

¶ 3

BACKGROUND

¶ 4 A grand jury indicted defendant on two counts of aggravated battery for attacking a Chicago Transit Authority (CTA) bus driver (720 ILCS 5/12-3.05(d)(7) (West 2014)) . The record shows that, on June 7, 2014, defendant initiated an altercation with CTA employee Charles Wynn after uttering racial slurs at Wynn, striking the windows and door of Wynn’s bus, and then attempting to board the bus. Bus passengers separated defendant and Wynn, before pushing defendant off the bus. When defendant attempted to re-board, there was a second altercation, after which defendant was again removed from the bus.

¶ 5 At defense counsel’s request, the circuit court ordered an evaluation of defendant’s fitness to stand trial. The reporting psychologist concluded that defendant was fit to stand trial, stating defendant “is not suffering from a mental condition that would compromise his ability to understand the nature of the proceedings against him or assist in his defense.” A Forensic Clinical Services report also indicated that defendant’s sister had reported defendant had been diagnosed with schizophrenia and hospitalized several times for psychiatric treatment.

¶ 6 After meeting with defendant, defense counsel requested another evaluation of defendant’s fitness to stand trial, with or without medication, and for an evaluation of defendant’s sanity at the time of the offense. The court granted the request and the psychiatrist concluded defendant was fit to stand trial and he was legally sane at the time of the offense.

¶ 7 At trial, the State played a surveillance video recorded by the surveillance camera located above Wynn’s head. The video has no accompanying audio track, so we describe the actions and movements of defendant, Wynn, passenger Masciopinto, and other passengers without noting what they said in the table below.

Time Stamp on Video	Event(s) Occurring
0:07	Wynn pulls his bus away from the curb, driving west on Chicago Avenue. Wynn passes approximately four newspaper racks and then stops the bus with the door in front of a garbage can.
0:10	Defendant walks into frame and is visible through the front passenger window.
0:11	Wynn begins moving the bus forward and toward the curb, simultaneously pointing to a clear space past the garbage can.
0:12	Defendant begins tapping on the glass of the front passenger window with an open palm.
0:14	Wynn finishes pulling forward and stops the bus. It appears he moved the bus no more than ten feet. Wynn opens the door.
0:17	Defendant steps onto the bus. As he steps onto the bus, defendant makes a questioning gesture with both hands, palms up. At this time, Wynn leans forward and points at defendant.
0:19	Wynn sits back in his chair and defendant goes to scan his fare card. Almost immediately thereafter, Wynn leans forward in his chair to cover the fare card reader with his right hand.
0:20	Wynn moves his right hand off the scanner and waves it, palm out, toward defendant. At this time, defendant drops his hands to his sides, then gestures his left hand, palm up, toward the back of the bus.

<p>0:22</p>	<p>Defendant takes a step toward Wynn with his right leg and gestures his left hand toward himself. At this time, Wynn points with his right hand past defendant and through the open bus door toward the curb.</p>
<p>0:24</p>	<p>Wynn points back toward the garbage can where the bus was stopped before Wynn pulled it forward to let defendant board.</p>
<p>0:25</p>	<p>Defendant gestures behind him toward the curb.</p>
<p>0:26</p>	<p>Both Wynn and defendant point toward the back of the bus. Although the video lacks an audio track, defendant’s body language signals escalating volume—he leans his head toward Wynn and his gestures become increasingly emphatic.</p>
<p>0:28</p>	<p>Defendant drops his left hand to his side and Wynn points toward defendant’s chest. At this time, Masciopinto walks into frame, approaches the bus door, and waits outside.</p>
<p>0:29</p>	<p>Defendant goes to swipe his fare card again and Wynn moves to block him.</p>
<p>0:30</p>	<p>Wynn leans forward out of his seat and defendant begins walking past Wynn toward the back of the bus. Wynn turns his shoulder as defendant passes such that he continues facing defendant.</p>
<p>0:31</p>	<p>Wynn reaches with his right hand toward defendant’s right arm. Due to the camera angle, it is unclear exactly how Wynn touched defendant’s arm. However, it appears Wynn lightly grabbed Defendant’s upper arm, with his fingers between defendant’s upper</p>

	arm and torso and his thumb on the outside of defendant's upper arm. At this time, defendant and Wynn appear to be no more than three feet apart.
0:32	Immediately after Wynn touches him, defendant punches Wynn. With his left fist, defendant strikes the right side of Wynn's head then immediately moves in to grapple him.
0:33	Defendant has Wynn in a headlock with his left arm and the two are wrestling.
0:36	Masciopinto has moved onto the bus and begins separating defendant from Wynn.
0:37	Defendant still has Wynn in a headlock, Masciopinto has defendant in a headlock, and Wynn has his arm around defendant's waist. The three struggle toward the bus door and,
0:39	Wynn and Masciopinto force defendant outside then follow him out. By this time, other passengers have moved toward the front of the bus.
0:42	Wynn gets back on the bus while defendant and Masciopinto continue wrestling.
0:46	It appears defendant knocked Masciopinto down.
0:51	Another passenger leans out the bus door and begins talking to defendant. While defendant is looking at this other passenger, Masciopinto rushes forward and pushes defendant hard, knocking him down. Defendant then gets to his feet as passengers board the

	bus.
1:08	Defendant begins moving toward the bus door and appears to be yelling at Wynn and Masciopinto, who are standing together on the bus.
1:10	Defendant points toward the curb and continues yelling. Another passenger pushes defendant away as Masciopinto appears to be speaking to defendant. Defendant continues to pace and stand outside the bus while yelling at Wynn and gesturing.
1:35	Wynn gets back in the driver's seat and passengers continue re-boarding.
1:38	Defendant gets back on the bus. Wynn gets up out of his seat as defendant continues to yell at him.
1:41	Wynn begins punching defendant about the head with both fists.
1:44	Masciopinto goes between Wynn and defendant and pushes defendant off the bus. Masciopinto then places his forearms on either side of the bus door to bar defendant from entering the bus. While standing outside, defendant continues yelling at Masciopinto. It appears Masciopinto is yelling back at defendant. Defendant begins walking away and the passengers shuffle toward their seats.
1:58,	Wynn starts closing the bus doors. Before the doors close, Masciopinto lunges forward and leans out of the bus. He gestures toward—presumably—defendant (who is no longer visible in the video) and other passengers pull him back onto the bus.

2:16	The door opens again to admit another passenger.
2:41	The door closes and passengers begin returning to their seats. Wynn drives away.

¶ 9 Wynn testified he was driving CTA bus route 66 on Chicago Avenue on June 7, 2014. Wynn was wearing his CTA uniform, had a CTA patch on his shirt, and he wore a CTA badge. At the time of the offense, Wynn was not using the protective divider—designed to separate a driver from the passengers—that the CTA required its bus drivers to use. Wynn said he did not use the divider because it created a glare that made gauging the distance between the bus and the curb difficult.

¶ 10 At about 7:45 p.m. on June 7, 2014, Wynn was driving his bus westbound when he made a stop at the Blue Line “L” terminal at the intersection of Chicago, Milwaukee, and Ogden Avenues. After passengers exited and entered the bus, Wynn closed the bus doors and pulled away from the curb. Defendant “banged” on the back window of the bus. Wynn stopped the bus and looked at defendant. Wynn had already pulled the bus more than 18 inches away from the curb, which pursuant to CTA requirements was too far to permit defendant to board. Wynn pointed to the curb and told defendant he was coming back over to the curb. As Wynn angled the bus back toward the curb, defendant hit the bus again.

¶ 11 When Wynn returned to the curb, he opened the bus doors for defendant to board. Wynn explained to defendant that he was not going to leave him but that he needed to get closer to the curb before defendant could board. As defendant got on the bus, he yelled racial slurs at Wynn. Defendant swiped his fare card, but the card reader indicated to Wynn the card did not register. Before defendant could try again, Wynn covered the fare card reader with his hands to prevent defendant from swiping his fare card and to get his attention. He told defendant that, having

come from Navy Pier, the bus had children on board and if defendant was going to use such language, he did not have to ride this bus and there was another bus a couple blocks behind his that defendant could board.

¶ 12 Wynn believed defendant was listening because defendant was watching Wynn. Defendant then began walking past Wynn toward the back of the bus. Wynn reached out to tap defendant to get his attention and said, “Excuse me, sir. Can you tap your card on the—?” Before Wynn could finish the request, defendant hit him with a closed fist across the right side of his head. Wynn said defendant’s initial punch dazed him and defendant punched him at least two more times after that. According to Wynn, he grabbed and began wrestling with defendant to protect his head. Wynn was pulled off the bus, and a passenger tried to grab defendant and separate them.

¶ 13 Wynn got back on the bus. At that point, defendant was still off the bus with the passengers who had broken up defendant and Wynn. Defendant was yelling curse words, but Wynn could not make out exactly what he was saying because he felt dizzy. Wynn pressed the bus’s panic button to notify the CTA control center that he needed police assistance. Defendant then attempted to re-board the bus, but one of the passengers pushed defendant off and told him he could not ride this bus.

¶ 14 The passengers who had gotten off the bus to break up the altercation got back on the bus. Defendant then got back on the bus, yelling curse words and pointing at Wynn. Defendant approached Wynn, and Wynn started swinging at defendant because he did not want defendant to start punching him again. Wynn did not know whether he hit defendant or not, but the passengers pushed defendant off the bus again.

¶ 15 Wynn closed the bus doors and drove away. Wynn estimated he drove two stops away in the interest of safety before he got off the bus and used his cell phone to call the CTA controller to tell them what was happening and ask them to call the police. A few minutes later, police officers responded to Wynn's location. They brought defendant with them. Wynn recognized defendant as the person who punched him and told the police officers the same.

¶ 16 A paramedic responded to the scene and examined Wynn. Wynn was taken to Northwestern Memorial Hospital, where he was treated by physicians and discharged early the next morning.

¶ 17 Wynn said the bus he was driving had around five cameras recording the inside of the passenger compartment. One of the cameras, positioned immediately above Wynn's head and pointed toward the front door, recorded passengers boarding and exiting the bus through that door. Wynn testified the footage from this overhead camera was transmitted to the Chicago Police Department.

¶ 18 The prosecution played this video for the jury, and Wynn described the events depicted on screen. The prosecution also played video from another camera, which was located toward the rear of the passenger compartment and faced toward the front of the bus.

¶ 19 Stephanie Picarra testified she was riding CTA bus route 66 on June 7, 2014, at around 7:45 p.m. After Wynn moved the bus back to the curb to let defendant on the bus, Picarra saw defendant get on the bus. Defendant started aggressively yelling curse words and racial slurs at Wynn. Picarra saw Wynn put his hand in front of the fare card reader. Defendant moved toward the back of the bus, and Picarra saw Wynn tap defendant on the shoulder. Defendant then turned around and punched Wynn quickly. Picarra saw defendant continue to punch Wynn as passengers moved in to separate the two.

¶ 20 The passengers got defendant and Wynn off of the bus. Picarra then saw Wynn get back on the bus while passengers continued to scuffle with defendant. After the passengers got back on the bus, defendant tried to re-board. The passengers blocked defendant, but defendant tried to get back on the bus a second time. Picarra saw Wynn and defendant scuffle again, then defendant was off the bus again. Wynn closed the bus doors and drove away.

¶ 21 Raymond Masciopinto testified that he was approaching Wynn's bus when it stopped at the intersection of Chicago, Milwaukee, and Ogden at around 7:45 p.m. on June 7, 2014. As Masciopinto approached, the bus doors were open, and he could see inside. Masciopinto testified that he was on his phone when he heard defendant scream a racial slur. Defendant's back was to Masciopinto. Masciopinto saw Wynn reach for the fare card reader and defendant move toward the back of the bus. Wynn then reached back and tapped defendant on the shoulder. According to Masciopinto, Wynn never grabbed or held defendant.

¶ 22 According to Masciopinto, after Wynn tapped defendant's shoulder, defendant punched the right side of Wynn's head at least once. After seeing this, Masciopinto got on the bus and started wrestling with defendant, trying to get him off the bus. Masciopinto put defendant in a headlock and pushed him out of the bus. Wynn fell out of the bus with Masciopinto and defendant.

¶ 23 Outside the bus, Masciopinto and defendant continued to wrestle. Masciopinto tried to stand, but defendant flipped him over and then screamed and cursed at him. Masciopinto got up and pushed defendant, who fell back. By this time, Wynn had returned to the bus. Masciopinto got back on the bus and paid his fare. Masciopinto testified that he did not see defendant again until Wynn swung at him. Masciopinto said defendant looked very angry and was screaming loudly.

¶ 24 After Wynn hit defendant, Masciopinto and other passengers helped force defendant off the bus. Masciopinto barred the door with his arms and told defendant, “Don’t come back in.” Defendant ignored Masciopinto and continued screaming at Wynn instead. Wynn eventually closed the bus doors and pulled away. He drove a couple of blocks before stopping.

¶ 25 The prosecution played the bus surveillance video for the jury again, this time with Masciopinto describing what was on screen. Masciopinto identified himself in the video. Watching the video, Masciopinto described defendant calling him racial slurs while they were wrestling outside the bus. Masciopinto also described getting angry at defendant after telling him he could not get back on the bus. Other passengers pulled Masciopinto back onto the bus.

¶ 26 After Masciopinto was dismissed, the State rested. Defense counsel moved for a directed verdict, which the trial court denied.

¶ 27 Defendant testified in his own defense. Defendant said he was waiting for the bus near the Blue Line stop at Chicago and Milwaukee when a bus showed up and “stopped for a moment.” Defendant recounted that Wynn signaled him to go up ahead, but defendant “didn’t want to go in between the obstacle because [he] would get dirty.” After Wynn signaled him to go ahead, defendant went around the obstacle [a train tunnel] and thought Wynn would stop there. Instead of letting defendant on where Wynn had stopped, defendant said that Wynn was “horseplaying around.”

¶ 28 Defendant testified that, when Wynn opened the bus door to let him on, “I went off on him.” Defendant tried to tell Wynn that defendant was distracted and to tell Wynn his story. Defendant noted, however, that Wynn kept “blocking [him] off,” “waving [him] off,” and “saying, ‘[I]f you don’t get on the bus or you’re not going to get on the bus, because I’m going to take off. I’m going to close the door.’ ”

¶ 29 Defendant then got on the bus. Defendant explained that he injured his knee and cut his foot before getting on the bus and was “kind of pissed off at that.” Defendant thought Wynn had something to do with these injuries because “he was stopping the bus and horseplaying the bus.”

¶ 30 Defendant testified that, when he got on the bus, he was mad, but that he only said racial slurs sarcastically and never said anything hateful toward Wynn. Defendant testified Wynn told him he was not going to get on the bus. Defendant responded, “I’m getting on the bus. You call the police. *** I’m going to sit down.” Defendant then testified, “I don’t know what I said.”

¶ 31 Defendant then stated that Wynn “grabbed” him when he tried to sit down. Defendant felt that Wynn was hurting him, so he swung at Wynn. Wynn or someone else then pushed or “grabbed [him] off” of the bus. Defendant acknowledged that the CTA video showed passengers pushing defendant off the bus, but defendant testified he thought it was Wynn pushing him.

¶ 32 Defendant testified inconsistently about whether he remembered trying to get back on the bus. Defendant remembered telling Wynn that he was going to get on the bus and that defendant would be calling the police. Defendant, however, did not remember being taken off the bus. Nonetheless, defendant admitted that the CTA video showed him being removed from the bus a second time and with Wynn swinging at him.

¶ 33 Defendant stated that, when Wynn touched him the first time, “[Wynn] threw his weight on [him].” According to defendant, Wynn “was showing threatening anger toward [him].” Defendant tried to “back off” by telling Wynn, “You came up, you stopped the bus. What the hell is wrong with you? I was telling him that he almost hit me and I hurt my knee. But I never said any swear words.” Defendant believed that Wynn was mad when he grabbed defendant.

¶ 34 Defendant testified that, when Wynn grabbed him, defendant was upset because he was “already hurt and exhausted.” Defendant added, “I was mad, so I took a swing at him. I felt that

I needed to go in self-defense. It was violence toward me. I was going to do violence toward—back with him back, self-defense.”

¶ 35 On cross-examination, defendant stated that Wynn stopped the bus and started moving “about four times” before he let defendant on. Defendant acknowledged the CTA video does not show Wynn repeatedly stopping and going, but defendant said the video did not “show the whole thing.”

¶ 36 Defendant testified that he felt threatened when Wynn grabbed his arm. Defendant reiterated that Wynn grabbed his arm and did not merely touch his shoulder. Defendant thought Wynn grabbed his forearm with both hands and threw his weight toward defendant. Defendant agreed that, when Wynn touched his arm, he was walking toward the back of the bus after Wynn told him he did not need to ride this bus.

¶ 37 Defendant explained that he started swinging immediately because he thought Wynn was going to hit him. Defendant testified, “[Wynn] fell on my arm or he grabbed my arm. He pulled me toward down, but he didn’t yank me. I think his weight—it looked like he was going to swing at me and that’s when I swung at him.”

¶ 38 Defendant denied yelling at Wynn when he got on the bus a second time. Although defendant believed that he was engaged in an altercation with Wynn outside the bus, after viewing the CTA video, defendant conceded that he was wrestling with another passenger. Defendant also testified, “[Wynn] was hitting me on the machine when I was swiping the card” and he “was reckless[ly] driving[,] and he grabbed me[,] and he was threatening me.”

¶ 39 On redirect examination, defendant admitted that he did not recall some of the events from June 7, 2014. Defendant’s attorney asked defendant, “Do you have any mental health issues?” The State objected to this question and the circuit court sustained the State’s objection.

Defendant testified that he thought the second part of the video looked “phoney,” “fake,” and “bogus” because “it looked like [he] wasn’t there at all.” After defendant’s testimony, the defense rested.

¶ 40 In its closing argument, the State argued:

“[T]he defendant doesn’t get any more or any less consideration [than the State’s three witnesses]. So consider the way that the defendant testified when he claims to you that he felt threatened by what Mr. Wynn did. First of all, the defendant flatout [*sic*] tells you, he can’t really remember a lot of what happened. Actually, his words when he first began testifying were that he could remember a little bit more once he viewed the video today. But he couldn’t provide a lot of details on a lot of different things. Then what he did tell you, some things just didn’t make sense. He couldn’t tell you specifically about certain actions or certain words which he was claiming that Mr. Wynn had said to him when he was getting on the bus. And he was waffling back and forth as to whether or not he was pissed off. And think about that, ladies and gentlemen, because he doesn’t want to make it sound as bad as it really was. But you know because not only could you see from the video, but again, common sense. ***

The defendant says that he was threatened or felt threatened by the victim because he grabbed him in the arm. But then even as my partner started to ask him more and more questions about, well,

did he grab your arm or didn't he? Well, I think he did. I believe he did, but I could be wrong."

The State further argued that defendant did not feel threatened; instead, it claimed that defendant made those statements "to try to justify what he did that day." The State summarized that "based on all the testimony and the evidence and even the defendant's own statements up there, there was no justification," for defendant's acts, and it asked the jury for a guilty verdict.

¶ 41 Defendant's attorney argued as follows:

"On June 7, 2014, Mr. Lopez did what he reasonably believed was [*sic*] and used self-defense. Now, he testified and you heard his testimony. And some things he didn't remember. Some things didn't make sense. He was illogical, disorganized. Use your common sense as to why he is the way he is and what he said.

* * *

[T]he instruction which you'll have is what [*sic*] [defendant] reasonably believed that such conduct was necessary to defend himself against the imminent use or unlawful use of force.

So you heard the testimony of Cezar Lopez and he told you what he felt and why he did what he did. You can judge his testimony, what he said, and what he didn't say, and what he remembers, and what he didn't remember. Obviously, you can see the video."

¶ 42 After closing arguments, the circuit court delivered its instructions to the jury. Among other things, the circuit court instructed as follows:

“In considering the testimony of any witness, you may take into account his ability and opportunity to observe, his memory, his manner while testifying, any interest, bias, or prejudice he may have, and the reasonableness of his testimony considered in light of all the evidence in the case.

You should judge the testimony of the defendant in the same manner as you judge the testimony of any other witness.”

¶ 43 The circuit court also delivered Illinois Pattern Jury Instructions, Criminal, No. 1.03 (4th ed. 2000):

“Opening statements are made by the attorneys to acquaint you with the facts they expect to prove. Closing arguments are made by the attorneys to discuss the facts and circumstances in the case and should be confined to the evidence and to reasonable inferences to be drawn from the evidence.

Neither opening statement[s] nor closing arguments are evidence. Any statement or argument made by the attorneys which is not based on the evidence should be disregarded.”

¶ 44 The jury returned a guilty verdict on defendant’s aggravated battery charge. The circuit court subsequently sentenced defendant to a term of three years in the Illinois Department of Corrections. This appeal followed.

¶ 45

ANALYSIS

¶ 46 Defendant contends that he is entitled to a new trial because the State’s closing argument about his confusion and poor verbal memory indicated that he was trying to “fabricat[e] his testimony that he felt threatened before striking the bus driver.” Defendant argues that, as noted in the first Forensic Clinical Services report, his poor recollection resulted from “mental health issues,” including a purported prior diagnosis of schizophrenia that defendant’s sister reported. Defendant asserts that this comment rose to the level of prosecutorial misconduct that prejudiced defendant and contributed to his conviction. Defendant acknowledges that he did not preserve this claim of error by objecting at trial and by raising it in a posttrial motion. Defendant, however, asks that we review this claim as plain error.

¶ 47 To preserve an issue for appeal, a defendant must object at trial and raise the issue in his posttrial motion. The failure to do so results in forfeiture. *People v. Belknap*, 2014 IL 117094, ¶ 47. Forfeiture is important because a timely objection not only allows a trial court to promptly correct error, but also prevents a party from strategically obtaining a reversal by their failure to act. *People v. Roberts*, 75 Ill. 2d 1, 11 (1979).

¶ 48 The plain-error doctrine is codified in Illinois Supreme Court Rule 615(a), which states, “[p]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court.” Ill. S. Ct. R. 615(a). Plain errors may be noticed if either (1) a “clear or obvious error occurred” and “the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error,” or (2) the error is “so serious that it affected the fairness of the defendant’s trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence.” *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). A defendant raising a plain-

error argument bears the burden of persuasion. *People v. Thompson*, 238 Ill. 2d 598, 613 (2010). “The first step of plain-error review is determining whether any error occurred.” *Id.*; see also *People v. Wilson*, 2017 IL App (1st) 143183, ¶ 25 (“Of course, there can be no plain error if there was no error at all.”).

¶ 49 The State is given considerable latitude in making closing arguments. *People v. Hall*, 194 Ill. 2d 305, 346 (2000). Furthermore, we must review the arguments of both the State and the defense in their entirety, with the challenged portions placed in their proper context. *People v. Cisewski*, 118 Ill. 2d 163, 175-76 (1987). A significant factor in determining the impact of an improper comment on a jury verdict is whether “the comments were brief and isolated in the context of lengthy closing arguments.” *People v. Runge*, 234 Ill. 2d 68, 142 (2009). In addition, we must presume, absent a showing to the contrary, that the jury followed the trial judge’s instructions in reaching a verdict. *People v. Simms*, 192 Ill. 2d 348, 373 (2000).

¶ 50 While prosecutors have a great deal of latitude during closing argument, they must refrain from making improper prejudicial statements or comments. *People v. Hudson*, 157 Ill. 2d 401, 441 (1993). “It is blatantly improper to suggest that the defense is fabricated, as such accusations serve no purpose other than to prejudice the jury.” *People v. Slabaugh*, 323 Ill. App. 3d 723, 729 (2001). Nonetheless, even if a prosecutor’s closing remarks are improper, “they do not constitute reversible error unless they result in substantial prejudice to the defendant such that absent those remarks the verdict would have been different.” *People v. Hudson*, 157 Ill. 2d 401, 441 (1993). Defendant, citing *People v. Walker*, 308 Ill. App. 3d 435, 438 (1999), and *People v. Hall*, 198 Ill. 2d 173, 17 (2001), argues that we should review this issue *de novo*. The State argues in favor of an abuse of discretion standard. See *People v. Blue*, 189 Ill. 2d 99, 128 (2000). While the issue of which standard of review should apply is unsettled (see *People v.*

Maldonado, 402 Ill. App. 3d 411, 421 (2010)), we need not resolve this apparent conflict because under either standard, defendant’s claim fails.

¶ 51 During the State’s closing argument, the prosecutor challenged defendant’s credibility and, in a solitary sentence, suggested that defendant was intentionally misstating or misremembering details to make events seem more favorable to him. Defendant argues that the State, knowing it had successfully prevented¹ the defense from introducing evidence of an innocent explanation for defendant’s memory lapses and scattered testimony—*i.e.*, a history of schizophrenia as reported by defendant’s sister—the State improperly argued that defendant was lying. A statement by a prosecutor during closing argument that a defendant is lying is proper if the statement is based on the evidence. *People v. Tiller*, 94 Ill. 2d 303, 319 (1982) (citing *People v. Weaver*, 18 Ill. 2d 108, 115 (1959) and *People v. Weathers*, 62 Ill. 2d 114, 120 (1975)); see also *People v. Smith*, 2014 IL App (1st) 103436, ¶ 69 (it is not improper to call the defendant a “liar” if conflicts in the evidence make such an assertion a fair inference); *People v. Rivera*, 262 Ill. App. 3d 16, 27 (1994).

¶ 52 Based on the stark differences between defendant’s testimony and the consistent testimony of Wynn, Picarra, and Masciopinto (as well as our own review of the CTA video), we find there were clear conflicts between the defendant’s testimony and the State’s evidence. The only evidence suggesting a clinical diagnosis of mental illness was anecdotally reported by defendant’s sister, and the jury did not hear testimony or receive evidence related to defendant’s mental health.² Therefore, considering this conflict, it was eminently fair for the State to argue

¹ We note that defendant’s attorney broached defendant’s history of mental illness for the first time in her redirect examination. The State, objecting to this question, did not articulate a basis for its objection before the circuit court sustained it. In any case, the objection was properly sustained because the question was beyond the scope of redirect examination.

² See n.1, *supra*.

that the jury should infer that defendant was intentionally misleading when he (1) made statements that were wholly unsupported by both the CTA video and the State's witnesses and (2) claimed he could not recall or describe the events of June 7, 2014. See *Smith*, 2014 IL App (1st) 103436, ¶ 69. Because the State's arguments were based on a reasonable inference from the evidence, they were proper.

¶ 53 Additionally, the State, in its argument, was not suggesting defendant's claim of self-defense was fabricated. Instead, the State argued that (1) defendant's confused and conflicting testimony could not support his claim of self-defense considering the State's testimonial and video evidence and (2) defendant was intentionally misrepresenting the evidence to make it less damning. Because arguing about the merits of a defense is distinct from arguing that the claim itself is fabricated, the State's argument in this case was not improper. See *Slabaugh*, 323 Ill. App. 3d at 729 (finding a prosecutor's closing argument to be improper where the prosecutor suggested the defense witnesses "concocted a defense"). For this additional reason, the State's argument in this case was properly within the wide latitude given the State in closing arguments. See *Hall*, 194 Ill. 2d at 346.

¶ 54 Moreover, even if the State's closing argument was improper, the State did not commit reversible error because its argument did not result in such "substantial prejudice to the defendant such that absent these remarks the verdict would have been different." *Hudson*, 157 Ill. 2d at 441. The State's argument did not prejudice defendant because the State's evidence overwhelmingly rebutted defendant's claim of self-defense. Considering that evidence, we find that the outcome of the trial would not have been different even if the State had not made its purportedly improper remarks. Moreover, the State's allegedly improper statement challenging defendant's credibility consisted of—at most—25 lines in a 12-page closing argument. The

State spent only one sentence suggesting that defendant intentionally miscast the evidence to make it appear more favorable to him. Because these comments were brief and isolated in the context of the State's argument, their effect did not rise to the level of prejudice such that the outcome of defendant's trial would have been different had the State not made them. See *Runge*, 192 Ill. 2d at 142. Defendant's claim of error is therefore without merit, and thus forfeited. See *Wilson*, 2017 IL App (1st) 143183, ¶ 25 (holding that, if there is no error, there is no plain error).

¶ 55 Finally, even assuming, *arguendo*, that the State committed error by making an improper closing argument, defendant's claim would fail under the plain error doctrine. To begin, the first prong of the plain error doctrine does not apply because the evidence was not close. Wynn, Picarra, and Masciopinto testified consistently that defendant initiated the altercation by striking Wynn after Wynn reached back to touch defendant's shoulder. The CTA video corroborates their statements and refutes defendant's rendition of events. Indeed, the circuit court was correct in characterizing the evidence against defendant as "overwhelming" when it denied his posttrial motion. Thus, the first prong of the plain error doctrine is inapplicable.

¶ 56 Furthermore, the second prong of the plain error doctrine does not arise here because we do not consider the alleged errors in this case to be so serious that they "affected the fairness of the defendant's trial and challenged the integrity of the judicial process." *People v. Herron*, 215 Ill. 2d 167, 187 (2005). The trial court instructed the jury, *inter alia*: (1) to base its verdict only on the evidence (and reasonable inferences therefrom); and (2) that opening and closing arguments are not evidence and they are entitled to disregard any argument which is not based on the evidence. Defendant provides nothing to rebut the presumption that the jury followed the judge's instructions. See *People v. Simms*, 192 Ill. 2d 348, 373 (2000). Because the circuit court properly instructed the jury and defendant has not shown that the jury disregarded the court's

instructions such that the fairness of his trial was compromised, the second prong of the plain error doctrine is inapplicable. See *People v. Glasper*, 234 Ill. 2d 173, 215 (2009) (holding an improper closing argument was not “so serious that the second prong of the plain-error test is satisfied”). Accordingly, even assuming plain-error review was warranted, defendant’s claim must be rejected.

¶ 57

CONCLUSION

¶ 58 Defendant’s claim of error is forfeited, and defendant has not offered compelling reason why we should review his claim for plain error. In any case, the State’s closing argument did not deny defendant a fair trial because it did not result in substantial prejudice such that, absent such remark, the verdict would have been different.

¶ 59 Affirmed.