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2018 IL App (4th) 151023-U

NO. 4-15-1023

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
August 8, 2018
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Adams County
STESON L. CRIDER,	)	No. 15CF242
Defendant-Appellant.	)	
	)	Honorable
	)	Robert K. Adrian,
	)	Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Justices Holder White and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court did not abuse its discretion in denying defendant's motion for change of venue.

(2) The trial court abused its discretion in allowing the admission of photos of defendant posing with various handguns that had been posted to public social media websites when those photos were not relevant to the issue of whether defendant was the person who shot the victim. However, the error was harmless, as there is no reasonable probability that, in light of the overwhelming evidence against defendant, the jury's verdict would have been different without the admission of the photos.

(3) The trial court did not abuse its discretion in refusing to give defendant's tendered non-pattern jury instruction on immunity.

(4) Defendant's counsel should have requested a limiting instruction upon the prosecutor's use of a prior consistent statement, which was introduced for the purpose of rehabilitation, but such error did not rise to the level required for a finding of ineffective assistance because defendant could not demonstrate prejudice. Further, counsel did not render ineffective assistance when he failed to object to the prosecutor's alleged reference to the prior consistent statement during closing argument.

(5) The prosecutor did not improperly vouch for the credibility of the accomplice witnesses.

(6) The trial court erred in not establishing a deadline for payment of restitution.

¶ 2 Following a jury trial, defendant, Steson L. Crider, was found guilty of first degree murder. The trial court sentenced him to 65 years in prison. Defendant appeals, arguing (1) the court erred in denying his motion for a change of venue, (2) the court erred in allowing the admission of social media photos of defendant posing with handguns, (3) the court erred in refusing to give a tendered nonpattern immunity instruction, (4) defense counsel rendered ineffective assistance by failing to (a) request a limiting instruction regarding a witness's prior consistent statement and (b) object to the use of those statements as substantive evidence, (5) he was denied a fair trial when the prosecutor personally vouched for the credibility of two witnesses during closing argument, and (6) the court failed to conduct an ability-to-pay hearing before imposing the restitution amount. We affirm defendant's conviction and remand with directions for the trial court to conduct a proper restitution hearing.

¶ 3 I. BACKGROUND

¶ 4 This case centers around the bad blood brewing between two groups of young men. Defendant and his half-brothers, Stefan Crider, III, and Justin Cartmill, along with their friends Ja'Chaun Parker and Anthony Runnels, had an ongoing dispute with Tyquan Campbell, whose nickname is Booka, Henry Johnson, whose nickname is Little Henry, and Kordell Tucker, whose nickname is K.T. Defendant resided in Arizona but was visiting family members in Quincy, Illinois, during the month of March 2015. Because several of the individuals pertinent to this case share the last name of Crider, we will refer to them by their first names or nicknames for ease and clarity.

¶ 5 The evidence presented at the jury trial included the following. By Thursday, March 26, 2015, defendant had arrived in Quincy. Tyrica Humphrey, a "really good friend" and sometimes girlfriend of defendant, picked up defendant at his grandmother's house and drove him to his stepmother Julia Crider's house. Noticing something around defendant's waist, Humphrey asked defendant about it. He pulled out a handgun to show her. She asked defendant why he had it, and he explained "[j]ust in case somebody, you know, comes up on him and he has to use it, basically." Later that night, Humphrey, defendant, and Parker went to her friend Precious Bailey's house. Humphrey again saw defendant with a gun when he laid it on the table. Bailey testified she saw Parker with a gun also.

¶ 6 On Friday, March 27, 2015, at approximately 5 p.m., Stefan and defendant used Julia's black Chevrolet Impala to pick up their friend Leshon Wrencher from work. Wrencher said Stefan and defendant were mad "about everything that had been going on with Booka and [Little] Henry and everything else going on with the Fifth Street [] stuff." He said defendant was "tired of everybody messing with him or whatever, his family and everything." Wrencher said defendant had a semi-automatic handgun on his lap.

¶ 7 Later that evening, Friday, March 27, 2015, at approximately 10:30 p.m., defendant, Stefan, Runnels, and Cartmill began drinking alcohol and smoking marijuana at Julia's house for, what Runnels described as, "pregaming." The group intended to meet others later at several clubs in town. Around midnight, Humphrey picked up her friend Miracle Parrish and headed to Players, a tavern. As they arrived in the parking lot sometime after midnight, Humphrey said she saw K.T., Little Henry, and Booka "having words" with Cartmill. According to witnesses inside the tavern, Stefan and defendant were there as well. Defendant was very

angry, presumably about the confrontation. As he made his way to the front door, defendant pushed a chair out of his way, kicked it, and then flipped a table over.

¶ 8 After the confrontation, Miracle and Precious went after Cartmill, who had walked away from Players alone. Stefan, defendant, Shaine Thomas, Parker, and Runnels were in Julia's black Impala. According to Runnels, Stefan stopped the car at Fifth and Spruce Streets because he and defendant wanted to see if Booka, Little Henry, and K.T. were outside where they typically were, near Barb Stemmons's house on Fifth Street. Defendant, who Parker described as "very drunk," got out of the car and headed down an alley between two buildings. According to Parker, defendant said " 'I'm about to go pop one of those niggas.' " Parker got out of the car to follow defendant and saw defendant tuck a gun into his belt. Parker said he did not follow defendant further into the yard because he had "a bad feeling." Parker headed back to the car.

¶ 9 Meanwhile, Stemmons's grandson, Benjamin Hodges, Jr. ("B.J.") and his friend Rayshone Humphrey, Jr. ("Ray"), age 12, were at Stemmons's house. Ray had planned to stay overnight but he must have changed his mind. Sometime after 12:30 a.m., Ray texted his mother, asking that she pick him up. He went outside to wait for her on the porch.

¶ 10 As Parker was heading back to the car, he heard a gunshot and saw defendant running back toward the car. When defendant got inside the car, Runnels said defendant said " 'I hit somebody in the face.' " Parker said defendant meant he had shot somebody in the face. Defendant said he had "just popped one of the niggas." According to Runnels, defendant thought he had shot K.T. because K.T. had been wearing a red "hoodie."

¶ 11 Back at Stemmons's house, B.J. went outside to check on Ray. He saw Ray's phone with the light on lying by the bushes. He could see Ray on the ground and the glare of blood. Ray was wearing a red "hoodie." He had been shot in the head.

¶ 12 Helen Horton, Runnels's sister, testified that she had been trying to reach her boyfriend by telephone. When he did not answer, she decided to walk toward his aunt Stemmons's house. Horton sat on the steps of a house across the street, hoping to see her boyfriend, who she suspected was cheating on her. She saw Ray come out of Stemmons's house. He was wearing a red "hoodie," standing on the porch, and looking at his phone. Horton saw a person appear from between the buildings and shoot Ray. The shooter was also wearing a red "hoodie" with chains around his neck and a blonde patch in his hair. Horton said she had seen the shooter with Runnels earlier that night at Players. Witnesses described defendant and Cartmill that evening as having blonde patches in their hair and defendant with gold chains around his neck.

¶ 13 When defendant got back into the car, Stefan turned up the music and drove away. Runnels said defendant asked Stefan what he should do with the gun. Defendant eventually threw it over a bridge. At about this same time, Cartmill was seen on video surveillance being dropped off at Indian Hills public housing development with Miracle and Precious.

¶ 14 Parker and Thomas split from the group. Stefan drove defendant and Runnels to Julia's house. Defendant's sister, Shanice Crider, arrived. The three men got into Shanice's car, a green Mustang, and intended to drive to Arizona. They stopped by Precious's apartment to pick up Cartmill and then checked into the Super 8 Motel in Hannibal, Missouri. Cartmill and Runnels drove back to Quincy to Shanice's house. There, they saw Stefan and defendant's

father, Stefan Crider, Jr., whose nickname is Kaney, Julia, and Shanice. Runnels said he told Kaney "pretty much *** exactly what happened."

¶ 15 Early Sunday morning, at approximately 1:30 a.m. on March 29, 2015, Stefan and defendant were taken into custody. Each gave police a statement. Defendant admitted being upset at Players and admitted owning a gun but denied having one in his possession on March 27, 2015, and denied shooting Ray. Defendant did not testify at trial.

¶ 16 After considering the evidence, the jury found defendant guilty of first degree murder (720 ILCS 5/9-1(a)(1) (West 2014)). The trial court sentenced him to 65 years in prison and ordered him to pay restitution to the hospital, ambulance, and funeral home for a total of $21,250.76.

¶ 17 This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 A. Motion for Change of Venue

¶ 20 Defendant first contends the trial court erred in denying his motion for a change of venue that he orally made during *voir dire*. We review a trial court's decision to grant or deny a change of venue for an abuse of discretion. *People v. Sutherland*, 155 Ill. 2d 1, 14 (1992).

¶ 21 On the Saturday before the trial was to begin on Tuesday morning, the local newspaper published a front-page story about this case titled "Prosecutor Outlines Murder Theory." This article referred to and summarized the contents of the State's seven-page pretrial motion for the admission of other-crimes evidence and the admission of Stefan's, Kaney's, and Julia's statements. Defendant's counsel brought the article to the court's attention and, as a result, all parties decided to question potential jurors in panels of four. After questioning eight potential jurors, defendant's counsel made an oral motion, arguing that six of the eight potential

jurors had heard information about the case. Two of the six affirmatively believed they could not ignore the information, and a third indicated that he probably could not. Defendant's counsel argued that "finding an impartial jury may be an impossibility." The court questioned whether counsel was making a motion for a change of venue or simply asking for a change in the jury-selection process. Counsel responded "both." The court denied "both motions," finding "that questioning by four is appropriate at this time." The court continued: "[t]here has been nothing to suggest that we will not be able to get a fair and impartial jury from this—this pool of jurors, and so the court is going to proceed, and we will deny the motion."

¶ 22 On appeal, defendant claims the trial court's denial deprived him of "his right to a trial by an impartial jury." We disagree.

¶ 23 This court has previously noted:

> "A defendant is entitled to a change of venue as a result of pretrial publicity if a reasonable apprehension exists that []he cannot receive a fair and impartial trial. [Citation.] 'Exposure to publicity about a case is not enough to demonstrate prejudice because jurors need not be totally ignorant of the facts and issues involved in a case.' [Citation.] Instead, what is essential is that the jurors ultimately chosen must be able to lay aside impressions or opinions and render a verdict based upon the evidence at trial. [Citation.] Thus, the relevant inquiry on appeal is not how much pretrial publicity occurred, but whether the defendant received a fair and impartial trial. [Citation.]" *People v. Little*, 335 Ill. App. 3d 1046, 1052 (2003) (quoting *People v. Kirchner*, 194 Ill. 2d 502, 529 (2000)).

¶ 24 Based upon our review of the record, not having a fair and impartial jury was not a concern in this case. Of the 16 jurors and alternates, 10 had heard or read something about the

case before trial. However, all 16 individuals stated they each understood that the newspaper article was not evidence and they each believed they could be fair and impartial.

¶ 25 In reaching our conclusion, we refer to two supreme court decisions, where the court refused to grant new trials based on the jurors' pretrial knowledge of the case from local media sources. As in *Sutherland* and *Kirchner*, the jurors here may have garnered "general" knowledge of the case, but each also indicated that he or she could be impartial and decide the case on the evidence alone. See *Sutherland*, 155 Ill. 2d 1, 16 (1992); *Kirchner*, 194 Ill. 2d at 530.

¶ 26 Further, defendant does not produce any compelling evidence of error. He cites to the *voir dire* of one particular juror who, when asked what his reaction to the newspaper article was, stated that he "didn't think it was bologna." However, later, that same juror indicated that he understood the newspaper article was not evidence. Defendant also relied on another juror's relationship with the victim. That juror stated the victim used to "come down my line" in the cafeteria at school. Again, this juror also indicated there was nothing in particular about that relationship that would make it difficult for her to serve as a juror.

¶ 27 We find the words of the Fifth District on this subject compelling. The court stated:

> "Change of venue, long recognized in our system of law, is a basic tool of the courts in insuring and protecting the right of an accused to a fair trial untainted by the passions of the community in which the crime occurred. A defendant may not, however, frivolously demand removal of his trial to another county at his whim, assigning as grounds any reasons which to him seem proper. The requirement is that prejudice of the local citizenry must be alleged and demonstrated. As stated in *People v. Williams*, 40 Ill. 2d 522, [531 (1968)]:

> 'The rule is that an accused is entitled to a change of venue when it appears there are reasonable grounds to believe that the prejudice alleged actually exists and that by reason of the prejudice there is a reasonable apprehension that the accused cannot receive a fair and impartial trial. [Citations.]'
>
> In this case defendant did not allege or endeavor to show that the citizens of Jackson County were prejudiced against him. It is also to be noted that there is nothing in the record to indicate that the *voir dire* examination of the jurors disclosed any prejudices against the defendant or any matters whatsoever that would tend to support the defendant's allegations of local prejudice. Accordingly, we find that the trial court did not abuse its discretion in denying defendant's oral motion for change of venue." *People v. Higgins*, 1 Ill. App. 3d 847, 850 (1971).

¶ 28 Likewise, here defendant makes neither a valid nor a persuasive argument that the jury in this case was partial or biased or that he was denied a fair trial. The trial court put forth sufficient effort to ensure that (1) the jury was selected in a fair and proper manner, (2) each member could be impartial, and (3) each understood they were to consider only the evidence presented. Our review of the record, including the entire *voir dire*, does not demonstrate any basis upon which we could find the jury was partial, biased, or prejudiced. As a result, we find no reason to disturb the trial court's decision to deny defendant's oral motion for a change of venue.

¶ 29 B. Social Media Photos

¶ 30 Defendant next contends the trial court erred when it allowed the State to introduce photos from a social media account—photos that depict defendant holding and

pointing different handguns. Defendant argues the photos were not relevant and were highly prejudicial.

¶ 31 Despite defendant's suggestion that we apply a *de novo* standard of review to the question of whether the photos were legally relevant, we continue to adhere to the long-standing precedent that the admissibility of evidence rests within the discretion of the trial court. *People v. Pikes*, 2013 IL 115171, ¶ 12. We will not disturb the court's decision absent an abuse of discretion. *Id.* "An abuse of discretion has occurred when the trial court's decision is arbitrary, fanciful, or unreasonable or when no reasonable person would take the position adopted by the trial court." *People v. Wilson*, 2015 IL App (4th) 130512, ¶ 75.

¶ 32 Generally, evidence is admissible if it is relevant. Ill. R. Evid. 402 (eff. Jan. 1, 2011). Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Ill. R. Evid. 401 (eff. Jan. 1, 2011). Relevant evidence may be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice" or if another rule of evidence excludes the evidence. Ill. R. Evid. 403 (eff. Jan. 1, 2011).

¶ 33 Defendant claims the photos are not relevant to prove the charge of murder, as they did "not make it any more or less likely that he, many months later, committed this shooting." He insists the "only purpose of this evidence was to portray [defendant] as a good-for-nothing thug who would be likely to commit a murder." We agree.

¶ 34 At trial, the trial court admitted five photos of defendant posing with other males, each holding different handguns, some semi-automatic handguns, and/or cash. In more than one photo, defendant is pointing a gun directly at the camera. These photos were publically posted to a social media account approximately 35 weeks prior to the shooting. Neither party disputes the

photos were taken in Arizona. During arguments on pretrial matters, the State initially represented to the court that these photos were posted on defendant's social media account. Defendant denied that he or anyone else posted the photos on his account. Regardless of who posted the photos, or on whose account they were posted, these photos depict defendant willingly posing for the photos. Defendant does not dispute that he appears in the photos or that they were altered in any way.

¶ 35 The State contends these photos are relevant because they tend to demonstrate "defendant's ready access to and familiarity with numerous handguns in the time before the murder." The State claims evidence of defendant's access to and familiarity with handguns was relevant to determine whether defendant shot Ray with a handgun. This may be so if defendant's access to and/or familiarity with handguns was at issue. It was not.

¶ 36 In defendant's initial interview with Detective Gibson on March 29, 2015, defendant admitted he had previously possessed guns in Arizona. He relayed to Gibson that he most recently had a Glock, Model 30, .45 caliber. However, he denied having a gun in his possession on the night of the shooting. Because defendant admitted he had previously had access to and was readily familiar with handguns, we fail to see how the admission of these five photos tends to prove any disputed issue at trial. The State reportedly introduced the photos as evidence having the tendency to make the existence of defendant's availability to weapons more probable. The trial court allowed the admission of, what it determined to be, relevant evidence after indicating it had found the probative value of the photos outweighed the prejudicial effect. The court relied on the fact defendant had "purposefully pos[ed]" for the photos.

¶ 37 The problem with the State's argument, and ultimately the trial court's decision, was that these photos did not tend "to make the existence of any fact *that is of consequence* to

the determination of the action more probable or less probable than it would be without the evidence." (Emphasis added.) Ill. R. Evid. 401 (eff. Jan. 1, 2011). That is, defendant's access to and familiarity with handguns was not at issue. Defendant denied having a gun that particular night but did not deny that he had possessed guns previously. The photos do not tend to prove or make it more probable that defendant had access to a semiautomatic handgun on the night Ray was shot. Therefore, we find the court's decision to admit the photos as relevant evidence was an abuse of discretion.

¶ 38 However, we further find the trial court's error was harmless in light of the overwhelming evidence against defendant. The State's witnesses each testified consistently with the sequence of events on the night of the shooting. For example, (1) at least three witnesses testified they saw defendant with a handgun that night; (2) several witnesses testified defendant was very angry about the confrontation that occurred at Players; (3) occupants of the vehicle in which defendant was riding testified that defendant made statements about his intent to shoot someone as he exited the vehicle and then bragged about what he had done when he returned; and (4) occupants of the vehicle testified defendant threw his handgun over a bridge into the river below.

¶ 39 This court has previously noted that "the admission of irrelevant evidence is harmless error if no reasonable probability exists that the verdict would have been different had the irrelevant evidence been excluded." *People v. Lynn*, 388 Ill. App. 3d 272, 282 (2009). In light of the overwhelming evidence against defendant as outlined above, we reject defendant's argument that the admission of the irrelevant evidence may have contributed to defendant's conviction. Accordingly, we find the admission of the photos into evidence constituted harmless error.

¶ 40 C. Jury Instruction

¶ 41 Defendant next contends the trial court erred in refusing defendant's proposed nonpattern jury instruction on the evaluation of the testimony of Runnels and Parker when the State had granted them immunity. During the jury instruction conference, defendant proposed Illinois Pattern Jury Instructions, Criminal, No. 3.17 (4th ed. 2000) (hereinafter IPI Criminal 4th No. 3.17), the instruction on accomplice testimony. Defendant tendered this instruction because the two witnesses at issue were in the car with defendant immediately prior to the shooting, and there was evidence that Parker was also armed. Over the State's objection, the court agreed to give the instruction. Defendant then proposed the non-IPI instruction on immunity. The court questioned the origin of the instruction. Defense counsel advised it was "based off of instruction 4.9 of the Ninth Federal Circuit Court of Appeals" and specifically addresses immunity. Counsel stated that he believed "the submitted non-IPI. instruction adequately addresses the situation in which a witness has been given immunity, which is more than simply being an accomplice." He continued: "I believe it's appropriate that the jury be instructed on how to handle or consider such testimony of immunized witnesses." The court refused the instruction, finding the "issue was adequately covered by the previous instruction, which is [IPI Criminal 4th No.] 3.17, testimony of an accomplice." Defendant claims the court's decision was error. We disagree.

¶ 42 " ' "The sole function of instructions is to convey to the minds of the jury the correct principles of law applicable to the evidence submitted to it in order that, having determined the final state of facts from the evidence, the jury may, by the application of proper legal principles, arrive at a correct conclusion according to the law and the evidence." ' " *People v. Hudson*, 222 Ill. 2d 392, 399 (2006) (quoting *People v. Ramey*, 151 Ill. 2d 498, 535 (1992)) (quoting *People v. Gambony*, 402 Ill. 74, 81-82 (1948)). "In reviewing the adequacy of

instructions, [the appellate] court must consider the jury instructions as a whole to determine whether they fully and fairly cover the law." *People v. Nutall*, 312 Ill. App. 3d 620, 633 (2000).

¶ 43 Illinois Supreme Court Rule 451(a) (eff. July 1, 2006) delineates when non-IPI jury instruction may be given. Specifically, that rule states: "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."

¶ 44 The trial court has the discretion to decide whether to give or refuse a non-IPI instruction. *Nutall*, 312 Ill. App. 3d at 633. "An abuse of discretion occurs in refusing to give a non-IPI instruction when there is no IPI instruction applicable to the subject on which the jury should have been instructed and the jury was therefore, left to deliberate without proper instructions." *Id.* "Conversely, refusal to give a non-IPI instruction does not constitute an abuse of discretion if there *is* an applicable IPI instruction and/or the essence of the refused instruction is covered by other given instructions." (Emphasis in original.) *People v. Thomas*, 175 Ill. App. 3d 521, 528 (1988).

¶ 45 Here, defendant argues that his non-IPI instruction should have been given to the jury because the accomplice IPI instruction does not contemplate whether that witness received immunity, which, he claims, "warrants even greater suspicion than an accomplice who did not receive immunity." He claims the IPI Criminal 4th No. 3.17 instruction does not "go far enough" in guiding the jury when they must consider the testimony of an accomplice who received immunity from prosecution.

¶ 46 The accomplice instruction states that "[w]hen 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 this case." IPI Criminal 4th No. 3.17. This instruction cautions the jury to carefully examine the veracity of the testimony of the witness who admittedly committed the crime with the defendant. Defendant contends this cautionary instruction does "not go far enough in that it did not accurately reflect the greater suspicion with which witnesses should be evaluated when their testimony has been procured though immunity." In other words, defendant wanted the jury to not only be suspicious and cautious of Runnels's and Parker's testimony as accomplices, but to be *really* suspicious and cautious because they were both granted immunity from possible prosecution.

¶ 47 It is reasonable to infer that any witness who admits criminal liability on the witness stand and has waived his or her Fifth Amendment rights has received some form of leniency or concession from the State. Thus, instructing the jury to evaluate the testimony with caution encompasses *any* reason that such testimony may be suspicious. "After all, the purpose of the accomplice witness instruction is to warn the jury that there may be a strong motivation for a witness to provide false testimony for the State in return for immunity or some other form of lenient treatment." *People v. Davis*, 353 Ill. App. 3d 790, 798 (2004). Because the jury was instructed with IPI Criminal 4th No. 3.17 to be aware of the witnesses's possible motives for testifying, the addition of the non-IPI immunity instruction would have been cumulative and added nothing that had not already been addressed by the given accomplice instruction. Accordingly, we find the jury was fairly, fully, and comprehensively apprised of the relevant legal principles. See *People v. Parker*, 223 Ill. 2d 494, 501 (2006). We find no error.

¶ 48 D. Ineffective Assistance of Counsel

¶ 49 Next, defendant contends his counsel rendered ineffective assistance when he failed to request a limiting instruction and failed to object during closing argument to the prosecutor's use of Runnels's statement to Cartmill that defendant said he had shot Ray. During the investigation of the shooting, Runnels reportedly changed his story several times, leaving out details or changing his version of the events. Defendant's counsel, in his opening statement, warned the jury to be wary of Runnels's testimony as a witness for the State. He suggested that the immunity and leniency agreements that Runnels had negotiated with the State, guided the substance of his testimony—testimony that identified defendant as the shooter.

¶ 50 On the witness stand, Cartmill was asked by the prosecutor: "[W]hen you were at Kaney's ***, in fact Anthony Runnels told you that [defendant] had shot Ray, didn't he?" Upon defendant's objection, the prosecutor argued Cartmill's testimony was admissible as a prior consistent statement because the prosecutor was trying to rebut counsel's contention that Runnels had a motive to falsify his testimony. The trial court agreed with the prosecutor, overruled the objection, and allowed the prior consistent statement. Defendant claims this was error. He argues the prior consistent statement was inadmissible and highly prejudicial and that his attorney should have requested a limiting instruction admonishing the jury that it should consider Cartmill's testimony for the limited purpose for which it was being introduced.

¶ 51 A claim of ineffective assistance of counsel is analyzed under the familiar two-prong standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984); *People v. Henderson*, 2013 IL 114040, ¶ 11. To prevail on such a claim, "a defendant must show both that counsel's performance was deficient and that the deficient performance prejudiced the defendant." *People v. Petrenko*, 237 Ill. 2d 490, 496 (2010). To establish deficient performance, the defendant must

show his attorney's performance fell below an objective standard of reasonableness. *People v. Evans*, 209 Ill. 2d 194, 219 (2004) (citing *Strickland*, 466 U.S. at 687). To establish prejudice, a defendant must show that, but for counsel's error, there is a reasonable probability that the result of the proceedings would have been different. *People v. Houston*, 229 Ill. 2d 1, 4 (2008). A "reasonable probability" has been defined as a probability which would be sufficient to undermine confidence in the outcome of the trial. *Id.* "A defendant must satisfy both prongs of the *Strickland* test[,] and a failure to satisfy any one of the prongs precludes a finding of ineffectiveness." *People v. Simpson*, 2015 IL 116512, ¶ 35. "However, if the ineffective-assistance claim can be disposed of on the ground that the defendant did not suffer prejudice, a court need not decide whether counsel's performance was constitutionally deficient." *People v. Evans*, 186 Ill. 2d 83, 94 (1999).

> "The general rule is that a witness may not be rehabilitated by admitting former statements consistent with his trial testimony. [Citation.] An exception to this rule exists where there is a charge that the witness recently fabricated the testimony or that the witness has a motive to testify falsely. [Citation.] Under these circumstances, a prior consistent statement may be admissible, but only if the witness makes the prior consistent statement before the motive to fabricate arose. [Citation.]" *People v. Heard*, 187 Ill. 2d 36, 70 (1999).

¶ 52 Runnels's motive to fabricate testimony, *i.e.*, his immunity and leniency deals with the State, existed at the time of defendant's trial but did not exist at the time the alleged statement was made. Accordingly, the prior consistent statement at issue here falls under the exception to the rule that such statements are otherwise inadmissible. Thus, the trial court's

evidentiary ruling was appropriate, as the statement was properly admissible for rehabilitative purposes. However, no limiting instruction was requested.

¶ 53 Further, during his closing argument, the prosecutor stated: "We know that Anthony Runnels told Kaney and Julia and [Cartmill] *** that what the defendant did was shoot Ray and we know that and that is supported by the phone records that I mentioned." Defendant's counsel did not object.

¶ 54 In this appeal, defendant claims his counsel was ineffective for failing to (1) request that the jury be instructed regarding the limited use of the statement and (2) object to the prosecutor's comment during closing argument referencing the statement. "Even where admissible, prior consistent statements may only be used for rehabilitative purposes; they are not admissible as substantive evidence." *People v. McWhite*, 399 Ill. App. 3d 637, 641 (2010). "Our supreme court has noted that where the State argues that a prior consistent statement is the truth, and the jury is not instructed that the evidence should be considered for a limited purpose, the statement is being used as substantive evidence." *People v. Dupree*, 2014 IL App (1st) 111872, ¶ 49 (citing *People v. Walker*, 211 Ill. 2d 317, 345 (2004)). See also *People v. Lambert*, 288 Ill. App. 3d 450, 458 (1997) ("Where the common law applies and a prior consistent statement is admitted into evidence, an instruction from the court instructing the jury of its limited rehabilitative purpose is proper."); *People v. Salgado*, 263 Ill. App. 3d 238, 247-49 (1994) (finding counsel's performance deficient because he did not ask the trial court for a limiting instruction regarding the use of impeachment evidence). Counsel should have requested an instruction advising the jury to limit the use of the consistent statement for rehabilitative purposes only.

¶ 55 Having determined that defense counsel's performance was deficient, we must consider whether counsel's error rendered the result of the trial unreliable or the proceedings fundamentally unfair. See *People v. Richardson*, 189 Ill. 2d 401, 411 (2000). We conclude that it did not. By the time of Cartmill's testimony, when the prior consistent statement was admitted, the jury had heard Runnels himself testify that when defendant got back into the car after the shooting, he admitted he had shot someone in the face. Runnels said defendant threw his gun over the bridge. And, Runnels said, when he got to Shanice's house, where Cartmill, Kaney, and Julia were, he "pretty much told [Kaney] exactly what happened." The testimony of the State's other witnesses, who had been with or had seen defendant and the others that evening, corroborated Runnels's testimony regarding the timing of the events and the veracity of the other occurrences of the evening. Thus, our review of the totality of the evidence presented at trial overwhelmingly demonstrated defendant's guilt. We cannot say that the admission of the prior consistent statement introduced during Cartmill's testimony negatively affected the jury's verdict in light of the remainder of the evidence presented.

¶ 56 As such, we conclude defendant has failed to show that there is a reasonable probability that the outcome of his trial would have been different had trial counsel requested the limiting instruction. See *Strickland*, 466 U.S. at 694. We find the error harmless and, as a result, defendant's claim of ineffective assistance of counsel on this subject therefore fails. *Heard*, 187 Ill. 2d at 66-67.

¶ 57 Likewise, we find defense counsel's failure to object to the prosecutor's reference during closing argument to Runnels's statement to Kaney that defendant shot Ray was not unreasonable. The prosecutor did not refer to the prior consistent statement *per se*. He did not reference Cartmill's testimony. He said: "We know that Anthony Runnels told Kaney and Julia

and [Cartmill] when he got back *** that what the defendant did was shoot Ray and we know that and that is supported by the phone records I mentioned." Presumably, the prosecutor was commenting on Runnels's own testimony, as he did not mention that Cartmill had testified to the same. Without any reference to or indication of the prior consistent statement, the prosecutor's argument was permissible; counsel's failure to object was not unreasonable. Because we find defendant's counsel's conduct was not deficient, defendant cannot demonstrate counsel rendered ineffective assistance by not objecting to this statement in the prosecutor's closing argument.

¶ 58 E. Vouching for the Credibility of Witnesses

¶ 59 Defendant also argues he was denied a fair trial because the prosecutor impermissibly vouched for Runnels's and Parker's credibility during his closing argument. We disagree.

¶ 60 The prosecutor stated:

> "Two final subjects. Again, in the category of things, you're going to get a big old whooping order of is, oh, these guys are just bought and paid for with immunity. They will say anything you want them to tell you. Immunity. Immunity. And you know what? Anyone who has been provided that kind of consideration in exchange for getting at the truth should be scrutinized and the judge is going to tell you that an accomplice in any kind of crime, testimony of that kind of person should be viewed with scrutiny, with suspicion and compared to all of the other evidence in the case.
>
> And I recommend strongly that you do just that because when you do, you will see that at every single turn, what Anthony Runnels said, words and all, and what Ja'Chaun Parker said is supported by independent evidence. Yes, they were

given immunity. Yes, because sometimes to get in that door, you need to talk to the people who are on the inside. But when you are satisfied that based upon all of the evidence, not accepting what they say at face value and that evidence supports what they say, you have made the right decision.

The decision to give them immunity was mine. And I would do it tomorrow, and I would do it the next day based on what we know to be true from the evidence in this case. I apologize not to the defendant, not to anybody for that decision because it's the right one in this case to get to the truth."

¶ 61 "During closing argument, prosecutors are granted wide latitude," but when a prosecutor expresses "personal beliefs or opinions or invokes the State's Attorney's office's integrity, to vouch for a witness's credibility," the prosecutor breaches that latitude. *Wilson*, 2015 IL App (4th) 130512, ¶ 66. Closing arguments are viewed in their entirety, and the challenged remarks are considered within the context in which they were conveyed. *Id.* We review *de novo* whether a prosecutor's statements delivered during closing arguments warrant reversal and remand for a new trial. *Id.* "Reversal is not warranted unless the improper remarks result in substantial prejudice to the defendant." *Id.*

¶ 62 Defendant acknowledges that he has forfeited review of this claim because he failed to (1) object at the time to the closing remarks and (2) file a posttrial motion addressing the issue. Nevertheless, he requests we review the claim under the plain-error doctrine. However, we need not address defendant's admitted forfeiture because we choose to consider whether any error was committed in the prosecutor's closing argument. For the reasons that follow, we conclude that defendant has not established any error, much less plain error.

¶ 63 Referring to the above-cited portion of the prosecutor's closing argument, we disagree with defendant's claim that such comments reveal that the prosecutor was vouching for the credibility of Runnels and Parker. Rather, we consider the prosecutor's comments indulgent. He encouraged the jury to carefully scrutinize the credibility of these witnesses, as the court will instruct them to do, because it will find, despite the grant of immunity, their testimony will coincide with the other evidence presented. The prosecutor was merely attempting to refute defendant's position that Runnels's and Parker's testimony was pawned or solely influenced by the State's decision to offer them immunity. Rather than vouching for their credibility, the prosecutor was explaining that his decision to grant immunity was fully "supported by the independent evidence." See *People v. Lewis*, 2017 IL App (4th) 150124, ¶ 71 (citing *People v. Dresher*, 364 Ill. App. 3d 847, 859 (2006)) (the prosecutor can focus or comment on the credibility of a witness if the comment is based on the evidence or reasonable inferences drawn from the evidence.) We find no error that would support the application of plain-error review or an ineffective-assistance-of-counsel claim for counsel's failure to object.

¶ 64 F. Restitution Order

¶ 65 The trial court sentenced defendant to 65 years in prison and ordered him to make restitution in the amount of $21,250.76. However, when entering the order, the court did not comply with the statute governing restitution orders, in that it did not consider defendant's ability to pay or designate the manner in which the amount should be paid. Defendant claims this court should vacate the order and remand for compliance. The State concedes error, and we accept the State's concession.

¶ 66 Although the trial court is not statutorily obligated to consider a defendant's ability to pay when *imposing* restitution (*People v. Otten*, 228 Ill. App. 3d 305, 313 (1992)), the

court is required to consider a defendant's financial ability when determining the *manner and time* in which restitution shall be paid (*People v. Lambert*, 195 Ill. App. 3d 314, 334 (1990)).

¶ 67 Section 5-5-6(f) of the Unified Code of Corrections provides as follows:

> "Taking into consideration the ability of the defendant to pay, including any real or personal property or any other assets of the defendant, the court shall determine whether restitution shall be paid in a single payment or in installments, and shall fix a period of time not in excess of 5 years *** within which payment of restitution is to be paid in full." 730 ILCS 5/5-5-6(f) (West 2014).

The parties agree the court here did not establish a deadline for when payments should be made. The court's failure to establish a deadline for payment of restitution makes the restitution order "fatally incomplete." *In re Estate of Yucis*, 382 Ill. App. 3d 1062, 1067 (2008). Thus, we remand this case for a new restitution hearing to determine an appropriate payment schedule and deadline for payment based on defendant's ability to pay.

¶ 68 III. CONCLUSION

¶ 69 For the reasons stated, we affirm defendant's conviction but remand for the trial court to conduct a restitution hearing to determine, based on defendant's ability to pay, a deadline for defendant to satisfy his restitution obligation and, if appropriate, a payment schedule.

¶ 70 Affirmed and remanded with directions.