

No. 1-13-0190

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County
)	
v.)	No. 10 CR 15949
)	
DANTE SMALL,)	Honorable
)	Mary Margaret Brosnahan,
Defendant-Appellant.)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 *Held:* We affirmed defendant's convictions of attempted murder, finding: the State proved defendant guilty beyond a reasonable doubt; the trial court did not err in the admission of evidence; the State made no improper comments during opening statement or closing argument; defense counsel provided effective assistance; defendant showed no prejudice from an alleged discovery violation; and defendant's sentence did not violate the proportionate penalties clause.

¶ 2 A jury convicted defendant, Dante Small, of two counts of attempted murder and one count of aggravated battery of a peace officer. The trial court merged the aggravated battery conviction into the attempted murder conviction for the same officer and sentenced defendant to two consecutive terms of 20 years' imprisonment. On appeal, defendant contends: (1) the State failed to prove him guilty beyond a reasonable doubt; (2) the trial court erred by admitting irrelevant evidence; (3) the State made improper comments during opening statement and closing

No. 1-13-0190

argument; (4) defense counsel provided ineffective assistance; (5) the State committed a discovery violation; and (6) his sentence violated the proportionate penalties clause. We affirm.

¶ 3 Tabitha Washington testified that in July 2010 she owned a silver Chevy Monte Carlo (Monte Carlo). On July 31, 2010, Tabitha went to her building parking lot and discovered that her car was missing. On August 3, 2010, between 5 and 6 p.m., Tabitha received a phone call from her father. Following their conversation, Tabitha and her boyfriend, Danny Lauderdale, drove in separate cars to the area of 79th Street and Stony Island Avenue. As she was looking for the car, Tabitha received a call from Danny and went to the intersection of 79th Street, Stony Island Avenue and South Chicago Avenue, where she observed her car.

¶ 4 Tabitha testified she saw two people in her car. The driver was an African American male. Tabitha began following the car and called 911. Danny also followed the car. Tabitha and Danny followed the car for about 15 minutes until they were curbed by police.

¶ 5 Sergeant Cornelius Brown testified that at about 1 a.m. on August 4, 2010, he was in an unmarked squad car and in civilian dress. He received a call that the owners of a stolen vehicle were following that vehicle near 75th Street and Colfax Avenue. Sergeant Brown went to that location and saw a silver Monte Carlo being followed by two other cars.

¶ 6 Sergeant Brown activated his lights to curb the vehicles. Tabitha and Danny eventually pulled their vehicles over. Sergeant Brown continued following the Monte Carlo with his lights and siren activated. The Monte Carlo accelerated and attempted to elude him. Sergeant Brown pursued the Monte Carlo for about 15 minutes before losing sight of it. Sergeant Brown then contacted Officers Courtney Hill and Dwayne McGee and asked for their assistance in locating the Monte Carlo.

No. 1-13-0190

¶ 7 Officer Hill testified that at approximately 1 a.m. on August 4, 2010, he and his partner, Officer McGee, received a call from Sergeant Brown asking for help in locating a stolen vehicle, a silver Monte Carlo, east on 79th Street. Officers Hill and McGee were dressed in plain clothes, wearing vests that said "police" on the back. The front of their vests had a patch with a star on it that said "Chicago Police." Each officer was wearing a belt containing a radio, gun, flashlight and handcuffs.

¶ 8 Officer Hill testified that after receiving the call, they proceeded to a three-way intersection at 79th Street, Stony Island Avenue, and South Chicago Avenue in an unmarked vehicle. Officer Hill was driving. When they arrived at 79th Street, they saw the silver Monte Carlo stopped at a light on South Chicago Avenue. There were two people in the Monte Carlo. Officer Hill identified defendant in court as the driver.

¶ 9 Officer Hill activated his emergency lights and drove up behind the Monte Carlo. Officer Hill called his dispatcher and "ran the [license] plate to make sure that was the car that was reported stolen." The dispatcher confirmed that the Monte Carlo was stolen. Officer Hill drove in front of the Monte Carlo and angled his car to prevent the Monte Carlo from fleeing.

¶ 10 Officer Hill and Officer McGee exited their police car. Officer Hill went to the back of the police car and faced the Monte Carlo. He had his weapon drawn and pointed at the ground. Officer Hill saw the Monte Carlo go in reverse, then move forward. Officer Hill shot at the defendant because he "was coming at me." Officer Hill had no time to move out of the way, and therefore was struck by the Monte Carlo. The Monte Carlo never slowed down at all.

¶ 11 Officer Hill testified that after the Monte Carlo hit him, he "flipped onto the hood, and off to the side, and *** rolled over a couple times." Defendant then drove away. Officer Hill tried to get up, but his knee was now causing him "excruciating pain" and he fell back to the ground.

No. 1-13-0190

An ambulance took him to the hospital, where he learned that his knee was broken in two places. Officer Hill did not have surgery on his knee, because it "started healing on its own."

¶ 12 Officer Hill went to the police station on August 13, 2010, and identified defendant in a lineup as the person who was driving the vehicle that struck him.

¶ 13 Officer Hill testified that as of the day of trial, his knee still hurts, he walks with a limp, and he has difficulty walking long distances. He is no longer able to work "on the street" but instead is assigned to desk duty. Officer Hill identified a photograph of himself in the emergency room with a brace on his left leg, and he identified the person in the background of the photograph as his daughter.

¶ 14 Officer McGee testified similarly to Officer Hill regarding the circumstances leading to Officer Hill driving their police car in front of defendant's Monte Carlo. Officer McGee testified he and Officer Hill exited their police car. Officer McGee had his weapon in his hand, pointed to the ground. Officer McGee announced his office and told defendant and his companion to put their hands up. Defendant did not comply. Officer McGee saw the Monte Carlo begin to "go into reverse." Officer McGee continued to say "let me see your hands." The Monte Carlo stopped going in reverse and began to move forward, directly toward Officer McGee, at a fast rate of speed. Defendant did not attempt to drive the Monte Carlo around Officer McGee. Thinking that defendant was going to hit him and kill him, Officer McGee fired his weapon toward the Monte Carlo as it began driving toward him. Officer McGee testified that "by the grace of God," he was able to get out of the way of the Monte Carlo without being hit. Officer McGee saw the Monte Carlo "continue to accelerate" and strike Officer Hill. Officer McGee did not see the Monte Carlo slow down, or attempt to swerve out of the way of Officer Hill.

No. 1-13-0190

¶ 15 Officer McGee testified that after the Monte Carlo struck Officer Hill, it made a left turn and went southbound on Stony Island Avenue. Officer McGee went over to Officer Hill and saw that his leg "looked deformed." Officer McGee called for an ambulance.

¶ 16 On August 13, 2012, Officer McGee went to the police station and identified defendant in a lineup as the driver of the silver Monte Carlo.

¶ 17 The incident was videotaped by a traffic camera. The video was admitted into evidence and played for the jury, and is part of the record on appeal. The video shows the Monte Carlo stopped at a traffic light. The police car pulls around to the back of the Monte Carlo. After a few seconds, the police car pulls in front of the Monte Carlo at an angle and stops with the passenger side of the police car facing the Monte Carlo.

¶ 18 The video shows Officer McGee exiting the passenger side of the police car, with his gun pointed at the ground. Initially, when Officer McGee exits the police car, he stands in front of the passenger side of the Monte Carlo. Officer McGee begins moving to his right, toward the driver side of the Monte Carlo. The Monte Carlo begins reversing and Officer McGee raises his gun and aims it at the Monte Carlo; we cannot tell from the video whether shots were fired.

¶ 19 The Monte Carlo turns its wheels to the left and begins moving forward in Officer McGee's direction. To avoid being hit, Officer McGee moves quickly to his right, away from the car. Meanwhile, Officer Hall exits the driver side of the police car, moves to the back of the police car, and faces the right-side (passenger side) of the Monte Carlo. Officer Hall aims his gun toward the Monte Carlo and begins moving to his right (toward the driver side); we cannot tell from the video whether shots were fired. The Monte Carlo turns its wheels to the right and drives directly at Officer Hall, striking him. Officer Hall rolls over the front of the car and falls

No. 1-13-0190

to the ground. The Monte Carlo takes a left and speeds away, followed shortly thereafter by a marked police vehicle.

¶ 20 After the video was played for the jury, Officer Otis Wells testified that at approximately 1:27 a.m. on August 4, 2010, he heard a radio transmission of a stolen vehicle and that officers were following three vehicles at a high rate of speed. A Monte Carlo was the lead car being pursued. Officer Wells later heard another radio transmission that the Monte Carlo had been stopped in the area of 79th Street and South Chicago Avenue.

¶ 21 Officer Wells activated his emergency lights and proceeded to 79th Street and South Chicago Avenue, where he observed an unmarked police car with its lights flashing, parked in front of a Monte Carlo at an angle. As Officer Wells approached the intersection, he heard gunfire and saw the Monte Carlo "take[] off" and strike Officer Hill. Officer Wells testified he did not see the Monte Carlo slow down or attempt to "swerve out of the way" of the police car.

¶ 22 Officer Wells saw Officer Hill roll onto the hood of the Monte Carlo and then fall to the ground. The Monte Carlo then "made a pause" and Officer Wells took out his gun and fired two shots at the Monte Carlo. The Monte Carlo then went northwest on South Chicago Avenue and turned south on Stony Island Avenue. Officer Wells pursued the Monte Carlo at a speed of over 80 miles per hour, but he was unable to catch up. He estimated that the Monte Carlo was driving about 100 miles per hour.

¶ 23 Max Brown, the passenger in the Monte Carlo, testified that a little after midnight on August 4, 2010, he was "hanging out" and smoking cigarettes when defendant drove up to him. Max did not remember the color or make of the car defendant was driving. Max entered the car and he smoked marijuana with defendant.

No. 1-13-0190

¶ 24 Max testified they were stopped at a red light in the area of 79th Street and Stony Island Avenue when a Crown Victoria (which he recognized as a police vehicle by the way it was driving, as if it "owned the street") came up behind them. After about five seconds, the police vehicle moved in front of them. Defendant put their car in reverse. Max heard an officer say: "Put your hands up." As they were reversing, Max heard gunshots and was shot in the forearm.

¶ 25 Max testified he ducked under the dashboard and therefore did not know whether defendant subsequently drove directly at the police officers. Max later jumped out of the car and was found by the police, who beat him and took him into custody.

¶ 26 Max went to the hospital and then to the police station, where he met with two detectives and Assistant State's Attorney (ASA) Armbrust. Max made a statement which ASA Armbrust wrote down and typed out.

¶ 27 ASA Armbrust testified that on August 5, 2010, she was assigned to an investigation regarding the attempted murder of a police officer. She went to the police station and met with two detectives and learned that Max Brown was there. ASA Armbrust met with Max and observed a cast on his arm but "otherwise he appeared fine." ASA Armbrust told Max she was an assistant State's Attorney and she asked if he was willing to talk about what had happened the night before. Max agreed to talk with her.

¶ 28 ASA Armbrust testified that after speaking with Max, she asked him if he would agree to allow her to type out his statement. Max agreed. ASA Armbrust asked Max how he had been treated by the detectives. Max never indicated that anyone had beaten him.

¶ 29 ASA Armbrust proceeded to testify to the contents of Max's statement. According to ASA Armbrust, Max stated that defendant was driving a Monte Carlo and pulled over to talk to him. Max entered the vehicle. A police car began following them. Max knew it was a police

No. 1-13-0190

car because he could see the people in the car were wearing bullet proof vests. The police car eventually "blocked" defendant's car and then an officer exited the police car and stated: "Stop the car, put your hand up." Defendant drove the Monte Carlo in reverse for a few feet, then put it into drive and drove directly towards the police officer. Max heard a lot of gunshots and tried to duck down.

¶ 30 ASA Armbrust testified that Max did not appear to be under the influence of drugs or alcohol when making the statement, that he reviewed the written statement to ensure its accuracy, and that he signed each page of the statement.

¶ 31 Max testified that People's exhibit number 15 was his statement and he acknowledged his signatures and initials throughout the statement. Max testified that "some of the things in [the statement] were changed around." Specifically, Max denied stating that: defendant's car was a Monte Carlo; that defendant thought a car was following them; that the intersection at which they were stopped was brightly lit and that he saw the officers were wearing bullet proof vests; that he saw an officer get out of the unmarked police car and say "Put your hands up"; and that defendant drove the car in reverse for a few feet, then put the car in drive and drove directly toward the police officer.

¶ 32 Detective Patrick Ford testified that on August 12, 2010, he learned that defendant had been taken into custody. The following day, Officer Hill and Officer McGee separately viewed a lineup and each identified defendant.

¶ 33 Herbert Keeler testified he is a forensic investigator for the Chicago police department. As a forensic investigator, he analyzes bullet trajectories and uses a Leica scan to aid in the bullet trajectory analysis. Investigator Keeler explained that a Leica scan is an instrument that digitally records the measurement of an object.

No. 1-13-0190

¶ 34 Investigator Keeler testified that at approximately 2:30 p.m. on August 4, 2010, he received an assignment to go to an auto pound at 5555 West Grand. When he arrived there, he saw a two-door, Chevy Monte Carlo. Investigator Keeler walked around the vehicle and observed three bullet holes in the front windshield.

¶ 35 Investigator Keller analyzed the trajectories of the three bullet holes. He began by touching the bullet holes and observing that the windshield glass was "pulverized, pushed inward," which indicated that the bullets came into the vehicle. The next step in analyzing the bullets' trajectories was to take fiberglass trajectory rods and "align them up with the bullet holes that were present." He explained that the rods were green and approximately two feet long and that each rod was placed into a bullet hole "to see where [the bullets] may have come from."

¶ 36 Investigator Keeler gave each of the bullet holes a letter to mark them. Bullet hole A was located at the lower driver side of the front windshield. Investigator Keeler testified that the trajectory of this bullet was from the lower driver side of the front windshield to the interior dashboard.

¶ 37 Bullet hole B was located toward the middle of the front windshield. Investigator Keeler testified that the trajectory of this bullet was from the front windshield through the passenger seats and then through the trunk.

¶ 38 Bullet hole C was located on the front windshield close to the passenger side door. Investigator Keeler testified that the trajectory of this bullet was from the front windshield through the "passenger side door area."

¶ 39 People's exhibit numbers 35 and 36 are photographs of the Monte Carlo with the trajectory rods placed through the bullet holes. With respect to bullet hole A, the location of the rods in both People's exhibit numbers 35 and 36 indicated that the bullet came from the direction

No. 1-13-0190

of the driver side. With respect to bullet holes B and C, the location of the rods in People's exhibit number 35, angling from the passenger side of the vehicle to the driver side, would indicate that the bullets came from the direction of the passenger side of the car. However, Investigator Keeler testified that People's exhibit number 35 was a photograph taken from the driver side of the vehicle at an approximately 45 degree angle, and that the reflection off the windshield created the "optical illusion" that the rods in bullet holes B and C were angled from the passenger side of the vehicle to the driver side. Investigator Keeler testified that People's exhibit number 36 more accurately depicted the location of the trajectory rods. People's exhibit number 36 shows the rods angling from the driver side of the vehicle to the passenger side, indicating that the bullets in holes B and C came from the direction of the driver side of the car.

¶ 40 Investigator Keeler testified that People's exhibit number 40 was the photograph of the Leica scan of the Monte Carlo with the trajectory rods placed through the bullet holes. Like People's exhibit number 36, People's exhibit number 40 shows the direction of all three bullets as coming from the driver side of the vehicle.

¶ 41 Following the close of the State's evidence, defendant testified on his own behalf. Defendant testified that at about noon on August 3, 2010, he saw Marvin Patterson at a corner store with a silver Monte Carlo. Marvin told defendant that the car belonged to his daughter, who was out of town, and that for \$20 he would lend defendant the car for the day. Defendant accepted and got in the car with Marvin.

¶ 42 Defendant testified they drove to Marvin's apartment building. Marvin exited the car, gave defendant his phone number, and told defendant to call him when he was ready to return the car. Defendant then drove to his house, went grocery shopping and returned to his house around 2 p.m. After about an hour or two, he went to a friend's cousin's house and "smoked weed."

No. 1-13-0190

Defendant stayed there a couple of hours, then met up with a "lady friend" and drove away from her house at around midnight.

¶ 43 As he was driving, defendant saw Max Brown on 75th Street and Colfax Avenue. Max got into the car and they went around the block and smoked weed. Max asked defendant to drop him off at his girlfriend's house. Defendant agreed to do so. As they were driving to that location, defendant noticed a dark colored truck following him. The truck stopped following him after about 15 minutes.

¶ 44 Defendant testified he stopped at a red light at the intersection of 79th Street and South Chicago Avenue. Defendant saw an unmarked police car come up behind him. Defendant thought the officers were "running" his license plate, but he was not concerned because he was unaware that the car had been reported stolen.

¶ 45 Defendant testified that the police car pulled in front of him and "cut the front of the car off." One of the officers opened the door of the police car and stepped out. Defendant was afraid he would get in trouble for smoking weed and/or that the car would be impounded, so he put the car in reverse in an attempt to flee. Defendant then stopped the car and turned the steering wheel to the left. At that point, as the car was stopped, the officers (who were now "to the right in front of the car") started shooting at him. Defendant ducked down, put the car in drive, and "hit the gas." He heard a "thump" but he was still ducked down and did not know that he had hit one of the officers. As the car moved forward, defendant did not look up because he was "too scared."

¶ 46 Defendant further testified that he finally looked up when he reached the middle of the intersection. Defendant took a left turn at the intersection, and he heard police shooting at the

No. 1-13-0190

back of his car. Police chased him for approximately 15 minutes until he was able to elude them. Defendant let Max out of the car in an alley.

¶ 47 Defendant testified he did not intend to kill any of the police officers and that he had only intended to go around them and drive away. Defendant admitted he had previous convictions for possession of a controlled substance and unlawful use of a weapon.

¶ 48 Defendant testified he was later arrested and taken to the police station, where he spoke with Detective Ford at about 3 a.m. on August 13, 2010. Defendant denied telling Detective Ford that he had never been in the Monte Carlo.

¶ 49 In rebuttal, Detective Ford testified he interviewed defendant at the police station at about 3 a.m. on August 13, 2010, and defendant stated he had never been in a silver Monte Carlo at any time.

¶ 50 Officer Hill testified he saw defendant's face as he was driving towards him, and that defendant was not ducking down.

¶ 51 Officer McGee also testified he saw defendant's face as he was driving towards him, and that defendant was not ducking down.

¶ 52 Thereafter, the State introduced a certified copy of defendant's 2006 conviction for possession of a controlled substance and a certified copy of defendant's 2008 conviction for aggravated unlawful use of a weapon. The State rested in rebuttal. Following closing arguments, the jury convicted defendant of the attempted murder of Officer Hill, the attempted murder of Officer McGee, and aggravated battery to a peace officer, Officer Hill. The trial court merged the aggravated battery conviction into the attempted murder conviction with respect to Officer Hill and sentenced defendant to two consecutive terms of 20 years' imprisonment. Defendant appeals.

No. 1-13-0190

¶ 53 Initially, we note defendant has waived review of many of his claims of error by failing to object at trial. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). However, we choose to address all defendant's claims of error on the merits.

¶ 54 First, defendant contends the State failed to prove him guilty of the attempted murders of Officers Hill and McGee beyond a reasonable doubt. "When a defendant challenges the sufficiency of the evidence, we must determine whether the evidence, when viewed in the light most favorable to the prosecution, allows any rational trier of fact to find the essential elements of the offense beyond a reasonable doubt. [Citation.] This standard of review applies in all criminal cases whether the evidence is direct or circumstantial. [Citation.] It is the function of the trier of fact to determine the inferences to be drawn from the evidence, assess the credibility of the witnesses, decide the weight to be given their testimony, and resolve any evidentiary conflicts. [Citation.] We will not substitute our judgment for that of the trier of fact on questions involving the weight to be assigned the evidence or the credibility of witnesses." *People v. Baugh*, 358 Ill. App. 3d 718, 736 (2005).

¶ 55 Defendant contends that since the video of the incident was shown to the jury and is available in the appellate record for this court to review, we should adopt a less deferential standard of review of the sufficiency of the evidence. Specifically, defendant argues that we are in the same position as the jury to review the video and we "may independently examine it and assign it its proper weight, without deference to the trier of fact, in assessing the rationalness or reasonableness of the verdicts as a whole."

¶ 56 We recently addressed this same issue in *People v. Span*, 2011 IL App (1st) 083037, in which a bench trial was held and the trial court convicted defendant, Samuel Span, of attempted armed robbery and aggravated battery after hearing testimony and viewing a surveillance video.

On appeal, Span argued that "less deference should be given to the trial court's findings because this court is in the same position to review the surveillance video as the trial court." *Id.* at ¶26. In addressing Span's argument, we noted that our supreme court has held that where the evidence at trial consists solely of documentary evidence, the reviewing court is not bound by the trier of fact's findings and may review the evidence *de novo*. *Id.* at ¶27 (citing *Addison Insurance Co. v. Fay*, 232 Ill. 2d 446, 453 (2009)). However, where "live testimony had a role in resolving a disputed issue of fact," the proper standard of review remains "the well-settled one applicable to the issue of whether the evidence was sufficient for a finding of guilty beyond a reasonable doubt." *Id.* at ¶27. As the case against Span involved both live testimony as well as the surveillance video, we viewed the video, examined the testimony, and then applied the well-settled standard of review of considering all the evidence in the light most favorable to the prosecution to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Id.*

¶ 57 In the present case, in addition to the video, live testimony of several witnesses was presented at trial to resolve the disputed issue of fact regarding whether defendant possessed the requisite mental state to commit attempted murder. Accordingly, as in *People v. Span*, we will examine the testimony and view the video and then consider whether, when viewing all the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt.

¶ 58 To convict defendant of attempted murder, the State must prove beyond a reasonable doubt that: (1) defendant committed any act which constituted a substantial step toward the commission of murder; and (2) defendant had the specific intent to kill. *People v. Valentin*, 347

No. 1-13-0190

Ill. App. 3d 946, 951 (2004). On appeal, defendant contests only the second element, arguing that he had no specific intent to kill either of the police officers.

¶ 59 "This court has observed that, since intent to kill is a state of mind, it is 'usually difficult to establish by direct evidence' and thus it is usually 'inferred from the surrounding circumstances.' [Citations.] These surrounding circumstances may include the character of the assault, the use of a deadly weapon, and the nature and extent of the victim's injuries." *People v. Teague*, 2013 IL App (1st) 110349, ¶24.

¶ 60 Our supreme court has held:

" 'Since every sane man is presumed to intend all the natural and probable consequences flowing from his own deliberate act, it follows that if one willfully does an act, the direct and natural tendency of which is to destroy another's life, the natural and irresistible conclusion, in the absence of qualifying facts, is that the destruction of such other person's life was intended.' " *People v. Koshiol*, 45 Ill. 2d 573, 578 (1970) (quoting *People v. Coolidge*, 26 Ill. 2d 533, 537 (1963)).

¶ 61 Defendant argues that the State failed to prove he had the specific intent to kill either of the officers because he never deliberately pointed his vehicle at either officer. Rather than aiming for the officers, defendant contends that he was merely trying to nonviolently escape from the traffic confrontation and from the officers firing their weapons at him, and that each officer moved into his path after he began moving his vehicle to get around the police car.

¶ 62 Defendant's argument is belied by the officers' testimony as well as the testimony of ASA Armbrust regarding Max Brown's statement and the video of the incident, all of which was discussed earlier in this order. The jury clearly found the testimony of the officers and ASA Armbrust, in conjunction with the video, to be more credible than defendant's testimony. We

No. 1-13-0190

will not substitute our judgment for the jury's credibility determinations. *Baugh*, 358 Ill. App. 3d at 736.

¶ 63 When the evidence is considered in the light most favorable to the prosecution, any rational trier of fact could have found from the officers' testimony, ASA Armbrust's testimony regarding Max's statement, and the videotape that defendant purposely aimed his vehicle and drove at Officer McGee at a high rate of speed, intending to strike him, and then purposely aimed his vehicle and drove at Officer Hill at a high rate of speed, intending to strike him too (and succeeding in his attempt). Any rational trier of fact also could have inferred that by driving the Monte Carlo toward Officer McGee and Officer Hill at a high rate of speed with the intent to strike them, and successfully striking Officer Hill, defendant possessed the requisite specific intent to kill for purposes of both attempted murder convictions. Accordingly, we reject defendant's challenge to the sufficiency of the evidence.

¶ 64 Next, defendant contends the trial court erred in the admission of certain evidence. "It is within the trial court's discretion to decide whether evidence is relevant and admissible. [Citation.] A trial court's decision concerning whether evidence is relevant and admissible will not be reversed absent a clear abuse of discretion. [Citation.] An abuse of discretion will be found only where the trial court's decision is 'arbitrary, fanciful or unreasonable' or where no reasonable man would take the trial court's view." *People v. Morgan*, 197 Ill. 2d 404, 455 (2001).

¶ 65 First, defendant contends the trial court erred by admitting irrelevant testimony from Officer Hill that he was a married man with two children. Officer Hill's testimony was as follows:

"Q. Are you married?"

No. 1-13-0190

A. Yes.

Q. Do you have any children?

A. Yes.

Q. How many?

A. Two."

¶ 66 We find no prejudicial error. *People v. Kitchen*, 159 Ill. 2d 1 (1994) is dispositive. In *Kitchen*, the defendant, Ronald Kitchen, was convicted of the first degree murder of 26-year-old Deborah Sepulveda, her three-year-old son and her two-year old daughter, together with 30-year-old Rose Marie Rodriguez and her three-year-old son. *Id.* at 11. On appeal, Kitchen argued that the State deliberately elicited prejudicial victim impact testimony from three surviving family members, including Deborah's sister and mother, and Rose Marie's aunt. *Id.* at 33. Specifically, defendant argued "it was unnecessary for the State to have asked these witnesses questions regarding the following: the burial arrangements and, in particular, the fact the children were buried in the same casket with their respective mothers; that Rose Marie's surviving son was now being raised by his 'quite disabled' grandmother; the details as to how each witness learned about the fire and conveyed the news to other members of the family; that Deborah's mother rushed to the house and saw the bodies being carried out; the children's demeanor as 'happy and normal' before their deaths; and that Deborah's mother went through the house following the fire and recovered her grandson's photograph." *Id.*

¶ 67 The supreme court noted that not every mention of the victim's family requires *per se* reversal and remand for a new trial. *Id.* Rather, it is how the evidence of the victim's family is introduced at trial and argued to the jury that is key. *Id.* If the prosecution obtains testimony about the victim's family from the witness intentionally and in such a manner as to make it

No. 1-13-0190

appear to the jury to be material to defendant's guilt or innocence, and/or if the prosecution dwells on the victim's family throughout closing argument in an effort to relate it to defendant's guilt, then the evidence and argument will be deemed inflammatory and improper. *Id.*

¶ 68 The supreme court found no reversible error in the case before it where "the remarks made by the testifying witnesses were admissible for the purpose of identification of the victims" or were "incidental to other testimony," and where the remarks were not mentioned by the State during opening statement or closing arguments and were "not stressed or emphasized" by the prosecution. *Id.* at 34.

¶ 69 In the present case, the testimony at issue involved three questions and answers, establishing only that Officer Hill was married and had two children. This testimony provided background information about the victim, Officer Hill, and was incidental to his testimony regarding the circumstances surrounding defendant hitting him with the Monte Carlo. Officer Hill's testimony regarding his wife and children did not specifically address any impact his injury has had on them and, thus, was far less extensive than the testimony in *Kitchen* that was found not to constitute reversible error. Further, the State never explicitly mentioned, either in opening statement or during closing arguments, Officer Hill's brief testimony that he was married with two children. We do note that during rebuttal closing arguments, the State showed the jury the photograph of Officer Hill in the hospital with his daughter and mentioned that "it's bad enough that somebody's daughter would have to visit you in the hospital during dire circumstances, but is it really necessary for her to be visiting him because of [defendant]?" Other than this single mention of Officer Hill's daughter (which was not objected to by defendant), the State did not reference Officer Hill's family during opening statement or closing argument. On this record, Officer Hill's very brief testimony regarding the fact of his marriage and two children (and the

No. 1-13-0190

State's isolated reference to his daughter during rebuttal closing arguments) was harmless and did not constitute reversible error.

¶ 70 Defendant next argues the trial court erred in admitting the photograph of Officer Hill and his daughter in the hospital. The photograph depicts Officer Hill sitting in a chair with a knee brace while a young woman sits near him. Officer Hill testified:

"Q. What do you see on your legs?

A. I have a brace on my left leg.

Q. Who is that person in [the] background?

A. That's my daughter.

Q. She come see you [in] the emergency room?

A. Yes."

¶ 71 We find no reversible error. "The State is entitled to introduce its full proof of the crime charged in the indictment, as long as the evidence is probative of an issue." *People v. Tyler*, 128 Ill. App. 3d 1080, 1095 (1984). The photograph depicting Officer Hill's injured left knee was relevant and admissible to show he had suffered great bodily harm, an element of the offense of aggravated battery of a peace officer. See 720 ILCS 5/12-4(a) (West 2010).

¶ 72 Defendant argues on appeal that the photograph should have been "trimmed" so as not to show Officer Hill's daughter. As defendant never argued in the trial court that the photograph should be trimmed, and as the photograph was otherwise relevant and admissible to show an element of one of the charges (aggravated battery of a peace officer) against him, we find no error in its admission. Further, the admission of the photograph and of Officer Hill's brief accompanying testimony was harmless, as the evidence against defendant was overwhelming and the result of the trial would not have been different even in the absence of the photograph.

¶ 73 Next, defendant argues the trial court erred by overruling his objection to Officer Hill's testimony that the knee injury he suffered as a result of being struck by the Monte Carlo prevents him from working "on the street anymore," and that he is now assigned to "desk duty" and performs primarily "secretarial work." We find no error, as this testimony helped show the nature and seriousness of the injury, which is an essential element of the charge of attempted murder and aggravated battery. See *People v. Goins*, 2013 IL App (1st) 113201, ¶ 79; *People v. Chatman*, 110 Ill. App. 3d 19, 24 (1982).

¶ 74 Next, defendant contends the State made improper remarks during its opening statement. "In opening statement, the State is permitted to comment on what it anticipates the evidence will be and the reasonable inferences to be drawn therefrom. [Citation.] Absent deliberate misconduct, incidental or uncalculated remarks in opening statement cannot form the basis of reversal. [Citation.] Reversal is warranted only where the complained-of remarks engender substantial prejudice such that the result of the trial would have been different had the comments not been made." *People v. Moore*, 358 Ill. App. 3d 683, 692 (2005). The trial court has great discretion in defining the allowable scope of opening statements and the trial court's determination will not be reversed absent an abuse of discretion. *People v. Campbell*, 2012 IL App (1st) 101249, ¶ 54.

¶ 75 Defendant first contends the State made an improper emotional appeal to the jury during its opening statement. See *People v. Pursley*, 284 Ill. App. 3d 597, 607 (1996) (The State may not make "inflammatory" comments during opening statements that are designed "solely to arouse the passions of the jury."). Specifically, defendant references the following portions of the State's opening statement:

"Ladies and gentlemen, in a few moments through that door Officer Courtney Hill is going to walk or attempt to walk to that stand. Why I say that is because he will actually limp to that stand. *** You're going to hear the story how he got the limp from his own mouth."

¶ 76 We find no error because the comment properly referenced Officer Hill's expected testimony that he continues to suffer a limp resulting from defendant driving his car directly at him.

¶ 77 Defendant next contends the State improperly appealed to the jury's emotion at the end of its opening statement, when it commented: "Now by the grace of God this officer is going to be coming in here only with a limp because he survived. He survived having a 2,000 pound vehicle come at him and hit him. But there is a word for what the defendant did on that date. It's attempt murder. He attempted the murder of those two officers when he tried [to] run them down."

¶ 78 We find no error. The phrase "by the grace of God" is an idiomatic expression, which is "commonplace enough" that its use during opening statement does not constitute reversible error. See *Moore*, 358 Ill. App. 3d at 692.

¶ 79 The remainder of the State's comment referenced defendant driving his car at Officer McGee and Officer Hill, striking and injuring Officer Hill. The comment properly referenced the officers' expected testimony of the incident and of Officer Hill's injury, as well as the video depicting defendant's Monte Carlo striking Officer Hill.

¶ 80 Next, defendant contends the State made various improper remarks during closing arguments. Prosecutors have great latitude in making their closing arguments, and such arguments are proper if they are based on the record or are reasonable inferences drawn therefrom. *People v. Moya*, 175 Ill. App. 3d 22, 24 (1988). The entire record, particularly the

No. 1-13-0190

full argument of both sides, must be considered to assess the propriety of prosecutorial argument. *People v. Williams*, 313 Ill. App. 3d 849, 863 (2000). Prosecutorial comments constitute reversible error only if they engender "substantial prejudice." *People v. Wheeler*, 226 Ill. 2d 92, 123 (2007). Substantial prejudice occurs when "the improper remarks constituted a material factor in a defendant's conviction." *Id.*

¶ 81 In *Wheeler*, our supreme court applied a *de novo* standard of review to the issue of prosecutorial statements during closing argument. *Id.* at 121. In *People v. Blue*, 189 Ill. 2d 99 (2000), which was cited by *Wheeler*, our supreme court applied an abuse of discretion standard. *Wheeler*, 226 Ill. 2d at 128. We need not resolve the issue of the appropriate standard of review, because our holding affirming the trial court would be the same under either standard.

¶ 82 First, defendant contends the State unfairly evoked sympathy for Officer Hill by stating:

"Ladies and gentlemen, there are certain-being a police officer is a calling. It's not a job that's superior to any other job. I'm not saying that by any means, but certain people decide to get into that life for a reason, maybe for a short time. But listen to what you heard on the stand just a couple of days ago.

Officer Courtney Hill, a 17-year veteran, a person who in every position he held prior to the one he's holding now he was on the street active from one year to another. This is a person who wanted to be a police officer and you know that from *** my questions when I asked him. Seventeen years as a police officer and before that he was a detention aid. Before he was a police officer he tried to get a job with the police department.

[Defense Counsel]: Objection, your Honor.

THE COURT: Overruled.

[Prosecutor]: This is what the evidence showed. This is what you heard from him. This is a 17-year veteran, a person who was on the street, who today has to sit behind a desk because of this man right over here. He put him there."

¶ 83 The prosecutor's comment was properly based on Officer Hill's testimony on direct examination that he is a 17-year veteran of the Chicago police department currently assigned to the Area South gang unit. Officer Hill testified he had previously been assigned to the 3rd District gang team, the tactical team in the 2nd District, the public housing unit, and the 6th District gang team. He had also been a patrol officer and a detention aid. Officer Hill testified that after defendant struck him with the Monte Carlo, he was no longer able to work "on the street" but instead is assigned to desk duty.

¶ 84 As the prosecutor's comment accurately reflected Officer Hill's testimony, we find no error.

¶ 85 Next, defendant complains on appeal about the following comment by the State:

"Ladies and gentlemen, I'm going to finish up in just a second by telling you that in certain parts of the world it's said that people work to live, but they say that in America we live to work. That's a clever way of saying that sometimes our careers define our person."

¶ 86 We fail to see how the prosecutor's remark about the American work ethic constituted a material factor in defendant's conviction. Accordingly, the remark did not constitute reversible error.

¶ 87 Next, defendant complains on appeal about the following comment by the State:

"This is a photograph of Courtney Hill. Sometimes you lose sight of the true people we have to really watch out for, the victims in this case. This is Officer Courtney Hill, and you can see the young lady with him. That's his daughter. Now, it's bad enough that somebody's

No. 1-13-0190

daughter would have to visit you in the hospital during dire circumstances, but is it really necessary for her to be visiting him because of [defendant]? You know, Officer Hill limped up. It's just a slight limp. I'm not trying to exaggerate it. He limped up to the stand.

When everyone is done. When every person in this courtroom-the trial is finished and whatever decisions that are made are made, everyone is going to get to go home and forget about this. Maybe this is a story you'll remember or whatever. But Officer Hill is going to go home and he's going to limp, and every time he limps-

[Defense Counsel]: Objection, Judge.

THE COURT: Overruled.

[Prosecutor]: That's [defendant] with him every day for the rest of his life. Everyone gets to go home, but Officer Hill has to live with this. Why? Because he was doing his job because he likes to be a police officer? More like because [defendant] is a real tough guy with a car running at police officers."

¶ 88 Defendant argues that this argument was error because it improperly referenced Officer Hill's daughter. Given the extremely limited testimony and argument regarding Officer Hill's daughter (as discussed earlier in this order), coupled with the overwhelming evidence of defendant's guilt, we cannot say the complained-of comment was a material factor in defendant's conviction necessitating a new trial.

¶ 89 Defendant also contends the State's comment improperly referenced Officer Hill's limp. As discussed earlier in this order, Officer Hill testified he continues to suffer a limp resulting from defendant striking him with the Monte Carlo. Officer McGee also testified to defendant's striking of Officer Hill with the Monte Carlo, and the resulting injury to his leg, and the incident

No. 1-13-0190

was captured on videotape which was played to the jury. The State's comment was properly based on the evidence at trial and did not constitute error.

¶ 90 Defendant contends the State improperly evoked the jury's passion during closing arguments by twice stating that "by the grace of God," the officers avoided being killed by defendant. As discussed earlier in this order, such a comment was an idiomatic expression that did not rise to the level of reversible error. See *Moore*, 358 Ill. App. 3d at 692.

¶ 91 Next, defendant contends the State improperly argued: "Today is your last day of jury service, but today is Officer Hill and McGee's day for justice. Today you can hold [defendant] accountable for what he did on this video." This argument was not improper, as "the State may denounce the activities of the defendant and urge that justice be administered." *People v. Goins*, 2013 IL App (1st) 113201, ¶ 93.

¶ 92 Next, defendant contends the State improperly disparaged the defense by stating during rebuttal closing argument that defendant's testimony was "[t]en minutes of garbage," and that defendant's "version of the story is bogus. It's conjured up."

¶ 93 We note that comments made during closing argument must be considered in the proper context by examining the entire closing arguments of both the State and defendant. *People v. Klinier*, 185 Ill. 2d 81, 154 (1998). The prosecutor may respond to comments by defense counsel which clearly invite a response. *Id.* In the present case, defense counsel stated during his closing arguments that "[defendant] didn't have to testify. You've heard it before. If he doesn't testify, you can't even use it against him under the law, but he went up there voluntarily." Defense counsel continued: "[Defendant] wanted to go up there and tell you what really happened to him that day, and when you saw him testify, you could see he was re-living what happened to him. He told you the truth." In response to defense counsel's argument that defendant had truthfully

No. 1-13-0190

testified at trial that he never intended to kill either of the officers, the State argued during rebuttal closing argument that defendant's testimony was "garbage," "bogus," and "conjured up." As the State's argument attacking defendant's credibility was made in response to defense counsel's argument that defendant had testified truthfully, we find no error.

¶ 94 Next, defendant contends the State improperly shifted the burden of proof to him by arguing that "[e]ither the officers are lying or the defendant is lying." We find no error. *People v. Coleman*, 158 Ill. 2d 319 (1994), and *People v. Siefke*, 195 Ill. App. 3d 135 (1990), are dispositive.

¶ 95 In *Coleman*, defendant Dedrick Coleman complained of the following remark made by the prosecution during closing arguments:

[Prosecutor]: Ladies and gentlemen, in order to believe the [d]efendant you must believe that all the civilian witnesses, all the police, all the experts, lied. And of all the 4 or 5 million people in this city.

[Defense counsel]: Objection.

THE COURT: Overruled.

[Prosecutor]: They got together to frame him. On two unrelated crimes in different areas of the city. It's not to be believed, ladies and gentlemen." *Id.* at 345.

¶ 96 Our supreme court held that it is error for the State to shift the burden of proof to defendant by arguing to the jury that to *acquit* defendant, it would have to find that the prosecutor's witnesses were lying. *Id.* at 346. However, the supreme court found that in the case before it, the State engaged in no such burden shifting. Instead of arguing to the jury that to *acquit* defendant it would have to find the State's witnesses were lying, the State "informed the jurors that in order to believe defendant they would have to find that all the State's witnesses had

No. 1-13-0190

lied. Thus, the jury could disbelieve defendant but still conclude that the State had not met its burden of proof." *Id.*

¶ 97 In *Siefke*, the appellate court also held that it is error for the State to shift the burden of proof to defendant by arguing to the jury that in order to reach a verdict of not guilty, it would have to find that the prosecution's witnesses were lying. *Id.* at 145. However, the appellate court noted that in the case before it:

"[T]he prosecutor merely revealed the contradictions between defendant's version, the complainant's recollection, and the investigatory officers' reports concerning the incident in question. The prosecutor argued that the jury would have to believe that the State's witnesses were lying in order to believe defendant's version of the incident. The prosecutor did not state that the jury would have to find that the State's witnesses were 'liars' in order to *acquit* defendant of the offenses charged. Consequently, after reading the prosecutor's closing argument in its entirety, we find that the argument was properly based on the evidence and hence find no prejudicial error." (Emphasis added.) *Id.*

¶ 98 Similarly, in the present case, the State argued that the jury would have to find the officers were lying in order to believe defendant's version of the incident, but the State never argued that the jury would have to find that the officers were lying in order to *acquit* defendant of the offenses charged. Accordingly, the State never shifted the burden of proof to defendant, and consequently we find no prejudicial error.

¶ 99 Next, defendant contends his trial counsel provided ineffective assistance. "Generally, to show ineffective assistance of counsel, a defendant must establish: (1) counsel's representation fell below an objective standard of reasonableness; and (2) counsel's alleged deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). We

accord substantial deference to an attorney's decisions as there is a strong presumption that an attorney acted adequately. *Strickland*, 466 U.S. at 689. A defendant must overcome the strong presumption the challenged action or inaction 'might have been the product of sound trial strategy.' *People v. Evans*, 186 Ill. 2d 83, 93 (1999). Every effort must 'be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time.' *Strickland*, 466 U.S. at 689. Because effective assistance refers to competent and not perfect representation, mistakes in trial strategy or judgment will not, of themselves, render the representation incompetent. *People v. Calhoun*, 404 Ill. App. 3d 362, 383 (2010). To satisfy the prejudice prong of the *Strickland* test, a defendant must demonstrate that, but for defense counsel's deficient performance, the result of the proceeding would have been different. *Strickland*, 466 U.S. at 694. If a reviewing court finds that the defendant did not suffer prejudice, it need not decide whether counsel's performance was constitutionally deficient." *People v. Steele*, 2014 IL App (1st) 121452, ¶ 37.

Defendant contends his defense counsel provided ineffective assistance by failing to question Officers Hill and McGee about their possible motive to testify falsely. Specifically, prior to trial, defense counsel informed the trial court that Max Brown, who had been shot by police during the encounter with defendant, indicated "he is considering seriously filing a suit against the police department." The trial court responded: "That has no bearing on this case unless either side wants to use it in one of their examinations if you feel that it might go to bias, etc." Defense counsel failed to question Max, at trial, about his possible lawsuit. Defense counsel also failed to question the officers about their knowledge, if any, regarding Max's possible lawsuit against them. On appeal, defendant contends that Max's potential lawsuit against the officers could establish some evidence that the officers were motivated to testify falsely against defendant so as

No. 1-13-0190

to minimize their potential civil liability arising out of Max's shooting. Accordingly, defendant contends his defense counsel provided ineffective assistance by failing to question Max and the officers regarding Max's possible lawsuit.

¶ 100 We find no ineffective assistance of trial counsel. *People. v. Martinez*, 120 Ill. App. 3d 305 (1983), is controlling. In *Martinez*, defendant, Fidel Martinez, argued on appeal that the trial court erred by prohibiting him from cross-examining a witness as to whether he contemplated filing a civil action against defendant. *Id.* at 308. Defendant claimed such a refusal amounted to a denial of his right to impeach the witness by showing his interest, bias or motive. *Id.*

¶ 101 The appellate court disagreed. *Id.* The appellate court noted:

"The actual pendency of civil litigation is relevant as tending to show the bias or interest of a witness, and thus is a proper subject matter of cross-examination. [Citations.] The instant case, however, involves potential rather than pending litigation. What action, if any, a witness may or may not choose to file in the future is so indefinite and questionable as to have little probative value." *Id.*

¶ 102 The present case also involves potential rather than pending litigation by Max against the officers. In disclosing the potential lawsuit to the trial court, defense counsel never indicated that the officers had been made aware thereof. We find no ineffective assistance where defense counsel exercised sound trial strategy in deciding not to examine Max or the officers on a potential lawsuit of which there is no evidence in the record that the officers were even aware and that was otherwise so "indefinite and questionable as to have little probative value." *Id.*

¶ 103 Next, defendant contends his trial counsel provided ineffective assistance by failing to examine the officers regarding an investigation of the shooting by the Independent Police Review Authority (IPRA). Defendant argues that the IPRA investigation would have been a

No. 1-13-0190

relevant subject of inquiry to show the officers' potential motivation to testify falsely against defendant so as to justify the discharge of their weapons.

¶ 104 We find no ineffective assistance, as review of the record indicates defense counsel's decision not to examine the officers regarding the IPRA investigation into the shooting was a matter of trial strategy. Specifically, the record indicates that, prior to trial, defense counsel issued a subpoena to the IPRA seeking the production of certain items related to an open, ongoing investigation in the officers' shooting in this case. In response to the subpoena, the IPRA delivered the requested items to the trial court for an *in camera* inspection. On July 13, 2011, the trial court stated for the record that it had conducted the *in camera* review and that it was going to "tender the file in its entirety" to the parties.

¶ 105 Thereafter, there was a discussion regarding which party would make copies of the items (which included some DVDs). The trial court asked defense counsel: "Would you like me to tender it to the State to have it all copied for you or do you have [the] facilities to make the video copies to then in turn tender to the State?" Defense counsel replied: "Judge, can I make sure that we have already received all of that and what I haven't received I will give to the State?" The trial court responded: "I will give it to you to review."

¶ 106 On this record, defendant has failed to overcome the "strong presumption" that defense counsel's decision not to question the officers at trial about the IPRA investigation was the result of sound trial strategy (see *Steele*, 2014 IL App (1st) 121452, ¶ 38), as defense counsel's decision not to so question the officers appears to have been made after full review of the IPRA investigative file and thus was a strategic decision made with full knowledge of all relevant facts surrounding the investigation. Accordingly, defendant's claim of ineffective assistance fails.

Id. ¶ 37 (even mistakes in trial strategy will not render the representation ineffective).

¶ 107 Next, defendant contends the State committed discovery violations denying him a fair trial. Specifically, defendant contends the State did not timely disclose the photograph of the Leica scan indicating that the shots were fired from the driver side of the car after defendant had put the car in drive and moved toward the officers. Defendant also contends the State failed to timely disclose that Investigator Keeler would provide expert testimony corroborative of the Leica scan and that the trial court erred in overruling an objection to the State's closing argument summarizing Investigator Keeler's conclusions.

¶ 108 "While compliance with the discovery requirements is mandatory, the failure to comply with these requirements does not require a reversal absent a showing of surprise or undue prejudice. The burden of showing surprise or prejudice is upon the defendant, and the failure to request a continuance is a relevant factor to consider in determining whether the new testimony actually surprised or unduly prejudiced the defendant." *People v. Robinson*, 157 Ill. 2d 68, 78 (1993). "Among the factors which this court considers in determining whether a defendant is entitled to a new trial stemming from a discovery violation by the State are the closeness of the evidence, the strength of the undisclosed evidence, the likelihood that prior notice could have helped the defense discredit the evidence, and the willfulness of the State in failing to disclose the new evidence." *Id.* at 81.

¶ 109 As previously discussed in detail earlier in this order, the evidence in this case was not close. Also, the strength of the undisclosed evidence (the photograph of the Leica scan) was not particularly strong, given that it was largely duplicative of another photograph (People's exhibit number 36) properly admitted into evidence. There is no indication of any willfulness by the State in failing to earlier disclose the photograph of the Leica scan. Defendant never asked for a continuance. Accordingly, defendant has failed to show surprise or prejudice by the alleged

No. 1-13-0190

discovery violations (or by the closing argument thereon) and, therefore, a new trial is not warranted.

¶ 110 Defendant contends:

"Pertaining to the matter of Keeler's testimony and [the photograph of the Leica scan], counsel was ineffective in a host of ways: during the pretrial investigatory phase, and in failing to make sufficient, proper and consistent objections and requests for remedies, thereby potentially forfeiting [defendant's] claims of error."

Given the overwhelming evidence against defendant, he has failed to show any prejudice by his counsel's alleged errors. Accordingly, defendant's claim of ineffective assistance fails. See *Steele*, 2014 IL App (1st) 121452, ¶ 37.

¶ 111 Next, defendant challenges his sentences of two consecutive 20-year terms of imprisonment.

¶ 112 The trial court was mandated to sentence defendant to a minimum of 20 years' imprisonment for each of his attempted murder convictions. See 720 ILCS 5/8-4(c)(1)(A) (West 2010). The sentences were required to run consecutively, given that severe bodily injury had been found. See 730 ILCS 5/5-8-4(d)(1) (West 2010).

¶ 113 Defendant argues that his mandatory consecutive sentences were unconstitutional because they violated the proportionate penalties clause as applied to him.

¶ 114 "We begin with the presumption that all statutes are constitutional. [Citation.] As a result of this presumption, the party challenging the constitutionality of a statute bears the burden of demonstrating that a constitutional violation exists. [Citation.] Great deference is given to the legislature's determination of the seriousness of various offenses and the sentences that the

No. 1-13-0190

legislature has deemed appropriate for those offenses. [Citation.] We review the question of whether a statute is constitutional *de novo*." *People v. Guyton*, 2014 IL App (1st) 110450, ¶ 55.

¶ 115 "The proportionate penalties clause provides that '[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship.' [Citation.] In assessing an alleged proportionate penalties violation, we must determine whether the penalty at issue has been set by the legislature according to the seriousness of the offense. [Citation.] There are currently two ways to determine whether a penalty will violate the proportionate penalties clause: (1) whether the penalty is cruel, degrading, or so wholly disproportionate to the offense committed as to shock the moral sense of the community; and (2) whether offenses with identical elements are given different sentences." *Id.* ¶ 56.

¶ 116 Here, defendant's challenge to his sentences comes under the first test. Given the overwhelming evidence that defendant committed two counts of attempted murder by purposely driving his Monte Carlo at two police officers at a high rate of speed, striking and injuring one of them, we cannot say his two consecutive terms of 20 years' imprisonment are cruel, degrading, or so wholly disproportionate to the offense committed as to shock the moral sense of the community. Accordingly, defendant's proportionate penalties challenge fails.

¶ 117 Defendant contends the "cumulative effect" of the various errors requires that he be granted a new trial. We disagree. There is no reversible error on any individual issue and no cumulative error.

¶ 118 For the foregoing reasons, we affirm the circuit court. As a result of our disposition of this case, we need not address the other arguments on appeal.

¶ 119 Affirmed.