewing the evidence in this case in the light most favorable to the State, we conclude that the circumstantial evidence is sufficient to support defendant's conviction.

¶ 39 According to the assistant principal at the school where Guillermo worked, at about 11 a.m. on March 2, 2009, Guillermo left school to go home for a "family emergency." A coworker who returned with food for Guillermo could not find him at around 11:30 or 11:45, which corroborates the timing of Guillermo's departure. Guillermo's departure is further corroborated by the evidence that he received a phone call at 11:06 from the Great Lakes train station, a call defendant acknowledged having made in police interviews. Moreover, the rigor mortis and lividity when Guillermo's body was found is consistent with his being killed around 11:30 a.m.

¶ 40 Although Price claimed to see Guillermo at the school at 1 p.m., which could also be consistent with the rigor mortis and lividity findings, this evidence is contradicted by the testimony of the other school personnel. Cell phone records also showed that Guillermo did not answer any calls after defendant's call, with any calls that his phone received after that time going to voicemail. At most, Price's testimony represented a conflict in the evidence that was for the jury to resolve (see *Sutherland*, 223 Ill. 2d at 242), which the jury could have rationally resolved in the State's favor.

¶ 41 In addition to the evidence that the last call Guillermo answered was from defendant, there was evidence that Guillermo was planning to meet defendant in that Guillermo referred to a "family" emergency. There were no signs of forced entry to the house, consistent with the theory that Guillermo was meeting a family member and that the killer was not a burglar. Defendant agreed in police interviews that the only family Guillermo had in the area at the time were defendant and Curry. This consideration decreases the importance of the calls Guillermo received before defendant's call. The evidence showed that Curry called the police after discovering Guillermo's body, whereas defendant repeatedly insisted he could not remember where he was that day and what he talked to Guillermo about right before Guillermo's murder.

¶ 42 In addition to evidence that defendant made the phone call that caused Guillermo to return home, Carley saw someone walking near Guillermo's house around 11:15 a.m. wearing what he described as jeans and a dark jacket, specifically a "[w]inter parka, the puffy

type now with fur around the head, face of the hood." While defendant argues that his jacket was tan or light-colored, defendant himself described the jacket as "brown" in a police interview. Defendant identified himself and his jacket in State's exhibit 49, and when Carley viewed a photograph of someone who appeared to be wearing the same jacket (State's exhibit 46), he said that it could have been the person he saw. The jury too was able to view the photographs and make its own assessment. Again, the description of the jacket as "dark" was, at most, a conflict in the evidence that the jury could have rationally resolved in the State's favor. Also, a stripe on the hood is not even visible in many of the exhibits, so it would not have been unreasonable for Carley not to notice it. Evidence of defendant's expired gun license showed that he may have possessed a gun or was at least familiar with guns, and it is undisputed that Guillermo died of a gunshot wound to the head. The jury was provided with a map showing the locations in question, and it could have concluded that defendant murdered Guillermo after calling him at 11:06 a.m. and returned to the naval base at 11:47 a.m.

¶ 43 Regarding motive, the evidence showed that in February 2009 defendant was forced to leave his cousin's apartment, where he had been living rent-free for about a year. Defendant's cousin testified that defendant also did not have a job during this time. This evidence provides some support to the State's theory that defendant was financially motivated to kill Guillermo and inherit his house. That defendant did not tell his family members in Boston that he was traveling to North Chicago is also evidence that he was keeping his plans secret. Although defendant had some jewelry and could make about four $65-per-night payments, this does not undermine the State's argument about a financial motive, as such assets are minimal compared to the cost of long-term housing. Furthermore, when defendant ran into his half-sister, he had all of his belongings with him, which could be an indication that he could no longer afford to stay at a hotel, which is additionally supported by his decision to stay with her and then a family in the neighborhood. Defendant's interest in Guillermo's house was demonstrated through his conversations with these individuals and with the police, to whom he also showed interest in Guillermo's car.

¶ 44 The State theorized that defendant's financial motive to kill Guillermo was also influenced by his dislike of Guillermo, the evidence of which was provided partially through Nathan's testimony. Though this testimony is certainly questionable for the reasons defendant cites, there is also evidence that defendant himself told the police after the murder that he did not care what happened to Guillermo. Although defendant emphasizes plans to meet for lunch as evidence of a good relationship, this evidence is slightly contradicted by defendant's choosing to stay at a hotel near his father's house rather than with his father, and much more so by defendant's statement to the police that he did not care what happened to Guillermo.

¶ 45 In the end, defendant's challenges highlight conflicts in the evidence as to specific circumstances of the case, but, as stated, such conflicts are for the jury to resolve. Moreover, the trier of fact is not required to be satisfied beyond a reasonable doubt as to each link in the chain of circumstances. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). Instead, the trier of fact need find only that all of the evidence, when considered together, supports a finding of the defendant's guilt beyond a reasonable doubt. *Id.* We must allow all reasonable inferences

from the record in favor of the State. *Id.* Although the evidence in this case was far from overwhelming, we cannot say that, after viewing all of the evidence in the light most favorable to the State, a rational trier of fact could not have found defendant guilty of Guillermo's murder beyond a reasonable doubt. Accordingly, defendant's argument fails.

¶ 46 C. Closing Argument

¶ 47 Last, defendant argues that the prosecution improperly shifted the burden of proof to him during rebuttal closing argument, thereby denying his right to a fair trial. Defendant cites the prosecution's references to Price as an "uncorroborated witness" and its statements that the defense failed to produce Price's time cards and phone records.

¶ 48 The standard of review for this issue is not settled. In *People v. Burman*, 2013 IL App (2d) 110807, ¶ 26, this court stated that our supreme court had advocated conflicting standards of review. In *People v. Wheeler*, 226 Ill. 2d 92, 121 (2007), the supreme court stated that whether a prosecutor's remarks were so egregious as to warrant a new trial was a legal question to be reviewed *de novo*. *Burman*, 2013 IL App (2d) 110807, ¶ 26. However, the *Wheeler* court cited with approval *People v. Blue*, 189 Ill. 2d 99 (2000), where the supreme court applied an abuse-of-discretion standard to the same issue. *Burman*, 2013 IL App (2d) 110807, ¶ 26. This court stated that, because the result would be the same applying either standard to the facts before us, we would wait for the supreme court to resolve the conflict. *Id.* The same logic applies here.

¶ 49 Prosecutors generally have wide latitude in closing arguments and may comment on the evidence and any reasonable inferences arising from the evidence, even if the inferences reflect negatively on the defendant. *People v. Perry*, 224 Ill. 2d 312, 347 (2007). We consider statements in the context of the closing arguments as a whole instead of examining the contested phrases in a vacuum. *Id.*

¶ 50 Regarding Price, defense counsel made the following argument in closing. Price testified that he remembered calling Guillermo because it was Casimir Pulaski Day and Price did not know if it was a school holiday. Price remembered going to work and punching in, and he testified that he saw Guillermo at school at 1 p.m. The State was asking the jury not to believe Price but to believe its witnesses. The State could have introduced the punch card to show that Price was lying, but the only reason the State did not call Price as a witness was that he did not fit into the prosecution's theory of the case. Price had no stake in the issue and was telling the truth. The conflict as to when Guillermo could have been killed created reasonable doubt about defendant's involvement.

¶ 51 The State responded as follows in rebuttal closing argument. It was clear that Price was mistaken, as phone records showed that defendant was the last person Guillermo spoke to. Also, the assistant principal testified that Guillermo left for a family emergency. Another coworker testified that she left for lunch at 11 a.m. and brought Guillermo a shake when she returned at 11:45 a.m., at which point she called him on his walkie-talkie. However, he did not respond to his walkie-talkie or any subsequent phone calls because he was already dead at that time.

¶ 52 The State continued:

"The defense wants you to believe this individual, Terell Price, said he saw the defendant [*sic*] later in the day.

Ladies and gentlemen, that is incorrect. For many reasons. First the defense did not produce a time card. Not a big deal because even if you have a time card it doesn't show a whole lot.

[DEFENSE]: Objection.

THE COURT: Overruled.

[THE STATE]: Again, *the defense does not have the burden in this case*, but when they do put on witnesses you should scrutinize their case the same way you do the State's. So if the defense want you to believe somebody they put on one *uncorroborated witness* you should be suspicious of that witness. How is it *uncorroborated* if he is the only person who allegedly saw Guillermo any time in the afternoon? *If there are more people who saw him where are they? Second of all, where are his phone records?* Okay. Not a big deal. Because we have Guillermo's phone records. What is Terell Price's phone number? Very easy for the defense to ask hey, Mr. Price, what is your phone number?" (Emphases added.)

The State argued that Guillermo's phone records showed that he did not have a conversation with Price on March 2 at 11 a.m., as the last call Guillermo answered before defendant's call from the train station was at 8:15 a.m. The State argued that Price was an "[u]ncorroborated witness" whose testimony "should not [be given] any weight" whereas "[e]very witness the State has called has been corroborated."

¶ 53 Later in rebuttal closing argument, the State argued:

"The defense asks why the State did not call Terell Price. Well, there is no way to prove that he talked to Guillermo on March 2. Defense showed that. They failed to ask him what kind of clothes Guillermo was wearing. They failed to ask him what his phone number was which could have proved this conversation occurred. They failed to produce the phone records.

[DEFENSE]: Objection.

THE COURT: Sustained.

[THE STATE]: *They don't have the burden; the burden is on the State. But it is uncorroborated*." (Emphasis added.)

¶ 54 Defendant argues that, by repeatedly referring to the defense's only witness as an "uncorroborated witness," the prosecutor unduly highlighted the fact that defendant failed to call other witnesses to testify to the same facts as Price. Defendant argues that the defense was under no obligation to do so, and it was likewise not required to submit Price's time card or phone records. Defendant maintains that to suggest otherwise, as the prosecution did here, improperly shifted the burden of proof to the defense.

¶ 55 We conclude that the State's comments about Price being an "uncorroborated witness" did not shift the burden of proof to defendant. We recognize the importance of not allowing the State to make improper argument during rebuttal closing argument, as at that point the defense is left without the opportunity to respond. *People v. Green*, 209 Ill. App. 3d 233, 245

(1991). Furthermore, the State always has the burden of proving, beyond a reasonable doubt, the crime's elements, and the State may not suggest that it has no burden of proof or attempt to shift the burden of proof to the defendant. *People v. Robinson*, 391 Ill. App. 3d 822, 841 (2009). However, if defense counsel provokes a response in closing argument, the defendant cannot complain that the State's reply in rebuttal argument denied him a fair trial. *Id.*

¶ 56 Here, the defense argued in closing that the State did not call Price as a witness simply because he did not fit into its theory of the case. The defense further argued that the State could have introduced Price's time card to show that he was lying. The defense maintained that the State was asking the jury to believe its witnesses over Price, but that Price was actually telling the truth. Accordingly, the disputed remarks in the State's rebuttal argument are properly viewed as a response to defendant's argument. The State essentially argued that it did not call Price because he was mistaken in believing that he called Guillermo that day and that he saw him at 1 p.m. The State argued that Price was contradicted by Guillermo's phone records indicating no such call at 11 a.m., the assistant principal's testimony that Guillermo left around 11 a.m., and another coworker's testimony that she could not locate Guillermo after 11:45 a.m. Thus, the State referred to its witnesses' testimony as being "corroborated" by the other evidence at trial, and Price's testimony as being "uncorroborated" by such evidence, to explain why it did not call Price as a witness and why its witnesses were believable, which was an acceptable response to defendant's closing argument.

¶ 57 Additionally, while the prosecution is generally not allowed to comment on a defendant's failure to produce evidence, such comments are acceptable if a defendant with equal access to that evidence assails the prosecution's failure to produce it. *People v. Jackson*, 399 Ill. App. 3d 314, 319 (2010). Thus, as the defense argued that the State could have introduced Price's time card into evidence, it was not error for the State to argue that defendant also did not introduce the time card. *Cf. People v. Nowicki*, 385 Ill. App. 3d 53, 91 (2008) (it was proper for prosecutor to point out that the defendant could have subpoenaed police officers, in response to the defense's highlighting that the State had not called officers as witnesses); *People v. Baugh*, 358 Ill. App. 3d 718, 741-42 (2005) (prosecutor's argument that the defendant could have produced telephone records was not improper where defense counsel had argued that the State could have produced such records but had chosen not to).

¶ 58 We do agree with defendant that it was improper for the State to question why the defense did not produce Price's phone records; while the defense raised the issue of Price's time card, it did not open the door to comments about Price's phone records. We also agree that it was error for the State to question why there were not additional witnesses who saw Guillermo at school after 1 p.m. See *People v. Armstead*, 322 Ill. App. 3d 1, 16 (2001) (a defendant is not required to produce any witnesses, and it is error to comment on his failure to do so). However, regarding the latter comment, defendant forfeited his argument by failing to object to the comment at trial and raise the issue in his posttrial motion. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (to preserve an issue for review, the defendant must object at trial and raise the issue in a written posttrial motion). Furthermore, defendant does not argue on appeal that the comment constitutes plain error, thereby forfeiting plain-error review. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) (points not argued are forfeited).

¶ 59 In any event, regarding both of these comments, we note that we will reverse a conviction only where the State's comments were so inflammatory or so flagrant that they denied the defendant a fair trial. *People v. Euell*, 2012 IL App (2d) 101130, ¶ 22. That is not the situation here. The remark about additional witnesses was an isolated statement that did not create reversible error. See *People v. Runge*, 234 Ill. 2d 68, 142-43 (2009) (remarks have lesser impact on a jury when they are brief and isolated); *People v. Luna*, 2013 IL App (1st) 072253, ¶ 140 (where comments were brief and of little import in the context of the State's lengthy closing argument, they did not amount to reversible error). The trial court sustained the defense's objection to the statement about Price's phone records, and the act of sustaining an objection to an argument is generally considered to cure any prejudicial error. *People v. Miller*, 363 Ill. App. 3d 67, 78 (2005). Moreover, the State itself said that the lack of Price's phone records was "not a big deal," because Guillermo's records were in evidence, and the State did not specifically state that defendant had the burden of proof. *Cf. Euell*, 2012 IL App 101130, ¶¶ 21-23 (although the State improperly shifted the burden of proof to the defendant during closing arguments, its remarks did not constitute reversible error, as the State never directly stated that the defendant had the burden to support his theory of the case). Rather, to the contrary, the State repeatedly stated that it had the burden of proof and that the defense did not have the burden, and the trial court properly instructed the jury regarding the burden of proof. See *People v. Flores*, 128 Ill. 2d 66, 95 (1989) ("Even if the remarks did give an improper impression to the jury, it was cured when the jury was properly instructed by the trial court on the State's burden of proof."). Thus, the improper comments cannot be labeled as so inflammatory or flagrant as to have denied defendant a fair trial.

¶ 60 We further find the cases cited by defendant to be distinguishable. In *People v. Wills*, 151 Ill. App. 3d 418, 420-21 (1986), the State's comments on the defendant's failure to call certain named witnesses was found to be reversible error. Similarly, in *People v. Lopez*, 152 Ill. App. 3d 667, 678-79 (1987), the State questioned the absence of 11 witnesses whom defendant had named only in pretrial discovery. Here, in contrast, there was no specific witness whom the State argued should have been called. Moreover, any argument about the remark about witnesses who could have corroborated Price was forfeited by defendant, and we have otherwise found it not to be reversible error for the reasons discussed above. The case of *People v. Fluker*, 318 Ill. App. 3d 193, 202-04 (2000), is distinguishable as that involved "pervasive misconduct" by the prosecution, including distracting the jury from the issue, misinforming the jury, and making inflammatory remarks in addition to a comment that improperly shifted the burden, and the appellate court reversed based on the "cumulative effects" of all of the errors. The final case, *People v. Clark*, 186 Ill. App. 3d 109, 116 (1989), similarly involved the cumulative effect of different types of improper comment during closing argument.

¶ 61 In sum, the remarks defendant complains of on appeal either were a proper response to his closing argument or otherwise do not qualify as reversible error, and the cases cited by defendant do not compel a different result.

¶ 62 III. CONCLUSION

¶ 63 For the reasons stated, we affirm the judgment of the Lake County circuit court.

¶ 64 Affirmed.