2017 IL App (1st) 143692-U

SIXTH DIVISION
Order filed: May 26, 2017

No. 1-14-3692

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 11 CR 17786
	)	
MATTHEW LAMOTTE,	)	Honorable
	)	John Joseph Hynes,
Defendant-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Rochford and Delort concurred in the judgment.

ORDER

¶ 1 *Held*: The defendant's conviction is affirmed where (1) the trial court did not err by rejecting defense counsel's proffered non-pattern jury instruction on the issue of accountability, and (2) the prosecutor's remarks during rebuttal closing argument did not amount to plain error.

¶ 2 Following a jury trial, the defendant, Mathew Lamotte, was found guilty of first-degree murder (720 ILCS 5/9-1(a)(1) (West 2010)) and sentenced to 45 years' imprisonment. On appeal, he argues that (1) the trial court erred by denying his request to give the jury a nonpattern jury instruction on the issue of accountability; and (2) he was deprived of his right to a fair trial

where the prosecutor made improper remarks during rebuttal closing argument. For the reasons that follow, we affirm.

¶ 3 In October 2011, the State charged the defendant and codefendant, Ricky Schoen, with the first-degree murder (720 ILCS 5/9-1(a)(1) (West 2010)) of Oscar Solorzano and the attempted first-degree murder (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2010)) of Daniel Reynoso. In August 2014, the matter proceeded to simultaneous but severed trials.

¶ 4 The evidence presented at trial generally established that, in May 2010, there was an ongoing conflict between two rival street gangs, the Almighty Saints and the Latin Kings. The defendant and Schoen are members of the Almighty Saints gang. In response to two shootings, in which an Almighty Saint and the brother of an Almighty Saint had been shot, Schoen called a meeting of the Almighty Saints. The defendant hosted the meeting at his house. There, Schoen complained that nothing was being done about the recent shootings and said that "somebody had to die," referring to the Latin Kings. Edwin Rolnicki, a former Almighty Saint, testified that he was at the meeting and recalled that Schoen was "thirsty for blood" and everyone "was pissed off."

¶ 5 Thereafter, on May 25, 2011, Schoen took his older brother's red Ford Explorer without permission and drove to Summit where he picked up the defendant and Gustavo Garcia. Around 10:40 p.m., the three men were traveling westbound on 61st Street in Summit, which was described as the "center" of Latin King territory. As they approached Archer Avenue, they abruptly stopped and started shooting at two men, later identified as Solorzano and Reynoso, who were in the process of entering Solorzano's vehicle. Reynoso, a Latin King, testified that he immediately ran away and escaped without being shot. Solorzano, who was not affiliated with any gang, died as a result of two gunshot wounds. Eyewitnesses to the shooting testified that the

shots were fired from the passenger side window of the red Explorer and that the vehicle turned south onto Archer Avenue and sped away. The eyewitnesses did not observe the faces of any occupants inside the Explorer.

¶ 6 Shortly after hearing a radio dispatch regarding the shooting, a Summit police officer, Mel Ortiz, observed the Explorer and a high-speed chase ensued. Eventually, the Explorer came to a stop at 5216 South Neva Avenue in Chicago. Schoen exited the vehicle through the driver's door and ran in a northwest direction, while the defendant and Garcia exited the front passenger door and ran east. Officer Ortiz broadcast a description of the suspects over the radio, chased the two passengers, and detained Garcia who had tripped and fell. The defendant jumped a fence and continued to run.

¶ 7 Phone records reveal that an outgoing phone call was placed from Schoen's cell phone at 10:46 p.m. David Wheeler, Schoen's older brother, testified that he received a call from Schoen around this time and that Schoen demanded that he report his vehicle stolen. Wheeler testified that Schoen sounded panicked and out of breath. After Wheeler complied with Schoen's request and reported the vehicle stolen, he called Schoen back to discuss what happened. Schoen told Wheeler that he borrowed his vehicle to meet some friends in Summit and that he shot someone after getting into an argument at a gas station. Schoen stated that he had to abandon the vehicle and that he would make it up to Wheeler.

¶ 8 Meanwhile, phone records show that various phone calls were made from the defendant's phone between 10:43 p.m. and 11:49 p.m. Rolnicki testified that he and Michael Gallardo were driving in his black GMC Sierra when the defendant called Gallardo and stated that he was in trouble and needed to be picked up. Rolnicki and Gallardo drove to a residential neighborhood near Harlem and Archer and located the defendant who ran up to them and entered the truck.

Rolnicki testified that the defendant was sweating and breathing hard "like he had run ten miles." The defendant stated that "they lit up some Kings;" that "Ricky did it, stupid as hell;" and that "Ricky just shot a guy, just did; stupid as hell; just shot the guy."

¶ 9 Chicago police officer Joseph McElligott testified that he was on patrol when he received a radio call from dispatch regarding the shooting and that a concerned citizen reported seeing a man run out of someone's yard and jump into a black pickup truck. About two minutes later, Officer McElligott observed a black pickup truck, activated his lights and pulled the vehicle over. The three occupants, later identified as Rolnicki, Gallardo, and the defendant, were placed in separate police cars and transported to the scene of the abandoned Explorer. There, Officer Ortiz viewed the three men and identified the defendant as the individual who exited the passenger side of the Explorer. The defendant, Garcia, Gallardo, and Rolnicki were taken to the police station for questioning, but were later released without being charged or arrested.

¶ 10 After being released from the police station, Rolnicki went to the defendant's house where he met with the defendant, Gallardo, and Garcia. The group discussed what happened and the defendant said "it wasn't over" and that he was going to hire an attorney to see if anyone was cooperating with the police. Rolnicki testified that he cooperated with the police and, as a consequence, he left the Almighty Saints gang and had not spoken to any gang members since that day.

¶ 11 During the investigation, the police recovered three spent nine-millimeter cartridge casings and a spent .380 caliber cartridge casing from the scene of the murder. Officers also canvassed the area near the abandoned Explorer and recovered a nine-millimeter semiautomatic handgun with a live round in the chamber lying on the ground just outside the driver's side door. In addition, they found four spent nine-millimeter cartridge casings inside the vehicle and

observed a small bullet hole in the rear passenger window. The police also recovered surveillance video from a liquor store located across the street from the shooting. The video shows Reynoso and Solorzano exiting the store at 10:40 p.m. and walking across the street to a parked car. Seconds later, the red Explorer approaches the parked vehicle, comes to an abrupt stop, and then drives away after two seconds.

¶ 12 An autopsy performed by a forensic pathologist revealed that Solorzano died from a gunshot wound to the right side of his back and right thigh. A nine-millimeter bullet was recovered from Solorzano's right bicep and submitted to the Illinois State Police crime lab for analysis. Forensic testing revealed that the nine-millimeter bullet recovered from Solorzano's body was fired from the semiautomatic handgun that was recovered from the Ford Explorer. The nine-millimeter cartridge casings recovered from the murder scene and the Ford Explorer were also fired from that handgun.

¶ 13 The defendant did not testify or present any witnesses. He did, however, introduce three certified statements of conviction regarding Schoen.

¶ 14 Following the presentation of evidence, the trial court conducted a hearing on the parties' proposed jury instructions outside the presence of the jury.

¶ 15 At that hearing, the defendant tendered a non-Illinois Pattern Jury Instruction (non-IPI) on accountability, seeking to add language that "mere presence" at the scene of a crime, by itself, is not sufficient to establish the defendant's guilt. The defendant argued that the proffered non-IPI instruction would aid the jury's understanding and prevent confusion. Defense counsel also argued that the proposed non-IPI accurately stated the law as it was "taken word for word" from section 5-2(c) of the Criminal Code of 1961 (720 ILCS 5/5-2(c) (West 2010)). The State argued that the law on accountability was adequately set forth by the IPI No. 5.03. Over the defendant's

objection, the trial court agreed with the State, stating that "when in doubt we are supposed to use [the IPI]."

¶ 16 During closing argument, the prosecutor described the crime, reviewed the eyewitness testimony and the police investigation, and then discussed the applicable law. The prosecutor argued that, under the theory of accountability, the defendant and Schoen were equally responsible for the murder of Solorzano and attempted murder of Reynoso where the evidence showed that they held a meeting, discussed retaliating against the Latin Kings, drove to Latin King territory in the same vehicle, fired multiple shots while driving down 61st Street, and fled the scene together.

¶ 17 Defense counsel argued, *inter alia*, that the Stated failed to prove beyond a reasonable doubt that the defendant was the person who shot and killed Solorzano or that he was responsible for Solorzano's death. Defense counsel asserted that Schoen and Garcia were the shooters and the State presented "zero" evidence that the defendant "solicited, aided, abetted, agreed to aid or attempted to aid [Schoen and Garcia] in the planning or commission of an offense."

¶ 18 After deliberations, the jury found the defendant guilty of first-degree murder of Solorzano and not guilty of the attempt murder of Reynoso. After denying the defendant's post-trial motion, the trial court sentenced him to 45 years in prison. This appeal followed.

¶ 19 The defendant's first contention on appeal is that he was denied a fair trial because the trial court denied his request to give the jury a non-IPI instruction on the issue of accountability.

¶ 20 Before reaching the merits, we note that the parties disagree as to the standard of review. The defendant argues that the proper standard of review on the trial court's refusal to give a requested jury instruction is *de novo*. The State argues that the appropriate standard is abuse of discretion.

¶ 21 In general, the decision to give a jury instruction rests within the trial court's discretion and will not be reversed absent an abuse of that discretion. *People v. McDondald*, 2016 IL 118882, ¶ 69; *People v. Bannister*, 232 Ill. 2d 52, 81 (2008). However, the issue of whether a jury instruction accurately conveyed to the jury the applicable law is reviewed *de novo*. *People v. Pierce*, 226 Ill. 2d 470, 475 (2007). In this case, the parties do not dispute that the non-IPI proffered by the defendant accurately stated the law. Rather, the parties' dispute concerns whether the non-IPI instruction would aid the jury's understanding and prevent confusion. As a consequence, we agree with the State and find that the appropriate standard of review in this case is abuse of discretion.

¶ 22 Whether a trial court has abused its discretion will depend on whether the non-IPI instruction is an accurate, simple, brief, impartial and nonargumentative statement of the law. *Bannister*, 232 Ill. 2d at 81. A trial court's refusal to give a non-IPI instruction will not constitute an abuse of discretion if there is an applicable IPI instruction, or "the essence of the refused instruction is covered by the other given instructions." *People v. Gilliam*, 172 Ill. 2d 484, 519 (1996).

¶ 23 Turning to the merits, the record reveals that the trial court gave the jury Illinois Pattern Jury Instruction Criminal No. 5.03, entitled "Accountability," which states as follows:

> "A person is legally responsible for the conduct of another person when, either before or during the commission of an offense, and with the intent to promote or facilitate the commission of an offense, he knowingly solicits, aids, abets, agrees to aid, or attempts to aid the other person in the planning or the commission of an offense.

> The word 'conduct' includes any criminal act done in furtherance of the planned and intended act."

¶ 24 The defendant's tendered non-IPI instruction included this language, but then went on to state that:

> "When two or more persons engage in a common criminal design or agreement, any acts in the furtherance of that common design committed by one party are considered to be the acts of all parties to the common design or agreement and all are equally responsible for the consequences of those further acts. Mere presence at the scene of a crime does not render a person accountable for an offense; a person's presence at the scene of a crime, however, may be considered with other circumstances when determining whether one person is legally responsible for the conduct of another."

The defendant asserts that the trial court's refusal to give the second part, which tracks the language of section 5-2(c) of the Code (720 ILCS 5/5-2(c) (West 2010)), is error. In particular, he argues that his proposed modification was "necessary to make the instruction more just and understandable, consistent with case law, and consistent with [the amended version of the accountability statute]." We disagree.

¶ 25 The purpose of jury instructions is to provide the jury with the correct legal principles applicable to the evidence, so that the jury may reach a correct conclusion according to the law and the evidence. *Pierce*, 226 Ill. 2d at 475. Jury instruction must "fully and fairly announce the law applicable to the theories of the State and the defense" (*People v. Mohr*, 228 Ill. 2d 53, 65 (2008)) and should not be misleading or confusing (*Bannister*, 232 Ill. 2d at 81). IPI instructions were "painstakingly drafted" with the goal of providing simple, brief, and unbiased language to

the jury, and the use of non-IPI instructions on a subject already covered by IPI instructions would defeat this goal. *People v. Pollock*, 202 Ill. 2d 189, 212 (2002). As a general rule, if an IPI instruction exists on a subject upon which the trial court has determined the jury should be instructed, the trial court must use that instruction, unless the court determines that the instruction does not accurately state the law. *Bannister*, 232 Ill. 2d at 81; Ill. S. Ct. R. 451(a) (eff. Apr. 8, 2013)). "In reviewing the adequacy of instructions, this court must consider the jury instructions as a whole to determine whether they fully and fairly cover the law." *People v. Nutall*, 312 Ill. App. 3d 620, 633 (2000).

¶ 26 We begin by noting that the defendant's argument that he is entitled to a non-IPI jury instruction regarding "mere presence" as it applies to the offense of accountability has been addressed and rejected several times by this court. In *People v. Thomas*, 175 Ill App. 3d 521, 528-29 (1988), this court explained as follows:

> "[T]he essence of the 'mere presence' instruction was already incorporated in or encompassed by [the standard IPI instruction]—which advise the jury that a defendant must be found innocent unless the State has proved beyond a reasonable doubt that before or during the commission of the defined offense he/she, with the intent to promote or facilitate the commission of that offense, knowingly solicited, aided, abetted, agreed or attempted to aid the other person in the planning or commission of it-and that the juries were, therefore, fully and accurately apprised of the law constituting the theory of defense, *i.e.*, that mere presence at the scene of a crime or during its commission is insufficient to sustain a conviction." See also *People v. Ayers*, 264 Ill. App. 3d 757, 760 (1993); *People v. Wilson*, 257 Ill. App. 3d 670, 697-98 (1993); *Nutall*, 212 Ill. App. 3d at 634-35

(rejecting the defendant's non-IPI instruction on mere presence where the standard IPI accountability instruction contained the essence of the "mere presence instruction").

¶ 27 In this case, as in the above-cited cases, the jury was given the IPI instructions on the presumption of innocence, the burden of proof, the definition and elements of first-degree murder, and the proof necessary to find the defendant guilty on the basis of accountability. Moreover, in closing argument, defense counsel argued each element of the offense of murder and accountability and explained why the defense believed the prosecution failed to satisfy its burden of proof. Defense counsel stressed that although the defendant was present in the Ford Explorer with Schoen and Garcia, he did not participate in any way and therefore should not be found guilty. We find that the instructions given by the trial court in this case accurately conveyed to the jury the correct principles of law applicable to the evidence in support of the defendant's theory and allowed the jury to arrive at a proper conclusion based upon the law and the evidence.

¶ 28 While it is true, as the defendant argues, that the legislature amended section 5-2(c) of the Code to include language that mere presence at the scene of a crime does not render a person accountable for an offense (see Pub. Act 96-710, § 25 (eff. Jan. 1, 2010)), our supreme court has long recognized that a person's mere presence at a crime scene does not render that person accountable for an offense. See *People v. Thicksten,* 14 Ill. 2d 132, 134-35 (1958); *People v. Taylor*, 164 Ill. 2d 131, 140 (1995). Because the legislature did not change or alter existing law, we are not persuaded by the defendant's assertion that IPI No. 5.03 is confusing or misleading. As we have previously held, IPI No. 5.03 clearly rules out liability where the defendant had no idea a crime was planned and, without question, rules out liability if the State proves nothing

more than the fact that the defendant was merely present at the scene of the crime. See *Wilson*, 257 Ill. App. 3d at 697-98 ("the standard IPI accountability instruction contains the essence of the "mere presence" instruction).

¶ 29 Thus, we conclude that the jurors were fully and accurately instructed on the law applicable to the evidence presented in support of his theory of defense and were well aware from the instructions given that the defendant's "mere presence" at or during the offenses was not sufficient to convict him of them. Accordingly, we conclude that the trial court properly exercised its discretion in refusing the "mere presence" instruction submitted by the defendant.

¶ 30 The defendant next contends that he was deprived of his right to a fair trial because the State committed prosecutorial misconduct in rebuttal closing argument. He acknowledges that he forfeited this issue for review, but asks this court to review his claim for plain error.

¶ 31 The plain-error doctrine is a narrow and limited exception to the general rule of forfeiture. *People v. Herron*, 215 Ill. 2d 167, 177 (2005). Under the plain-error doctrine, the defendant has the burden to show that a clear or obvious error occurred, and either (1) the evidence is so closely balanced that the error, standing alone, threatened to tip the scales against the defendant regardless of the seriousness of the error, or (2) the error was so serious that it affected the trial's fairness and challenged the integrity of the judicial process. *People v. Thompson*, 238 Ill. 2d 598, 613 (2010). Before considering whether the plain-error exception applies, we must first determine whether any error occurred. *People v. Glasper*, 234 Ill. 2d 173, 203-04 (2009).

¶ 32 Prosecutors are afforded wide latitude in closing argument, and a prosecutor's comments therein will result in the reversal of a conviction only when they engender substantial prejudice against a defendant to the extent that it is impossible to determine whether the jury's verdict was

caused by the comments or the evidence. *People v. Wheeler*, 226 Ill. 2d 92, 123 (2007). Where a defendant claims that he has been denied the right to a fair trial based upon an improper closing argument, the arguments of both the prosecutor and the defense attorney must be reviewed in their entirety so that the prosecutor's statements can be viewed in their proper context. *People v. Kliner*, 185 Ill. 2d 81, 154 (1998).

¶ 33 In support of his claim that he was deprived of his right to a fair trial, the defendant maintains that, during the State's rebuttal argument, the prosecutor diminished the State's burden of proof by arguing that the jury "need not figure anything out, because the evidence was as clear as it appears, and because the 'sole issue' was that the defendant was begging the jury to let him walk free."

¶ 34 Here, during closing argument, the defendant's attorney argued, *inter alia*, that the State presented "essentially zero" evidence of accountability. In a rhetorical question, he asked the jury: "What was the planned and intended act? Do we have any evidence of that? As they just said, we don't know, it could have been anything."

¶ 35 In rebuttal, the prosecutor argued:

> "I want to address something right up front. I am sure there are a couple of you sitting here right now scratching your head wondering what is going on? I must be missing something. We just sat through a week long trial, heard 25 witnesses. We listened to all this testimony and it sure seems to me that this is pretty straight forward. I have got to be missing something. And it would be natural for some of you to think that.
>
> *Some of you may think; well, we are on a jury, there must be something that we have to solve or figure out or a puzzle that we need to put together. Don't*

> *worry about this. This case is as clear and straightforward as it appears.* That guy right there, that defendant, he's a killer. He is a killer. The guy in the white shirt hanging out the window blasting away at Oscar Solorzano and his friend sits right in that chair, sits right in that chair, no question about it.
>
> This is the same guy that's caught with a white shirt hanging out the window. It is as clear as it appears. *The only issue, the sole issue in this case is that this defendant is begging, he is banking on you; please, please, please, let me walk out that door a free man.* Ignore the fact that this case is as obvious as it appears. It's a car full of gang bangers going down rival territory lighting [it] up, please just look away from that. Look away.
>
> If you have to, look at the other people. Look at the other people in the car. Don't look at the spotlight of guilt shining right over that table. *Please, please, please ignore all the evidence and let me walk out that door. That's what this case is about. That's it. That's it. And the issue in this case is zero, there is none.*" (Emphasis added.)

¶ 36 Based upon our review of the record, the prosecutor's comments constituted a fair response to defense counsel's assertion that there was "essentially zero" evidence establishing that the defendant was accountable for the shooting death of Soloranzo. See *Glasper*, 234 Ill. 2d at 204 ("Statements [in closing arguments] will not be held improper if they were provoked or invited by the defense counsel's argument."). We also find that the prosecutor was commenting on the strength of the State's case by arguing that the defendant is hoping the jurors will ignore the overwhelming evidence against him and allow him to escape punishment. Considered in context, the prosecutor responded to defense counsel's argument by explaining to the jury that

the case "is as clear and straightforward as it appears" and that the evidence against the defendant is overwhelming. See *People v. Cloutier*, 156 Ill. 2d 483, 507 (1993) ("the prosecution is allowed to comment on the evidence and the strength of its case and to urge the fearless administration of justice"). Thus, we do not believe the prosecutor's comments were improper or diminished the State's burden of proof.

¶ 37 In further support of his claim that he was deprived of his right to a fair trial, the defendant maintains that the prosecutor improperly shifted the burden of proof by inviting the jury to consider his failure to proffer alternative, innocent explanations for the circumstantial evidence of his guilt.

¶ 38 During closing rebuttal argument, the prosecutor argued as follows:

> "You take a look at all the questions that are thrown out to you, all the questions, all the Scientists answered the questions, the witnesses answered the questions. It's all right there before you.
>
> But there are certain questions that there is no explanation for. And one of those questions is why in the world is that guy, that defendant in that truck?
>
> * * *
>
> *There is no other explanation for it.* And he knew what was happening, and he was going with. None, none.
>
> Why in the world is his window down? Why is it down? No other explanation for it that what we know happened. Why in the world out of all places are the shots coming out his window? *No other explanation for it is given.* Why is it not out of Schoen's window? Interesting, isn't it? Why in the world

> does this defendant say it's not over? Why in world does this defendant say that he needs to get an attorney to find out if anyone has ratted." (Emphasis added.)

¶ 39 After reviewing the closing arguments in their entirety, as we must, we do not agree with the defendant's assertion that the prosecutor improperly shifted the burden to the defendant. The prosecutor's remarks were not intended or calculated to direct the jury's attention to the defendant's failure to testify. Rather, the prosecutor's comment that there is "no explanation" for why the defendant was in the vehicle or why shots were fired from his window was not improper as it addressed the uncontradicted nature of the evidence. See *People v. Skorusa*, 55 Ill. 2d 577, 584 (1973) (statement that "[w]e have heard no evidence here from the stand of what the reason, from his side, for the theft was," did not improperly call attention to the defendant's failure to testify). The prosecutor did not argue that the defendant had the burden of proof or failed to present evidence to prove his innocence. Since the prosecutor was merely commenting on what the evidence did and did not show, we find that his remarks were permissible as references to the uncontradicted evidence presented by the State.

¶ 40 Finally, the defendant argues that the prosecutor used an "inflammatory, spiritual theme of predestination" in his closing remarks. For example, the prosecutor argued:

> "And what are the chances that [two eyewitnesses] are looking right in this direction? They see this window down. I mean, what are the chances that this occurs? Fate, fate. Making sure that Oscar Solorzano was going to receive justice for what was done for him.
>
> And what are the chances that there is a Summit Police Officer ***
>
> * * *

> And he goes and he sets up on Harlem Avenue figuring this is Latin King territory, maybe it's the Saints, maybe they are heading back over to deep Summit. And he sits there. And lo and behold here comes the Saints, here comes the defendant.
>
> Fate, fate was smiling down on Oscar Solorzano. Fate didn't save his life but it's going to make sure that justice is coming."

The defendant asserts that the prosecutor's comments of "fate smiling down on Oscar Solorzano" were irrelevant and inflamed the passion of the jury.

¶ 41 In the present case, we agree with the defendant the prosecutor's remarks that "fate was smiling down on Solorzano" was improper since it expressed a personal opinion and was not based upon any evidence. See *People v. Johnson*, 114 Ill. 2d 170, 199 (1986). However, the jury was specifically instructed that closing arguments are not evidence and that they should disregard any argument not based on the evidence. Moreover, the prosecutor's comments were sporadic and incidental to other relevant evidence presented at trial, were not presented in an inflammatory manner, and did not lead the jurors to believe that his remarks were material. See *id*. (prosecutor's comments that "fate" or "a miracle" spared the victim's life did not deprive the defendant of a fair trial where: the remark was isolated; the jury was instructed to disregard any arguments that were not based on the evidence; and where the evidence against the defendant was overwhelming and the improper comment did not constitute a material factor in the defendant's convictions). In view of the entire record and the substantial evidence of the defendant's guilt, we cannot say that the prosecutor's remarks regarding "fate" constituted a material factor in the defendant's convictions or otherwise prevented him from receiving a fair trial.

¶ 42 In sum, the State's and the defendant's closing arguments were extensive and thoroughly explored the facts of the crime based upon the evidence. Viewed in the context of the State's entire argument, the disputed comments were either invited or provoked by defense counsel's argument or amounted to little more than an isolated reference that was not highlighted, repeated or otherwise emphasized. Accordingly, we find that the defendant has failed to show that a clear or obvious error occurred and, therefore, we honor the procedural default of this claim.

¶ 43 For the reasons stated herein, we affirm the defendant's first-degree murder conviction.

¶ 44 Affirmed.