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2018 IL App (3d) 160069-U

Order filed October 5, 2018

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2018

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-16-0069
v.	)	Circuit No. 15-CF-465
	)	
ANTONIO T. COAXUM,	)	Honorable Kevin W. Lyons,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices O'Brien and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: The court did not abuse its discretion in modifying the pattern jury instruction on compulsion or in admitting all three of defendant's prior felony convictions to impeach defendant's credibility.

¶ 2 Defendant, Antonio T. Coaxum, appeals his convictions for armed robbery and unlawful possession of a weapon by a felon. Defendant argues that the court erred in modifying the pattern jury instruction on compulsion and in admitting all three of defendant's prior felony convictions, particularly a conviction for robbery, to impeach defendant's credibility. We affirm.

¶ 3 FACTS

¶ 4 Defendant was charged with armed robbery (720 ILCS 5/18-2(a)(2) (West 2014)) and unlawful possession of a weapon by a felon (*id.* § 24-1.1(a)).

¶ 5 Defendant filed a motion *in limine* stating that he would likely be testifying in support of his compulsion defense and requesting that the State be prohibited from impeaching him with his criminal history without first establishing the admissibility of such evidence outside the presence of the jury. The motion acknowledged that defendant had three prior convictions for robbery, aggravated unlawful use of a weapon (AUUW), and theft. At a hearing on the motion, defense counsel argued that defendant's prior convictions for robbery and AUUW were more prejudicial than probative because they were similar to the offenses charged in the instant case. The State argued that all of defendant's prior felony offenses should be admitted to impeach his credibility because defendant's credibility was an important issue in the case. The State also argued that defendant should not be able to benefit from the fact that his prior offenses were similar to those charged in the instant case.

¶ 6 The court ruled that it would allow the State to impeach defendant with his prior theft conviction. The court also ruled that the State could impeach defendant with the mere fact that he had two additional felony convictions without naming the specific offenses. In so ordering, the court stated: "I hate to do this because I don't like to hold much from the jury." The court also noted: "I certainly sympathize with the State's position about getting a break by having the same offense." The prosecutor said she believed the supreme court had indicated that it did not look favorably upon the mere fact method of impeachment and that she would research the issue.

¶ 7 The matter proceeded to a jury trial. James Harris Jr. testified that he drove to the Knoxville Food Mart around 9 or 9:20 p.m. on the evening of the incident. Defendant was

standing outside the store. Harris exited his car, and defendant told him " '[i]t smelled good.' " Harris believed that defendant was referring to the cannabis Harris had in his pocket. Harris handed the cannabis to defendant. Defendant smelled the cannabis and returned it to Harris. Harris walked into the store and bought cigarettes and cigars. Harris exited the store and entered his car. Defendant approached Harris's car and asked Harris if he knew where defendant could purchase cannabis. Harris said he could get defendant cannabis and told defendant to get into the car. Defendant entered the car. Harris reached down for his gear shift, and defendant hit him across the head with a hard object. Harris saw that defendant had a gun. Defendant told Harris to empty his pockets and walk toward a nearby gas station. Harris removed cigarettes, cigars, cannabis, and approximately $130 to $140 from his pockets and placed it on the center console. Harris then exited the car and walked toward the gas station. Defendant took the money and cannabis.

¶ 8 A man standing outside the gas station told Harris he was bleeding. Harris used the man's phone to call his mother and girlfriend. A police officer approached Harris, and Harris told the officer what happened. An ambulance came and tried to take Harris to the hospital, but Harris told the paramedics that he would go to the hospital on his own. Harris's brother drove him to the hospital later that night. Harris was given eight or nine stitches at the hospital and had to get his "nose glued back together." Photographs of Harris's injuries were introduced into evidence.

¶ 9 Police Officer Seth Landwehr testified that he was on patrol around 9:15 to 9:20 p.m. on the evening of the incident. Landwehr saw a large crowd in front of the Knoxville Food Mart. Landwehr approached the crowd and saw an individual with a bloody face. Landwehr could not remember the man's name, but the parties do not dispute that the man was Harris. Harris told

Landwehr that he had been robbed and hit with a gun. Landwehr reported the incident over his police radio.

¶ 10 Landwehr entered the Knoxville Food Mart and reviewed the store's security camera video footage. The State played the surveillance video footage for the jury. In the video, defendant walked up to the store with several other individuals. A car pulled up next to them, and Harris exited the car. It appeared that defendant and Harris spoke to each other, though the video recording did not have sound. Harris walked up to defendant and handed him something. Defendant held it to his face and returned it. Harris entered the store, and defendant remained standing in front of the store. Harris exited the store a few minutes later and appeared to speak with defendant. Defendant followed Harris to his car and got inside. Approximately 25 seconds later, Harris exited the car and walked away from the Knoxville Food Mart. Defendant exited the car a few seconds later and walked in the opposite direction.

¶ 11 Landwehr testified that he had seen one of the men with defendant in the video earlier that day at a house on Arcadia Avenue (Arcadia house). Landwehr stated that he was familiar with the Arcadia house and its owner. Landwehr proceeded to the house and approached the front door. Defendant poked his head out of the kitchen window curtains. Landwehr recognized defendant from the video by the yellow and navy blue baseball cap he was wearing. Landwehr also noted that defendant was light skinned and had a beard, which matched the description given by Harris. When defendant saw Landwehr, he shut the curtains and retreated deeper into the house. The owner of the house came to the door, and Landwehr asked him to have everyone exit the house. Several individuals, including defendant, exited the house.

¶ 12 Several police officers testified that they searched the Arcadia house. Police Officer Michael Boland located a semiautomatic pistol under a blue and yellow flat-bill hat in a

bathroom cabinet. Boland found a " 'blunt,' " which he described as cannabis packed inside of a cigar wrapper, in an ashtray on top of the bathroom sink. He also found a bag of cannabis in the bottom of a trash can in the bathroom. Photographs of the items were admitted into evidence. Police officers also testified that they recovered the following items from other rooms in the house: a small rock of cocaine, a pistol magazine, a small amount of cannabis, six spent brass casings from a .38 firearm, a shotgun, three nine-millimeter bullets, and a khaki colored tote bag containing a large amount of ammunition and several magazines.

¶ 13 Detective Eric Esser testified that defendant was transferred from the Arcadia house to the police station. Esser interviewed defendant at the police station. The interview was video and audio recorded. The court admitted the recording into evidence, and the State played it for the jury.

¶ 14 In the recording, defendant said that he went to the Arcadia house that night because Demetrius Harper and other individuals were there drinking and smoking. Defendant said he tried to call Officer John Briggs and report that there were firearms at the Arcadia house, but Briggs was not working that day. Defendant initially said that a few men at the house went to the Knoxville Food Mart that night, but he did not go with them. Defendant later admitted that did go to the Knoxville Food Mart after a detective told him they had security camera footage showing defendant at the store that night. Defendant said that Harper told defendant to take a gun with him. When defendant arrived at the store, a man exited his car and put a bag of cannabis in defendant's hand. Defendant asked to purchase cannabis from the man. The man entered the store. When the man returned, defendant got into his car with him. The man placed the cannabis on the center console then reached under the seat. Defendant asked the man why he was reaching under the seat. Defendant believed he was reaching for a gun. Defendant hit the man with the

gun Harper had given him. Defendant took the cannabis and exited the car. Defendant went back to the Arcadia house, returned the gun to Harper and showed him the cannabis. Defendant said that he knew it was wrong to possess the gun but he was afraid for his life and was trying to "stay protected." Defendant said he was trying to help get Harper "off the streets." Defendant asked to speak to one of the officers alone. The officer said he would call Briggs. The officer later told defendant he was unable to reach Briggs.

¶ 15 An officer testified that $144 was collected from defendant's personal effects on the evening of the incident before defendant went to jail.

¶ 16 The court told the jury that the parties had stipulated that defendant had been convicted of a felony offense at the time of the offenses charged in the instant case. The State rested.

¶ 17 The parties again discussed defendant's motion *in limine* to exclude his prior offenses in the event that he testified. The State advised the court that an opinion issued by the Illinois Supreme Court had held that it was improper to impeach a witness with the mere fact of a prior conviction without stating the nature of the offense. The court said it would revisit its ruling on defendant's motion *in limine*. Defense counsel argued that the State should not be permitted to impeach defendant with his prior convictions for robbery and AUUW. Defense counsel argued that the additional offenses would not further impeach defendant's credibility and that there was a risk that the jury would view the offenses as evidence that defendant had a propensity to commit robberies and firearm offenses. The State argued that the additional convictions were highly probative because they went to defendant's credibility, which was "going to be the primary issue." The court ruled that the State would be permitted to impeach defendant with all three convictions. The court reasoned that it was "not as delicate in this case" because "the defendant [was] making the election to let the jury know that he's a person who has had some

relationship with weapons, and in a house with weapons, *** and clearly he was involved in an event that has the framework of a robbery."

¶ 18 Detective Shawn Curry testified as a defense witness. Curry testified that he had known defendant for approximately four years through defendant's work as a paid police informant. Curry generally found the information provided by defendant to be valuable, truthful, and accurate. Curry had assisted defendant in obtaining his driver's license and finding employment because he was valuable to the police department.

¶ 19 Officer Briggs testified that he had known defendant for approximately three years. Defendant had worked as a paid confidential informant for Briggs, two other local police officers, and an agent of the Federal Bureau of Investigations. Defendant provided Briggs with intelligence on gangs and individuals who possessed illegal firearms. Briggs testified that to provide good information, informants generally had to immerse themselves in the lifestyle of the people they were investigating. However, Briggs did not ask defendant to immerse himself in a certain lifestyle or associate with certain people. Briggs testified that working as a confidential informant was "dangerous to a certain extent." On one occasion, the police took defendant out of town for a few days for his safety. Defendant had been providing Briggs with information on Harper and other individuals. Briggs testified that based on his knowledge of Harper's past criminal history, he would have been interested in building a case against Harper. Briggs testified that defendant was advised when he became an informant that he was not permitted to commit crimes.

¶ 20 Briggs last had contact with defendant on July 10, 2015. Two days earlier, defendant had provided Briggs with the location of a firearm. Briggs recovered the firearm and paid defendant approximately $150 for the information. Defendant told Briggs that he believed the firearm

belonged to someone called Wham or Whammy. Defendant did not indicate that the firearm was associated with Harper. The firearm was located in an alley near where defendant lived. Defendant told Briggs that he lived across the street from Harper, but Briggs did not know where Harper lived.

¶ 21 Defendant testified that he had prior convictions for robbery, AUUW, and theft. Defendant said that he had been working with law enforcement as an informant since 2011. Defendant provided information on gangs, drugs, and individuals possessing firearms. Defendant also made controlled buys. Defendant worked as an informant because he "wanted to do something right" and the money helped his family. Defendant was looking into the Moe Block gang for Briggs. Harper was a leader in the Moe Block gang. Harper's father lived in the Arcadia house, and the Moe Block gang regularly met up there. Defendant said that he had to blend in with gangs in order to get information for the police.

¶ 22 Defendant testified that before the incident, he called Briggs because he had learned that there was a firearm in the backyard of the house where defendant's son's mother lived. Defendant also stayed at that house occasionally. Defendant told Briggs that Harper and someone named Whammy had asked him to hold firearms for them in the past. Defendant asked Briggs to pull into the alley when he came to retrieve the firearm because Harper's girlfriend lived across the street from defendant, and defendant knew Harper was at her house. Briggs went to defendant's residence and retrieved the firearm when defendant was not home.

¶ 23 On the evening of the incident, Harper called defendant and asked him to come to the Arcadia house. Harper said that he and his friends were drinking and smoking cannabis. Defendant walked to the house. When defendant arrived, Harper asked defendant why the police had been at his son's mother's house. Defendant told Harper that he did not know what he was

talking about. Harper told defendant that he had heard rumors about defendant " 'being the police' " and that defendant had to do something to prove to Harper that he was not the police. Harper told defendant he would have to rob someone at the Knoxville Food Mart. Harper said he would kill defendant if he did not commit the robbery. Harper was holding a gun in his hand while he said this. Harper gave defendant another gun, which was unloaded, to use during the robbery. Harper told defendant to go to the Knoxville Food Mart and that there would be someone there for defendant to rob. Harper told several other men in the gang to accompany defendant. Defendant did not know if any of those men were armed.

¶ 24 When defendant and the other men arrived at the Knoxville Food Mart, the other men told defendant to stand outside the store. They spread out around him. Harris pulled up in his car and walked right up to defendant. Defendant had never met Harris. Harris placed a bag of cannabis in defendant's hand, which defendant found to be strange. Defendant looked at one of the gang members. The gang member nodded, and defendant interpreted that to mean that Harris was the person he was supposed to rob. Defendant asked Harris if he had any cannabis for sale. Harris said he was going into the store to buy a few items, but he would come back. After Harris entered the store, defendant looked at one of gang members. The gang member indicated that Harris was the person who defendant was supposed to rob. Defendant said he could not run away at that point because the gang members were standing around.

¶ 25 When Harris exited the store, he asked defendant if he still wanted to purchase cannabis, and defendant said yes. Harris told defendant to get into his car. Defendant and Harris entered the car. Harris placed the bag of cannabis he had previously shown defendant and a bag of smaller bags of cannabis on the center console. Defendant showed Harris his money. Harris told defendant to hold on and reached under the seat. Defendant believed Harris was reaching for a

gun and that Harris would kill him. Defendant grabbed the gun that Harper had given him and hit Harris with it. Defendant asked Harris what was under the seat, and Harris said there was nothing under the seat. Defendant said that he was going to take the cannabis, and he told Harris to walk to a gas station. Defendant put the cannabis in his pocket. Defendant and the men who had accompanied him to the Knoxville Food Mart walked back to the Arcadia house.

¶ 26 Defense counsel asked defendant why he did not ask Harris to drive him away once he got into Harris's car. Defendant replied:

> "Because I'm—if I tried to escape then, they know where my son['s] mother stay[s]. My son['s] mother was pregnant with my son that she just had ***. And I'm not going to sit there and play with a person that I know that would seriously do harm—you know what I'm saying—to either me or my children."

Defendant said that he assumed at the time that Harris knew the gang members. Defense counsel asked defendant if that was why he did not ask Harris for help. Defendant replied:

> "[I]f I would've asked him for help, that['s] still not benefiting me because [Harper] already told me, man, he would kill me, don't try—you know what I'm saying? And then not only that, [Harris was] reaching under the seat. So I got to rob him anyway just to prove that I'm not the police."

¶ 27 When defendant and the gang members returned to the Arcadia house, defendant set the cannabis on the kitchen table. The gang members told Harper that defendant had committed the robbery. Defendant looked out the kitchen window and saw that the police had arrived. Everyone started scurrying around the house hiding things. Defendant did not hide anything. Harper told defendant to remove his hat and shirt so he would not look like he did on the security cameras at the Knoxville Food Mart. Defendant gave his hat and shirt to Harper.

¶ 28 Eventually, defendant exited the house and was placed in a squad car. As soon as defendant entered the car, he told the officers he needed to talk to Briggs. At the police station, defendant did not tell the detectives that Harper forced him to commit the robbery because Harper was down the hall and defendant feared for his life. Defendant testified that before he entered the interview room at the police station, the police required him to remove his shoes and place them outside the door. Defendant said that if anyone knew what shoes he was wearing, they would know he was in that interview room. Defendant could hear the voices of other individuals from the Arcadia house outside the interview room. At one point, defendant left his interview room to get a light for a cigarette. He encountered Harper, and Harper told him not to say anything.

¶ 29 The defense rested.

¶ 30 The court agreed to give the jury an instruction on the affirmative defense of compulsion over the State's objection. The State requested that the court modify the pattern jury instruction on compulsion to state that a defendant cannot avail himself of the compulsion defense if he has an opportunity to withdraw or, alternatively, that a future threat of death or great bodily harm would not excuse criminal conduct. The State argued that instructions that future threats would not excuse criminal conduct had been given in other cases. The State noted that compulsion defenses were not used often and sometimes "the jury instructions aren't always accurate as to how the law has developed and unfolded." The court noted that a case cited by the State was 11 years old and the pattern jury instruction had still not been changed. The court also stated that the committee worked slowly. The court stated that it would not give an instruction regarding the opportunity to withdraw because the court believed it would confuse the jury. The court stated

that it would consider instructing the jury that a future threat of death or great bodily harm was not sufficient to excuse criminal conduct. The court reasoned:

> "You lay down with dogs, you're going to get fleas, your mother tells you. And you—and I think the Court has said the law has indicated that when you're playing with people that have no respect for the law, and then you—then they turn on you and you're worried, well those things happen. And—but with regard to this sentence, the defendant is saying, 'Well I couldn't do it. I couldn't run to the police at this point because he knows where I live. He knows where my baby momma lives.' *** And—and that is exactly what [the prosecutor] is saying, that the—he doesn't have the right to talk about future threats. You get into that world, and you live with a potential injury.
>
> However, this case presents both. Future threat and *** imminent danger. If they walk a 1 or 2-minute walk from the house to the *** 'Knoxville Mart'—stop and rob—whatever they do these days down by the AT&T. And a group of people walk with you, you have an imminency."

The judge reserved ruling on the issue.

¶ 31 When the trial recommenced two days later, defendant objected to the proposed modification to the pattern instruction on compulsion. Defendant argued that a future threat was not at issue in the case. The court ruled that it would accept the State's modified instruction. The court reasoned:

> "I do think that the thrust of the defendant's defense was that he felt a sense of contending doom from the time that he was approached by [Harper]. And that it continued until he got to the gas station and back. He did throw in that part about

> his family later, but that's always the case. And I think that is an accurate reflection of the law, so I will include State's Instruction 20 with the last line that says, 'A threat of future death or great bodily harm is not sufficient to excuse criminal conduct.' "

¶ 32 The jury found defendant guilty of both counts. The court sentenced defendant to 22 years' and 6 months' imprisonment for armed robbery and 5 years' imprisonment for unlawful possession of a weapon by a felon, to be served concurrently.

¶ 33 ANALYSIS

¶ 34 I. Modification of Pattern Instruction on Compulsion

¶ 35 Defendant argues that the court abused its discretion in modifying the pattern jury instruction on compulsion because the pattern instruction accurately stated the law, and the court did not find otherwise. We find that the court did not abuse its discretion in modifying the pattern instruction to conform to the unique facts of this case. Alternatively, we find that even if the court abused its discretion in modifying the pattern instruction without finding that it did not accurately state the law, any error was harmless because the modified instruction accurately stated the law.

¶ 36 The pattern instruction on compulsion stated as follows:

> "It is a defense to the charge made against the defendant that he acted under the compulsion of threat or menace of the imminent infliction of death or great bodily harm, if he reasonably believed that death or great bodily harm would be inflicted upon him if he did not perform the conduct with which he is charged." Illinois Pattern Jury Instructions, Criminal, No. 24-25.21 (approved Dec. 8, 2011) (hereinafter IPI Criminal No. 24-25.21).

The court added the following sentence to the end of IPI Criminal No. 24-25.21: "A threat of future death or future great bodily harm is not sufficient to excuse criminal conduct."

¶ 37 Illinois Supreme Court Rule 451(a) (eff. Apr. 8, 2013) provides:

> "Whenever Illinois Pattern Jury Instructions, Criminal, contains an instruction applicable in a criminal case, giving due consideration to the facts and the governing law, and the court determines that the jury should be instructed on the subject, the IPI Criminal instruction shall be used, unless the court determines that it does not accurately state the law."

" '[T]he trial court is allowed to deviate from the suggested instruction and format only where necessary to conform to unusual facts or new law.' " *People v. Anderson,* 2012 IL App (1st) 103288, ¶ 40 (quoting *People v. Banks*, 287 Ill. App. 3d 273, 280 (1997)). "[T]he instructions may be modified or supplemented when the facts of a particular case make them inadequate." *People v. Sims*, 265 Ill. App. 3d 352, 362 (1994). See also *People v. Hines*, 257 Ill. App. 3d 238, 244 (1993) ("[T]he pattern instructions may be modified where the facts of the case render the uniform instruction inadequate."). "[T]he discretion to modify the instruction lies with the circuit court." *Id.*

¶ 38 We find that the court's modification of IPI Criminal No. 24-25.21 was not an abuse of discretion because the modification was necessary to conform to the facts presented in the instant case. In ordering that the pattern instruction be modified, the court noted that defendant testified regarding both imminent threats of harm (*i.e.*, the threat that the gang members who followed him to the Knoxville Food Mart would harm him if he did not commit the armed robbery) and future threats of harm (*i.e.*, that Harper knew where his son's mother lived). Because defendant's testimony could reasonably be interpreted to contain both threats of imminent and future harm,

the court did not abuse its discretion in modifying the pattern instruction to clarify that threats of future death or future great bodily harm did not excuse criminal conduct.

¶ 39 We find support for our holding in *People v. Goodman*, 347 Ill. App. 3d 278, 290 (2004) and *People v. Carini*, 151 Ill. App. 3d 264, 282 (1986). In both cases, the court instructed the jury that a threat of future harm was not sufficient to excuse criminal conduct. *Goodman*, 347 Ill. App. 3d at 290; *Carini*, 151 Ill. App. 3d at 282. In both cases, the courts found that the instructions accurately stated the law and were warranted by the facts of the case. *Goodman*, 347 Ill. App. 3d at 290; *Carini*, 151 Ill. App. 3d at 282. In *Carini*, the defendant testified that he had received a series of threatening phone calls over a period of time. *Carini*, 151 Ill. App. 3d at 282. In *Goodman*, the defendant's compulsion defense was based on the defendant's comment to an undercover police officer posing as a hit man that she would be killed if she did not go through with her plan to hire him to kill her ex-husband. *Goodman*, 347 Ill. App. 3d at 290. The court reasoned that the jury could reasonably find that this comment referred to a future threat of injury because it revealed no detail about who made the threat or when it would be carried out. *Id.*

¶ 40 Contrary to defendant's argument on appeal, we find that this case is comparable to *Goodman* and *Carini*. Like in *Goodman* and *Carini*, the modification was warranted in light of the specific facts of the case—namely, that the defendant testified concerning both imminent and future threats.

¶ 41 Also, like the courts in *Goodman* and *Carini*, we believe that the modified instruction in this case accurately stated the law. Illinois courts have long held that, in establishing the affirmative defense of compulsion, a threat of future injury is not sufficient to excuse criminal conduct. *People v. Collins*, 2016 IL App (1st) 143422, ¶ 35 (quoting *People v. Robinson*, 41 Ill. App. 3d 526, 529 (1976) ("A threat of future injury 'is not sufficient to excuse criminal

conduct.' ")); *People v. Davis*, 16 Ill. App. 3d 846, 848 (1974) ("A threat of future injury is not enough to excuse a criminal act."); *People ex rel. Rusch v. Rivlin*, 277 Ill. App. 183, 196 (1934) (" 'The compulsion which will excuse a criminal act, however, must be present, imminent, and impending, and of such a nature as to induce a well grounded apprehension of death or serious bodily harm if the act is not done. A threat of future injury is not enough.' ").

¶ 42 Even if we were to accept defendant's argument that the court erred in giving the modified instruction without explicitly finding that the pattern instruction did not accurately state the law, any error would be harmless because the modified instruction did accurately state the law. *Supra* ¶ 41. We reject defendant's argument that the modified instruction might have misled the jury into believing that an imminent threat was not sufficient because "an imminent threat is one that will be carried out 'soon,' *i.e.*, in the future, albeit the near future." We believe the modified instruction clarified that the threat of harm had to be imminent rather than relating to something in the future.

¶ 43 II. Impeachment with Prior Convictions

¶ 44 Defendant argues that the court erred in allowing him to be impeached with all three of his prior convictions. Specifically, defendant argues:

> "Defendant was denied a fair trial where the [court] allowed him to be impeached with all three of his prior felony convictions, including a 2004 conviction of robbery, because the impeachment could have been accomplished by telling the jury of two of his prior convictions, and the prejudicial impact of the robbery conviction outweighed its probative value inasmuch as defendant was being prosecuted for armed robbery."

At another point in his brief, defendant concedes that "it was reasonable for the [court] to allow evidence of at least one of his prior convictions for the purpose of impeaching his credibility as a witness." It is unclear whether defendant objects to the admission of only his robbery conviction or to the admission of one of his other convictions as well. In any event, we find that the court did not abuse its discretion in allowing the State to impeach defendant with all three of his prior convictions because defendant's credibility was a central issue in the case.

¶ 45 Pursuant to Illinois Rule of Evidence 609(a) (eff. Jan. 6, 2015), a witness may be impeached with evidence of the conviction of a crime punishable by death or a term of imprisonment in excess of one year where less than 10 years have elapsed since the conviction or the defendant's release from imprisonment, whichever is later, unless "the court determines that the probative value of the evidence of the crime is substantially outweighed by the danger of unfair prejudice." See also *People v. Montgomery*, 47 Ill. 2d 510, 516-19 (1971). "The determination of whether a witness' prior conviction is admissible for impeachment purposes is within the discretion of the trial court." *People v. Atkinson*, 186 Ill. 2d 450, 456 (1999).

¶ 46 In determining whether the probative value of a prior criminal conviction is substantially outweighed by the danger of unfair prejudicing, courts "should consider, *inter alia*, the nature of the prior conviction, its recency and similarity to the present charge, other circumstances surrounding the prior conviction, and the length of the witness' criminal record." *Id.* "[T]rial courts should be cautious in admitting prior convictions for the same crime as the crime charged." *Id.* at 463.

> " 'Where multiple convictions of various kinds can be shown, strong reasons arise for excluding those which are for the same crime because of the inevitable pressure on lay jurors to believe that "if he did it before he probably did so this

time." As a general guide, those convictions which are for the same crime should be admitted sparingly ***.' " *People v. Williams*, 161 Ill. 2d 1, 38 (1994) (quoting *Gordon v. United States*, 383 F.2d 936, 940 (D.C. Cir. 1967)).

¶ 47 However, "similarity alone does not mandate exclusion of the prior conviction." *Atkinson*, 186 Ill. 2d at 463. In *Atkinson*, our supreme court held that the circuit court did not abuse its discretion in ruling that the defendant's two prior convictions for burglary were admissible to impeach defendant's credibility if he testified during his burglary trial. *Id.* at 461. The court reasoned that the defendant's credibility was a "central issue" because the defendant's testimony made up his entire defense. *Id.* at 462. The *Atkinson* court also noted that the circuit court instructed the jury to consider the defendant's prior burglary convictions only for the purpose of assessing his credibility and not as evidence of guilt. *Id.* at 463.

¶ 48 In the instant case, the court did not abuse its discretion in admitting defendant's three prior convictions, including his prior conviction for robbery. Like in *Atkinson*, defendant's credibility was a central issue in the case. Defendant's testimony was the only evidence that Harper threatened to kill defendant if he did not commit the armed robbery and sent members of his gang to the Knoxville Food Mart with defendant to make sure he committed the armed robbery. Whether the jury believed defendant's testimony on this point was dispositive as to whether it found defendant's criminal conduct to be excused by compulsion. We acknowledge that the security video footage showed several men accompanying defendant to the store, and the testimony of Curry and Briggs corroborated defendant's testimony that he was a paid informant. However, there was no evidence corroborating defendant's testimony that Harper threatened to kill him if he did not commit the armed robbery.

¶ 49 Also, like in *Atkinson*, the court gave the jury a limiting instruction. Specifically, the court advised the jury that it could only consider defendant's prior convictions as they affected his believability as a witness and for the purpose of finding that the State had proved that defendant had committed a felony, which was an element of the offense of unlawful possession of a weapon by a felon.

¶ 50 In reaching our holding, we acknowledge that when the circuit court admitted defendant's prior AUUW and robbery convictions for impeachment purposes, the court reasoned that it was "not as delicate in this case" because defendant was admitting that he "had some relationship with weapons" and "was involved in an event that ha[d] the framework of a robbery." Even if we were to accept defendant's argument that the circuit court's reasoning was "seriously flawed," we would still find that the court did not abuse its discretion in admitting all three of defendant's prior convictions because defendant's credibility was a central issue in the case. We note that the State argued that all three convictions should be admitted because the credibility of defendant's testimony was important to the case. Moreover, "this court is not bound by the trial court's reasoning for its judgment and can affirm the trial court's judgment on any ground in the record regardless of whether the trial court relied on it." *People v. English*, 2013 IL App (4th) 120044, ¶ 14. See als*o People v. Relwani*, 2018 IL App (3d) 170201, ¶ 20 (2018) ("[I]t is well established that it is the trial court's judgment, and not its reasoning, that is the subject of our review on appeal.").

¶ 51 We reject defendant's argument that the court's decision to allow the State to impeach him with all three of his prior convictions was "inconsistent with [the court's] initial decision to mitigate the prejudicial impact of defendant's prior convictions by keeping the jury from learning the crimes defendant had committed." When the court initially ruled that the State

would be able to impeach defendant with his prior theft conviction and the mere fact that he had two additional convictions, the court expressed reservation about doing so because it did not "like to hold much from the jury." The court's reasoning showed that it was initially willing to use mere fact impeachment for defendant's robbery and AUUW convictions (rather than excluding them entirely) as a compromise to reduce the danger of unfair prejudice to defendant while still allowing the State to use the convictions for impeachment. Once the court learned that mere fact impeachment was not permitted,[1] the court was forced to choose between admitting the robbery and AUUW convictions or excluding them entirely. Neither admitting the convictions nor excluding them entirely would have been inconsistent with the court's prior decision.

¶ 52 CONCLUSION

¶ 53 The judgment of the circuit court of Peoria County is affirmed.

¶ 54 Affirmed.

[1]Our supreme court has held that a criminal defendant may not be impeached with the mere fact of his or her prior convictions. *Atkinson*, 186 Ill. 2d at 458 ("[I]t is the nature of a past conviction, not merely the fact of it, that aids the jury in assessing a witness' credibility.").