2012 IL App (1st) 092625-U

FOURTH DIVISION
April 12, 2012

No. 1-09-2625

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 06 CR 12269
	)	
ANTHONY REYNOLDS,	)	Honorable
	)	Robert Jeffery Clifford,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE STERBA delivered the judgment of the court.
Justices Fitzgerald Smith and Pucinski concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in rejecting defendant's offered issues instruction because self-defense and defense of others is not a defense to felony murder. The trial court also did not err in rejecting defendant's proposed use of force definition instruction because it was not supported by the evidence. Errors associated with the tendering of felony murder instructions were not properly before this court for review where the trial court merged the felony murder conviction into the intentional and strong probability murder conviction. No prosecutor misconduct occurred where the prosecutor responded to defendant's arguments during closing and details of an alleged plea statement were not provided to the jury. The trial court did not err in allowing reference to defendant's prior convictions by the specific name of the offenses because we

> decline to adhere to the mere-fact approach when deciding whether prior convictions should be admitted for impeachment purposes. Admission of defendant's prior unlawful use of a weapons conviction, which was subsequently vacated on appeal, for impeachment purposes was harmless error.

¶ 2 Following a jury trial, defendant, Anthony Reynolds, was convicted of intentional and strong probability murder and felony murder. The jury also found that he personally discharged a weapon during the commission of the first degree murder of Martel Edwards. The trial court merged defendant's felony murder conviction with the intentional and strong probability murder conviction, and it sentenced defendant to 60 years in prison. On appeal, defendant contends that he was denied his constitutional right to present a defense because the trial court refused to tender to the jury self-defense and defense of others instructions. Defendant also contends that his constitutional right to present a defense was violated when the trial court tendered felony murder instructions because the underlying offense of aggravated discharge of a firearm was inherent in the felony murder charge. Defendant further contends that the second degree murder statute is unconstitutional because he was precluded from raising self-defense as a defense to the felony murder charge, but such a defense is permissible against a second degree murder charge. Also, defendant claims that the prosecutor's comments during closing arguments that he recently fabricated his defense amounted to prosecutor misconduct, as did the prosecutor's comment that defendant sought a plea deal. Lastly, defendant claims that the trial court erred in allowing impeachment with prior convictions by specifically naming the prior offenses, and that impeachment with a conviction that was subsequently vacated amounted to reversible error. For the reasons that follow, we affirm the judgment of the trial court.

¶ 3 BACKGROUND

¶ 4 This case arises from events occurring at a car wash on April 28, 2006, that resulted in the shooting death of Martel Edwards. Defendant's theory of the case was that he went to the car wash to foster peace between his fraction and a rival fraction of town, and that gun shots were discharged in self-defense or in defense of others. The State's theory of the case was that defendant went to the car wash to avenge the shooting death of his friend.

¶ 5 Before the trial commenced, defendant filed a motion *in limine* to bar use of defendant's prior convictions of attempt armed robbery, attempt murder, unlawful use of a weapon (UUW) and armed habitual criminal (AHC) to impeach his credibility. Defendant argued that the jury's knowledge of those prior convictions would substantially limit his ability to defend against the charges he now faced, and that the prior convictions were for violent weapons offenses similar to the pending offenses. After performing a balancing test weighing the probative value of admitting the prior conviction against the prejudicial impact of the information, the trial court allowed the State to use the UUW and AHC prior convictions for impeachment purposes.

¶ 6 During the jury trial, the State presented the testimony of five occurrence witnesses. William Blasingame testified that on April 28, 2006, at approximately 9:30 p.m., he was hanging out at the Touch and Go Car Wash with Martel Edwards, Stephen Henderson, David Dabbs, Terron and Rio. While he was at the car wash, Blasingame noticed a vehicle that looked suspicious. He saw defendant and another man, who was Raymond Lipscomb, approach Dabbs, who turned around and shook defendant's hand. Edwards then approached Dabbs and defendant, and he shook defendant's hand. Lipscomb stood right next to defendant. After Edwards shook defendant's hand, Dabbs shouted out Terron's name, “Bear.” Dabbs and Edwards turned around,

and Lipscomb first started shooting followed by defendant firing his weapon in Edwards' direction. Lipscomb shot at Edwards and Dabbs, who were standing next to each other, and they began to run once the shooting started. Blasingame saw Edwards and Dabbs running very close together, and then he saw Edwards drop to the ground. Blasingame saw defendant and Lipscomb run eastbound on Sibley Boulevard to a running vehicle. After the shooting stopped and defendant left the area, Blasingame went to Edwards and found him laying face down, gasping for air. Blasingame and another individual lifted Edwards and placed him into a vehicle. As the vehicle was leaving the car wash, it stopped because Edwards fell out of the vehicle onto the pavement. The men placed Edwards back into the vehicle and took him to Ingalls Hospital.

¶ 7 On cross-examination, Blasingame stated that when defendant approached Dabbs, he had his hand extended, but not a weapon. At some point, Lipscomb, who was standing approximately three feet away, began firing a weapon. After the first gun shots were fired, defendant reached for his weapon and began firing it.

¶ 8 On redirect, Blasingame stated that a couple of minutes elapsed between the time that defendant approached Dabbs and Edwards and when the shots were fired. He saw defendant and Lipscomb exit the same vehicle, walk together towards Dabbs, fire gun shots and run to the same vehicle.

¶ 9 Nathaniel Arnold testified that on April 28, 2006, he was at the car wash at around 9 p.m. with Edwards, Dabbs, Bear, Mario and Henderson. Edwards had decided to leave the car wash, but changed his mind before exiting the car wash and reversed his vehicle back into the parking lot. He then saw Edwards walk near the bathroom stalls where Dabbs was talking to defendant. Arnold saw defendant and Dabbs aggressively shake hands. He also saw a "dark skinned stud,"

who was Lipscomb, on the side of Dabbs and defendant about three feet away from defendant. When Edwards approached defendant, he shook defendant's hand, too. Arnold was not close enough to hear anything that was said between the men. Gun shots were fired approximately 30 seconds after Edwards and defendant stopped shaking hands. Lipscomb, who was on defendant's side, fired the shots and it appeared that he was shooting at Dabbs and Edwards. Arnold thinks that he saw defendant fire one shot in Dabbs' and Edwards' direction. After the shooting stopped, he saw defendant and Lipscomb jump into a blue vehicle.

¶ 10 During cross-examination, Arnold stated that he was not sure when Lipscomb approached the group because he did not see him until after the gunfire started. Lipscomb was not standing directly next to defendant, but was approximately 2 ½ to 3 feet behind and to the left of him. On redirect, Arnold indicated that after the shooting started, Edwards and Dabbs began to run and he did not see a weapon in either of their hands. When the conversation between defendant and Dabbs first started, he did not see any weapons. Arnold thought that Edwards had a weapon in his vehicle, but he did not see Edwards holding a weapon outside of the vehicle. When defendant first approached the scene, Arnold did not see anyone else with a weapon besides defendant and Lipscomb. On re-cross examination, Arnold stated that when defendant first approached Dabbs, the only thing defendant extended was his hand. Upon further examination, Arnold stated that he never saw a gun pointed at defendant or Lipscomb. When defendant first approached the men, his hand was the only thing extended, and when he left, defendant held a pistol in his hand.

¶ 11 David Dabbs testified that on April 28, 2006, he was hanging out at the car wash with Edwards, Henderson, Elliott and Maloney. He and Edwards were getting ready to leave the car

wash, but he decided to use the bathroom before leaving. As he was leaving the bathroom stall, defendant approached him, and they were standing face to face. Defendant asked him "Where is Willie?" Dabbs responded that "Willie ain't here." Defendant extended his hand out, and Dabbs shook it. Dabbs then turned around and called out for his friend "Bear," who approached Dabbs along with Edwards. Dabbs was standing shoulder to shoulder with Edwards and defendant stood close by. When Edwards approached the men, defendant shook his hand and asked him the same question. After they shook hands, Lipscomb approached them within approximately three seconds. When Lipscomb reached the group, he immediately began shooting his weapon. It appeared that Lipscomb was shooting at him and Edwards because he could hear the bullets pass right by him. At that point, Dabbs began to run towards the bathroom stall, and Edwards followed him as the gun shots continued. When he and Edwards were inside of the bathroom stall, he fell and then Edwards fell. Dabbs thought he was shot because they were shooting in his direction and he felt bullets fly past him, but he was not shot. The shooting stopped, but he did not see where defendant and Lipscomb went. He, along with the other men, put Edwards into his vehicle to drive him to Ingalls Hospital. Before he pulled out of the parking lot, the men, who were in the vehicle with him, told him to stop because Edwards was not completely in the vehicle. To his knowledge, Edwards did not fall out of the vehicle.

¶ 12 On cross-examination, Dabbs agreed that defendant did not start a fight with him, swing at him or pull a gun on him when he first approached him. On re-cross examination, Dabbs thought that he told the investigators that defendant asked "Where is Willie," but he did not know why that was not in his report.

¶ 13 Deon Maloney testified that on April 28, 2006, he was working as a manager at the car

wash. He was hanging out with his friends, Blasingame, Edwards, Dabbs and "Bear." Maloney was closing the car wash when he noticed a vehicle with three individuals in it drive slowly past him. He had a conversation with Edwards, and they both agreed that they were ready to leave. Edwards entered into his vehicle and began to drive away, but he turned around and went back to the car wash. Maloney walked towards Blasingame's vehicle and got into it. When he did so, he saw Edwards exit his vehicle and start walking towards the crowd. As Edwards was getting out of the vehicle, Maloney heard Dabbs shout: "Yo, Bear; Yo, Bear." Maloney saw Dabbs talking to defendant and Lipscomb, and they were all standing face to face. After hearing Dabbs shout "Yo, Bear," he heard a lot of gun shots ring out, which came from defendant's and Lipscomb's weapons. Edwards was approximately three feet from Dabbs when Maloney heard the gun shots, which were fired directly in Dabbs' and Edwards' direction. The shooting stopped about ten seconds later, and he went to the door of Blasingame's vehicle because it was open. He saw defendant jump into a blue vehicle right away and it drove off. Lipscomb caught up to the vehicle as it was driving off, and got into it. After the vehicle drove off, Maloney ran to where the gunshots were fired to see if anyone got hit with a bullet. Maloney saw Edwards on the ground. Maloney went to a building at the car wash and called 911. Then, Maloney went to the street and flagged down a police vehicle that was driving down the street. He asked the officer to call the paramedics. Because the paramedics did not arrive, Maloney and his friends placed Edwards in Dabbs' vehicle. As they did this, Dabbs hit the gas to turn the corner, and Edwards' body fell out of the vehicle because the door was not closed. Maloney and his friends picked Edwards' body up and put him back into the vehicle. Dabbs drove the vehicle to Ingalls Hospital.

¶ 14 Stephan Henderson testified that on April 28, 2006, he was just chilling out at the car

wash with about 7 to 11 others. He saw Dabbs talking with defendant and Lipscomb. Henderson also saw Edwards walk towards them and they were talking a while. Henderson heard gun shots and saw the shots coming from defendant and Lipscomb, who were shooting towards Edwards and Dabbs. Henderson saw a black and chrome gun in defendant's hand, and saw him fire it in Edwards' and Dabbs' direction. He saw Lipscomb fire shots, as well. When the shooting stopped, he saw defendant and Lipscomb run towards a blue vehicle and enter the vehicle. Henderson looked at the first bathroom stall and saw Edwards' shoe, but he could not see his entire body. Henderson approached Edwards and, as he turned him over, Edwards said "Bro, get me to the hospital." Dabbs pulled his vehicle up and he, Dabbs and Arnold all tried to put Edwards into the vehicle. Edwards, however, was not all the way in when Dabbs pulled out causing Edwards to fall out of the vehicle and hit the ground. They put Edwards back into the vehicle, and Dabbs drove them to Ingalls Hospital.

¶ 15 On cross-examination, Henderson stated that the gunfire began when Lipscomb, holding a handgun, approached Edwards, Dabbs and defendant. After the gunfire started, he saw defendant produce a handgun and fire it.

¶ 16 Defendant testified that in the evening of April 28, 2006, he was riding in a vehicle with his cousin, Kendall Edwards, and Lipscomb. The vehicle drove down Sibley Boulevard towards Harvey when it passed by the car wash. Defendant recognized some of the vehicles that were at the car wash and the individuals who drove those vehicles, including Dabbs and Blasingame. The vehicle that defendant rode in drove past the car wash and went to a store a few blocks away for a few minutes so that they could purchase liquor. After leaving the store, defendant was driving the vehicle, and he drove east past the car wash. This time, defendant turned the vehicle

into the car wash. Defendant wanted to talk to Dabbs because there was an altercation and tension between Dabbs' side of town, which was the east side, and the west side of town, which is where defendant lived. Defendant wanted to talk to Dabbs to see if they could squash the animosity between both sides. Defendant parked the vehicle, exited it and approached Dabbs. When he exited the vehicle, Kendall was still in the passenger seat and Lipscomb was in the back passenger seat. Defendant started to walk across the parking lot and noticed that Dabbs was to his left. When defendant approached Dabbs, he shook his hand, at which point defendant thought to himself "so far, so good." Due to the tension between the two sides, defendant thought it was an accomplishment just to be able to shake Dabbs' hand. Defendant told Dabbs that he wanted to squash the animosity, and Dabbs agreed because he was tired of all of the unnecessary going back and forth. Dabbs then shouted to the crowd: "Hey, check it out." Defendant saw a man coming from his right side real fast with his hand on a revolver, which was on his hip. Defendant thought: "Man, I am thinking, He fin [sic] to shoot me. I am about to die out here."

¶ 17 Defendant had a .40 caliber handgun with him that night, which was located between the mid of his right hip and the small of his back underneath his shirt. Defendant carried a weapon because a few months before that night, he and his friend were shot at and his friend later died. Because that shooter was never arrested, defendant kept a gun on him for protection.

¶ 18 At first, defendant did not know who the man with the gun was, but he later recognized him as Edwards. When defendant saw Edwards, he did not reach for his gun because he and Dabbs were still locked in a handshake. Defendant thought that "He trying to hold my hand so this guy can shoot me." While defendant was standing there, he focused on Edwards holding his

gun, and he saw flashes from gun shots coming from his left side and heard ringing in his ear. Defendant thought he was about to die because he was on their side of town, in the middle of them and a man fired shots while he was out there by himself. At that point, defendant snatched his hand from Dabbs and turned to run because they were shooting at him. As he was running, defendant pulled out his weapon and fired a shot back "to get them off of him" hoping that if they realized he had a gun, they would stop shooting. Defendant's gun was capable of firing 31 bullets, but he only fired once because he thought one shot "was enough to get them up off me." Defendant ran towards the vacuum cleaners at the car wash to try to take cover. When he was at the vacuum cleaners, defendant thought "Man, it is on. It is fin [sic] to be an all out war." Defendant then ran to a vehicle and jumped in the driver's seat. When defendant started the vehicle, the back door flew open. He ducked because he thought they were "fin [sic] to start shooting up in the car, but it was Raymond getting in the car." He did not know that Lipscomb exited the vehicle when defendant approached Dabbs. Defendant drove the vehicle out of the area so he could stay alive.

¶ 19 Also during his direct examination, defendant acknowledged that he was currently serving time in the State penitentiary relating to prior convictions for armed habitual criminal and unlawful use of a weapon. On cross-examination, defendant stated that in 2005, Willie Matthews shot at him and his friend, who died. Defendant acknowledged that he wanted revenge on Matthews for the shooting, and he was mad at him. Defendant, however, was not mad at Dabbs, Edwards, Blasingame, Arnold or Henderson. Defendant again stated that he pulled into the car wash to make peace and that he had no problems with those men. When defendant approached Dabbs, Lipscomb was not with him. Lipscomb was never standing next to him, and

when the gun shots were fired, defendant did not know it was Lipscomb firing the shots. When defendant discharged his weapon, he did not know what direction he fired in because he just shot back in the direction that the gun shots came from. Basically, defendant shot back at those who were shooting at him, and it all began after Lipscomb fired the first shots. After he left the car wash, defendant went home and stayed there until the morning. Defendant then went to a house in Robbins, where he was apprehended.

¶ 20 After being apprehended and taken to the South Holland Police Department, defendant was questioned by detectives. Defendant did not tell the officers that Edwards had a gun, and he did not tell the officers anything about that night. When the officers first questioned defendant on May 2, 2006, he acknowledged that he knew Edwards was dead. Defendant might have told the officers that an unknown black male, who was behind him, pulled out two guns and began shooting at Edwards and Dabbs. Defendant again reiterated that the whole point of the evening was to make peace because he wanted the violence to end.

¶ 21 During a second conversation with detectives, defendant stated that the second shooting offender went by the name of “Little Mo.” After leaving the car wash, defendant drove to his girlfriend's house. He kept his gun on him, and he did not hide it. When defendant arrived at the car wash, he did not ask Dabbs or Edwards "Where is Willie."

¶ 22 On redirect examination, defendant stated that he did not give the police Lipscomb's name because he had just saved his life. Defendant gave the police the name of "Little Mo." Lipscomb and defendant were not tried together. Lipscomb refused to testify in defendant's case based on his fifth amendment right against self-incrimination.

¶ 23 During the jury instructions conference, defendant offered the self-defense and defense of

others definition instruction to support his defense that Lipscomb discharged his weapon in self-defense and in defense of defendant. Defendant argued that absent the instruction, he could not fully defend against the accountability charge. Defendant claimed that tendering the self-defense and defense of others instruction to the jury would allow him to present his defense that Lipscomb discharged his weapon because he faced the imminent threat of unlawful use of force. The trial court rejected defendant's offered instruction finding that the evidence in the record did not support that instruction. Even though defendant objected to the State's offered felony murder instruction because the defense that Lipscomb acted in self-defense or in defense of defendant could not be used against a felony murder charge, the trial court tendered that instruction to the jury.

¶ 24 After the jury was instructed and during deliberations, the jury sent the following question to the trial court:

> "In considering whether Anthony is guilty of the lesser offense of 2nd degree murder instead of 1st degree murder, we need clarification on this point:
>
> > 'that the defendant, at the time he performed the acts which caused the death of Martel Edwards, believed the circumstances to be such that they justified the deadly force he used.'
>
> Should we consider the beliefs of those for whom Anthony is legally responsible?"

¶ 25 The trial court read the question to both parties and sought their response. The State argued that there was no evidence indicating what Lipscomb believed or thought. Defendant responded that although there was no direct evidence regarding Lipscomb's thoughts or beliefs,

circumstantial evidence regarding his thoughts and beliefs existed. Because the jury received the instructions addressing circumstantial evidence, defendant agreed to the trial court's proposed response to the jury's note. After discussing the jury's note with the attorneys, the trial court read to the parties the following proposed answer:

> "In response to your last note, you have heard the testimony and have been provided with all of the evidence and all the instructions that you will be given. Please continue to deliberate."

¶ 26 The trial court asked the parties whether they agreed with the proposed response, and both parties affirmatively agreed to the response. The trial court then provided the above response to the jury.

¶ 27 After the jury concluded deliberations, it found defendant guilty of first degree murder, Type A (intentional and strong probability) and Type B (felony), and that defendant personally discharged a firearm during the commission of the offense of first degree murder. The jury did not find that the State proved that during the commission of the offense of first degree murder, defendant personally discharged a firearm that proximately caused death to another individual.

¶ 28 Defendant filed a motion for a new trial and an addendum to the motion for a new trial, which the trial court denied. The trial court merged the felony murder conviction with the intentional and strong probability first degree murder conviction. The trial court sentenced defendant to 60 years' imprisonment consisting of 40 years for the first degree murder and 20 years for the firearm enhancement. Defendant filed a motion to reconsider the trial court's denial of the motion for a new trial and a motion to reconsider the sentence. The trial court denied both motions. Defendant timely filed this appeal.

¶ 29 ANALYSIS

¶ 30 I. Jury Instructions

¶ 31 Defendant contends that the trial court erred in failing to tender to the jury the offered self-defense and defense of others instructions, which prevented him from presenting a defense to the accountability charge. Defendant claims that the evidence supports his defense that Lipscomb fired gun shots in self-defense and in his defense, and that, under an accountability theory, self-defense may be raised on behalf of both testifying and non-testifying defendants.

¶ 32 The purpose underlying jury instructions is to communicate to the jury the correct principles of law relating to the evidence presented to enable it to reach a correct conclusion regarding the defendant's guilt or innocence based on the law and evidence. *People v. Ramey*, 151 Ill. 2d 498, 535 (1992). This court will not disturb the trial court's tendered jury instructions absent an abuse of discretion. *People v. Polk*, 407 Ill. App. 3d 80, 107 (2010). A trial court abuses its discretion "only where no reasonable person would take the view adopted by the trial court." *People v. Hall*, 195 Ill. 2d 1, 20 (2000).

¶ 33 Defendant offered the following modified Illinois Pattern Jury Instruction (I.P.I.), Criminal, No. 7.02 entitled “Issues in First Degree Murder”:

> "To sustain the charge of first degree murder, the State must prove the following propositions:
>
> First Proposition: That the defendant, or one for whose conduct he is legally responsible performed the acts which caused the death of Martel Edwards; and
>
> Second Proposition: That when the defendant, or one for whose conduct he is legally responsible did so,

he intended to kill or do great bodily harm to Martel Edwards;

or

he knew that his acts would cause death to Martel Edwards;

or

he knew that his acts created a strong probability of death or great bodily harm to Martel Edwards;

or

he was committing the offense of aggravated discharge of a firearm; and

Third Proposition: That the defendant, or one for whose conduct he was legally responsible was not justified in using the force he used.

If you find from your consideration of all the evidence that each one of these propositions *has been proved* beyond a reasonable doubt, *you should find the defendant committed the offense* of aggravated discharge of a firearm.

If you find from your consideration of all the evidence that any one of these propositions *has not been proved* beyond a reasonable doubt, *you should find the defendant committed the offense* of aggravated discharge of a firearm." I.P.I. Criminal 4th No. 7.02 (4th ed. 2000) (modified) (emphasis added).[1]

¶ 34 Here, the trial court did not abuse its discretion in denying defendant's offered jury instruction because the evidence failed to support that instruction. During the jury instructions conference when the discussion turned to the aggravated discharge of a firearm issue and

[1] Emphasis was added to identify a typographical error in the proffered instruction.

definition instructions, the trial court asked defense counsel what evidence supported the tendering of the self-defense and defense of others instructions. Counsel responded that it was a logical inference that Lipscomb acted in self-defense. The trial court, however, disagreed stating that what Lipscomb would testify to regarding self-defense was speculative because he did not testify and no testimony existed that Lipscomb acted in self-defense or in defense of others.

¶ 35 Jury instructions may be tendered to the jury only if the evidence and law supports the offered instruction. In the instant case, the evidence and law failed to support defendant's proffered jury instruction. A "logical inference," as characterized by defense counsel, of why Lipscomb acted the way he did does not equate to direct evidence and is not sufficient to support the tendering of the defendant's proffered jury instruction, nor does the inference amount to circumstantial evidence sufficient to tender the instruction to the jury. Defendant's proffered jury instruction failed to communicate the correct principles of law based upon the evidence presented, or the lack thereof, to enable the jury to reach a correct conclusion regarding defendant's guilt or innocence. Defendant's only proposed evidence was that Lipscomb was standing near defendant and he could have seen that Edwards had a gun, which would have caused him to discharge his weapon to protect himself and defendant against the imminent use of unlawful force. The evidence in the record reveals, however, that Edwards and the other rival fraction members did not fire a single bullet that evening and only Lipscomb and defendant discharged their weapons. Arnold testified that he did not see a weapon in either Edwards' or Dabbs' hands. The State's witnesses testified that Lipscomb and defendant fired their weapons towards Edwards and Dabbs. The evidence that Lipscomb and defendant fired their weapons is not disputed. The disputed evidence is whether defendant actually saw a weapon on Edwards or,

instead, he assumed that Edwards was carrying a weapon. Contrary to defendant's testimony, the State presented evidence that Edwards and Dabbs were unarmed that night. Even though Lipscomb did not testify, the evidence in the record fails to support the defense's theory that he and defendant acted in self-defense or in defense of each other, and what Lipscomb might have testified to was purely speculative and not supported by the record. Accordingly, the evidence in the record fails to support tendering defendant's proposed jury instruction.

¶ 36 Additionally, according to defendant's proposed instruction, whether by typographical error or not, the jury would have been instructed to find defendant guilty of aggravated discharge of a firearm regardless of whether the State proved the three propositions beyond a reasonable doubt. Moreover, the offered instruction, by using the words "or one for whose conduct he is legally responsible did so" and by adding the third proposition, combined the concepts of accountability and self-defense into the felony murder instruction. The proposed combined instruction could have potentially confused the jurors because of the many legal principles that were combined into that single instruction. The committee notes to I.P.I Criminal 4th No. 7.01X indicate that the instruction should be used for felony murder and I.P.I. Criminal 4th No. 7.04 or No. 7.06 should be used for intentional and strong probability first degree murder or second degree murder. The law in Illinois clearly establishes that self-defense may not be used by a defendant to defend against a charge of felony murder. *People v. Morgan*, 197 Ill. 2d 404, 411 (1983). Contrary to established legal precedent, defendant's proposed instruction sought to instruct the jury that defendant could not be found guilty of felony murder if he or Lipscomb acted in self-defense.

¶ 37 Defendant also references the jury's note to assert that the trial court erred in failing to tender to the jury the proposed jury instruction. The jury's note was in reference to the second degree murder charge and not the felony murder charge. The note asked whether they could consider the beliefs of one for whom defendant was responsible. The defense counsel agreed with the trial court's response that the jury had all of the evidence and that they should continue to deliberate. The record does not include evidence supporting Lipscomb's beliefs and, thus, the trial court did not abuse its discretion in how it responded to the jury's note. The trial court accurately informed the jury that they were to decide defendant's guilt or innocence based on the evidence presented to it. In the instant case, the trial court did not abuse its discretion in refusing defendant's proffered jury instruction that included language raising self-defense in the felony murder issues instruction.

¶ 38 Defendant also contends that the trial court erred in rejecting his proffered definition instruction I.P.I. Criminal No. 24-25.06 entitled “Use of Force in Defense of a Person.” Defendant maintains that the proffered self-defense definition instruction would have aided the jury in understanding that concept and applying its understanding of self-defense to the idea of "imminent use of unlawful force," which defendant claimed Lipscomb faced causing him to discharge his weapon. Defendant further contends that this definition instruction would have ensured the jury understood the phrase "without lawful justification" used in the intentional and strong probability murder and second degree murder instruction, and eliminated juror confusion concerning whether an individual is justified in using a firearm when committing aggravated discharge of a weapon and intentional and strong probability murder. Defendant concedes that this claim of error was not preserved for our review, but he, nonetheless, requests review under a

plain error analysis.

¶ 39 This court may review an unpreserved error if: (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) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Thompson*, 238 Ill. 2d 598, 613 (2010). Before engaging in a plain error analysis, the preliminary determination of whether an error occurred at all must be made because a plain error analysis requires the existence of an error. *Id.* Thus, we must first determine if the trial court erred by refusing to tender to the jury defendant's proffered definition instruction of self-defense.

¶ 40 Defendant contends that the following jury instruction addressing the definition of self-defense should have been tendered to the jury:

> "A person is justified in the use of force when and to the extent that he reasonably believes that such conduct is necessary to defend himself and/or another against the imminent use of unlawful force.
>
> However, a person is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself and/or another." I.P.I. Criminal 4th 24-25.06.

Because defendant was charged with intentional and strong probability first degree and second degree murder, the jury issues instruction incorporated language addressing the mitigating factor of self-defense. Specifically, the third proposition of the issues instruction tendered to the jury

stated the following: "Third: That the defendant was not justified in using the force which he used." Also, the instruction included the following paragraph:

> "The defendant has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of Second Degree Murder instead of First Degree Murder (Type A). By this I mean that you must be persuaded, considering all the evidence in this case, that it is more probably true than not true that the following mitigating factor is present: that the defendant, at the time he performed the acts which caused the death of Martel Edwards, believed the circumstances to be such that they justified the deadly force he used, but his belief that such circumstances existed was unreasonable."

The jury also received the following instruction regarding the definition of a mitigating factor:

> "A mitigating factor exists so as to reduce the offense of First Degree Murder (Type A) to the lesser offense of Second Degree Murder if at the time of the killing the defendant believes that circumstances exist which would justify the deadly force he uses, but his belief that such circumstances exist is unreasonable." I.P.I. Criminal 4th No. 7.05.

Thus, even though the jury did not receive the self-defense definition instruction, the jury received instructions addressing the concept of self-defense. Consistently throughout the proceedings, defendant presented his claim that Lipscomb discharged his weapon in self-defense or in defendant's defense when he was faced with the imminent threat of unlawful force. The concept that Lipscomb and defendant discharged their weapons because they were protecting

themselves or each other was clearly conveyed by the instructions tendered, and is a concept easily comprehended by the jury and does not need detailed elaboration. Defendant relies upon *People v. Dailey*, 188 Ill. App. 3d 683, 685 (1989) (*abrogated* in *People v. Wendt*, 163 Ill. 2d 346 (1994) on other grounds), to support his position, but his reliance is misplaced. In *Dailey,* the State agreed to the defendant's proffered self-defense instruction if additional language was included regarding a person's use of force. *Id.* The trial court agreed to tender defendant's proffered self-defense definition instruction, which would include the State's offered language. *Id.* However, the trial court failed to actually tender the instruction to the jury. *Id.* This court held that the trial court's failure to tender the instruction after it agreed to do so denied the defendant a fair trial. *Id.* at 686. *Dailey* is distinguishable, however, because the trial court, here, did not agree to tender the self-defense definition instruction and then failed to do so. Rather, the trial court refused the instruction because the evidence did not support tendering that instruction to the jury.

¶ 41 Defendant's claim that the jury was not properly instructed because the tendered jury instructions omitted "the imminent use of unlawful force" phrase is not persuasive. A separate self-defense definition instruction was not necessary in light of the mitigation language included in the issue instruction and definition of a mitigating factor. The jury received instructions communicating the legal principle relating to the claim that defendant believed deadly force was necessary to protect himself. The instructions fully conveyed to the jury the principle that defendant could have used deadly force if he reasonably believed he faced the imminent use of unlawful force. Inclusion of the phrase "imminent use of unlawful force," as proposed by defendant, in the jury instructions would not have further aided the jury in understanding why

defendant or Lipscomb would have used force to protect himself or each other. Here, the tendered instructions fully and comprehensively apprised the jury of the relevant legal principles, including the principle of self-defense. *People v. Parker*, 223 Ill. 2d 494, 501 (2006). Accordingly, no error resulted from the trial court not tending to the jury defendant's proffered jury instruction defining self-defense and including that principle in the issues instruction. As such, we need not engage in a plain error analysis because no error occurred. Similarly, defendant's alternative ineffective assistance of counsel claim is rejected because no error occurred relating to the instructions tendered to the jury. In the absence of error relating to the jury instructions, no basis exists to find counsel ineffective as claimed by defendant.

¶ 42 II. Felony Murder Instructions

¶ 43 Next, defendant contends that the felony murder instruction and second degree murder statute violated his right to a fair trial. Defendant contends that the trial court erred in tendering the felony murder instruction because the underlying predicate felony of aggravated discharge of a firearm was inherent in the killing of Edwards. Defendant concedes that this error was not raised at the trial level, but claims that the error should be reviewed under a plain error analysis. Defendant also contends that the felony murder instruction precluded him from presenting a defense to the predicate aggravated discharge of a firearm, which effectively left him with no defense to the felony murder charge. Defendant further contends that the second degree murder statute is unconstitutional because he is precluded from requesting a second degree murder instruction based on felony murder whereas such an instruction is permitted based on intentional and strong probability murder.

¶ 44 Here, the record reveals that the trial court did not enter a judgment on the felony murder

conviction. The trial court explicitly stated that the felony murder conviction merged into the intentional and strong probability murder conviction. The trial court did not impose a sentence relating to the felony murder conviction independently. In *People v. Flores*, the defendant claimed that his conviction for armed robbery should be vacated because the trial court did not impose a sentence on that conviction, and, instead, imposed a sentence on the murder conviction. 128 Ill. 2d 66, 95 (1989). In *Flores*, the Illinois Supreme Court stated that "[w]hile it is axiomatic that there is no final judgment in a criminal case until the imposition of sentence, and, in the absence of a final judgment, an appeal cannot be entertained, it does not follow, however, that the conviction must be vacated." *Id.* In that case, the court continued by stating that without a final judgment, a defendant may not appeal a conviction. *Id.* In the case *sub judice*, the trial court merged the felony murder conviction into the intentional and strong probability murder conviction. Since no sentence was imposed on the felony murder conviction, no final judgment was entered, and, thus, defendant may not appeal that conviction. See also *People v. Dotson*, 214 Ill. App. 3d 637, 645 (1991) (holding that where a trial court merged a weapons charge with a murder charge and no sentence would be imposed on the weapons charge, there was no appealable judgment). Accordingly, issues relating to the felony murder jury instructions are not before this court for review.

¶ 45 III. Prosecutorial Misconduct

¶ 46 Defendant next contends that he was denied his right to a fair trial because of the prosecutor's misconduct when he inferred during closing arguments that defendant recently fabricated his testimony that he went to the car wash to broker peace, and that Edwards had a gun even though defendant provided this information to the prosecution approximately 20 months

before trial. Defendant also claims that prosecutor misconduct occurred when the prosecution asked defendant whether he attempted to enter into a plea deal with the State.

¶ 47 The relevant portion of the State' closing argument is as follows:

> "But the interesting thing about that, this big peace mission, this mysterious gun that everyone supposedly hid is this happened March 28, 2006. He waited 1,131 days to tell anyone about this mysterious gun. He waited 1,131 days to tell anyone, 'Oh, hey, wait. I was on a peace mission.' He waited until yesterday.
>
> * * *
>
> The next day he talks to the police. He says, 'Yeah, okay, well, the guy was Little Mo, but if you show me a picture, I can't identify him.' Why not? If you are for this change, if you got this epiphany of, 'Oh, God, I want peace. I want peace. I want to be free,' say that. Why wait 1,131 days? Does that make sense?"

¶ 48 Defendant contends that the prosecutor's comments were not only inaccurate, but they mislead the jury regarding his credibility and were prejudicial. Defendant claims that he told the prosecution about his peace mission plan, which was memorialized in his proffer agreement dated September 20, 2007. Defendant's proffer agreement stated in part that "he pulled into the car wash to talk to David Dabbs to try to squash all the shooting. There were approximately 15 other people around associated with the rival group. Reynolds claimed that he walked up to David and shook his hand. As he was shaking David's hand, he could see out of the corner of his eye Martel Edwards walking towards him reaching into his shirt. Reynolds thought that he was being set up to be shot."

¶ 49 During defendant's closing argument, defendant reiterated to the jury that he approached

Dabbs to foster peace and to end the shooting. Defense counsel stated that the case was not about revenge, but it was about getting people to stop dying, and defendant's plan was to talk to Dabbs to reach a resolution.

¶ 50 The law is well established "that the prosecutor is afforded wide latitude in closing arguments and may argue to the jury facts and reasonable inferences drawn from the evidence." *People v. Kliner*, 185 Ill. 2d 81, 151 (1998). A prosecutor, however, may not argue assumptions or facts that are not supported by the evidence in the record. *Id.* Prosecutor remarks deemed improper warrant reversal only if they result in "substantial prejudice to the defendant, considering the content and context of the language, its relationship to the evidence, and its effect on the defendant's right to a fair and impartial trial." *Id.* at 152. In reviewing a claim of prosecutor misconduct during closing arguments, we "will consider the entire closing arguments of both the prosecutor and the defense attorney, in order to place the remarks in context." *Id.* Prosecutor statements will not be held improper if they were provoked or invited by the defense counsel's arguments. *Id.* at 154. A prosecutor's misconduct during closing arguments warrants a new trial if the improper remarks were a material factor in defendant's conviction or if the jury "could have reached a contrary verdict had the improper remarks not been made." *People v. Wheeler*, 226 Ill. 2d 92, 123 (2007). Determining whether a prosecutor's misconduct warrants a new trial is a legal issue that this court reviews *de novo*. *Id.* at 121.

¶ 51 Here, the proffers defendant relies upon to establish prosecutor misconduct were not included in the record, and, thus, defendant may not rely on the proffers. Regardless, defendant invited the prosecutor's comments when defendant stated during closing arguments that defendant went to the car wash to broker peace.

¶ 52 After considering the closing arguments of both counsels, we conclude that the prosecutor's comments were not improper because they were comments invited by the defense counsel's closing arguments. A prosecutor has wide latitude during closing arguments to respond to comments made by defense counsel that invite a response by the prosecution. *Kliner*, 185 Ill. 2d at 153. In the instant case, defense counsel's statements that defendant approached Dabbs and shook his hand to foster peace and end all the shooting invited a response by the prosecution. The prosecution's response was to attack defendant's credibility regarding his desire to foster a peace agreement with the rival faction. Defendant's position is that the prosecutor's 1,131 day remark was highly effective to attack defendant's credibility and his version of events. Defendant contends that the prosecutor misstated the facts of the case because it was within the prosecutor's personal knowledge that defendant indicated in a proffer that he wanted to squash all of the shooting, and that knowledge was not part of the trial evidence presented to the jury. Defendant correctly states that the proffers were not admitted into evidence and, thus, are not part of the record that we may consider. Included in the record, however, are the instructions tendered to the jury. The trial court instructed the jury that "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 statements or closing arguments are evidence, and any statement or argument made by the attorneys which is not based on the evidence should be disregarded." This instruction "can serve to alleviate any possible prejudice from an erroneous closing comment by the State." *Id.* at 159. Thus, any prejudicial effect that the prosecutor's statement may have had were rectified by the instructions tendered to the jury, including the instruction that closing arguments are not to be considered as evidence.

Any improper comments, here, were not so substantial that it resulted in prejudice to defendant and deprived him of a fair trial. *Id.* at 160.

¶ 53 Moreover, the prosecutor's remarks were not a material factor in defendant's conviction, and the jury would not have reached a contrary verdict had the prosecutor not made the alleged improper remarks. The State's evidence consisted of Dabbs' testimony that defendant asked "Where is Willie?" As stated previously, the State also presented Arnold's testimony who stated that he did not see a weapon in either Edwards' or Dabbs' hands. Also, no evidence exists in the record that they, or other fraction members, fired a single bullet from a weapon. Thus, even assuming that the prosecutor made improper comments, the comments were not a material factor in defendant's conviction and the jury would not have reached a contrary verdict had the prosecutor not made the alleged comments.

¶ 54 Defendant further contends that the prosecution's inquiry about whether he sought a plea deal negated his presumption of innocence and violated Illinois Supreme Court Rule 402(f). Defendant maintains that these errors amounted to reversible error.

¶ 55 Illinois Supreme Court Rule 402(f) is intended to encourage plea negotiations by precluding the introduction of statements or admissions defendants make during plea negotiations to the fact finder. *People v. Jones*, 219 Ill. 2d 1, 24 (2006). Rule 402(f) states: "If a plea discussion does not result in a plea of guilty, or if a plea of guilty is not accepted or is withdrawn or if judgment on a plea of guilty is reversed on direct or collateral review, neither the plea discussion nor any resulting agreement, plea, or judgment shall be admissible against the defendant in any criminal proceeding." Ill. S. Ct. R. 402(f) (eff. Jul. 1, 1997). A two prong test exists to determine whether a statement is an inadmissible plea-related statement, and the

defendant must meet both prongs. *Jones*, 219 Ill. 2d at 24. A statement is inadmissible pursuant to Rule 402(f) as being plea-related if: "defendant exhibited a subjective expectation to negotiate a plea and the expectation was reasonable under the totality of the objective circumstances." *Id.*

¶ 56 Defendant contends that the following question during his cross-examination amounted to reversible error:

> "Q: Didn't you tell them that you'd identify the unknown shooter if the State would give you a deal?"

Defendant's counsel objected to the question, and the trial court called for a sidebar. During the sidebar, the trial court stated that defendant's objection was sustained, and that the State was prohibited from asking any further questions relating to the plea negotiations. After that sidebar concluded, the jury was excused from the courtroom, and another sidebar was held. When the jury returned, questioning of the defendant resumed, and the trial court did not verbalize before the jury its ruling that the defendant's objection would be sustained.

¶ 57 While it was an error not to have sustained the objection in the jury's presence subsequent to the sidebar, the questioning regarding the plea agreement did not resume after the sidebar and defendant did not respond to the question. Because the jury did not hear a definitive answer regarding defendant's attempt to enter into a plea agreement, no prejudice resulted from the question. We disagree with defendant that the question alone "exposed jurors to the highly prejudicial inference that Reynolds sought a plea deal." Also, defendant did not meet his burden of satisfying both prongs of the Rule 402(f) test, primarily because he did not establish that he had a reasonable expectation of negotiating a plea. Additionally, specifics of a negotiated plea were not discussed, or revealed to the jury. Accordingly, Rule 402(f) was not violated.

Defendant failed to preserve either claimed prosecutor misconduct error for review. As previously stated, to engage in a plain error analysis, an error must be found to exist. Because we conclude that no error exists, a plain error analysis is not warranted.

¶ 58 IV. Impeachment

¶ 59 Lastly, defendant contends that the trial court erred in allowing the State to impeach defendant regarding his prior convictions by naming the two prior convictions of AHC and UUW. Defendant maintains that the mere fact that he had prior convictions should have been introduced to the jury, but not the specific name of those convictions. Defendant claims that naming the two prior convictions was prejudicial and negatively impacted his credibility to the jury, which denied him a fair trial.

¶ 60 If a defendant decides to testify on his own behalf during a criminal proceeding, any prior convictions are admissible to discredit the defendant as a witness. *People v. Naylor*, 229 Ill. 2d 584, 594 (2008). The underlying rational of allowing the prior convictions to impeach a defendant is to affect the credibility of the defendant's trial testimony and assist the trier of fact to determine whether they should believe the defendant's testimony instead of the testimony of conflicting witnesses. *Id.* at 599.

¶ 61 Under the mere-fact impeachment method advocated by defendant, the jury learns of a witness' prior conviction, but the nature of the conviction is not revealed to the jury. *People v. Atkinson*, 186 Ill. 2d 450, 457 (1999). Our supreme court set forth another method to determine whether prior convictions should be admissible to assess a defendant's credibility in *People v. Montgomery*, 47 Ill. 2d 510 (1971). According to the *Montgomery* rule, "evidence of a witness' prior conviction is admissible to attack the witness' credibility where: (1) the prior crime was

punishable by death or imprisonment in excess of one year, or involved dishonesty or false statement regardless of the punishment, (2) less than 10 years has elapsed since the date of conviction of the prior crime or release of the witness from confinement, whichever is later, and (3) the probative value of admitting the prior conviction outweighs the danger of unfair prejudice." *People v. Atkinson*, 186 Ill. 2d 450, 457 (1999), citing *Montgomery*, 47 Ill. 2d at 516. The Illinois Supreme Court affirmed the continued use of the *Montgomery* rule in *People v. Atkinson*, and rejected use of the mere-fact approached urged by defendant. The *Atkinson* court stated that "the three-prong approach adopted in *Montgomery* has guided our court's analysis of this issue for many years and has recently been reaffirmed." *Atkinson*, 186 Ill. 2d at 458. In *Atkinson*, the court expressly stated that "trial courts should not consider the mere-fact method of impeachment." *Id.* at 461. Accordingly, we decline defendant's invitation to render a decision adopting the mere-fact approach, which would be in stark contrast to the supreme court's binding precedent.

¶ 62 Turning to the *Montgomery* test, we note that the only element at issue is the balancing test set forth in the third prong because the prior crimes were punishable by imprisonment in excess of one year and less than ten years have elapsed since both the date of his conviction and defendant's release from prison. The record reveals that the trial court engaged in the required balancing test in determining whether to allow defendant's prior convictions for impeachment purposes. The trial court stated that it "was very familiar with *Montgomery* and its progeny, *Atkinson, Cox,* and so down the line, I have read the cases many, many times." The trial court noted that defendant's entire defense rested on his testimony, which then placed great emphasis on his credibility. Because credibility became a central issue, the trial court held that the State

was entitled to use available impeaching evidence to attack and destroy defendant's credibility. After balancing the probative value of using defendant's prior convictions to assess his credibility against the danger of unfair prejudice that may result, the trial court ruled that the State was allowed to use for impeachment purposes the offenses of AHC and UUW. The trial court prohibited the State from using the offenses of aggravated unlawful use of a weapon and attempt first degree murder.

¶ 63 The trial court's ruling regarding the admissibility of prior convictions for impeachment purposes pursuant to the *Montgomery* rule is reviewed for an abuse of discretion. *Atkinson*, 186 Ill. 2d at 456. Here, the record reveals that the trial court considered the nature of defendant's prior convictions, recognized the potential of unfair prejudice to defendant if the prior convictions were admitted and expressed its familiarity with *Montgomery*. The record also reveals that the trial court expressly stated that it conducted the required balancing test. Considering first the AHC conviction, we conclude that the trial court did not abuse its discretion regarding the admissibility of that conviction because it acknowledged the importance of defendant's credibility and appropriately weighed the need to impeach his credibility against the unfair prejudice that may result from the jury learning of his prior convictions. We next consider the admissibility of the UUW conviction.

¶ 64 Defendant contends that the trial court abused its discretion when it permitted the State to impeach him with the AHC and UUW convictions because the convictions all stemmed from the same physical act of possessing one handgun, which violated the one-act, one-crime rule. Defendant claims that on appeal, this court vacated the UUW conviction, and, thus, the trial court erred in allowing the State to use that conviction to attack his credibility. Defendant maintains

that reversible error occurred where the trial court allowed the State to impeach him with an erroneously admitted prior conviction.

¶ 65 Impeachment with prior convictions assists the trier of fact with determining defendant's credibility in comparison to the credibility of conflicting witnesses. *Naylor*, 229 Ill. 2d at 599-600. Even though the UUW offense was later vacated, reversible error did not occur when the trial court permitted the State to use that offense along with the AHC conviction to impeach defendant's credibility.

¶ 66 In *People v. Martin-Trigona*, the Illinois Supreme Court held that a prior conviction obtained in violation of a constitutional right may not be used to determine guilt or innocence. 111 Ill. 2d 295, 303 (1986). Where a prior conviction is erroneously relied upon to determine a defendant's guilt, a new trial is warranted if the error is not harmless. See *id* at 303-04. Accordingly, we must first determine whether an error occurred when the trial court allowed admission of defendant's prior UUW conviction for impeachment purposes, and if so, whether the error was harmless.

¶ 67 At the time of defendant's trial, his appeal in an unrelated case where he was convicted of, among other crimes, AHC and UUW was pending. Even though the UUW conviction was still a valid conviction at the time of defendant's trial in the instant case, defendant alerted the trial court that the UUW conviction violated the one-act, one-crime rule when it filed its motion *in limine* to bar the State's use of defendant's prior convictions. Thus, although the probative value of admitting the prior conviction was not outweighed by the danger of unfair prejudice, the trial court erred by not fully considering the implication of the one-act, one-crime rule as it related to the admission of the UUW conviction when it ruled on the admissibility of that prior conviction.

¶ 68 We must next consider whether the error was harmless. An error is considered harmless where the State establishes beyond a reasonable doubt that the error did not contribute to the resulting verdict. *People v. Patterson*, 217 Ill. 2d 407, 428 (2005). The following three approaches are used to determine whether an error is harmless: "(1) focusing on the error to determine whether it might have contributed to the conviction, (2) examining the other evidence in the case to see if overwhelming evidence supports the conviction, and (3) determining whether the improperly admitted evidence is merely cumulative or duplicates properly admitted evidence." *Id.*

¶ 69 Turning to the first factor, the error did not contribute to defendant's conviction. Defendant first introduced his prior conviction during his direct testimony when counsel asked the following question: "Mr. Reynolds, you have previously been convicted of the offense of armed habitual criminal and unlawful use of a weapon under case number 06 CR 4436, correct?" Defendant acknowledged the prior convictions and that he was currently in the Illinois Department of Corrections. During the cross-examination of defendant, the State did not ask defendant any questions relating to his prior convictions. When the State discussed the jury instruction addressing evidence of defendant's prior conviction during closing arguments, the State informed the jury that a defendant's "previous conviction of an offense may be considered by you only as it may affect his believability as a witness and must not be considered by you as evidence of his guilt of the offense of which he is charged, but you can use those convictions as to his believability." The State continued by stating that "He admitted that he was convicted of unlawful use of a weapon. You can use [that], and I ask you to." The limited use of the prior conviction through the introduction of it during defendant's direct testimony, and the State's

reference to the conviction during closing arguments, would not have contributed to defendant's conviction. Turning to the next factor, the evidence in the instant case overwhelming supports defendant's conviction. The State presented Dabbs' testimony that defendant asked him "Where is Willie?" Five of the State's witnesses testified that Lipscomb discharged his weapon. The State's witnesses also testified that Lipscomb was standing near defendant, and that he left the scene in the same vehicle as defendant. The evidence further established that neither Dabbs, Edwards or other members of the rival faction discharged a weapon. Here, the State offered overwhelming evidence supporting defendant's conviction. Turning to the last factor, we must consider whether the admission of defendant's prior UUW conviction was cumulative of properly admitted evidence. The trial court admitted defendant's prior conviction of AHC to impeach his credibility. Admission of the UUW prior conviction was also to be used to impeach defendant's credibility. Admitting both convictions to attack defendant's credibility was not unduly prejudicial, and the jury was expressly instructed to use the prior convictions to only determine his believability as a witness. Admitting defendant's UUW conviction, in addition to the AHC conviction, would not have unduly affected his credibility such that the outcome of the trial would have been different. Here, the error resulting from the admission of defendant's prior UUW conviction that was later vacated for violating the one-act, one-crime rule was harmless beyond reasonable doubt, and the error did not contribute to the resulting verdict in light of the other evidence adduced at trial.

¶ 70 For the reasons stated, we affirm the judgment of the trial court.

¶ 71 Affirmed.