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2015 IL App (3d) 130200-U

Order filed September 15, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF)	Appeal from the Circuit Court
ILLINOIS,)	of the 10th Judicial Circuit,
)	Peoria County, Illinois,
Plaintiff-Appellee,)	
)	Appeal No. 3-13-0200
v.)	Circuit No. 12-CF-462
)	
HOWARD ELLIS,)	Honorable
)	Stephen Kouri,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justice Lytton concurred in the judgment.
Justice Wright dissented.

ORDER

¶ 1 *Held:* Defendant's conviction and sentence upheld where: (1) trial court properly exercised discretion in denying defendant's motion to continue the trial; (2) trial court's error in refusing to tender accomplice jury instruction was harmless beyond a reasonable doubt; (3) plain error did not occur in prosecutorial closing argument; and (4) the "truth-in-sentencing statute was properly applied to the conviction for armed violence.

¶ 2 The State charged defendant Howard Ellis with two counts of home invasion, three counts of armed robbery, one count of aggravated battery, and one count of unlawful possession of a weapon arising out of the January 28, 2012, shooting of Karl Griffin. A jury found

defendant guilty of all charges. On appeal, defendant argues: (1) the trial court committed error by denying his second request to continue the trial due to the absence of certain alibi witnesses; (2) the prosecutor's rebuttal argument was improper; (3) the trial court erred by refusing defendant's request to provide an accomplice instruction to the jury; and (4) day-for-day credit applies to his sentence for armed robbery. We affirm.

¶ 3

BACKGROUND

¶ 4

On May 1, 2012, the State charged defendant by indictment with five separate offenses naming Karl Griffin as the victim, including: home invasion (count I), three counts of armed robbery (counts II, IV, and V), and aggravated battery (count VI). Defendant was also charged with home invasion, naming Darin Thompson as the victim (count III), and unlawful possession of a firearm by a felon (count VII).

¶ 5

On June 6, 2012, pursuant to Illinois Supreme Court Rule 413(d)(iii), defendant disclosed his alibi defense and named four family members and a friend as potential alibi witnesses who would testify defendant was in Chicago on January 28, 2012. Ill. S. Ct. R. 413(d)(iii) (eff. July 1, 1982). On June 18, 2012, defendant filed a second disclosure asserting an additional alibi witness, Carlos Chaffin, would testify on defendant's behalf.

¶ 6

On the scheduled trial date of August 27, 2012, the court granted the State's request for a continuance and rescheduled the jury trial for October 9, 2012. On October 9, 2012, the trial court granted defendant's request for a short continuance to October 15, 2012. On October 15, 2012, defendant requested to further postpone his trial because two of his alibi witnesses, Tonia Ellis and Sam Hart, were unable to arrange transportation and could not be present for the trial, which was scheduled to begin on that date. Without objection from the State, defendant's trial was continued at defendant's request to December 3, 2012.

¶ 7 On December 3, 2012, defense counsel appeared in court and once again informed the court that defendant's alibi witnesses from Chicago were not present to testify for the defense. Defense counsel advised the court that the public defender's office would have the witnesses served with subpoenas and would pay the cost of bus tickets for the witnesses if the trial was continued to another court date. The court denied defendant's request for a continuance.

¶ 8 On December 4, 2012, the jury trial began.¹ The undisputed evidence presented at trial established that, on January 28, 2012, a home invasion and shooting occurred at the home of Christine Krasner located at 2108 North Peoria Street in Peoria.

¶ 9 Detective Steven Garner testified that he interviewed Krasner after the incident, around 6:30 a.m. on January 28, 2012. Krasner told Detective Garner she "did not see what happened" because she was hiding in the bedroom. Detective Garner testified that he did not present photos of any potential suspects to Krasner because the investigation was in its very early stages and no suspects had been named at that point in time. Detective Garner placed Krasner under arrest and took her to the jail, where he interviewed Krasner again the following day. According to Detective Garner, defendant's name was first mentioned during the investigation when Erin Osborn provided information to the police. However, Detective Garner did not provide Krasner with a photo lineup during either interview and Krasner did not identify defendant as the gunman.

¶ 10 Christine Krasner also testified for the State. She testified that she resided at 2108 Peoria Street in Peoria and was on the couch in the living room when she heard a knock at the door at 5 a.m. on January 28, 2012. Krasner ran to her bedroom and hid in the closet when Darin "Dyrell"

¹ The trial court granted defendant's November 29, 2012, motion to sever the unlawful possession of a firearm by a felon charge from the remaining charges.

Thompson opened the door and Krasner saw a man with a gun enter the house. While hiding in her closet, Krasner heard arguing and three or four gunshots. When Krasner exited her bedroom, she observed blood on her kitchen floor and saw Thompson outside trying to carry Karl “K.G.” Griffin.

¶ 11 During her testimony, Krasner identified defendant in open court as the man she saw with the gun at the door. On cross-examination, Krasner testified police officers showed her photographs after the incident, but that since she did not know who the gunman was she was unable to identify anyone.

¶ 12 Erin Osborn testified she knew defendant for one month before the day of the shooting. According to Osborn, defendant was seated in her car when she met Griffin in a parking lot on January 27, 2012 and purchased marijuana from Griffin. During this transaction, Griffin told Osborn, “Don’t bring him [defendant] again.” After purchasing the marijuana from Griffin, Osborn and defendant went directly to Carlos’s home to smoke “weed” and drink alcohol.

¶ 13 Around 8 or 9 p.m. on January 27, 2012, Osborn and defendant left Carlos’s home and traveled to Krasner’s house where they socialized with Griffin, Krasner, and Thompson. According to Osborn, she and defendant left Krasner’s home to purchase marijuana and return to Carlos’s home.

¶ 14 According to Osborn, around 5 a.m., she drove back to Krasner’s house with defendant because defendant wanted to purchase drugs from Griffin. When she dropped defendant off outside Krasner’s house, she saw him put on gloves, but she did not see defendant with a gun.

¶ 15 Osborn heard what she believed to be gunfire as she waited outside in her car for defendant to return from the house. Osborn started driving her car up the alley when defendant jumped into her car and told her “[s]nitches don’t get stitches. Where I come from, they get

found in ditches.” Osborn drove defendant back to her house in Pekin, where she treated defendant’s injuries to his back and ankle. Between 6 and 8 a.m., Osborn drove defendant back to Peoria and dropped him off at Carlos’s house.

¶ 16 After leaving Carlos’s home, Osborn drove immediately to a friend’s house where she called her pastor. Later, her pastor drove her to the Pekin police station. Thereafter, she was transported to the Peoria police department where she discussed the incident with two detectives and provided a written statement on January 28, 2012. Osborn testified she had not spoken with Griffin, Krasner, or Thompson since January 28, 2012.

¶ 17 Shane Hawkins, Osborn’s pastor, testified he picked up Osborn from a friend’s house during the morning of January 28, 2012. According to Hawkins, Osborn was very upset and he could tell she had been crying.

¶ 18 Karl Griffin, the gunshot victim, testified he was asleep on the couch in Krasner’s living room around 5 a.m. on January 28, 2012, when he heard someone screaming from the kitchen area. Griffin went to the kitchen to investigate and saw a man holding a gun to Thompson’s head. Griffin stated that the gunman had a “piece of a thing covering his nose up.” When the man holding the gun saw Griffin, he turned the gun toward Griffin and ordered Griffin to turn around and get down on his knees. Instead of complying, Griffin swung around and hit the man in the throat and grabbed for the gun. Griffin and the gunman struggled for the gun while Thompson stood screaming in a different part of the kitchen.

¶ 19 During the struggle, according to Griffin, the gun was “going off the whole time.” Griffin fell backwards down the basement stairs and the man with the gun attempted to shoot him, but the gun jammed. Griffin ran back up the stairs, and as Griffin wrestled with the gunman over the weapon, the gun discharged, striking Griffin in the chest. According to Griffin, the man

hit Griffin in the head, ripped the chains off of Griffin's neck, took approximately \$400 or \$500 in cash from Griffin's pocket, and ran out the back door.

¶ 20 Griffin indicated that the mask worn by the gunman was "far enough down" to enable Griffin to recognize the man. During his testimony, Griffin identified defendant in open court. Griffin testified that the first time he saw or met defendant occurred during the afternoon of January 27, 2012, approximately 12 hours before the shooting when he sold Osborn \$50 worth of marijuana.

¶ 21 Detective Garner testified that when he spoke with Griffin, the shooting victim, on January 30, 2012, while Griffin remained hospitalized, Griffin did not identify the gunman from a photo lineup displayed by the detective. Griffin told the detective he did not want to be a "snitch." However, Griffin identified defendant as the person who was with Osborn the previous day when Osborn purchased marijuana from Griffin on January 27, 2012.

¶ 22 Robin Alley, a surgical resident at St. Francis Medical Center, testified that on January 28, 2012, Griffin arrived at the hospital with gunshot wounds to his lung, which required emergency surgery. Griffin was discharged from the hospital on February 5, 2012.

¶ 23 Darin Thompson testified that he was with Griffin and Krasner at Krasner's residence on January 27, 2012. Osborn arrived with defendant, but the pair left at some point to "get some drinks." According to Thompson, around 5 a.m., Thompson heard Osborn's car returning down the back alley. Moments later, Thompson heard a knock at the back door, opened the back door, and discovered a masked "black man" standing at the door who pointed a gun at Thompson's stomach. Thompson testified that when Griffin entered the room, a scuffle ensued between Griffin and the masked gunman. According to Thompson, the gun fired once, and when the gunman tried to fire a second time, the gun jammed. Thompson escaped by running out the back

door of the home when the gun jammed. Once Thompson was outside the house, he heard a second gunshot and saw Osborn slowly driving her car down the alley.

¶ 24 On February 3, 2012, Thompson went to the police station. During his interview with police, Thompson identified defendant from a photo lineup as the man who entered the house on January 28 and shot Griffin.

¶ 25 After the State rested, Marisha Smith testified on behalf of the defense. Smith testified that she knew defendant for 10 years. Smith testified that she and defendant were supposed to go to defendant's sister's birthday party in Chicago on either January 25 or 26, 2012. Although Smith did not travel with defendant to Chicago as planned, she did not see defendant in Peoria between January 23, 2012, and February 6, 2012.

¶ 26 The court conducted a jury instructions conference and defendant tendered Defendant's Instruction No. 3 based on Illinois Pattern Jury Instructions, Criminal, No. 3.17 (4th ed. 2000) (hereinafter, IPI Criminal 4th No. 3.17). IPI Criminal 4th No. 3.17 provided:

“When a witness says he was involved in the commission of a crime with the defendant, the testimony of that witness is subject to suspicion and should be considered by you with caution. It should be carefully examined in light of the other evidence in the case.”

During the conference, the parties discussed whether the instruction should be provided to the jury based on Osborn's testimony. The trial court elected to take a short recess to conduct research. After returning from the recess, the court stated it would not instruct the jury regarding IPI Criminal 4th No. 3.17 based on the court's conclusion that Osborn was not an accomplice to the home invasion or shooting. The court observed Osborn did not drive the gunman to the house with knowledge her passenger intended to commit a robbery while inside the home. The

jury found defendant guilty of home invasion, armed robbery, and aggravated battery.² On January 2, 2013, defendant filed a motion for new trial challenging, in part, the court's denial of defendant's December 3, 2012, request to continue the trial due to the unavailability of defendant's alibi witnesses and the court's refusal to allow defendant's accomplice testimony jury instruction based on IPI Criminal 4th No. 3.17. The court denied defendant's posttrial motion on February 28, 2013.

¶ 27 The trial court sentenced defendant to 35 years' incarceration for armed robbery (count II), 30 years for home invasion (count III) to run consecutively with count II, and 10 years each for aggravated battery (count VI) and unlawful possession of a firearm (count VII) to run concurrently to the other counts. At the conclusion of the hearing, the court stated that defendant was entitled to no more than four and a half days of good conduct credit for each month of his sentence, requiring him to serve at least 85% of his sentence. 730 ILCS 5/3-6-3(a)(2)(iii) (West 2012). The order indicated defendant would be required to serve 85% of his sentence on counts II, III, and VI, and 50% on count VII. Defendant filed a motion to reconsider sentence on March 4, 2013, which the trial court denied on March 18, 2013. Defendant timely appealed.

¶ 28 ANALYSIS

¶ 29 On appeal, defendant raises multiple errors for our review, the first of which is that the trial court erred in denying his motion for a continuance on December 3, 2012, the day trial was scheduled to begin. Defendant maintains that his motion should have been granted to allow him more time to secure the attendance of his alibi witnesses. Because motions to continue are addressed to the sound discretion of the trial judge, the denial of a motion to continue will be

² Immediately following these verdicts, the court conducted a trial on the unlawful possession of a firearm charge and the jury returned a guilty verdict on that charge as well.

reversed on appeal only when it is shown that the court abused its discretion and caused prejudice to the defendant. *People v. Ward*, 154 Ill. 2d 272, 304 (1993). An abuse of discretion occurs when the ruling is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the trial court. *People v. Patrick*, 233 Ill. 2d 62, 68 (2009). Factors which are to be considered upon review of the denial of a motion to continue include whether the defendant demonstrated diligence in attempting to secure the witnesses, whether the proposed testimony was material and likely to have affected the verdict, and whether the defendant was prejudiced when the motion was denied. *Ward*, 154 Ill. 2d at 307.

¶ 30 Viewing the entire record, we cannot say that the trial court abused its discretion in denying defendant's motion to continue. Turning first to the question of whether defendant had been diligent in attempting to secure the witnesses attendance at the trial beginning on December 3, 2012, we note that the trial court previously granted defendant's motion to continue the trial originally scheduled for October 15, 2012, for the express purpose of allowing defendant time to secure the attendance of these witnesses. Thus, defendant had from October 15, 2012, to December 3, 2012, a period of 49 days in which to arrange for his witnesses to travel to Peoria for trial on December 3, 2012. The record further established that at a pretrial conference on November 21, 2012, defendant indicated that he was ready for trial, apparently indicating to the court that he had made appropriate arrangements for his witnesses to travel from Chicago to Peoria for trial on December 3, 2012. Yet, on December 3, 2012, defendant announced he was not ready for trial because his alibi witnesses had transportation problems. Defendant proffered no explanation as to any attempts to secure the presence of these witnesses nor any explanation as to why he indicated on November 21, 2012, that he was ready for trial, yet was unable to secure the attendance of his witnesses at trial. It appears that defendant simply believed that his

alibi witnesses would show up at trial because they were family members. The record contains no indication that defendant exercised diligence to secure the attendance of his witnesses.

¶ 31 We turn next to the question of whether the proposed testimony was material and might have affected the jury's verdict. According to defendant's motion to continue trial, the family alibi witnesses would have testified that defendant was in Chicago from January 23, 2012, until February 2, 2012, and thus could not have been present in Peoria on January 28, 2012, when the crime occurred. While it cannot be denied that the proposed testimony was material, we find that the testimony would not likely have affected the jury verdict or resulted in undue prejudice. The determination whether alibi evidence might have affected a jury verdict and prejudiced a defendant is made by reviewing the potential impact of the alibi evidence against the overall evidence of guilt. *People v. James*, 348 Ill. App. 3d 498, 505-07 (2004); *People v. Brooks*, 345 Ill. App. 3d 945, 955-56 (2004).

¶ 32 As to whether the proposed witnesses would have testified that they personally observed defendant present in Chicago on January 28, 2012, the record contains no affidavits to that effect. Instead the record contains only the unsworn statement of defense counsel that these witnesses would testify that defendant was in Chicago from January 23, 2012, though February 2, 2012. Moreover, we note that Marisha Smith testified that defendant was supposed to leave Peoria and travel to Chicago on January 23, 2012, to attend his sister's birthday party on or about January 26, 2012. Smith further testified that she did not see defendant in Peoria again until February 6, 2012. This testimony was in general accord with the representations in the notice of alibi regarding the testimony of the missing alibi witnesses. Thus, the jury was apprised of defendant's alibi that he was in Chicago when the crimes occurred. Even if the missing witnesses had testified that defendant was in Chicago in the general time frame when the crime

occurred, defendant was identified by three eyewitnesses and an occurrence witness as the perpetrator who entered the home on the morning of January 28, 2012, armed with a handgun.

¶ 33 A jury is never required to accept alibi testimony over the positive identification of the accused even where the alibi is given by a greater number of witnesses. *People v. Woodward*, 225 Ill. App. 3d 1069, 1074 (1992). Moreover, a single eyewitness identification of the accused is sufficient to sustain a conviction notwithstanding contradictory alibi testimony, so long as the eyewitness had an adequate opportunity to view the accused and the resulting in-court identification is positive and credible. *People v. Slim*, 127 Ill. 2d 302, 307 (1989). Here, given the equivocal nature of the proposed alibi testimony when compared to the credible in-court identification of defendant as the perpetrator, we cannot find that the jury verdict would likely have been different or that defendant was thereby prejudiced by the trial court's denial of his motion to continue. We find no abuse of discretion in the ruling denying the motion to continue.

¶ 34 Defendant next maintains that he is entitled to new trial because the trial court erroneously refused to provide the jury with an accomplice instruction. The State agrees that the trial court erroneously refused to allow the defense's tendered instruction based on IPI Criminal 4th No. 3.17. However, the State argues the court's error was harmless because the evidence of defendant's guilt was clear and convincing. We agree.

¶ 35 The failure to give an accomplice testimony instruction when appropriate is not necessarily reversible error. In determining whether the failure to instruct the jury on accomplice testimony is error, a reviewing court will consider whether the witness's testimony was critical to the prosecution, whether witness bias was brought out on cross-examination, whether the court gave a general jury instruction as to the credibility of witnesses, and whether defense counsel

noted the potential bias of the witness during closing argument. *People v. Howard*, 209 Ill. App. 3d 159, 185 (1991); *People v. Hoard*, 249 Ill. App. 3d 21, 32 (1993).

¶ 36 Here, defendant maintains that without Osborn's testimony it was highly unlikely that the jury would have returned a guilty verdict against him. Based upon our review of the record, we cannot agree. There can be no doubt that Osborn's testimony was damaging to defendant, however, it was not *critical* to the prosecution's case against him. While Osborn's testimony provided important contextual details concerning how and why defendant came to be in the residence at 2108 N. Peoria on the morning of January 28, 2012, the three individuals in the home provided the critical testimony establishing that defendant perpetrated the charged offenses. Krasner, Griffin, and Thompson each identified defendant in open court as the perpetrator. While it is apparent that the police were first alerted to defendant as the possible perpetrator by Osborn, the record clearly established that both Griffin and Thompson has seen defendant before the shooting. Moreover, both of these witnesses testified without reservation and were subject to cross-examination. In addition, the jury received a general instruction regarding the credibility of witnesses, and defense counsel strenuously argued that all of the witnesses testifying against defendant were doing so in order to give "someone's name." It is clear, therefore, that regardless of the lack of an accomplice instruction, the jury was well apprised of the possible credibility issues regarding Osborn's testimony.

¶ 37 Given the record herein, although it is acknowledged that an accomplice instruction should have been given regarding Osborn's testimony, the failure of the trial court to give that instruction was not reversible error.

¶ 38 Defendant next maintains on appeal that the prosecutorial misconduct during rebuttal closing argument warrants a new trial. Specifically, he challenges a statement when the

prosecutor opened rebuttal by saying: “Then who shot him? If it’s not Howard Ellis, [then] who?” Defendant maintains that this statement impermissibly shifted the burden of proof. Defendant also challenges the statement made at the close of rebuttal when the prosecutor stated: “Reasonable doubt, that’s our burden. It’s not [one] hundred percent certainty. It’s not beyond all doubt. It’s reasonable doubt.” Defendant maintains that this statement was an attempt to convince the jury that its burden was something less than beyond a reasonable doubt.

¶ 39 We begin by noting that defendant neither objected to these comments during the trial nor did he raise these objections in his post-trial motion. Our precedent is clear that an objection at trial and a written post-trial motion raising the issue are required to preserve an issue for appellate review (*People v. Enoch*, 122 Ill. 2d 176, 186 (1988)), and unless defendant can demonstrate plain-error, his failure to preserve the error operates as a forfeiture of the issue on appeal. *People v. Keene*, 169 Ill. 2d 1, 17 (1995). Plain-error analysis requires this court to first determine whether an error has in fact occurred. *People v. Naylor*, 229 Ill. 2d 584, 593 (2008). It is axiomatic that, if no error occurred there can be no reversible error. *People v. Thompson*, 238 Ill. 2d 598, 613 (2010).

¶ 40 In evaluating the propriety of a prosecutor’s rebuttal argument, a closing argument must be viewed in its entirety with all remarks taken in the context of the entire argument. *People v. Buss*, 187 Ill. 2d 144, 151 (1999). Further, statements made during rebuttal argument are proper if invited or provoked by the arguments of defense counsel. *People v. Glasper*, 234 Ill. 2d 173, 204 (2009). The statement “[t]hen who shot him? If not Howard Ellis, [then] who?” was made in direct response to defendant’s closing argument that proposed a theory that the three main witnesses against defendant had conspired to falsely identify defendant as the perpetrator in order to give the police “someone’s name.” In this context, the prosecutor was properly

attacking the defendant's argument to the jury that the witnesses conspired to falsely accuse defendant. Defendant argued that someone else had shot the victim and the witnesses were knowingly concealing that person's identity. In that context, it was acceptable for the prosecutor to question who that unknown individual might be and why the witnesses would conspire to protect that individual by falsely accusing defendant. Given that context, we are convinced that the prosecutor was not attempting to shift the burden of proof to the defendant to prove his innocence. Therefore, we find that no error occurred when the prosecutor questioned the identity of the unnamed assailant in the rebuttal argument.

¶ 41 Defendant also maintains that the prosecutor's comments concerning the definition of "reasonable doubt" sought to diminish the burden of proof or somehow shift the burden of proof to the defendant. The facts and circumstances do not support defendant's position.

¶ 42 Attempts to explain the reasonable doubt standard have been disfavored by the courts because "no matter how well-intentioned, the attempt may distort the standard to the prejudice of the defendant." *People v. Downs*, 2015 IL 117934 ¶19; *Keene*, 169 Ill. 2d at 25. However, both the prosecutor and defense counsel are entitled to "discuss reasonable doubt and to present his or her view of the evidence [presented] and to suggest whether the evidence supports reasonable doubt." *People v. Laugharn*, 297 Ill. App. 3d 807, 811 (1998). A prosecutor is permitted to discuss the reasonable doubt standard without necessarily diminishing the burden of proof or shifting it to the defendant. *People v. Burney*, 2011 IL App (4th) 100343 ¶ 90. We note that several similar statements have been found not to impermissibly diminish or shift the burden of proof. See *People v. Thompson*, 2013 IL App (1st) 113105 ¶ 90 ("beyond a reasonable doubt is not any doubt in the world, any crazy doubt"); *Burney*, 2011 IL App (4th) 100343 ¶ 67 ("It's not beyond all doubt"); *Laugharn*, 297 Ill. App. 3d at 810 ("Now, that's not beyond all doubt or any

doubt, but beyond a reasonable doubt”); *People v. Renslow*, 98 Ill. App. 3d 288, 295 (1981) (“Well, it’s not beyond all doubt; it’s beyond a reasonable doubt”). Here, the prosecutor sought to discuss the reasonable doubt standard in similar terms. We find that these statements did not diminish the prosecution’s burden of proof or shift that burden to the defendant. Since we find no error in the prosecutor’s statements, we necessarily find our plain-error analysis is concluded. *Thompson*, 238 Ill. 2d at 613.

¶ 43 Defendant last maintains on appeal that his sentence should be modified so as to permit him to earn day-for-day good time credit against his 30-year sentence for home invasion. He acknowledges that he has failed to properly preserve the issue for appellate review, but asks this court to review his sentence as a void sentence which can be challenged at any time. See *People v. Patrick*, 406 Ill. App. 3d 548, 561 (2010) *affirmed on other grounds*, 2011 IL 111666. His theory requires us to find that his sentence is void in order to find that he has not forfeited the issue on appeal. For the following reasons, we find that the sentence imposed conformed to statutory requirements and was not, therefore, a void sentence subject to appeal.

¶ 44 Defendant maintains that the truth-in-sentencing provision of section 3-6-3(a)(2)(iii) of the Unified Code of Corrections (Code) do not apply in his case. “Truth-in-sentencing” is a label applied to certain statutory exceptions to the general day-for-day good time credit applicable to certain offenses. *People v. Salley*, 373 Ill. App. 3d 106, 109 (2007). Under section 3-6-3(a)(2)(iii) of the Code, a prisoner serving a sentence for home invasion with a category I or category II weapon, when the court has entered a finding that defendant’s conduct leading to the conviction “resulted in great bodily harm to a victim,” is entitled to no more than 4.5 days of sentence credit for each month of the sentence. 730 ILCS 5/3-6-3(a)(2)(iii) (West 2012). Defendant maintains that the “victim” referenced in the statute must be the specific individual

referenced in the home invasion count. The State maintains, that the Code unambiguously includes as a “victim” any individual who may injured by the defendant’s conduct during the offense in question.

¶ 45 We review *de novo* questions of whether a sentence is statutorily sound. *People v. Collins*, 214 Ill. 2d 206, 214 (2005). Under section 3-6-3(a)(2)(iii) of the Code, a person convicted of home invasion while using a firearm (category I weapon) resulting in great bodily harm to a victim is entitled to no more than 4.5 days of good-time credit for each month of incarceration. In *Salley*, the court held that the statute’s reference to an offense that “resulted in great bodily harm to a victim” unambiguously encompassed anyone who was injured by the defendant’s conduct during the offense in question. *Salley*, 373 Ill. App. 3d at 109-10. We are in agreement with the holding in *Salley* where the court noted that the statutory phrase “a victim” rather than “the victim” clearly indicated a legislative intent to establish that great bodily harm to any victim occurring during a home invasion would trigger the truth-in-sentencing provision of the Code. *Id.*

¶ 46 Here, each of the operative facts (conviction on the charge of home invasion, use of a category I weapon, great bodily harm to a victim) were found to be present by the trial court. Thus, it is clear and unambiguous that the Code provisions concerning “truth-in-sentencing” were appropriately applied to defendant. *Salley*, 373 Ill. App. 3d at 109-10.

¶ 47 CONCLUSION

¶ 48 For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed.

¶ 49 Affirmed.

¶ 50 JUSTICE WRIGHT dissenting:

¶ 51 I agree with the majority that the trial court's denial of defendant's request for a continuance did not constitute an abuse of discretion. In addition, I also agree with the majority's determination that the prosecutor's closing argument and defendant's sentence were proper.

¶ 52 However, I respectfully dissent because I conclude the trial court's refusal to allow the defense's tendered accomplice instruction does not qualify as harmless error. The evidence concerning defendant's presence in Krasner's house, both before and after the shooting, was completely dependent on Osborn's credibility.

¶ 53 However, the State's occurrence witnesses gave contradictory versions of the events in comparison to Osborn's account as a State's witness. First, I note that Osborn clearly stated during her testimony that she watched defendant step on the front porch and enter the front door before Osborn heard gunshots. In contrast, Krasner, Thompson, and the victim uniformly agreed the gunman knocked on the *back* door and first entered Krasner's kitchen, rather than entering through the front living room door.

¶ 54 Moreover, Osborn testified that she and defendant were together at Krasner's for about forty-five minutes and socialized with the occurrence witnesses on the night before the early morning shooting. In contrast, neither Krasner, Thompson, nor the victim, corroborated Osborn's testimony that defendant was with Osborn at Krasner's house on the night before the shooting. Each occurrence witness testified that Osborn was alone when she was socializing with them just hours before the early morning home invasion.

¶ 55 It is clear that Osborn acted as the gunman's accomplice and may have had a strong motive to falsely implicate defendant in order to protect the true identity of the gunman. An

accomplice instruction would have focused the jury on Osborn's potential bias as a participant in the home invasion more clearly.

¶ 56 Accordingly, I conclude the denial of defendant's request for an accomplice jury instruction may have affected the outcome of this trial and should not be considered harmless error. For these reasons, I would remand for a new trial with a properly instructed jury.