2018 IL App (1st) 153211-U

FOURTH DIVISION
December 27, 2018

No. 1-15-3211

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. 11 CR 13613
	)	
STEVEN DIXON,	)	
	)	Honorable
Defendant-Appellant.	)	Maura Slattery Boyle,
	)	Judge Presiding.

PRESIDING JUSTICE McBRIDE delivered the judgment of the court.
Justices Reyes and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The State proved defendant guilty beyond a reasonable doubt based on extensive DNA and crime scene evidence; (2) the trial court properly denied defendant's motion to suppress the recovery of clothing; (3) defendant was not denied a fair trial where the prosecutor's admission of photographs and comments during closing argument were proper; and (4) the mittimus is to be corrected to reflect one conviction for first degree murder.

¶ 2 Following a jury trial, defendant Steven Dixon was found guilty of the first degree murder of Tiffany Lindsey. The trial court subsequently sentenced him to a term of 40 years in prison.

¶ 3 Defendant appeals, arguing that (1) the State failed to prove defendant guilty beyond a reasonable doubt; (2) the trial court erred in denying defendant's motion to suppress during trial regarding the warrantless seizure of defendant's clothing from the hospital; (3) defendant was denied a fair trial when the prosecution introduced irrelevant and prejudicial photographs of Lindsey's son and the prosecutor made improper comments during closing arguments; and (4) defendant's mittimus should be corrected to reflect a single conviction for first degree murder.

¶ 4 On October 13, 1991, 16-year-old Tiffany Lindsey was found beaten and stabbed to death inside her apartment located at 47th Street and Drexel Boulevard in Chicago. Defendant admitted that he was with Lindsey that morning and told police that an unknown individual entered the apartment and attacked them. No charges were filed at that time. Following new testing in 2009, defendant was arrested and charged with Lindsey's murder. The following evidence was presented at defendant's jury trial.

¶ 5 Detrice Shelton was Lindsey's aunt and foster mother. Shelton had rented the studio apartment for Lindsey in late summer 1991 to have a stable place for Lindsey and her one-year-old son Kendall Lindsey to live. Shelton kept in contact with Lindsey daily by visiting the apartment or by telephone. On cross-examination, Shelton remembered speaking with the police after Lindsey's death, but she did not recall telling officers that strange people would visit Lindsey or that Lindsey might be involved in narcotics transactions. She testified that she remembered being told that Lindsey might have been involved in selling narcotics.

¶ 6 Candice Hogans testified that she was defendant's sister. In October 1991, she lived with her family, including defendant, at 82nd Street and Damen Avenue. Defendant was 16 at that time. On the morning of October 13, 1991, she saw defendant at the house and he looked "shocked." She could not remember if defendant had cuts on his face, but he had injuries on his

chest and stomach. Defendant told her that "someone came in on him and Tiff" and to send somebody to check on Lindsey. Both Hogans and defendant were friends with Lindsey. Hogans then contacted Tiffany Henderson Williams, another mutual friend with Lindsey. She told Williams to go to Lindsey's apartment and check on her based on defendant's statement. Eventually, Hogans went to Lindsey's apartment, but was unable to get inside and the police were present.

¶ 7 Tiffany Henderson Williams testified that in October 1991, she lived at 26th Street and Calumet Avenue in Chicago. She was friends with Lindsey, defendant, Hogans, and Tameko Brown. They went to parties and drank, "normal, everyday things."

¶ 8 On Friday, October 11, 1991, Lindsey had a party at her apartment. All of the friends were present, including other friends of Lindsey. Williams stayed at the party until approximately 3 or 4 a.m. on Saturday, October 12, 1991. At the time, Brown was pregnant and was dating defendant. Williams did not speak with Lindsey again that day.

¶ 9 The morning of October 13, 1991, Williams received a call from Hogans telling her to go to Lindsey's apartment and check on her "because the defendant came home with cuts on him and they [were] taking him to the hospital." Williams got up and asked her sister who lived nearby to go with her. They drove over to Lindsey's apartment and parked behind the building. Lindsey's unit was on the second floor. Williams noticed that the gate to Lindsey's back door was not closed or locked and the door was open a "crack." She pushed open the door and called for Lindsey. Her sister grabbed the doorknob, but the doorknob came off in her hand. Williams and her sister entered the apartment and continued calling for Lindsey. Lindsey's son Kendall crawled toward them from the living room. She picked him up and observed that he "had blood

all over him." They walked to the living and saw Lindsey on the floor. Williams estimated that it was approximately 6:30 a.m. when they arrived.

¶ 10 Williams described Lindsey's face as "beat up really bad," and Lindsey was covered, there was "a sheet wrapped from her waist like to her neck." Williams stated that she was "panicking," while her sister reached down to check for a pulse. Her sister did not feel a pulse. They left out the back door and told someone outside to call the police. They kept Lindsey's baby with them and waited for the police. Later, Williams was able to reenter Lindsey's apartment with Brown, Hogans, and defendant's mother. While inside, Williams noticed a pair of underwear on the floor. She picked them up and Brown identified them as belonging to defendant. Williams testified that it was unusual for the burglar gate to be open at Lindsey's apartment because Lindsey "never, had her bars off. Even if we came, she had to know it was us before she even unlocked it."

¶ 11 On cross-examination, Williams testified that her residence in 1991 was in the neighborhood where she grew up with defendant and the circle of friends she named.

¶ 12 Tameko Brown testified that she has two children with defendant. Her first child was born October 18, 1991. She was dating defendant in October 1991. On October 13, 1991, Brown received a phone call from Hogans telling Brown to check on Lindsey. When Brown arrived at Lindsey's apartment, the police were present. Brown identified a pair of underwear in a photograph as belonging to defendant. She testified that she had seen him wear them. Brown stated that she was best friends with Lindsey since childhood.

¶ 13 Investigator Carl Brasic testified that in 1991 he was employed as an evidence technician with the Chicago police department. On October 13, 1991, he was working the day shift with his partner when they received an assignment to process a homicide scene at 4724 South Drexel.

They arrived at approximately 9:50 a.m. He spoke with an officer at the scene and then did a walk-through of the apartment. There were no signs of forced entry. Lindsey's body was still present at the scene. He then photographed the scene and collected blood evidence. He also recovered the following items from near Lindsey's body: a Phillips head screwdriver, a padlock, two blue knife handles without the blades, a knife blade, a Newport cigarette case, a bottle of Hennessey cognac, and a can of "Old English" malt liquor. He also recovered a washrag from the floor near the kitchen sink and a second opened can of "Old English" from the kitchen table. Investigator Brasic also collected the clothes from Kendall Lindsey.

¶ 14 Investigator Brasic also testified that blood spatter was present on the south wall of the living room and a window shade as well as red stains on a kitchen cupboard. He put bags around Lindsey's hands to preserve evidence that might have been on her hands or under her nails. Three teeth were found on the carpet near her body.

¶ 15 After he left the scene, Investigator Brasic went to the 21st district police department where he recovered defendant's clothing from another officer. He recovered a pair of brown shoes, a hooded Michigan sweatshirt, a denim jacket, denim pants, and a brown belt. The investigator next went to Mercy Hospital and photographed defendant and his injuries. He also took a swab of blood from defendant's right hand.

¶ 16 Lieutenant Scott DeDore testified that in October 1991, he was assigned to the 21st district tactical team, a civilian dress team on the second watch. On October 13, 1991, Lieutenant DeDore and his partner received an assignment to respond to the corner of 47th and Drexel. He estimated that they arrived between 9 and 10 a.m. He and his partner were then directed to 8215 South Damen, which he estimated was 8 miles from the homicide scene. After he spoke with a family member of defendant, Lieutenant DeDore went to Mercy Hospital. He located defendant

in a curtained off area in the emergency room with his mother present. He was wearing a hospital gown. Lieutenant DeDore observed scratches on defendant's face. The officer spoke with defendant's mother and then gave defendant his *Miranda* rights. Defendant agreed to speak with them.

¶ 17 Defendant told the lieutenant that he was sleeping on the floor of Lindsey's apartment while Lindsey was sleeping on the couch. He woke up because "he heard screams and he felt he was being cut." He "jumped" up, got dressed as he had only been wearing his pants, and fled the apartment. Defendant walked to Cottage Grove Avenue and hailed a cab to his home at 8215 South Damen. Defendant estimated this happened at approximately 7 a.m. When the lieutenant asked defendant if he called police or tried to help Lindsey, defendant responded that he was in shock and worried about himself. Lieutenant DeDore described defendant's demeanor as "very calm." Defendant did not provide a description of the person who cut him. Defendant did not ask about Lindsey's condition.

¶ 18 Lieutenant DeDore testified that defendant's clothing he had been wearing were either "bagged or put in a basket" by the nurse and present in the room. He removed some personal items from the clothing, which included a bus transfer, a key chain, and a lottery ticket. The clothing was later inventoried. The bus transfer was dated October 13, 1991, and punched to indicate the number four route with an expiration of 8 a.m. He testified that at the time the number four bus route was Martin Luther King Drive.

¶ 19 On cross-examination, Lieutenant DeDore testified that he observed injuries to defendant's face and abdomen. Lieutenant described defendant's clothing as "bloody" and agreed that the clothing was something the police would want to collect as possible evidence. He stated that normally a patient's clothing is placed under the gurney or on the counter. He could

not recall where defendant's clothing had been placed. When asked if he asked for permission to go through defendant's clothing, Lieutenant DeDore answered, "Probably not. Don't remember." He did not have defendant sign any sort of waiver regarding defendant's clothing, nor did the lieutenant have a search warrant.

¶ 20 A medical examiner testified regarding his examination of the 1991 autopsy on Lindsey. The autopsy disclosed negative toxicology, multiple blunt and sharp force injuries to her face, head, and neck, as well as a beaten body. A handle-less knife blade was protruding from Lindsey's neck from left to right. The knife blade severed Lindsey's carotid artery. Lindsey also had a displaced skull fracture on her right temple which broke through the skull and bruised her brain. Her fingernails, clothing, and blood were collected as evidence. The medical examiner estimated that she would have stayed in motion for a matter of seconds up to possibly a minute or two after the neck wound was inflicted.

¶ 21 In 1991, the Chicago police department crime lab did not conduct DNA testing. However, tests were conducted for the presence of human blood. Positive results for human blood was found on crust from fingernail clippings from Lindsey, the bent knife blade from the morgue, the screwdriver shaft and handle, the two knife handles, the knife blade recovered from the scene, the body and hook of the padlock, the cigarette box and liner, the washrag as well as swabs from the living room carpet, a window shade from the northeast window in the living room, and defendant's hand. Defendant's clothing also tested positive for the presence of human blood on the top and front of both shoes, stains on his sweatshirt, the sleeves of his denim jacket, and the denim pants had stains on the front and back of the left leg, the front of the right leg, the lining inside the pants, and smears inside the belt near the belt holes.

¶ 22 Detective Patrick Smith testified that in 2009, he was assigned to the cold case unit of the Chicago police department. He received an assignment to investigate Lindsey's murder. Detective Smith was aware of a grant from the United States government to review unsolved cases that had possible DNA evidence. He was aware that some of the evidence had been submitted to Orchid Cellmark laboratory (Cellmark) for DNA testing. After he received the results from the DNA testing, Detective Smith attempted to locate defendant. He located defendant in Madison, Wisconsin. He and another officer obtained a court order to collect biological samples from defendant. He collected a blood sample in October 2010.

¶ 23 Cellmark conducted the testing on the evidence with DNA samples from Lindsey, defendant, and Kendall Lindsey. The DNA results disclosed as follows:

• Samples of blood stains on living room carpet, window shade and the washrag: Single source DNA consistent with Lindsey

• Padlock: Mixed profile, the major contributor profile was Lindsey, Kendall could not be excluded as to the minor profile. No conclusion could be reached as to defendant as a contributor

• Cigarette box: Mixed profile consistent with mixture of Lindsey and Kendall. Defendant was excluded as a DNA contributor

• Screwdriver shaft: Mixed profile consistent with mixture of Lindsey and Kendall. Defendant was excluded as a DNA contributor

• Screwdriver handle: DNA profile consistent with Lindsey

• Knife blade from living room floor: DNA profile consistent with Lindsey

• Knife handle #1: DNA profile consistent with Lindsey

• Knife handle #1 (nonblood area): Major profile consistent with Lindsey, minor consistent with Kendall. Defendant was excluded as DNA contributor

• Knife handle #2 (nonblood area): Partial DNA profile was mixture of defendant and Lindsey, Kendall could not be excluded.

• Fingernail clippings from Lindsey: Mixed profile, major profile consistent with Lindsey and partial profile consistent with defendant. Kendall was excluded.

• Blood crusts from Lindsey's fingernails: Partial predominant profile consistent with defendant

• Cuttings from defendant's sweatshirt hood, inside sweatshirt waistband, left jacket sleeve, right jacket sleeve, and inside front panel of jacket: DNA profile consistent with defendant

• Cuttings from back of left leg of defendant's jeans: Mixed profile, major full profile consistent with Lindsey, minor partial from unknown individual. No conclusion could be drawn as to defendant, Kendall was excluded

• Cuttings from right front leg of defendant's jeans: Single source DNA profile consistent with Lindsey

• Cutting from defendant's right shoe: Single source DNA profile consistent with Lindsey

• Swab of defendant's right hand: Mixed profile, major profile originated from Lindsey and defendant could not be excluded as minor contributor. Kendall was excluded.

¶ 24 Defendant's clothing was submitted for blood spatter analysis in early 2011. Investigator Thomas Merchie testified that he was now retired, but he had performed the analysis on defendant's clothing. He was trained in blood pattern analysis during his career as a crime scene investigator with the Illinois state police. During his testimony, he opined that the blood drops on defendant's right shoe came from the toe area and traveled toward the rear of the shoe. This opinion was based on the tail of the blood drop moving toward the back of the shoe. Investigator Merchie testified that defendant's right shoe had over 100 blood stains, but none of the stains were on the back of the shoe. Based on the size, number and pattern of the bloodstains, he opined that the source of the blood was in front of where the shoe was pointed. In his opinion, the stains were not left by incidental contact. He stated that the size of the bloodstains indicated a blunt force trauma. In comparison, defendant's left shoe had fewer bloodstains, approximately 20 to 30 stains. The stains were located on the right side of the shoe and the top of the shoe.

¶ 25 Investigator Merchie also analyzed defendant's jeans for blood spatter. He found more stains on the right leg than the left. Both legs had the majority of the stains below the knee. He testified that the absorbency of the cloth distorted the stains at times. The blood will be absorbed into the material and spread because of this, some of the stains do not show direction. In his opinion, Investigator Merchie testified that because the stains on both the shoes and the pants were similar in size and shape, it indicated that both items were in the same or approximately the same location when the blood struck them. He opined that the shoe was mostly likely on the floor and within two to three feet from the source of the blood.

¶ 26 On cross-examination, Investigator Merchie agreed that his report did not include some of the details disclosed in his testimony. Specifically, in his report, he stated that the shoes and pants were "within several feet" of the blood source. He also did not state in his report that the

left shoe was facing the blood source, that the right shoe and pants were closer to the blood source, or that the right pant leg and right shoe were together at the time of impact. He did not perform mathematical calculations to determine angles of the blood pattern because it was not necessary for his analysis. He agreed that his opinion was partially shaped by the crime scene photos.

¶ 27 The State rested its case-in-chief following Investigator Merchie's testimony. Defendant moved for a directed finding, which the trial court denied.

¶ 28 Following Lieutenant DeDore's testimony, defendant filed a motion to suppress the recovery of defendant's clothing from Mercy Hospital. A written copy of the motion to suppress is not included in the record on appeal. During arguments, defense counsel argued that defendant's clothing should be suppressed because defendant had an expectation of privacy to his belongings in a property bag at the hospital and Lieutenant DeDore testified that he did not ask permission before he went through the bag of defendant's belongings. The prosecutor responded that Lieutenant DeDore was investigating a stabbing murder and had learned that defendant had gone to the hospital. Defendant asserted to the officer that he had been a victim in the attack. Lieutenant DeDore indicated that defendant had been injured and there was bloody clothing in the room that defendant wore while he was attacked at the time his friend was murdered. The prosecutor maintained that the evidence was in plain view, that defendant had asserted he was a victim and it would be evidence the police would ultimately inventory as inevitable discovery. Following the arguments, the trial court denied defendant's motion based on defendant's visible wounds and his assertion that he was a victim of the attack.

¶ 29 Defendant testified on his own behalf. He moved to Madison, Wisconsin in 2005 and admitted that he had two convictions for "possession with intent" of THC less than 200 grams.

¶ 30 Defendant grew up in the Prairie Courts neighborhood, which he described as being located from 26th Street to 29th Street between King Drive, Calumet Avenue and Prairie Avenue. In October 1991, defendant was 16 years old. He grew up with Lindsey in the Prairie Courts neighborhood and had known her most of his life. In October 1991, defendant lived with his family at 8215 South Damen Avenue. Also in October 1991, defendant was in a relationship with Kameko Brown and she was pregnant with his child. He had been dating Brown for two years. Defendant testified that he also had a sexual relationship with Lindsey that had been going on for two years. Brown and Lindsey were best friends, but defendant stated that Brown did not know about his relationship to Lindsey. Brown gave birth five days after Lindsey's murder.

¶ 31 In October 1991, Lindsey lived near 47th Street and Drexel Avenue, which was not the same neighborhood where they grew up. She moved there in the summer of 1991. He estimated that he had visited Lindsey at her apartment five or six times. The apartment had two entrances, a front door and a back door. He used the back door because he did not like the guys in her neighborhood who would be in the front of Lindsey's apartment. Defendant testified that Lindsey supported herself by selling drugs. They sold drugs together. He had seen her sell drugs in the apartment.

¶ 32 Defendant testified that Lindsey had a party at her apartment the weekend of her murder, which defendant attended. He came with a friend named Foyce Gitz or "Fat Daddy." There were 15 to 20 people at the party including friends from Prairie Courts. Defendant was drinking at the party. Defendant testified that Lindsey had thrown the party because the guys in her neighborhood did not like that she was selling drugs and the party was to show them "that she had people who had her back."

¶ 33 Defendant left the party at some point with Gitz and went to Prairie Courts to make money. When he left Prairie Courts, he took the number four Cottage Grove bus back to Lindsey's apartment. When he got to Lindsey's apartment, the party was over. He did not know what time it was, but it was late. He entered through the back door. He had consensual sex with Lindsey on the floor while her child was asleep on the couch. Afterwards, he slept on the floor of the apartment and Lindsey slept on the couch with her child. When he fell asleep, defendant was naked. At some point he woke up to use the bathroom. While he was up, defendant put on his pants. He then lay down on the floor and went back to sleep.

¶ 34 Later, defendant was woken up by "loud screams." He could not tell where the screams were coming from. Once he started to wake up, he "felt a sharp object coming at [him]." The sharp object was coming from someone else in the apartment. He felt the object on his face and his abdomen. He could not see who was attacking him. Defendant described the room as "semi" dark with no lights on and the sun was not up. Defendant then began to wrestle with the person. He still could not see the person's face or tell whether the person was black or white. He assumed the attacker was a man. He also could not see the sharp object the attacker was holding. He could not say how long the wrestling lasted, he stated that it felt like hours, but probably lasted "a matter of minutes." The wrestling ended when defendant was hit in the head with an unknown object. Defendant testified that this strike caused him to become "semi conscious." After he was hit in the head, he did not see where the attacker went and he did not see where Lindsey was.

¶ 35 When defendant became more conscious, he saw Lindsey on the floor. He went over to Lindsey and noticed she had something in her neck. Defendant tried to pull the knife out of her neck, but the handle fell off. He testified that Lindsey was still breathing. He stated that, "It was

like she had tried to say something, and blood had spurted, and I was, like, man, I'm fixin' to get some help." Defendant then grabbed his shoes, shirt, and jacket, and ran out of the apartment. His clothes had been close to him on the floor. He forgot to take his underwear. Defendant exited through the back door. He did not close Lindsey's back door and burglar gate.

¶ 36 Defendant then ran to Cottage Grove and hailed a cab to take him to his house. When he got home, he told his family to have someone go check on Lindsey "because somebody had ran in the house on us." His mother then took him to Mercy Hospital.

¶ 37 While at the hospital, defendant remembered speaking to the police. He testified that he did not remember the police asking him for a description of the attacker. He denied killing Lindsey. He denied having any sort of fight or disagreement with Lindsey.

¶ 38 On cross-examination, defendant testified that the party at Lindsey's apartment was on Saturday, October 12, 1991. He stated a few of his friends knew he had been having consensual sex with Lindsey, but his girlfriend Brown did not know. He did not know if Tiffany Williams knew about his relationship with Lindsey, but it was possible she knew. When he went to Prairie Courts during Lindsey's party, he went there to sell drugs. He sold cocaine. He did not recall how much money he made that night. He could not estimate the amount. He sold drugs that night for more than an hour and possibly more than two hours.

¶ 39 When defendant returned to Lindsey's apartment, her baby was asleep on the couch. Defendant estimated that he was at Lindsey's apartment for about an hour before they had sex. He testified that they smoked cigarettes and drank some "Old English." During this time, they were sitting on the couch while the child was asleep on the couch. The child remained on the couch while defendant and Lindsey had sex on the floor. When defendant woke up to use the bathroom, he put his pants on because he did not want the baby to see him naked. He described

the apartment as "semi dark," but agreed that he was able to find his pants. Lindsey was asleep on the couch.

¶ 40 Defendant testified that when he was wrestling the attacker, they were not face to face, but were "in close proximity." His hands were on this person's body, but he did not know what part of the body. Defendant testified that it was a violent struggle and they moved around the apartment. He did not know if the person ever fell down. It was possible that they pushed each other. He stated it was possible he bumped into the couch while wrestling and he did bump into the wall. During the struggle, he never felt or saw where Lindsey or her child was located. He did not hear Lindsey or her child during the struggle. The attacker was able to cut him while they fought. Defendant did not know if he was hit in the head by the person he was fighting. He was struck on the right side in the back of his head. Defendant testified that he was unconscious after being struck, but did not know how long he was out. He stated that it was so dark in the apartment that he could not see the whites of the attacker's eyes. When he woke up after being struck, the apartment was lighter and he was able to see. Lindsey was on the floor, but he did not know where the baby was in the apartment.

¶ 41 As he left, defendant did not knock on any doors in the building for help or ask anyone to call the police or an ambulance. When he was at the hospital, he was "sure" he told the police he was hit in the head. He also told the police he struggled with the attacker in the apartment. He did not know if he told the police this happened around 7 a.m. Defendant admitted that he was right handed.

¶ 42 The defense then entered a stipulation that two police officer during the investigation in October 1991 interviewed Detrice Shelton, Lindsey's aunt. In their report, Shelton told them she

had indications that Lindsey might have been involved in narcotic transactions and that there were strange people visiting briefly. Following the stipulation, the defense rested.

¶ 43 In rebuttal, the State recalled three witnesses. Investigator Brasic testified that when he went to Mercy Hospital to photograph defendant's injuries, he had no information that defendant had been struck in the head. If he had been told about this injury, he would have photographed defendant's head. Lieutenant DeDore testified that defendant did not tell him that defendant had been struck in the head, that defendant had struggled with the attacker, or that defendant had been knocked unconscious. Defendant did not tell the officer that when defendant saw Lindsey on the floor, a knife was protruding from her neck. Defendant did tell Lieutenant DeDore that the attack happened around 7 a.m.

¶ 44 Tiffany Williams testified that Lindsey's party occurred on Friday, October 11, 1991, and the purpose was not to let the local drug dealers know that Lindsey was selling drugs and she was not intimidated by them. Williams stated that Lindsey did not have a party on Saturday, October 12, 1991. Williams testified that she was "real close" with Lindsey and they shared the details of their romantic lives together. According to Williams, Lindsey was friends with defendant and Lindsey's boyfriend was named "Junebug." Williams testified that Lindsey did not have a sexual relationship with defendant and was not aware of a secret affair between defendant and Lindsey. Williams also stated that bus transfers were valid for two hours, but agreed that on Sundays, a person could get a "super transfer" that was valid all day. On cross-examination, Williams testified that she told Lindsey "pretty much" everything that was happening in her life. She agreed it was "possible" that there were things Lindsey did not tell her. She maintained that there was no party on Saturday because she would have known.

¶ 45 Following closing arguments, the jury found defendant guilty of first degree murder. Defendant filed a motion for a new trial, which the trial court denied. The trial court subsequently sentenced defendant to 40 years in prison.

¶ 46 This appeal followed.

¶ 47 Defendant first argues that the State failed to prove him guilty beyond a reasonable doubt because the evidence was not consistent with the State's theory of the case and was not inconsistent with defendant's assertion that they were attacked by an unknown assailant. Specifically, defendant contends that given the extent of Lindsey's injuries and the amount of blood involved, the fact that blood was found only on defendant's shoes, lower portion of his pants, and a small spot on his hand was inconsistent with the State's theory of the case. Defendant also pointed out there was no direct evidence to the crime with no witnesses and defendant did not confess to the crime. The State maintains that the evidence was sufficient to prove defendant guilty beyond a reasonable doubt, noting Lindsey's blood on defendant's hand, his DNA on her fingernail clippings and inside the crusts of blood under her fingernails as well as the blood on defendant's jeans and shoes contained Lindsey's DNA.

¶ 48 When this court considers a challenge to a criminal conviction based upon the sufficiency of the evidence, it is not our function to retry the defendant. *People v. Hall*, 194 Ill. 2d 305, 329-30 (2000). Rather, our inquiry is limited to "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (Emphasis in original.) *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); accord *People v. Cox*, 195 Ill. 2d 378, 387 (2001). It is the responsibility of the trier of fact to "fairly *** resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Jackson*, 443 U.S. at 319.

¶ 49 The reviewing court must carefully examine the record evidence while bearing in mind that it was the fact finder who observed and heard the witnesses. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). Testimony may be found insufficient under the *Jackson* standard, but only where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt. *Id*. Only where the evidence is so improbable or unsatisfactory as to create reasonable doubt of the defendant's guilt will a conviction be set aside. *Hall*, 194 Ill. 2d at 330.

¶ 50 According to defendant, the evidence was insufficient to find him guilty beyond a reasonable doubt because the amount of blood and DNA evidence did not match the injuries inflicted on Lindsey and were not inconsistent with defendant's testimony placing him at the apartment at the time of Lindsey's death. However, this argument was presented to and rejected by the jury.

¶ 51 At trial, the jury heard extensive evidence regarding the blood and DNA testing as well as blood spatter patterns. There was significant testimony about the recovery of DNA from Lindsey's body, her apartment, items involved in the attack, and defendant's clothing.

¶ 52 Lindsey's blood and DNA was found on defendant's jeans and shoes. Investigator Merchie testified about his analysis of defendant's clothing, observing that more significant amounts of blood were found on defendant's right pant leg below the knee and his right shoe. The right shoe contained approximately 100 blood drops. The blood pattern on his left shoe was more toward the front on the right side of the shoe. This pattern suggested that the right leg was closer to the source than the left leg. Defendant admitted at trial that he was right handed. Investigator Merchie testified that based on the blood pattern, the shoes and pants were likely within 2 to 3 feet of the source, Lindsey. Investigator Merchie also testified that the blood stains

were not caused by incidental contact. He described the stains as impact spatter and opined that the small stains were caused by blunt force trauma. Investigator Merchie further stated that due to the similarity in size and shape, the shoes and pants were likely in the same location when the blood struck them.

¶ 53 In contrast, defendant's testimony was inconsistent with the blood pattern evidence. He testified that he was asleep wearing only his jeans when he was cut by an unknown assailant. He then wrestled with this person around Lindsey's apartment until he was struck on the head and lost consciousness. When he awoke, he saw Lindsey on the floor with something protruding from her neck. He went over and pulled the knife with the handle coming off in his hand. He then grabbed the rest of his clothing and shoes and fled the apartment. Under defendant's version, his pants and shoes were not together at any point in which the blood pattern could have occurred, nor were the items within 2 to 3 feet of the source of blood. He points to a partial DNA profile of an unknown individual on the back of the left leg of his pants, but no conclusion could be made as to whether defendant could be included or excluded as a possible source. We find defendant's assertion that this stain was proof of an unknown assailant to be speculation.

¶ 54 Significantly, defendant's DNA was found on Lindsey's fingernail clippings and in the crusts of blood recovered from under Lindsey's fingernails. Defendant sought treatment for cuts on his face and abdomen. He contends that the cuts were too deep to have been made by fingernails, but only cites to photograph exhibits which were presented to the jury. While a criminal defendant has no burden to present any evidence at trial, we note that no medical or scientific evidence was presented indicating the width and depth of defendant's injuries. While there was testimony that DNA can be transferred during sexual intercourse and again defendant was not required to present any evidence, no evidence was presented to suggest that defendant's

DNA found in crusts of blood under Lindsey's fingernails was transferred during sexual activity. We also point out that the jury as fact finder heard defendant's testimony and viewed the photograph exhibits of his injuries in its consideration of the case.

¶ 55 Further, defendant's argument that given the severity of Lindsey's injuries, more blood would have been present on defendant to be speculation. Defendant testified at trial that he was not wearing a shirt for at least part of the time he was at Lindsey's apartment. As the State points out, a washrag was recovered from Lindsey's kitchen that contained her blood and DNA on it. A swab taken from defendant's right hand testified positive for Lindsey's blood and DNA. Additionally, one of the photographs relied on by defendant regarding the source of his injuries shows dried reddish-brown stains across his knuckles, fingers, and fingernails.

¶ 56 We also note that defendant's initial statements to the police after Lindsey's murder failed to include details he presented in his trial testimony. First, defendant testified that he struggled with an unknown assailant in Lindsey's apartment and that he was struck in the head by the assailant and lost consciousness. However, Lieutenant DeDore testified in rebuttal that defendant never mentioned a struggle with the assailant or being struck in the head during the hospital interview. Investigator Brasic also stated in rebuttal that he would have photographed defendant's head if a head injury had been reported. Next, Lieutenant DeDore testified that defendant did not tell him that defendant touched and attempted to remove the knife in Lindsey's neck. We also note that Investigator Brasic testified at trial that there was no sign of forced entry into Lindsey's apartment.

¶ 57 We also find defendant's reliance on the decision in *People v. Kinsloe*, 281 Ill. App. 3d 799 (1996), to be misplaced. In that case, the defendant was accused of setting his wife on fire. At trial, his wife exonerated him and testified that she accidentally set herself on fire. During a

fight, the wife had picked a can of floor wax and eventually the defendant got possession of the can and poured the contents on her. She stated that she began to feel high from the fumes and attempted to light what she believed was a cigarette which ignited the wax. The trial court admitted a prior inconsistent statement given by the wife to an assistant State's Attorney in which the wife stated that the defendant had set her on fire. *Id*. at 802-06. A jury found the defendant guilty of heinous battery and aggravated battery, premised on the burning. *Id*. at 802. On appeal, the defendant argued that the trial court erred in admitting his wife's previous statements as substantive evidence. The reviewing court agreed, finding the testimony inadmissible hearsay and that the error was not harmless in light of the remaining evidence on the record. *Id*. at 809-10. Further, the court concluded that the evidence was not sufficient to find the defendant guilty beyond a reasonable doubt where the circumstantial evidence was not inconsistent with the wife's testimony. *Id*. at 813.

¶ 58 Unlike in *Kinsloe*, no witness testified that defendant did not kill Lindsey except defendant himself. However, "[a] jury is not obligated 'to accept any possible explanation compatible with the defendant's innocence and elevate it to the status of reasonable doubt.' " *People v. Evans*, 209 Ill. 2d 194, 212 (2004) (quoting *People v. Herrett*, 137 Ill. 2d 195, 206 (1990)). "Regarding defendant's insinuation that someone else murdered the victim, we note that speculation that another person might have committed the offense does not necessarily raise a reasonable doubt of the guilt of the accused." *People v. Manning*, 182 Ill. 2d 193, 211 (1998).

¶ 59 Here, the jury heard defendant's testimony about the unknown assailant attacking him and Lindsey alongside the State's extensive evidence of blood pattern and DNA evidence connecting defendant to Lindsey's injuries. After reviewing the evidence in the light most

favorable to the State, we cannot say that the evidence was so improbable that no rational trier of fact could have found defendant guilty of Lindsey's murder beyond a reasonable doubt.

¶ 60 Next, defendant asserts that the trial court erred in denying his motion to suppress the police recovery of his clothing because the State failed to show any exception to the warrant requirement under the fourth amendment. The State responds that the trial court properly denied defendant's motion because the evidence affirmatively established that defendant's clothing was taken since he claimed to be a victim of the attack.

¶ 61 In reviewing a trial court's ruling on a motion to suppress evidence, we apply a two-part standard of review. *People v. Johnson*, 237 Ill. 2d 81, 88 (2010) (citing *Ornelas v. United States*, 517 U.S. 690, 699 (1996)). Findings of historical fact will be reviewed only for clear error and the reviewing court must give due weight to inferences drawn from those facts by the fact finder. *Ornelas*, 517 U.S. at 699. "A reviewing court, however, remains free to undertake its own assessment of the facts in relation to the issues and may draw its own conclusions when deciding what relief should be granted." *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006). Accordingly, we will accord great deference to the trial court's factual findings, and we will reverse those findings only if they are against the manifest weight of the evidence. However, we will review *de novo* the ultimate question of the legal challenge of the motion to quash arrest and suppress evidence. *Johnson*, 237 Ill. 2d at 88-89.

¶ 62 "In a motion to suppress, the burden is on the defendant to establish that the search or seizure was unreasonable or unlawful." *People v. Juarbe*, 318 Ill. App. 3d 1040, 1049 (2001). Defendant must establish a *prima facie* case that the police acted without a warrant and that the defendant was doing nothing to justify the intrusion by the police at the time of the stop or arrest.

After defendant has made a *prima facie* case, the burden shifts to the State to provide evidence to justify the stop or arrest. *Id.*

¶ 63 "Both the fourth amendment and the Illinois Constitution of 1970 guarantee the right of individuals to be free from unreasonable searches and seizures." *People v. Colyar*, 2013 IL 111835, ¶ 31 (citing U.S. Const., amend. IV and Ill. Const. 1970, art. I, § 6). "This court has explained that '[t]he "essential purpose" of the fourth amendment is to impose a standard of reasonableness upon the exercise of discretion by law enforcement officers to safeguard the privacy and security of individuals against arbitrary invasions.' " *Id.* (quoting *People v. McDonough*, 239 Ill. 2d 260, 266 (2010), quoting *Delaware v. Prouse*, 440 U.S. 648, 653-54 (1979)). "A 'seizure' of property occurs when there is some meaningful interference with an individual's possessory interests in that property." *United States v. Jacobsen*, 466 U.S. 109, 113 (1984).

¶ 64 When a defendant files a motion to suppress evidence, he bears the burden of proof at a hearing on that motion. *People v. Gipson*, 203 Ill. 2d 298, 306 (2003); 725 ILCS 5/114-12(b) (West 2016) ("The judge shall receive evidence on any issue of fact necessary to determine the motion and the burden of proving that the search and seizure were unlawful shall be on the defendant."). A defendant must make a *prima facie* case that the evidence was obtained by an illegal search or seizure, and, once a *prima facie* case is established, the burden shifts to the State to present evidence to counter the defendant's prima facie case. *Id.* at 306-07. However, the ultimate burden of proof remains with the defendant. *Id*.

¶ 65 Defendant's motion to suppress was made following Lieutenant DeDore's trial testimony and arguments were heard after the State rested its case-in-chief. As noted earlier, defendant failed to include the written copy of his motion to suppress in the record on appeal in

contravention of Supreme Court Rule 321. Ill. S. Ct. R. 321 (eff. Feb. 1, 1994). "We note that the appellant bears the burden of providing a reviewing court with a complete record sufficient to support his claims of error, and any doubts that arise from the incompleteness of the record will be resolved against the appellant." *People v. Lopez*, 229 Ill. 2d 322, 344 (2008) (citing *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984)). "When the record presented on appeal is incomplete, this court will indulge in every reasonable presumption favorable to the judgment from which the appeal is taken, including that the trial court ruled or acted properly." *People v. Ranstrom*, 304 Ill. App. 3d 664, 672 (1999). Without the written motion, this court is unable to review the grounds on which defendant based his arguments for suppression. The court is limited to less than four pages of trial transcript in which both parties advanced brief arguments and the trial court denied the motion. Given the incomplete record and very limited arguments, the record is insufficient for a thorough review of this issue and we presume that the trial court properly denied defendant's motion to suppress.

¶ 66 Assuming *arguendo*, even if we considered the merits of defendant's contention under this record, we would conclude that the trial court properly denied the motion to suppress.

¶ 67 At the arguments on the motion to suppress, defense counsel made a brief argument that defendant had an expectation of privacy in his clothing and that Lieutenant DeDore admitted he did not ask permission before going through the bag of defendant's clothing and recovering the items. In response, the prosecutor argued that the items were in plain view at the hospital and defendant had asserted that he was a victim in an attack by an unknown assailant so the clothing was evidence the police would have obtained as inevitable discovery. The trial court denied the motion, finding that at the time defendant had indicated he was a victim himself.

¶ 68 We find that the seizure of defendant's clothing was proper under the plain view doctrine. "[P]olice may seize an object without a warrant if the encounter meets the requirements of the plain view doctrine: (1) the officers are lawfully in a position from which they view the object; (2) the incriminating character of the object is immediately apparent; and (3) the officers have a lawful right of access to the object." *People v. Jones*, 215 Ill. 2d 261, 271-72 (2005) (citing *Minnesota v. Dickerson*, 508 U.S. 366, 374-75 (1993)). The seizure of property in plain view involves no invasion of privacy and is presumptively reasonable, assuming that there is probable cause to associate the property with criminal activity. *Id*. at 272.

¶ 69 Here, Lieutenant DeDore testified that defendant's clothing was either on the counter or under the gurney in the room. There was no testimony that he searched the room and discovered defendant's clothing. Further, the incriminating character of the clothing was immediately apparent at that time because defendant was wearing these items during Lindsey's murder, either as the perpetrator or as a second victim in an attack. Lieutenant DeDore testified that the clothing had blood on all on the items. The officer had a lawful right to access the object while conducting an interview of defendant, which was consented to by both defendant and his mother. The interview was in a curtained section of the emergency room of Mercy Hospital. Therefore, under the plain view doctrine, defendant's clothing was lawfully seized by Lieutenant DeDore and the trial court properly denied defendant's motion to suppress.

¶ 70 Defendant next contends that he was denied a fair trial when the prosecution introduced irrelevant and prejudicial photographs of Kendall Lindsey, made repeated inflammatory references to Kendall crawling on Lindsey's dead body, and argued facts not in evidence. The State responds that defendant's claims have been forfeited because he failed to object at trial or raise the claims in his motion for a new trial. Defendant admits that he did not preserve these

claims for appeal, but asks this court to review them under the plain error doctrine or for ineffective assistance of counsel.

¶ 71 To preserve an issue for review, defendant must object both at trial and in a written posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Failure to do so operates as a forfeiture as to that issue on appeal. *People v. Ward*, 154 Ill. 2d 272, 293 (1992). Supreme Court Rule 615(a) states that "[a]ny error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court." Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967). The plain error rule "allows a reviewing court to consider unpreserved error when (1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007) (citing *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005)). However, the plain error rule "is not 'a general saving clause preserving for review all errors affecting substantial rights whether or not they have been brought to the attention of the trial court.' " *Herron*, 215 Ill. 2d at 177 (quoting *People v. Precup*, 73 Ill. 2d 7, 16 (1978)). Rather, the supreme court has held that the plain error rule is a narrow and limited exception to the general rules of forfeiture. *Id*.

¶ 72 Defendant carries the burden of persuasion under both prongs of the plain error rule. *People v. Lewis*, 234 Ill. 2d 32, 43 (2009). Defendant asserts that this alleged error would qualify as a plain error under the first prong because the evidence was closely balanced. However, "[t]he

first step of plain-error review is to determine whether any error occurred." *Lewis*, 234 Ill. 2d at 43.

¶ 73 Additionally, claims of ineffective assistance of counsel are resolved under the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). In *Strickland*, the Supreme Court delineated a two-part test to use when evaluating whether a defendant was denied the effective assistance of counsel in violation of the sixth amendment. Under *Strickland*, a defendant must demonstrate that counsel's performance was deficient and that such deficient performance substantially prejudiced defendant. *Id.* at 687. To demonstrate performance deficiency, a defendant must establish that counsel's performance fell below an objective standard of reasonableness. *People v. Edwards*, 195 Ill. 2d 142, 163 (2001).

¶ 74 "A defendant is entitled to reasonable, not perfect, representation, and mistakes in strategy or in judgment do not, of themselves, render the representation incompetent." *People v. Fuller*, 205 Ill. 2d 308, 331 (2002). "In recognition of the variety of factors that go into any determination of trial strategy, courts have held that such claims of ineffective assistance of counsel must be judged on a circumstance-specific basis, viewed not in hindsight, but from the time of counsel's conduct, and with great deference accorded counsel's decisions on review." *Id.* at 330-31 (citing *Roe v. Flores-Ortega*, 528 U.S. 470, 477 (2000); *Strickland*, 466 U.S. at 689).

¶ 75 In evaluating sufficient prejudice, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. If a case may be disposed of on the ground of lack of sufficient prejudice, that course should be taken, and the court need not ever consider the quality of the attorney's performance. *Id*. at 697.

¶ 76 "Plain-error review under the closely-balanced-evidence prong of plain error is similar to an analysis for ineffective assistance of counsel based on evidentiary error insofar as a defendant in either case must show he was prejudiced: that the evidence is so closely balanced that the alleged error alone would tip the scales of justice against him, *i.e.*, that the verdict 'may have resulted from the error and not the evidence' properly adduced at trial (see *People v. Herron*, 215 Ill. 2d 167, 178 (2005) (plain error)); or that there was a 'reasonable probability' of a different result had the evidence in question been excluded (see *Strickland*, 466 U.S. at 694)." *People v. White*, 2011 IL 109689, ¶ 133. We next consider each of defendant's complained-of errors in turn.

¶ 77 Defendant contends that the prosecution improperly prejudiced the jury by introducing photographs of Lindsey's baby Kendall covered in blood. However, as the State points out, defense counsel was asked if he had any objection to the admission of the photographs and no objection was made. Thus, the record shows that defendant acquiesced in the admission of this evidence. "When a party procures, invites, or acquiesces in the admission of evidence, even though the evidence is improper, that party cannot contest the admission on appeal." *People v. Caffey*, 205 Ill. 2d 52, 114 (2001). Further, plain error analysis applies to cases involving procedural default, not affirmative acquiescence. *People v. Bowens*, 407 Ill. App. 3d 1094, 1101 (2011) (citing *People v. Townsell*, 209 Ill. 2d 543, 547-48 (2004)). Thus, defendant's contention regarding the admission of the photographs is only reviewable under ineffective assistance.

¶ 78 "If photographs are relevant to prove any fact at issue, they are admissible and can be shown to the jury unless their nature is so prejudicial and so likely to inflame the jurors' passions that their probative value is outweighed." *People v. Terrell*, 185 Ill. 2d 467, 495 (1998) (citing *People v. Henderson*, 142 Ill. 2d 258, 319 (1990)). Defendant argues that the photographs of

Kendall wearing bloody clothes did not address any issues in contention and served no purpose other than to inflame the jury. The State responds that the photographs were used to corroborate Williams's testimony about how she found Lindsey's body and the state of her apartment. According to the State, this evidence was highly probative to explain the DNA evidence and the physical evidence at the scene when there was no witness testimony to the murder. The State also points out the photographs were relevant to explain why Kendall's DNA profile was present on items recovered from the apartment, including the knife handles, the screwdriver shaft, the padlock, and the cigarette box. Finally, the State observes that the photographs of Kendall established the scene had been altered since Lindsey's murder by the child moving through the apartment and on his mother.

¶ 79 After viewing the photographs, we find that the photographs were not so prejudicial as to outweigh their probative value. Witnesses testified that Kendall was found at the scene covered in blood. These photographs accurately depicted Kendall at that time. We agree with the State that the photographs offered probative value to explain DNA and crime scene evidence. Defendant has not shown how his attorney's acquiescence in the admission of the photographs was objectively unreasonable where the photographs offered probative value at trial. " 'Defense counsel is not required to make futile motions or objections in order to provide effective assistance.' " *People v. Smith*, 2014 IL App (1st) 103436, ¶ 64 (quoting *People v. Glass*, 232 Ill. App. 3d 136, 152 (1992)).

¶ 80 We next consider whether the prosecutor's comments in closing argument constituted plain error. Generally, a prosecutor is given wide latitude in closing arguments, although his or her comments must be based on the facts in evidence or upon reasonable inferences drawn therefrom. *People v. Page*, 156 Ill. 2d 258, 276 (1993). "The prosecutor has the right to comment

on the evidence and to draw all legitimate inferences deducible therefrom, even if they are unfavorable to the defendant." *People v. Simms*, 192 Ill. 2d 348, 396 (2000). "Whether a prosecutor's comments or arguments constitute prejudicial error is evaluated according to the language used, its relation to the evidence, and the effect of the argument on the defendant's right to a fair and impartial trial." *Id*. "In reviewing comments made at closing arguments, this court asks whether or not the comments engender substantial prejudice against a defendant such that it is impossible to say whether or not a verdict of guilt resulted from them." *People v. Wheeler*, 226 Ill. 2d 92, 123 (2007). "Prosecutorial misconduct warrants reversal only if it 'caused substantial prejudice to the defendant, taking into account the content and context of the comment, its relationship to the evidence, and its effect on the defendant's right to a fair and impartial trial.' " *People v. Love*, 377 Ill. App. 3d 306, 313 (2007) (quoting *People v. Johnson*, 208 Ill. 2d 53, 115 (2004)). "If the jury could have reached a contrary verdict had the improper remarks not been made, or the reviewing court cannot say that the prosecutor's improper remarks did not contribute to the defendant's conviction, a new trial should be granted." *Wheeler*, 226 Ill. 2d at 123. "The trial court may cure errors by giving the jury proper instructions on the law to be applied; informing the jury that arguments are not themselves evidence and must be disregarded if not supported by the evidence at trial; or sustaining the defendant's objections and instructing the jury to disregard the inappropriate remark." *Simms*, 192 Ill. 2d at 396-97.

¶ 81 As previously acknowledged, none of these comments were preserved and we are reviewing for error under the plain error doctrine as well as ineffective assistance of counsel.

¶ 82 The first complained-of comments involved Kendall's presence at the scene and were made during the State's initial closing argument. In describing the murder scene, the prosecutor stated, "And this is how he left her when he [] left that apartment that morning (indicating). The

defendant literally knocked her teeth out of her mouth, and they lay next to her body, her lifeless body, while her one-year-old child crawled on its dead mother's body." Later, the prosecutor described the one-year-old as, "Kendall, her son, who we know was there, because he's crawling on the bloody body of his mother when her friend come to discover the body." According to defendant, these comments served no purpose other than improperly create a sense of outrage against defendant.

¶ 83 However, these comments were based on evidence presented of the crime scene. Kendall was present when Lindsey's body was discovered and was covered in her blood. Since there was no evidence that Kendall was injured, any blood on him came from another source, Lindsey. The comments were a reasonable inference as to how the blood transferred onto Kendall. The prosecutor has the "right to comment on the evidence and draw all legitimate inferences deducible therefrom, even if they are unfavorable to the defendant." *People v. Pasch*, 152 Ill. 2d 133, 18 (1992). We find no error in these comments.

¶ 84 Next, defendant asserts that the prosecutor erred in making an unsupported argument that Lindsey must have known her attacker. The State responds that the comment in rebuttal closing argument was in response to defense counsel's argument that this was a message about Lindsey's drug business and that more than three people were in the apartment that night.

¶ 85 Specifically, defense counsel argued:

> "Somebody did this. The fact is, contrary to what [the prosecutor] has said, the evidence actually supports that there was more than three people in that apartment. That's the evidence that we sat and we listened to. The person that did this brutalized two people.

Ladies and Gentlemen, as of 11:40 a.m., on April 30, 2015, that person is still unknown. And what [the prosecutor] said is correct. This is over-kill. This was a message. This was a message to whoever was putting [Lindsey] out there to sell, not in her neighborhood.

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And you know, normally with a case like this, you wonder how is the State going to try to prove my client is guilty beyond each and every reasonable doubt you may have. And the fact is, in this case they can't. If anything, what they've done is shown that there's another person in the apartment. As you heard the evidence, there is an unknown male profile on the murder weapon, there is an unknown male profile of DNA on the back of [defendant's] leg, and this comes back to corroborate everything [defendant] said. So instead of proving their case, what they've done essentially, is proven [defendant's] case.

But it comes back repeatedly to why? This doesn't make any sense whatsoever. There is absolutely no reason. I defy you to find a reason that [defendant] would kill [Lindsey]. There is absolutely no reason. There is nothing in any evidence, any testimony you've heard, there is absolutely no reason, that he would kill a family friend, somebody he's known his whole life. Why?"

¶ 86 The State argues that the following comments were made in response.

"Why? Why? Why did this happen? Well, the judge in a few minutes is going to read you the law in this case. And my partner referred to that in those jury instructions that you will receive.

> You know, you'll get a lot of them. But one of them won't be the fact that we need to prove a motive.
>
> But think about it. The defendant had two girlfriends. They were best friends. And as you heard him say and you heard Tameko Brown say, she gave birth to the defendant's son five days later on October 18th. So he's sleeping with best friends. He knows that Tameko doesn't know about him sleeping with [Lindsey]. Okay? And he says he leaves the party at [Lindsey's] house and goes to Prairie Courts to make some money, and then he comes back to have sex.
>
> Well, what happened. You saw the pictures. She's laying on her back, looks like with tights partly pulled down. I don't know. Did she say no? Maybe. Did she say something, hey, I'm going to tell Tiffany [Williams], set him off? Something set him off. Do we know exactly what that was? No. But he sure made his point.
>
> And think about it. Think about the way she's found. Her face is bashed in. There is no other way to describe it. This is up close and personal. This isn't some guy in the alley who from the new neighborhood that [Lindsey] is not familiar with who doesn't like her selling drugs. That's not it. This is someone who knows her, who's irate, in rage, and beats her face. Her face. Not her body. Her face. That's how we know it was him. He knew her. He knew her since the first grade."

¶ 87 According to defendant, the argument that the nature of Lindsey's injuries suggested that she knew her attacker bolstered the State's case and was not a reasonable inference from the evidence. The State contends that Lindsey's murder did not involve a robbery or break-in, and

violent nature of the attack was indicative of rage, which suggested a personal attack. In the context of the argument, the State asserts that it was a reasonable inference based on defendant's testimony that he was engaged in sexual relationships with his pregnant girlfriend's best friend. Further, we point out there was no evidence of forced entry, which supports the prosecutor's inference that Lindsey knew her attacker. Williams testified that Lindsey "never, had her [burglar] bars off. Even if we came, she had to know it was us before she even unlocked it." We find that the argument by the prosecutor was a reasonable inference from the evidence and made in response to defense counsel's argument that no motive existed for defendant to kill Lindsey.

¶ 88 Further, as noted above, "[t]he trial court may cure errors by giving the jury proper instructions on the law to be applied; informing the jury that arguments are not themselves evidence and must be disregarded if not supported by the evidence at trial; or sustaining the defendant's objections and instructing the jury to disregard the inappropriate remark." *Simms*, 192 Ill. 2d at 396-97. Here, the trial court instructed the jury prior to the start of closing arguments and again during jury instructions that the closing arguments were not evidence and should not be considered evidence as well as to disregard any statement not based on evidence or reasonable inferences drawn from the evidence. We find no error in this comment by the prosecutor.

¶ 89 Since we have concluded that no errors occurred in the admission of the photographs or the prosecutor's comments in closing arguments, defendant cannot establish plain error or ineffective assistance of counsel.

¶ 90 Finally, defendant asks this court to correct the mittimus to reflect only one conviction for first degree murder because there was a single victim. The mittimus in this case reflects convictions for both counts of first degree murder from the indictment. The State admits that the

mittimus should be corrected. We agree. "Where but one person has been murdered, there can be but one conviction of murder." *People v. Kuntu*, 196 Ill. 2d 105, 130 (2001); see also *People v. Cardona*, 158 Ill. 2d 403, 411 (1996); *People v. Pitsonbarger*, 142 Ill. 2d 353, 377-78 (1990). Since there was a single victim in this case, defendant's mittimus should only list a single conviction for first degree murder. Pursuant to Supreme Court Rule 615(b)(1) (Ill. S. Ct. R. 615(b)(1) (eff. Jan. 1, 1967)) and our authority to correct a mittimus without remand (*People v. Bowen*, 2015 IL App (1st) 132046, ¶ 68), we direct the clerk of the circuit court to correct the mittimus to reflect one conviction for first degree murder.

¶ 91 Based on the foregoing reasons, we affirm defendant's conviction and sentence. The mittimus is corrected as ordered.

¶ 92 Affirmed; mittimus corrected.