THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee,	)	Appeal from the Circuit Court of Cook County.
v.	)	No. 93 CR 25151
JOSE CRUZ, Defendant-Appellant.	)	Honorable STUART PALMER, Judge Presiding.

O R D E R

Jose Cruz (defendant) was charged with two counts of first-degree murder, attempted first-degree murder, aggravated battery with a firearm, three counts of armed violence, and three counts of aggravated battery. After a jury trial, defendant was found guilty of murder, attempted murder, and aggravated battery with a firearm. The trial court imposed a sentence of 60 years for first-degree murder, consecutive with 30 years for attempted murder. The court further ruled that these sentences were to be served consecutively to a 15-year imprisonment for a separate conviction for attempted first-degree murder under case number 93CR13478. Defendant filed a timely notice of appeal and raises the following issues: (1) whether reversible error occurred as a result of ineffective assistance of counsel and prosecutorial misconduct when other crimes evidence was presented to the jury; (2) whether defendant was denied his due process right to a fair trial when the State repeatedly sought to bolster the

testimony of its eyewitness; (3) whether the prosecutor's closing arguments denied defendant his right to a fair trial; and (4) whether the trial court's consideration of certain victim impact evidence violated section 120/3(a)(3) of the Code of Criminal Procedure (725 ILCS 120/3(a)(3) (West 1994)).

STATEMENT OF FACTS

Vernon Meadors (Meadors) testified that he is 42 years old and employed as a lead janitor. He is married and has three children. On October 6, 1993, he lived at 1318 North Kedzie, approximately two blocks from the intersection of North Avenue and Kedzie Avenue. At that time, he also owned another building in the area which he was rehabilitating. Meadors testified that he no longer lives at 1318 North Kedzie and that he "had to give *** up" the other building. At this point of Meadors' testimony, defense counsel moved for a mistrial and the trial court denied the motion.

Meadors further testified that he worked the 5 a.m. to 1:30 p.m. shift. He stated that he usually woke up at 3:30 a.m. and walked three blocks to the bus stop on North Avenue. On the morning of October 6, 1993, Meadors was at the bus stop at approximately 3:30 a.m. He stated that there is a 24-hour gas station located on the corner and the area is well lit. While waiting for the bus that morning, Meadors saw a young black man pull into the gas station in his car. This man was later identified as Antoine Douglas. The car stopped running and Douglas got out of the car and approached Meadors and asked him if he knew where he could get a jump. Meadors suggested that Douglas ask the gas station attendant if he could leave the car there and come back later in the morning. As Douglas walked away, a car pulled into the station and stopped in front of him.

Meadors testified that he was about 15 feet away from the car and saw four people inside the car. His attention was drawn to the front seat passenger who was crouched down in the car. Meadors stated that the car window was open and the front seat passenger began speaking to Douglas. Meadors made an in-court identification of Jose Cruz (defendant) as the front seat passenger. Meadors stated that he saw defendant's face very clearly and that the area was extremely well lit. Meadors heard defendant ask Douglas what gang he was in and whether he was a Disciple. Meadors heard Douglas respond that he was not a Disciple; he was a Vice Lord. Meadors then saw defendant and the rest of the men in the car start to exit the car. Meadors stated that he did not see the faces of any of the other men. As the men began to exit the car, Douglas began to run away and the men brought out weapons and started to shoot in Douglas' direction. Meadors testified that defendant was using a "bright, shiny, automatic-type of weapon" to shoot at Douglas. The others were using "little round tubular-type guns."

When the shooting began, Meadors dove onto the ground. Meadors stated that he heard at least 20 shots and then it became silent and he heard somebody holler, "Witness!" Meadors stated that he was shot in the arm and then he heard additional clicks of the gun. On cross-examination, Meadors stated that he does not know if it was defendant who shot him. At the time of Meadors' testimony, the bullet was still lodged in his arm. After being shot, Meadors heard the car pull away. He made sure the men were gone and then he walked to the gas station. The attendant would not let Meadors in but told Meadors that he called the police.

Meadors testified that approximately one-and-a-half minutes later, the police and an ambulance arrived on the scene. While the paramedics were

attending to Meadors, a young Hispanic male walked up to Meadors and "gives [Meadors] that look, like, you better not say anything." Meadors testified that he felt threatened and was extremely frightened.

Meadors went to St. Elizabeth Hospital and was treated for the gunshot wound. At the hospital, Meadors spoke with a detective and described the person he saw in the front passenger seat as a chubby, Hispanic male with a thin moustache, about five feet four inches tall and weighing approximately 145-150 pounds. Meadors was released and later that same evening detectives arrived at his house with about 25 photos of Hispanic males. Meadors recognized one of the men in the photos but did not tell the police because he "was still afraid and nervous at the time, not wanting to jeopardize [his] family." He stated that he was concerned because he lived in a Latin King neighborhood.

Meadors testified that on the morning of October 7, 1993, he read in the newspaper that he was identified as a witness and his name and address were listed. He became very upset and frightened. On October 8, 1993, Detective Wojcik dropped off his card at Meadors' house. Meadors then spoke to his father and his wife about whether he should come forward. He contacted the police and the police came to his home. The police stayed at Meadors' apartment until his wife and children arrived and then they moved the family to Meadors' father's house until Meadors could find another residence. After his family was secure, Meadors went to the police station and looked through a book with thousands of pictures of Hispanic males. He saw a picture of the shooter. The picture was of the same person he recognized earlier. He identified the picture from the book and then identified a picture of the same person from the group of photographs he had seen at his home. On October 9, 1993, Meadors picked defendant out of

a line-up.

Meadors testified that prior to the shooting he did not know the victim. He identified a picture of the victim and stated that he now knows that the victim's name was Antoine Douglas.

On cross-examination, Meadors testified that he could not identify any of the other men who had been in the car because he was nervous and because the incident happened so quickly. Meadors estimated that defendant was about 10 or 15 feet away from him when the shooting occurred. Meadors said that he remembered defendant because defendant had "done the talking." Meadors estimated that the conversation between defendant and Antoine Douglas lasted about four or five seconds before the men exited the car and started shooting.

Detective Kevin McDonald testified that he arrived on the scene after Meadors had been taken to the hospital. Douglas' body was lying face up on the sidewalk on Kedzie. The police found a birth certificate on the victim which indicated his name. Douglas was wearing a blue and black jacket, a Duke Blue Devils shirt and purple pants.

Detective McDonald spoke with Meadors at the hospital. Meadors was in a lot of pain, was visibly shaken, scared, trembling and very upset. Meadors described the offender to Detective McDonald as approximately 26 years old, about five feet four inches in height, about 145 to 160 pounds, chubby, with a moustache. Meadors told him that there were three assailants.

Detective Ronald Ferrari testified that he went to the scene on the morning of October 6, 1993, to photograph, collect and preserve physical evidence. He recovered nine .22 caliber cartridge cases from the gas station lot about 10 to 15 feet away from the bus stop.

Larry Sims, a deputy medical examiner with the Cook County Medical Examiner's office, testified that he performed an autopsy on Douglas on October 6, 1993. The external examination revealed several gunshot wounds to the left shoulder, left flank and middle of the back. The internal examination showed that the bullet that entered the back went through the liver, stomach and heart. Sims further stated that the cause of death was multiple gunshot wounds.

Frank Petrone testified that he is a field services training specialist with the Cook County Adult Probation Department. Petrone testified as an expert in gang identification. He stated that there are two main "umbrella" gang organizations; one is called "People" and the other is called "Folks." Ninety-five percent of the street gangs in Chicago are affiliated with either one. Latin Kings are People and they are identified with the colors yellow and black. He testified that the rivalry between the Latin Kings and the Disciples is one of the worst and longest. Disciples are Folks and their colors are blue and black. He testified that the area of North Avenue and Kedzie Avenue is Latin King territory. Petrone also testified that Vice Lords are People and they are in the same alliance with Latin Kings.

Petrone testified that some irrefutable evidence of gang affiliation are tattoos, sweaters, hand signals and business cards. He stated that it is also common for gang members to wear sports paraphernalia to identify their gang and that Duke University clothing is the most common. Duke symbolizes the Disciples gang. He further stated that anyone wearing Duke clothing in Latin King territory would be in serious trouble. Petrone testified that based on Douglas' tattoos and the clothing he was wearing when he was murdered, Douglas was a Disciple. Petrone also testified that

based on defendant's attire at the time of his arrest, defendant is a Latin King.

Sergeant Miney, a Chicago police officer, testified that on October 6, 1993, he went to the Meadors residence with about 21 photographs. He stated that Meadors appeared to be scared and his hands were trembling. Sergeant Miney showed Meadors the photos and Meadors did not make an identification. On October 8, 1993, Detective Tony Wojcik asked Sergeant Miney for the photos that had been shown to Meadors. Meadors was at the police station and Detective Wojcik showed Meadors the pictures. Sergeant Miney stated that Meadors identified defendant.

Detective Tony Wojcik testified that on October 8, 1993, he went to Meadors' residence at approximately 10 a.m. Meadors told him that he would be able to identify the shooter. Wojcik stated that Meadors was scared and he could see that Meadors was shaking. Meadors told Wojcik he was scared because his name was listed in the paper as a witness. Meadors also told him that after the incident, "a Hispanic individual had walked up and stood over him, kind of stared at him, scared him, and he took it to mean he should not *** say anything." Meadors further told him that he believed the offenders were from his neighborhood. Wojcik gave Meadors his card and told Meadors to discuss the situation with his family and to call him when he felt comfortable. Meadors asked him to tell other officers not to come to his house because he did not want people to think he was cooperating with the police.

At approximately 4:30 that same afternoon, Wojcik was paged and told to go to Meadors' house. Meadors told him that when he viewed the photographs the first time, he saw a picture of the shooter. Meadors also told Wojcik about something that had happened after Wojcik left earlier

that day. Upon hearing this, Wojcik arranged for officers to guard Meadors' home and made plans for an emergency relocation for Meadors and his family. Wojcik testified that after being relocated to a relative's home, Meadors never returned to his residence on Kedzie Avenue.

Wojcik brought Meadors to the police station and showed him a photo album containing about 500 arrest photographs. Meadors identified defendant from the photographs. The photograph was different from the photograph that Sergeant Miney showed Meadors but it was of the same person. Wojcik then showed Meadors the photographs that were shown to him on the day of the shooting. Meadors again identified defendant.

After returning Meadors to his relocated residence, Wojcik began looking for Jose Cruz, the defendant. Defendant was arrested on October 9, 1993, brought to the police station and advised of his Miranda rights. Defendant was searched and Wojcik recovered a piece of paper which said "Latin King Constitution" and a photograph of defendant making the Latin King gang sign with his hands while holding a baby.

During questioning, defendant told Wojcik that he was a Latin King. Wojcik asked defendant what he would do if any Folks came through the neighborhood and defendant responded that he "would have to move on them." Wojcik asked him to explain what that meant and defendant stated he would have to "chase him, beat him, stab him, shoot him, whatever it takes to get him out of there."

Wojcik testified that defendant had asked why he was there. Wojcik responded that he was brought there for an investigation of a shooting. Defendant told Wojcik that the last shooting he had done was at the "blue boys" in the park and that he was already investigated for that shooting. Wojcik testified that "blue boys" was a street term which referred to a

uniformed patrol officer. Wojcik left the room to pull the case report on the "blue boys" incident. He pulled the report and returned to the room. Wojcik asked defendant what had happened with that case and defendant told him he was out on bond. Wojcik informed defendant that he was not there in relation to that incident. Wojcik told defendant he was being investigated concerning the shooting of Antoine Douglas which occurred on October 6, 1993, on the corner of Kedzie Avenue and North Avenue. Defendant denied involvement in the shooting and told Wojcik that he did not want to speak to him anymore. As Wojcik and Detective Ricchio began to leave the room, defendant called them back in and said that he was out on the night of October 5 and that he had arrived home at about 12:30 a.m. on October 6. Defendant also said that three of his relatives were awake when he arrived home that night and that he went to sleep at about 1:30 a.m. Two of the relatives were subsequently interviewed.

Wojcik further testified that on October 9, 1993, he picked up Meadors at his new residence and brought him to the police station where a line-up was conducted. Wojcik stated that "[Meadors] identified Mr. Cruz as the individual. He said, that's the guy. He says, I'll never forget him."

After the testimony of Detective Wojcik, the People rested. The trial court denied defendant's motion for directed finding. The defense rested. The jury found defendant guilty of first-degree murder, attempted first-degree murder, and aggravated battery with a firearm. The trial court denied defendant's motion for new counsel and for a new trial.

Defendant was sentenced to 60 years imprisonment for murder, consecutive to 30 years imprisonment for attempted murder, consecutive to a sentence of 15 years imprisonment for attempted murder under case number 93CR13478.

A. OTHER CRIMES EVIDENCE AND INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant's first contention is that the admission of evidence that defendant confessed to having fired shots at police officers in an unrelated incident and evidence that defendant had previously been arrested and was known by police was reversible error. Defendant further contends that defense counsel's failure to object to the admission of other crimes evidence constitutes ineffective assistance of counsel. The State contends that defendant is estopped from complaining about the introduction of the evidence where he first commented on it in his opening statement and, further, that defense counsel's failure to object to admission of other crimes' evidence was a matter of trial strategy which did not prejudice the defendant. We agree with the State.

It is well-settled that evidence of crimes for which the accused is not on trial is inadmissible if relevant merely to establish defendant's propensity to commit crime. People v. Thingvold, 145 Ill. 2d 441 (1991). However, where a defendant procures, invites, or acquiesces in the admission of evidence, even where it is improper, he is estopped from arguing its admissibility. People v. Ocasio, 205 Ill. App. 3d 157 (1990); People v. Payne, 98 Ill. 2d 45 (1983).

The State directs this court to People v. Kovacivich, 10 Ill. App. 3d 797 (1973). In Kovacivich, defendant was found guilty of burglary. At trial, defense counsel made it known during opening statements that defendant had been involved in another trial for burglary but had been acquitted. Kovacivich, 10 Ill. App. 3d at 798. On direct examination of a codefendant, the State elicited evidence of defendant's prior burglaries. Kovacivich, 10 Ill. App. 3d at 798-99. On cross-examination of the same witness, defense counsel further elicited evidence of defendant's prior

burglaries. Kovacivich, 10 Ill. App. 3d at 799. On appeal, defendant argued that the State committed reversible error when it produced evidence of defendant's other crimes. Kovacivich, 10 Ill. App. 3d at 799. The Third District held:

> "It is true that the State on direct examination of their witnesses also brought forth testimony as to the defendant's participation in other crimes but such testimony was not objected to by the defendant's counsel. Not only are we of the opinion that the defendant is estopped from complaining about testimony concerning a subject matter which his counsel first introduced to the jury, but in addition our reviewing courts have held that the unobjected testimony of State witnesses which had the effect of disclosing to the jury that the defendant had committed a robbery other than the one for which he was on trial was properly received and any error was waived because of failure to object. [Citation.]" Kovacivich, 10 Ill. App. 3d at 799.

We find that Kovacivich is analogous to the case at bar. In the instant case, defense counsel introduced defendant's prior criminal history in his opening statement. He stated:

> "When my client was arrested, he denied to the police that he did this. When he was arrested, he admitted that he was a gang member.
>
> * * *
>
> He may have admitted to the police certain other

illegal activity, but he denied this."

Additionally, defense counsel stated in closing argument:

> "[H]e makes a statement to the police. He tells the police he's a gang member. He admits it. He allegedly makes some statement about coming onto other gangs or other gang members. And he admits to even another crime, when he doesn't have to admit to anything. But he denies this.
>
> * * *
>
> If you are going to lie to protect your ass, why say anything? Why admit you're a gang member? Why admit to doing another crime, you know, a few weeks earlier?
>
> They said, we're arresting you for shooting somebody. He said, listen, I haven't shot anyone since two weeks ago. Why admit to that? That case is still going, unless you are willing to tell them the truth, and then deny this. Doesn't make any sense. It doesn't make any sense. So much so that his statement shows that he's not guilty of this offense.
>
> His telling that authorities where he was with, denying the crime, saying that, yes, I committed this other crime; yes, I'm a gang member. All that goes to reasonable doubt."

During its direct examination of Detective Wojcik, the State elicited the evidence of the other crime. Defense counsel not only failed to seek exclusion of the other crimes evidence, but his cross-examination of

Detective Wojcik served to emphasize defendant's involvement in the prior shooting.

Accordingly, we find that defendant is estopped from asserting that the other crimes evidence was improperly admitted.

Likewise, we reject defendant's argument that mentioning the other crimes evidence in opening statement and failing to object to the testimony of Detective Wojcik constitutes ineffective assistance of counsel. To prevail on a claim of ineffective assistance of counsel, a defendant must meet both prongs of the Strickland test. See Strickland v. Washington, 466 U.S. 668, 80 L. Ed. 2d 674, 104 S. Ct. 2052 (1984) (which was adopted by Illinois in People v. Albanese, 104 Ill. 2d 504 (1984)). First, trial counsel's performance must fall below an objective standard of reasonableness. Strickland, 466 U.S. at 687-88, 80 L. Ed. 2d at 693, 104 S. Ct. at 2064. An objective standard of reasonableness under the prevailing professional norms is judged by whether the attorney gave reasonable assistance within the range of competence demanded of attorneys in criminal cases. People v. Caballero, 126 Ill. 2d 248 (1989). Second, even if defendant meets the first requirement, he must also establish that there exists a reasonable probability that but for counsel's unprofessional performance, the result of the petitioner's trial would have been different. When applying the Strickland test, the reviewing court must view the totality of counsel's conduct in light of all the circumstances. People v. Jackson, 195 Ill. App. 3d 104, 119 (1990).

Defendant argues that his counsel's failure to seek exclusion of his admission to the previous shooting was objectively unreasonable and since there was no justifiable basis for admitting this evidence, counsel should have moved to exclude it. We disagree. Based upon review of defense

counsel's opening and closing arguments and his cross-examination of Detective Wojcik, his theory of the case is clear: since defendant admitted to being a gang member and admitted to committing another shooting, his assertion of innocence in the instant case is credible and should be believed.

The State directs this court to the case of People v. Groves, 287 Ill. App. 3d 84 (1997). In Groves, defendant was convicted of first-degree murder and possession of a stolen vehicle. Groves, 148 Ill. App. 3d at 93. Defendant argued on appeal that his counsel was incompetent for allowing the defendant to testify that he sold drugs for a gang. Groves, 287 Ill. App. 3d at 93. This court found that based on a review of the record, it was evident that defense counsel's trial strategy was to persuade the jury that the defendant was a drug dealer but not a murderer. Groves, 287 Ill. App. 3d at 94. Moreover, this court found that the strategy was not unreasonable or prejudicial to the defendant. Groves, 287 Ill. App. 3d at 94.

The instant case is analogous. Like Groves, the defense counsel's strategy was not unreasonable or prejudicial. In the case at bar, defense counsel's theory was that defendant had admitted to a shooting in the past, so his denial of the present crime should be believed. This goes to defendant's credibility and is certainly not an unreasonable argument.

Defendant also contends that defense counsel's failure to move for a mistrial and his failure to request a limiting instruction to ensure that the jury would not consider the previous shooting as evidence of defendant's guilt (see Illinois Pattern Jury Instruction, Criminal, No. 3.14 (3d ed. 1992)) also constitutes ineffective assistance of counsel. However, as the State points out, the decision to ask for a mistrial is a

matter of trial strategy which must be given great deference. People v. Shlimon, 232 Ill. App. 3d 449, 458 (1992). Also, where the decision not to request a limiting instruction is obviously a tactical decision, there is no ineffective assistance. People v. Sizemore, 226 Ill. App. 3d 956, 959 (1992).

Accordingly, since the above constitutes trial strategy and since counsel's performance does not fall below an objective standard of reasonableness, we reject defendant's claim of ineffective assistance of counsel. Defendant's failure to satisfy the first prong of the Strickland test is fatal to his claim of ineffective assistance of counsel (People v. Randle, 277 Ill. App. 3d 788, 796 (1995)) and we need not address the second prong.

B. BOLSTERING OF STATE WITNESS

Defendant's next contention is that the State improperly bolstered the testimony of Meadors. Defendant asserts that he was denied his right to a fair trial by: (1) admission of testimony that an unidentified Hispanic male attempted to intimidate Meadors into not testifying; (2) admission of evidence that Meadors and his family were relocated after the shooting; and (3) admission of testimony that Meadors made out-of-court statements consistent with his trial strategy.

1. Evidence of Attempt to Intimidate Meadors

At trial, Detective Wojcik testified that two days after the shooting, he went to Meadors' home to interview him and Meadors was scared and visibly shaken. When asked if Meadors explained why he was afraid, Detective Wojcik testified:

"He said several reasons why. He said the main reason why was that his name had showed up in the

paper, and that people would be able to know that he was a witness in the case.

He also told me on the night of the incident, a Hispanic individual had walked up to him and stood over him, kind of stared at him, scared him, and he took it to mean he should not, he should not say anything in the sense he should not be a witness ***."

Defendant argues this testimony constitutes inadmissible hearsay. Hearsay is defined as testimony of an out-of-court statement offered for the truth of the matter asserted. People v. Sims, 285 Ill. App. 3d 598 (1996). Where the testimony is not offered for the truth of the matter asserted, but for some other purpose, it is admissible. People v. Clark, 160 Ill. App. 3d 877, 885 (1987).

The State contends that Detective Wojcik's testimony was not offered for the truth of the matter asserted, but rather this testimony was used to show why Detective Wojcik relocated Meadors and was not able to get an identification from Meadors until after the relocation. We agree with the State and find that this evidence was admissible to establish a basis for Meadors' fear and reluctance to testify.

The State relies primarily on People v. Perez, 258 Ill. App. 3d 753 (1994). In Perez, defendant was convicted of aggravated battery and armed violence. Perez, 258 Ill. App. 3d at 754. On appeal, defendant argued that a police officer's testimony at trial that he did not disclose the identity of a citizen because of the citizen's fear of gang retaliation was prejudicial error. Perez, 258 Ill. App. 3d at 759. The court stated that "[t]he answer of [the officer] established only that the unknown witness was afraid of gangs in general, not the defendant." Perez, 258 Ill. App.

3d at 759. This court found that the error did not prejudice the defendant to the point that the testimony constituted reversible error. Perez, 258 Ill. App. 3d at 759.

Similarly, the testimony regarding the threats in the instant case served as a basis for Meadors' fear and subsequent relocation. There was no evidence which in any way linked the unidentified Hispanic male to defendant. Rather, the evidence supported Meadors' fear of gangs in general. Moreover, there was no evidence that Meadors feared or was intimidated by the defendant in particular.

Accordingly, for the foregoing reasons we find that the evidence was properly admitted and did not prejudice defendant.

2. Relocation Evidence

Defendant next argues that admission of evidence about the relocation of Meadors and his family was prejudicial error. The State asserts that Meadors' testimony was relevant to explain the inconsistency in his identification testimony.

The admission of evidence is within the sound discretion of the trial court and its ruling should not be reversed absent abuse of that discretion. People v. Ward, 101 Ill. 2d 443 (1984). Evidence of a witness' fears is relevant and admissible where it tends to prove a material fact in issue and its probative value outweighs its prejudicial effect. People v. Eyler, 133 Ill. 2d 173 (1989).

In the instant case, defense counsel stated in opening statement:

> "The evidence about the identification, and this is the important, going to the important issue in the case, is not whether a person believes that my client did it, but the accuracy of that belief. That this

occurred, yes, in a very well-lit area, but it was a shocking situation.

As I said before, no exact description was given. That this is an identification where the description that was given could fit hundreds or thousands of young Hispanic men who look like my client.

* * *

The evidence is not going to show that there is a sufficient degree of reliability and accuracy in the identification to assure that the evidence is guilty beyond a reasonable doubt."

Based on the above statement, it was not unreasonable to assume that defense counsel would attack Meadors' ability to identify defendant. Likewise, it was not unreasonable to assume that defense counsel would emphasize the fact that Meadors initially failed to identify defendant when first shown defendant's photo. In fact, defense counsel did question Meadors about his ability to identify defendant and the gap between the time Meadors was shown the first photo array and the time Meadors first identified defendant, two days later. It was not until after the State relocated Meadors and his family that Meadors identified defendant. The fact that Meadors feared for his own safety and that of his family in addition to the fact that he was forced to relocate due to his cooperation with the State was properly admitted to illustrate his failure to identify defendant when first given the opportunity.

Accordingly, we find that the relocation evidence was properly admitted.

3. Prior Consistent Statements of Meadors

Defendant's next contention is that admission of evidence of statements that Meadors made to police which were consistent with his trial testimony was improper and prejudicial.

A prior consistent statement is hearsay and is only admissible to refute an inference of motive to testify falsely, or to rebut a showing of recent fabrication. People v. Brown, 122 Ill. App. 3d 452, 458-459 (1984). However, this rule does not apply to identification testimony. Brown, 122 Ill. App. 3d at 459; see also People v. Rogers, 81 Ill. 2d 571, 582 (1980). Out-of-court statements are admissible to corroborate a witness' in-court testimony where the statements relate to identification, and where the identification is part of establishing conduct pursuant to police procedures. People v. Shum, 117 Ill. 2d 317, 342 (1987).

In People v. Brown, 122 Ill. App. 3d 452 (1984), the Second District noted the following:

> "The Illinois Supreme Court clearly enunciated our State's position on the issue-in-chief in the case of People v. Rogers, 81 Ill. 2d 571 (1980). In substance, the court decreed that evidence of out-of-court identifications by an identifying witness, and any third-person who saw or heard the identification, is admissible for the purpose of corroborating an in-court identification. Such corroboration is justified to rebut the notion that 'by the time of trial the witness' mind has become so conditioned that there is little likelihood that he would not identify the person in court.' [Citation.] Thus, where the identifying witness herself is testifying, she may in fact be

repeating an out-of-court assertion for the truth of the matter asserted, yet the opportunity for cross-examination is present and therefore the rationale for hearsay exclusion is absent. [Citations.]" Brown, 122 Ill. App. 3d at 457-58.

Both cases cited by defendant for the proposition that the identification testimony of the detectives constitutes reversible error are distinguishable on their facts. See People v. Wheeler, 186 Ill. App. 3d 422 (1989); People v. Sommerville, 193 Ill. App. 3d 161 (1990). Moreover, in its reply brief, defendant essentially acquiesces that the police testimony of Meadors' identification is admissible under People v. Rodgers, 81 Ill. 2d 571 (1980). We find that the testimony of the police officer is admissible under Rodgers as proper corroboration of an in-court identification.

Nevertheless, defendant goes on to argue that even if the testimony was admissible, the officer's testimony that Meadors said he would never forget the man's face does not constitute a prior statement of identification and the State's reiteration of the remark in closing arguments constitutes improper bolstering. We agree that the police testimony regarding Meadors' statement that he would never forget defendant's face does not constitute a prior statement of identification and was inadmissible. However, we do not find that it rises to the level of prejudicial error. In addition, with respect to the State's comments in closing arguments, the judge properly tempered any prejudice when he instructed the jury that closing arguments were not evidence. People v. Lasley, 158 Ill. App. 3d 614 (1987).

C. PROSECUTOR'S CLOSING ARGUMENT

Defendant's next contention is that the prosecutor made improper and inflammatory remarks in closing argument. Specifically, defendant points to the prosecutor's statements that Meadors was a credible witness, that defendant was a "teacher" of "his ways of the world," that Meadors was their "ace in the hole," that defendant was a "Latin Killer," and that defendant was smiling when he shot Douglas.

We must decide whether the complained-of remarks rose to the level of depriving defendant of a fundamentally fair trial while bearing in mind the following. When a court reviews allegations of prosecutorial misconduct, the closing arguments of both the State and the defendant must be examined in their entirety and the comments complained of must be placed in their proper context. People v. Cisewski, 118 Ill.2d 163, 175-76 (1987). It must also be remembered that prosecutors are afforded wide latitude in closing argument. People v. Williams, 147 Ill. 2d 173, 231 (1991). The prosecutor has a right to comment upon the evidence presented and make any reasonable inferences arising therefrom, even if those inferences are unfavorable to defendant. People v. Hoffstetter, 203 Ill. App. 3d 755, 778 (1990). And if the trial court instructs the jury that closing arguments are not evidence, any error resulting from the prosecutor's remarks is considered cured. Camden, 219 Ill. App.3d at 141. Reversal is not warranted unless the argument as a whole is so prejudicial to the defendant so as to deprive him of a fair trial. People v. Morgan, 112 Ill. 2d 111, 132 (1986). The trial court's determination regarding the propriety of an argument will not be overturned absent a clear abuse of discretion. People v. Stuckey, 231 Ill. App. 3d 550, 563 (1992).

The following are the complained-of comments made by the prosecutor during closing argument:

"The day, that night, at 3:30 in the morning, violence, crime and gangs met up with honesty, hard work, and courage. Vernon Meadors.

Whatever you thought of Mr. Meadors, folks, that man is a hero. He's a citizen beyond all citizens, and most of all, he is a pure, pure victim in this case. And his intimidation and his fear and his gang and his kingism lasted for a couple of hours, because Vernon Meadors was scared for his life and scared for his family, but the man's character came through. His conscience came through in this case.

* * *

[Vernon Meadors] is the most credible, straightforward, honest witness, you will ever hear from. The sacrifices that that man made that night, and the rest of his life. He had to get police protection. His wife comes home with his two kids. They had to get relocated, leave his home because of this guy and his buddies.

* * *

[Meadors] hesitates, initially, to pick this man out, but his conscience and character, conscience and his character came through. And out of hundreds, hundreds of photos in an album, he picks out Jose Cruz.

* * *

And isn't it fitting that a gang member shooter like this guy, isn't it fitting that the person who

brings him to justice is a citizen like Vernon Meadors? Who's got the courage to come forward and tell you, in the same room, of an executioner, a gang member? To tell you what happened there? Isn't it fitting for guys like Jose Cruz to be brought to justice by a man of that character? Vernon Meadors, you are never going to meet a man like that again. You will never see a guy like that. That man's duty that he fulfilled here will never be equalled."

In rebuttal, the prosecutor asserted the following:

"[Y]ou have heard from the evidence that Jose Cruz, he's not only a killer, but I'll tell you what else he is. He's a teacher. That's what Jose Cruz is about. He's a teacher. He's the guy that [the gang expert] described as 'cradle to the grave.'

DEFENSE COUNSEL COHN: Objection again. It's irrelevant.

THE COURT: Overruled.

ASSISTANT STATE'S ATTORNEY BYRNE:

He's a cradle-to-the-grave gang member, and he's teaching other people his ways of the world."

He further stated:

"There's only one way to beat a king and that's with an ace, and that's what Vernon Meadors is. He's our ace in the hole. He's not lying, he's not mistaken. [Jose Cruz is] a Latin King. He's a Latin Killer."

We find that these comments, while unnecessarily repetitious, did not deprive defendant of a fair trial. We agree that is highly improper for a prosecutor to vouch for a witness' credibility (see People v. Fields, 258 Ill. App. 3d 912 (1994)) or to give his personal opinion of the veracity of witnesses. People v. Schaefer, 217 Ill. App. 3d 666 (1991). However, that did not occur in the instant case. The prosecutor stated that Meadors was "the most credible, straightforward, honest witness, you will ever hear from" and that his "conscience and his character came through." Further, he stated "[y]ou are never going to meet a man like that again" and referred to him as their "ace in the hole." These comments were all properly based upon the evidence at trial and Meadors' presence on the witness stand. Meadors was at a bus stop early that morning on his way to work. He was supporting a family. He was afraid to testify but did so anyway. There was evidence that Meadors made a big sacrifice in coming forward and certainly that reflects upon his character.

Defendant directs our attention to People v. Valdery, 65 Ill. App. 3d 375, 378 (1978), in which the prosecutor argued:

> "[T]he equality [sic] and integrity of the three witnesses *** have never been higher. I have never had contact with people who have come forward and testified as witnesses who have had the level of integrity and character of those people and I'm particularly impressed."

The appellate court held that these comments were highly prejudicial because the prosecutor placed the integrity of the State's Attorney's Office behind the credibility of the State's witnesses. Valdery, 65 Ill. App. 3d at 378. That is not what occurred in the instant case. The

prosecutor's comments were based upon Meadors' testimony and the particular facts of the incident. Moreover, the prosecutor never referred to his official title or the powers of his office.

Second, defendant argues that it was highly improper for the prosecutor to refer to defendant as a "Latin Killer" and a "teacher" of "his ways of the world." We find, however, that these remarks were based upon the evidence. As the State points out, when defendant was arrested, he was carrying the Latin King Constitution in his wallet. Defendant was also carrying a photograph of himself holding a baby while making the Latin King hand sign. In addition, it was defendant who questioned the victim about his gang status. Moreover, defendant told police that he would do whatever it took to get a rival gang member of out his gang's territory. Thus, it is not an unreasonable inference that defendant was a "teacher" of "his ways of the world." Also, the prosecutor's reference to defendant as a "Latin Killer" was not a derogatory racial comment but rather a play on the gang's name "Latin Kings."

Finally, we agree with defendant that there was no basis in the evidence that any of the shooters, including defendant, were smiling as they shot at Douglas. This argument violated the well-established principle that it is improper for the prosecutor to argue assumptions or facts without basis in the evidence or to advance what amounts to his own unsworn testimony. People v. Whitlow, 89 Ill. 2d 322 (1982). However, any error committed by the prosecutor in closing arguments was cured when the trial court instructed the jury that closing arguments are not evidence. People v. Lasley, 158 Ill. App. 3d 614 (1987). Moreover, in view of the entire record and evidence of defendant's guilt, we cannot say that the improper comment either constituted a material factor in defendant's

convictions or otherwise prevented him from receiving a fair trial so as to require reversal.

Accordingly, we find that the prosecutor's closing argument did not prejudice defendant.

D. VICTIM IMPACT STATEMENTS

Defendant's final argument is that the trial court improperly considered three victim impact statements, one written by the decedent's grandmother, in violation of the Rights of Crime Victims and Witnesses Act. 725 ILCS 120/1-9 (West 1994).

A victim impact statement is a statement pursuant to a statutory right, prepared by a "crime victim" together with the State's Attorney's Office, explaining the impact that the defendant's conduct had upon the victim. 725 ILCS 120/6 (West 1994). This statement is to be considered as one factor among many taken into consideration by the trier of fact in sentencing defendant. 725 ILCS 120/6 (West 1994). The definition of a "crime victim" includes "a single representative who may be the spouse, parent, child or sibling of a person killed as the result of a violent crime perpetrated against the person killed." 725 ILCS 120/3(a)(West 1994).

In the case at bar, the trial court received and considered three victim impact statements, one of which was written by decedent's grandmother who does not fall within the statutory definition. Nevertheless, the Rights of Crime Victims and Witnesses Act specifically states: "Nothing in this Act shall create a basis for vacating a conviction or a ground for appellate relief in any criminal case." 725 ILCS 120/9 (West 1994). As this court has previously recognized:

"[T]he title of the Act suggests that [the Act] was

> intended as a shield to protect the rights of victims and witnesses forced, through no fault of their own, to participate in the criminal justice system. The language quoted above, delineating the scope of the Act, expressly reveals that its provisions may not be used as a sword by criminal defendants seeking appellate relief." People v. Benford, 295 Ill. App. 3d 695 (1998).

We find that defendant cannot rely upon the Act as a basis for having his sentence vacated and, therefore, reject his contention.

We also find that defendant failed to establish that he was prejudiced by the consideration of more than one statement, therefore, defense counsel's failure to object does not constitute ineffective assistance of counsel.

Conclusion

For the aforementioned reasons, the decision of the circuit court of Cook County is hereby affirmed.

AFFIRMED.

BUCKLEY, P.J., with O'BRIEN and GALLAGHER, JJ., concurring.