FOURTH DIVISION
June 4, 2015

No. 1-12-2960

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. 12 CR 9767
	)	
MERSED VILLA,	)	Honorable
	)	Michael Brown
Defendant-Appellant.	)	Judge Presiding.

JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Howse concurred in the judgment.

ORDER

¶ 1 *Held*: Conviction for aggravated battery of police officer affirmed. Trial court did not abuse its discretion in denying defendant's request for continuance. Trial court's exclusion of evidence of lawsuit filed by co-arrestee against arresting officers' sergeant was error but was harmless beyond reasonable doubt. Although State's comments during rebuttal closing argument improperly boosted credibility of State's police officer witnesses, error was harmless beyond reasonable doubt.

¶ 2 Defendant Mersed Villa was charged with aggravated battery of a peace officer and demanded a speedy trial. After a jury trial, defendant was found guilty. The trial court denied defendant's request for a new trial and sentenced him to seven months in Cook County jail and three years felony probation.

¶ 3 Defendant raises three issues on appeal. First, he argues that he was denied his right to a fair trial when the trial court refused his request for a continuance that he made on the day of trial. Second, defendant contends that the trial court erred in excluding evidence of a lawsuit that had been filed against the arresting officers' sergeant by defendant's co-arrestee because it precluded him from showing their bias and motive, and denied him his right to present his theory of defense to the jury that the police officers falsely arrested them and used excessive force in doing so. Third, defendant argues that he was denied his right to a fair trial by the prosecutor's improper comments during closing argument that attempted to bolster the credibility of the State's police officer witnesses. For the reasons that follow, we affirm.

¶ 4 I. BACKGROUND

¶ 5 A. Pre-Trial Matters

¶ 6 On May 8, 2012, after an encounter with the police, defendant was arrested along with his nephew, Michael Ayala. Defendant was charged with aggravated battery of a peace officer while the officer was performing his official duties.

¶ 7 On June 21, 2012, the trial court reduced defendant's bond to $30,000. Defense counsel requested that the matter be set for trial and informed the court that defendant would not be able to post bond. The court allowed counsel to file the written demand for speedy trial when he filed his answer to discovery, which counsel did on June 26, 2012. The parties agreed to a July 30, 2012 jury trial. On that date, the State appeared and answered ready for trial, but defendant requested a continuance. The court denied the request for reasons discussed in our analysis below.

¶ 8 The State moved *in limine* to preclude defendant from introducing evidence of any injuries to Ayala. The defense argued that Ayala was an occurrence witness and the evidence of

Ayala's injuries was relevant to the defense theory that the aggravated battery charge against defendant was a "cover up" and "a way to *** get out of" a police beating. The trial court ruled that Ayala could not testify about his own injuries because they were not relevant, but he could testify as to what he witnessed regarding defendant. The trial court stated that any force used against Ayala would not be relevant unless defendant was claiming he "acted out of necessity or self defense to defend Mr. Ayala." The trial court granted the State's motion *in limine*.

¶ 9 The next day, defense counsel filed an amended answer to discovery adding the defense of self defense related to excessive force by the police officers. Defendant also added two individuals, Emiliano Franko and Margarita Melgosa, as possible defense witnesses.

¶ 10 The trial court ruled that defendant could not elicit any testimony regarding a civil rights lawsuit filed in federal court by Ayala against a sergeant in the eighth police district. Although the lawsuit was not pending against any of the police officers involved in defendant's arrest, defendant wanted to introduce it as evidence of their bias against Ayala and, by default, defendant, who was with Ayala and related to him. Defense counsel asked if he could question the arresting officers to establish that they were aware of the lawsuit at the time of defendant's arrest. The judge denied the request, finding that the lawsuit was irrelevant.

¶ 11 B. Evidence at Trial

¶ 12 Chicago police officers Raul Rosales and Javier Reyes testified that, on May 8, 2012, they were on routine patrol in the eighth police district, in full uniform, in a marked police vehicle. At approximately 2:30 a.m., they received a radio call regarding a disturbance in the 4800 block of South Springfield, a residential area approximately a mile away, involving three Hispanic males who were drinking beer and making a lot of noise. The officers arrived within a minute or two. They testified that they saw defendant and Ayala walking south. Both officers

testified that defendant and Ayala were "on the sidewalk." Each was holding a can of beer and one was carrying a cardboard box that appeared to be a case of Modelo beer.

¶ 13 The officers asked defendant and Ayala what they were doing and to come speak to them. Instead, defendant and Ayala put down their beers and the 12-pack cardboard box and went up the stairs of the building at 4831 South Springfield. Officer Reyes testified that he later determined that 4831 South Springfield was defendant's family residence. During their cross-examinations, both Officer Rosales and Officer Reyes denied that defendant and Ayala were on the porch when the officers arrived.

¶ 14 The officers testified that, after defendant and Ayala went up the stairs, the officers got out of their car and approached them, asking for identification. Officer Reyes testified that the officers wanted to be sure the men lived there and wanted identification in order to "issue them a citation for drinking on the public way."

¶ 15 The officers went up the stairs behind defendant and Ayala. Ayala began pounding on the door. Both defendant and Ayala were yelling at the officers. Officer Rosales said that defendant was in an agitated state, appeared intoxicated, and smelled of alcohol. He refused to provide identification. Defendant's hands were balled up in fists and he said "this is bullshit." Officer Rosales testified that he tried to calm defendant down and ease the situation. He told defendant to relax, telling him, "it's not that serious, I just want to pat you down real quick and we'll be out of your face." Officer Rosales told defendant to put his hands at his side, but defendant was uncooperative. Defendant kept his hands "balled up" and "kept moving up and down like he was angry."

¶ 16 Based on defendant's agitated state, Officer Rosales attempted to do a pat down for officer safety to see if defendant had a weapon. As Officer Rosales placed his left hand on

defendant's hip, defendant grabbed his wrist and violently pulled it down and away. Officer Rosales almost fell down the stairs, and when he tried to brace himself, he felt his left shoulder tearing from its socket until it "popped out." His left arm went limp. He immediately felt pain and knew his shoulder was dislocated. He saw his shoulder slanted down with a bone protruding. He told Officer Reyes that he was hurt, and that Reyes should "grab" defendant.

¶ 17 Officer Reyes performed an emergency takedown of defendant, pressing up against defendant and placing his chest and face up against the pillar of the house. He secured defendant's hands and placed him in handcuffs behind his back. In the process, defendant's face and elbow were scratched.

¶ 18 Officer Rosales testified that he was concerned that Ayala would flee because he was trying to get into the apartment building. Officer Rosales immediately radioed for assistance and was able to hold Ayala with his one good arm. Ayala continued to struggle and Officer Rosales could no longer detain him due to his injury. The officers switched; Officer Reyes held Ayala and Officer Rosales took control of defendant, now handcuffed. When the assisting officers arrived, Officer Moya took control of defendant and placed him in the backseat of Officer Rosales's squad car. After defendant was placed in the squad car, he became very violent and started pounding his head along the cage of the car and kicking the doors.

¶ 19 Officer Rosales was transported to the hospital where x-rays showed he had suffered a dislocated left shoulder. His left arm was immobilized for two weeks, and he had physical therapy for one month. During this time, Officer Rosales was unable to perform his normal duties.

¶ 20 During his cross examination, Officer Rosales denied that anyone pulled defendant down the stairs. He acknowledged that defendant had cuts and bruises on his arm, elbow and legs, but

he did not know if they were a result of the arrest. During his cross-examination, Officer Reyes stated that he believed defendant's face and arm were injured when he had to force him against the pillar while defendant was resisting the pat-down. On re-direct examination, Officer Reyes testified that the only injuries to defendant were scrapes.

¶ 21 Officer Alla Adwallah, an eighth district Chicago police officer, testified that he and his partner arrived at the scene at approximately 2:40 a.m. There were several officers on the scene. Ayala was on the front porch in the process of being handcuffed. Defendant was already in the back seat of the squad car lying on his back with his hands cuffed behind him. Defendant was kicking at the doors inside the car, using both feet. Officer Adwallah saw the car "shaking back and forth" and decided to put defendant into a squadrol, typically referred to as a "paddy wagon." When Officer Adwallah opened the door to take defendant out of the squad car, he continued kicking at the door and was "yelling and cursing." Officer Adwallah testified that, as defendant was kicking, he was sliding out of the backseat and fell on his rear onto the pavement. They warned defendant several times that he would be tasered if he continued kicking at the officers. Defendant then complied, and the officers assisted defendant in standing up. Officer Adwallah did not prepare a police report regarding any of these observations.

¶ 22 Officer Brett Kellam, an eighth district Chicago police officer, testified that he and his partner responded to the call for assistance. Officer Kellam recovered five cans of Modelo beer and a Modelo cardboard box in front of 4831 South Springfield, between the sidewalk and the front steps of the house. Three cans were unopened and two cans were open. None of the cans were in the box.

¶ 23 After the State rested, defendant moved for a directed finding, which the court denied. Defendant presented no evidence. The jury found defendant guilty of aggravated battery.

¶ 24 Defendant filed a posttrial motion in which he raised each of the issues that he raises in this appeal. The trial court denied the motion.

¶ 25 The court sentenced defendant to seven months of incarceration in the Cook County jail plus three years of felony probation. As a condition of the probation, defendant was ordered to take anger management classes, undergo drug and alcohol evaluation, and perform 80 hours of community service. Defendant filed a timely notice of appeal.

¶ 26 II. ANALYSIS

¶ 27 A. Defendant's Request for a Continuance

¶ 28 We first address defendant's argument that he was denied his right to a fair trial when, on the date set for trial, the court refused his request for a continuance. We review a trial court's decision to grant or deny a continuance for an abuse of discretion. *People v. Walker*, 232 Ill. 2d 113, 125 (2009). Abuse of discretion is the most deferential standard of review. *People v. Radojcic*, 2013 IL 114197, ¶ 33; see also *People v. Coleman*, 183 Ill. 2d 366, 387(1998) (noting that the abuse of discretion standard has been " 'recognized as the most deferential standard of review available with the exception of no review at all.' [Citation.]"). A trial court abuses its discretion where its ruling is arbitrary, fanciful, or unreasonable. *People v. Tuduj*, 2014 IL App (1st) 092536, ¶ 100; *People v. Patrick*, 233 Ill. 2d 62, 68 (2009).

¶ 29 The Illinois Supreme Court has discussed the factors to be considered by a trial court when deciding whether to allow a request for a continuance, including the movant's diligence, the defendant's right to a speedy, fair and impartial trial, the interests of justice, the history of the case, the complexity of the matter, the seriousness of the charges, docket management, judicial economy, and inconvenience to the parties and witnesses. See *People v. Lovejoy*, 235 Ill. 2d 97, 123 (2009); *People v. Walker*, 232 Ill. 2d 113, 125-26 (2009). Another factor to be considered is

whether defense counsel was unable to prepare for trial because he had been held to trial in another cause. *Walker*, 232 Ill. 2d at 125; see also 725 ILCS 5/114-4(b)(2) (West 1994)). Whether the trial court has abused its discretion in denying a continuance necessarily depends upon the particular facts of each case. *Walker*, 232 Ill. 2d at 125.

¶ 30 In requesting a continuance, defense counsel told the court he had just been tendered certain discovery that included general progress reports, supplemental reports, tactical response reports, and a report from an Officer Bellinger. Defense counsel further stated that he had a federal trial scheduled to begin on September 11, 2012, in New Jersey that had pending deadlines, and he was extremely involved in Chinese translations of five expert witnesses. He argued that, as a result of his schedule with that case, and another in Minnesota, he had not been able to interview three witnesses for the instant case—two civilian witnesses and an individual in the sheriff's lockup. Defense counsel offered to withdraw his demand for a speedy trial if he could secure a continuance. The State, it should be noted, did not object to a continuance.

¶ 31 The trial court denied the continuance and refused to allow defense counsel to withdraw his speedy-trial demand. The court first noted that the speedy-trial demand—and even more specifically, defendant's request for a trial date on the first available date post-arraignment—was made with the understanding that defendant would be ready for trial notwithstanding any discovery issues. The court further stated that the discovery that had been tendered to defense counsel that day appeared to be the usual documents that one would expect. The court also said that it was certain that defense counsel's federal case had already been scheduled at the time that defense counsel agreed to the trial date of July 30, 2012 in the instant case. In sum, the court said, "I'm not going to continue this case based on your trial schedule or the lack of discovery. All that was known when you filed a written demand for trial." The trial court acknowledged that

defense counsel had other clients but said "you have an obligation to this gentleman here," referring to defendant. The court further noted that the State and its witnesses were ready to proceed, and that the court had continued another case on its docket for this day because of the trial demand in this case.

¶ 32 The trial court also alluded to the fact that this case was not particularly complex, predicting that the jury could be selected the first day, the evidence put in the next, with closing arguments the following day. The court said that "[this case] is not going to take a lot of your time, Counsel." When defense counsel advised the court that, on the projected third day of trial, he was scheduled for a sentencing hearing in federal court, the trial court said, "All right. Well, then we'll work out our schedules…."

¶ 33 The trial court later discussed the request for a continuance in rejecting defendant's motion for a new trial, addressing defendant as follows:

> "You wanted to go to trial at the earliest possible date. That's what a demand for trial means. So we set the matter down because you demanded trial and on the day that you set down for trial, [the] State was ready and a result, you had your day in court. That's the way the system works. We have cases and either we agree to continue cases and there's not a demand for trial or there is. This is not a game. This is your constitutional rights involved. This is a court in the State of Illinois in the United States of America. We handle some very serious things here and we are not here to set cases and not set cases and demand trial and withdraw our demand. I take you on your word. If you're ready for trial, that means you're ready. You said you're ready, we set the matter down for trial. I just held you to your word."

¶ 34 Defendant argues that the trial court's denial of his request for a continuance denied him his right to present a complete defense. He relies principally on *Walker*, 232 Ill. 2d 113. In that case, the 15-year-old defendant was charged with two counts of first-degree murder. *Id*. at 116. A bench trial was scheduled for January 20, at which time the court was also going to consider defendant's motion to suppress statements. *Id*. at 117. Defense counsel miscalendared the trial date for January 26. *Id*. When the defendant called her the night before January 20, counsel realized her mistake. *Id*. On the morning that the case was set for trial, the following colloquy took place between the court and defense counsel:

> "[Defense Counsel]: Judge, I had [defendant's] case up on January 26th, and [defendant] left a message yesterday that his case was up today. I have been on trial both Tuesday and Wednesday before Judge Karnezis, on Tuesday until about 6:00 and yesterday until 7:10. I am not ready to go to trial today, and I did not call the State. He asked me why I didn't call. But, as I said, I have it up for next week.
>
> THE COURT: Ms. Rouse, this has been set. I am sorry. We will pass this case for trial.
>
> [Defense Counsel]: I am not ready for trial, Judge, and I will not be able to go to trial today.
>
> THE COURT: It is irrelevant. There isn't a private attorney in the business who hasn't tried to pull something like this.
>
> [Defense Counsel]: As the court knows, I was not originally assigned to [defendant's] case.
>
> THE COURT: I know, but it is a dirty shame." *Id*. at 117-18.

As our supreme court noted, the discussion above constituted the entirety of the trial court's consideration of the continuance request. *Id.* at 118. The supreme court reversed the defendant's subsequent convictions and remanded the case for a new trial. *Id*. at 131. The court found plain error in the trial court's failure to consider the relevant factors, instead denying defense counsel's request for a continuance "reflexively, arbitrarily and mechanically" and "on the sole basis that the case had been set for trial." *Id*. at 131, 129.

¶ 35 Defendant analogizes the trial court's actions here to those in *Walker*. If we were to review the trial court's decision exclusively based on his comments in ruling on the posttrial motion for a new trial, defendant's argument would be more persuasive. Certainly, those comments in isolation could be read to suggest that the trial court denied the continuance, as in *Walker*, "on the sole basis that the case had been set for trial." *Id*. at 129. But at the time the request for a continuance was made, on the day set for trial, the trial court gave several reasons for its refusal to continue the matter. The court first noted that defense counsel's principal bases for a continuance—that he had just received discovery, and that he had been busy on another case—were both factors that defense counsel took into account at the time he demanded a speedy trial; there was, in other words, no unfair surprise to defendant. The court also noted the lack of complexity in this case. The court further raised the issue of docket management, noting that it had continued another case set for that day to make room for this speedy-trial demand, as well as the fact that the State and its witnesses were ready to proceed. These are many of the factors our supreme court has instructed trial courts to consider. See *Lovejoy*, 235 Ill. 2d at 123; *Walker*, 232 Ill. 2d at 125-26.

¶ 36 There are other factors to consider, some of which favor defendant and some of which do not. In defendant's column, first of all, the State did not object to a continuance. More

importantly, defense counsel claimed that there were potential witnesses that he had not yet had a chance to interview. Although the State notes that the defense did not call any witnesses at trial, this factor actually bolsters defendant's point. Defense counsel could not be expected to call witnesses that he had not even interviewed, much less prepared for trial. Nor could defense counsel have been prepared to make any reasonable offer of proof without having first interviewed the witnesses. But on the other hand, the State correctly notes that defense counsel had 5 weeks—a short window of time, but a short window that defendant demanded—in which to interview witnesses, issue subpoenas, and otherwise prepare for the case. Even more significantly, defense counsel should not have waited until the day of trial to request the continuance; had he advanced the case previously for the purpose of requesting the continuance, the result might have been different. As it was, defense counsel showed up on the day of trial, when the State had summoned its witnesses and prepared its case, and after the trial court had already moved another case from the docket that day to allow for the trial in this case, before requesting a new date.

¶ 37 While we may have our reservations about the decision the court ultimately reached, we are not asked to determine whether the trial court made a perfect decision, or even the correct one. We are only asked to consider whether the trial court abused its discretion—whether its decision was so arbitrary or fanciful that no reasonable person could adopt its position. *Tuduj*, 2014 IL App (1st) 092536, ¶ 100; *Patrick*, 233 Ill. 2d at 68. Under the "most deferential standard of review available" (*Coleman*, 183 Ill. 2d at 387), we affirm the trial court's denial of the continuance.

¶ 38 B. Admissibility of Lawsuit Filed by Ayala

¶ 39 Defendant next argues that the trial court erred in excluding evidence of a federal civil rights lawsuit that had been filed by Ayala against the arresting officers' sergeant. Ayala, defendant's nephew, who was with defendant on the early morning in question and was arrested along with defendant, had previously filed a civil-rights suit against a sergeant in the same police district where the responding officers, Rosales and Reyes, were assigned. During arguments on motions *in limine*, the trial court raised the issue of this civil-rights lawsuit, initially deciding, before any argument, that there would be "no mention of that" at trial. Defense counsel argued that there was reason to believe that Ayala was known to the arresting officers when they first approached him on the early morning in question because they addressed Ayala by his first name, Michael. Defense counsel argued that he believed the reason the officers knew him was because they were aware of the civil-rights suit he had filed against their sergeant. Counsel stated that he should at least be given the opportunity to ask the officers whether, in fact, they were aware of Ayala's lawsuit at the time of the events in question.

¶ 40 Defense counsel argued that the officers' knowledge of the civil-rights lawsuit filed by Ayala was relevant because it "show[ed] their motive for this whole arrest and for the force that they used upon these two" arrestees, Ayala and defendant. Defendant had previously indicated that he intended to argue self-defense at trial—that his actions toward the arresting officers were in response to their excessive force—a ruling on which the court had reserved judgment. Defendant's theory, in essence, was that neither he nor Ayala were drinking beer on the public way—that, instead, they were drinking beer on their porch, but they were singled out for arrest and abuse by these arresting officers because of their negative feelings toward Ayala due to the lawsuit he had filed. As a result of the excessive force, defense counsel claimed, defendant used justifiable force to defend himself.

¶ 41 After considering the argument of defense counsel, the trial court again ruled that defense counsel could not pursue this argument or even mention the existence of the lawsuit. The court reasoned that the police sergeant who was the defendant in the civil-rights action was not present at the scene of defendant's arrest, nor did defendant, personally, have any connection to that lawsuit. Thus, the trial court concluded, the evidence "has nothing to do with self-defense, it has nothing to do with the allegations here. We're not going to turn this [into] a trial of general police conduct." The court further ruled that the evidence "doesn't explain the actions of your client, it doesn't explain the actions of the police in an injury that may or may not be caused."

¶ 42 Despite the fact that defendant objected to the court's ruling at the time it was made and raised it as an error in his motion for a new trial, the State argues that defendant forfeited the issue because he did not make a formal offer of proof regarding the contents of the lawsuit or even proof of the lawsuit's existence at all. See *People v. Peeples*, 155 Ill. 2d 422, 457 (1993). But an offer of proof is not required to preserve an issue where the trial court understood the "nature and character of the evidence sought to be introduced, or where the question itself and the circumstances surrounding it show the purpose and materiality of the evidence." *Id*. at 458. An offer of proof was not necessary here. The contents of the lawsuit were irrelevant. It was the mere existence of it that mattered, its effect (if any) on the state of mind of the arresting officers. And neither the trial court nor the State ever challenged the existence of the lawsuit. The trial court unquestionably understood what defendant wanted to introduce and why. Defendant did not forfeit this issue. We will review the merits of the issue.[1]

[1] Defendant contends that the State's reference to the lawsuit throughout its appellate brief as "alleged," "allegedly filed," "unknown," or "uncertain" (terms we note were used approximately 20 times) is disingenuous where there was no uncertainty, doubt or dispute in the trial court that Ayala had filed the lawsuit or that the State was aware of the suit. Defendant's point is well-taken.

¶ 43 A defendant is entitled to present evidence which is relevant to his theory of the case. *People v. Wheeler*, 226 Ill. 2d 92, 132 (2007). A trial court errs when it does not allow cross-examination " 'on matters which would *reasonably* tend to show bias, interest or motive to testify falsely.' " (Emphasis in original.) *People v. Green*, 339 Ill. App. 3d 443, 455 (2003) (quoting *People v. Furby*, 228 Ill. App. 3d 1, 4-5 (1992)). This right to reasonably inquire into a witness's bias, interest, or motive to testify falsely is part of a defendant's fundamental, constitutional right to confront witnesses against him. *People v. Nelson*, 235 Ill. 2d 386, 420-21 (2009).

¶ 44 But the evidence must be relevant, in the first instance; the trial court, in the exercise of its discretion, may "reject offered evidence on grounds of irrelevancy if it has little probative value due to its remoteness, uncertainty, or possibly unfair prejudicial nature. [Citations.]" (Internal quotation marks omitted.) *Wheeler*, 226 Ill. 2d at 132. The confrontation clause does not guarantee the right to ask any question defense counsel wishes or to explore any topic at whatever length. *People v. Klepper*, 234 Ill. 2d 337, 355 (2009). The trial court retains "wide latitude" to impose limits on a defendant's inquiry into the potential bias or motivation of a witness, without offending the confrontation clause, to avoid harassment, prejudice, or confusion of the issues. *Id.*; see U.S. Const., amend VI.

¶ 45 The trial court ruled that the evidence was not probative, that it was prejudicial, and that it could lead to a confusion of the issues. It was not probative, the court reasoned, because the lawsuit was between Ayala and a sergeant who was not present on the scene—the lawsuit did not involve either defendant or the officers who responded to the scene. The trial court further reasoned that whether Ayala sued the officers' sergeant had nothing to do with whether defendant battered one of the officers on the early morning in question. The court found possible prejudice

and confusion of the issues because a discussion of the police-brutality lawsuit threatened to turn the case into a referendum on police misconduct.

¶ 46 On appeal, defendant raises the same argument he did below, that his theory of the case was that defendant and Ayala were lawfully drinking beer on a porch when the responding officers falsely arrested them and used excessive force in doing so. Defendant argues that the arresting officers' knowledge of the pending lawsuit brought by Ayala against their sergeant would have provided context for his theory; it would have explained why Officers Rosales and Reyes would have acted in such an overly aggressive fashion. Thus, defendant argues, the evidence was relevant to explain the motivation of the officers in subduing Ayala and defendant in what defendant characterizes as an excessive manner.

¶ 47 Part of our problem is that there is so much we do not know about this issue, because any inquiry into the matter was foreclosed by the trial court. Most notably, we do not know if the officers even knew of the lawsuit at the time of the events in question. If they had testified they did not, the inquiry would have ended right there; the lawsuit would have absolutely no relevance. If the officers *did* know about the lawsuit, we do not know what effect that knowledge had on them. We do not know if the officers were very upset about Ayala's lawsuit because they were very close to this particular sergeant or for some other reason; if the complete opposite were true, and they did not have any feelings one way or the other about the lawsuit; or if the truth lied somewhere in between those two extremes.

¶ 48 We believe the trial judge should have allowed defense counsel at least a preliminary inquiry into this issue. As we have just noted, depending on the officers' answer to the first question—whether they were even aware of the lawsuit—this entire issue might have been taken off the table. Either way, the development of some predicate facts would have allowed both the

trial court and this court to more effectively review the relevance of this evidence. This questioning could have been done outside the presence of the jury for the trial court to determine the relevance of the matter without admitting possibly prejudicial or confusing evidence to the jury. We find the trial court's refusal to allow defendant to conduct at least a preliminary inquiry to be an abuse of discretion. See, *e.g.*, *People v. Fultz*, 2012 IL App (2d) 101101, ¶¶ 60-61 (trial court abused discretion in not allowing defense to inquire into arresting officer's knowledge of complaint filed against arresting officer by defendant's mother).

¶ 49 Though we find error in the court's ruling, even if we agreed with defendant that the error rose to a constitutional nature, we would still affirm the conviction, because the error was harmless beyond a reasonable doubt. See *People v. Wilkerson*, 87 Ill. 2d 151, 157 (1981). In determining whether a constitutional error is harmless beyond a reasonable doubt, we may consider whether the excluded evidence contributed to the conviction; whether the evidence against defendant was overwhelming; and whether the excluded evidence was cumulative or duplicative of other evidence. *Id*.

¶ 50 To the extent defendant posited that the officers' hypothetical knowledge of the lawsuit led them to "frame" defendant for drinking on the public way, this argument would go nowhere, because defendant was not standing trial for drinking on the public way; he was on trial for battering the responding officer. To the extent defendant would use the officers' supposed knowledge of the lawsuit to show that the officers used excessive force in dealing with defendant and Ayala—thus compelling defendant to respond in self-defense—this argument would fail because defendant put on no credible evidence of excessive force at trial. Defendant did not testify, nor did he call Ayala, who was available. Neither of the two individuals who were arrested testified concerning the officers' use of force. Indeed, the trial court ultimately refused to

tender the jury a self-defense instruction because defendant had proffered no evidence of excessive force and insufficient evidence of any injuries to defendant that would suggest excessive force—a ruling defendant does not appeal. Thus, defendant has provided no record on which we could find that the absence of this lawsuit evidence contributed in any meaningful way to the guilty verdict. Without evidence of excessive force by the police officers, the officers' knowledge of the Ayala lawsuit—if any—would not have played a significant role in the case.

¶ 51 In addition, the evidence against defendant was overwhelming. The arresting officers and other, later-responding officers were thoroughly cross-examined by able defense counsel but were not significantly impeached. The two responding officers clearly and consistently testified that defendant resisted a lawful pat-down and battered the officer in the process.

¶ 52 We thus hold that the trial court's error in denying defense counsel the opportunity to inquire into the responding officers' knowledge of the Ayala lawsuit was harmless beyond a reasonable doubt.

¶ 53 C. Prosecutor's Comments Bolstering Credibility of Police

¶ 54 Defendant finally argues that he was denied a fair trial when the prosecutor improperly bolstered the credibility of its witnesses during rebuttal closing argument. Specifically, the prosecutor argued that Officer Rosales would not put his livelihood or reputation on the line. We agree the remark was improper.

¶ 55 In *People v. Adams*, 2012 IL 111168, ¶ 20, the Illinois Supreme Court held that the prosecutor's statements during closing argument that the police officers should be believed because they would not risk their credibility, jobs, or freedom by lying under oath was improper. As the court explained, the comments were impermissible speculation because no evidence was introduced at trial from which it could be inferred that the officers would risk their careers if they

testified falsely. *Id*. Additionally, such comments constitute improper vouching and violate the principle that " 'a prosecutor may not argue that a witness is more credible because of his status as a police officer.' " *Id*. (quoting *People v. Clark*, 186 Ill. App. 3d 109, 115-16 (1989)); see also *People v. Gorosteata*, 374 Ill. App. 3d 203, 219 (2007) (same).

¶ 56 Citing *People v. Hudson*, 157 Ill. 2d 401, 441 (1991) and *People v. Andras*, 241 Ill. App. 3d 28, 47 (1992), the State asserts that the remarks were invited. But the "invited response" doctrine is limited to instances of *improper* argument from the other side. See *Gorosteata*, 374 Ill. App. 3d 203, 221-22 (2007) ("The invited response doctrine allows a party who is provoked by his opponent's improper argument to right the scale by fighting fire with fire"). Here, defense counsel's closing remarks were not improper. Defense counsel reviewed the police officers' actual testimony and called their credibility into question. We agree with defendant that this was proper argument, and the State has not claimed otherwise. The State's comments that Officer Rosales was not lying when he testified that defendant "yanked" his shoulder so hard that he pulled it out of its socket because he would not "[p]ut his livelihood, his reputation on the line" were not invited and were improper.

¶ 57 Having determined that the State's remarks were improper, the question is whether they were harmless beyond a reasonable doubt. Defendant argues that the trial court, in overruling his objection to the improper remarks, left the jury with the impression that it was free to consider the improper comments. Defendant further notes that the improper remark was made in closing rebuttal argument when the defense had no opportunity to respond. Prior to closing arguments, however, the trial court told the jury that "[w]hat the lawyers say during the arguments is not evidence and should not be considered by you as evidence." Again, after closing arguments, the court instructed the jury that the closing arguments were not evidence. The court instructed the

jury that "any statement or argument made by the attorneys which is not based on the evidence should be disregarded."

¶ 58 Although the State's remarks in its closing rebuttal argument were inappropriate, and the trial court committed error in overruling the defendant's objection to them, we hold that the error was harmless beyond a reasonable doubt. In reviewing comments made during closing arguments, we consider whether "the comments engender substantial prejudice against a defendant such that it is impossible to say whether or not a verdict of guilt resulted from them." *Wheeler*, 226 Ill. 2d at 123. Prosecutorial misconduct in closing argument "warrants reversal and a new trial if the improper remarks constituted a material factor in a defendant's conviction." *Id*. "If the jury could have reached a contrary verdict had the improper remarks not been made, or the reviewing court cannot say that the prosecutor's improper remarks did not contribute to the defendant's conviction, a new trial should be granted." *Id*.

¶ 59 Considering the overwhelming evidence against defendant, we conclude that the error did not materially contribute to defendant's conviction. The prosecutor made one isolated comment that Officer Rosales had no motivation to "put his livelihood, his reputation on the line" by lying. Improper as it was, we cannot say that this statement was so inflammatory or prejudicial that it cast a shadow over the other evidence in this case. We find this error harmless beyond a reasonable doubt.

¶ 60 III. CONCLUSION

¶ 61 For the reasons stated above, we affirm defendant's conviction.

¶ 62 Affirmed.