2018 IL App (2d) 160078-U
No. 2-16-0078
Order filed June 15, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. JASON C. ANAYA-WHITAKER, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Lake County. No. 14-CF-754 Honorable James K. Booras, Judge, Presiding.

PRESIDING JUSTICE HUDSON delivered the judgment of the court.
Justices Schostok and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court abused its discretion in admitting gang-related and other-crimes evidence, which was irrelevant and could not be deemed harmless; thus, we reversed defendant's conviction and remanded for a new trial.

¶ 2 Defendant, Jason C. Anaya-Whitaker, appeals from the judgment of the circuit court of Lake County finding him guilty of the unlawful possession of a firearm by a felon (720 ILCS 5/24-1.1(a) (West 2014). Because the trial court abused its discretion in admitting a recorded telephone conversation and certain testimony, both containing gang-related evidence, we reverse and remand.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged by information in the circuit court of Lake County with one count of the unlawful possession of a firearm by a felon (720 ILCS 5/24-1.1 (West 2014)), one count of possession of a stolen firearm (720 ILCS 5/24-3.8(a) (West 2014)), and one count of aggravated unlawful use of a weapon (720 ILCS 5/24-1.6(a)(1),(a)(3)(C) (West 2014)). The State nol-prossed the latter two charges. Defendant opted for a jury trial.

¶ 5 Before trial, defendant filed a motion *in limine*, seeking to bar admission of a recorded telephone conversation between himself and Gregory Harris, Sr. Defendant contended that the probative value of the conversation was substantially outweighed by the prejudicial effect of the other-crimes and gang-related evidence contained in the conversation. The State contended that, although the possession of the handgun did not have "anything directly to do with anything directly gang related," it was relevant "to a certain degree just to explain the content and context of the conversation between [defendant] and Harris." The trial court denied the motion. In doing so, the court found that the statement was relevant to show consciousness of guilt and that the prejudice from the gang-related evidence was extremely outweighed by its probative value.

¶ 6 The following was established at the trial. At approximately 1:30 a.m. on March 24, 2014, Officer Oscar Gallarzo of the North Chicago Police Department was patrolling a high-crime residential area. As he approached 2317 Honore Street, he observed a silver Pontiac parked in the driveway. He did not see the doors open, the interior light come on, or anyone exit the vehicle.

¶ 7 The vehicle was occupied by two men. Defendant was seated in the driver's seat, and Damon Duffie was in the front passenger's seat. The Pontiac was registered to Latonya Johnson from Waukegan. Officer Gallarzo decided to investigate.

¶ 8 Officer Gallarzo approached the driver's-side window and asked defendant where he lived. Defendant responded that he lived with his brother at 2317 Honore Street. When defendant could not provide any proof of where he lived, Officer Gallarzo asked him for consent to search the vehicle. Defendant consented.

¶ 9 Officer Gallarzo had both defendant and Duffie exit the vehicle. During the search, Officer Gallarzo found a cannabis cigarette near the front passenger-side door and a loaded, semi-automatic handgun protruding from beneath the rear of the driver's seat. Officer Gallarzo also found a backpack belonging to defendant on the rear seat.

¶ 10 Defendant told Officer Gallarzo that he had been dropped off at 2317 Honore Street. According to Officer Gallarzo, defendant was evasive in answering who had dropped him off. Defendant stated that, as Officer Gallarzo arrived, defendant's girlfriend and another female, both of whom had been in the vehicle, left the scene on foot. Defendant added that, because it was cold, he and Duffie had decided to sit in the vehicle. Defendant did not mention anyone having been in the backseat of the vehicle.

¶ 11 The handgun was analyzed at the crime lab. The parties stipulated that there were no DNA or fingerprints on the handgun that were suitable for comparison.

¶ 12 Officer Marc Keske of the North Chicago Police Department was one of the backup officers. When he arrived, he saw only two people in the Pontiac, one in each of the front seats. He did not see anyone exit the vehicle before defendant and Duffie did so. Defendant did not appear nervous during the search.

¶ 13 According to Latonya Johnson, she owned the Pontiac and, on March 23, 2014, had loaned it to her daughter, Quadajah Johnson. Although she had a FOID card, she denied owning

a firearm or having one in the Pontiac. She told the police that her daughter might have loaned the Pontiac to defendant.

¶ 14 Quadajah Johnson lived with her mother. On March 24, 2014, she and defendant were friends. At around 9:30 p.m. on March 23, 2014, she loaned defendant the Pontiac so that he could drive to work at a bar called Frank's. She later drove with someone to the bar to see if defendant was there.

¶ 15 Later, she saw defendant on Honore Street. According to Quadajah, defendant and several others were standing around the Pontiac. Although she testified that she told the police that she had seen defendant on Honore Street, she admitted that in her written statement she never mentioned seeing defendant there. Quadajah denied having a gun or ever having seen the handgun seized from the Pontiac.

¶ 16 On cross-examination, Quadajah testified that she thought she had seen two men in the backseat of the Pontiac while it was parked in the driveway. She admitted that she had not reported that to the police or told them that she had been on Honore Street that night.

¶ 17 Damon Duffie had known defendant for 10 years, had worked with him, and considered him a good friend. He and defendant had worked together at Frank's on March 23-24, 2014. At around 1 a.m., he and defendant left Frank's together in defendant's girlfriend's car. According to Duffie, they left with two other men, whose names he did not know. Defendant drove, Duffie sat in the front passenger's seat, and the other two rode in the backseat.

¶ 18 They drove to Honore Street. They parked in the driveway, and all four men remained in the Pontiac. After discussing an upcoming party, the two people in the rear exited the vehicle. Duffie admitted that the cannabis cigarette was his. According to Duffie, there never were two females in the vehicle and he did not see Quadajah on Honore Street that evening.

¶ 19 On cross-examination, when defendant's attorney referred to someone named "Doug" and his brother as being in the vehicle, Duffie recalled that those were the two men in the backseat. Duffie could not recall whether he mentioned Doug and his brother in his written statement to the police.

¶ 20 The State recalled Officer Gallarzo, who testified that, when he had asked Quadajah to describe what had happened regarding the Pontiac, she never said anything about being on Honore Street that night. Nor did she mention Doug being there.

¶ 21 The parties stipulated to the foundation and admission of the audio recording of the telephone conversation between defendant and Harris. A transcript of that conversation provided, in relevant part, that defendant told Harris that the prosecutor had said that he was a "known gang member and drug dealer." Defendant stated that his attorney had said that, because no fingerprints were on the handgun and the car was not defendant's, they could beat the charge. Defendant added that, even if the police said that they saw him put something under the seat, there were no fingerprints on the gun.

¶ 22 Harris said that defendant had to make sure that "they g[o]t little. Especially Duff." When defendant asked if the State would call Duffie into court, Harris said "[m]ost likely." When Harris added that Duffie needed to "lay low a little bit," defendant responded "[r]ight."

¶ 23 When Harris told defendant that he had a chance of beating the charge, defendant responded, "just like you said, I'm finna sho' tell Duff lay low, shit." Harris then said, "Tell Duff we going to kill him." Defendant responded, "Oh yeh. Ain't no ands, ifs or buts." Harris immediately replied, "[h]ey, for real for real though, what's your uh, what your lawyer suggest, a bench or a jury trial?"

¶ 24 In discussing what he would do if he were charged, Harris said that he would deny that the gun was his. Harris added that, when "we caught that shooting," he had "copped out to trial" during jury selection.

¶ 25 Defendant and Harris then discussed the advantages and disadvantages of a bench trial versus a jury trial. Harris noted that, at the end of the day, it was not defendant's car and defendant's fingerprints were not on the gun.

¶ 26 Again, referring to Duffie, Harris said that the best thing was for Duffie to "just get lost." Defendant agreed. Harris added that Duffie needed to lie low until after trial, because if he testified he would be confronted with his statement, which would affect his credibility. When Harris said that defendant did not want to go through that, defendant answered, "Stay low." Harris responded that when the trial began they would get Duffie "a room somewhere." Defendant said, "Yeh, a suite."

¶ 27 When they discussed that defendant had been given the car for the day, Harris told defendant that he should argue that he had pulled into the driveway to drop somebody off, which would show that someone else besides defendant and Duffie had been in the car. Defendant responded that that made sense. Defendant added that it should be two people who got out of the car, because the officer had said that he saw two people get out. When Harris suggested that it was Duffie's gun, defendant said, "Hell yeh."

¶ 28 Harris then said that he was surprised that they had not been charged with that "blunt in [defendant's] shoe." Defendant said that the prosecutor considered him "a known gang member, a drug dealer, Four Corner Hustler." Defendant added "yeh, that, that sound like me." When defendant said that he thought that the prosecutor had "something personal" in talking about

defendant that way, Harris said that he did, because "[t]hat's what they say when them Fours come through there."

¶ 29 Officer Brian Wainscott of the Mundelein Police Department, who was assigned to an FBI gang and drug task force, had listened to thousands of Harris's telephone conversations. He identified Harris's and defendant's voices on the recording. When Officer Wainscott referred to defendant as Harris's courier and driver, the trial court told the jury to disregard the word courier. According to Officer Wainscott, between May and September of 2014, Harris and defendant were together almost daily. Officer Wainscott described Harris and defendant as members of the Four Corner Hustler street gang.

¶ 30 Based on his understanding of the gang's terminology, Officer Wainscott opined that, when Harris said that defendant should make sure that they got little, especially Duff, he meant that they should get Duffie out of the area so that he would not testify. He interpreted the phrase "lay low a little bit" to mean "out of sight/out of mind." According to Officer Wainscott, when defendant said that he was going to "finna sho' tell Duff lay low," he meant that he was going to tell Duffie to get out of the area and not be seen. When Harris said that the best thing for Duffie was to get lost, he meant that if Duffie did not listen to them they would get rid of him in some form or fashion. When Harris said that on the day of trial they would get Duffie a room somewhere, he meant that Duffie should hide somewhere other than the courthouse. When Officer Wainscott suggested that Harris and defendant might have meant to put Duffie in a cemetery, the trial court sustained defendant's objection and instructed the jury to disregard the word "cemetery." When Harris referred to how the prosecutor's office dealt with the "Fours," he meant the Four Corner Hustler gang. The expression "on the Foe," a slang term of the gang, meant swearing on the gang.

¶ 31 On cross-examination, Officer Wainscott explained that it was possible that Harris and defendant were talking about killing Duffie. When defense counsel asked if the reference to getting Duffie a suite meant a coffin or a nice room, Officer Wainscott answered that he did not know too many people who would pay for a hotel suite when they want to get rid of somebody. When defense counsel asked whether Harris and defendant were sincerely talking about killing Duffie, Officer Wainscott answered that it was possible.

¶ 32 In his closing argument, the prosecutor stated that the purpose of the recording was "not to dirty up the defendant" and that he did not want the jury to consider that defendant had the gun because he was a drug dealer, gang member, or criminal. Instead, the prosecutor argued that the purpose of the recording was to show defendant's intent and knowledge. The prosecutor reminded the jury that at no time during the conversation did defendant admit to having the gun. The prosecutor added, however, that, during the conversation, defendant never denied having the gun or stated that it belonged to someone else. The prosecutor characterized the discussion between Harris and defendant as containing no assertion of innocence but instead addressing only how to beat the charge. The prosecutor described the conversation as showing that defendant knew that the gun was under the seat and that he was "consciously guilty." He added that Harris and defendant were referring to beating the charge when they talked about the importance of preventing Duffie from testifying, including by killing Duffie. The prosecutor then reminded the jury that the purpose of introducing the conversation was not to show that, because they had talked about killing Duffie, defendant had a gun. Instead, the purpose was to show that defendant had a consciousness of guilt. The prosecutor added that, because defendant knew that he was guilty of possessing the gun, he could not let Duffie testify. The prosecutor further asserted that defendant did not want Duffie to testify because Duffie would contradict

defendant's story to the police and because defendant believed that there was a very good chance that Duffie would testify that defendant possessed the gun. The trial court did not instruct the jury regarding the limited purpose for the gang evidence.

¶ 33 The jury found defendant guilty. Defendant, in turn, filed a motion for a new trial, in which he challenged, among other things, the admission of the gang evidence. The trial court denied the motion for a new trial and sentenced defendant to four years' imprisonment. Defendant, in turn, filed this timely appeal.

¶ 34 II. ANALYSIS

¶ 35 On appeal, defendant contends that the trial court abused its discretion in admitting the recorded telephone conversation, because it was not relevant to show defendant's consciousness of guilt. Alternatively, defendant maintains that, even if portions of the conversation were relevant, it was inadmissible, as it contained highly prejudicial other-crimes and gang evidence. Defendant makes the same argument as to Officer Wainscott's testimony.

¶ 36 The State responds that the conversation was relevant to show defendant's consciousness of guilt. Additionally, the State asserts that the probative value far outweighed any prejudicial effect. In that regard, the State maintains that the entire conversation, including that Harris and defendant were in the same gang, was admissible to show that the two men had a close and trusting relationship such that they shared the goal of having defendant acquitted, including by having Duffie not testify. Finally, the State contends that any prejudice from the other-crimes evidence was minimal such that any error was harmless.

¶ 37 A. Relevance of Recorded Telephone Conversation

¶ 38 We first address whether the conversation between Harris and defendant was, at least partially, relevant to an issue at trial. It was.

¶ 39 To sustain a conviction of unlawful possession of a firearm by a felon, the State must prove that the defendant had a felony conviction and that he knowingly possessed the firearm. 720 ILCS 5/24-1.1(a) (West 2014). Knowledge and possession are questions of fact to be resolved by the trier of fact. *People v. Carodine*, 374 Ill. App. 3d 16, 25 (2007). Here, only the issue of knowing possession is in dispute.

¶ 40 Possession may be actual or constructive. *People v. Love*, 404 Ill. App. 3d 784, 788 (2010). The State here relied on constructive possession. Constructive possession is proved where the defendant knew that the item was present and exercised immediate and exclusive control over the area where it was found. *People v. Ross*, 407 Ill. App. 3d 931, 935 (2011). Knowledge of the presence of a firearm may be proved with circumstantial evidence. *People v. Bailey*, 333 Ill. App. 3d 888, 891 (2002).

¶ 41 Consciousness of guilt is relevant to show knowing possession. *People v. Moore*, 2015 IL App (1st) 140051, ¶ 26; *People v. Robinson*, 233 Ill. App. 3d 278, 288 (1992). Further, evidence of attempts to conceal evidence or obstruct an investigation are relevant to prove consciousness of guilt. *People v. Shum*, 117 Ill. 2d 317, 352-53 (1987); *People v. Gambony*, 402 Ill. 74, 80 (1948); *People v. Rogers*, 2014 IL App (4th) 121088, ¶ 21.

¶ 42 In this case, the telephone conversation between Harris and defendant contained statements indicating that defendant desired that Duffie not testify. Further, defendant and Harris talked about the lack of fingerprint evidence connecting him to the gun. They also discussed that, because defendant had been loaned the vehicle, he should argue that there were two people in the backseat. Those comments showed that defendant was conscious of his guilt regarding the gun found in the vehicle. From that consciousness, the jury could infer that defendant knew that the gun was under the seat and that he constructively possessed it. See

Moore, 2015 IL App (1st) 140051, ¶ 26. Thus, those portions of the conversation regarding a desire to have Duffie not testify and how to otherwise avoid criminal liability were clearly relevant to show defendant's consciousness of guilt.[1]

¶ 43 Defendant points to cases that suggest that actual intimidation of a witness must occur before threats to do so are admissible to show consciousness of guilt. See *People v. Hood*, 229 Ill. App. 3d 202 (1992); *People v. Frazier*, 107 Ill. App. 3d 1096 (1982). Those cases do not support defendant, however, as here the conversation did not include any discussion of intimidating Duffie. Rather, the words and tone of the conversation indicate an intention merely

[1] On appeal, the State alternatively contended that the recorded statement was admissible as a tacit admission. In support of that contention, the State cited for the first time at oral argument the case of *People v. Goswami*, 237 Ill. App. 3d 532 (1992). Following oral argument, defendant filed a motion seeking leave to file a response to the State's argument based on *Goswami*. The State, in turn, filed a response to defendant's motion. We now grant defendant's motion.

Defendant contends in his response that, among other things, the State forfeited the tacit-admission argument by not raising it in its appellate brief. We disagree. The State alternatively contended that the statement was admissible, because defendant's failure to assert his innocence under the circumstances showed that he was not innocent. That was essentially an argument that defendant tacitly admitted his involvement in the crime. Thus, the State did not forfeit the argument. Nonetheless, because we have held that the recorded statement was otherwise admissible, we need not address the State's alternative contention that it was admissible as a tacit admission.

to have Duffie, who was a good friend of defendant, not testify. Although Harris and defendant mentioned killing Duffie, Harris quickly added "for real" before talking about a bench versus a jury trial. The use of the term "for real" in that context showed that the two were merely joking about killing Duffie. Moreover, neither man mentioned telling Duffie that they would kill him if he agreed to testify. Thus, those cases involving a threatened intimidation of a witness are not applicable.

¶ 44 B. Prejudicial Impact of Recorded Telephone Conversation

¶ 45 Defendant contends, however, that, even if the conversation was relevant, it was unduly prejudicial, because it contained other-crimes and gang-related evidence. Because it is dispositive, we first address the gang-evidence issue.

¶ 46 Evidence that a defendant is a member of a gang must be admitted with care, because society regards gangs with considerable disdain. *People v. Morales*, 2012 IL App (1st) 101911, ¶ 40. Nonetheless, a defendant may not insulate the trier of fact from his gang membership where it is relevant to a determination of an issue in the case. *People v. Rivera*, 145 Ill. App. 3d 609, 618 (1986). Evidence that a defendant is a gang member is admissible only where there is sufficient proof that such membership is relevant to the crime charged. *People v. Strain*, 194 Ill. 2d 467, 477 (2000). To ensure a careful exercise of discretion, a trial court should require the State to demonstrate a clear connection between the crime charged and the gang evidence. *People v. Roman*, 2013 IL App (1st) 110882, ¶ 25. A trial court should take great care when exercising its discretion to admit gang evidence (*Roman*, 2013 IL App (1st) 110882, ¶ 24), but its ruling to admit such evidence will not be disturbed absent an abuse of discretion (*People v. Jaimes*, 2014 IL App (2d) 121368, ¶ 54).

¶ 47 Initially, there is no doubt that the conversation between Harris and defendant revealed that defendant was a member of a gang. That conclusion was bolstered by Officer Wainscott's unequivocal testimony that defendant was a gang member. The next question then is whether defendant's gang membership was relevant to any issue at the trial. It was not.

¶ 48 There was no evidence showing that defendant possessed the handgun in relation to his gang membership or any gang-related activity. Nor was there any showing that the gun belonged to the gang. Similarly, the evidence did not establish that defendant was engaged in any gang activity when the gun was found. Thus, the gang evidence was not relevant to any issue at trial.

¶ 49 The State, however, contends that the gang evidence was relevant to show that defendant and Harris were in a relationship involving trust and that such trust demonstrated that their conversation regarding the charged offense was credible. That argument lacks merit.

¶ 50 Even if Harris and defendant, as members of the same gang, trusted each other, the State never argued to the jury that they did, that such trust made their statements more credible, or that the gang membership showed that defendant knowingly possessed the handgun. Indeed, the State told the jury that it should not consider the gang evidence on the issue of whether defendant knowingly possessed the handgun.

¶ 51 Even if the gang evidence was relevant, its prejudicial impact far outweighed its probative value. As noted, there is a strong societal prejudice against gangs. See *Roman*, 2013 IL App (1st) 110882, ¶ 24. Once the jury learned of defendant's gang membership, it was more likely to find that defendant possessed the handgun. That likelihood was exacerbated by the lack of any limiting instruction.[2] See *Roman*, 2013 IL App (1st) 110882, ¶ 33 (limiting instruction

[2] Although we recognize that defendant did not ask for such an instruction, it would have been advisable for the trial court *sua sponte* to instruct the jury regarding the limited purpose of

ameliorates the prejudice arising from gang evidence). The mere fact that the prosecutor told the jury during closing argument not to consider the gang evidence as evidence of defendant's propensity to commit the offense was not sufficient alone to cure the prejudice. Argument of counsel cannot effectively substitute for a directive from the court. See *People v. Carini*, 151 Ill. App. 3d 264, 280 (1986). Thus, the prejudicial impact of the gang evidence overwhelmed any probative value.

¶ 52 Even if the admission of gang evidence is error, such error will be disregarded if harmless. *Roman*, 2013 IL App (1st) 110882, ¶ 36. Such error is harmless where the court is satisfied beyond a reasonable doubt that it did not contribute to the defendant's conviction. *Roman*, 2013 IL App (1st) 110882, ¶ 36. The effect of inflammatory evidence depends upon the circumstances of each case. *Roman*, 2013 IL App (1st) 110882, ¶ 36.

¶ 53 Here, given its lack of probative value, the likelihood that the jury would consider the gang evidence as showing defendant's propensity to possess the handgun, and the lack of any limiting instruction, we cannot say beyond a reasonable doubt that the gang evidence here did not contribute to defendant's conviction. Thus, the error in its admission was not harmless.[3]

¶ 54 Because we are remanding for a new trial, we will address the issue regarding the other-crimes evidence. See *People v. Burgund*, 2016 IL App (5th) 130119, ¶ 240. As our rules of

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such evidence and that the jury was not to consider it as propensity evidence. See Illinois Pattern Jury Instructions, Criminal, No. 3.14 (4th. ed. 2000); *People v. Mullen*, 80 Ill. App. 3d 369, 375 (1980) (although trial court does not have a duty to *sua sponte* give a limiting instruction regarding gang evidence, it is advisable to do so).

[3] Our holding as to the gang evidence in the recorded conversation applies equally to Officer Wainscott's gang-related testimony.

evidence provide, evidence of other crimes is not admissible to prove a criminal defendant's propensity to commit the charged offense. Ill. R. Evid. 404(b) (eff. Jan. 1, 2011); see also *People v. Wilson*, 214 Ill. 2d 127, 135 (2005). In order to be admissible, such evidence must have some threshold similarity to the charged offense. *Wilson*, 214 Ill. 2d at 136. Even where other-crimes evidence is relevant, the trial court may exclude it if the probative value is substantially outweighed by the danger of unfair prejudice. *People v. Donoho*, 204 Ill. 2d 159, 170 (2003). A trial court's ruling on the admission of other-crimes evidence is reviewed for an abuse of discretion. *People v. Chapman*, 2012 IL 111896, ¶ 19. Thus, the question is whether the trial court's decision was arbitrary, fanciful, or unreasonable to the degree that no reasonable person would agree. *People v. McDonald*, 2016 IL 118882, ¶ 32. Even if other-crimes evidence was improperly admitted, it is harmless error when a defendant is neither prejudiced nor denied a fair trial. *People v. Nieves*, 193 Ill. 2d 513, 530 (2000).

¶ 55 Here, defendant points to Harris's statement that "we caught that shooting" as evidence that defendant had committed another crime. Because Harris used the word "we" when speaking to defendant, it would have been reasonable for the jury to find that he meant himself and defendant. Thus, the statement about being involved in a shooting constituted evidence of defendant's commission of a crime unrelated to the charged offense. The same can be said for Harris's references to defendant having a "blunt" in his shoe and defendant's agreement with the prosecutor's characterization of him as a drug dealer. Those latter two statements were also evidence of other crimes unrelated to the charged offense.

¶ 56 More importantly, the references to defendant's prior criminal conduct were not relevant to any issue at trial. Indeed, there was no indication that the other-crimes evidence was relevant to show defendant's consciousness of guilt or any other acceptable purpose. See *Wilson*, 214 Ill.

2d at 135 (other-crimes evidence admissible if relevant for any purpose other than propensity to commit crime). Thus, it was error to admit those portions of the recorded conversation referring to defendant's prior criminal conduct.

¶ 57 Even if the other-crimes evidence was relevant, its prejudicial impact substantially outweighed any probative value. Statements that defendant had been involved in a shooting and was involved with drugs likely indicated to the jury his propensity to commit other crimes, including possession of a handgun. Further, such prejudice would have been heightened by the lack of any limiting instruction. See *supra* n.2. On remand, the court should not admit those portions of the recorded conversation referring to defendant's prior criminal conduct but only admit the statements consistent with this disposition.

¶ 58 We note that defendant seeks a new trial. He does not challenge the sufficiency of the evidence. Thus, there is no double jeopardy impediment to a new trial. See *People v. Meuris*, 2016 IL App (2d) 140194, ¶ 19.

¶ 59 III. CONCLUSION

¶ 60 For the reasons stated, we reverse the judgment of the circuit court of Lake County and remand for a new trial.

¶ 61 Reversed and remanded.