2015 IL App (4th) 130571-UB

NO. 4-13-0571

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

Order filed June 15, 2015

Modified upon denial of rehearing July 28, 2015

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Vermilion County
EDWIN BROWN,	)	No. 12CF480
Defendant-Appellant.	)	
	)	Honorable
	)	Craig H. DeArmond,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Harris and Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: (1) When all the evidence is regarded in the light most favorable to the prosecution, a rational trier of fact could find, beyond a reasonable doubt, the disputed elements of threatening a public official (720 ILCS 5/12-9(a)(1)(i), (a)(2), (a-5) (West 2010).

(2) By accepting the State's nonpattern instruction on threatening a public official, the trial court did not abuse its discretion.

(3) By choosing not to discuss, in her closing argument, defendant's intoxication at the time he threatened a police officer, defense counsel made a strategic decision, which cannot be the basis of a claim of ineffective assistance.

¶ 2 Defendant, Edwin Brown, appeals his conviction of threatening a public official (720 ILCS 5/12-9(a)(1)(i), (a)(2), (a-5) (West 2010)), for which the trial court sentenced him to eight years' imprisonment. He makes three arguments.

¶ 3 First, defendant challenges the sufficiency of the evidence. Looking at all the evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could find, beyond a reasonable doubt, the disputed elements of threatening a public official.

¶ 4 Second, defendant challenges a nonpattern instruction the trial court gave on the offense of threatening a public official. We find no abuse of discretion in the giving of this instruction.

¶ 5 Third, defendant accuses his trial counsel of rendering ineffective assistance in her closing argument in that she failed to argue he was intoxicated at the time he made the threats to the police officer. We decline to second-guess this strategic decision by defense counsel.

¶ 6 Therefore, we affirm the trial court's judgment.

¶ 7 I. BACKGROUND

¶ 8 A. The Charge

¶ 9 In an amended information, the State charged defendant with one count of threatening a public official (720 ILCS 5/12-9(a)(1)(i), (a)(2), (a-5) (West 2010)) and two counts of domestic battery (720 ILCS 5/12-3.2(a)(1), (a)(2) (West 2010)).

¶ 10 The only count relevant to this appeal is count I, the count of threatening a public official. According to that count, the public official was Scott Crawley, and defendant threatened him on October 3, 2012.

¶ 11 B. Evidence in the Jury Trial

¶ 12 In the jury trial, which took place in April 2013, the evidence tended to show that on October 3, 2012, two Danville police officers, Crawley and Ryan Birge, interviewed Lori Gillen in response to her report of a domestic battery. Gillen told them they could find defendant at 1129 North Chandler Street. Crawley and Birge went there and knocked on the doors of the

house, Crawley on the front door and Birge on the back door, announcing they were the police. They both were in uniform. The back door swung open, and out came a pit bull, running toward Birge and barking and growling. Birge used his Taser on the dog. The electrical shock persuaded the dog to stop in its tracks, turn around, and retreat.

¶ 13 When defendant finally emerged from inside the house, he was drunk, as both Crawley and Birge testified, and he was irate that the police had "shot" his dog. On the way to the police station, sitting handcuffed in the back of Crawley's squad car, defendant made threats. The prosecutor asked Crawley:

> "Q. Describe what was said.
>
> A. Just stated that he was going to kill Officer Birge and myself. Also made a statement to me while I was in route that once I take the handcuffs off of him, that he was going to beat my ass.
>
> * * *
>
> [PROSECUTOR]: Do you recall any specific quotes the Defendant said in route to the [police station]?
>
> THE WITNESS: The quote is, he told me, he said, 'Officer, I love that dog.' He said, 'You don't know me.' He goes, 'I will beat your ass, officer.' "

¶ 14 They arrived at the police station. In accordance with protocol, the handcuffs were taken off defendant in the booking area. He sat down on a bench. Four police officers were present. Defendant never lunged at Crawley and never made any aggressive movement

toward him. He just continued to threaten Crawley while remaining seated on the bench. The prosecutor asked Crawley:

"Q. And do you recall any specific quotes or language the Defendant used in book-in?

A. Yeah. He was sitting on the bench. I was filling out the book-in paperwork. He told me that he's going to find out where I live, and that he's going to kill me.

* * *

Q. All those comments, including the last ones, the threats to your life, how did that make you feel?

A. Very alarming, disturbing.

Q. Did—go ahead.

A. In the course of my job, we take all threats seriously. You don't know what someone is capable of doing.

Q. Did it cause you concern?

A. Very much.

Q. Why?

A. Because not only did he make multiple threats, now he's talking about coming to my house and killing me."

¶ 15 C. The Jury Instruction Conference

¶ 16 In the jury instruction conference, the State tendered a modified instruction based on Illinois Pattern Jury Instructions, Criminal, No. 11.49 (4th ed. 2000):

> "A person commits the offense of threatening public officials when he knowingly delivers or conveys, directly or indirectly, to a public official by any means a communication containing a threat containing specific facts indicative of a unique threat to the person of the public official that would place the public official in reasonable apprehension of immediate or future bodily harm and the threat was conveyed because of the performance or nonperformance of some public duty."

¶ 17 Defense counsel objected to this proposed instruction, arguing that, under *People v. Hale*, 2012 IL App (4th) 100949, ¶ 21, the additional language "and not a generalized threat of harm" was required in the description of the threat. We stated in *Hale*: "Because of [the allegedly threatened person's] position as a law-enforcement officer, the jury should have received instructions that 'the threat must contain specific facts indicative of a unique threat to the person, family or property of the officer *and not a generalized threat of harm*.' 720 ILCS 5/12-9(a-5) (West 2008). Without it, the jury was not properly instructed in the law." (Emphasis added.) *Id.*

¶ 18 For the same reason, defense counsel objected to the State's modified instruction based on Illinois Pattern Jury Instructions, Criminal, No. 11.50 (4th ed. 2000) (IPI, Criminal, No. 11.50). That modified instruction read as follows:

> "To sustain the charge of threatening public officials, the State must prove the following propositions:
>
> *First Proposition:* That the defendant knowingly delivered or conveyed, directly or indirectly, to Scott Crawley, a threat that

would place Scott Crawley in reasonable apprehension of immediate or future bodily harm; and

Second Proposition: That Scott Crawley was a public official at the time of the threat; and

Third Proposition: That the threat was contained in a communication by any means; and

Fourth Proposition: That the threat contained specific facts indicative of a unique threat to the person of the public official; and

Fifth Proposition: That the threat was conveyed because of the performance or nonperformance of some public duty; and

Sixth Proposition: That when defendant conveyed the threat, he knew Scott Crawley was then a public official.

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 guilty.

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 not guilty." (Emphases in original.)

Defense counsel argued this instruction was defective in that it omitted the statutory language "and not a generalized threat of harm" in the description of the threat. 720 ILCS 5/12-9(a-5) (West 2010).

¶ 19 Defense counsel tendered his own modified instruction based on IPI, Criminal, No. 11.50, and the second proposition of that instruction read as follows: "Second Proposition: That the threat contained specific facts indicative of a unique threat to Scott Crawley *and not a generalized threat of harm*." (Emphasis added.)

¶ 20 The trial court refused defense counsel's instruction and overruled her objections to the State's instructions. The court reasoned that "if the threat contain[ed] specific facts indicative of a unique threat to the person, family, or property of the officer," the threat, *ipso facto*, was "not a generalized threat of harm." The court noted that we also said in *Hale*: "When a sworn law-enforcement officer is involved, it is clear that whether a defendant made a threat containing specific facts indicative of a unique threat to an officer is an element of the offense. The State should include this element in the charging document, and the jury should be instructed on that element." *Hale*, 2012 IL App (4th) 100949, ¶ 24. This passage, unlike a passage earlier in the opinion, omitted the phrase "and not a generalized threat of harm." The court understood this passage as confirming that the two phrases were merely two sides of the same coin: the language "and not a generalized threat of harm" was merely an alternative way of saying "a threat containing specific facts indicative of a unique threat to an officer"—or else, in that passage, *Hale* would have included the language "and not a generalized threat of harm." Thus, the court regarded the language "and not a generalized threat of harm" as redundant and unnecessary.

¶ 21 D. Defense Counsel's Decision To Avoid the Topic of Intoxication in Her Closing Argument

¶ 22 Before closing arguments, the prosecutor asked the trial court to bar defense counsel from presenting defendant's intoxication as a defense. Defense counsel responded she

had no intention to argue intoxication as a defense. Instead, she said, she intended to argue that Crawley lacked an objective basis to feel apprehensive from defendant's threats, considering that defendant was intoxicated when making the threats. The court agreed this would be a legally permissible argument to make to the jury. Nevertheless, the court was concerned that this argument could mislead the jury into considering intoxication as a defense. In fact, the court seemed to accuse defense counsel of attempting something sneaky or underhanded. The court told her:

> "When you use the language that the Defendant is intoxicated, that raises it to the level of a claimed defense in the minds of the jury, which is an improper inference. Once again, we're dealing with the efforts to assert improper inferences in the minds of the jury. *** Here, through[] a back-door means, the defense wants to raise, in the minds of the jurors, intoxication as a defense when it does not legally exist. That should not and cannot be allowed. Yes, they can consider the fact that the Defendant appeared to be under some degree of influence of alcohol, and they can argue that all they want; but when you assert intoxication, you then create in the minds of the jury, improperly, that they can somehow consider his intoxication as a defense to the crime, which they cannot do by law. Without having it as a defense, they can't then seek to lessen the seriousness of the Defendant's acts through intoxication, which is exactly what they are trying to do. If there's reference to intoxication, which you're free to make the reference, but if you

> do, then I think it's just as appropriate to instruct the jury that intoxication has not been asserted as a defense in this case, that it cannot be asserted as a defense in this case, and cannot be considered by you as a defense."

¶ 23 In her closing argument, defense counsel chose not to refer to defendant's intoxication, even though, in her opening statement, she had posed the question: "[W]as Crawley in reasonable apprehension of harm, or was this a more generalized threat by a drunk?"

¶ 24 II. ANALYSIS

¶ 25 A. The Sufficiency of the Evidence

¶ 26 1. *The Specificity of the Threat*

¶ 27 Under section 12-9(a-5) of the Criminal Code of 1961 (720 ILCS 5/12-9(a-5) (West 2010)), if the defendant made a threat to a law enforcement officer, "the threat must contain specific facts indicative of a unique threat to the person, family[,] or property of the officer and not a generalized threat of harm." Defendant observes that, according to the State's own evidence, he never stated he knew where Crawley lived, he never specified how he would kill Crawley, and he never did anything physically menacing toward Crawley.

¶ 28 When a defendant argues the evidence is insufficient to prove an element of the offense, we look at all the evidence in the light most favorable to the prosecution and ask whether any rational trier of fact could find that element to be proved beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). Not all rational triers of fact would have to agree with defendant that, for his threat to be specific to Crawley, defendant would have had to specify Crawley's home address and the method of execution. Defendant's words to Crawley, "I'm going to find out where you live and kill you," could reasonably be regarded as a specific threat that

was directed uniquely at Crawley. Most people on the receiving end of that threat would feel singled out and would not think the person was speaking in generalities.

¶ 29 That defendant was ignorant of Crawley's home address and that he made no menacing physical moves toward Crawley were relevant to the question of whether Crawley was "in reasonable apprehension of immediate or future bodily harm" but not to the question of whether the threat was specific to Crawley. 720 ILCS 5/12-9(a)(1)(i) (West 2010).

¶ 30 2. *Reasonable Apprehension of Bodily Harm*

¶ 31 One of the elements the State had to prove was that the "threat *** would place [Crawley] in reasonable apprehension of immediate or future bodily harm." *Id.* For four reasons, defendant argues the State failed to prove this element of the offense. First, when threatening to find out where Crawley lived and to kill him, defendant was unarmed and seated on a bench in the police station, with four police officers standing only a few feet away, two of them armed. Second, defendant was drunk. Third, he remained seated on the bench, giving no physical indication that he intended to carry out his threats. Fourth, he obviously did not know where Crawley lived.

¶ 32 We can see how the presence of other police officers and defendant's physical passivity on the bench would negate a reasonable apprehension of *immediate* bodily harm; but the offense requires, on the part of the victim, a "reasonable apprehension of immediate *or future* bodily harm." (Emphasis added.) *Id.* When the evidence is regarded in the light most favorable to the prosecution, a rational trier of fact could find that, despite defendant's intoxicated condition and his ignorance of Crawley's home address, his threat to find out where Crawley lived and to kill him "would place the public official *** in reasonable apprehension of *** future bodily harm." *Id.* Evidently, defendant was not so drunk that he was oblivious to what he

was saying. He was mentally competent enough to engage in a kind of psychological warfare. He played on Crawley's fear of the unknown—" 'You don't know me' "—and he tried to make his dangerousness more credible by telling Crawley he loved his dog, suggesting he had a genuine motivation to hunt Crawley down and kill him. He wanted Crawley to be troubled by the necessity of looking over his shoulder and to be scared of noises in the night. Arguably, the calculation or strategy behind what defendant was saying made it hard for Crawley to dismiss his words as drunken nonsense.

¶ 33 B. Jury Instructions

¶ 34 1. *The Omitted Language as a Restatement, in Negative Form, of What Was Already Stated*

¶ 35 The State tendered a modified jury instructions on the elements of threatening a public official, because the pattern instruction—IPI, Criminal, No. 11.50—did not include the language in subsection (a-5) (720 ILCS 5/12-9(a-5) (West 2010)), which Public Act 95-466 (eff. June 1, 2008) added to section 12-9 on June 1, 2008.

¶ 36 Rule 451(a) 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." Ill. S. Ct. R. 451(a) (eff. July 1, 2006). Because IPI, Criminal, No. 11.50 lacked the language from section 12-9(a-5), this pattern jury instruction did not "accurately state the law." *Id.* Thus, the trial court did not abuse its discretion by deciding that a modified, nonpattern instruction was necessary. See *id.*; *People v. Rodriguez*, 2014 IL App (2d) 130148, ¶ 78. Whether the nonpattern instruction, in its content, was an abuse of discretion depends on whether

it was "an accurate, simple, brief, impartial, and nonargumentative statement of the applicable law." *Id.*

¶ 37 Considering that the criminal statute included the phrase "and not a generalized threat of harm," it would have been pretty hard to criticize a jury instruction for likewise including that phrase. 720 ILCS 5/12-9(a-5) (West 2010). "Laying down the law in the words of the law itself ought not to be pronounced error." *Deming v. City of Chicago*, 321 Ill. 341, 345 (1926). We have no idea why the prosecutor and the trial court drew a line in the sand and opposed a full quotation of the statute. When deciding, however, whether the trial court abused its discretion, we ask whether the jury instruction accurately stated the law (*Rodriguez*, 2014 IL App (2d) 130148, ¶ 78), and to accurately state the law, an instruction does not *necessarily* have to quote the statute in full. An incomplete quotation of a criminal statute *can* amount to an inaccurate statement of the law if the omitted language is an element that is unexpressed in the quoted part of the statute or anywhere else in the instruction. See *People v. Diggins*, 379 Ill. App. 3d 994, 999 (2008). If, however, the omitted language of the statute is merely a restatement, in negative form, of the quoted portion of the statute, we cannot regard the omission as misleading or an abuse of discretion. Assume, for example, an ordinance says: "All outside fires shall be put out at sunset, and no outside fire shall be left burning at night." Because the second clause is merely a restatement, in negative form, of the first clause, the first clause alone would be an accurate statement of the ordinance.

¶ 38 Defendant disagrees that the omitted statutory phrase "and not a generalized threat of harm" is merely a restatement, in negative form, of the statutory phrase that the State's tendered instructions quoted: "the threat contained specific facts indicative of a unique threat to the person of the public official." He says in his petition for rehearing: "[T]he second clause

contained a necessary element of the offense for threatening a public official: that it be particular and not vague or imprecise." According to him, omitting the second clause from the jury instructions allowed the jury to settle for a threat that was "vague or abstract." But that really does not answer our question. If a threat contained specific facts indicative of a unique threat to the person of the public official, how could the threat lack particularity or be vague, abstract, and imprecise? In other words, how could a threat of harm contain *specific facts* indicative of a *unique* threat to the person of the public official and yet, at the same time, be a *generalized* threat of harm? How is that logically possible? Until defendant explains how the phrase "and not a generalized threat of harm" would have contributed an additional meaning, we are unable to say the trial court abused its discretion by accepting the State's modified jury instructions. See *Rodriguez*, 2014 IL App (2d) 130148, ¶ 78.

¶ 39 2. *Saving the Phrase From Superfluity*

¶ 40 Defendant argues that by interpreting the phrase "and not a generalized threat of harm" as a restatement, in negative form, of the preceding phrase, "the threat contained specific facts indicative of a unique threat to the person of the public official," we reduce the phrase "and not a generalized threat of harm" to superfluity, in violation of the supreme court's teaching that "[e]ach word, clause[,] and sentence of a statute must be given a reasonable meaning, if possible, and should not be rendered superfluous." *People v. Chenoweth*, 2015 IL 116898, ¶ 21.

¶ 41 Just because a phrase, though, imparts no additional content, it does not follow that the phrase is superfluous or useless. A might tell B, for example, "Go straight home, without delay; don't stop anywhere along the way." It is true that the phrase to the right of the semicolon imparts no additional content: it says nothing that the phrase to the left of the semicolon has not already said. Even so, the phrase to the right of the semicolon serves a

purpose: it makes A's command more emphatic than it otherwise would have been. Similarly, through the use of contrast, the phrase "and not a generalized threat of harm" makes more emphatic the preceding phrase, "the threat contained specific facts indicative of a unique threat to the person of the public official." When the trial court omitted, from its instructions to the jury, the phrase "and not a generalized threat of harm," the court stripped the statute of an emphasis that the legislature intended it to have. The question for us, however, is whether the jury instructions accurately stated the law (*Rodriguez*, 2014 IL App (2d) 130148, ¶ 78), a question we answer *de novo* (*Hale*, 2012 IL App (4th) 100949, ¶ 19). We are unable to say that omitting a phrase that, as a negative restatement, would have served merely the purpose of emphasis made the jury instructions an inaccurate or substantively incomplete statement of the law.

¶ 42 3. *Hale*

¶ 43 According to defendant's petition for rehearing, "this Court's interpretation that the omitted statutory language is merely a restatement, in negative form, completely disregards this Court's holding in *People v. Hale*, 2012 IL App (4th) 100949." Then defendant quotes the language from *Hale* that is favorable to his case:

> "Because of [Brian Doellman's] position as a law-enforcement officer, the jury should have received instructions that 'the threat must contain specific facts indicative of a unique threat to the person, family or property of the officer *and not a generalized threat of harm*.' 720 ILCS 5/12-9(a-5) (West 2008). Without it, the jury was not properly instructed on the applicable law." (Emphasis added.) *Hale*, 2012 IL App (4th) 100949, ¶ 21.

¶ 44 But defendant ignores the subsequent language in *Hale* that undercuts his argument. As the trial court noted, this court also said in *Hale*:

> "When a sworn law-enforcement officer is involved, it is clear that whether a defendant made a threat containing specific facts indicative of a unique threat to an officer is an element of the offense. The State should include this element in the charging document, and the jury should be instructed on the element. Based on the instruction given in this case, the jury was deprived of the guidance needed to decide whether defendant's threat contained specific facts indicative of a unique threat to Officer Doellman. It is possible the jury concluded defendant made a generalized threat to Doellman, but the statute requires more before she could be found guilty beyond a reasonable doubt." *Id.*, ¶ 24.

The first sentence, in the quoted text immediately above, states "the element" on which "the jury should be instructed" (according to this portion of *Hale*)—and notably absent from the first sentence is the phrase "and not a generalized threat of harm." *Id.* Instead, the first sentence says merely: "[W]hether a defendant made a threat containing specific facts indicative of a unique threat to an officer is an element of the offense." *Id.* Then the third and fourth sentences speak of "a generalized threat" as the antithesis of a "threat contain[ing] specific facts indicative of a unique threat to Officer Doellman" (*id.*)—suggesting that the statutory phrase "and not a generalized threat of harm" is indeed merely a restatement, in negative form, of the preceding statutory phrase, "the threat must contain specific facts indicative of a unique threat to the person, family or property of the officer" (720 ILCS 5/12-9(a-5) (West 2010)).

¶ 45 4. *The Current Version of IPI, Criminal, No. 11.50*

¶ 46 As we said earlier, Rule 451(a) requires the trial court to use pattern jury instructions unless they do not accurately state the law. On May 2, 2014, approximately a year after the jury trial in this case, the Supreme Court Committee on Jury Instructions in Criminal Cases issued a new version of IPI, Criminal, No. 11.50. This new version includes the phrase "and not a generalized threat of harm." Defendant argues: "The fact that the current complete IPI instructions include this statutory language establishes *** that[,] contrary to this Court's conclusion, the 'and not a generalized threat of harm' language is not 'merely a restatement' and is absolutely necessary."

¶ 47 If defendant were correct in that argument—if, simply from the fact that certain language was in a pattern jury instruction, that language had to be regarded as "absolutely necessary" to correctly instructing a jury—any deviation from the pattern jury instructions would be, *ipso facto*, reversible error. But we are unaware of any case so holding. Rather, the supreme court has said: "There is no advance approval of [pattern jury instructions] by this court, and they are approved or rejected only after they have been tested in the courts." *People v. Hester*, 131 Ill. 2d 91, 104 (1989). Regardless of whether the trial court used a pattern jury instruction or a nonpattern jury instruction, the question, for purposes of affirmance or reversal, is "whether the instruction was an accurate, simple, brief, impartial, and nonargumentative statement of the applicable law." *People v. Dunmore*, 389 Ill. App. 3d 1095, 1110 (2009). For the reasons we have explained, we are unconvinced that the omission of the phrase "and not a generalized threat of harm" made the jury instructions an inaccurate statement of the law.

¶ 48 Granted, "[l]aying down the law in the words of the law itself," *i.e.*, in the words of the statute, "ought not to be pronounced error." *Deming*, 321 Ill. at 345. But it does not

necessarily follow that laying down the law in fewer words than the statute uses ought to be pronounced as error if, for instance, the additional words the statute uses merely emphasize what the statute said earlier.

¶ 49 C. Ineffective Assistance

¶ 50 Defendant claims his trial counsel rendered ineffective assistance in that, "apparently intimidated" by the trial court's warning that it would give an intoxication-is-no-defense instruction, defense counsel refrained from arguing, in her closing argument, that because of defendant's intoxication, his threats would not have "place[d] the public official," Crawley, "in reasonable apprehension of immediate or future bodily harm." 720 ILCS 5/12-9(a)(1)(i) (West 2010).

¶ 51 What to argue in the closing argument is a strategic decision (*People v. Franklin*, 135 Ill. 2d 78, 119 (1990)), and "it is well settled that an appellate court will not second-guess tactical or strategic decisions without evidence that those decisions are based on inadequate preparation, ignorance of relevant law, or other shortcomings capable of objective evaluation" (*People v. Sharp*, 2015 IL App (1st) 130438, ¶ 125). It is purely a matter of judgment whether defense counsel was right to refrain from referring, in her closing argument, to defendant's intoxication at the time he made the threats. She could have argued, in effect: "Because defendant was visibly intoxicated, it was unreasonable of Crawley to feel apprehensive when defendant threatened to find out where he lived and to kill him," but such an argument would have run the risk of the reaction "That's easy for you to say." Not only might defense counsel have given the impression of minimizing the dangers of police work, but the instruction the trial court would have immediately recited to the jury—that intoxication was not offered as a defense and that it was no defense—might have given the impression that, in an indirect way, defense

counsel was trying to shift responsibility from defendant to the liquor. In the instruction that intoxication was no defense, the jury might have perceived the court as directly contradicting defense counsel, if the jury was unable to understand the rarified distinction between using intoxication as a defense and using intoxication to cast doubt on an element of the offense. It is impossible to say, as a matter of "objective evaluation," that the argument would have been worth the price. *Id.* Maybe it was better just to depend on the opening statement, in which defense counsel had posed the question "[W]as Crawley in reasonable apprehension of harm, or was this a more generalized threat by a drunk?" Further prompting might have seemed unnecessary. The jury would rely heavily on common sense, and common sense would not fail to take into account defendant's intoxication when deciding whether, under the circumstances, his threats put Crawley in reasonable apprehension of immediate or future bodily harm. We decline to second-guess the strategic choices defense counsel made in her closing argument, including the choice to refrain from referring to defendant's intoxication. See *Franklin*, 135 Ill. 2d at 119; *People v. Shamlodhiya*, 2013 IL App (2d) 120065, ¶ 15.

¶ 52 III. CONCLUSION

¶ 53 For the foregoing reasons, we affirm the trial court's judgment. We award the State $50 in costs against defendant.

¶ 54 Affirmed.