

NOTICE
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2012 IL App (4th) 100747-U

Filed 5/25/12

NO. 4-10-0747

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Vermilion County
ROBERT L. TAYLOR,)	No. 09CF561
Defendant-Appellant.)	
)	Honorable
)	Craig H. DeArmond,
)	Judge Presiding.

JUSTICE COOK delivered the judgment of the court.
Presiding Justice Turner and Justice Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court committed no error in instructing the jury.

¶ 2 Defendant, Robert L. Taylor, was charged with aggravated battery with a firearm (720 ILCS 5/12-4.2(a) (West 2008)), in that on or about November 9, 2009, he knowingly caused injury to Corney H. Faulkner by discharging a firearm. On May 4, 2010, following a jury trial, a verdict of guilty was returned. On June 24, 2010, the trial court found great bodily harm and imposed an extended-term Class X prison sentence of 35 years. Defendant appeals, arguing the trial court erred in giving Illinois Pattern Jury Instruction, Criminal, No. 3.06-3.07, at 91 (4th ed 2000) (hereinafter IPI Criminal 4th) "Statements by Defendant," by omitting the bracketed language in the following sentence: "It is for you to determine [whether the defendant made the statements(s), and if so,] what weight should be given to the statement(s)." We affirm.

¶ 3

I. BACKGROUND

¶ 4 At trial, Faulkner testified that he and Taylor had previously argued over a girl they had dated, Teshon Price. In August 2009, there was an altercation where Faulkner hit Taylor and Faulkner stabbed Taylor in the hand. Faulkner testified that on November 9, 2009, he was walking with a friend named "Bird" and saw Taylor and Price in an argument. Taylor approached him, Faulkner tried to push him away, and Taylor pulled out a gun, stuck it in Faulkner's face and pulled the trigger. The gun did not go off. Faulkner said that Taylor put the gun back in his pocket, and then said "come on, let's go." It was then that Taylor pulled the gun out and shot Faulkner. Officer Dennis Witsman arrived on the scene to find Faulkner sitting in a chair outside. Witsman noted Faulkner's injuries, consisting of four wounds to his left side.

¶ 5 Officer Phillip Wilson testified he interviewed Taylor on November 12, 2009, Wilson read Taylor his *Miranda* rights (*Miranda v. Arizona*, 384 U.S. 436 (1966)), and Taylor understood and waived them. Taylor looked at the video camera and asked if it was on. Wilson said that it was not, and Taylor wanted proof. Wilson took Taylor to the control room and showed him that the equipment was not on. Taylor agreed to speak to Wilson in that room.

¶ 6 Wilson testified that Taylor told him that he and Faulkner were arguing over Price. Wilson said that Taylor did not intend to kill Faulkner, but shot him because:

"He just reacted, because he had been stabbed by Mr. Faulkner in the past, several months ago. He said he had a gun pulled on him several months ago by Mr. Faulkner. He indicated there was a large man circling around him and he just reacted and shot. I asked him if he was threatened by Mr. Faulkner, and he

said no, that he was just jawing at him."

¶ 7 Teshon Price and her friend, Chantel Garland, also testified. They saw the two arguing and then heard shots fired. They testified they did not see anyone with a gun, but testified that defendant had his hands in his pocket at all times, while Faulkner's hands were at his side.

¶ 8 II. ANALYSIS

¶ 9 Defendant argues that the trial court's "Statements by Defendants" instruction omitted a crucial clause, "whether the defendant made the statement[s], and if so." IPI Criminal 4th No. 3.06-3.07, at 91. However, defense counsel failed to object to the instruction or offer any other instruction, and he did not raise the issue in a posttrial motion. In fact, in closing argument, defense counsel admitted defendant made the statements, but was just repeating what the detective told him. "My client, reasonably so, gets a bit scared. Just because you say something, I think a lot of people think that's an automatic win. *** I don't believe there's any truth in any of the statements my client said to the detective."

¶ 10 The Committee Notes to IPI Criminal 4th No. 3.06-3.07 state that the bracketed portion "should be deleted only when the defendant admits making all the material statements attributed to him." Nevertheless, a number of cases have held that the instruction is proper without the bracketed phrase in circumstances where the defendant presented no evidence that he denied making the statement. These cases have reasoned that to hold otherwise would confuse the jury by making it decide an issue improperly before the it. *People v. Echols*, 382 Ill. App. 3d 309, 316, 887 N.E.2d 793, 800 (2008). It is not necessary that a defendant take the stand and deny making the statement attributed to him before he is entitled to have the bracketed portion of

the instruction included. *People v. Richmond*, 341 Ill. App. 3d 39, 52, 791 N.E.2d 1132, 1142 (2003). The First District held in *Richmond* that cross-examination of the interrogating officers, establishing that statement was not videotaped, and was written by the officers, not verbatim, "contained enough vitality for presentation to the jury," and the bracketed portion of the instruction should have been given. *Richmond*, 341 Ill. App. 3d at 52, 791 N.E.2d at 1193. A special concurrence saw the cross-examination argument as based on "innuendoes and insinuations, wholly unsupported by any evidence" and insufficient to entitle a defendant to the instruction. *Richmond*, 341 Ill. App. 3d at 55, 791 N.E.2d at 1145 (Hoffman, J., specially concurring).

¶ 11 The present case does not include any evidence that defendant denied making the statement, not even the weak cross-examination evidence contained in *Richmond*. In fact, defense counsel in this case admitted that defendant made the statements, although he argued defendant was not speaking truthfully. In *Richmond*, defense counsel argued that the defendant did not make the statement attributed to him and requested that the bracketed phrase be included in the instruction. Again, in the present case there was no request for the bracketed phrase to be included in the instruction, and the issue was not raised in a posttrial motion.

¶ 12 The First District found plain error in failing to give the bracketed phrase in *People v. Turman*, 2011 IL App (1st) 091019, 954 N.E.2d 845, but in that case the defendant testified and expressly denied making many of the statements. The court found the evidence was closely balanced, threatened to tip the scales of justice, and the failure to give the bracketed phrase in the instruction deprived defendant of a fair trial and impacted the integrity of the judicial process.

