2016 IL App (1st) 143386

THIRD DIVISION
September 14, 2016

No. 1-14-3386

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellee,	)	
v.	)	No. 09 CR 15709
NORBERTO TORRES,	)	
Defendant-Appellant.	)	The Honorable Lawrence Flood, Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Mason concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence showing defendant shot the victim was sufficient to prove him guilty of murder beyond a reasonable doubt. There was no abuse of discretion on the trial court's part or any error in admitting testimony about defendant's prior arrest, video excerpts of his interview with police, and testimony about the Assistant State's Attorney's general duty to issue charges. Finally, the trial court did not improperly limit defense counsel's cross-examination of a witness. We affirm the trial court judgment.

¶ 2 Following a jury trial, defendant Norberto Torres was found guilty of murder and sentenced to 60 years in prison. Defendant appeals, raising a number of contentions.

Defendant asserts the evidence was insufficient to sustain his conviction and further that evidence of his prior arrest and of his video interrogation with police was erroneously admitted. Defendant also contends the Assistant State's Attorney impermissibly commented on her prosecutorial role and, finally, that his constitutional right to confront witnesses was violated. We affirm.

¶ 3 BACKGROUND

¶ 4 Defendant was arrested and then charged with the gang-related murder of Omar Sanchez, who died at age 15 from a single gunshot wound to his back shoulder. Defendant's trial theory was that his cousin, Edgar Flores, shot the victim. At the outset, we note the parties submitted a number of exhibits into evidence, including a video and photographs of the scene, but they have not been included in the appellate record.

¶ 5 At defendant's 2014 trial, the combined testimony of the State's witnesses revealed that on July 30, 2009, around 5:30 p.m., members of the Spanish Cobras and Maniac Latin Disciples (MLD) encountered each other at Keystone Avenue and Palmer Street in Chicago (Keystone Avenue runs north-south and Palmer Street runs east-west). The Spanish Cobras consisted of the victim Sanchez, Janette Laureano (age 17), Ricardo Martinez (age 14) and Damian Padilla (age 15); Laureano and Padilla were on bikes and the others on foot.[1] Defendant was among the group of MLDs (around ages 19 or 20). On encountering each other, the two groups began

[1] At the time of trial, Laureano, Martinez, and Padilla all had criminal histories, some including felony convictions.

"gangbanging to each other," meaning exhibiting gang symbols with their hands. The Spanish Cobras proceeded west and as they passed Karlov Avenue, which is a north-south street running parallel to Keystone Avenue, they heard a gunshot. Spanish Cobras Laureano and Padilla then saw Sanchez shot in his back and saw him collapse. Martinez was running next to Sanchez when he heard a single gunshot. About half a block later, Martinez turned around, then saw the victim on the ground. As further discussed below, several witnesses saw defendant take out a gun from his waistband and point it towards Sanchez just before the gunshot issued. Although Padilla reportedly had a .38 gun, Martinez never saw it while on the street, and Martinez did not see anyone else with a gun. Evidence technicians later recovered a fired .45-caliber cartridge case at Keystone Avenue and Palmer Street.

¶ 6 As detailed below, defendant's conviction rested largely on Padilla's memorialized statement, which he recanted at trial, the testimony of area neighbors Racquel Martinez and Lanette Lucena, and circumstantial evidence. Shortly after the shooting, detectives and Assistant State's Attorney (ASA) Jennifer Bagby interviewed Padilla with his mother present. ASA Bagby eventually memorialized Padilla's statement in writing. The statement was admitted into evidence and it was read into the record before the jury. In it, Padilla stated that he was trailing behind the group of Spanish Cobras on his bike, while Martinez and Sanchez were running ahead. Padilla then saw defendant take a gun from his waistband and point it in Sanchez's direction. As Padilla turned to ride away, "he heard one gunshot coming from [defendant]." Sanchez lifted his shoulder, ran a ways, and then grabbed his chest, falling to the

ground. Padilla went to Sanchez, took off Sanchez's shirt, and saw that he was shot. Padilla identified defendant from a group of photos and in a lineup as Sanchez's shooter. Padilla's statement was consistent with the medical examiner's testimony that Sanchez was alive for some period following the single gunshot wound to his back.

¶ 7 At trial, Padilla recanted his statement and denied defendant's gang status. Padilla claimed detectives promised to release him in exchange for his statement, and that he was "smacked" by a detective prior to the arrival of his mother. He asked for a lawyer but was denied one. Padilla denied identifying defendant as the shooter from a photo array, although he admitted his initials and mother's signature appeared on the form, and also asserted that he viewed the array without his mother present, merely identifying a "couple people" and circling "a lot of pictures." Padilla asserted the detectives showed him a photo of defendant prior to the lineup, and he denied reading the lineup advisory form, but he admitted the form bore his signature and that of his mother. On cross-examination, he stated detectives "were whispering" in his ear during the lineup that defendant was the shooter. Padilla admitted he met with ASA Bagby, but asserted he was on drugs at that time and told ASA Bagby whatever the detectives wanted him to say. He could not recall signing the written statement, yet again admitted it bore his signature and initials. Padilla had known defendant since he was young because defendant had dated Padilla's sister. Sanchez was Padilla's best friend.

¶ 8 Contrarily, ASA Bagby testified Padilla relayed he had been treated fine by the detectives. He never indicated he was coached, coerced, or promised anything in return for his statement.

At trial, Detective Nicholas Spanos testified that was the case, denying any coercion. ASA Bagby did not see Padilla "drifting off," "falling asleep," or exhibiting slurred speech.

¶ 9 Racquel, another occurrence witness, testified that she lived at 2157 North Karlov Avenue, on the corner of Palmer Street. On July 30, 2009, around 5:30 p.m., Racquel was in her backyard with her grandchildren when she heard screaming. As Racquel peered over her fence, she observed four or five teenagers (ages 12-13) both on foot and bikes pass by, moving from Keystone Avenue towards Karlov. Turning her attentions towards Keystone Avenue, Racquel observed a group of males in their 20s,[2] yelling at the teenagers ahead. From that group, emerged a person who "looked like a black guy" with braids close to his skull. He took a pistol from his waistband and pointed it towards the teenagers, while Racquel fully observed his face. At this time, Racquel stepped down from the fence and "heard a noise like a cracker." She grabbed her grandchildren and ran to her house. Raquel stated on cross-examination that she never observed the male actually pull the trigger, and she only heard a single gunshot. Racquel identified defendant both in the lineup the next day and in court as the person with the gun.

¶ 10 Lucena testified that she lived in a first-floor apartment at Palmer Street and Keystone Avenue. On the day in question, around 5:30 p.m., Lucena heard a single gunshot coming from the front of her house. From her window, Lucena saw defendant "throwing gang signs" and placing a gun into his waistband, although she did not see who fired the gun. He wore "pushed back braids, going straight down," a white "Dago T," and "blue jeans past his knees," but she also

[2] She actually testified they were "in their 22s."

described him as having hair that was a "free kind of style, big." The State later clarified, however, "[w]hen you saw him with the gun in his hand, he had braids?" to which she responded, "[y]es." Lucena recognized defendant because she used to live across the street from him. On cross-examination, Lucena stated that from her window she saw only defendant; she did not recall testifying at the grand jury hearing that she saw three males outside.[3] Lucena identified defendant as the shooter from a six-person photo array that same day, in a lineup the next day, and lastly in court. She was "very sure" in her identification. In the photo array, defendant wore braids, while at the lineup he did not.

¶ 11 Chicago Police Detective Juan Morales, who testified to the following on direct and cross-examination, arrested defendant later at his home and placed him into custody.[4] The house was not searched, and no weapon was recovered. At the station, detectives electronically recorded the interview with defendant, who at that time had pulled-back braids and was heavy-set. The recordings were admitted into evidence and published to the jury but do not appear in the appellate record. During the recorded interview, defendant denied his gang membership and insisted his cousin Flores was the shooter. However, he also apparently presented Detective Morales with different versions of what occurred on the evening in question, and the detectives questioned defendant's veracity. Detective Morales admitted that defendant

[3] The parties later stipulated to her grand jury testimony of seeing three males outside.

[4] Immediately following the shooting, defendant was presented in a "show-up" to an unidentified woman living near the scene of the shooting, but she could not identify defendant as the criminal. At the time, defendant had "[t]ight rolled up braids that came down a little bit towards the shoulder," he wore a white tank top, and shorts.

asked why a gunshot residue test on his clothes was not performed, but Detective Morales never ordered those clothes to be collected or tested. Lastly, Detective Morales stated that the photo arrays shown to witnesses included a photo of defendant, but not of Flores, who had a shaved head, lighter complexion and was much shorter than defendant.

¶ 12 Flores testified for the State that on July 30, 2009, he was not at the scene of the shooting, but rather at his home. Flores' sister corroborated this fact. Flores denied firing a gun near Keystone Avenue and Palmer Street. He added that he was bald then and did not have braids. On cross, Flores admitted he was an MLD gang member and that he went to the police station several days after the crime at his mother's behest.

¶ 13 The State rested, and defendant presented three witnesses but did not himself testify. Defendant first called his uncle, Laurentino Vazquez, who testified that on July 30, 2009, he lived with defendant and his parents at Keystone Avenue. Around 5:30 p.m., Vasquez drove down Karlov Avenue, where he heard police and ambulance sirens. When Vazquez parked his vehicle at defendant's house, he saw Flores run past him. Shortly thereafter, he observed Flores outside talking on the phone and making nervous gestures. Flores was wearing a white shirt, but he went into a basement area and changed into a "yellowish" shirt, then got into a van with his sister. On cross, Vazquez admitted he told detectives about Flores years after defendant was arrested. He stated Flores had a shaved head in 2009 and was smaller in stature than defendant.

¶ 14 Faustino Garcia, an MLD and friend to defendant's brother, testified that he lived at 2204 N. Keystone Avenue and was home on July 30, 2009. At 5:30 p.m., he heard screaming

coming from Keystone Avenue and Palmer Street. From his window, he saw six or seven friends outside "gangbanging," and then saw Flores get on one knee and fire one round west towards Karlov. Flores, who was wearing a white shirt, placed the gun back in his waistband and ran into Garcia's backyard. Garcia also saw defendant wearing a dark shirt in the street that day, but not with a gun. Defendant later returned to the scene wearing "a white Dago." On cross, Garcia admitted he never told the police what he saw, even after learning defendant had been arrested and charged. Rather, he relayed this information to a defense investigator in 2011. Lastly, days before the shooting, Garcia and defendant were arrested for gangbanging, but he claimed that they were just waving flags. Garcia admitted that defendant had braids in his hair then but Flores had a shaved head and was about five inches shorter and much thinner than defendant. The parties later stipulated that according to the defense investigator's report and contrary to his trial testimony, Garcia had seen three *unknown* males flashing gangs signs; one of the unnamed men was on Keystone Avenue a few feet from Palmer Street, and he shot at the other two, then afterwards ran through Garcia's yard. Just prior to the shooting, Garcia saw defendant around the scene just "looking and listening to the argument between the three males."

¶ 15 Defendant finally called Nicholas Maldonado, an MLD and friend of defendant's brother. On the day in question, around 5:30 p.m., Maldonado saw "gangbanging" at the corner of Keystone Avenue and Palmer Street. Padilla was throwing up gang signs and motioning as if he had a weapon. Maldonado then observed Flores, clad in a white shirt and blue jeans, and defendant's brother proceeding to the corner store. He followed them; defendant, clad in dark

clothing, trailed a few paces behind Maldonado. Maldonado then heard a gunshot and saw Flores motion as if he was putting something under his shirt. On cross, Maldonado admitted he walked towards Padilla even though Maldonado was not in a gang at that time and even though he thought Padilla was armed. Maldonado admittedly did not have a gun and did not actually see anyone shoot. He stated that Flores was bald and shorter than defendant. Maldonado admitted that shortly after the shooting he knew defendant had been charged with murder, but Maldonado did not disclose his knowledge about Flores until years later at trial. Maldonado lastly stated he rode to court with defendant's father and brother and had previously visited defendant in jail, which the parties stipulated occurred in January 2011.

¶ 16 Following evidence and argument, the jury found defendant guilty of first degree murder. Without citing to the record on appeal, in violation of our supreme court rules, appellate counsel asserts defendant was sentenced to 45 years' imprisonment, and that his appeal was filed in 2005. See Ill. S. Ct. R. 341(h)(4)(ii) (eff. Jan. 1, 2016) (all facts recited in the jurisdictional statement shall be supported by page references to the record on appeal). Contrary to appellate counsel's inaccuracies, the record reveals that defendant's appeal was timely filed in 2014 following issuance of the mittimus, which shows defendant was in fact sentenced to 60 years' imprisonment, not 45 years. We note this jurisdictional inaccuracy only because it is representative of other deficiencies arising in appellate counsel's brief filed on behalf of defendant, which we point out throughout our analysis as we proceed on the merits.

¶17 ANALYSIS

¶ 18 Defendant first contends that the trial evidence was insufficient to support his conviction beyond a reasonable doubt because the witnesses presented inconsistent and therefore incredible testimony. When a defendant challenges the sufficiency of the evidence, the relevant question is whether, after reviewing 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). Under this standard, a reviewing court must allow all reasonable inferences from the record in favor of the prosecution. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). In addition, when weighing the evidence, the trier of fact is not required to search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt. *People v. Bull*, 185 Ill. 2d 179, 205 (1998). This court will not substitute its judgment for that of the trier of fact on questions involving the weight of the evidence, credibility of witnesses, or resolution of conflicting testimony, and therefore, we will not reverse a criminal conviction unless the evidence is so unreasonable, improbable, or so unsatisfactory as to justify a reasonable doubt of the defendant's guilt. *People v. Campbell*, 146 Ill. 2d 363, 375 (1992).

¶ 19 Defendant argues generally that the "number of lies and impeachable statements were too many to count," and "trial became a battle of inconsistent statements." Specifically, defendant asserts that neither Racquel nor Lucena saw him fire the weapon, and he implies this created a reasonable doubt. He asserts Lucena's description of the shooter as having

"afro-style" hair[5] conflicted with Racquel's description of defendant.

¶ 20 For the reasons to follow, we conclude the State presented competent evidence demonstrating that it was defendant who pointed his gun at Sanchez, shooting him dead. Racquel saw defendant point a pistol at a group of teens near Keystone Avenue and Palmer Street just before a single gunshot issued, and seconds later, Lucena saw defendant in the same area placing a gun into his waistband. Given that defendant was the only individual seen with a gun, per the State's witnesses, and the victim died from a single gunshot wound to his back, it is reasonable to infer defendant was the shooter. See *Bull*, 185 Ill. 2d at 205; see also *People v. Williams*, 182 Ill. 2d 171, 192 (1998) (circumstantial evidence proving elements of crime beyond a reasonable doubt sufficient to sustain a conviction). Moreover, both Racquel and Lucena, both disinterested, non-gang related witnesses, were confident in identifying defendant. See *In re Keith C.*, 378 Ill. App. 3d 252, 258 (2007) (the reliability of a witness's identification of a defendant is a matter for the trier of fact); *People v. Barnes*, 364 Ill. App. 3d 888, 895 (2006) (the testimony of a single credible witness who makes a positive identification is sufficient to sustain a criminal conviction). Racquel clearly saw defendant's face and described him as having braids close to his skull; Lucena recognized defendant because she used to live right across the street from him and also described him as having "pushed back braids, going straight down" and

[5] Appellate counsel also argues Lucena described defendant as being "large in stature." Defendant does not point out where in the record Lucena offered this description of defendant, in violation of the supreme court rules, and our review of her testimony reveals she did not in fact testify about defendant's stature, thus revealing an inaccuracy in defendant's argument. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016).

a white "Dago T" with blue jeans. See *id*. (persuasiveness of identification strengthened by witness's prior acquaintance with accused). Although Lucena also noted defendant had afro-style hair, she clarified that it was braided at the time of the shooting, and the evidence showed defendant took his braids out at the lineup. Their descriptions of defendant were quite similar and even consistent with those of the defense witnesses, who acknowledged that defendant wore braids, while Flores did not, and defendant was larger in stature than Flores. Racquel and Lucena, moreover, identified defendant in a photo array, lineup, and in court. Regardless, we note that any minor inconsistencies in testimony do not, by themselves, create a reasonable doubt. *People v. Wesley*, 382 Ill. App. 3d 588, 592 (2008).

¶ 21 In addition, the State presented Flores' testimony that he was not even on the scene, and Padilla's recanted statement corroborated the testimony of Racquel and Lucena. See *People v. Ivy*, 2015 IL App (1st) 130045, ¶ 56 (evidence sufficient even where it's entirely the prior, recanted statement of eyewitnesses). Padilla, in his prior written statement, told the police that he saw defendant take out a pistol from his waistband. When Detective Spanos presented him with the photo array, Padilla also identified defendant as the person who shot and killed Sanchez. While Padilla recanted all those statements at trial, we may not reweigh the evidence where the jury had an opportunity to review it along with any inconsistencies. See *Campbell*, 146 Ill. 2d at 375.

¶ 22 Defendant nonetheless asserts the defense witnesses were more believable than the State's witnesses and notes there was no physical evidence to corroborate the trial testimony.

We reiterate that the reliability of a witness's identification of a defendant is a matter for the trier of fact, and proof of physical evidence connecting a defendant to a crime has never been required to establish guilt. *In re Keith C.*, 378 Ill. App. 3d at 258; *Williams*, 182 Ill. 2d at 192. The jury heard the competing versions of events as to who fired the bullet that killed Sanchez, and ultimately chose to believe the State's evidence. Based on the foregoing, viewing the evidence in the light most favorable to the prosecution, we cannot say the evidence is so improbable or unsatisfactory as to raise a reasonable doubt of defendant's guilt.

¶ 23 Defendant next contends the trial court erroneously admitted prejudicial evidence of other crimes, specifically relating to the following testimony. Chicago police officer Richard Tunzi testified that about a month before the shooting, he observed defendant one block north of the crime scene commit a "gang disturbance" by repeatedly stating "Cobra killer" while several others ran along the vehicle traffic throwing up MLD gang signs and stating the same. Defendant, who admitted to being an MLD, was arrested. At that time, defendant had long, dread-lock braids. Defendant now argues this evidence was excessive and the prejudicial effect outweighed its probative value. We disagree.

¶ 24 Generally, evidence indicating that a defendant committed prior bad acts is improper where its purpose is to demonstrate the defendant's propensity to commit crime. *People v. McSwain*, 2012 IL App (4th) 100619, ¶ 36. It may nonetheless be admitted if relevant for any other purpose, including motive, opportunity, intent, preparation, plan, knowledge, or identity, and if its prejudicial impact does not substantially outweigh the probative value. *Id.* ¶¶ 36-37;

People v. Clark, 2015 IL App (1st) 131678, ¶ 28. The same can be said about gang affiliation evidence. *People v. King*, 252 Ill. App. 3d 334, 341 (1993). Evidence that a defendant was a gang member or involved in gang activity may be introduced to show common purpose or design, or to provide a motive for an otherwise inexplicable act, also tending to identify a particular person as the offender. *Id*. at 342; *People v. Williams*, 228 Ill. App. 3d 981, 989 (1992). Here, Officer Tunzi's testimony was relevant to establish defendant's gang activity, murderous animus towards the Spanish Cobras, of which the victim Sanchez was a member, identity, and his proximity to the crime scene in terms of geography and time. See *People v. Ayala*, 208 Ill. App. 3d 586, 593 (1990) (references to defendant's gang activity, including that he made gang signals at a nearby bus stop more than 30 times, was admissible to prove motive for his otherwise random and inexplicable murder). In addition, it tended to rebut Padilla's trial testimony denying defendant's status as the gang-signaling shooter. We cannot say the trial court abused its discretion in admitting the evidence, as it reasonably bolstered defendant's identity and showed motive. See *People v. Robinson*, 167 Ill. 2d 53, 63 (1995); (review of such a matter is for abuse of discretion); *McSwain*, 2012 IL App (4th) 100619, ¶ 38 (same).

¶ 25 Defendant next contends it was plain error to admit the video excerpts of his interview with detectives. While the video does not appear in the record on appeal, the report of proceedings reveals the State presented various video clips to Detective Morales of the post-shooting interrogation interview with defendant. Following each clip, Detective Morales merely verified that the video showed what occurred in the interrogation room, but there is no

transcript of what was played. The record also reveals that during direct, the State asked Detective Morales whether his police partner had "pressed" defendant on his "version" of the events during the interrogation, and defense counsel then objected, arguing the video evidence impermissibly showed the "detective's opinion about why" defendant wasn't "telling the truth." In a side bar, defense counsel asserted "repeatedly having the detective call my client a liar on video in front of the jury" was prejudicial. The State responded that the evidence was necessary to show why and how defendant changed his story, presenting different versions of the events and it was not commentary on whether the detectives actually believed defendant. The court ultimately allowed the video evidence, stating it was the detectives' interrogation process. During cross-examination, Detective Morales admitted that "on several occasions" during the interrogation he told defendant he didn't believe him and thought defendant was lying. Further examination also revealed that in the video defendant ultimately blamed Flores and never admitted to the shooting.

¶ 26 Defendant now argues that in the clips, the detectives effectively questioned defendant's credibility and offered improper opinion testimony, thus usurping the jury's authority as fact-finder. The State responds that since defendant has failed to supply this court with the actual video, we cannot address his contention on appeal. We agree with the State, while also noting that defendant has not filed a response brief.

¶ 27 An appellant bears the burden of presenting a sufficiently complete record to support its claim of error, and any doubts arising from an incomplete record are resolved against the

appellant. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-93 (1984); *Smolinski v. Vojta*, 363 Ill. App. 3d 752, 757-58 (2006). In fact, in the face of an incomplete record, we presume the trial court was correct in its rulings. *People v. Majer*, 131 Ill. App. 3d 80, 84 (1985). Without seeing exactly what was presented to the jury, we cannot conclude that it was unduly prejudicial or that the police were effectively commenting on defendant's ultimate guilt, which *is not* allowed, rather than simply showing a sequential account of the investigatory process, which *is* allowed, and revealing defendant's shifting stories prior to his accusing Flores of the shooting. See *People v. Munoz*, 398 Ill. App. 3d 455, 487-88 (2010). Moreover, this is not a case where Detective Morales stated he *never* believed defendant or where he commented on defendant's veracity at the time of trial. *People v. Hanson*, 238 Ill. 2d 74, 101 (2010); *cf. Munoz*, 398 Ill. App. 3d at 488-89 (error where officer testified he did not believe defendant ever told him the truth on the night in question).[6] To the extent the record shows Detective Morales voiced any doubt about defendant's credibility, it appears it was directed at defendant in the context of the video interview and not at the jury during trial. See *id.*; *People v. Moore*, 2012 IL App (1st) 100857, ¶ 52. Given the record before us, which, as noted, is incomplete, we must presume the trial court was correct in its evidentiary ruling. Since there was no error, there can be no plain error to the extent appellate counsel even argues that point. *People v. Lopez*, 2012 IL App (1st) 101395, ¶ 64. Defendant also complains about hearsay in this context but has not developed an

[6] Towards the end of his argument, defendant writes that "*Munoz* is inapplicable to the case at bar and Detective Morales' statements were properly admitted." Since this portion of defendant's argument contradicts the entire whole, we would hope that appellate counsel inadvertently included that sentence in the appellate brief.

argument in that regard, so we need not address the matter further. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016) (points not argued are waived).

¶ 28 Defendant's third contention on appeal is that the trial court erroneously permitted ASA Bagby to testify about her prosecutorial role. Specifically, ASA Bagby testified on redirect that as a trial supervisor in the felony review unit, there were cases that were "eventually charged," and also cases that "were not charged." Defendant argues this testimonial interchange essentially suggested defendant's guilt.

¶ 29 Initially, we note that nowhere in his brief has defendant cited to the 6-volume report of proceedings to support his claim of error. See Ill. S. Ct. R. 341(h)(6), (7) (eff. Jan. 1, 2016) (appellant's brief must contain facts with appropriate reference to the pages of the record on appeal); *Lopez v. Northwestern Memorial Hospital*, 375 Ill. App. 3d 637, 638 n. 1 (2007) (party's failure to comply with Rule 341 is grounds for disregarding arguments on appeal based on an unreferenced statement of facts). Defendant's failure to cite to the record warrants our disregard of his argument. *In re Guardianship of Tatyanna T.*, 2012 IL App (1st) 112957, ¶¶ 17-18 (appellant's failure to rely on adequate legal and factual support provides basis to dismiss appeal).

¶ 30 Regardless, ASA Bagby's testimony merely explained her role as a felony review prosecutor. She did not comment on specific charges in defendant's case, and there was nothing improper or prejudicial about her testimony. See *People v. McKnight*, 72 Ill. App. 3d 136, 144-45 (1979) (implicit that any jury in ordinary course of events be informed that some member

of State's Attorney's office authorized the filing of charges against the accused); see also *People v. Hancock*, 83 Ill. App. 3d 700, 704 (1980) (same); *cf. People v. Turner*, 127 Ill. App. 3d 784, 792 (1984) (prejudicial error where prosecutor testified he recommended charges against the defendant).

¶ 31 Defendant finally contends the trial court improperly limited defense counsel's cross-examination of Lucena, specifically relating to her grand jury testimony, denying him a right to confront witnesses. Again, defendant does not point this court to the appropriate pages of the record in support of his contention. Defendant, for example, asserts that the trial court's comment on the evidence, made in response to an objection raised during Lucena's cross, contradicted Lucena's "recorded statement to police." Defendant does not identify where in the record to find the trial court's comment or where in the record to find Lucena's recorded statement to police. Under these circumstances, we must disregard defendant's argument. See Ill. S. Ct. R. 341(h)(6), (7) (eff. Jan. 1, 2016); *Lopez*, 375 Ill. App. 3d at 638 n. 1; *In re Detention of Lieberman*, 379 Ill. App. 3d 585, 610 (2007) (issue not clearly defined fails to satisfy Rule 341(h)(7) and is thus waived); *Thrall Car Manufacturing Co. v. Lindquist*, 145 Ill. App. 3d 712, 719 (1986) (appellate court is not a depository where appellant can dump burden of argument and research). Waiver aside, we have reviewed defense counsel's cross-examination of Lucena and conclude no improper limitations were placed on counsel. Through cross, defense counsel was able to test the accuracy and trustworthiness of Lucena's testimony, pointing out various claimed contradictions. See *People v. Harris*, 123 Ill. 2d 113, 145 (1988) (no confrontation

concern if jury made adequately aware of relevant areas of impeachment); *People v. DeSantiago*, 365 Ill. App. 3d 855, 869 (2006) (the confrontation clause guarantees the opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish). In short, her credibility was brought to the attention of the jury. In fact, when the trial court sustained objections to defense counsel's questions, it was because they were repetitious, which as the State asserts, was entirely appropriate. See *id.* at 144 (trial court may limit cross that is repetitious). Finally, the parties later entered stipulations about Lucena's grand jury testimony that supported defense counsel's attempts at impeachment on cross. We find no error and even if there were error, it was not prejudicial to warrant any action on this court's part. Defendant's contention fails.

¶ 32 CONCLUSION

¶ 33 Based on the foregoing, we affirm the judgment of the circuit court of Cook County.

¶ 34 Affirmed.