2022 IL App (4th) 190635-U

NO. 4-19-0635

FILED
January 26, 2022
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Livingston County
JOHN MAYS,	)	No. 18CF229
Defendant-Appellant.	)	
	)	Honorable
	)	Jennifer H. Bauknecht,
	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Justices Harris and Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, holding the State proved defendant guilty beyond a reasonable doubt, defendant did not receive ineffective assistance of counsel, and the State neither improperly vouched for witness testimony nor shifted the evidentiary burden to defendant.

¶ 2 In a March 2019 trial, a jury found defendant, John Mays, guilty of aggravated battery (720 ILCS 5/12-3.05(d)(4)(i) (West 2016)), a Class 2 felony. Defendant afterwards moved for a new trial, arguing the State failed to prove him guilty beyond a reasonable doubt. In a July 2019 hearing, the trial court denied defendant's motion and sentenced him to four years' incarceration in the Illinois Department of Corrections (DOC), followed by two years' mandatory supervised release (MSR).

¶ 3 On appeal, defendant challenges his conviction on three grounds: (1) the State failed to prove him guilty beyond a reasonable doubt of aggravated battery; (2) trial counsel's failure to move to admit an incident report he used to impeach the alleged victim during

cross-examination amounted to ineffective assistance; and (3) the prosecutor improperly vouched for witness testimony and shifted the burden of proof to defendant, rendering the trial unfair. We disagree and affirm the convictions.

¶ 4 I. BACKGROUND

¶ 5 In August 2018, by way of indictment, the State charged defendant with one count of aggravated battery (720 ILCS 5/12-3.05(d)(4)(i) (West 2016)), alleging "defendant on or about August 24, 2017 *** knowingly made physical contact of an insulting or provoking nature with Correctional Officer Enrique Ruiz, in that the defendant struck Enrique Ruiz, knowing Enrique Ruiz to be a correctional institution employee of the State of Illinois Department of Corrections, who was engaged in the performance of his authorized duties." The matter proceeded to a jury trial on March 14, 2019.

¶ 6 The State first called Officer Enrique Ruiz, who testified he worked as a correctional officer at Pontiac Correctional Center (PCC) and had been employed there for more than eight years. Ruiz explained escorting inmates is one of his authorized duties at PCC. He confirmed he was working on August 24, 2017, and part of his duties that day was to escort defendant from a mental health group to defendant's cell. Ruiz recounted he sat outside the group room and, once the group ended, he entered the room and heard defendant demanding to speak to Denise Rall, the mental health professional. She refused and, according to Ruiz, defendant became "a little bit agitated going back to his cell." Ruiz explained: "I could tell he was agitated because the way his movement was. He was cursing. He was mad." As Ruiz escorted defendant from the group room, they turned right into a 20- or 30-foot long hallway that led to the gallery housing inmates' cells. As they approached the door to the gallery, Ruiz held defendant's waist chain with his left hand and reached to open the gallery door with his right

hand. Ruiz testified: "[T]hat's when he struck me on the left cheek, headbutted me at that time, and then we both fell to the ground." Ruiz explained, per protocol, he did not let go of defendant's waist chain after the headbutt and that was why both men fell to the ground. Ruiz testified he got control of defendant while they were on the ground and responding officers helped subdue and shackle defendant when they arrived 15 to 20 seconds later. Ruiz estimated the whole event—escorting defendant from the mental health group, the headbutt, and subduing defendant—lasted "a minute, minute 20 seconds if that."

¶ 7 On cross-examination, defense counsel questioned Ruiz about the alleged incident, asking: "So would it be accurate to say that after you were struck you took [defendant] down to the ground?" Ruiz responded: "We both fell to the ground because I never let go of the chain. So when he struck me, I went backward. He fell, and then I get on top of him until other staff showed up." Ruiz confirmed he filed an incident report detailing what happened. Labeling the report "Defendant's Exhibit Number 1," defense counsel impeached Ruiz with the report by having him acknowledge he omitted certain information from the report, particularly that the report did not say Ruiz "fell to the ground," nor had he been "knocked to the ground," but that he "got control of the situation and held this inmate on the ground until other staff arrived." When pressed on the differences between his trial testimony that he and defendant fell to the ground and the headbutt knocked him down and the incident report, which omitted those details, Ruiz testified: "We have got a certain amount of time to do our reports." He confirmed he reported "generally what happened," including "the main stuff of what happened." At no point did defense counsel move to admit the incident report.

¶ 8 The State next called Officer Lacie Blackwell. She testified she was employed at PCC and was working on August 24, 2017. She explained she worked "in what we call a cage or

a control center," where she can observe the inmates coming and going from the gallery. Blackwell testified she saw Ruiz escorting defendant from the group room, down the hall, and toward the gallery door. She stated: "[W]hen Officer Ruiz opened the door, [defendant] headbutted Ruiz in the face." She explained defendant, standing to Ruiz's left, "struck his head over and connected with his, what would have been [Ruiz's] left cheek." She testified she could not leave the cage so she immediately called for backup to assist Ruiz. Blackwell confirmed she did not see the men fall down, but after she called for help, she "looked up" and saw Ruiz "gaining compliance on the ground."

¶ 9 On cross-examination, Blackwell testified her position in the cage was "not a very long distance" from the gallery door. She estimated the distance at 50 feet. Defense counsel questioned Blackwell about the movement she made when describing the headbutt on direct examination, and he asked her to do it again, which she did. The record showed Blackwell "moved her body to the right showing her head in like a striking fashion. *** Tilting her head sideways." Blackwell answered "yes" to defense counsel's recap of her testimony: "And then you indicated in your testimony that you saw Officer Ruiz did you say place him on the ground until other staff arrived?" Blackwell testified there are security cameras in PCC, but she did "not know where they are located as far as what they can see and where they are at because every cellhouse is different."

¶ 10 In closing arguments, the State recounted the testimony from Officers Ruiz and Blackwell and reiterated they both testified defendant headbutted Ruiz. Discussing the elements necessary to establish aggravated battery, the State argued the evidence proved each element, noting Ruiz was a PCC employee performing his authorized duties when defendant headbutted him. The State asked for a guilty verdict.

¶ 11 Defense counsel, on the other hand, argued the State did not meet its burden of proving defendant guilty because Ruiz's testimony was not credible. He argued Ruiz "vacillated" during his testimony and "kind of gave the answer that he was hoping the State was looking for." Defense counsel argued Ruiz gave different versions of events during direct examination, cross-examination, and redirect examination. Counsel further highlighted discrepancies between Ruiz's testimony and the report he filed on the date of the incident. Counsel specifically noted how Ruiz's written report did not say he fell to the ground but during his testimony Ruiz first said he and defendant fell to the ground and then said defendant knocked him to the ground. Defense counsel characterized those differences as "an effort I think to make it sound even more violent." Counsel next noted Blackwell's testimony that she did not see Ruiz and the defendant fall to the ground but saw Ruiz gain compliance while on the ground. Counsel emphasized differences in Ruiz's report and Blackwell's testimony, specifically the report indicating defendant spun into Ruiz, whereas Blackwell did not indicate any spinning, but rather tilting of defendant's head. Finally, defense counsel argued the State did not present enough evidence for a conviction, noting a lack of video or medical evidence to corroborate Ruiz's and Blackwell's testimony. Regarding video evidence, counsel stated: "Miss Blackwell testified to the fact there's cameras all over this institution. You don't see any video of this today. Why not?" Defense counsel concluded his argument by presenting his theory of the case:

> "[Defendant] wanted to talk with a mental health tech further; and he wasn't allowed to; and he started cursing and yelling and arguing; and Officer Ruiz had had enough of it; and he decided to control him by taking him to the ground and that he was seen

> taking him to the ground. Other officers were summoned to help him but that there was no headbutt."

Counsel asked the jury to find defendant not guilty.

¶ 12 The State responded by claiming defense counsel did not want the jury to look at the evidence, particularly that Ruiz and Blackwell both testified defendant headbutted Ruiz. Addressing defense counsel's attack on Ruiz's credibility, the State argued:

> "Enrique Ruiz didn't embellish. He was asked a lot of questions on his testimony by myself and by Counsel getting really into all the details about what happened that day. He didn't embellish one iota. He didn't say this Defendant was yelling at him or cursing at him. He said he just seemed mad in general. [']He didn't say anything to me.['] When asked on cross, he said [']he wasn't cursing at me.['] He didn't embellish the wound that he had. He didn't say [']my face was swollen for weeks. I missed work.['] He said, [']yes, I got hit in the cheek. I went to medical and they said that it was swollen,['] and that was that. He didn't embellish about the wounds that had happened to him.
>
> As to making it sound bad, he got headbutted. It sounds bad on its own that he got headbutted for just doing his job because [defendant] was unhappy that Denise didn't want to see him anymore."

In response to defense counsel's question asking why the State did not present video evidence, the State noted: "As for not showing a video, you saw no video from either side of this case. If

there was video that had captured it—" when defense counsel objected. During a sidebar, the State maintained that since defendant "specifically brings up the fact that no video was shown, the State can argue you weren't shown that by the defense either." Defense counsel noted the defense requested video but none was provided. The trial court overruled the objection, telling defense counsel: "Okay. But you raised the issue so I think case law allows him to make that argument since you brought it up." The State resumed its argument, saying:

> "As for the video or not, we heard that, there was no video was shown to you; and you saw no video today. You can presume that there's no video. That if I have an opportunity to show you the video, so would the defense if it showed what they want you to believe that it showed. So the video itself, the photos, these are items that the Defendant would argue that you need to see. Well, what did the State give you? Eyewitness testimony from the victim, eyewitness testimony from the person who observed it."

¶ 13 Once the trial court read to the jury its instructions, it excused the jury to begin deliberations at 11:50 a.m. Outside the presence of the jury, addressing Ruiz's written incident report, the trial court noted: "Defendant's 1 was referenced but not admitted I believe." Defense counsel answered, "Correct," and the trial court confirmed, "So that for the record was not sent back to the jury."

¶ 14 During the jury's nearly two-hour deliberation, it sent a handful of notes to the trial court either asking for the incident report or indicating it was deadlocked. Each time the court responded by either telling the jury it could not provide the incident report or asking the jury to continue deliberating. Following a *Prim* instruction (*People v. Prim*, 53 Ill. 2d 62, 289

N.E.2d 601 (1972)), however, the jury reached a verdict. It found defendant guilty of aggravated battery. The trial court ordered a presentence investigation report and set the matter for sentencing.

¶ 15 In June 2019, defendant filed a "Motion for New Trial and Other Post-Trial Relief," arguing the State failed to present sufficient evidence to prove him guilty beyond a reasonable doubt. Defendant requested the trial court either find him not guilty or award him a new trial. At a July 2019 hearing, the trial court denied the motion, finding: "I do believe that there was sufficient evidence at the trial to support the jury's verdict ***." The trial court then proceeded to sentencing, where the defense presented testimony from defendant's aunt, Angela Mays. She testified to defendant's troubled childhood and his potential for good. Noting the seriousness of the offense, defendant's history, and the need for deterrence, the State recommended an eight-year sentence in DOC, served at 50% and consecutive to defendant's current sentence. Defense counsel, by contrast, argued for the minimum sentence of three years, noting first defendant's difficult adolescence and, second, defendant did not cause serious bodily harm to Ruiz.

¶ 16 In rendering its decision, the trial court noted any sentence imposed was required to be served consecutively to defendant's current sentence. 730 ILCS 5/5-8-4(d)(6) (West 2018). The trial court referenced defendant's troubled childhood and how defendant spent the first seven years of his adulthood in DOC. Mindful of the aggravating and mitigating factors, the trial court sentenced defendant to four years in DOC, followed by two years' MSR.

¶ 17 This appealed followed.

¶ 18 II. ANALYSIS

¶ 19 Defendant challenges his aggravated battery conviction on three grounds: (1) the State failed to prove him guilty beyond a reasonable doubt; (2) defense counsel rendered ineffective assistance by not moving to admit Ruiz's written incident report; and (3) the State denied defendant a fair trial when the prosecutor vouched for Ruiz's testimony and improperly shifted the burden of proof to defendant.

¶ 20 A. Sufficiency of the Evidence

¶ 21 "The due process clause of the fourteenth amendment to the United States Constitution requires that a person may not be convicted in state court 'except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.' " *People v. Cunningham*, 212 Ill. 2d 274, 278, 818 N.E.2d 304, 307 (2004) (quoting *In re Winship*, 397 U.S. 358, 364 (1970)). When a defendant appeals his convictions, arguing the State failed to satisfy this burden of proof, a reviewing court will not retry the defendant but asks " 'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (Emphasis in original.) *Cunningham*, 212 Ill. 2d at 278 (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). Testimony from one credible eyewitness can provide proof beyond a reasonable doubt to sustain a conviction. *People v. Smith*, 185 Ill. 2d 532, 541, 708 N.E.2d 365, 369 (1999). Specifically, when a conviction rests "on eyewitness testimony, a reviewing court must decide whether, in light of the record, a fact finder could reasonably accept the testimony as true beyond a reasonable doubt." *Cunningham*, 212 Ill. 2d at 279. But in applying this standard, we will neither reweigh evidence nor judge witness credibility; rather, we defer to the fact finder's credibility determinations. See *Smith*, 185 Ill. 2d at 542.

¶ 22 In order to prove defendant guilty beyond a reasonable doubt of aggravated battery, the State had to establish three elements: (1) defendant knowingly caused physical contact of an insulting or provoking nature with Enrique Ruiz, (2) defendant knew Enrique Ruiz to be a correctional institution employee, and (3) defendant knew that Enrique Ruiz was engaged in the execution of official duties. 720 ILCS 5/12-3.05(d)(4)(i) (West 2016). Defendant concedes the State proved the second and third elements beyond a reasonable doubt and contests only the first—he knowingly headbutted Ruiz. Specifically, defendant contends the State presented insufficient evidence to prove that element beyond a reasonable doubt, arguing "Ruiz's testimony was inconsistent and unworthy of credence."

¶ 23 Defendant directs our attention to *People v. McCarthy*, 102 Ill. App. 3d 519, 430 N.E.2d 135 (1981), as an example of a reviewing court reversing a defendant's conviction when the victim's testimony was incredible and "severely impeached." That case arose from an alleged vehicle collision gone awry. There, defendant McCarthy's car allegedly struck the victim's car and injured her, which prompted a vehicle chase and a confrontation with McCarthy (an off-duty police officer) shooting the victim. Following a bench trial, where all the occupants of both vehicles testified and defendant McCarthy asserted self-defense, "[t]he trial court believed the version of the occupants of the [victim's] car" and found McCarthy guilty of aggravated battery. *McCarthy*, 102 Ill. App. 3d at 522.

¶ 24 This court noted: "The trial produced two completely conflicting versions of the shooting of Dolores Custodio." *McCarthy*, 102 Ill. App. 3d at 522. Testimony from Custodio and the other six occupants in her vehicle portrayed McCarthy as the aggressor who wantonly shot her in the face. *McCarthy*, 102 Ill. App. 3d at 520-21. McCarthy and the occupant in his vehicle, on the other hand, portrayed Custodio and her cohorts as the aggressors, testifying that after the

chase ended, he exited his car and approached Custodio's vehicle, and when he knocked on the window, Custodio said, " 'I'm going to kill you, you pig.' " *McCarthy*, 102 Ill. App. 3d at 521. Then Custodio pointed a gun at McCarthy, who testified he "stepped back and fired one shot." *McCarthy*, 102 Ill. App. 3d at 521.

¶ 25 Citing the deference due the trial court's credibility determinations, this court "carefully scrutinize[d] the evidence" in evaluating McCarthy's claim "he was not proved guilty beyond a reasonable doubt." *McCarthy*, 102 Ill. App. 3d at 522. This court noted all but two of Custodio's occurrence witnesses were related to her and lived in the same apartment building. The two non-family witnesses were family friends, ages 15 and 17 years old. This court further noted: "Most of the occurrence witnesses conceded that they had all talked about the case together, and they all came to court together every day during the trial." *McCarthy*, 102 Ill. App. 3d at 522. Custodio's witnesses also admitted speaking to the attorney who represented her in her civil lawsuit against McCarthy. "Finally, many of [Custodio's] witnesses significantly changed their testimony at trial from earlier versions." *McCarthy*, 102 Ill. App. 3d at 522.

¶ 26 By way of example, the witnesses changed their story about whether there was a toy gun in their car. All but Custodio remembered one of the youths playing with a toy gun during the course of the night. Some denied a gun being in the car, while others acknowledged one was in the glove compartment, and another said the gun was on the dashboard. Two witnesses admitted discussing their testimony, with one saying " 'We knew there might be an issue over the toy gun.' " *McCarthy*, 102 Ill. App. 3d at 523. This court then reviewed other discrepancies in the witnesses' testimony and their earlier recollections of events. In earlier recitations, Custodio and another person in her car admitted shouting obscenities at McCarthy; however, at trial Custodio "denied hearing any obscenities coming from her car" and the other

person "was not sure." *McCarthy*, 102 Ill. App. 3d at 523. This court next noted how the 17-year-old's trial testimony differed from what he initially told police and he later "admitted that he discussed his planned testimony with his father, and that he read the transcript of his father's preliminary hearing testimony several days before trial." *McCarthy*, 102 Ill. App. 3d at 523. This court finally noted the 15-year-old's testimony was likewise "riddled with inconsistencies." *McCarthy*, 102 Ill. App. 3d at 523. This court held:

> "We must conclude that the testimony of the occupants of the [victim's] car raises a reasonable doubt concerning the incident. There are too many instances of witnesses changing their stories, too many details that are inconsistent, and too many details that are exactly the same in the testimony of several witnesses. The testimony of the victim Custodio is too conflicting and too inconsistent to be believed. We find the evidence so unsatisfactory that it cannot satisfy the requirement that defendant's guilt be proved beyond a reasonable doubt." *McCarthy*, 102 Ill. App. 3d at 524.

Defendant likens his case to McCarthy's and urges for the same outcome—a finding of insufficient evidence to prove him guilty beyond a reasonable doubt and reversal of his conviction. Defendant claims that, like Custodio, Ruiz's testimony was too conflicting and inconsistent to be believed. Furthermore, defendant notes that while Blackwell's and Ruiz's testimony was exactly the same on the headbutt, their testimony was too inconsistent on other details. We disagree.

¶ 27 There are no gross inconsistencies between Ruiz's and Blackwell's testimony. They may differ in the manner in which defendant executed the headbutt (tilting, spinning, reaching up), but each testified to the headbutt. Neither witness drastically changed his or her story between the incident and trial. While Ruiz's written incident report did not include him falling to the ground, it did include the insulting or provoking contact, the headbutt. Finally, this case is nothing like *McCarthy*. That case involved McCarthy's claim of self-defense, meaning the details leading to the aggravated battery were essential to a fair determination of the case. There, witness inconsistencies about whether obscenities were hurled, or whether Custodio knew if there was a gun in the car, or whether she pointed the gun amounted to important facts that affected whether McCarthy was legally responsible for firing his weapon. Moreover, McCarthy highlighted the questionable motives of Custodio and her family. She had a pending civil suit against him, and some of her witnesses spoke with the attorney representing her in that matter before testifying at trial. Further, some witnesses admitted talking to each other to coordinate their stories. None of that is present here. There is no indication anywhere in the record of Ruiz or Blackwell having a motive for having defendant convicted or coordinating their testimony. Their testimony relating to the crux of the case—the headbutt—is essentially consistent.

¶ 28 In proving defendant knowingly caused insulting or provoking physical contact upon Ruiz, the State presented eyewitness testimony from two witnesses—Ruiz and Blackwell. Eyewitness testimony is sufficient, even if there are minor discrepancies. See *Smith*, 185 Ill. 2d at 541 (stating credible eyewitness testimony is sufficient evidence to satisfy the beyond-a-reasonable-doubt standard). Both testified defendant struck Ruiz's left cheek with his head, each labeling the act a headbutt. The defense sought, and still seeks on appeal, to undermine the witnesses' agreement on this point by pointing to other collateral details where

they differ. The defense focuses on *how* Ruiz and defendant ended up on the ground and the *vocabulary* Ruiz used to describe it. Did they fall? Did defendant knock down Ruiz? Did Ruiz take defendant to the ground? These questions are red herrings. They are the defense introducing irrelevant points to avoid the real question—did defendant knowingly make insulting or provoking physical contact with Ruiz? Based on the evidence, the answer is, unequivocally, yes. Both Ruiz and Blackwell testified defendant headbutted Ruiz's face, specifically his left cheek, as Ruiz was opening the gallery door. The State did not need to prove what happened after that point. The headbutt alone constitutes the insulting or provoking physical contact necessary for the conviction, not the fall or knock-down, or take-down, or however one might phrase it. Ultimately, the jury found Ruiz and Blackwell credible on the critical fact of defendant knowingly initiating and insulting or provoking physical contact with Ruiz—the headbutt. We defer to that determination because judging witness credibility lies within the fact finder's purview as it hears the testimony firsthand and watches the witness testify. See *People v. Sturgeon*, 2019 IL App (4th) 170035, ¶ 62, 126 N.E.3d 703 ("This court will not substitute its judgment for that of the jury on questions involving the weight of the evidence or the credibility of the witnesses."); *Best v. Best*, 223 Ill. 2d 342, 350, 860 N.E.2d 240, 245 (2006) ("A reviewing court will not substitute its judgment for that of the [fact finder] regarding *** credibility," because "it is in the best position to observe the conduct and demeanor of *** witnesses."); *Smith*, 185 Ill. 2d at 541 (stating reviewing courts must "giv[e] due consideration to the fact that the court and jury saw and heard the witnesses"). More importantly, though, we will not disturb the jury's assessment of Ruiz's and Blackwell's credibility because a fact finder "could reasonably accept [their] testimony as true beyond a reasonable doubt." *Cunningham*, 212 Ill. 2d at 279.

¶ 29 Viewing all the evidence in the light most favorable to the State and deferring to the jury's credibility determinations, we hold the evidence reasonably supports a finding of guilt beyond a reasonable doubt for the offense of aggravated battery. See *Cunningham*, 212 Ill. 2d at 278. Based on the above evidence, a rational fact finder could have found the State proved beyond a reasonable doubt that defendant knowingly caused physical contact of an insulting or provoking nature with Ruiz. See *Smith*, 185 Ill. 2d at 541.

¶ 30 B. Ineffective Assistance of Counsel

¶ 31 Defendant next argues his trial counsel rendered him ineffective assistance by failing to move to admit the written incident report used to impeach Ruiz on cross-examination. We disagree.

¶ 32 The Illinois and United States constitutions guarantee criminal defendants the right to counsel, and the latter mandates, " ' 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)); U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § 8. When presented with a defendant's ineffective-assistance-of-counsel claim, we apply the well-established, two-part *Strickland* test. The defendant must prove: (1) counsel rendered deficient performance, meaning counsel's representation fell below an objective standard of reasonableness as gauged by prevailing professional norms and (2) counsel's deficient performance prejudiced the defendant, *i.e.*, but for counsel's errors the result of the proceeding would have been different. See *People v. Young*, 341 Ill. App. 3d 379, 383, 792 N.E.2d 468, 472 (2003) (citing *Strickland*, 466 U.S. at 687, 694); *People v. Peck*, 2017 IL App (4th) 160410, ¶ 26, 79 N.E.3d 232.

¶ 33 When assessing the deficient-performance prong, "a court must indulge a strong presumption that the challenged action, or inaction, was the result of sound trial strategy." *People v. Poole*, 2012 IL App (4th) 101017, ¶ 10, 972 N.E.2d 340. Similarly, "a reviewing court will be highly deferential to trial counsel on matters of trial strategy, making every effort to evaluate counsel's performance from his perspective at the time, rather than through the lens of hindsight." *People v. Perry*, 224 Ill. 2d 312, 344, 864 N.E.2d 196, 216 (2007). If a defendant fails to prove deficient performance, the court need not consider the prejudice prong, and vice versa. *People v. Torres*, 228 Ill. 2d 382, 395, 888 N.E.2d 91, 100 (2008); *People v. Graham*, 206 Ill. 2d 465, 476, 795 N.E.2d 231, 238 (2003).

¶ 34 Defense counsel used Ruiz's written incident report to impeach him on a prior inconsistent statement: specifically, before trial, Ruiz had not claimed defendant's headbutt caused him to fall down or knocked him down. But counsel did not move to admit the report. Defendant asserts that Ruiz's incident report would have been admissible under section 115-10.1 of Illinois's Code of Criminal Procedure of 1963 (725 ILCS 5/115-10.1 (West 2016)), and the State does not dispute the assertion.

¶ 35 Defendant confuses the potential admissibility of prior inconsistent statements contained within the incident report with the admissibility of the entire report as a prior inconsistent statement under section under section 115-10.1. In *People v. Brothers*, 2015 IL App (4th) 130644, ¶ 68, 39 N.E.3d 1101, *abrogated on other grounds by People v. Veach*, 2017 IL 120649, 89 N.E.3d 366, our colleague, Justice Steigmann, provided a detailed outline (albeit of a different subsection) of the foundational requirements for substantive use of prior inconsistent statements, pointing out that the foundational requirements for introducing a prior inconsistent statement as substantive evidence are the same as those for introducing prior inconsistent

statements to impeach a witness and serve the same purpose. He noted, "[T]he witness must be confronted with, and acknowledge making, each of the specific prior statements sought to be admitted as substantive evidence. Further, this acknowledgement must be linked to the contents of a specific statement. It is not sufficient, for example, if the witness merely acknowledges the subject matter of a prior conversation that she had with another person." *Brothers*, 2015 IL App (4th) 130644, ¶ 74. The acknowledged statements are still not admissible "until the witness testifies *inconsistently* with it." (Emphasis in original.) *Brothers*, 2015 IL App 130644, ¶ 77. "When certain evidence is omitted from an earlier statement, but later found to be relevant and testified to at trial, this does not constitute an inconsistency for the purposes of [section 115-10.1]." *People v. Lawrence*, 268 Ill. App. 3d 327, 333, 644 N.E.2d 19, 23 (1994). It is also true that only those inconsistent portions of a prior inconsistent statement are substantively admissible. *People v. Govea*, 299 Ill. App. 3d 76, 87, 701 N.E.2d 76, 83 (1998) (citing *Lawrence*, 268 Ill. App. 3d at 333). "A statement's consistency is measured against the witness's testimony." *People v. Guerrero*, 2021 IL App (2d) 190364, ¶ 50. Further, "the prior inconsistent statement must be relevant and material." *Guerrero*, 2021 IL App (2d) 190364, ¶ 49. Examples of statements, although not directly contradictory to the witness's testimony, but nonetheless "inconsistent," include evasive answers, silences, changes in position, inability to recall, and omission of " 'a significant matter that would reasonably be expected to be mentioned if true.' " *Guerrero*, 2021 IL App (2d) 190364, ¶ 50 (quoting *People v. Zurita*, 295 Ill. App. 3d 1072, 1077, 693 N.E.2d 887, 891 (1998)).

¶ 36 It is important to place the incident report Ruiz was being cross-examined about in context. The entirety of the handwritten incident report's narrative read as follows:

> "On the above date and time this R/O escorting inmate Mays M26787 back to his cell from mental health group. This inmate insisted to talk to Mrs. Rall. She answer no to this inmate. This R/O ask inmate Mays she doesn't want to talk right know [*sic*] at that this inmate got combative with this officer spun around and head butted this officer in the left cheek. This officer got control of the situation and held this inmate on the ground until other staff assisted with the incident. This R/O advice the cell house Lt about the incident. This inmate was IP by gallery [indecipherable]. This R/O was sent to the HCU by cell house Major."

When questioned on cross-examination, Ruiz was asked general questions about topics which counsel contended where not contained therein. For example, on direct examination, Ruiz testified that after defendant headbutted him, "then we both fell down to the ground." Elaborating further regarding what happened after the headbutt, Ruiz said he was still holding onto the waist chain when "we both fell down; and I was trying to gain control; at that time, it took 15, 20 seconds for the officers to respond." On cross-examination, counsel inquiring about what occurred immediately after the headbutt asked: "Now after that occurred, you said there was a struggle?" We note there was no reference on direct examination to a struggle; that was a characterization of Ruiz's direct testimony by defense counsel. Ruiz responded, "There was a little struggle. We both fell on the ground, and my cage officer called for backup." The following colloquy occurred:

"Q. Now you were struck; and after you were struck, you are supposed to get control of the situation. Is that right?

A. That's correct. I never let go of the chain.

Q. All right. So it would be accurate to say that after you were struck you took him down to the ground?

A. We both fell down to the ground because I never let go of the chain. So when he struck me, I went backward. He fell, and then I get on top of him until other staff showed up.

Q. So you fell on top of him?

A. We both fell down so I went on top just to take over control."

When counsel asked how he regained control, Ruiz responded: "I just laid on top of him until other staff showed up, 10, 15 seconds, put leg irons on which is to secure his leg; and from there he was escorted to north house." Counsel asked Ruiz to identify his incident report, the narrative portion of which is set out in full above, and asked:

"Q. All right. Now in there it does not say that you fell to the ground; does it?

A. It states here we were both on the ground.

(counsel asks to approach)

Q. Does it say the officer got control of the situation and held this inmate on the ground until other staff arrived [*sic*] with the incident. Doesn't say that you fell; did it?

A. No, it don't.

Q. It says that you took control of the situation."

¶ 37 On redirect examination, the prosecutor asked if it would be accurate to say "he [defendant] 'knocked you to the ground?' " Again, we note this is a characterization by counsel, not testified to by Ruiz previously or contained in his report. Ruiz responded: "He knocked me, and I still held onto him so we both fell." Again, on recross-examination, defense counsel noted: "[Y]ou just indicated to [the State] that you were knocked to the ground." Directing his attention to the fact he wrote the incident report right after the incident, counsel asked, "[Y]ou never in there say I was knocked to the ground." When counsel directed him to answer "yes" or "no" to whether he included "I was knocked to the ground in that statement," Ruiz responded: "I was struck, and we both fell down to the ground." He acknowledged the words "knocked to the ground" did not appear in his statement, and in response to counsel's question, he agreed "all it says is that you gained control of the situation."

¶ 38 On redirect examination, Ruiz was able to explain they only had a certain amount of time to write these incident reports and they contain "generally what happened and like always you are going to leave stuff out. You have got to write the main stuff of what happened."

¶ 39 Based upon this, defendant now argues the entire written incident report was admissible under section 115-10.1 and that counsel was ineffective for failing to seek its admission. We disagree on both points.

¶ 40 Neither the incident report nor the statements contained therein were admissible under section 115-10.1. We take the time to explain what may seem like otherwise minor issues because they are indicative of an ongoing problem with the use of prior inconsistent statements and efforts to use them substantively. Here, the statements were not only not inconsistent, but they were also based on characterizations of Ruiz's testimony by the attorneys themselves, not what he otherwise testified. As we noted previously, we measure a statement's consistency by

considering it in relation to the rest of the witness's testimony. *Guerrero*, 2021 IL App (2d) 190364, ¶ 50. Here, there was nothing which had a "tendency to contradict the trial testimony" (*Zurita*, 295 Ill. App. 3d at 1077) or could be considered "evasive answers, silences, and changes in position [citation]; inability to recall [citation]; and omission of 'a significant matter that would reasonably be expected to be mentioned if true.' " *Guerrero*, 2021 IL App (2d) 190364, ¶ 50 (quoting *Zurita*, 295 Ill. App. 3d at 1077). Ruiz's short written incident report omitted an explanation of how the two men came to be on the ground, while his longer explanation during his trial testimony recounted he and defendant fell to the ground after the headbutt because Ruiz held on to defendant's waist chain. Defense counsel made this earlier omission relevant when trying to inject reasonable doubt into the juror's minds, but that does not make the omission a prior inconsistent statement. See *Lawrence*, 268 Ill. App. 3d at 333 ("When certain evidence is omitted from an earlier statement, but later found to be relevant and testified to at trial, this does not constitute an inconsistency for the purposes of [section 115-10.1]."). Without a prior inconsistent statement, section 115-10.1 cannot apply.

¶ 41 But even if we had accepted the parties' position that the evidence was admissible, we would not find counsel performed deficiently by not moving to admit the report. Although defendant would have us attribute the failure to seek substantive use of the incident report to ineffective assistance of counsel, the comments of counsel at the close of the trial are more consistent with a conscious decision to limit its use to impeachment only. After instructing the jury the trial court observed, "Defendant's [Exhibit No.] 1 [(incident report)] was referenced but not admitted I believe." Defendant's counsel responded, "Correct," and the trial court indicated for the record it would not be going back to the jury. Counsel's failure to comment further, having utilized the report extensively on cross-examination and referencing it in his

closing argument, would cause us to conclude, as a matter of trial strategy, he did not want it admitted substantively, contrary to the argument here on appeal. Defendant's argument before us is based less on what transpired at trial and more on hindsight in light of some of the questions from the jury. That, however, is not the proper gauge for whether counsel's tactical decisions made during trial constitute effective assistance. "[T]here is a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance [ ], making every effort to eliminate the distorting effects of hindsight *** and to evaluate the conduct from counsel's perspective at the time." (Internal quotation marks omitted.) *People v. Massey*, 2019 IL App (1st) 162407, ¶ 25, 142 N.E.3d 803.

¶ 42 "[D]ecisions as to which witnesses to call or what evidence to present are viewed as matters of trial strategy and 'generally immune from claims of ineffective assistance of counsel.' " *People v. Brown*, 2018 IL App (4th) 160288, ¶ 47, 115 N.E.3d 408 (quoting *People v. West*, 187 Ill. 2d 418, 432, 719 N.E.2d 664, 673 (1999)). We have noted, " '[t]he only exception to this [general] rule is when counsel's chosen trial strategy is so unsound that counsel entirely fails to conduct any meaningful adversarial testing.' " *Brown*, 2018 IL App (4th) 160288, ¶ 47 (quoting *West*, 187 Ill. 2d at 432-33). Ruiz's written incident report detailed his observations of defendant's interaction with the mental health professional, defendant becoming combative and headbutting Ruiz in the left cheek, and Ruiz gaining control of the situation and holding defendant on the ground. The report also noted Ruiz was sent for a medical evaluation. The report, therefore, corroborated both Ruiz's and Blackwell's testimony, even to the detail that defendant headbutted Ruiz on the left cheek. More importantly, the written report showed the incident between defendant and Ruiz satisfied every element of aggravated battery. If taken as true, the report confirmed defendant knowingly headbutted Ruiz, a PCC employee in the course

of his authorized duties. Had defense counsel moved to admit the incident report and the trial court admitted it, the jury would have had in paper form a recitation of the incident that corroborated the eyewitness testimony and confirmed the State proved every element necessary for a conviction.

¶ 43 We do not see defense counsel's decision not to admit the report as unsound, nor do we think counsel failed to submit the State's case to adversarial testing. *Brown*, 2018 IL App (4th) 160288, ¶ 47. In fact, we note defense counsel vigorously cross-examined Ruiz on the discrepancies between his testimony and the report. It seems defense counsel's strategy was to impeach Ruiz on the minor point of how he and defendant got to the ground to undermine his credibility and plant a seed of doubt in the jury's mind by suggesting perhaps Ruiz simply took defendant to the ground because he had enough of defendant's yelling and cursing. It seems defense counsel considered this approach better than putting evidence before the jury that, if believed, could prove his client guilty beyond a reasonable doubt.

¶ 44 Even though it may not have worked, we conclude counsel's decision to use the incident report to impeach Ruiz during cross-examination and not move to admit it into evidence amounted to "a matter of trial strategy." *Poole*, 2012 IL App (4th) 101017, ¶ 10. Defendant, therefore, cannot overcome the strong presumption that counsel acted strategically rather than deficiently. See *Poole*, 2012 IL App (4th) 101017, ¶ 10. In sum, we conclude counsel's decision against moving to admit Ruiz's incident report did not constitute deficient performance. Since defendant failed to show counsel performed deficiently, we need not consider *Strickland*'s prejudice prong. *Torres*, 228 Ill. 2d at 395.

¶ 45 C. State Misconduct

¶ 46 Defendant next alleges the State denied him a fair trial by improperly vouching for Ruiz's credibility and then improperly shifting the burden of proof to defendant by suggesting he could have presented video evidence. We disagree on both points.

¶ 47 As a threshold matter, we note defendant did not object to the prosecutor's alleged vouching statements at trial. Nor did he raise the entire misconduct issue in his posttrial motion. Defendant, therefore, forfeited this issue, but he asks that we review the issue for plain error. See *People v. Hestand*, 362 Ill. App. 3d 272, 279, 838 N.E.2d 318, 324 (2005). "The plain-error rule bypasses normal forfeiture principles and allows a reviewing court to consider unpreserved claims of error ***." *People v. Thompson*, 238 Ill. 2d 598, 613, 939 N.E.2d 403, 413 (2010). Defendants can invoke the plain-error doctrine when they make one of two showings:

> " '(1) a clear and obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence.' " *Thompson*, 238 Ill. 2d at 613 (quoting *People v. Piatkowski*, 225 Ill. 2d 551, 565, 870 N.E.2d 403, 410-11 (2007)).

¶ 48 Under either prong, "[t]he first step of plain-error review is determining whether any error occurred." *Thompson*, 238 Ill. 2d at 613. We find no error in the State's comments during closing arguments.

¶ 49 1. *Improper Vouching*

¶ 50 "Prosecutors are afforded wide latitude during closing argument and may properly comment on the evidence presented and reasonable inferences drawn from that evidence, respond to comments made by defense counsel that invite a response, and comment on the credibility of a witness." *People v. Marzonie*, 2018 IL App (4th) 160107, ¶ 47, 115 N.E.3d 270. Despite this latitude, prosecutors may not " 'vouch for the credibility of a prosecution witness.' " *People v. Boling*, 2014 IL App (4th) 120634, ¶ 126, 8 N.E.3d 65 (quoting *People v. Lee*, 229 Ill. App. 3d 254, 260, 593 N.E.2d 800, 804 (1992)). When evaluating claims the prosecution's argument improperly vouched for its witness, we view closing arguments " 'in their entirety, and the challenged remarks must be viewed in context.' " *Boling*, 2014 IL App (4th) 120634, ¶ 126 (quoting *People v. Wheeler*, 226 Ill. 2d 92, 122, 871 N.E.2d 728, 745 (2007)). The prosecution's "[s]tatements will not be held improper if they were provoked or invited by the defense counsel's argument." *People v. Glasper*, 234 Ill. 2d 173, 204, 917 N.E.2d 401, 420 (2009). Statements during closing argument are improper and amount to error "only when they cause substantial prejudice to the defendant." *Marzonie*, 2018 IL App (4th) 160107, ¶ 48. We can find substantial prejudice if the improper remarks were a " 'material factor' " in a defendant's conviction. *People v. Thompson*, 2013 IL App (1st) 113105, ¶ 79, 997 N.E.2d 681 (quoting *Wheeler*, 226 Ill. 2d at 123).

¶ 51 Defendant directs our attention to the prosecutor's statements during rebuttal closing argument where he said "Enrique Ruiz didn't embellish" during his testimony. When recapping Ruiz's testimony that defendant struck him on the left cheek, the prosecutor reminded the jury that Ruiz did not claim defendant's headbutt inflicted a serious injury that caused him to receive medical treatment or to miss work. Nor did Ruiz's testimony portray defendant as yelling or cursing at him specifically. The prosecutor then went on to say three more times that Ruiz did

not embellish, even saying once: "He didn't embellish one iota." But we must consider these comments in light of the preceding argument by defense counsel.

¶ 52 Viewing the closing arguments in their entirety, we conclude defense counsel's closing argument invited the prosecution's comments on Ruiz's credibility during rebuttal. See *Marzonie*, 2018 IL App (4th) 160107, ¶ 47 (stating that depending on the context, a prosecutor may "respond to comments made by defense counsel that invite a response, and comment on the credibility of a witness"). Defense counsel attacked Ruiz's credibility, arguing Ruiz "vacillated" during his testimony and "kind of gave the answer[s] that he was hoping the State was looking for." Defense counsel then characterized Ruiz's testimony as "an effort I think to make it sound even more violent." This is the context for the prosecution's statements about Ruiz not embellishing—rebutting defense counsel's characterization of Ruiz as not credible. The prosecutor did not say he personally believed Ruiz to be truthful. Rather, the prosecutor directed the embellishment comments toward defense counsel's assertion that Ruiz tried to make the headbutt sound more violent. The prosecutor emphasized what Ruiz actually said during his testimony while noting what he did not say. Moreover, the prosecutor's comments highlighted for the jury that Ruiz's testimony, and the reasonable inferences therefrom, did not support the defense's theory that he was just saying what the State wanted to hear. See *Marzonie*, 2018 IL App (4th) 160107, ¶ 47 (stating prosecutors may properly comment on the evidence presented and the reasonable inferences drawn therefrom). Since defense counsel's argument invited the prosecutor's response that defendant did not embellish his testimony, we cannot conclude the prosecutor's statements caused defendant substantial prejudice. *Marzonie*, 2018 IL App (4th) 160107, ¶ 48. Consequently, we find no error here. See *Glasper*, 234 Ill. 2d at 204-05.

¶ 53 2. *Improper Burden Shifting*

¶ 54 Defendant next argues part of the prosecutor's closing argument improperly shifted the burden of proof to the defense when it implied defendant needed to offer video evidence. Again, we disagree.

¶ 55 During the State's rebuttal closing argument, over a defense objection, the prosecutor responded to defense counsel's question asking why the State provided no video evidence showing the incident between defendant and Ruiz. The prosecutor said:

> "As for the video or not, we heard that, there was no video was shown to you; and you saw no video today. You can presume that there's no video. That if I have an opportunity to show you the video, so would the defense if it showed what they want you to believe that it showed. So the video itself, the photos, these are items that the Defendant would argue that you need to see. Well, what did the State give you? Eyewitness testimony from the victim, eyewitness testimony from the person who observed it."

Defendant concedes the prosecutor was allowed to respond to defense counsel's assertion that there are cameras everywhere in PCC and counsel's question about why no video was shown; however, defendant argues the prosecutor stepped too far when he said: "That if I have an opportunity to show you the video, so would the defense if it showed what they want you to believe that it showed."

¶ 56 " 'The defense is under no obligation to produce any evidence, and the prosecution cannot attempt to shift the burden of proof to the defense.' " *People v. Curry*, 2013 IL App (4th) 120724, ¶ 80, 990 N.E.2d 1269 (quoting *People v. Beasley*, 384 Ill. App. 3d 1039, 1047-48, 893 N.E.2d 1032, 1039 (2008)). The prosecution, however, does not shift the burden of

proof when it "respond[s] to comments by defense counsel that clearly invite a response." *Curry*, 2013 IL App (4th) 120724, ¶ 80. For example, "a prosecutor is permitted to comment on a defendant's failure to produce evidence where a defendant with equal access to the evidence assails the prosecutor's failure to produce that evidence." *Curry*, 2013 IL App (4th) 120724, ¶ 80.

¶ 57 Defendant likens his case to *People v. Bell*, 2020 IL App (4th) 170804, ¶ 135, 145 N.E.3d 740, where this court found some comments made by the prosecutor during closing argument to be "troublesome," "improper and unnecessary." We identified two offending statements from the prosecution that "crossed the line and suggested the State was shifting the burden of proof to defendant," specifically: "(1) '[D]efendant didn't call any doctor to testify that he had injuries' and (2) 'But the defendant doesn't provide you with any video showing him being led to this area where this assault occurred. Doesn't show you any video of him being led back to his cell with these injuries. If there were videos, there certainly would have been a video of that and he could have presented that to support his testimony.' " *Bell*, 2020 IL App (4th) 170804, ¶ 135. Defendant compares *Bell*'s second troublesome statement to the prosecutor's comment here, "[t]hat if I have an opportunity to show you the video, so would the defense if it showed what they want you to believe that it showed," and defendant maintains this statement should likewise be found improper burden shifting. We disagree because we see *Bell* as distinguishable from the instant case, and therefore, *Bell* does not mandate a similar conclusion here.

¶ 58 When plucking *Bell*'s video comments out of context, they do appear similar to the remarks made in this case. But viewing the entire context of the closing arguments in each case, as we must do, the comments are different. See *Boling*, 2014 IL App (4th) 120634, ¶ 126

(noting reviewing courts must view closing arguments in their entirety and view the challenged remarks in context). Unlike the prosecutor's remarks here about lack of video evidence, the *Bell* comments we identified as troublesome were not invited by the defense. There, the defense's closing argument challenged several aspects of the State's case, including photographic evidence the State introduced by "noting, in part, the State's witnesses 'never not one time mentioned a camera.' " *Bell*, 2020 IL App (4th) 170804, ¶ 71. In rebuttal, the State responded this way: " 'Now, the defendant also mentioned something about a camera. And, well, I am not certain exactly what the argument there is. The simple fact of the matter is there is no video in this case. If there were a video, I would have presented it for you. There is not video of the inside of the cells.' " *Bell*, 2020 IL App (4th) 170804, ¶ 75. This court did not find this response "crossed the line" or was "troublesome." We construed this statement, along with several others from the prosecution, "as proper comments concerning the credibility of defendant's theory in light of the evidence presented or proper responsive comments to defendant's suggestions and argument at trial rather than improper comments implying defendant had a duty to present evidence of his innocence." *Bell*, 2020 IL App (4th) 170804, ¶ 135.

¶ 59 The prosecution's statement about video evidence that we did find troublesome, by contrast, was not invited by the defense. The defense's closing argument emphasized its theory that the defendant "had been 'jumped' on several occasions since being imprisoned and even 'won lawsuits due to *** circumstances like the one we are going through today.' " *Bell*, 2020 IL App (4th) 170804, ¶ 69. Defendant had made those claims during his testimony and did not claim the alleged attacks were recorded by video. Nor did defense counsel suggest those alleged attacks were video recorded when it reiterated defendant's testimony during closing argument. Nevertheless, in combating that specific defense theory, the State not only referenced

lack of video evidence to support the defendant's testimony, but the State said, " '[T]he defendant doesn't provide you with any video showing him being led to this area where this assault occurred. Doesn't show you any video of him being led back to his cell with these injuries. If there were videos, there certainly would have been a video of that and he could have presented that to support his testimony.' " *Bell*, 2020 IL App (4th) 170804, ¶ 135. These remarks during rebuttal argument from the *Bell* prosecution crossed the line because they expressly identified potential evidence the defense did not present *and* were not invited by the defense's closing argument.

¶ 60 The prosecution's remarks here, however, were invited by the defense's closing argument. Unlike in *Bell*, here it was defense counsel who brought up the lack of video evidence when stating: "Miss Blackwell testified to the fact there's cameras all over this institution. You don't see any video of this today. Why not?" These comments clearly invited a response from the State, which was appropriate. See *People v. Kliner*, 185 Ill. 2d 81, 154, 705 N.E.2d 850, 887 (1998) ("We have held that the prosecutor may respond to comments by defense counsel which clearly invite a response ***.").

¶ 61 We find the instant case more akin to *Curry* than *Bell*. In *Curry*, a police officer testified the defendant fell asleep in the interrogation room and the officer had to awaken him by shaking his leg. The officer also testified the interrogation room was under 24-hour video surveillance. *Curry*, 2013 IL App (4th) 120724, ¶ 82. During closing argument, defense counsel said: " 'There's a tape. Where's the tape? We didn't get to see a tape. We don't have the burden of proof here, folks. The State has the burden of proof. If it's really as egregious as they're wanting you to believe, then where's the tape? Why don't we get to see if [defendant is] nodding off? Why don't we get to hear if he's snoring?' " *Curry*, 2013 IL App (4th) 120724, ¶ 82. The

State responded on rebuttal by saying, in part: " 'I guarantee you if that tape showed you that the defendant wasn't sleeping, didn't have to be woke[n] up, you would have saw [*sic*] it here in the courtroom, and he would have played it for you.' " *Curry*, 2013 IL App (4th) 120724, ¶ 79. We held "the prosecutor's comments here were invited by defense counsel and were not improper." *Curry*, 2013 IL App (4th) 120724, ¶ 82. Given the similarities between this case and *Curry*—both the actual remarks made and the entire context of closing arguments—we conclude this case merits the same result. The prosecution's comments here were invited by the defense's argument and did not substantially prejudice defendant. They were not improper, and they did not shift the burden to the defense.

¶ 62 Because we find no error occurred during the prosecution's rebuttal argument—the prosecutor neither vouched for Ruiz nor improperly shifted the burden of proof to defendant—we need not address defendant's remaining plain-error argument.

¶ 63 III. CONCLUSION

¶ 64 For the reasons stated, we affirm the trial court's judgment.

¶ 65 Affirmed.