2025 IL App (4th) 230700

NO. 4-23-0700

FILED
October 17, 2025
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. RONALD A. WHITE, a/k/a Robert A. White, Defendant-Appellant.	))))))))	Appeal from the Circuit Court of Peoria County No. 22CF1 Honorable Kevin W. Lyons, Judge Presiding.

JUSTICE DOHERTY delivered the judgment of the court, with opinion.
Presiding Justice Harris and Justice Steigmann concurred in the judgment and opinion.

OPINION

¶ 1 After their New Year's Eve party ended in the early morning of January 1, 2022, Daniela Jackson and her husband Levi Conway were shot in their apartment, with Daniela quickly dying from her wounds. At trial, a jury convicted defendant Ronald A. White, also known as Robert A. White, of first degree murder (720 ILCS 5/9-1(a)(1)-(2) (West 2022)) and aggravated battery (*id.* § 12-3.05(e)(1)) for shooting Daniela and Levi. On appeal from his convictions and aggregate sentence of 69 years' imprisonment, defendant argues that (1) his counsel was ineffective for acquiescing in the admission of a police interrogation video, (2) the prosecutor denied him a fair trial by making improper comments during closing argument, and (3) the trial court denied him a fair sentencing hearing by penalizing him for exercising his right to stand trial. For the reasons that follow, we affirm.

¶ 2 I. BACKGROUND

¶ 3 A. Pretrial Proceedings

¶ 4 In January 2022, defendant was indicted in Peoria County case No. 22-CF-1 for first degree murder (*id.* § 9-1(a)(1)-(2)) for shooting Daniela and aggravated battery (*id.* § 12-3.05(e)(1)) for shooting Levi. The present appeal concerns defendant's trial and sentence on these charges; like the parties and the trial court, we have deliberately omitted any reference to the allegations against defendant in Peoria County case No. 22-CF-2 because defendant was presumptively innocent of those allegations throughout the entire proceedings under review. See *People v. Custer*, 2019 IL 123339, ¶ 31.

¶ 5 On February 9, 2022, defendant was arrested at a motel where he was staying with his mother, who was in poor health. Defendant waived his *Miranda* rights (see *Miranda v. Arizona*, 384 U.S. 436 (1966)) and answered questions in a video-recorded interrogation, during which he repeatedly denied any involvement in the shooting. Defendant first claimed that he did not attend the party at all because he was at his mother's house, but when the officers asked him to explain a photograph showing him at the party, defendant acknowledged that he had attended the party but claimed that he left to take care of his mother before the shooting took place. The officers repeatedly expressed disbelief at defendant's account of events, referring to it as "f*** stupid," "f*** dumb," and something that "[n]obody would believe *** in a billion f*** years." During the interview, the officers also asked defendant about Facebook photos showing him posing with a gun. Defendant stated that the gun was not his and that he did not own a gun.

¶ 6 Defense counsel moved *in limine* to "prevent[ ] the State from introducing any type of photographs from Facebook without establishing a sufficient link for reliability that the particular gun depicted in the photographs has a nexus to the shell casings found" in the apartment.

At the hearing on the motion, "the State agree[d] that [it] would not have testimony from [its] witnesses that would claim a match, a presumptive match, or similar match between the gun shown in one of those photographs and whatever was collected at the scene."

¶ 7 The Facebook photos were ultimately not introduced at trial. However, defense counsel did not object to the State's introduction of the police interrogation video subject to agreed-upon redactions; the redacted version of the video still included the officers' exchanges with defendant about the Facebook photos, as well as their expressions of disbelief.

¶ 8 Because Levi was serving a criminal sentence in Jacksonville Correctional Center at the time of trial, the trial court granted the State's request for a writ of *habeas corpus ad testificandum* to obtain his testimony. See 735 ILCS 5/10-135 (West 2022).

¶ 9 B. The Trial

¶ 10 The case proceeded to trial in June 2023.

¶ 11 1. *The New Year's Eve Party*

¶ 12 The following facts are generally uncontested. On December 31, 2021, Levi and Daniela hosted a New Year's Eve party for family and friends at their apartment in Peoria, Illinois. That evening, six partygoers joined Levi at the apartment while he was waiting for Daniela to get off work: Davontae (Daniela's cousin); Daniel, Nate, and Zach (3 of Daniela's 10 brothers); Stacey Wright-Jackson (Daniel's wife); Dezaree Walker, who lived in the same building as Daniela and shared children with another of her brothers; and defendant, who was friends with Davontae and Zach. In this group, defendant was generally called "Little Rocky" or "Rocky." Everyone at the party was listening to music, drinking, and smoking marijuana. Once Daniela got home, the group walked to a nearby bar before midnight to celebrate, then walked back to the apartment after midnight. Zach left shortly after the group returned to the apartment, but everyone else continued

to drink, smoke marijuana, and celebrate, with at least some of them dancing.

¶ 13 The parties disagree about what happened next. The State introduced accounts of the end of the party through direct examination of Levi, Stacey, and Dezaree, as well as through defendant's statements on the interrogation video. We address these accounts in turn.

¶ 14 a. Levi's Testimony

¶ 15 Levi testified that Stacey and Dezaree were dancing together when the following altercation took place:

> "[O]ut of nowhere [defendant] said [to them], you all need to suck some or suck on each other or something of that nature. And everybody in there like, whoa, where did that come from?
>
> Q. So what did you think that meant in your mind that you went whoa?
>
> A. Something he shouldn't have said, something disrespectful pretty much.
>
> Q. Okay.
>
> * * *
>
> A. Dezaree and [defendant] started arguing.
>
> Q. Okay. Is this verbal?
>
> A. Yeah.
>
> Q. Okay. What happens next?
>
> A. She called him goofy, a bum a*** n***, and saying all type of, you know, disrespectful s*** to him. And he told her that you didn't—you wasn't saying that when you was kissing me. So now everybody like d*** again. Where did that come from?
>
> Q. So [do Dezaree] and the Defendant have a relationship such that you

know of such that they would be kissing each other?

A. No, ma'am. Everybody was in shock that he even said something like that. The same way when he said like sucking some part. It was the same reaction, like where did that come from?

Q. And how did [Dezaree] take it when he started saying they were kissing?

A. She got super, super irate, screaming and hollering. I ain't ever kissed you. I don't know what the f*** you talking about and slamming and calling him a name even more. And he pulled his gun out and started pointing it at her like he was trying to shoot her.

Q. And what was the reaction by Dezaree *** when he pulled the gun out?

A. She was still screaming and talking s***.

Q. What did you do?

A. I jumped in—I jumped in front of [defendant] and like, bro, you tripping. What you doing? That is a female. You about to shoot a female. You tell her shut up, [Dezaree], shut the f*** up. I'm going to do that to your a***. Shut the f*** up, [Dezaree]. And I'm trying to—like I'm tussling with him to get him to put the gun up. Stacey is in front of [Dezaree] telling her to shut up. And he puts the gun up.

Q. So where did he put the gun then?

A. In his waist. He put the gun up. Stacey pulled [Dezaree] out—

THE COURT: Do you mean put it away or pulled it up?

THE WITNESS: No.

THE COURT: Put it away?

THE WITNESS: Yeah. He put it in his waistband.

[THE ASSISTANT STATE'S ATTORNEY]: And Stacey did what?

A. Stacey pulled [Dezaree] out—like took her out of my apartment because she was still irate screaming and hollering and won't be quiet. I guess to like to try to alleviate the situation she pulled her out. Everybody in there walked out behind them. Everybody. The last person to walk out was [defendant].

Q. So after this argument between [Dezaree] and the Defendant, everybody funnels out of the apartment?

A. Yes, ma'am.

Q. Except who? Who stays in the apartment?

A. The only people in the apartment after everybody walked out was me and Daniela.

Q. You and Daniela.

A. Yeah.

Q. Did you see the Defendant go out of the apartment?

A. Yeah. He was the last person to walk out."

¶ 16 Levi later testified that he is about a foot taller than defendant and significantly heavier, but that he did not try to take the gun from defendant because he did not want to get shot.

¶ 17 b. Stacey's Testimony

¶ 18 Stacey's testimony about the altercation was as follows:

"As we were all dancing, [defendant] tells me and Dezaree, why don't you all go ahead and lick something or something. Everybody stopped, like what in the heck and where did that come from? Why would you even say that to us?

And I just—we looked at him and said, what the f***? And him and [Dezaree] get to arguing, and she calls him a lame and tells him he ain't nothing. And he looks at her and says, well, I was something when we kissed. She said, that lame a*** kiss. That wasn't nothing. You still ain't nothing. And then he pulls out a gun and—

THE COURT: This was a conversation between the Defendant and *** who?

THE WITNESS: Dezaree Walker.

THE COURT: Okay. And then someone pulls out a gun. And so just name who these folks are.

THE WITNESS: [Defendant] pulls out a gun and tries to shoot [Dezaree]. And [Daniel] and Levi kind of surround him, tell him, no. Why are you trying to shoot a girl? And they are trying to get him to put it away.

And at this time [Daniel] yells at me to get [Dezaree] out of there. I push [Dezaree] in the hall. And she is still yelling and talking because we have been drinking. And I push her out of the hallway. We walk around through the parking lot. We go the long way to the front of the building.

And I get her in the building, and I use the restroom [in Dezaree's apartment]. Then by the time I come out of using the restroom, [Daniel] and Nate and Davontae had pulled up in the car because they—I called it a night because it was just too much.

[THE ASSISTANT STATE'S ATTORNEY]: After he pulled out the gun, that kind of spoiled everybody's evening?

A. Correct. It was over. It was too much."

¶ 19 c. Dezaree's Testimony

¶ 20 According to Dezaree, while she was at the party, her five children were in her apartment upstairs being checked on by Rich Donovan, the landlord. Dezaree described the altercation as follows:

"A. [Defendant] said when I was dancing on Stacey, both of you all should just lick each other. And I said that that's—he was a lame and he got mad about that.

Q. Okay. And so when you—I mean, how did you interpret the term 'lick each other'? Why did that upset you?

A. We was dancing on each other having a good time, you know. And he just turned around and said, you all might as well just lick on each other. That's how he said it too.

Q. And that made you upset?

A. Yeah. Why would I lick on my friend?

Q. Yeah. And you didn't have any kind of relationship like intimate relationship—

A. No.

Q.—with Stacey, right?

A. No.

Q. And so that made you mad. Did you tell him what you thought about it?

A. Yeah. I called him whack.

Q. You called him whack?

A. Yes. And a lame.

Q. And a lame. And how did he take you calling him those words?

A. He took out the gun and pointed it at me.

Q. Where did you see him take the gun from?

A. I think his waist. I'm not for sure though.

Q. Do you remember what it looked like, if you remember?

A. No.

Q. And what did he say to you when he pointed it at you?

A. He didn't say anything. He just pointed it at me. And Stacey took me out of the house and around to my house.

Q. Okay. And you had been drinking a good bit?

A. Yeah.

Q. Did you have some words to say to him when he pulled the gun and pointed it at you?

A. That's when I called him a lame.

Q. And what did you see the other people in the apartment do with [defendant] as Stacey was taking you out of the house?

A. I don't know for sure because she was grabbing me and taking me out.

Q. And were you still—were you kind of mouthy?

A. Yeah. When I got outside, yeah.

Q. Okay. Were you mad at him for doing that?

A. Yes.

Q. And you thought of [defendant] as your friend, didn't you?

A. Yes.

Q. And where did Stacey take you to?

A. To my apartment."

¶ 21 d. Defendant's Statements

¶ 22 Defendant declined to testify, letting his statements on the video stand as his account of events. While defendant's statements contradict Levi's subsequent testimony about the shooting, they do not necessarily contradict the witnesses' consistent testimony above: that defendant made a crude remark while Stacey and Dezaree were dancing, brandished a gun, was confronted by Levi, kept the gun, and left the apartment after the other partygoers. Therefore, it is unclear whether defendant's theory of the case is that these allegations are (1) entirely fabricated, implying that the altercation never took place at all; (2) entirely correct, implying that he left with the gun and that Levi and Daniela were shot with another gun; or (3) fabricated only to a certain extent, for instance because he did not have a gun when the altercation took place or because Levi took the gun from him rather than handing it back.

¶ 23 For our purposes, it is sufficient to point out that the testimony of Levi, Stacey, and Dezaree is mutually corroborated and uncontradicted as to the events before the end of the party, notwithstanding any impeachment of these witnesses' credibility in other respects.

¶ 24 2. *The Shooting and Aftermath*

¶ 25 Because defendant did not testify, the only account of the shooting came from Levi. On direct examination, Levi testified that after the partygoers left the apartment, he began picking up the trash, and Daniela went to feed their cats. According to Levi, defendant returned a few minutes after everyone else had left and stood in the doorway to the apartment. Levi continued:

"A. [Defendant] said, don't ever—don't y'all ever try to stop me from doing

what the f*** I'm doing. I don't give a f*** even if Zach ain't here. So I'm like, bro, you tripping man. Motherf***, was just trying to make you not make a mistake. I'm like, there ain't nobody against you.

I said, bro, we look at you like family. Motherf***, done watch you grow up. I said, bro, you tripping. There ain't nobody angry with you. And he looked at me and like nodded his head and like a grin, like he was thinking about what I was saying and walked away from the door.

Q. Okay. And then what happened?

A. I looked at Daniela. She looked at me. And we was looking like puzzled, you know. And no less than like maybe a minute or two minutes or seconds later, he spun back in the door. He said, f*** you, b*** a*** n***. F*** you. And he started shooting.

* * *

A. He had the gun in his hand, but he looked at me, shot in my direction, then looked toward over where Daniela was at and shot in her direction.

Q. Okay. And do you remember what the gun looked like if you remember?

A. Black.

Q. Okay. That's all you can remember at this point?

A. Yeah. I think I know it was—it looked like a nine-millimeter.

Q. Okay. And so he fired at you, and he fired in Daniela's direction?

A. Yes, ma'am.

Q. And what happened next?

A. I was froze. Like I couldn't move. And I'm looking at him. He looking

at me. He got the gun down like this, like this (indicating).

Q. Down to his side?

A. Yes, ma'am. And the only thing that snapped me out of my trance was I heard Daniela say, what the f***? And I spinned and looked towards her. She was holding her left side falling to the floor. And I spinned back and looked at him. He still stuck looking at me. I slammed the door, locked it, grabbed—ran to the bed, grabbed her phone off the charger, dialed 911 and swooped up under her.

* * *

*** I'm sitting—I'm holding her on the phone talking to the people, the 911 operator. I hear him outside the door like walking, pacing. And like maybe two or three minutes later I hear him running down the hallway. The door slammed.

* * *

And I'm screaming, hollering, crying, and I would say like maybe six, seven minutes, or maybe a little bit more, I hear the door [to the building] open. And I could hear [Daniela's] brother and them running down the hallway. So I got up and unlocked the [apartment] door and let them in. And Daniel ran over to her, and he scooped her up and was talking to her. *** I was still on the phone with the operator.

And shortly after that, the police came and a whole bunch of police was in the hallway. And they got pulling people out of the room handcuffing them one by one. Everybody was like, help her. Why was you handcuffing us? Help her. And they—and they even handcuffed me and walked me out. And [Rich] was in the hallway. He like, why you handcuffed? You got shot too. I didn't even know I got shot.

* * *

Q. Where were you shot?

A. In my waist, in my thigh, and in my butt.

* * *

Q. Did it [(the bullet that struck your waist)] come back out?

A. Yeah.

Q. How about your inner right thigh?

A. There is a bullet in there. It's a hole right here. I can still—you can feel the bullet sitting right there.

Q. So the bullet is still inside your thigh?

A. Yes, ma'am.

Q. And how about back on your right buttocks?

A. It is still in there. They never took no bullets out of me."

¶ 26 Daniela's autopsy showed that she had been shot in the back of her left shoulder, the left side of her lower back, and the inside of her right thigh, and that a fourth bullet had grazed the back of her neck. A forensic pathologist testified that Daniela could not have survived the shot through her shoulder because the bullet went through her heart and both lungs, but she could have survived the other wounds. According to the forensic pathologist, there was no evidence that Daniela had been shot at close range, but her position and distance from the gun could not be determined from the trajectory of the bullet alone.

¶ 27 Two bullets were recovered from Daniela's body, and a third bullet and four cartridge casings were recovered from the scene. A ballistics expert testified that the four casings had come from a single 9-millimeter gun and the three bullets had come from a single gun in the

9-millimeter caliber range, although the ballistics expert could not say with certainty whether the bullets had come from the casings. No gun was found in the apartment, and the gun used in the shooting had not been found.

¶ 28 Stacey and Dezaree testified that they did not see anyone leave the building or run away, including defendant. However, it is undisputed that defendant was the only partygoer who did not return to the apartment after the shooting, apart from Zach, who left early. As noted above, defendant went into hiding for 39 days before being arrested.

¶ 29 3. *The Partygoers' Credibility*

¶ 30 The testimony of Levi, Stacey, and Dezaree was impeached in several respects through direct examination and cross-examination during the State's case, as well as through evidence introduced during defendant's case. As noted above, it is undisputed that Levi, Stacey, and Dezaree had spent several hours drinking and smoking marijuana before the altercation took place, and there are some discrepancies as to the specific details. Furthermore, each of the witnesses gave prior statements to the police that contradicted their testimony as to some details, and when Stacey was initially asked about the shooting, she did not tell the police about the altercation between defendant and Levi because she believed the shooting and the altercation were "two completely different moments in that night that [she] was not putting together at that moment because [she] was intoxicated." Defendant called Rich to the stand, who testified that he sometimes checked on Dezaree's children but that he did not check on them during the New Year's Eve party as Dezaree had claimed in her testimony.

¶ 31 Levi acknowledged that he had prior convictions for felony burglary, misdemeanor theft, and felony theft. See Ill. R. Evid. 609 (eff. Jan. 1, 2011) (allowing for impeachment on this basis). On cross-examination, defense counsel asked Levi a line of questions about what happened

after the police arrived at the apartment. Defense counsel repeated and rephrased several of these questions in response to objections by the State; the following excerpt is representative of Levi's overall responses:

"Q. Do you recall being outside of your doorway?

A. Yeah.

Q. Do you recall a police officer coming up to you and asking you what happened?

A. A few officers approached me and asked me what happened.

Q. And do you recall what you told those officers?

A. They asked me what happened? Who shot you? I said, we was shot by Little Rocky. Little Rocky shot us. They said—they asked do I know a real name? I never knew this man's government name.

Q. So you never—

A. I never told nobody that I don't know who did what or what happened. I have never said that to nobody. The only thing—I could not help nobody who asked me, even at the hospital—I did not know his real name. I know him as Little Rocky.

Q. So you never told anybody you didn't know what happened?

A. No, sir.

* * *

Q. Did you explain to each and every officer who asked you when they asked you that it was Rocky who shot you, you just didn't know his government name?

A. Every single person that asked me about what happened, I told them what

happened and told them who shot us."

¶ 32 During his case-in-chief, defendant called four officers who arrived at the apartment after the shooting. Each officer testified that they had asked Levi and the other partygoers what had happened and that Levi refused to explain. A fifth officer testified that Levi again refused to explain what happened upon his arrival at the hospital. None of the officers said that Levi told them he did not know what happened, although they generally agreed that he was extremely emotional and that his responses to their questions were evasive.

¶ 33 4. *Defendant's Demeanor During Levi's Testimony*

¶ 34 While cross-examining Levi, defense counsel asked him about what happened after the partygoers left the apartment, as follows:

"A. Once they left outside of my apartment door, I don't know where they went.

Q. But this all happened within five minutes you said, right?

A. Yeah. But I don't know where they went. I didn't go with them. I was in my apartment with my wife. All of them left out the door.

Q. Okay. All right. But it happened within five minutes?

A. I can't state where they went. I wasn't with them.

THE COURT: Okay. Hang on.

BY [DEFENSE COUNSEL]:

Q. Did you walk them out to the door or did they just go out?

A. How can I walk them out the door if I'm still in my apartment?

Q. I didn't know you were still in your apartment.

THE COURT: He just said he was.

THE WITNESS: That's what I said. That's what I been saying.

BY [DEFENSE COUNSEL]:

Q. So they just walked out in the hallway?

A. Do you think my words going to change?

THE COURT: Let him ask you the questions.

THE WITNESS: Do you think this s*** is funny or something?

THE COURT: Hang on.

THE WITNESS: Can I ask you one question?

THE COURT: Mr. Conway, I get it.

THE WITNESS: Why is [defendant] smiling at me like this s*** funny? I lost my wife.

THE COURT: Mr. Conway.

THE WITNESS: What the f*** is so funny?

THE COURT: Mr. Conway, nobody thinks it's funny.

THE WITNESS: He is smiling at me like this s*** is a joke or something. He killed my wife."

¶ 35 Defense counsel attempted to ask one last question on an unrelated matter, but the trial court objected *sua sponte*; defense counsel did not attempt to cross-examine Levi further. The State declined to conduct redirect examination.

¶ 36 5. *Closing Arguments*

¶ 37 Although the parties' arguments on appeal address their closing arguments as a whole, we reproduce only the key excerpts here. Neither party interposed any objections during closing arguments. We note that the State's initial closing argument and rebuttal were presented

by different assistant state's attorneys, but we will refer to them both as "the prosecutor."

¶ 38 a. The State's Initial Closing Argument

¶ 39 The prosecutor began the State's initial closing argument as follows:

> "Counsel, members of the jury, Daniela Jackson was a loving wife, daughter, sister, aunt, and niece. She was deeply loved, and she is greatly missed.
>
> Daniela and Levi will never get a chance to grow their family and have children. And Daniela's parents will never get to meet any grandchildren that they may have had.
>
> The Defendant murdered her in cold blood. He not only stole her from them. He stole their futures. The future they have to look forward to. Levi is devastated. Her family is devastated. She was one of a kind. The only girl in a family with ten brothers. She is irreplaceable.
>
> And yet the Defendant had the gall to laugh and smile when Levi took the stand to tell you the events about that terrible night. You heard Levi say, you think this is funny? I think he even dropped an F bomb in there. You killed my wife, he told him."

The prosecutor concluded as follows:

> "Ladies and gentlemen, New Year's Eve is supposed to be a fun night filled with laughter and cheer and a celebration to bring in the new year. Instead Daniela's family had to plan a funeral.
>
> And in the New Year's Eves to come, it's doubtful that it will ever be a celebration as the holiday is forever tainted by blood and death for them.
>
> Daniela is gone forever and her husband and family are left with nothing

but her precious memory. The Defendant did that. I ask you to find him guilty. Thank you."

¶ 40 b. Defendant's Closing Argument

¶ 41 At the beginning of defense counsel's closing argument, he noted that the judge would instruct the jurors that what he and the prosecution argued was not evidence but "an opportunity for both [sides] to pick up all of the evidence and talk about it and see how it is that we believe that it goes towards proving or not proving the propositions that the State has the burden of showing."

¶ 42 When discussing Dezaree's testimony, defense counsel referred to Stacey as "the person who [wa]s in control of everything and calm and collected and taking Dezaree *** over up to her apartment."

¶ 43 When discussing Levi's testimony, defense counsel said:

"If you think about his behavior, *** about his manner while testifying, Levi is a bully, plain and simple. And the fact of the matter is if he is acting like that in court, what do you think he is going to be acting like in his own house after he has been drinking?

Look at the difference in size between Mr. Conway and [defendant]. It's probably about the same size difference between [the prosecutor] and myself.

* * *

*** I would submit to you that it defies credibility to suggest that somebody the size of [defendant] would pull a gun out of his waist, point it at somebody in Mr. Conway's house, along with his brother being right there, and then say, oh, please don't do that. Put that back in your pants and we'll just continue. Let's break

this up.

* * *

And I would suggest that Levi's story of, oh, hey, any time the police officers talked to me I was okay. I gave them what I had. No. It was given at the hospital some—depending on how you are looking—three and a half hours after this happened.

We don't know who he was talking to on the phone, what he was saying. We do know that he was on the phone beyond the time the EMT people were there.

So ask yourself this. Why? Why did it take so long? What is he doing there? And I think that you look at the way Mr. Conway acts, he answers that question.

Because that gives you an idea of what reason there would be for this delay to try to coordinate everything and figure out how he is going to get out of this mess that he created."

¶ 44 At several points in his closing argument, defense counsel sought to preempt the State's rebuttal:

"[The forensic pathologist] talked about the trajectory of the bullets [(that struck Daniela)], how it went in from the back to front and down.

And think about bullet trajectory, think about going down. [The forensic pathologist] cannot tell whether a person was sitting, standing, lying, kneeling, bending over to put cat food in, which is I'm sure what [the prosecutor] is going to argue was going on.

* * *

*** [Dezaree] lied under oath because [Rich] was not babysitting her

children period, the end.

Now, the State might very well get up here, knowing [the prosecutor], and say, well, this isn't a [Department of Children and Family Services] case. I mean, okay. It's New Year's. She had to do this. She had to do that.

* * *

*** If you listen to Levi, what he says was this. Any officer that came up to me, asked me what happened, I was cooperative with them. I told them what I knew. I told them what happened.

And I said, I know the person, but I don't know their government name, which is street terminology for their legal name. You sure? Yep, yep, yep. Absolutely.

Well, we had the officers all come in very short and to the point. Was that the case? No, no, no. It wasn't. And I'm sure [the prosecutor] is going to say, well, he was distraught. Okay. But he wasn't distraught enough to be on his phone [*sic*].

* * *

Now, one thing I would say is, well, you're sending [pictures of the party] to [Dezaree's husband]. Why don't you have a picture of Daniela? And I know [the prosecutor], knowing her well, what her response is going to be. Well, [Daniela] was taking the pictures.

* * *

And the fact of the matter is as incredible as [the prosecutor] is going to tell you [defendant's account of events] is, the fact of the matter is all their witnesses are saying the same thing except Mr. Conway. Because Dezaree says, I left. Stacey

says, I left. Varying I might have heard a gunshot. I didn't see anybody with a gun. I didn't see anybody shoot a gun.

So that's the same thing, frankly, as the witnesses for the State are saying. The only difference is going to be when [the prosecutor] says, well, the Defendant shot the gun. How convenient how that he says he [didn't]."

¶ 45 c. The State's Rebuttal

¶ 46 The State's rebuttal included the following:

"Well, I guess I wasn't listening to the same trial as [defense counsel] or the same testimony. But in the end, the judge told you this early in the trial, and I'm going to remind you.

It isn't what [defense counsel] says. It isn't what I said happened. It's what you heard. And there's no—don't rely on what either of us said if it's different than what your memories and your collective memories are.

But I want to start with some of this craziness that I just heard from [defense counsel] about—let's see. Let's start with Stacey was calmly escorting [Dezaree] out of the apartment.

I must have fallen asleep during that bit of testimony, because that's silly and ridiculous. The testimony from the beginning was that everyone was up in arms because the Defendant was so inappropriate in this party that they were—[Dezaree] was shouting. Stacey was shouting. Levi was shouting. The brothers, they were all trying to break up this thing and get [Dezaree] out. And Stacey pushing [Dezaree] out of the apartment while she is F bombing people.

That's the testimony I heard, ladies and gentlemen, not [defense counsel's]

version of testimony that Stacey was calmly removing *** Dezaree from the apartment.

And then let's talk a little bit about the statements [defense counsel] just made about Levi. I believe what [defense counsel] said was that Levi's testimony was that he—that he told any officer that asked him that the person that shot him was Rocky, but he didn't know his government name. That is not the testimony I recall.

I recall [defense counsel] repeatedly asking Levi did you ever tell anyone you did not know who did this? Not that I told every person that asked me every detail of what happened. But the question was *** asked *** over and over, and I objected. Because he would say any officer, anywhere, did you ever tell them you did not know who did this? And Levi said, I never said that, because I knew who did this. I have known him my whole life. So I never would have said I did not know who did this. That's the testimony I recall, not [defense counsel's] version of it.

And there was a lot of chaos going on there. And [defense counsel] paraded a whole bunch of officers in front of you who said, we asked Levi what happened. We asked Levi what happened. He never said he didn't know what happened. I don't even understand that line of questions. All he—they all said, no. He just didn't answer our question. He just kept asking for his wife.

Imagine that. You have been shot. Your wife, the last moments that you saw your wife, she is [lying] on the floor of the apartment bleeding. There's officers over her performing CPR, and the police are dragging you and your family

members out of there. They're handcuffing you. They handcuffed Levi. They handcuffed Stacey. They handcuffed [Daniel]. They handcuffed everyone.

Because they didn't—as the police said, they were trying to secure and make sure people didn't get away. But imagine the trauma. His wife is [lying] there dying, and they're treating him like the criminal. And they're not letting him get to his wife.

Common sense tells you he has got one thing on his mind, and that is how is my wife. And sadly enough, he did not learn of his wife's death for hours. Horrible. Just like Stacey and the rest of them didn't learn that she had died right there on the floor of that apartment.

***

*** [W]e brought the evidence to you. And it wasn't Levi shooting himself. How incredibly ridiculous. So he has a gunshot wound with a bullet in his butt on his right side.

So I guess we're supposed to believe he shot himself on his inner thigh and then he shot himself from left to right. Because Levi said the bullet goes in here and comes out here. All for what purpose?

Why does he need to say that [defendant] shot his wife and then he is going to like fake this shooting thing of himself? He wasn't even concerned about being shot. He wasn't concerned at all about being shot. He was worried about Daniela.

He loves this woman. You saw him. He couldn't even look at her photograph without sobbing. And we hear [defense counsel] tell you that Levi is the bully. Really?

Levi, as you heard the testimony of Stacey, Dezaree, he was the one trying to calm things. When the Defendant got all up in himself, whipped out his gun, going to be the big man, it was Levi who was trying to calm things.

Levi, dude, we're cool. We love you, man. You know, you're family. You're family, dude. Is that the actions of a bully? Of course it's not. It's a—it's the actions of a person who is trying to calm the temperature of the room.

And that's why Levi was not scared of the Defendant because it never crossed his mind that the Defendant would shoot him. [Dezaree] said the same thing. I never thought he would do it. He whips out this gun and points it at me and says all kind of nice F bomb words and things to me. But they never thought he would do it.

Because they don't—they didn't need to be the bully. The bully is sitting right there. ***

* * *

And I don't need to say anything more about Levi Conway's testimony. I mean, he was wearing his emotions on his sleeve for you about what happened that night. And [defense counsel] says, well, geez. There was only one person in the room that saw the shooting go down. True. True.

Well, Daniela was there and she is not here to tell us. True. Levi was the only one left. But the actions of the Defendant with everyone else leading up to this tell the big story."

¶ 47 6. *Close of Trial*

¶ 48 The jury returned guilty verdicts against defendant on both counts. Defendant filed

a motion for a new trial raising several issues, but not the ones raised in this appeal; the trial court denied the motion.

¶ 49 C. Sentencing

¶ 50 On his conviction for first degree murder, defendant's potential sentence was 45 years to natural life in prison (730 ILCS 5/5-4.5-20(a), 5-8-1(a)(1)(d)(iii) (West 2022)); on the conviction for aggravated battery, his potential sentence was 6 to 30 years (*id.* § 5-4.5-25(a)), with the sentences required to be served consecutively (*id.* § 5-8-4(d)(1)).

¶ 51 During defendant's allocution, the following exchange took place:

> "THE DEFENDANT: I just want to put this on record, because like you mention, my name is Robert White. My real name is Ronald White.
>
> THE COURT: Okay. Good for you. Go on.
>
> THE DEFENDANT: *** Robert is not my name. It's really Ronald White.
>
> THE COURT: Today it's Defendant White, so continue on from there."

Although the record reflects that both "Ronald" and "Robert" have been used as names by defendant, we have corrected the caption in this case to recognize that Robert is defendant's alias, as opposed to his real name.

¶ 52 Before pronouncing sentence, the trial court made some discursive observations, the following portions of which are relevant to the issue we address in this opinion:

> "Levi Conway had to come here from prison to testify against you. He wasn't committing the crime of the century. I don't even recall exactly what he was in for some short period of time, but he could have, and many times they do say I'm not going. What's done is done.
>
> But he got in the little car shackled up, got driven to Peoria so he could stare

you down again, because he did it before on January 1st, 2022, and we were both in the same room, you and I, [defense counsel], [the prosecutor], and Levi. [Defense counsel] is not a small person, and I'm not a big, strong person, but my opinion is that Mr. Conway could have taken us all out. So, I'm guessing he could have done that when you first started acting up on December 31st and January 1st of 2021 and 2022, but he did not.

In some places on the planet, on a New Year's Eve, when people get all full of liquid courage and think that they're the biggest man in the room, fights break out, that happens. Insults get traded. Usually guns don't get drawn, but in some parts of the world, they do, and you, my opinion is, thought you were going to be the biggest guy in the room when you displayed your gun, and weirdly, you displayed it in the room that probably liked you the most on the earth that night.

What a misstep. What a misstep. And yet, Levi, and I hope the message gets back to him, Levi could have, what's the phrase, squashed you like a bug, but he did not, and neither did the two wom[e]n that you were insulting. Neither did the rest of the family that was gathered.

They heard you say what you said, and then they watched you do what you did, and in a great show of restraint, they showed you the door when they could have showed you some violence, but they did not, and what did you do? You came back, and then Mr. Conway had to, for of lack of a better term, lower himself to come and sit in th[e witness] chair, there it is, and look at you and look at me and look at these folks and everyone else here and say that's the man that did it.

That's what he had to do just so that you could be accountable, because had

he wanted to, he could have made you accountable that night, and we'd be having an entirely different conversation here, if you were here at all, but restraint and self-discipline means something to me because sometimes I don't have it, sometimes I react.

* * *

*** I hope that word goes back to Levi that it was meaningful to me that he came and testified against you, because even though it was the right thing to do, I'm in a business where people don't necessarily do the right thing, and when he wrote, and I believe his [victim impact statement] came from the heart.

Really, how much fun can that be. I'm in a prison cell in wherever he was at, I forget. I'm going to write a letter to a judge in a courtroom in Peoria where I cannot go because I'm locked up for a little while, so I've got to spill my heart out and send it to Peoria and hope someone reads it. I read it.

But in a strange twist, I want you to know, [defendant], that I know that in some way you enjoy at this point a little piece of all of this. The point is not lost on me that during Mr. Conway's testimony, you smirked and laughed and looked at him.

Small guy, [defendant], and I might add, we're not all that different in size, and big guy, Mr. Conway, and it didn't bother you at all to look at him and smirk and smile and laugh like this was a game. It is no game, sir, and I want Mr. Conway to know that even though he wrote things that were from his heart, I think you sort of relished in these things, but I don't relish in them.

I think that he certainly meant when he said Daniela meant the world to me

and everything in it, and I'm lost without her. He doesn't even mention, oh, by the way, I'm in prison. He's mentioning about his wife. He's telling us about his life.

In some way, if you were willing to smile at him when he was on this witness stand telling us that you were the killer, I'm guessing that you have some sort of vicarious joy that this bothers him, but I want him to know that because it bothers him, it bothers me, and it impacts your sentence."

Defendant did not object at any point during the court's pronouncement of his sentence.

¶ 53 The trial court sentenced defendant to 55 years' imprisonment on the first degree murder charge and 14 years' imprisonment on the aggravated battery charge, to be served consecutively. Defendant filed a motion to reconsider the sentence but did not raise the issue we address in this appeal. The trial court denied the motion.

¶ 54 This appeal followed.

¶ 55 II. ANALYSIS

¶ 56 Defendant argues that (1) his counsel was ineffective for acquiescing in the admission of the police interrogation video, (2) the prosecutor denied him a fair trial by making improper comments during closing argument, and (3) the trial court denied him a fair sentencing hearing by penalizing him for exercising his right to stand trial. We address each of these arguments in turn.

¶ 57 A. Admission of the Police Interrogation Video

¶ 58 We turn first to defendant's argument that his counsel was ineffective for acquiescing in the admission of the police interrogation video or by failing to demand further redactions of the video.

¶ 59 The sixth amendment to the United States Constitution guarantees defendants the

right to the assistance of counsel for their defense (U.S. Const., amends. VI, XIV), and " 'the right to counsel is the right to the effective assistance of counsel.' " *Strickland v. Washington*, 466 U.S. 668, 686 (1984) (quoting *McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970)). Under *Strickland*, a defendant alleging that his counsel was ineffective has the burden of showing both deficiency and prejudice. *Id.* at 687. To satisfy the deficiency prong, "the defendant must prove that counsel made errors so serious, and that counsel's performance was so deficient, that counsel was not functioning as the 'counsel' guaranteed by the sixth amendment." *People v. Evans*, 186 Ill. 2d 83, 93 (1999). To satisfy the prejudice prong, "[t]he defendant must prove that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* "A reasonable probability is a probability sufficient to undermine confidence in the outcome" of the trial. *People v. Houston*, 229 Ill. 2d 1, 4 (2008).

¶ 60 Because a defendant must satisfy both prongs to prevail, courts need not "address both [prongs] of the inquiry if the defendant makes an insufficient showing on one." *Strickland*, 466 U.S. at 697; *Evans*, 186 Ill. 2d at 94. Here, we can dispose of defendant's claim on the deficiency prong alone. Our standard of review is *de novo*. See *People v. Brown*, 2024 IL 129585, ¶ 29 ("Whether counsel is ineffective is a question of law subject to *de novo* review.").

¶ 61 Defendant argues that counsel was deficient for failing to "demand the further redaction of the interrogation video" to exclude statements regarding defendant's familiarity with firearms and the officers' belief that his version of events was implausible. We start with the strong presumption that counsel's failure to object to the State's introduction of this evidence was sound trial strategy. See *People v. Graham*, 206 Ill. 2d 465, 478-79 (2003). "Sound trial strategy" "embraces the use of established rules of evidence and procedure to avoid, when possible, the admission of incriminating statements, harmful opinions, and prejudicial facts." *People v. Moore*,

279 Ill. App. 3d 152, 159 (1996). Allegations of ineffectiveness based on trial strategy generally fail because "counsel's strategic choices that are made after investigation of the law and the facts are virtually unassailable." *People v. Ramsey*, 239 Ill. 2d 342, 433 (2010). This case is no exception.

¶ 62 As the State points out, the only evidence that defendant left the apartment building before the shooting took place came from his self-serving statements to the officers on the interrogation video. Notably, defendant's arguments at trial and on appeal have relied extensively on these statements, effectively conceding that even though *the State* introduced the interrogation video, at least some portions of the video worked to *defendant's* benefit. This is crucial because "[i]n almost all circumstances, if a defendant wishes to inform the trier of fact of where [he] *personally* claims to have been when the crime at issue was committed, he must testify at trial." (Emphasis in original.) *People v. Woods*, 292 Ill. App. 3d 172, 178 (1997).

¶ 63 Defendant argues that defense counsel should have demanded further redaction of the video on the basis that the officers' derisive comments about his version of events were unduly prejudicial. See Ill. R. Evid. 403 (eff. Jan. 1, 2011) (providing for the exclusion of evidence when "its probative value is substantially outweighed by the danger of unfair prejudice"); *People v. Davila*, 2022 IL App (1st) 190882, ¶ 61 (finding that similar statements should have been excluded under Rule 403 because they can "usurp[ ] the jury's role in a manner that can be simply devastating"). We are skeptical that jurors are so easily cowed by profane heckling that they will fail to fairly evaluate a defendant's consistent protestations of innocence in the face of that heckling, and for that matter, when one of the officers asked defendant himself if he knew how "stupid" his version of events sounded, defendant acknowledged, "Yes, it sounds real—" before the officer cut him off.

¶ 64 Assuming that a Rule 403 objection would have been sustained, however, a reasonable defense attorney can forgo even a meritorious objection. See *Graham*, 206 Ill. 2d at 478-79. Because defense counsel was in no position to demand the *admission* of defendant's self-serving statements (see *Woods*, 292 Ill. App. 3d at 178), counsel could have overplayed his hand by demanding the *exclusion* of the officers' responses, in which case the State may simply have decided against introducing the video altogether or sought the admission of only inculpatory excerpts from the video.

¶ 65 Although counsel's strategy was ultimately unsuccessful, we cannot conclude that counsel's acquiescence in the admission of the interrogation video was "irrational and unreasonable in light of the circumstances that defense counsel confronted at the time." *People v. Faulkner*, 292 Ill. App. 3d 391, 394 (1997).

¶ 66 B. The State's Closing Argument

¶ 67 Next, defendant contends that we should reverse his convictions because several comments in the prosecutor's closing argument were improper. "A prosecutor *** has wide latitude in making a closing argument and may comment on the evidence and any reasonable inferences that arise from it, even if those inferences reflect negatively on the defendant." *People v. Williams*, 2022 IL 126918, ¶ 44.

¶ 68 We first address the relevant legal framework and then return to defendant's specific allegations of impropriety.

¶ 69 1. *Preservation of the Issue*

¶ 70 Challenges to comments in the prosecutor's closing argument are not exempt from the forfeiture rule, which provides that the alleged impropriety must be preserved for review through a contemporaneous trial objection and a written posttrial motion addressing the specific

comments alleged to be improper. *People v. Moss*, 205 Ill. 2d 139, 168 (2001); see *People v. Wheeler*, 226 Ill. 2d 92, 122 (2007) (noting that a challenge to the cumulative effect of multiple improper comments must also be preserved); see also *Williams v. Lane*, 826 F.2d 654, 663 (7th Cir. 1987) (interpreting Illinois Supreme Court precedent as imposing a requirement that "a party must object to each and every objectionable statement in a closing argument").

¶ 71 A contemporaneous objection is especially important in this context because the prompt sustaining of the objection together with a jury instruction "usually is sufficient to cure any prejudice arising from an improper closing argument." *People v. Johnson*, 208 Ill. 2d 53, 116 (2003). But see *People v. Hope*, 116 Ill. 2d 265, 278 (1986) (noting that the prejudicial effect of the prosecutor's improper comments was *amplified* when the trial court overruled defense counsel's objections to those comments). The contemporaneous objection requirement is not excused even though the interruption potentially frustrates the jury and draws its attention to the improper argument. See *Williams*, 826 F.2d at 662-63; *cf. Daniels v. Standard Oil Realty Corp.*, 145 Ill. App. 3d 363, 369 (1986) (applying the forfeiture rule in a civil case when a party "failed to object at trial for fear of drawing attention to the [prejudicial] argument").

¶ 72 2. *Standard of Review*

¶ 73 The parties dispute whether we should review for an abuse of discretion or *de novo*, but it is undisputed that defendant entirely failed to raise this issue with the trial court, meaning that the only possible exercise of discretion for us to review is the trial court's failure to intervene *sua sponte*, which is not the focus of our inquiry, as we will explain. Accordingly, we will review only for plain error or ineffective assistance of counsel; under either standard, our review is *de novo*. *Williams*, 2022 IL 126918, ¶ 48 ("Whether there is plain error is a question of law, which we review *de novo*."); *Brown*, 2024 IL 129585, ¶ 29 ("Whether counsel is ineffective is a question

of law subject to *de novo* review.").

¶ 74 a. The Plain-Error Rule

¶ 75 Illinois Supreme Court Rule 615(a) (eff. Jan. 1, 1967) provides: "Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court." Reversal is appropriate under the plain-error rule

> "(1) when 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) when a clear or obvious error occurred and the 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. *** Under both prongs, the burden of persuasion remains with the defendant." *People v. Moon*, 2022 IL 125959, ¶ 20.

We reject out of hand defendant's allegation that the comments we discuss below reflected a pervasive pattern of willful conduct intended to subvert his right to a fair trial. See, *e.g.*, *People v. Jackson*, 2020 IL 124112, ¶ 87 (readily dismissing such an argument). As such, we need only address the first prong of the plain-error rule.

¶ 76 The supreme court has emphasized that "[t]he only question in a first-prong case, once clear error has been established, is whether the evidence is closely balanced." *People v. Sebby*, 2017 IL 119445, ¶ 69. In *Sebby*, the court clarified that the defendant's burden of persuading a reviewing court that the evidence was closely balanced does not apply *in addition to* a burden of persuading the court that the clear error would have warranted reversal if it had been preserved; rather, the analysis of whether the evidence at trial was closely balanced is a *substitute for* a traditional harmless-error analysis. *Id.* ¶ 64. Accordingly, in the context of true errors

committed by the trial court, "a defendant who has shown clear error and closely balanced evidence has shown prejudice and is entitled to relief under the first prong of the plain error doctrine." *Id.*

¶ 77 Although *Sebby* would seem to suggest that any clear prosecutorial impropriety in a closely balanced case would warrant reversal under the first prong of the plain-error rule, the supreme court has more recently said that "[t]o establish first-prong plain error, defendant must show that the evidence was closely balanced and that the prosecutor's comments were 'clear or obvious' *reversible* error that *changed the outcome of the trial*." (Emphases added.) *People v. Mudd*, 2022 IL 126830, ¶ 22 (citing *People v. Johnson*, 218 Ill. 2d 125, 143 (2005), as setting forth the relevant standard). Under this standard, the court has *declined* to reverse even when finding clear prosecutorial impropriety in a closely balanced case, suggesting that the standard for granting relief on appeal now differs for clear prosecutorial impropriety and clear error by the trial court. *Johnson*, 218 Ill. 2d at 141-43. But see *Williams*, 2022 IL 126918, ¶ 57 (citing *Sebby* for the proposition that "there is no additional substantiality requirement because all plain errors are substantial").

¶ 78 Although we would welcome guidance from the supreme court on this point, we need not definitively resolve it here because we find that defendant has failed to meet his burden of persuading this court that the evidence at trial was closely balanced.

¶ 79 b. Ineffective Assistance of Counsel

¶ 80 As explained above, a claim of ineffective assistance of counsel requires the defendant to show both deficiency and prejudice. *Strickland*, 466 U.S. at 687. The supreme court has held that in the context of prosecutors' closing arguments, the inquiry into prejudice is the same under *Strickland*'s prejudice prong and the first prong of the plain-error rule. *Williams*, 2022 IL 126918, ¶¶ 57-58; see *People v. White*, 2011 IL 109689, ¶ 134.

¶ 81 This means that the key difference between showing first-prong plain error and ineffective assistance of counsel comes from *Strickland*'s deficiency prong, which can afford the defendant relief from prosecutorial impropriety invited by defense counsel's closing argument. See *People v. Johnson*, 2023 IL App (4th) 220201, ¶ 38 ("Although inviting a ruling precludes a plain-error challenge to that ruling, a defendant may still argue that his counsel was ineffective for inviting the ruling."); see also *People v. Lewis*, 2022 IL 126705, ¶ 108 (finding deficient performance when defense counsel made three strategic missteps, including failing to object during the prosecutor's closing argument). As with evidentiary matters, defense counsel's approach to closing argument is a matter of trial strategy. See *United States v. Simone*, 931 F.2d 1186, 1195 (7th Cir. 1991). "Trial strategies are unsound only when no reasonably effective criminal defense attorney, facing similar circumstances, would pursue such strategies." *Faulkner*, 292 Ill. App. 3d at 394.

¶ 82 Here, however, our analysis of prejudice under the first prong of the plain-error rule does not rest on a finding that the allegedly improper comments were invited by defense counsel, so we need not address defendant's alternative contention that his counsel was ineffective for failing to object to those comments. See *White*, 2011 IL 109689, ¶ 134; *Strickland*, 466 U.S. at 697 (noting that a court need not consider deficiency if the defendant makes an insufficient showing of prejudice).

¶ 83 3. *The Present Case*

¶ 84 We now turn to the specific arguments defendant raises concerning several remarks made by the prosecutor during closing arguments. We group defendant's challenges to the prosecutor's comments into separate categories and address each category independently, followed by their cumulative effect.

¶ 85 a. Encouraging the Jurors to Envision Themselves as the Victim

¶ 86 Defendant argues that the prosecutor improperly asked the jurors to imagine themselves in Levi's shoes. It is true that "the State is not free to 'invite the jurors to enter into some sort of empathetic identification with' the victim." *People v. Wood*, 341 Ill. App. 3d 599, 614 (2003) (quoting *People v. Spreitzer*, 123 Ill. 2d 1, 38 (1988)). However, the prosecutor's comments in this case were clearly intended to address Levi's credibility as a witness to Daniela's murder and not to engender sympathy for him as the victim of aggravated battery. The fact that Levi was both victim and witness creates a considerable contrast to the highly improper remarks in *Spreitzer*, 123 Ill. 2d at 38, where the prosecutor simply engendered sympathy by saying to the jurors, " 'Place yourself in [the victims'] shoes and think what they must have been thinking about at the time they were murdered. *** What went through their minds when they were shot, stabbed, mutilated, handcuffed.' "

¶ 87 Here, the question of what Levi was thinking shortly after the shooting was critical to the jury's determination of whether he correctly identified defendant as the shooter and, consequently, whether the State had proven beyond a reasonable doubt that defendant was the person who committed the charged offenses. Furthermore, identity was the central disputed issue at trial; Levi's identification of defendant as the shooter cannot be described as a trivial, collateral, or undisputed issue that the prosecutor raised only as a pretense for describing the sympathetic aspects of Levi's situation. *Contra People v. King*, 2020 IL 123926, ¶ 45 ("[H]ow [the victim's sister and father] reacted upon hearing the news of [the victim's] death is of no probative value whatsoever on the question of defendant's guilt or innocence, while at the same time being highly and inherently prejudicial against defendant.").

¶ 88 Accordingly, we find that the prosecutor's comments about Levi's state of mind

were within the bounds of proper argument.

¶ 89 b. Mischaracterization of the Evidence

¶ 90 As set forth above, defense counsel asserted in his closing argument that Stacey "[wa]s in control of everything and calm and collected and taking Dezaree *** over up to her apartment." In rebuttal, the prosecutor contradicted this assertion, stating that "[Dezaree] was shouting. Stacey was shouting. Levi was shouting. The brothers, they were all trying to break up this thing and get [Dezaree] out. And Stacey [was] pushing [Dezaree] out of the apartment while she [wa]s F bombing people."

¶ 91 Defendant argues that the prosecutor's comment was improper because she both (1) mischaracterized the relevant testimony and (2) accused defense counsel of mischaracterizing that same testimony. See *Jackson*, 2020 IL 124112, ¶¶ 83-88 (noting that comments may be improper when they mischaracterize the evidence). However, unlike the alleged mischaracterizations in *Jackson*, which required the reviewing court to make a straightforward determination as to whether the prosecutor mischaracterized expert testimony regarding DNA evidence and fingerprints, the alleged mischaracterizations here relate to the emotional tenor of events being described by eyewitnesses.

¶ 92 As such, determining whether the attorneys' comments were mischaracterizations or reasonable inferences from the witnesses' testimony would require us to consider the witnesses' demeanor and the volume of their voices while testifying. Because these aspects of the witnesses' testimony do not appear in the record on appeal, the impropriety of the prosecutor's comments is not " 'plainly apparent from the record,' " therefore the comments cannot warrant reversal under the plain-error rule. *People v. Johnson*, 2024 IL 130191, ¶ 67 (quoting *People v. Precup*, 73 Ill. 2d 7, 17 (1978)).

¶ 93 c. Disparagement of Defense Counsel and the Defense Evidence

¶ 94 Defendant also challenges comments made during the prosecution's rebuttal that are alleged to have been disparaging, including the prosecutor's (1) suggestion that defense counsel "wasn't listening to the same trial *** or the same testimony," (2) description of defense counsel's closing argument as "craziness" and "silly and ridiculous," and (3) assertion that defense counsel "paraded" officers in front of the jury in order to ask a "line of questions" that the prosecutor "d[id]n't even understand." See *People v. Lyles*, 106 Ill. 2d 373, 391 (1985) ("Generally, a prosecutor may not *** make personal attacks against the defendant's attorney.").

¶ 95 We have expressed a high degree of skepticism regarding these kinds of challenges in the past, emphasizing that we are "disinclined to become the 'speech police.' " *People v. Dunlap*, 2011 IL App (4th) 100595, ¶ 28. Our skepticism is especially strong in the context of the plain-error rule, which serves as a "a narrow exception to the rule of procedural default" rather than "a 'general saving clause' to allow defendants to escape the consequences of their nonfeasance." *Williams*, 2022 IL 126918, ¶ 48. Reversing a conviction on appeal is a serious matter; to do so on grounds never raised with the trial court affords criminal defendants an " 'extravagant protection' " that is justified only in the rarest of circumstances. *United States v. Young*, 470 U.S. 1, 16 (1985) (quoting *Henderson v. Kibbe*, 431 U.S. 145, 154 n.12 (1977), and citing *Namet v. United States*, 373 U.S. 179, 190 (1963)).

¶ 96 It is simply not this court's role to parse prosecutors' closing arguments for word choice and minor rhetorical flourishes that defense counsel and the trial court let pass without a second thought; we have significant faith in jurors to cut through sarcasm and hyperbole to focus on their responsibilities without the need for this court to engage in such intrusive second-guessing of trial attorneys and judges. And, while every argument presented to this court receives our full

consideration, we nevertheless believe it is highly unlikely for jurors to convict a man of first degree murder simply because they dislike his attorney. Setting aside the question of whether we *should* engage in a painstaking examination of these comments under the narrow and limited exception of plain-error review, that examination shows that the challenged comments were within the bounds of proper argument.

¶ 97 Defendant asserts that the prosecutor's suggestion that she "wasn't listening to the same trial as [defense counsel] or the same testimony" constituted an accusation that defense counsel was not listening to the testimony at all. We disagree; the prosecutor was clearly suggesting that her interpretation of the witnesses' testimony differed so significantly from defense counsel's that they might as well have been listening to different trials. Even if we were to read the prosecutor's comments as uncharitably as defendant does, we could just as easily conclude that the *prosecutor* was the one not listening to the testimony, perhaps because she "must have fallen asleep," as she later suggested. These comments, while sarcastic, were not a personal attack on defense counsel.

¶ 98 With respect to the prosecutor's reference to "some of this craziness that [she] just heard from defense counsel," we note that the prosecutor did not describe *defense counsel* as crazy; the prosecutor described *defense counsel's argument* as craziness, *i.e.*, an interpretation of the evidence so irrational that the jury should reject it. See *People v. Potts*, 2021 IL App (1st) 161219, ¶ 244 (distinguishing between attacking a defense theory and personally attacking defense counsel). While this statement may have been hyperbole, it was far from an accusation that defense counsel himself was crazy. The same goes for the prosecutor's use of the terms "silly" and "ridiculous," which were used to describe defense counsel's argument and theory of the case, not defense counsel himself. The prosecutor was obviously not asking the jury to convict defendant

because his attorney was a "craz[y]," "silly," or "ridiculous" person, and no juror would have interpreted the prosecutor's comments in such a way.

¶ 99 Defendant asserts that the prosecutor disparaged the defense *evidence* by referring to it as a "parade" that she "d[id]n't even understand." Disparaging the defense evidence is, of course, the primary objective of the prosecutor's closing argument after extolling the State's evidence. However, defendant seems to be drawing a distinction between a prosecutor's argument that (1) the jury should find the defendant guilty because the State has proven his guilt, and his evidence to the contrary is unpersuasive and (2) the jury should find the defendant guilty, not because the State has proven his guilt, but to penalize him for exercising the right to present evidence on his own behalf. We struggle to envision how this distinction could be meaningfully applied as a practical matter.

¶ 100 Regardless, the prosecutor's challenged comments here served the purpose of rebuttal: convincing the jurors not to draw the inferences that defense counsel had asked them to draw from the evidence. Her use of sarcasm and hyperbole to describe defense counsel's argument was well within the wide latitude afforded to prosecutors in closing argument. That said, if we had any doubt that the prosecutor's comments were within the bounds of proper argument, we would still find that these comments were invited.

¶ 101 A central aspect of defense counsel's closing argument was preempting what the prosecution would say in rebuttal. Counsel referred to the prosecutor by name no less than six times, pointing out that he was sure of what she would say because he knew her well. But the fact that an argument can be predicted makes it no less valid, and defense counsel's knowledge of the prosecutor had nothing to do with defendant's guilt or innocence. Once defense counsel took this approach, it was highly likely that the prosecutor would refer to defense counsel in rebuttal and

dismiss what he said in a similarly familiar manner, which is exactly what she did. Indeed, the prosecutor's rebuttal was arguably *more* appropriate because it focused on the actual validity of defense counsel's arguments rather than the collateral question of whether those arguments were predictable or typical of defense counsel's approach to closing argument.

¶ 102 Accordingly, we conclude that the prosecutor's remarks with respect to defense counsel's closing argument were within the bounds of proper argument.

¶ 103 d. Remaining Arguments and Alleged Cumulative Effect

¶ 104 Of the remaining arguments, defendant asserts that (1) the prosecutor's comments about Daniela's family were improper, (2) the prosecutor improperly remarked on his courtroom demeanor when saying that he "had the gall to laugh and smile when Levi took the stand to tell you the events about that terrible night," and (3) the improper arguments of the prosecution had a cumulative effect, requiring reversal.

¶ 105 Here, among other things, the State argued that the victim's parents "will never get to meet any grandchildren that they may have had." The supreme court has held that a prosecutor's comments concerning the victim's " 'children and grandchildren [that] w[ould] not be born' " was improper. *People v. Urdiales*, 225 Ill. 2d 354, 447 (2007); see *People v. Blue*, 189 Ill. 2d 99, 129 (2000). ("Proof that the victim of a crime is survived by a family is irrelevant to the guilt or innocence of a criminal defendant. [Citation.] It can only serve to prejudice a defendant in the eyes of the jury."). This is an area in which prosecutors should tread carefully, as commenting on the victim's family is an area fraught with peril. However, not every mention of a deceased's family *per se* entitles the defendant to a new trial. *Hope*, 116 Ill. 2d at 276.

¶ 106 Further, the prosecutor remarked on defendant's courtroom demeanor when saying that he "had the gall to laugh and smile when Levi took the stand to tell you the events about that

terrible night," even though defendant did not testify. It is important to note that, while commenting on the demeanor of a *testifying* witness is always fair game, defendant here did not testify. It has been held that a "[d]efendant's demeanor, in any respect other than when he is testifying," is not a proper subject of comment. *People v. Foss*, 201 Ill. App. 3d 91, 95 (1990). The supreme court noted similar authority in this regard in *People v. Heard*, 187 Ill. 2d 36, 73 (1999). Once again, this represents an area of caution to prosecutors.

¶ 107 While both aforementioned topics addressed in the closing arguments represent areas on which prosecutors should tread carefully, we elect to resolve defendant's plain error and ineffective assistance arguments on the basis that they fail the prejudice analysis under each. *White*, 2011 IL 109689, ¶ 148; *People v. Coleman*, 183 Ill. 2d 366, 397-98 (1998).

¶ 108 We find that the evidence was not closely balanced and defendant was not prejudiced by the errors of which he complains. *Williams*, 2022 IL 126918, ¶¶ 57-58; see *People v. Adams*, 2012 IL 111168, ¶ 23.

> "In determining whether the evidence adduced at trial was close, a reviewing court must evaluate the totality of the evidence and conduct a qualitative, commonsense assessment of it within the context of the case. [Citations.] That standard seems quite simple, but the opposite is true. A reviewing court's inquiry involves an assessment of the evidence on the elements of the charged offense or offenses, along with any evidence regarding the witnesses' credibility." *Sebby*, 2017 IL 119445, ¶ 53.

¶ 109 A reviewing court is more likely to find the evidence closely balanced when "credibility was the only basis upon which defendant's innocence or guilt could be decided." *People v. Naylor*, 229 Ill. 2d 584, 608 (2008); see *People v. Emerson*, 97 Ill. 2d 487, 502 (1983)

("Where guilt or innocence depends entirely on the credibility of an accuser and the defendant, no error should be permitted to intervene."). The evidence may be closely balanced even if the defendant fails to testify or present evidence contradicting the challenged testimony (see *People v. Piatkowski*, 225 Ill. 2d 551, 567 (2007)), but the evidence is generally not closely balanced when the challenged testimony is corroborated and uncontradicted and the witness has not been significantly impeached. *Williams*, 2022 IL 126918, ¶¶ 61-65; see *Naylor*, 229 Ill. 2d at 609 ("It is axiomatic that whether the evidence in a criminal trial is closely balanced depends solely on the evidence adduced in that particular case. Accordingly, our holding in this case in no way creates any legal rule that will 'always' produce a particular result.").

¶ 110 Defendant argues that the evidence at trial was closely balanced as to whether he shot Levi and Daniela. Identity is an element of every offense in that "it is one of two propositions the State must prove beyond a reasonable doubt to obtain a valid conviction," along with the commission of the offense. *People v. Lara*, 2012 IL 112370, ¶ 17; see *Piatkowski*, 225 Ill. 2d at 568 (finding that the evidence was closely balanced as to the defendant's identity as the person who shot the victim).

¶ 111 According to defendant, this case is a "contest of credibility," meaning that "the evidence consisted of two different accounts *** of the same event, neither of which was corroborated by extrinsic evidence, but both of which were credible." *Williams*, 2022 IL 126918, ¶ 60 (citing *Naylor*, 229 Ill. 2d at 607-08). Strictly speaking, defendant is incorrect; the jury was presented with *three* different accounts: (1) Levi's testimony that defendant left after the other partygoers and then returned to the apartment and shot him, (2) defendant's statement that he attended the party but left before Levi was shot, and (3) defendant's since-retracted statement that he never attended the party at all. We agree with defendant that his current account of events is

uncorroborated by extrinsic evidence; to call it credible is too generous.

¶ 112 Furthermore, defendant's statement, while exculpatory if credited, still did not rise to the level of a true alibi. See *People v. Fritz*, 84 Ill. 2d 72, 76-77 (1981) ("To establish an alibi, the accused must show that he was at another specified place at the time the crime was committed, thus making it *impossible* for him to have been at the scene of the crime. It is not enough for the accused to say he was not at the scene and must therefore have been elsewhere." (Emphasis added and omitted.)). Defendant's statement also does not contradict the testimony of the other partygoers, who testified that defendant left before Levi was shot but could not say whether defendant doubled back after leaving.

¶ 113 Nevertheless, the evidence could still be closely balanced if Levi's credibility were the sole basis on which the jury could have convicted defendant. *Naylor*, 229 Ill. 2d at 608. Assuming for the sake of argument that Levi's testimony on this point is incredible and therefore entitled to no weight, then we must still make a qualitative, commonsense assessment of the remaining evidence as to who shot Levi.

¶ 114 Apart from minor inconsistencies among the partygoers' testimony, the evidence uniformly showed that defendant made a crude remark while Stacey and Dezaree were dancing, brandished a gun, was confronted by Levi, kept the gun, and left the apartment after the other partygoers. See *Williams*, 2022 IL 126918, ¶ 64 (finding the evidence was not closely balanced when it relied on testimony that "differed in some respects *** but *** was consistent in important details"). Daniela and Levi were then shot with bullets fired from a single gun that could have been the one defendant brandished, yet no gun was found in the apartment or another partygoer's possession. Even though defendant was the last to leave and presumably closer than the other partygoers when Levi was shot, he was nevertheless conspicuously absent when the other

partygoers returned after hearing gunshots. Defendant then went into hiding for 39 days and blatantly lied to the police by telling them that he never attended the New Year's Eve party until he was presented with photographic evidence that he did.

¶ 115 We can easily reject as fanciful the possibility that Levi shot himself from behind. See *Sebby*, 2017 IL 119445, ¶ 61 (recognizing that an inquiry into whether the evidence is closely balanced does not require a reviewing court to entertain a fanciful account of events). Similarly, defendant's claim that an unknown gunman coincidentally arrived and inexplicably shot Levi so soon after the partygoers left that they could quickly return, "though not logically impossible, [is] highly improbable." *Adams*, 2012 IL 111168, ¶ 22. Alternatively, defendant suggests both that (1) Levi was shot by one of the other partygoers and (2) Levi and the other partygoers, *including the person who actually shot Levi*, conspired to frame defendant for shooting Levi instead. Again, this suggestion defies common sense. The final possibility is that Daniela shot Levi; however, defendant has never advanced this theory or identified any credible evidence to support it, and it is extremely difficult to reconcile this remote possibility with the uncontradicted circumstantial evidence, particularly the absence of a gun in the apartment. See *People v. Belknap*, 2014 IL 117094, ¶ 56 (finding that the evidence was not closely balanced when, "[w]hile there were no eyewitnesses to the crime, other evidence pointed to [the] defendant as the perpetrator and excluded any reasonable possibility that anyone else inflicted [the victim's] injuries").

¶ 116 Having conducted a qualitative, commonsense assessment of the evidence, we conclude that the identification of defendant as the person who shot Levi did not hinge on the believability of an uncorroborated account of events. See *Williams*, 2022 IL 126918, ¶ 64. As such, the jury's verdict for aggravated battery did not result from prosecutorial impropriety, but rather the evidence.

¶ 117 Of course, the jury also found defendant guilty of first degree murder, rejecting defense counsel's argument that Levi might have been the person who shot Daniela. Before this court, defendant has treated Levi's credibility as an all-or-nothing proposition, forfeiting any argument that Levi truthfully testified that defendant shot him but falsely testified that defendant shot Daniela. But to entertain such an argument, we would have to envision a scenario in which Levi obtained the gun from defendant and shot Daniela, with defendant then obtaining the gun from Levi, shooting him, fleeing with the gun, hiding out from Levi and the police for 39 days, and lying about being present in the apartment during either shooting. While it is "not logically impossible" that the gun changed hands twice in such a narrow span of time, it is nevertheless "highly improbable." *Adams*, 2012 IL 111168, ¶ 22. As such, we conclude that the jury's verdict for first degree murder also did not result from prosecutorial impropriety rather than the evidence.

¶ 118 Defendant has failed to meet his burden of persuasion to show that the evidence was closely balanced under the plain-error rule or that he suffered prejudice under *Strickland*.

¶ 119 Defendant's final argument under this heading is that the comments above had a cumulative effect, denying him a fair trial. See *People v. Quezada*, 2024 IL 128805, ¶ 46. While we have found that only the comments on two subjects carried the possibility of impropriety, we do not agree that they had a cumulative effect requiring reversal. As discussed above, the alleged errors asserted by defendant do not rise to the level of plain error, and any cumulative impact did not affect the fairness of defendant's trial or undermine the integrity of the judicial process. *Id.* ¶ 55.

¶ 120 C. Sentencing

¶ 121 Defendant also argues that his sentencing hearing was improper in several respects. Defendant failed to raise these issues through a contemporaneous objection or in his

postsentencing motion but asks that we review these issues as second-prong plain error. In the sentencing context, the question under second-prong plain-error review is whether the error is of such magnitude that it undermined the framework of the sentencing hearing itself, rather than constituting a mere error in the sentencing process. *Johnson*, 2024 IL 130191, ¶ 85. As with first-prong plain error, our standard of review for second-prong plain error is *de novo*. *Moon*, 2022 IL 125959, ¶ 25.

¶ 122 First, defendant argues that the trial court demeaned him with respect to the name by which he asked to be referred. The record shows in most places that defendant's name is Robert White, but defendant asked to be referred to by what he claimed to be his real name, Ronald White. Faced with this request, the trial court responded, "Okay. Good for you." It is unclear from the record whether this reflects, as defendant argues, sarcasm on the part of the sentencing judge, and we certainly do not condone it if it was. However, even if it were sarcasm, we cannot find that the judge's comment rises to the level necessary to constitute a structural error that undermined the framework of the sentencing hearing.

¶ 123 Second, defendant argues that the trial court labored under a factual misapprehension when it said that the State's key witness, Levi, was not even aware he had been shot when he called police. He also suggests that the trial court speculated about concerns that Levi might have been shot by responding police, a situation that no evidence suggested had occurred. This is certainly a reminder to sentencing judges to ensure that any consideration relied on at sentencing should be supported by the record, but we have no difficulty concluding that these matters did not undermine the framework of the sentencing hearing.

¶ 124 The third and final issue defendant raises concerning sentencing is a serious one. Defendant argues that, by noting the burden placed on Levi to come to court and testify against

defendant, the trial court was effectively punishing defendant for invoking his right to trial. It is, defendant argues, the State's obligation to bring its witnesses to court if a defendant invokes his right to trial, and the fact that this has occurred should not constitute a factor that would impact defendant's sentence in any way.

¶ 125 In our judicial system, every defendant charged with a serious crime has the right to a jury trial (see *Duncan v. Louisiana*, 391 U.S. 145, 159 (1968)), and the State decides what evidence it needs to prove the defendant's guilt at that trial (see *Garner v. United States*, 424 U.S. 648, 655 (1976) (referring to "the generally applicable principle that governments have the right to everyone's testimony")). If the State chooses to call a witness, the defendant generally has the right to confront that witness face-to-face at trial and conduct cross-examination through counsel. See *Crawford v. Washington*, 541 U.S. 36, 57 (2004). These guarantees of a fair trial are fundamental to our system of justice and belong to the innocent and the guilty alike. *People v. Bimbo*, 314 Ill. 449, 454 (1924) ("[T]he law does not provide one method for trying innocent persons and another for trying guilty persons ***.").

¶ 126 In order to protect the defendant's right to confrontation, the State is expected to make a good-faith effort to secure a witness's attendance at trial by subpoena or other reasonable means, such as the writ of *habeas corpus ad testificandum* issued in this case. See *People v. Chatman*, 2024 IL 129133, ¶¶ 47-48. These orders are issued either by the trial court itself or under its authority; therefore, a witness who fails to comply shows contempt for the court's authority. See 725 ILCS 5/115-17 (West 2022); see also 725 ILCS 120/7(c) (West 2022) (providing that victims and witnesses have the responsibility to aid the prosecution by testifying at trial).

¶ 127 We agree that it is the State's obligation to call to testify those witnesses necessary to convict the defendant, and the fact that it has done so is neither here nor there when it comes to

the separate question of the sentence to impose on a convicted defendant. Despite our concern, however, we are mindful that the argument here is asserted as second-prong plain error. We note that, in the somewhat analogous situation of a trial court considering an improper factor in aggravation, the supreme court concluded that the trial court's error was "a mere error in the sentencing process itself," but it "did not affect the framework within which the sentencing hearing proceeded." *Johnson*, 2024 IL 130191, ¶ 90. We find that the same rationale applies to the current situation. The trial court's comment was not of sufficient magnitude to constitute second-prong plain error.

¶ 128 III. CONCLUSION

¶ 129 For the reasons stated, we affirm defendant's convictions.

¶ 130 Affirmed.

Decision Under Review:	Appeal from the Circuit Court of Peoria County, No. 22-CF-1; the Hon. Kevin W. Lyons, Judge, presiding.
Attorneys for Appellant:	James E. Chadd, Catherine K. Hart, and Edward J. Wittrig, of State Appellate Defender's Office, of Springfield, for appellant.
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