2011 IL App (1st) 093047-U

Third Division
November 9, 2011
Modified Upon Denial of Rehearing December 28, 2011

No. 1-09-3047

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.	)	05 CR 746
	)	
JONAS HARO,	)	Honorable
	)	Lawrence Terrell,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Steele and Justice Murphy concurred in the judgment.

ORDER

¶ 1 *Held*: Where the defendant did not have additional counsel ready, willing and able to represent the defendant on the day set for trial, the trial court did not abuse its discretion when it denied the defendant's motion for a continuance so that he could hire a second attorney to assist his trial counsel. The trial court did not abuse its discretion when it admitted gang-related evidence to explain the motive for the crime. Where the defendant forfeited review of other errors, which did not amount to plain error, the appellate court affirmed the trial court's judgment.

¶ 2 A jury found Jonas Haro guilty of the attempted murder of two police officers and

the aggravated battery of one of the officers. The trial court sentenced Haro on four counts of attempted murder and one count of aggravated battery. On appeal, Haro contends that the trial court erred (1) when it denied his motion, brought on the date the court had set as the trial date, for a continuance so that he could hire a second attorney to assist his trial counsel; (2) when it violated Supreme Court Rule 431(b) (Ill. S. Ct. R. 431(b) (eff. May 1, 2007)) by giving the venire incomplete admonishments about applicable legal principles; (3) when it admitted evidence that a man caught near the scene of the crime was Haro's brother; (4) when it admitted gang-related evidence; (5) when it permitted the prosecutor to call a defense witness a "scumbag" and to make assertions unsupported by the evidence; (6) when it rejected Haro's assertion, in his motion for a new trial, that he received ineffective assistance of counsel; (7) when it imposed five sentences on Haro for only two attempted murders; and (8) when it failed to give Haro full credit against his sentences for his time spent in custody before trial.

¶ 3 We hold that the trial court did not abuse its discretion when it denied the motion for a continuance or in its evidentiary rulings. Because we do not find the evidence closely balanced, we find no plain error in either the court's incomplete compliance with Rule 431, or in the prosecutor's improper statements during closing argument. We also find that Haro has not shown that he received ineffective assistance of counsel. We vacate two of the attempted murder convictions and the aggravated battery conviction under the one-act, one-crime rule; we affirm the judgments entered on the two remaining attempted murder counts; and we remand for the trial court to correct the mittimus.

¶ 4 BACKGROUND

¶ 5 Terrance Flynn's family threw him a birthday party at a bar in Berwyn on December 4, 2004. Two Chicago police detectives, Pat McCormack and Michael O'Donnell, came to the party as invited guests. An uninvited man came to the party wearing a hoodie. When some of the invitees complained to Flynn about the uninvited man's behavior, Flynn asked the man to leave. The man said, "You don't want to fuck with me. This is my neighborhood." But the man left.

¶ 6 Around 3:30 a.m. on December 5, 2004, after most of the guests had left the party, the uninvited man returned to the bar, still wearing the hoodie. The two detectives identified themselves as police officers and told the man to leave. The man said, "[C]ome outside and I'll show you what the fuck I'm here for." The detectives followed the man into a nearby alley. When the man pulled out a gun the detectives took cover. The detectives and the man in the hoodie fired at each other, and another man shot at the detectives from a hiding place in the alley. One bullet injured McCormack's hand. The man wearing the hoodie escaped. O'Donnell chased the other shooter. O'Donnell caught Joseph Ayala trying to scale a fence, and nearby he found a gun on the ground. The detectives called Berwyn police, who arrested Ayala. The detectives described the man in the hoodie as about 5 feet 6 to 5 feet 10 inches tall, around 160 pounds, 20 years old and Hispanic, with a tattoo on his chest of a crown.

¶ 7 An officer at the Berwyn police station created a photo lineup for the detectives to

view. He included a photograph of Haro because Haro fit the detectives' description, he belonged to the Latin Kings, who use crown tattoos to denote membership in the gang, and he was Ayala's brother. Both detectives identified Haro as the intruder in the hoodie who shot at them. Berwyn police arrested Haro at his home. They found no gun. They found one jacket that looked somewhat like the hoodie the shooter wore. They took that jacket as evidence, but laboratory tests showed no traces of gunshot residue on the jacket.

¶ 8 Haro and Ayala hired separate counsel, and their attorneys worked together on their defenses. The court held settlement conferences for both defendants. On the day set for trial, Ayala decided to accept the State's offer, with which the court concurred. Ayala pled guilty to aggravated battery of a police officer in exchange for a sentence of eight and a half years.

¶ 9 Haro's attorney, Russell Stewart, moved for a ten-day continuance. Stewart explained that he had relied on Ayala's attorney for some of the preparation for trial. Haro's family wanted to hire another attorney, not Ayala's attorney, to work with Stewart, and the person they had contacted would need some time to prepare. Stewart said he had worked with Haro for more than three years, preparing for the trial, and Stewart admitted that he had not spoken with the new attorney Haro sought to hire. The court denied the motion for a continuance. The State elected to proceed against Haro on four counts of attempted murder and one count of aggravated battery with a firearm.

¶ 10 Trial

¶ 11 The trial court instructed the entire venire on the fundamental principles of law

applicable to criminal trials. The court said that the jurors must presume the defendant innocent, the State has the burden of proving the defendant's guilt beyond a reasonable doubt, the law does not require the defendant to present any evidence on his own behalf, and if the defendant decides not to testify, the jurors must not hold that decision against him. The court then asked each individual prospective juror whether he or she accepted "the principles of law [he] talked about," without repeating any of the principles, and without asking whether the prospective juror understood the principles.

¶ 12 In his opening statement, Stewart told the jurors they would see Haro "standing there in a blue tank top sweat shirt, which is mine." He said the jurors could then assess whether the detectives could have seen the crown tattoo on Haro's chest on the night of the shooting.

¶ 13 Flynn testified that the intruder at his party wore a baby blue hoodie. Flynn did not identify Haro as the intruder. Flynn testified that he spoke to police at the scene shortly after the shooting.

¶ 14 McCormack testified that he saw a tattoo of a crown on the intruder's chest, visible under the open hoodie, and he recognized the crown as the symbol of the Latin Kings. He reaffirmed the identification he made on the night of the shootings, that Haro wore the hoodie, intruded into the party and shot at McCormack and O'Donnell in the alley near the bar. McCormack swore that he suffered from renal failure, so he needed to restrict his alcohol intake. He had about two beers and several cups of a soft drink over the course of the evening of December 4 into the morning of December 5, 2004. On cross-examination, McCormack admitted that many teens belonged to the Latin Kings gang.

¶ 15 O'Donnell testified that he came to the party very late, so he did not see the initial confrontation with the uninvited man. He had not finished his second drink when he saw Haro, in the light blue hoodie, coming into the bar around 3:30 a.m. O'Donnell saw the Latin Kings tattoo on Haro's chest. O'Donnell also described the shooting and his capture of Ayala near the scene of the shooting.

¶ 16 Several members of Haro's family testified that Haro stayed home on the evening of December 4, 2004. When they heard gunshots nearby, around 3:30 a.m. on December 5, 2004, they checked Haro's room and found him sleeping. Haro's mother testified that police frequently came to her home looking for Haro. Every time a shooting took place in Berwyn, police sought out Haro first for questioning.

¶ 17 Nello Pacilio testified that Flynn's family hired him to drive Flynn and some of the guests home in a limousine after the party. The other guests he would drive included McCormack and O'Donnell. Pacilio saw Joey Montoro, a member of the 12th Street Players gang, come into the party, wearing a black hoodie. He saw Flynn ask Montoro to leave, and he heard Montoro threaten to shoot the guests. But Montoro left. According to Pacilio, Montoro returned to the bar around 3:30 a.m. Pacilio saw part of the confrontation between Montoro and the detectives outside the bar, and soon after that confrontation, Pacilio heard gunshots. Pacilio testified that several years earlier, he, too, had belonged to the 12th Street Players, and the bar stood in Players' territory. The Players opposed the Latin Kings. Pacilio said he stayed at the bar until 5 a.m., but he did not talk to police about the shooting.

¶ 18 Haro's brother Eli testified that shortly after the shooting, Haro's friend, Montoro,

came to Haro's house, saying someone was chasing him. Montoro called for a cab from Haro's house. Montoro told Eli that he had shot someone in the head.

¶ 19 Haro did not testify and he did not appear in court in a hoodie or a sweatshirt, despite the promise Stewart made in opening statements.

¶ 20 In closing argument, the prosecutor said that Haro, at the party, was "showing his tattoo, his gang tattoo, *** waiting for somebody to give him some respect, the respect that the Latin Kings are due." The prosecutor repeatedly referred to the tattoo. He then attacked the credibility of defense witnesses, saying, "Nello Pacilio *** is a complete scumbag. I mean, he is a member of a gang. If you believe that he dropped out of the gang, fine, but *** he is a member of the 12th Street Players." He added, "Nello says that he was there at the bar until 5 o'clock in the morning and never talked to the police? Can you believe it? There had to be police officers everywhere."

¶ 21 The jury found Haro guilty of the attempted murders of McCormack and O'Donnell, and of aggravated battery with a firearm for the injury to McCormack's hand.

¶ 22 Posttrial Proceedings

¶ 23 Haro hired a new attorney, Barry Spector, for posttrial proceedings. Spector filed a motion for a new trial in which he argued that the court erred by denying the motion for a continuance, and Stewart had provided ineffective assistance of counsel. At the hearing on the motion, Stewart testified that he requested more time to prepare because Ayala's attorney had planned to impeach the detectives with evidence that they got drunk at the party, and because only Ayala's attorney had interviewed Pacilio. Stewart said he interviewed Pacilio

sufficiently before presenting him as a witness. Haro, Spector and Stewart did not suggest that, if the court had granted the continuance, they could have impeached McCormack and O'Donnell.

¶ 24 Spector also asked Stewart about the evidence that Haro belonged to the Latin Kings gang. Stewart said he had planned to object to any such evidence, but he did not recall hearing any mention of the Latin Kings at trial. Stewart said that at the time of opening statements, he intended to show Haro in court wearing a sweatshirt Stewart owned, but he changed his mind after the State's expert witness admitted she found no gunshot residue on the jacket police took from Haro's home that most closely resembled the hoodie the shooter wore.

¶ 25 The trial court denied the motion for a new trial. The court sentenced Haro to 45 years in prison on each of four counts for attempted murder, and to 40 years for aggravated battery, with all sentences to run concurrently. Haro now appeals.

¶ 26 ANALYSIS

¶ 27 On appeal, Haro argues that the court erred when it (1) denied his motion for a continuance; (2) inadequately questioned the venire about their understanding of the legal principles applicable to criminal trials; (3) admitted evidence that Ayala was Haro's brother; (4) permitted prosecutorial misconduct; (5) denied the motion for new trial based on ineffective assistance of counsel; (6) sentenced him on five separate counts; and (7) failed to give him full credit for all his time in custody.

¶ 28 Continuance for Additional Counsel

¶ 29 If, on the day set for trial, the defendant requests a continuance so that he can obtain new counsel, the court must weigh the defendant's right to counsel of his choice against the judicial interest in trying the case with due diligence. *People v. Tucker*, 382 Ill. App. 3d 916, 920 (2008). The trial court has discretion to determine whether the right to choose counsel unduly interferes with orderly judicial administration, and this court will not disturb the trial court's decision on the motion unless the trial court abused its discretion. *People v. Young*, 207 Ill. App. 3d 130, 134 (1990).

¶ 30 Here, Haro hired Stewart to represent him shortly after the arrest, and Haro did not seek to replace Stewart until the conclusion of the trial. Haro claims that he did not have counsel of his choosing because, on the day of trial, he decided he wanted Stewart and a second attorney to represent him. He had contacted, but not yet hired, a second attorney. Haro said he needed a second attorney because Ayala's attorney had prepared part of the defense Haro sought to present, but Haro did not ask for leave to hire Ayala's attorney to assist Stewart. Instead, he sought to bring in a third attorney and delay the trial for at least a week so the new attorney could become familiar with the facts in the case. At a posttrial hearing, Stewart discussed the aspects of the trial for which he had relied on Ayala's attorney, and Stewart admitted that he prepared for all the issues that arose at trial. Haro presented no evidence at the posttrial hearing that Stewart failed to present at trial to show how the trial would have differed had a second attorney helped Stewart. The trial court found that Stewart prepared adequately for the trial, and we see no grounds to disturb that finding.

¶ 31 In general, if the defendant presents a new attorney, ready, willing and able to try the case on the day the defendant requests the substitution, the court should permit him to bring in the new attorney. *Young*, 207 Ill. App. 3d at 134. But, if the new counsel has not already prepared for trial, so the substitution may cause an indefinite delay, denial of the motion for a continuance usually will not constitute an abuse of discretion. *Young*, 207 Ill. App. 3d at 134.

¶ 32 Haro relies on *People v. Washington*, 195 Ill. App. 3d 520 (1990), as authority for reversal here. In *Washington*, the defendant requested a brief continuance so that a private attorney could substitute for the public defender. The trial court denied the motion without inquiring into the reason for the request. The appellate court reversed and remanded for a new trial, finding that the trial court abused its discretion when it denied the request without any inquiry into the reason for the request. *Washington*, 195 Ill. App. 3d at 526-27; see also *People v. Walker*, 232 Ill. 2d 113, 126 (2009) (conviction reversed because the trial court denied request for a continuance without considering applicable factors).

¶ 33 Here, Stewart explained to the court that he needed more time and help from a new attorney because the attorney for Ayala had prepared some aspects of the defense. The court knew that Haro had not requested leave to add Ayala's attorney as his second attorney, although Ayala's attorney came to court on the day set for trial and assisted Ayala with his guilty plea. We find that *Washington* does not require reversal here because the court adequately inquired into the grounds for the request. Because Haro did not have a second attorney present, ready, willing and able to assist with the defense, we find that the trial court

did not abuse its discretion when it denied the motion for a continuance so that Haro could find a second attorney to assist Stewart with the defense.

¶ 34 Rule 431(b)

¶ 35 Haro next argues that the judge violated Supreme Court Rule 431(b) (Ill. S. Ct. R. 431(b) (eff. May 1, 2007)) when he questioned individual venire members about whether they agreed with "the legal principles [he] talked about" without reminding the venire members of those specific principles, or asking whether they understood the principles. Because defense counsel did not object at trial, we review the issue only for plain error. See *People v. Thompson*, 238 Ill. 2d 598, 613 (2010). We will find plain error only if (1) the evidence of innocence balances closely against the evidence of guilt, and the error might have tipped the balance; or (2) the error denied the defendant his fundamental right to a fair trial. *Thompson*, 238 Ill. 2d at 613.

¶ 36 Haro admits that the error here does not implicate his fundamental rights. See *Thompson*, 238 Ill. 2d at 615. He argues only that the error might have tipped the balance in this close case. We disagree because we do not find the evidence here closely balanced.

¶ 37 Two detectives who had an ample opportunity to observe the offender at the party before the shooting both identified Haro, who lived near the crime scene, as the shooter. They followed the offender to the alley where an accomplice helped ambush the detectives. The detectives chased the accomplice and caught Ayala, near a gun, trying to leave the scene. Haro presented evidence that he stayed home on the night of the shooting and that Montoro, from a rival gang, shot at the detectives, but he does not explain why Ayala would

work with Montoro to ambush the police, or why police caught Ayala in the alley if he had not helped with the ambush. One of Haro's alibi witnesses, his brother Eli, offered the striking story that Montoro, from a rival gang, regarded Haro as such a close friend that he ran to Haro's house and confessed the shooting immediately after he escaped from the scene. Because we do not regard the evidence as closely balanced, we see no reason to believe that the failure to ask the venire members whether they understood the legal principles affected the outcome of the case. Accordingly, we find that the violation of Rule 431(b) in this case does not amount to plain error.

¶ 38 Evidence that Ayala is Haro's Brother

¶ 39 Haro also contends that the trial court erred by permitting the prosecution to present evidence that Ayala was Haro's brother. We review the trial court's evidentiary decisions for abuse of discretion. *People v. Gonzalez*, 142 Ill. 2d 481, 489-90 (1991).

¶ 40 The evidence of the familial relationship helped explain why Berwyn police chose to include Haro's picture in the photographic lineup they showed the detectives after the shooting. The court usually may admit evidence of the steps taken in a police investigation, even when the narrative suggests a reason to direct the investigation to the defendant. See *People v. Johnson*, 116 Ill. 2d 13, 24 (1987). We find that the trial court did not abuse its discretion when it admitted evidence that Ayala was Haro's brother.

¶ 41 Prosecutorial Misconduct

¶ 42 Haro contends that prosecutors made his trial unfair in two ways. First, they elicited and relied on evidence of Haro's gang affiliation, and, second, they called Pacilio a

"scumbag" and accused him of belonging to a gang, although no evidence supported the accusation. Because defense counsel failed to object to the evidence and argument, we review the issue only for plain error. See *People v. Herron*, 215 Ill. 2d 167, 175 (2005).

¶ 43 The trial court may admit evidence of gang involvement in a crime if the evidence helps explain the motives for the criminal acts. *People v. Hamilton*, 328 Ill. App. 3d 195, 202 (2002). Here, the gang-related evidence explained what the intruder meant when he said, "You don't want to fuck with me. This is my neighborhood." And the desire to protect gang turf explained why the intruder sought to disrupt the party to confront people he did not know. See *People v. Rivera*, 145 Ill. App. 3d 609, 618 (1986). We find no error, let alone plain error, in the admission of gang-related evidence here.

¶ 44 We also cannot say that the prosecutor used the gang-related evidence improperly in closing argument. While the prosecutor several times in argument reminded the jurors that the detectives saw a Latin Kings tattoo on the intruder, that evidence both permissibly bolstered the crucial identification testimony, and it helped refute Pacilio's testimony that Montoro, of the 12th Street Players, committed the crime.

¶ 45 In closing argument, the prosecutor may properly comment on the credibility of witnesses, but in doing so the prosecutor should avoid language used solely to inflame the passions of the jurors. *People v. Quiroz*, 257 Ill. App. 3d 576, 585 (1993). The prosecutor must base his argument on the evidence and reasonable inferences from the evidence. *People v. Scott*, 148 Ill. 2d 479, 550 (1992).

¶ 46 The prosecutor here properly commented on Pacilio's credibility. Although the use

of the epithet "scumbag" is inappropriate, we cannot say that its use here amounts to plain error. Pacilio admitted that he had belonged to the 12th Street Players, and the prosecutor permissibly commented that jurors did not need to believe his testimony that he left the gang. While no evidence supported the comment that Pacilio remains in the gang, again we do not find the remark so prejudicial that it amounts to plain error.

¶ 47 Haro also claims that no evidence supported the prosecutor's comment that "There had to be police everywhere" around the bar between the time police arrested Ayala and 5 a.m., when Pacilio left the bar. Flynn, McCormack and O'Donnell all testified that they spoke to police at the scene. In view of the nature of the crime, a shooting of a police officer, we find that the testimony adequately supports the prosecutor's inference that police would have interviewed everyone they could find who might have witnessed anything that would help them find the shooter. We cannot say that the remark created plain error. Accordingly, we find that prosecutorial misconduct does not require reversal here.

¶ 48 Ineffective Assistance of Counsel

¶ 49 Haro argues that Stewart provided ineffective assistance in three separate ways: (1) he reneged on his promise to show the jury Haro in a sweatshirt; (2) he introduced gang-related evidence and failed to object to the prosecutor's gang-related evidence; and (3) he failed to object to the prosecutor's improper closing argument. To show ineffective assistance of counsel, the defendant must show that his counsel's representation did not meet an objective standard of competence, and the defendant must show a reasonable probability that he would have achieved a better result if not for counsel's unprofessional errors. *People*

v. Metcalfe, 202 Ill. 2d 544, 561 (2002); *People v. Stone*, 274 Ill. App. 3d 94, 98 (1995).

¶ 50 Unfulfilled Promise From the Opening Statement

¶ 51 In his opening statement, Stewart promised that the jury would get to see Haro wearing a sweatshirt, and they could use that evidence to assess the detectives' testimony that they saw a crown tattoo on the chest of the shooter under the shooter's hoodie. Stewart did not so present Haro.

¶ 52 The failure to produce promised evidence may qualify as unprofessional error. *People v. Ligon*, 365 Ill. App. 3d 109, 120 (2006). However, events at trial may warrant a change in strategy, so that competent counsel may decide not to present the promised evidence. See *United States ex rel. Hampton v. Leibach*, 347 F. 3d 219, 257 (7th Cir. 2003). Here, Stewart explained that he decided not to have Haro wear the sweatshirt after the State's expert admitted that she found no gunshot residue on the jacket police took from Haro's home. We find that even if Stewart erred by failing to follow through on his promise, Haro has not shown that the error might have affected the outcome of the trial.

¶ 53 Stewart, in opening argument, did not offer to show the jury Haro wearing the hoodie the shooter wore. Haro did not concede that he had such a hoodie, and the police never found the shooter's hoodie. Instead, Stewart said Haro would put on a sweatshirt Stewart owned. Neither Haro nor Stewart could say whether the sweatshirt bore any similarity to the shooter's hoodie, and no evidence suggests that McCormack, O'Donnell, or any other witness would testify to the needed similarity. Showing Haro wearing a sweatshirt, without evidence of any similarity between the sweatshirt and the shooter's hoodie, should not have any effect

on the jurors' assessment of the credibility of McCormack and O'Donnell's identification of Haro as the shooter. Because the promised evidence lacked relevance to the issues at trial, we cannot say that the failure to follow through on the promise could have affected the outcome of the trial.

¶ 54 Gang Evidence

¶ 55 We have already found that the trial court did not err when it permitted the prosecution to present gang-related evidence, because that evidence helped explain a possible motive for the crime, and because it supported the identification of Haro as the shooter. We cannot regard Stewart's failure to object to admissible evidence as professionally unreasonable conduct. See *People v. Evans*, 209 Ill. 2d 194, 222 (2004).

¶ 56 Haro points out that Stewart went further, introducing his own gang-related evidence. Stewart elicited from McCormack testimony that many teens throughout the Chicago area belong to the Latin Kings. The evidence elicited during cross-examination weakened the identification of Haro as the shooter insofar as the police relied on the tattoo specifically to identify Haro. Stewart also showed that police always questioned Haro about any trouble in Berwyn, and that evidence supported the inference that police targeted Haro here, just as they always did, without regard to the specific circumstances of the case. Further, Stewart presented testimony from Pacilio, who admitted that he had belonged to a gang, and that his gang controlled the area around the bar where the incident took place. The evidence supported the defense theory that Montoro, and not Haro, crashed the party and shot at the detectives. We cannot say that Stewart acted unprofessionally when he elicited gang-related

evidence and when he failed to object to the State's gang-related evidence.

¶ 57 Closing Argument

¶ 58 Stewart sat silent through most of the prosecutor's closing arguments. Haro now claims that Stewart's failure to object to the argument based on gang evidence, and to the remarks about Pacilio, amounted to ineffective assistance of counsel.

¶ 59 We see no grounds for objecting to the prosecutor's remarks on the gang-related evidence, as the prosecutors used the evidence appropriately to show the motive for the crime and to bolster the identification testimony. Stewart should have objected to the reference to Pacilio as a scumbag and to the comment, unsupported by evidence, that Pacilio remained in a gang. However, even considering those two errors and assuming that Stewart erred when he failed to show the jury Haro in a sweatshirt, we still cannot see any reasonable probability that Haro would have achieved a better result but for the errors. Accordingly, we find that Haro has not shown that he received ineffective assistance of counsel.

¶ 60 Convictions on Five Counts

¶ 61 The trial court imposed sentences on Haro for four counts of attempted murder and one count of aggravated battery. The State concedes that the court should have sentenced Haro on only one count for the attempted murder of McCormack, and another count for the attempted murder of O'Donnell. We vacate the conviction for aggravated battery and for counts II and IV of the attempted murder counts.

¶ 62 Haro asks us to remand the case for resentencing on the two remaining attempted murder convictions. However, the vacature of a conviction under the one-act, one-crime rule

requires resentencing only if the record indicates that the court considered the improper convictions in sentencing. See *People v. Radford*, 359 Ill. App. 3d 411, 419 (2005). We see no such indication in this record. Accordingly, we affirm the sentences of 45 years on both count I and count III, for the attempted murders of two peace officers, with the sentences to run concurrently.

¶ 63 Credit for Time in Custody

¶ 64 The prosecution also concedes that the trial court miscounted, by three days, the amount of time Haro spent in custody pending trial. We direct the trial court to correct the mittimus to reflect credit for the three additional days.

¶ 65 CONCLUSION

¶ 66 The trial court did not abuse its discretion when it refused to grant Haro a continuance, on the day of trial, for the addition of a second attorney to represent him. The court did not commit plain error when it failed to question the venire members about whether they understood the legal principles set out in Rule 431(b). The court did not abuse its discretion when it admitted evidence that Ayala, captured at the crime scene, was Haro's brother, as that relationship helped explain the steps police took in their investigation. The court also did not abuse its discretion when it admitted gang-related evidence. The prosecutor overstepped the bounds of proper argument when he called Pacilio a "scumbag" who still belonged to a gang. However, we find that the unchallenged overstatements do not warrant a new trial in this case. We also find that Haro has not shown that he had ineffective assistance of counsel. Because Haro attempted to murder only two persons, and the

aggravated battery count merged with one of the attempted murder counts, we vacate two of the attempted murder convictions and the aggravated battery conviction, and we affirm the convictions and sentences on the two remaining counts of attempted murder. We direct the trial court to correct the mittimus to reflect credit for three additional days Haro spent in custody awaiting trial.

¶ 67 Affirmed in part, vacated in part, and remanded with directions.