2011 IL App (1st) 080859-U

THIRD DIVISION
November 2, 2011

No. 1-08-0859

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	
	)	No. 04 CR 7899
JOSE PEREZ,	)	
	)	
Defendant-Appellant.	)	Honorable
	)	John J. Fleming,
	)	Judge Presiding.

ORDER

JUSTICE SALONE delivered the judgment of the court.
Presiding Justice Steele and Justice Murphy concurred in the judgment.

HELD: Evidence was sufficient to prove that defendant committed first degree murder; the State did not commit prosecutorial misconduct; trial court did not abuse its discretion in denying defendant's jury instruction on compulsion for the charge of dismembering a human body; defendant's sentence was not excessive.

¶ 1 Following a jury trial, defendant was convicted of three counts of first degree murder and

one count of dismembering a human body. Defendant was sentenced to 40 years for first degree murder, and a term of imprisonment of 10 years to be served consecutively for dismembering a human body. On appeal, defendant contends: (1) that the State failed to prove him guilty of first degree murder beyond a reasonable doubt; (2) the State committed prosecutorial misconduct by improperly reciting a graphic depiction of the victim's death during closing arguments; (3) the trial court abused its discretion when it denied defendant's request for a jury instruction on compulsion for the charge of dismembering a human body; and (4) the 50-year prison term was excessive. We affirm.

¶ 2 BACKGROUND

¶ 3 Defendant's convictions stemmed from the kidnaping and subsequent murder and dismembering of the body of the victim, Jesus Colon. The victim owned two cellular communications stores located on Fullerton Avenue. On February 21, 2004, the victim's wife, Norma Morales (Morales), was working at the store located at 4222 West Fullerton (4222 store) and Sandra Rioja (Rioja) was working at the store at 3700 West Fullerton (3700 store). Rioja's boyfriend, Victor Lopez (Lopez), along with a group that included Alejandro "Flaco" Santiago, Melvin "Polaco" Santiago, Javier "Chino" Anaya, Adelberto "Sabu" Santiago, Francis "Chaos" Bell, and ultimately defendant, who sold drugs for Lopez, devised a plan to kidnap the victim and demand ransom money from his wife, Morales. On the afternoon of February 21, 2004, Sabu and Chaos solicited several individuals to break the window of the 4222 store to create a distraction so that the victim could be kidnaped. Defendant became directly involved in the kidnaping when he was assigned the task of receiving the bag of money at the ransom drop

located at the Logan Square el station. However, one of the men in the group, Chaos, was arrested before defendant was given the bag of money. Thereafter, the murder and dismembering of the victim occurred over the next six days. Defendant was subsequently arrested and provided a detailed videotaped statement of the circumstances surrounding the kidnaping, murder, and dismembering of the victim's body.

¶ 4 Defendant was charged with a total of 23 counts, consisting of: 5 counts of first degree murder, one count of dismembering a human body, 9 counts of aggravated kidnaping, 3 counts of kidnaping, one count of robbery, one count of concealment of a homicidal death, one count of conspiracy to commit robbery, and two counts of criminal damage to property. Prior to trial, the State nol-prossed the majority of the counts against defendant, except 3 counts of first-degree murder and one count of dismembering a human body. The case proceeded to trial on those remaining counts.

¶ 5 Morales, the victim's wife, testified that she was working on February 21, 2004 at the 4222 store when a rock was thrown through the window. The victim told Morales that he was coming to the store, but never arrived. Later that night, at approximately 11:30 p.m., Morales received a phone call from an unidentified source, ordering her to pay $100,000 for the return of the victim. She was told that if she called the police, her husband would be killed. Despite the warning, Morales did contact the police and all future calls were recorded. The following day, on February 22, 2004, Morales received a phone call from her husband's kidnapers, instructing her to bring the $100,000 ransom money to the Logan Square el station. An undercover police officer accompanied Morales to the el station, she left the bag on the platform, and then went

home. Morales further testified that she never heard from nor saw the victim again.

¶ 6 Detective Patrick Smith (Smith) testified that he and his partner were dressed as CTA employees when Morales left the bag of money at the Logan Square el station. He observed Morales leave the bag on the ground, and then watched as a black male, who was later identified as Chaos, approach the area of the bag while talking on a cell phone. Chaos subsequently grabbed the bag and ran. Smith testified that he and his partner chased Chaos up the stairs and tackled him in the street. The bag was subsequently recovered by an F.B.I. agent.

¶ 7 Chicago Police Sergeant Kenneth Boudreau (Boudreau) testified that he and his partner, U.S. Marshall John Haehnig, went to Sabu's residence with a search warrant for his home and vehicle on February 24, 2004. Sergeant Boudreau found a Home Depot receipt in Sabu's van dated February 21, 2004 at 1:17 p.m., indicating a purchase of a roll of duct tape and a container of black plastic ties.

¶ 8 Seargant Michael Barz (Barz) from the Chicago Police Department testified that he and his partner, detective Michael Andruzzi (Andruzzi), were directed to defendant's home by Lopez, who was in police custody[1]. Defendant was subsequently arrested and advised of his *Miranda* rights, which he waived. Detective Barz stated that the defendant initially denied any involvement in the murder of the victim. At some point, defendant was allowed to speak to Lopez. Shortly thereafter, defendant directed the officers to the location of the dumpsters containing the body parts of the victim.

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[1]Although not clear from the record, pretrial documents indicate that Lopez was arrested sometime before March 9, 2004. Thereafter, Lopez made a statement admitting that he planned the kidnaping with his girlfriend Rioja, and Sabu.

¶ 9 On cross-examination, detective Barz testified that during the interview, defendant told him that Sabu threatened to kill his daughter if he did not participate in the crime.

¶ 10 Assistant State's Attorney David Williams (Williams) testified that he advised defendant of his *Miranda* rights, which defendant waived. Over a two-hour period, defendant discussed the victim's kidnaping and murder with Williams. Defendant then agreed to provide a videotaped statement, which was published to the jury. This videotaped statement detailed the circumstances and events surrounding the kidnaping, murder, and dismembering of the victim. Defendant's main contentions on appeal center around the circumstances of the victim's death and dismemberment, so we shall limit any detail to those issues.

¶ 11 In his videotaped statement, defendant stated that he became involved in the crimes committed against the victim when on February 21, 2004, he received a phone call from Lopez to go to the victim's store to help Rioja with her car. While waiting for Rioja in the alley as instructed by Lopez, defendant observed two men in a white Cadillac drive up to the back door and put something in the trunk. Later in the day, defendant learned from Lopez that Sabu, Flaco, Polaco, and Chaos kidnaped two "Mexicans" in exchange for five kilograms of cocaine. Subsequently, defendant became aware that a third man, who defendant identified as the victim, was also kidnaped and a ransom demand of $100,000 was made in exchange for his release.

¶ 12 Defendant further stated that the Logan Square el station was the designated spot for the victim's wife to leave the money. Sabu gave each of the men an assignment, and defendant's role was to grab the bag from Chaos, dip the bag in water, shock it with a stun gun to disable any tracking device, and then give the bag to Sabu. However, defendant never received the bag

because Chaos was intercepted by the police. Chaos was subsequently arrested and the bag of money was recovered. Thereafter, defendant and the other men went to Polaco's garage, where he saw the victim for the first time, tied up to a chair.

¶ 13 At some point, defendant went to a restaurant, but received a phone call from Lopez and quickly returned to the garage. Defendant heard Lopez, Flaco, and Polaco discussing what to do with the victim who was now tied up in the back of the minivan. Polaco then received a phone call. Thereafter, Polaco got into the minivan, sat on the victim's chest, and taped his mouth and nose with duct tape. Flaco then held the victim down by sitting on his waist and told Lopez to grab a leg. The victim began to fight and struggle so Lopez told defendant to grab the other leg. Polaco then pressed down on the victim's neck and face for approximately two minutes while the victim struggled. The victim ultimately stopped moving and died. Defendant demonstrated for Williams the manner in which the victim was suffocated. He then explained that Flaco was concerned that the victim might not be dead, so Polaco put one foot on the victim's shoulder and grabbed his neck and twisted it. Defendant also demonstrated these movements for Williams. He indicated that he heard the breaking noise of a bone and realized that Polaco had broken the victim's neck. Flaco, who was sitting on the victim's waist, then stated, "oh, man, I forgot they do this," making reference to the fact that the victim urinated on himself.

¶ 14 Defendant further related in his videotaped statement that Flaco and Polaco threw tires, a tarp, and wood over the victim and then drove the minivan to Flaco's father's garage. Defendant followed the minivan in a separate car where he waited while the others talked in the garage. Lopez then took defendant home.

¶ 15 The following day, on Monday, February 23, 2004, Lopez told defendant to assist Flaco in getting the van out of the garage. They parked the van a few blocks away on the street, and defendant recalled that the van "smelled like rotting meat."

¶ 16 Lopez called defendant again on Tuesday, February 24, 2004, and told him to meet Flaco for the purpose of moving the minivan from its location on the street. They decided to park it in a garage on Hollywood in Chicago. Defendant explained that later in the day he met Lopez at a restaurant, and Lopez told him that he needed to take care of this because defendant was the only one without a record, so if he was caught he would not get life imprisonemnt. Defendant further explained that Lopez told him that "they" were threatening both of their kids, and that "they" knew that defendant had kids too. Lopez then gave defendant twenty dollars to buy two gallons of gasoline.

¶ 17 During his videotaped statement, defendant further related that on Wednesday, February 25, 2004, Lopez called him and told him to meet Flaco to "take care of the situation, the body." Lopez called again on Thursday, February 26, 2004, and defendant met Flaco, but went home when Chino did not show up with the tools. Later that day, Lopez called defendant and offered him $10,000 in exchange for assisting Flaco with the disposal of the victim's body. Defendant explained that at first he didn't want to do it, but then told Lopez that he was afraid of the "guys" and that he would do it. Defendant further stated that he didn't do the job for the money and that although Lopez has had this kind of money in the past, defendant didn't believe he would get paid.

¶ 18 On Friday, February 27, 2004, Lopez called defendant for the final time regarding the

disposal of the victim's body. Defendant met Flaco at the garage and waited for Chino to arrive with the tools. Chino provided defendant and Flaco with various tools for the purpose of cutting up the victim, including a chain saw, and gear to cover up their clothes and shoes. Chino then went outside and acted as the "look-out." Defendant described the smell in the garage as, "rotting meat, real bad, rotting meat." Flaco and defendant smoked cigarettes to get rid of the smell. Once Flaco put on the gear, he threw down a tarp in the minivan and the garage, and began to cut pieces of the victim's body with the chainsaw. Defendant explained that Flaco used the chainsaw to first cut the victim's leg at the knee, then at the waist. Next, as he attempted to cut the victim's torso, the chainsaw broke and started to leak oil. Flaco finished cutting and placed each body part into a separate plastic bag. There was a total of nine separate bags with body parts and defendant's job was to tie each bag and put them off to the side. Defendant further explained that Flaco cut off each of the victim's fingers and pulled out each of the victim's teeth with bolt cutters, and these were placed in a bottle of antifreeze so the remains were unable to be traced through fingerprint or dental records. According to defendant, the entire process took approximately four to five hours.

¶ 19 Defendant stated that he cleaned the garage while Flaco combined body parts so that there

were now six bags total. Flaco threw the tools in the minivan and then poured gasoline inside. Chino and defendant each disposed of three bags. Flaco followed defendant in his car and beeped his car horn indicating when defendant should throw a bag into a certain dumpster. Later, defendant was able to show the police where each dumpster was located. After the final

dump, defendant lost Flaco, but later Flaco called to say that he set the van on fire and watched it burn. That same night, Lopez called defendant inquiring whether the job was done, to which defendant responded "yes."

¶ 20 At the end of the videotaped statement, defendant indicated that the officers provided him with food, drinks, use of the bathroom and time to sleep. He stated that he gave his statement freely and voluntarily, and that no threats or promises were made to him in exchange for the statement.

¶ 21 On cross-examination, Williams denied stopping the video and starting over at any point during defendant's statement. Defense counsel questioned Williams why he failed to pursue any questioning concerning the threats made against defendant's children, and he replied, "that's the first time he ever mentioned anything to me about any threats or anything occurring." Then defense counsel referred to a part in the video where Williams asked, "And he offered you ten thousand dollars?" and defendant responded, "Yeah. But I didn't do it for the money. I just..." Defense counsel then asked Williams why he interrupted defendant with another question before he finished his sentence. In response, Williams explained that defendant had adequate opportunity to elaborate on any answers and could have further explained his statements, but he chose not to.

¶ 22 The State then presented a series of witnesses who testified with regard to physical evidence recovered in this case. Special Agent Kelly O'Connor and Special Agent Edward Lawson, employed by the Federal Bureau of Investigation, testified that a hacksaw, saws, bolt cutters, a gas can, cigarette butts, and pieces of human flesh were recovered from the garage.

Additionally, materials that were consistent with tiny bits of human flesh were scraped off the interior of the garage door. Eight pieces of human tissue were laid out on brown paper on the floor and photographed to scale with a measuring device. Each piece of flesh was then placed in a paper bag that was subsequently placed into a can marked "biohazard."

¶ 23 Detective Barney Graf and Dr. Amy Rehnstrom testified that DNA from the flesh recovered in the garage matched the buccal swab taken from the victim's mother.

¶ 24 Christine Prejean, a forensic scientist, opined that the DNA taken from the cigarette butt found in the garage where the victim's body was dismembered matched the DNA of the defendant.

¶ 25 The State then rested its case-in-chief. Defendant moved for a directed finding, which was denied.

¶ 26 The defense called three witnesses. Lizbeth Crespo (Crespo), the mother of one of defendant's children, testified that on February 22, 2004, she picked up defendant and they ate at a restaurant. While there, defendant received a phone call and ordered more food. Thereafter, Crespo drove him somewhere but was unable to recall the exact location.

¶ 27 Brenda Feliciano (Feliciano), the mother of defendant's other two children, testified that defendant was at her mother's house for her birthday party on February 22, 2004. She stated that defendant left the party for approximately twenty minutes but returned, and then he left again around 11:00 p.m. or 11:30 p.m.

¶ 28 Defendant then testified on his own behalf. A substantial portion of his trial testimony mirrors his videotaped statement with a few exceptions. Defendant testified that Lopez told him

to go to the Logan Square el station to complete a drug transaction. Once there, the station was empty except for a black man wearing a hoodie who was talking on a cell phone, two other people and a female worker. Defendant testified that he thought, "this looks funny," so he left and returned to Feliciano's party. Subsequently, Crespo picked him up and they went to a restaurant. Defendant stated that Lopez called him and told him to bring him some food, so he left and met him in an alley behind a garage. Defendant gave Lopez the food and observed that he was "real nervous, he was shaking." Polaco then appeared and took the food into the garage, but returned quickly. Lopez and Polaco had a short conversation that defendant was unable to hear, and then Lopez told defendant to drive Polaco's car and follow Flaco, who was in a minivan. He followed Flaco to a gas station and then another van driven by Sabu arrived, at which time Sabu got in the van with Flaco. Defendant then followed Flaco and Sabu to a garage where they parked the van. He waited while Lopez, Flaco, and Sabu talked and then he followed Lopez and Polaco back to Polaco's house. Lopez then drove the defendant home.

¶ 29 Defendant further testified that the next day, on Monday, February 23, 2004, Lopez told him to go to a friend's house to pick up a cell phone. Once he arrived back home, the cell phone rang and it was Flaco. Sometime thereafter, Flaco called back and told defendant to meet him at a car dealership on Grand Avenue. Once they met, defendant got in Flaco's car and they went to a restaurant where Flaco told defendant that they needed to move the van out of the garage. Defendant testified that the van "smelled real bad," that he jumped out and that he accidentally locked the keys in the car. Thereafter, Flaco broke the window and they proceeded to park the van on a side street. Defendant further stated that he believed drugs would be in the car, and he

called Lopez to see why the car smelled so bad. Lopez then admitted to him that Polaco and "them" had killed someone and the body was inside the van. Defendant further testified that Lopez told him, "since I already know about it that I'm already involved."

¶ 30 Defendant testified that the next day, on February 24, 2004, Lopez told him to meet Flaco because the van needed to be moved again. Defendant stated to Lopez that he didn't want to do it, and Lopez replied, "they knew I had kids just like they knew he had kids too, that, you know that I better cooperate with him, I better help him out * * * or they will hurt my daughters." Shortly thereafter, defendant met Flaco and they parked the van in a garage. Subsequently, defendant told Lopez that he did not want to be involved, and Lopez told him that he was already involved and he now had to help them out.

¶ 31 Defendant further testified that on Friday, February 27, 2004, he met Flaco at the garage. Chino arrived with some tools but quickly left. Flaco proceeded to dismember the victim over a four to five hour period. During this time, Flaco told defendant, "not to open my mouth that this was a Cobra Nation, business, I had nothing to do with it * * *and if I opened my mouth that I would end up the same way as [that] person." Defendant testified that the "person" Flaco was indicating was the victim. However, defendant also stated that if he was asked to cut up the victim's body he would have replied "no." Chino returned and Flaco gave him three bags with body parts and put an additional three bags inside the car defendant was driving. Defendant stated that he followed Flaco and did as he was told.

¶ 32 Defendant also testified that Assistant State's Attorney Williams told him that they were going to use him as a witness against Sabu because he was wanted for other crimes. Defendant

further stated that Williams had Lopez's statement that explained what happened inside the garage during the killing of the victim and that the State needed defendant to say he was present and explain the manner in which the victim was killed. Defendant testified that Williams told him that according to procedure they needed him to make a videotaped statement, which he rehearsed one time before recording.

¶ 33 Defendant denied holding down the victim's leg and explained that he stated so in the video only because he followed instructions from Williams. However, he admitted that he held the bags while Flaco dismembered the victim's body. He further stated that he only did this because he was afraid that his children would be hurt.

¶ 34 On cross-examination, defendant was asked, "did you say that Sabu was there when the killing took place?", and defendant replied, "he had left."

¶ 35 Defense counsel then directed defendant's attention to the part in the video where he explained that Lopez offered him $10,000 but that he said that he didn't do it for the money. Counsel pointed out that defendant did not finish his sentence during the video. Defendant explained that he wanted to say that, "I did it because I was scared * * * scared of them hurting my daughters." The defense then rested its case.

¶ 36 The court thereafter held a conference on jury instructions. The defense tendered an instruction pertaining to the charge of dismembering a human body, setting forth the defense of compulsion. The State objected, arguing that the defense did not apply to the facts of the case.

¶ 37 The trial court denied defendant's request for an instruction on compulsion, and ruled that a threat of imminent harm is required which was not shown through defendant's testimony, and

specifically noted that defendant "felt they wouldn't kill him if he said 'no' to cutting up the body but they [would] kill him or his family it [sic] if he didn't hold the bag."

¶ 38 The State then called Williams as a rebuttal witness. He denied telling defendant that he was going to be used as a witness against Sabu and was required to give a videotaped statement pursuant to normal procedure. Williams specifically denied instructing the defendant to make a statement that Flaco said, "I forgot that they do this", referring to the victim urinating on himself. Additionally, he denied telling the defendant to say that he saw and heard Polaco or anyone break the victim's neck. Finally, he denied that he told the defendant to say, "Victor told me to hold one leg down."

¶ 39 The trial then proceeded to closing argument.

¶ 40 The jury found defendant guilty of three counts of first-degree murder and one count of dismembering a human body.

¶ 41 Defendant filed a post-trial motion for a new trial, which was denied. Relevant to this appeal, defendant alleged that the trial court failed to properly instruct the jury on the defense of compulsion, the jury verdict was against the manifest weight of the evidence, and the State failed to prove every material allegation of the offenses beyond a reasonable doubt.

¶ 42 The court sentenced defendant to 40 years for first-degree murder and 10 years to be served consecutively for dismembering a human body. Defendant filed a motion to reduce sentence, which was denied.

¶ 43 Additional facts will be set forth as needed in the analysis portion of our discussion.

¶ 44 DISCUSSION

¶ 45 Defendant has raised the following issues on appeal: (1) whether the State proved defendant guilty of first degree murder beyond a reasonable doubt; (2) whether the State committed prosecutorial misconduct by improperly reciting a graphic depiction of the victim's death; (3) whether the trial court abused its discretion when it denied defendant's request for a compulsion jury instruction; and (4) whether the 50-year prison term was excessive.

¶ 46 Sufficiency of the Evidence

¶ 47 Defendant first contends that the evidence was insufficient to prove him guilty of first degree murder beyond a reasonable doubt[2]. Specifically, defendant asserts that the video statement was the only evidence that connected him to the murder, and notes that he recanted the statement at trial. Therefore, defendant urges this court to reverse his first degree murder conviction.

¶ 48 When reviewing a challenge to the insufficiency of the evidence, the critical inquiry is 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. *People v. Cunningham*, 212 Ill. 2d 274, 278-280 (2004). Under this standard, a reviewing court must allow all reasonable inferences from the record in favor of the prosecution. *Cunningham*, 212 Ill. 2d at 278-280. This standard of review applies to direct and circumstantial evidence. *People v. Gilliam*, 172 Ill. 2d 484, 515 (1996). We will not reverse a conviction unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985).

[2]Defendant does not challenge sufficiency of the evidence to support his conviction for dismemberment. Accordingly, that conviction is not at issue in this appeal.

¶ 49 In order to prove defendant guilty of first degree murder, the State must establish the following:

> "(a) a person who kills an individual without lawful justification commits first-degree murder if, in performing the acts which cause the death:
>
> (1) he either intends to kill or do great bodily harm to that individual or another, or knows that such acts will cause death to that individual or another; or
>
> (2) he knows that such acts create a strong probability of death or great bodily harm to that individual or another; or
>
> (3) he is attempting or committing a forcible felony other than second-degree murder."
>
> 720 ILCS 5/9-1(a)(1); (a)(2); (a)(3) (West 2004)).

¶ 50 In the case at bar, defendant was charged as a principal and under the theory of accountability. In order for defendant to be guilty of first-degree murder, the State must first prove that defendant or one for whose conduct he was legally responsible performed the acts that caused the death of the victim; and when defendant or one for whose conduct he was legally responsible performed these acts, he intended to kill or do great bodily harm to the victim; or defendant knew that his acts created a strong probability of death or great bodily harm to victim; or he was committing the offense of kidnaping. See *People v. Davis*, 233 Ill. 2d 244, 252 (2009).

A person commits the offense of kidnaping when he knowingly and secretly confines another

person against his will. 720 ILCS 5/10-1(a) (West 2004).

¶ 51 A person is legally accountable for the conduct of another person when he has the intent to promote or facilitate the offense, either before or after its commission, and he agrees to solicit, aid, abet, agree, or attempts to aid the other person in the planning or commission of the offense. *People v. Taylor*, 164 Ill. 2d 131, 140 (1995). Defendant's presence at the scene of the crime does not make him accountable for the offense; however, active participation in the crime is not required to find defendant guilty under a theory of accountability. *Taylor*, 164 Ill. 2d at 140. A defendant can be held accountable for the acts of another if he shared the criminal intent of the principal, or if there was a common plan or purpose. *Taylor*, 164 Ill. 2d at 140-41. Even in the absence of explicit words of agreement, a common design may be inferred from viewing the circumstances surrounding the commission of the crime. *Taylor*, 164 Ill. 2d at 141. Moreover, defendant's voluntary attachment to a group of individuals determined to commit a crime along with defendant's knowledge of their intent and purpose is sufficient evidence to support a conviction for the offense of another under the theory of accountability. *Taylor*, 164 Ill. 2d at 141.

¶ 52 Here, there was sufficient evidence to find defendant guilty of first-degree murder beyond

a reasonable doubt. Defendant admitted during his video statement that he learned that Lopez, Sabu, Flaco, Polaco, and Chaos kidnaped the victim and demanded ransom money from his wife. Upon receiving this information, defendant voluntarily continued to participate in the plan to obtain the ransom money by accepting the task of receiving the bag at the Logan Square el

station. When the plan was thwarted by the police, defendant again voluntarily continued to associate with the group and became an active participant in the murder when he held the victim's leg while Polaco suffocated the victim and broke his neck. Moreover, defendant remained involved for the next four days as he and Flaco drove the victim's dead body around the city, and defendant ultimately assisted Flaco in the dismemberment of the victim and subsequently disposed of the body parts in various dumpsters. We additionally note that defendant was unaffected by the vague and indirect threats when he stated that he would refuse to cut up the victim's body.

¶ 53 Defendant contends that the circumstantial evidence and lack of physical evidence was insufficient to connect him to the murder. We disagree. During his video statement, defendant explained how he and Flaco smoked cigarettes in the garage to get rid of the smell that he described as "rotting meat, real bad, rotting meat." The DNA from the cigarettes recovered from the garage floor matched the DNA of the defendant. Furthermore, defendant described in detail the tools that were used to cut up the victim's body, and tools matching that description containing tiny pieces of the victim's flesh were later recovered from the burned out van.

¶ 54 Defendant further argues that his trial testimony is more credible than his video statement. Whether to believe a defendant's confession is a question of credibility and is a matter to be determined by the trier of fact. *People v. Pecoraro*, 144 Ill. 2d 1, 11 (1991). Moreover, any discrepancies between a defendant's confession and other evidence presented at trial should be resolved by the trier of fact. *Pecoraro*, 144 Ill. 2d at 11. Defendant asserts that Williams told him to say that he was present for and assisted in the murder so that he would be a

more credible witness against Sabu, who was wanted for other crimes. Yet, in his video statement and at trial, defendant stated that Sabu was not present for the murder. Additionally, we note that defendant claims that after rehearsing the story one time with Williams, that he was able to recall in specific detail the circumstances surrounding the murder including the manner in which the victim's neck was broken, and even at one point correcting Williams when he supposedly made a mistake with the details.

¶ 55 Defendant relies upon *People v. Parker*, 234 Ill. App. 3d 273 (1992) and *People v. Brown*, 303 Ill. App. 3d 949 (1999) in support of his position that his murder conviction should be reversed because the only evidence of his participation in the murder is his recanted confession. However, these cases are factually distinguishable because the reversal of the convictions in those cases were based on the admission of recanted statements from witnesses. In the case at bar, defendant's conviction was based on his confession that was corroborated by other evidence presented at trial. A question of fact was presented to the jury when defendant recanted his confession at trial, and the jury determined that defendant's confession was more credible than his trial testimony.

¶ 56 Defendant also cites to *People v. Lewellen*, 43 Ill. 2d 74 (1969) in support of his position. In *Lewellen*, the court reversed the conviction based on defendant's prior inconsistent statements and subsequent conflicting trial testimony, concluding that there was not enough evidence to connect her to the murder of her husband. *Lewellen*, 43 Ill. 2d at 75-77. However, defendant's reliance on *Lewellen* is misplaced. Initially, we note that the court in *Lewellen* applied the reasonable hypothesis standard, which was abolished by the Illinois Supreme Court

over 20 years ago. *People v. Pintos*, 133 Ill. 2d 286, 291 (1989). Additionally, the defendant in *Lewellen* made numerous prior inconsistent statements while suffering from a mental impairment. *Lewellen*, 43 Ill. 2d at 77.

¶ 57 Here, defendant's murder conviction was based on his confession and other corroborating evidence. "When a defendant's 'testimony allegedly constitutes the only evidence of what actually took place, the trier of fact is not obligated to accept all, or even any part, of his statements but may consider the reasonableness of the defense offered, assess its probabilities, if any, and reject that evidence which it finds contradictory, unlikely, or improbable in light of the other facts before it." *People v. Brooks*, 203 Ill. App. 3d 493, 501 (1990), quoting *People v. Eliason*, 117 Ill. App. 3d 683, 695-96 (1983). Based upon our examination of the totality of the evidence, we find that it is not so unreasonable or improbable that a rational trier fact would find that defendant committed the required elements of first degree murder beyond a reasonable doubt. Accordingly, we conclude that the defendant's guilt was proven beyond a reasonable doubt.

¶ 58 Prosecutorial Misconduct

¶ *59* Defendant next contends that the State committed misconduct during its closing argument. Specifically, defendant contends that the State presented a graphic and unnecessary description of the victim's death. Defendant acknowledges that his attorney failed to object to the challenged remarks at trial and failed to raise it in his post-trial motion. Nevertheless, he argues that the challenged remarks should be reviewed as plain error.

¶ 60 To preserve an issue for review, a defendant must raise an objection at trial and in a

written post-trial motion. *People v. Moss*, 205 Ill. 2d 139, 168 (2002). Failure to raise an issue in a written motion results in forfeiture of that issue on appeal. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). An exception to the procedural default is found in an invocation of the plain error rule that is available if: (1) the evidence is so closely balanced that the error likely caused the conviction, or (2) the errors were so substantial that they impugn the integrity of the judicial process because they denied defendant a fair trial. *Moss*, 205 Ill. 2d at 168.

¶ 61 Specifically, defendant challenges the following remarks made by the State during closing argument:

> "Make no mistake about it. Ladies and gentleman, this man sitting before you for the past six to seven days, is the man who is responsible for turning People's Number 48, this, Jesus Colon, for turning him into what is now a can filled with eight chunks of dismembered flesh marked as a biohazard. This is the man who is responsible for turning a man who had two thriving businesses on the Northwest Side in an area familiar to many of us in this city. Two businesses. A man responsible for turning him Jesus Colon into eight chunks of flesh. Lying on brown butcher paper in the Area 5 auto pound on that cold floor being measured to scale.
>
> This is the man who is responsible for turning this married businessman into a medical examiner case number 286 March

2004.

And finally, this man is the man responsible for turning that man, Jesus Colon, into splatters, splatters on a garage wall at an innocuous looking residential neighborhood with an innocuous looking detached garage like we see so often in the city of Chicago turning this man into chunks into splatters of debris. Of flesh. On this wall. That is what this man is responsible for."

¶ 62 The State went on to comment:

"But think about this: How chilling is it that a mother who gave this man life, who gave Jesus Colon life also had to give proof of his death. The flesh of her flesh ended up splattered on a garage wall behind an innocuous looking garage door in a residential neighborhood."

¶ 63 In order to address defendant's contentions under plain error, we must first determine whether a clear or obvious error occurred at all. *People v. McLaurin*, 235 Ill. 2d 478, 488 (2009). Our supreme court has instructed us that "prosecutors are afforded wide latitude in closing argument and challenged remarks must be viewed in the context of closing arguments as a whole." *People v. Kirchner*, 194 Ill. 2d 502, 549 (2000). Prosecutors are allowed to make comments based on the evidence or reasonable inferences therefrom. *People v. Wilburn*, 263 Ill. App. 3d 170, 181 (1994). On review, a prosecutor's comments will constitute reversible error only when they engender 'substantial prejudice' against the defendant, such that it is impossible

to determine whether the jury verdict was the result of the comments or the evidence. *Kirchner*, 194 Ill. 2d at 549.

¶ 64 Here, we find that the State's comments about the victim's death were not improper or prejudicial because they came straight from the testimony of witnesses. Special agents O'Connor and Lawson testified that eight pieces of human flesh were recovered from the garage, along with tiny pieces of human flesh that were scraped off the interior of the garage door, which were then laid out on brown paper, photographed to scale with a measuring device and then placed in a paper bag that was put in a can marked "biohazard." Additionally, defendant described in detail during his video statement how Flaco used a chainsaw to cut the victim's body parts and then placed each part in a bag that was held by defendant.

¶ 65 Defendant also argues that it was improper for the prosecutor to mention the victim's mother during closing argument. However, the record further reveals that detective Graf testified that the DNA from the remains of the victim were compared to the buccal swab taken from the victim's mother, confirming that the flesh belonged to the victim.

¶ 66 Therefore, we find that the prosecutor's comments were not intended to inflame the passions of the jury where the statements merely repeated the witness' testimony at trial. Accordingly, we find no error.

¶ 67 Jury Instruction

¶ 68 Defendant next contends that the trial court abused its discretion in denying defendant's request for a jury instruction on the affirmative defense of compulsion in relation to the charge of dismembering a human body. Specifically, defendant argues that he and his family members

were threatened harm if he did not participate in the dismembering of the victim's body.

¶ 69 A denial of a jury instruction is reviewed under an abuse of discretion standard. *People v. Guiterrez*, 402 Ill. App. 3d 866, 887 (2010). The defense of compulsion is a question of fact for the jury and only some evidence of compulsion is required for a jury instruction on the defense. *People v. Scherzer*, 179 Ill. App. 3d 624, 645 (1989).

¶ 70 Defendant tendered the following jury instruction for the affirmative defense of compulsion:

> "It is a defense to the charge made against the defendant that he acted under the compulsion of threat or menace of the imminent infliction of death or great bodily harm, if he reasonably believed death or great bodily harm would be inflicted upon him if he did not perform the conduct with which he is charged."
>
> 720 ILCS 5/7-11(a) (West 2004).

¶ 71 The defense of compulsion requires an impending threat of great bodily harm together with a demand that the defendant perform a specific criminal act; a threat of future injury is not enough to raise the defense. *People v. Scherzer*, 179 Ill. App. 3d at 644; *People v. Jackson*, 100 Ill. App. 3d 1064, 1068 (1981). The defense is not available if the acts were committed by the negligence or fault of defendant, or if defendant failed to take an opportunity to withdraw from the crime. *People v. Sherzer*, 179 Ill. App. 3d at 645-46.

¶ 72 The trial court did not err in denying defendant a jury instruction on the affirmative

defense of compulsion. There were two separate threats that defendant asserts forced him to perform the act of dismembering the victim's body: the indirect threat to hurt defendant's daughters made three days before the actual act of dismemberment and Flaco's warning to defendant that he would end up like the victim if he talked. We hold that neither constitutes a threat of an imminent infliction of death or great bodily harm. Indeed, the vague and indirect threats made to defendant did not deter him from deciding what tasks he would undertake, as is evident when he testified that he would have refused to cut up the victim's body. Lastly, we also note that defendant, over a six-day period, had multiple opportunities to withdraw from his participation of the crime, but chose not to. We conclude that defendant assisted Flaco in the dismembering of the victim without the threat of imminent infliction of death or great bodily harm. Accordingly, we find that the trial court properly denied defendant's request for a jury instruction on the affirmative defense of compulsion.

¶ 73 Excessive Sentence

¶ 74 Defendant last contends that the sentence imposed was excessive; he seeks a reduction of the sentence of 40 years' imprisonment for first-degree murder to the minimum term of 20 years' imprisonment. Defendant acknowledges that the sentence of 40 years' imprisonment is within the statutory limitations, however, he cites in mitigation his age at the time of the offense (mid-20's), his lack of criminal history, his strong family background, and his history of regular employment.

¶ 75 A trial judge's sentencing determination may not be set aside absent an abuse of

discretion. *People v. Jackson*, 375 Ill. App. 3d 796, 800 (2007). Absent an abuse of discretion, we give great deference to a trial court's sentencing determination. *People v. Alexander*, 239 Ill. 2d 205, 213-14 (2010).

¶ 76 Before issuing the sentence, the trial judge stated that he considered the factors in mitigation, including defendant's age of 30 years old at the time of sentencing; that he was the father of three daughters; a loving son with a supportive family; and that this was his first felony conviction. The judge also considered the defendant's pre-sentence investigation report, as well as statutory factors in aggravation and mitigation.

¶ 77 A term of imprisonment for first degree murder shall not be less than 20 years and not more than 60 years. 730 ILCS 5/5-8-1(a)(1) (West 2004)). The judge's decision to impose 40 years' imprisonment for first degree murder in this case is well within the statutory range. 730 ILCS 5/5-8-1(a)(1) (West 2004). The trial judge considered the aggravating and mitigating circumstances, and we cannot find that the 40 year sentence imposed by the judge constituted an abuse of discretion.

¶ 78 CONCLUSION

¶ 79 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 80 Affirmed.