

NOTICE
Decision filed 05/07/14. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2014 IL App (5th) 110290-U

NO. 5-11-0290

IN THE

APPELLATE COURT OF ILLINOIS

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).

FIFTH DISTRICT

| | | |
|--------------------------------------|---|-------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the |
| |) | Circuit Court of |
| Plaintiff-Appellee, |) | Jackson County. |
| |) | |
| v. |) | No. 10-CF-694 |
| |) | |
| TREVIS THOMPSON, |) | Honorable |
| |) | E. Dan Kimmel, |
| Defendant-Appellant. |) | Judge, presiding. |

JUSTICE CATES delivered the judgment of the court.
Justices Goldenhersh and Schwarm¹ concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant was proved guilty of first-degree murder beyond a reasonable doubt, and his sentence was not manifestly disproportionate to the nature of the offense.

¶ 2 Defendant, Trevis Thompson, was convicted after a jury trial of first-degree murder, aggravated battery, and mob action, and was sentenced by the circuit court of Jackson County to 50 years' imprisonment for first-degree murder. Defendant appeals,

¹Justice Wexstten was originally assigned to participate in this case. Justice Schwarm was substituted on the panel after Justice Wexstten's retirement, and has read the briefs and listened to the tape of oral argument.

contending that he was not proved guilty beyond a reasonable doubt. He further asserts that the court erred in allowing into evidence allegations pertaining to defendant having stabbed another person shortly before the victim was stabbed, and in overruling defendant's objections to improper comments made in closing argument pertaining to defendant's failure to call a certain witness to corroborate his testimony. Defendant also believes his sentence is excessive in light of the circumstances of the offense and his lack of a criminal history. We affirm.

¶ 3 On the evening of November 19, 2010, a new establishment in Carbondale was having a "soft opening" event. Because the establishment did not have its liquor license in place for the event, many of the attendees were drinking outside in the parking lot after purchasing alcohol from nearby stores. At approximately 1:15 in the morning, an announcement was made that the owner of the parking lot next door to the club was having parked cars towed off its lot. Many of the patrons started leaving the club to move their vehicles off the other lot. At about the same time, the parking lot became the scene of numerous brawls. According to the estimates of various witnesses, at one point, there were over 50 people in the parking lot either fighting or watching.

¶ 4 Marshare Adams was one of the patrons at the club that evening. As she was leaving the club, she happened to be carrying \$5 in her hand. According to her testimony, defendant came up and snatched the money from her. Adams followed defendant out to an SUV, owned by codefendant Patrick Greene, and demanded back her money. Greene jumped out of the vehicle and started yelling at Adams. Another patron, Jeremy Clark, saw Adams, Greene, and defendant arguing. He continued watching as a

crowd began to gather around them. He then observed his cousin, Orlando Clark, the victim, approach Greene and start exchanging words and then punches. According to another witness, the victim approached Greene to stop him from yelling obscenities at Adams. Jeremy Clark then became involved in his own fight with someone else and stopped watching the victim until he was told that defendant and Greene were fighting with the victim near the wall of a nearby building. His cousin's girlfriend, Regina Labotte, was yelling for help. As Jeremy ran toward the victim, he saw defendant and Greene run away.

¶ 5 Another witness, Courtney Williams, testified he saw Adams and Greene arguing by Greene's SUV. According to Williams, defendant was seated inside Greene's vehicle. Williams observed the victim trying to break up the argument and then saw defendant get out of the vehicle with a blade in his hand. When another individual attempted to step in to break up the fight, Williams witnessed defendant stab that individual. Williams then became involved in yet another fight, but did see defendant and Greene running after the victim. According to Williams, defendant was swinging a blade. Once they reached the wall of a nearby building, Williams saw defendant make "jabbing" motions at the victim. Williams further testified that after the victim fell to the ground, Greene hit the victim over the head with empty liquor bottles before leaving the area.

¶ 6 The victim's girlfriend, Regina Labotte, testified that she saw Greene in front of the victim by the wall and that the two of them were punching each other. According to Regina, defendant was standing near the victim's left side facing the victim who was then cornered against the wall. Defendant was stabbing at the victim with jabbing motions.

Regina ran toward them screaming, and defendant turned to run away. Regina watched the victim drop to one knee and saw Greene pick up two bottles and begin hitting the victim on the head. She threw herself on top of the victim and begged for Greene to stop hitting the victim. Greene dropped the bottles and ran away. Regina tried to help the victim up, but he was unable to stand. She noticed his breathing growing shorter and then stop. At this point, the police arrived, followed by the paramedics.

¶ 7 Police officers began arriving at the club at approximately 1:20 in the morning. They encountered 50 or 60 people in the parking lot and described the scene as "chaotic" and near "riot conditions." After finding the victim sitting against a wall, they tried performing CPR on him with little success. The paramedics soon discovered a large gaping wound in the victim's left thigh, with blood spurting from the wound whenever chest compressions were administered. Although the victim received several stab wounds on various parts of his body, he died from the wound to his left thigh. The femoral artery had been completely severed, causing the victim to bleed to death.

¶ 8 Some of the police officers who arrived on the scene began looking for witnesses and suspects. Two of these officers followed a group of men that they had observed walking down the alley off the lot. The group refused to stop when commanded. At the entrance to the alley, the men split up and fled in different directions. Two of these men were defendant and Greene. As additional officers arrived, other officers followed defendant and Greene until both were stopped and apprehended. During the course of the investigation, several items of clothing were seized from defendant and from the scene.

While the victim's DNA was not found on any of defendant's clothing, blood from the first individual stabbed allegedly by defendant was found on defendant's clothing.

¶ 9 Defendant claimed he had spent the evening riding around with friends before ending up at the club's parking lot. He had also gone inside the club a couple of times over the course of the evening. Upon leaving the club the last time, he claimed he ran into Adams, who was intoxicated. She asked him for some money, and he pulled some from his pocket. Adams grabbed more than he intended for her to take and took the money back. He and Adams started pushing each other "in jest" over the money until he claims he hurt his ankle. He went back to Greene's SUV to get a ride home, but Adams followed him, still asking for money. According to defendant, someone opened the door while he was sitting in the vehicle and pulled him out. He scuffled with the person who pulled him out of the vehicle and was slammed to the ground. He denied getting into a fight with the victim or stabbing him that evening. He also denied having a knife on him and had no recollection of the victim being stabbed. The jury, however, found him guilty of first-degree murder, aggravated battery, and mob action.

¶ 10 Defendant argues on appeal that he was not proved guilty beyond a reasonable doubt because there was no physical evidence connecting him to the stabbing. In particular, he points to the lack of the victim's DNA on his clothing despite the significant amount of blood at the scene. He also contends that the testimony of those witnesses claiming to have seen him with a knife and/or stabbing the victim was contradicted by the testimony of other witnesses and by the physical evidence in general.

¶ 11 We initially note that a criminal conviction will not be set aside on review unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. The relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the elements of the crime beyond a reasonable doubt. *People v. Milka*, 211 Ill. 2d 150, 178, 810 N.E.2d 33, 49 (2004). We, as a reviewing court, are not to substitute our judgment for that of the jury regarding the credibility of the witnesses, the weight given to the evidence, the reasonable inferences drawn from the evidence, or the resolution of inconsistencies or conflicts in the evidence. *People v. Sutherland*, 223 Ill. 2d 187, 242, 860 N.E.2d 178, 217 (2006).

¶ 12 Looking at the totality of the evidence presented in the light most favorable to the prosecution, we cannot say defendant was not proved guilty of first-degree murder beyond a reasonable doubt. Multiple witnesses saw defendant holding a weapon and moving toward the fight between the victim and Greene. Multiple witnesses saw defendant and Greene attacking the victim as he was cornered against a brick wall. Multiple witnesses saw defendant make stabbing gestures at the victim, who subsequently fell to the ground. This evidence alone was more than sufficient to sustain defendant's convictions. Against such overwhelming evidence, any inconsistency in the testimonies as to the color of the knife which defendant used to stab the victim is hardly material, especially when two witnesses described defendant exiting Greene's vehicle holding a knife. "[M]inor discrepancies in the evidence are an insufficient basis upon which to set aside a finding of guilt where, as in this case, the finding is supported by the

totality of the evidence beyond a reasonable doubt." *People v. Wages*, 261 Ill. App. 3d 576, 587, 633 N.E.2d 855, 864 (1994). Discrepancies in the description of defendant's clothing were similarly explainable and understandable given the circumstances of the evening. The presence of such discrepancies does not, in and of themselves, generate a reasonable doubt, given that a positive identification of the accused was otherwise made. See *People v. Slim*, 127 Ill. 2d 302, 309, 537 N.E.2d 317, 320 (1989); *People v. Harrison*, 57 Ill. App. 3d 9, 14-15, 372 N.E.2d 915, 920 (1978). Here, the victim's girlfriend, Regina, identified defendant as the individual who stabbed her boyfriend. Her identification was very credible because she had known defendant's mother, and through her, defendant, for at least 16 years. As the longtime friend of defendant's mother, Regina actually had a motive for not identifying defendant as the attacker. Additionally, several other witnesses corroborated various aspects of Regina's account. Again, the credibility of the witnesses is for the jury to resolve. *Sutherland*, 223 Ill. 2d at 242, 860 N.E.2d at 217. We also note that the jury was made aware of the relationships of the various witnesses to either defendant or the victim, as well as of any criminal records that they may have had. The jury was also made aware of any delays in the reporting of the incident to the police. Delays in the reporting of crimes, however, particularly when prompted by fear, certainly do not destroy a witness's credibility. See *People v. Franklin*, 130 Ill. App. 3d 514, 520, 474 N.E.2d 776, 781 (1985). We conclude that the testimonies presented here pertaining to the stabbing of the victim by defendant were both credible and corroborated. As the State points out, a jury is not required to search out a series of potential explanations compatible with innocence and elevate them to the status of

reasonable doubt. See *People v. Lopes*, 17 Ill. App. 3d 986, 992, 309 N.E.2d 108, 113 (1974).

¶ 13 We also conclude that the lack of the victim's blood on defendant's clothing does not justify the reversal of his conviction. The victim's girlfriend explained that when she saw defendant stabbing the victim, she started running toward them screaming. As she did so, defendant turned and ran off. When the girlfriend tried to help the victim stand, she saw that his left pant leg and shoe were covered in blood, whereas the victim's right shoe hardly had any blood on it. Such evidence supports the inference that the victim's own pant leg and shoe absorbed the blood from the wound to his thigh. The forensic pathologist testified that the wound would likely have spurted blood, but it depended on how close the artery was to the skin surface and whether the spurt was blocked by clothing. While one of the paramedics testified that blood spurted from the victim's thigh when chest compressions were administered, he also noted that the victim's pants had been cut away in order to attend to the wound. It is therefore a fair inference that the majority of the blood found on the scene was shed after defendant was no longer anywhere near the victim. Accordingly, the jury's verdict was not unreasonable given that the evidence was more than sufficient to prove him guilty otherwise.

¶ 14 Defendant next argues on appeal that the court erred in allowing the prosecution to introduce evidence of defendant's alleged involvement in another stabbing shortly before the victim was stabbed. Defendant believes the evidence was not probative of any issue and served merely to show that he had a propensity to commit a crime and deserved punishment.

¶ 15 According to the prosecution's theory of the case, Greene and the victim were fighting by Greene's vehicle. Defendant retrieved a knife and planned to intervene in the fight. Another individual, Antonio Pugh, also stepped in to break up the fight, but he was stabbed by defendant. Shortly thereafter, the victim was fatally stabbed. Defense counsel moved to bar any evidence that defendant may have stabbed Pugh. The prosecution argued that such evidence was necessary to establish both defendant's identification and that he was at the scene. The court agreed and denied defense counsel's motion. Defendant, relying on *People v. Gregory*, 22 Ill. 2d 601, 603, 177 N.E.2d 120, 122 (1961), argues that he is entitled to have his guilt or innocence determined solely with reference to the crime with which he was charged. According to defendant, even when evidence of another crime is admitted for a proper purpose, the trial court should exclude such evidence when the prejudicial effect of that evidence substantially outweighs its probative value. See *People v. Donoho*, 204 Ill. 2d 159, 170, 788 N.E.2d 707, 714-15 (2003). Defendant points out there was no concrete evidence connecting him to the stabbing of Pugh. He asserts that any one of the multitude of people fighting in the parking lot that evening could have stabbed Pugh. More importantly, Pugh did not testify that defendant stabbed him, and any of Pugh's blood found on his clothing could have gotten on him as he brushed past Pugh. Added to the fact that such evidence was cumulative, given that many of the witnesses had already testified to seeing defendant on the lot that evening, defendant concludes the admission of such evidence was extremely prejudicial.

¶ 16 We initially note that evidentiary rulings are within the sound discretion of the trial court and will not be disturbed on appeal absent a clear abuse of that discretion resulting in manifest prejudice. *People v. Gonzalez*, 379 Ill. App. 3d 941, 948-49, 884 N.E.2d 228, 235 (2008). Second, evidence of other crimes is admissible to prove any relevant material fact. Such evidence is inadmissible if relevant only to demonstrate a defendant's propensity to engage in criminal activity. *People v. Norwood*, 362 Ill. App. 3d 1121, 1128, 841 N.E.2d 514, 522 (2005). Even when relevant for a permissible purpose, however, other-crimes evidence should be excluded if the prejudicial impact substantially outweighs the probative value. *Norwood*, 362 Ill. App. 3d at 1129, 841 N.E.2d at 522. Here the record shows that the disputed evidence was admissible for numerous reasons not related to showing that defendant had a propensity to commit crimes, and any possible prejudicial impact did not substantially outweigh its probative value.

¶ 17 First, the testimony of the various witnesses established that the stabbing of Pugh and of the victim took place within a space of a few minutes. The evidence that defendant stabbed Pugh was inextricably intertwined with the evidence that defendant stabbed the victim. Defendant stabbed Pugh, someone who was trying to break up the fight, as a necessary precursor to defendant's intentional intervention into the fight between Greene and the victim. The evidence was therefore admissible under the continuing-narrative exception to prove defendant's intent and motive to stab the victim. See *People v. Hale*, 2012 IL App (1st) 103537, ¶¶ 14, 24-25, 977 N.E.2d 1140.

Defendant's other-crime evidence was just another circumstance surrounding the crime with which he was charged.

¶ 18 The evidence was also probative of defendant's identity and presence at the scene with a knife. See *People v. Biggers*, 273 Ill. App. 3d 116, 123-24, 652 N.E.2d 474, 478-79 (1995). Identity clearly was at issue because defendant denied he stabbed the victim and denied that he had a knife. Evidence that defendant stabbed Pugh placed the knife in defendant's hand no more than a few minutes before and a few yards from the stabbing of the victim.

¶ 19 We also cannot say that the evidence pertaining to the stabbing of Pugh was so prejudicial as to deny defendant a fair trial. It certainly was not a material factor in his conviction such that, without the evidence, the verdict likely would have been different. See *People v. Cortes*, 181 Ill. 2d 249, 285, 692 N.E.2d 1129, 1145 (1998). The evidence of defendant's guilt was strong even without the admission of this evidence. Moreover, the nature of the evidence pertaining to the stabbing of Pugh was limited, thereby lessening any prejudicial impact. Additionally, the jury was instructed that any evidence received for a limited purpose was not to be considered for any other purpose. The jury was specifically told that the evidence pertaining to Pugh's stabbing was received for the purposes of identification and presence only. We presume that the jury was able to follow the court's instruction and properly separated the issues. See *People v. Walker*, 253 Ill. App. 3d 93, 105-06, 624 N.E.2d 1353, 1362 (1993).

¶ 20 For his next issue on appeal, defendant claims that he did not receive a fair trial because the prosecutor, during rebuttal closing argument, improperly commented on

defendant's failure to call a certain witness to corroborate defendant's testimony. Given that a prosecutor is barred from implying that a defendant has the obligation to present evidence to support his innocence (*People v. Weinstein*, 35 Ill. 2d 467, 470, 220 N.E.2d 432, 433-34 (1966)), defendant argues that such comments improperly shifted the burden of proof to him, thereby denying him a fair trial and requiring reversal of his conviction.

¶ 21 The State counters that defendant forfeited his claim of prosecutorial error. While he objected to the remark at the time it was made during closing arguments, he failed to raise the issue in his posttrial motion. See *People v. Enoch*, 122 Ill. 2d 176, 186, 522 N.E.2d 1124, 1129 (1988). The State also points out that a posttrial motion alleging generally only the improper making of statements in closing argument will not preserve the issue for review, even when defense counsel objected at trial to a specific comment in closing arguments. See *People v. Moss*, 205 Ill. 2d 139, 168, 792 N.E.2d 1217, 1234 (2001). Accordingly, when a forfeited claim pertaining to closing argument is framed as prosecutorial misconduct, review is for plain error. *People v. Phillips*, 392 Ill. App. 3d 243, 274-75, 911 N.E.2d 462, 491 (2009). The State concludes that any error here did not rise to the level of plain error. We find no error, plain or otherwise.

¶ 22 In the State's closing argument, the State noted that Williams testified that he saw defendant get out of Greene's vehicle with a knife, that Pugh tried to break up the fight, and that defendant stabbed Pugh. The prosecutor argued that this evidence corroborated Williams's other testimony that defendant had a knife in his possession during the parking lot incident. Defense counsel, in his closing argument, responded by commenting on the fact that the prosecutor had made a "big deal" about Pugh. He then stated: "Well it seems

awfully strange that Antonio Pugh didn't come into court to testify here. We never heard anything from Antonio Pugh taking the witness stand to say that [defendant] stabbed him. They never even charged [defendant] with anything regarding Antonio Pugh." He later stated: "[T]he bottom line there is if they are going to say that Antonio Pugh helps their case, they should have brought him in *** here to testify, and we never heard a single solitary word from Antonio Pugh. So I guess the inference would be he would have contradicted the testimony of *** Williams." In rebuttal, the prosecutor commented that defense counsel suggested that the State did not bring in Pugh to testify because his testimony would have contradicted the testimony of the others. The prosecutor continued, "[I]f that's the case, why didn't they call Antonio Pugh." At that point defense counsel objected noting that defendant did not have the burden of proof. The court told the prosecutor to continue and the prosecutor finished the rebuttal.

¶ 23 Beside the fact that prosecutors are given wide latitude during closing argument (see *People v. Walker*, 262 Ill. App. 3d 796, 804, 635 N.E.2d 684, 692 (1994)), it is not error for the State to respond to defense comments that clearly invite a response (see *People v. Nowicki*, 385 Ill. App. 3d 53, 90-92, 894 N.E.2d 896, 930-32 (2008)). When reviewing claims of prosecutorial misconduct in closing argument, the court is to consider the entire closing arguments of both the prosecutor and the defense attorney in order to place the objected-to remarks in context. *Phillips*, 392 Ill. App. 3d at 275, 911 N.E.2d at 491. In situations nearly identical to the one here, our supreme court has specifically rejected the argument that such comments shifted the burden of proof to the defendant. See, e.g., *People v. Kliner*, 185 Ill. 2d 81, 154-55, 705 N.E.2d 850, 887

(1998). More importantly, even if the challenged remark was improper, it must have resulted in substantial prejudice to the accused in order to constitute reversible error, such that absent the remark, the verdict would have been different. *People v. Cisewski*, 118 Ill. 2d 163, 175, 514 N.E.2d 970, 976 (1987). Such is not the case here. The court specifically instructed the jury that the State had the burden of proving defendant guilty beyond a reasonable doubt and that defendant was not required to prove his innocence. Again, the jury is presumed to have followed the court's instructions (see *People v. Taylor*, 166 Ill. 2d 414, 438, 655 N.E.2d 901, 913 (1995)), thereby curing any prejudice that may have resulted from the comment (see *People v. Pasch*, 152 Ill. 2d 133, 185, 604 N.E.2d 294, 315 (1992)). And contrary to defendant's assertions, the evidence was not so close in this instance that the challenged statement was a material factor in his conviction.

¶ 24 For his final point on appeal, defendant contends his sentence is excessive in light of the circumstances of the offense and his lack of criminal history. Defendant points to the fact that the victim was stabbed during "a brawl between willing participants that got out of hand." It was not a crime that was deliberately planned and executed. Defendant further argues the evidence used to support the inference that he was violent "throughout his life" was unreliable and, even if considered, occurred many years before the instant offense. Given that he had no serious criminal history and that the victim was stabbed while engaged in "mutual combat," defendant asserts that there was nothing else to justify a sentence of 50 years. We disagree.

¶ 25 Defendant was convicted of mob action, aggravated battery, and first-degree murder. He was sentenced only on the first-degree murder conviction. We note that a

sentencing court has great discretion to fashion an appropriate sentence within the statutory limits. See *People v. Fern*, 189 Ill. 2d 48, 53-54, 723 N.E.2d 207, 209-10 (1999). Defendant's sentence of 50 years was within the statutory limits, and it was not manifestly disproportionate to the nature of the offense. We further note that the sentencing court was in the best position to weigh the acts constituting the crime as well as defendant's credibility, demeanor, and general character. See *People v. Tijerina*, 381 Ill. App. 3d 1024, 1039, 886 N.E.2d 1090, 1104 (2008). We are not to substitute our judgment for that of the trial court under such circumstances. *Fern*, 189 Ill. 2d at 53, 723 N.E.2d 209. While defendant blames the victim for intervening in an argument that did not involve him, he conveniently forgets that the victim was trying to defend a woman who was being verbally assaulted and threatened by another man, *i.e.*, Greene. The victim did not turn the verbal argument into a physical brawl; Greene did. And even if the evidence supports the inference of voluntarily engaging in a fistfight, the inference does not support the additional inference that the victim assumed the risk of being stabbed by a third party who was sitting inside a vehicle nearby. There was no evidence that the victim voluntarily engaged in any type of fight with defendant. It was defendant who intervened in a fistfight that did not involve him and who escalated that fight into a stabbing death. We also agree that the sentencing court was in the best position to determine defendant's violent character in general as well as his lack of remorse. See *Tijerina*, 381 Ill. App. 3d at 1039, 886 N.E.2d at 1104. Additionally, the trial court was not required to give defendant's prospects for rehabilitation more weight than the seriousness of the offense. *People v. Phillips*, 265 Ill. App. 3d 438, 450, 637 N.E.2d 715,

723 (1994). Accordingly, under the circumstances presented, we find no abuse of the court's discretion in sentencing defendant to a term of 50 years' imprisonment.

¶ 26 For the foregoing reasons, we affirm the judgment of the circuit court of Jackson County.

¶ 27 Affirmed.