2012 IL App (1st) 091324-U

SECOND DIVISION
November 13, 2012

No. 1-09-1324

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
	)	the Circuit Court
Plaintiff-Appellee,	)	of Cook County
	)	
v.	)	01 CR 2136
	)	
JAMES JOHNSON,	)	Honorable
	)	Nicholas Ford,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Harris and Justice Quinn concurred in the judgment.

O R D E R

¶ 1 ***Held*****:** Admission of other-crimes evidence was proper and not excessive where the evidence was relevant to establish motive. The State did not make improper remarks during closing argument, but any improper remarks did not amount to prejudice.

¶ 2 Following a jury trial, defendant James Johnson was convicted of first-degree murder and personally discharging a firearm that caused the victim's death. Defendant was sentenced to 50

years in prison for the murder, and 25 years in prison for the firearm enhancement, the sentences to run consecutively. Defendant then filed a *pro se* postconviction petition alleging that he was denied effective assistance of counsel when his attorney failed to file a notice of appeal. Defendant was allowed to file a late notice of appeal due to his trial counsel's failure to file a timely one. This direct appeal followed.

¶ 3 I. BACKGROUND

¶ 4 The victim, Jerome Hines, was shot to death on the evening of June 27, 2001. Just before the shooting, Hines and his girlfriend, Marcia Sloan, drove to the home of Joyce Hines, the victim's sister, and parked in the back of her building. Sloan went upstairs to the third floor, got the keys to Joyce's car, returned downstairs and started the car. Hines motioned for Sloan to follow him, and the two pulled away from Joyce's building. When Hines stopped his car at a red light at Jackson and California, Sloan pulled her car along the right side of Hines' car and began talking to him. As they talked, a blue and gray van pulled up to the driver's side of Hines' car, in the left turn lane. The side door of the van was open and Sloan saw defendant, who she knew as "Crunchy," pointing a gun at Hines. Sloan pulled away and then heard 10 or 11 gunshots fired, and in her rearview mirror saw defendant repeatedly shoot Hines.

¶ 5 After watching the van turn left on California, Sloan turned around and saw Hines' car hit a tree. She then drove back to Joyce's building to get help. Sloan called 9-1-1 from Joyce's apartment and reported that her boyfriend had been shot at California and Jackson. Sloan then went to the hospital where she spoke to a police officer. The police officer told her that Hines had died. Sloan told the officer that "Crunchy" had killed Hines, but she did not say she was a

witness to the killing because she was afraid since defendant was "still out there." She testified that she did not call police and tell them what she saw because she thought they would send police to her house and she did not want anyone in her neighborhood to know she spoke to the police. Sloan further testified that defendant lived a block and a half away from the home she shared with Hines, so they had been living with Sloan's cousin for about a month before Hines was murdered.

¶ 6 The police contacted Sloan in August to tell her that defendant was in custody, at which point Sloan told the police that she had been with Hines when he was shot. She told police that she did not admit to being present on the night of the shooting earlier because she was afraid defendant would "come after her" if he heard she was talking to the police. Sloan also testified as to what happened in front of a grand jury where she identified a photo of defendant.

¶ 7 Joyce Hines, the victim's sister, testified that when Sloan returned to her apartment, she was screaming that "Crunchy" killed Hines. Joyce ran two blocks to the scene of the shooting and saw her brother laying in his car with a towel over his head. The car was on the sidewalk and had hit a tree.

¶ 8 Chicago Police Forensic Investigator Joseph Dunigan took photographs of the scene and searched the area for evidence. He recovered twelve bullet fragments from inside the car and on the car's exterior surface. Three of the fragments were found on the outside of the car, all on the driver's side. Of the nine fragments recovered from inside the car, three were found in the front passenger seat area, three behind the front passenger seat on the floor, and three inside the trunk. Dunigan also found a total of nine 40-caliber Winchester cartridge cases on the street.

¶ 9 Illinois State Police Firearms Examiner Kurt Zielinski examined the firearms evidence that was recovered from the scene as well as the bullet that was recovered from the victim's body by the medical examiner. Zielinski testified that the bullet fragments recovered from the car were all similar, but he could not determine if they came from the same firearm. An examination of the nine cartridge cases recovered from the intersection revealed that all of them were Winchester 40-caliber Smith and Wesson, and had all been fired from the same firearm. Zielenski was unable to determine the caliber of the bullet submitted by the medical examiner.

¶ 10 The protocol prepared by the medical examiner was stipulated to and entered into evidence. The medical examiner found that Hines sustained multiple gunshot wounds, one to the back of the head, one to the left cheek, three to the left side of the neck, and two superficial gunshot wounds to the upper left arm. The cause of death was multiple gunshot wounds.

¶ 11 Defendant was arrested and charged with Hines' murder. While in custody, he confessed to an earlier shooting in which he attempted to kill Hines but shot a homeless man instead.

¶ 12 *Other-Crimes Evidence*

¶ 13 Prior to defendant's trial, the State filed a motion, which sought to allow the introduction of evidence of a previous shooting incident that defendant was involved in on May 17, 2001, just over a month before the murder of Hines, which resulted in the death of a homeless man. A hearing was held on the State's motion on January 15, 2004. The transcript of that hearing was not included in the record on appeal. Following the hearing, the trial court granted the State's motion.

¶ 14 Defendant subsequently filed a motion *in limine* to limit the use of the other-crimes

evidence, arguing that the court should avoid permitting the introduction of excessive details about the May 17, 2001, shooting. During that hearing, which was held immediately before trial began, defense counsel sought to bar defendant's admission that he made after his arrest, in which he admitted to shooting and killing a homeless man while trying to shoot Hines. Defense counsel contended that if the jury heard that defendant admitted to killing a homeless man, the prejudice would far outweigh any probative value because the jury would then consider defendant a killer no matter what. Defense counsel stated that what the State wished to get into evidence could be introduced in other ways, like having a detective testify that defendant was "charged with the [homeless man's] killing," because he "tried to shoot Hines and missed and that he is the same James Johnson," without bringing in the oral admission from defendant.

¶ 15 The trial court stated that limiting instructions would be tendered to the jury, reinforcing the fact that the other-crimes evidence should only be considered as it relates to intent and motive. The court proposed that defense counsel should object as it is introduced, and that the court would rule on the evidence individually at trial. The trial court noted that it did not know what the witnesses were going to say and that prior to trial, it did not know whether or not the evidence would be overly extensive.

¶ 16 Defense counsel then specifically made a motion to "redact any mention of the [homeless man's] homicide from the alleged oral statement" made by defendant. Defense counsel went on to argue that the State could get it into evidence by having the detective testify that Hines was a witness to the killing and therefore intent would be proved without defendant's oral statement. The court allowed the statement in over defense counsel's objection. The trial then began.

¶ 17 The other crimes evidence that was introduced throughout the course of the trial revealed that Michael Ramsey and his friend, Gus, bought liquor at a liquor store at California and Congress sometime just before midnight on May 17, 2001. As they left the liquor store, Ramsey saw Hines, and the three began to talk. They then moved to the back of Hines' car, which was parked on the street a few feet away. There was also a homeless man there, standing next to Hines. Ramsey poured himself a drink, and when he looked up, he saw a gunman. The gunman was wearing a black hood and was on the sidewalk facing them. Ramsey ran from the back of the car and dove onto the street near the front driver's side of the car. He then heard one shot fired from a gun, heard a gun jam, and then heard the shooter attempting to un-jam the gun. Ramsey then saw Hines run from the scene, and saw the shooter run the other way. Ramsey saw the homeless man's body on the ground near the rear of the car.

¶ 18 Chicago Police Detective Mike Hammond was assigned to investigate the homicide of the homeless man, later identified as Rufus Smith. Smith's body had been removed from the scene when Hammond arrived, but officers had found him lying in the street near the sidewalk to the rear of the parked car. Hammond later learned that the car belonged to Hines. While at the scene, Hammond found a spent shell casing on the ground towards the rear of the car, and learned that the shooter was wearing a dark hoodie.

¶ 19 Hines arrived at the police station a few hours later, looking for his car. Hammond testified that after talking to Hines, he had a particular person in mind as a suspect in the shooting of Smith. Chicago Police Detective Ricky Galbreth assembled a photo array containing five photographs, including one of defendant. He and his partners issued an investigative alert for

defendant, but were unable to locate him.

¶ 20 Chicago Police Detective Robert Bloomquist was assigned to the gang intelligence unit. On August 1, 2001, after he had been looking for defendant ("Crunchy") for two or three weeks, he received information that defendant might be at California and Harrison playing basketball. When Bloomquist and his fellow officers arrived there at 11 p.m., he saw a group of people, including defendant, standing around a car. As Bloomquist approached, defendant ran away. The officers eventually apprehended him at 2712 W. Flournoy, where defendant was found hiding under a bed. They placed him under arrest.

¶ 21 On August 2, 2001, Lieutenant John Farrell learned that defendant was in custody. Farrell had known defendant from the neighborhood around California and Harrison for a few years, and was told by other detectives that defendant wanted to speak with him. Farrell informed defendant of his *Miranda* rights when he entered the interview room, and told defendant that he had been identified in a photo as the offender in the murder of Smith. Defendant stated that he had gotten into a fight with Hines three weeks before the May 17, 2001, shooting. The two had argued and punched each other. Hines then left and returned with a gun. He called defendant names and threatened him, so defendant walked away.

¶ 22 Defendant told Farrell that on May 17, 2001, he drove with his friends to a liquor store, and when he got out of the car, he saw Hines standing outside of the store staring at him. Defendant stated that he then got back in his car and drove off to get a gun because he had to get Hines before Hines got him.

¶ 23 Defendant told Farrell that he retrieved a tech 9 handgun, walked back to the liquor store,

and saw Hines standing outside with other people behind a black car. Defendant pulled the gun out of his pants and started to shoot at Hines, but Hines pulled Smith in front of him and defendant shot Smith instead. Defendant told Farrell that he did not mean to shoot Smith, as he was aiming for Hines. Defendant then left the scene and sold his gun.

¶ 24 When the conversation concluded, Farrell asked defendant if he would talk to an assistant state's attorney (ASA) but defendant refused. He asked Farrell who had identified him and was told it was Hines. He stated that he could not have been identified because he was wearing a black ski mask at the time of the shooting. Farrell wrote down what defendant told him, showed it to him, and had him read the narrative portion out loud. Defendant indicated that everything Farrell had recorded and read out loud was true, but he refused to memorialize the statement, refused to speak to an ASA, and refused to sign the statement.

¶ 25 Farrell testified that he never spoke to defendant regarding the Hines murder, but that he knew Sloan had come in on August 2nd or 3rd to talk to detectives about that case. He testified that at that time she claimed for the first time to have been an eye witness to the Hines murder.

¶ 26 After all the evidence had been presented, closing arguments took place, the specific facts of which we will discuss below in connection with defendant's closing argument contentions.

¶ 27 The jury found defendant guilty of first-degree murder as well as with personally discharging a firearm. He was sentenced to 75 years in prison. Defendant now appeals.

¶ 28 II. ANALYSIS

¶ 29 On appeal, defendant argues that (1) the trial court abused its discretion when it allowed the introduction of other-crimes evidence, and (2) the prosecutor committed reversible error

during closing arguments.

¶ 30 A. Other-Crimes Evidence

¶ 31 Defendant contends that the trial court abused its discretion by allowing the State to introduce irrelevant and excessive other-crimes evidence. Specifically, defendant takes issue with the introduction of evidence that during the failed attempt to shoot Hines in May, an innocent bystander was killed. Defendant contends that the fact that he attempted to kill Hines previously, could have been established without repeatedly informing the jury that another man was killed instead. The State maintains that the trial court exercised proper discretion in admitting the other-crimes evidence as it was relevant to defendant's motive, intent, and identity; and that the introduction of the other crimes evidence was not excessive. We agree with the State.

¶ 32 It is well-settled that evidence of other crimes is admissible if it is relevant for any purpose other than to show the defendant's propensity to commit crimes. *People v. Lovejoy*, 235 Ill. 3d 97, 135 (2009); *People v. Wilson*, 214 Ill. 2d 127, 135-36 (2005). Our supreme court has held that "other-crimes evidence can be admissible to show motive to commit the crime for which the defendant is being tried." *Lovejoy*, 235 Ill. 2d at 135; see also *People v. Heard*, 187 Ill. 2d 36, 58 (1999) (other crimes evidence is admissible to prove motive or intent). If the evidence is relevant to prove *modus operandi*, knowledge, intent, lack of mistake, or that the crime charged was part of a common design, scheme or plan of the defendant, it is admissible. *People v. Partin*, 156 Ill. App. 3d 365, 370 (1987). "However, such evidence should not be admitted if the prejudicial effect of the evidence substantially outweighs its probative value." *Id.* "The

admissibility of other-crimes evidence rests within the sound discretion of the trial court, and we will not disturb the trial court's judgment absent a clear abuse of discretion." *Id.*

¶ 33 Here, the State made clear that its theory was that defendant had motive to murder Hines because (1) defendant had tried to murder Hines a few weeks before, and (2) Hines witnessed the May 17, 2001, murder of Smith, and had spoken to the police about it. The admission of this other-crimes evidence was therefore not introduced to show defendant's propensity to commit crimes, but rather was relevant to show his motive. Defendant contends, however, that this motive and intent could have been established by his admission that he attempted to kill Hines, and that it was unnecessary for the State to elicit further evidence that defendant killed Smith in the process of his attempt. However, part of the State's theory was that defendant not only had motive because he had attempted to kill Hines before, but also that he had motive because Hines was a witness to a murder that defendant had committed, and that Hines was willingly talking to police about the incident prior to defendant being apprehended. This particular motive could not have been established without introducing the fact that a murder had taken place a few weeks before Hines' murder. Accordingly, the fact that Smith had died as a result of the earlier attempt on Hines' life was essential to the State's motive theory, and therefore relevant.

¶ 34 Defendant argues that even if the evidence of Smith's death was relevant, the prejudicial effect of introducing evidence that Smith was killed far outweighed any probative value. The transcript of the hearing on the State's motion *in limine* regarding introduction of the other-crimes evidence is not in the record. Accordingly, we assume that the trial court weighed the probative

value of the evidence against its prejudicial effect and concluded that admission of the evidence was proper. *People v. Banks*, 378 Ill. App. 3d 856, 861 (2007) (where the record on appeal is incomplete, any doubts arising from that incompleteness will be construed against the defendant and every reasonable presumption will be taken in favor of the judgment below). Additionally, the trial court denied defense counsel's request, just prior to trial, to exclude defendant's admission that he killed Smith in his attempt to kill Hines in May. Moreover, the court orally reminded the jury that it should only consider the other-crimes evidence for the purpose of motive, intent, and identity. It also gave a limiting instruction in writing to the jury, which stated:

> "Evidence has been received that the defendant has been involved in an offense other than that charged in the indictment. This evidence has been received on the issues of the defendant's identification, intent and motive and may be considered by you only for that limited purpose. It is for you to determine whether the defendant was involved in that offense and, if so, what weight should be given to this evidence on the issues of identification, intent and motive."

¶ 35 Accordingly, any prejudicial effect of the evidence of Smith's killing was limited when the jury was specifically instructed that the other crimes evidence was received solely on the issue of defendant's identification, intent, and motive. See *People v. Houston*, 240 Ill. App. 3d 754, 765 (1992). The instruction here provided a sufficient safeguard that the jury's consideration of the other crimes evidence was limited and not used to show propensity. *People*

v. Luczak, 306 Ill. App. 3d 319, 328 (1999). "Faith in the jury to follow instructions and separate issues is 'the cornerstone of the jury system.' " *Id*. (quoting *People v. Illgen*, 145 Ill. 2d 353, 376 (1991)).

¶ 36 Defendant nevertheless maintains that the limiting instruction did not cure the prejudice that resulted from the excessiveness of the other-crimes evidence. See *People v. Boyd*, 366 Ill. App. 3d 84, 94 (2006) (where the unfair prejudice is excessive, a limiting instruction will not save admissibility of the evidence). Defendant contends that there were just as many witnesses called to present the other-crimes evidence as there was to present the crime for which defendant was on trial, and that the repeated references to the murder of Smith distracted the jury from the issue at hand: whether defendant murdered Hines.

¶ 37 It is true that "the admission of other-crimes evidence, although relevant, does not justify a 'mini-trial' of a collateral offense." *People v. Colin*, 344 Ill. App. 3d 119, 130 (2003) (citing *People v. Aleman*, 313 Ill. App. 3d 51, 65 (2000)). The evidentiary details of the other crimes evidence should be limited to those "necessary to illuminate the issue for which the other crime was introduced." *Id*. Here the question is whether the evidence of the killing of Smith was detailed only to the extent necessary to prove intent, motive, and identity, or whether it went beyond that.

¶ 38 Defendant argues that the on the first day of trial, the jury heard Detective Hammond testify as to his investigation and subsequent interview with Hines regarding the May 17, 2001, shooting, as well as his search for a specific suspect. The jury then heard Detective Galbreth testify to his interview with Hines, and his subsequent issuance of an investigative alert for

defendant. Michael Ramsey testified that he was present with Hines and Smith when the shooting took place, and described the shooting to the jury. Detective Robert Bloomquist then detailed defendant's arrest. On the second day of trial, Lieutenant Farrell testified about his interrogation of defendant about the May shooting after he was arrested, including defendant's confession of that shooting. Defendant contends that evidence of the May shooting was excessive and should not have been permitted.

¶ 39 The State responds that each of the details about the May 17, 2001, shooting were necessary to prove intent, motive, and identity, and were not excessive. We agree. In order to admit other-crimes evidence, the State must first establish that the other crime actually took place. *Partin*, 156 Ill. App. 3d at 370 ("The State must prove that another offense did take place and was committed by defendant, but the proof need not be beyond a reasonable doubt"). Accordingly, it was necessary to call Ramsey, as he was the only witness called who could describe the commission of the crime. The detectives' testimonies were necessary to establish that Smith died as a result of the shooting, that Hines spoke to police the night of the shooting, and that as a result of talking to Hines, the police sent an investigative alert out for defendant. The detectives' testimonies therefore established motive based on the fact that Smith had been murdered and Hines was talking to police about it. Additionally, the testimonies established that Hines identified defendant as the shooter. And finally, Farrell's testimony regarding defendant's admissions were necessary to show that defendant had a motive where he had attempted to kill Hines before. Accordingly, each witness' testimony regarding the May shooting was necessary to establish defendant's identity, motive, and intent in murdering Hines. We therefore cannot say

that the other-crimes evidence was excessive, and are unpersuaded by defendant's reliance on *Peoplev. Nunley*, 271 Ill. App. 3d 427 (1995), to convince us otherwise.

¶ 40 In *Nunley*, the defendant was arrested for aggravated battery of his mother. While in police custody, defendant confessed to stabbing his mother and killing her dog. He also confessed to committing armed robbery and murder of a man a year before. Defendant was charged with first-degree murder in connection with that prior armed robbery and murder. *Nunley*, 271 Ill. App. 3d at 428. At trial, an officer testified regarding defendant's arrest, including the fact that officers found a dog stabbed to death at the residence when they arrived, that the defendant was covered in blood and told officers that he had attacked his mother because she had Satan in her and the best way to get Satan out was to "cut her head off," and that he had killed the family dog when it tried to intervene. *Id*. at 429. The defendant was taken to the hospital for observation, and a nurse testified that he was screaming that he killed his mother and his dog at the hospital. Another officer testified that defendant admitted he stabbed his mother and that he intended to kill her. He also testified that defendant admitted to stabbing his mother's dog when it came to her aid. *Id*. at 430-31. The court ultimately found him guilty of the earlier murder he committed a year prior to the incident with his mother.

¶ 41 On appeal, this court found that evidence of the stabbing of his mother and her dog were excessive. The defendant was on trial for the murder and robbery of an unrelated person, which had happened a year prior to the stabbing incident. This court found that while some evidence of defendant's acts on the day he stabbed his mother was necessary to establish the voluntariness of his confession, the "detail and repetitive manner in which the evidence presented greatly

exceeded what was required to accomplish this purpose." *Nunley*, 271 Ill. App. 3d at 432. This court stated that the other-crimes acts were "completely unrelated to the crime at issue, and in and of themselves shed no light upon whether or not defendant robbed and murdered [the armed robbery and murder] victim." Id.

¶ 42 What occurred in the *Nunley* trial is not what occurred here. Evidence of defendant's prior attempt to shoot Hines, which resulted in Smith's death, was not "completely unrelated" to Hines' murder, the crime at issue. The past crime did not deal with an "unrelated person" as the intended victim was Hines, who was standing next to Smith. Rather, the prior shooting established two motives for why defendant wanted to kill Hines, and also helped identify defendant as the shooter that killed Hines. We cannot say that the prejudicial effect of the jury hearing that defendant shot an innocent man prior to the murder he was on trial for far outweighed the probative value of establishing identity, motive, and intent. Accordingly, we find that the trial court did not abuse its discretion in allowing the amount of other-crimes testimony into evidence that it did.

¶ 43 B. Closing Arguments

¶ 44 Defendant's second contention on appeal is that the State's opening and closing arguments were improper and prejudiced defendant. Specifically, defendant contends that the State vouched for Sloan's credibility, forged an "us-versus-them" mentality, and referred to defendant as an animal. The State responds that all its comments were based on the evidence and proper inferences therefrom, and that even if some of the comments were improper, evidence of defendant's guilt was overwhelming.

¶ 45 It is well established that "[a] prosecutor is given considerable leeway in closing and rebuttal argument and is permitted to argue the evidence, as well as reasonable inferences drawn from that evidence." *People v. Ellis*, 315 Ill. App. 3d 1108, 1121 (2000). Closing remarks must be viewed in their entirety, and the challenged remarks must be viewed in context. *People v. Wheeler*, 226 Ill. 2d 92, 122 (2007). In reviewing comments made at closing arguments, the question is 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. *Wheeler*, 226 Ill. 2d at 123. Misconduct in closing argument is substantial and warrants reversal and a new trial if the improper remarks constituted a material factor in a defendant's conviction. *Id*. 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. *Id*.

¶ 46 1. Sloan's Credibility

¶ 47 Defendant's first complaint is that the prosecutor personally vouched for Sloan in her closing remarks. Defendant takes issue with three specific comments. The first one was made during the State's initial closing argument, where the prosecutor stated that it took courage for Sloan to come forward as a witness after defendant had been arrested. Then during rebuttal argument, the prosecutor stated: "[Lieutenant Farrell] comes in here and stands up in from of you and says [Sloan is] lying and Lieutenant Farrell doesn't believe her. I say she's courageous, she's brave." After the trial court overruled defense counsel's objection, the prosecutor then repeated, "[t]hat takes courage. That is brave."

¶ 48 We begin by noting that the prosecutor, as the representative of the State of Illinois, stands in a special relation to the jury and must choose her words carefully so that she does not place the authority of her office behind the credibility of her witnesses. *People v. Roach*, 213 Ill. App. 3d 119, 124 (1991). While she may "express an opinion if it is based on the record," she may not state her personal opinion "regarding the veracity of a witness or vouch for a witness's credibility." *Id*. For a prosecutor's closing argument to be improper, however, she must *explicitly* state that [s]he is asserting [her] personal views, stating for example, 'this is my personal view.' " *People v. Pope*, 284 Ill. App. 3d 695, 707 (1996) (emphasis in original). Moreover, this court has held that while it might be good practice for prosecutors to refrain from using sentences beginning with "I believe" or "I think," any time a prosecutor does so does not result in error. See *Pope*, 284 Ill. App. 3d at 606-07; *People v. Baker*, 195 Ill. App. 3d 785, 788 (1990).

¶ 49 We find that in this case, the prosecutor's complained-of remarks did not amount to error. First, defendant points to only one instance where the prosecutor used the first person, and thus we cannot say that she repeatedly told the jury what her, or her office's, opinion was as to the credibility of Sloan. Second, the statements about Sloan's courage and bravery were based on the evidence and were invited by defense counsel. See *People v. Jackson*, 293 Ill. App. 3d 1009, 1016 (1997) (when challenged comments are within rebuttal argument, they will not be held improper if they have been invited by defense counsel's argument). In defense counsel's closing argument, he attacked the credibility of Sloan, and stated that this case was a credibility test between Lieutenant Farrell and Sloan. Defense counsel argued that the State was asking the jury

to give Sloan more credibility than Lieutenant Farrell, and "that's an insult." He also argued that the jury heard Lieutenant Farrell's background, and that "he's the boss right now of Area 1" and that he's the boss of homicide detectives "who know more about murder than anyone else in the city." He questioned Sloan's excuse for why she did not call the police right away, since nobody would have seen her make a phone call.

¶ 50 The prosecutor's comments, therefore, were in response to defense counsel's attack on Sloan's credibility, and were made to explain Sloan's actions for why she did not contact the police right away. Defense counsel was making the argument that Farrell thought Sloan was lying when she said she did not contact the police after Hines' murder because she was afraid, and that she could have made a phone call without being seen by anyone in her neighborhood. The prosecutor's remarks stating that Sloan was brave and courageous to talk to the police, were in direct response to defense counsel's argument that Sloan should not have been afraid to make a phone call.

¶ 51 Moreover, calling Sloan brave and courageous does not rise to the level of vouching for a witness's credibility. See *People v. Zoph*, 381 Ill. App. 3d 435, 444 (2008) (while "brave" and "honorable" are value-laden words that may imply that a person possessing those characteristics may be less inclined to lie or mislead in his or her testimony, choosing such adjectives does not place the integrity of State's Attorney office behind the credibility of the witnesses and does not rise to the level of improperly vouching for the credibility of the witnesses).

¶ 52 2. Us-Versus-Them Mentality

¶ 53 Defendant's next argument is that the prosecutor improperly pitted the jurors against

defendant by making the jurors identify with Sloan, and portraying defendant as an intimidating criminal. Specifically, defendant points to the prosecutor's initial closing argument in which she stated:

> "You had the opportunity to observe [Sloan] yesterday and listen to her testimony. She was very clear and very candid about the type of neighborhood she lives in. Or lived in back then. And a lot of you may not be familiar with the neighborhood like that but neighborhoods like that exist in our city, neighborhoods that are ruled by criminals."

¶ 54 The prosecutor also stated that "intimidation" is what rules a lot of "these neighborhoods." Then in rebuttal, the State made the following statement:

> "Remember when you're back there how Marcia Sloan testified, what she told you and why she was afraid. And when you're back there, it will be your turn. Don't let him get away with it. Don't let him intimidate anymore."

¶ 55 Defendant contends that this argument was an improper "us-versus-them" argument. It is improper for a prosecutor to utilize closing argument to forge an "us-versus-them" mentality that is inconsistent with the criminal trial principle that a jury fulfills a nonpartisan role, under the presumption that a defendant is innocent until proven guilty. *People v. Wheeler*, 226 Ill. 2d 92, 129 (2007).

¶ 56 The State contends that its closing argument remarks did not amount to an "us-versus-them" argument, and that the remarks were based on the evidence and inferences therefrom.

Ellis, 315 Ill. App. 3d at 1121 (it is well established that "[a] prosecutor is given considerable leeway in closing and rebuttal argument and is permitted to argue the evidence, as well as reasonable inferences drawn from that evidence"). We agree.

¶ 57 During trial, Sloan testified that she did not tell police about what she had witnessed until six weeks after the crime out of fear because she lived in the same neighborhood as defendant, and that she was afraid defendant would come after her if he knew she had spoken to police. It was therefore a reasonable inference for the prosecutor to conclude that Sloan was intimidated by the fact that defendant lived in the same neighborhood as she did. By telling the jury members that it will be their turn to deliberate, and to not let defendant get away with this crime, the prosecutor was commenting on the role of the jury and the evidence against defendant, not creating an "us-versus-them" mentality.

¶ 58 3. Reference to Defendant Stalking Prey

¶ 59 Defendant's final closing argument contention is that the State inflamed the passions of the jury by referring to him as an animal when the prosecutor stated: "[Defendant] was out there stalking his prey, Jerome Hines."

¶ 60 Prosecutors may not engage in inflammatory arguments solely to arouse the passions of the jury. *People v. Johnson*, 119 Ill. 2d 119, 139 (1987). It is improper to characterize defendant as an "animal," even if that characterization is based on the evidence. *Johnson*, 119 Ill. 2d at 129. Nevertheless, improper remarks generally do not constitute reversible error unless they result in substantial prejudice to the accused. *Id*. at 139-40.

¶ 61 Here, we find that the prosecutor's remark was not an improper animal reference. See

People v. Sims, 403 Ill. App. 3d 9, 21 (2010) (statement that defendant was laying in wait looking like an animal waiting for his prey, did not improperly equate defendant with an animal because when the comments are viewed in their entirety and in context, they do not exceed the bounds of fair comment on the action taken by defendant). The prosecutor never referred to defendant specifically as an animal. And the fact that defendant was stalking his prey, when viewed in context, did not exceed the bounds of fair comment on the action taken by defendant in this case.

¶ 62 Moreover, we find that even if one or two of the prosecutor's remarks were improper, we would not find that any such remarks amounted to reversible error, as we cannot say that had the remarks not been made, the jury could have returned a contrary verdict. *Wheeler*, 226 Ill. 2d at 123. And any prejudice that may have resulted from those remarks were lessened by the trial court's instruction to the jury, right before closing arguments, in which it stated that anything the lawyers said in closing arguments should not be considered by the jury as evidence. See *People v. Chavez*, 265 Ill. App. 3d 451, 462 (1994) (any prejudice which may have resulted from improper comments was offset by the trial court's admonishments to the jury).

¶ 63 III. CONCLUSION

¶ 64 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 65 Affirmed.