FIRST DIVISION
April 14, 2014

No. 1-11-3783
2014 IL App (1st) 113783

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court
Plaintiff-Appellee,	)	of Cook County
	)	
v.	)	No. 10 CR 8524
	)	
RICHARD PANDOLFI,	)	Honorable
	)	Sharon Sullivan,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE CONNORS delivered the judgment of the court.
Justices Hoffman and Cunningham concurred in the judgment and opinion.

O R D E R

Held: Trial court did not err in refusing to give jury self-defense and defense of dwelling instructions where defendant testified that he did not commit the acts of battery or resistance underlying the charges against him. Defendant forfeited arguments on evidentiary issues and improper closing argument where he failed to present well-developed arguments with citations to legal authority.

¶ 1 Following a jury trial, defendant Richard Pandolfi was convicted of felony

aggravated battery to a police officer and resisting arrest after a confrontation with police in his home. Defendant was sentenced to an 18-month term of conditional discharge, community service, and anger-management classes. He now appeals his conviction. On appeal, he argues that the police illegally entered his home and he justifiably acted in self-defense and in defense of his dwelling. He also challenges several of the trial court's evidentiary rulings and the propriety of the State's comments in closing arguments. For the following reasons, we affirm.

¶ 2 I. BACKGROUND

¶ 3 In 2010, Justin Stanaker entered into a contract with defendant to perform construction work at defendant's home. Justin had a key to defendant's house and was authorized to enter and leave the work area on the second floor of the house freely. At some point, a dispute arose over the quality and pace of the construction. Defendant demanded that Justin refund half of the earnest money that defendant paid, and he told Justin that he would not return Justin's tools until he was repaid.

¶ 4 According to the testimony of the State's witnesses, on April 2, 2010, Justin and his brother, Robert, appeared at defendant's home and stood on the sidewalk outside of a locked wrought-iron fence. Robert called defendant and asked him to return Justin's tools, but defendant did not do so. Robert then called 9-1-1 and requested police assistance because, he said, he feared for Justin's safety. Justin testified that defendant had previously threatened him and that he wanted a police escort while attempting to recover his tools.

¶ 5 Chicago Police Officer David Syfczak arrived after being assigned to "assist a citizen in a dispute over property." Justin and Robert explained that they were there to retrieve the tools from inside the house. Robert called defendant again while Syfczak was there. At that time, defendant indicated that he would be there in 10 minutes. Based on that response, Syfczak testified that he did not believe that defendant was at home. Syfczak also stated that he knew he was not investigating a crime.

¶ 6 While the three were waiting, Officer Lisa Eitel arrived at defendant's house in response to a "disturbance call." Justin and Robert explained the situation to Eitel and showed her the contract and the key to the house. Eitel testified that "as far as [she] could tell, the contract was valid." After more than 25 minutes, defendant did not appear at the house as he had previously indicated.

¶ 7 Justin then used his key to open the locked gate. Justin, Eitel, Robert, and Syfczak walked into the yard and approached the front door of defendant's house. Eitel testified that she knocked and announced her office as Justin used the key to enter the front door. She testified that she again knocked and announced her office as Justin used the key to enter the door to the stairwell leading to the second floor.

¶ 8 Eitel testified that as they got about halfway up the stairs, she heard footsteps and screaming. She stated that defendant then came out of the door to the second-floor unit and ran down the stairs yelling obscenities. She testified that defendant then struck Justin in the face. Justin fell into her and she fell into

Robert and Syfczak.

¶ 9 Eitel stated that she got up and walked up the stairs toward defendant, stating that he was under arrest for battery. She reached out to grab defendant's wrists and bring him downstairs. She stated that defendant pulled his arms away from her and, using the heels of both of his hands, pushed her just below the shoulders, causing her to fall backward down the stairs. She fell down about 5 or 7 steps and hit the wall.

¶ 10 Eitel then testified that she got up and ordered defendant to come down the stairs, as he was now under arrest for aggravated battery of a police officer. Defendant refused to come down so Eitel took out her Taser and pointed it at him. Defendant then came down the stairs and was taken into custody. Thereafter, Eitel testified that she allowed Justin to remove his tools from defendant's home.

¶ 11 Defendant and his wife, Stacy, testified that they had a dispute with Justin over the work he was doing at their house. Defendant stated that before this incident occurred, he met with Justin and Robert and told them that if Justin wanted a chance to finish the job, he had to repay half of the earnest money defendant had paid and then they would discuss how to proceed. The day that Justin and Robert appeared at his house was the deadline for Justin to repay the earnest money.

¶ 12 Defendant and Stacy testified that they were inside the house when Robert first called defendant from outside the house. Stacy noticed that the police officers

arrived and were outside with Justin and Robert, but she and defendant chose not to go out to talk to them.

¶ 13 Sometime later, Stacy heard footsteps on the stairs outside of the second-floor unit. She screamed and alerted defendant to the sound. Defendant then went into the hall. He stated that Justin charged up the stairs, yelling obscenities and trying to get past defendant into the unit. He stated that Justin knocked him down and the two of them were lying on the stairs. Defendant testified that he pushed Justin off of him and Justin then fell into Eitel, knocking her down.

¶ 14 Defendant testified that he asked the officers whether they had a search warrant and Eitel said that she had the contract between him and Justin. He told the officers and the Stanakers that they were trespassing and demanded that they leave. In response, the officers told him to "shut up and do as I say [*sic*]." When defendant told Stacy to call 9-1-1, Eitel told her to stay where she was. Eitel then told defendant he was under arrest. According to defendant, when he asked what the charge was, the officers conferred and Syfczak said, "You'll find out, come down here." He then stated that he went down to where the officers were and he was handcuffed and placed in a police car. When asked whether he ever made contact with Eitel, he said, "Absolutely not. I have never made physical contact with that person. She didn't even cuff me. The male officer cuffed me."

¶ 15 II. PROCEDURAL HISTORY

¶ 16 Following his arrest, defendant was charged with several counts of

aggravated battery of Officer Eitel, simple battery of Justin Stanaker, and resisting arrest. The simple battery charge was later dropped and the trial proceeded only on one count of aggravated battery of Eitel under section 12-4(b)(18) of the Criminal Code of 1961 (Code) (720 ILCS 5/12-4(b)(18) (West 2010))[1] and one count of resisting arrest under section 31-1(a-7) (720 ILCS 5/31-1(a-7) (West 2010)). Defendant did not file a motion to quash his arrest or suppress evidence. Rather, he proceeded by asserting the affirmative defenses of self-defense and defense of dwelling based on the theory that the officers' entry into his home violated his Fourth Amendment rights and he was entitled to use force in his defense.

¶ 17 Defense counsel filed a pretrial statement entitled "Assertion of Fifth and Sixth Amendment Rights." Defendant stated that he did not want "the government or others acting on the government's behalf to question me, or to contact me seeking any waiver of any rights, unless my counsel is present." At a court appearance, defense counsel stated that she understood that the State was doing its investigation and that "somebody" called defendant's house. Counsel stated that she wanted to ensure that the investigators were not "trying to inadvertently interview [defendant] while he's charged." The State explained that the investigator was likely trying to reach Stacy, whom defendant listed as a witness. Defense counsel replied, "I believe that whatever it is may be inadvertent, but I just wanted to make sure that was record was protected [*sic*]."

[1] Section 12-4(b)(18) has subsequently been renumbered as section 12-3.05(a)(3) of the Criminal Code of 2012 (720 ILCS 5/12-3.05(a)(3) (West 2012)).

¶ 18 On the morning of trial, defense counsel made a motion *in limine* to have the court give the jury two jury instructions before opening statements. The first one was a non-pattern jury instruction that stated the Fourth Amendment of the U.S. Constitution. It also purported to state "Illinois law" on when a search warrant may issue, but provided no citations. Finally, it stated that warrantless searches and seizures inside a home are presumptively unreasonable. The second instruction contained partial recitations of the Illinois Pattern Jury Instructions, Criminal, No. 24-25.06 and No. 24-25.07 (3d ed. 1992) (hereinafter IPI Criminal), governing self-defense and defense of dwelling, respectively. The court denied the motion, stating that it was not appropriate to give the jury instructions on Fourth Amendment law or the affirmative defenses before knowing what the evidence in the case would be.

¶ 19 The State then moved to exclude any mention of self-defense or defense of dwelling in opening statement or to present any evidence on those defenses during trial. The State argued that under section 7-7 of the Code (720 ILCS 5/7-7 (West 2010)), a person is not entitled to use force to resist an arrest being made by a known police officer, even if he believes the arrest is unlawful and the arrest is, in fact, unlawful.

¶ 20 The court denied the State's motion, stating that it would rule on the admissibility of evidence as the case went along. Defense counsel stated that she would "very possibly" discuss those defenses in her opening statement to the jury, to

which the court replied:

> "I'm not going to preclude you at this point from introducing evidence that may go to self-defense or defense of dwelling. Although, I think the State's point may be something that we're going to have to address down the line. And, certainly the jury can be instructed on these issues of—that the State has set forth in paragraphs 1 and 2 of [its] motion *in limine*.
>
> And so I just caution you to tread carefully because I don't—you know, in the opening statement, you don't want to represent things that may be affected by later rulings on evidentiary matters as the case goes in [*sic*]. So I'm not going to grant the motion *in limine*. However, I do give that word of caution that I suggest the defense tread carefully because we don't know what the evidence will be—I don't know what the evidence will be or the instructions."

¶ 21 During the trial, defense counsel attempted to elicit evidence which, she argued, would show that the police had no authority to enter defendant's home and warranted defendant's acts of self-defense. Specifically, on cross-examination of Eitel, she tried to ask whether the Chicago Police Department had any "general orders" that would have allowed her to enter defendant's home without a search warrant. The court sustained the State's objection that it was irrelevant to whether defendant committed aggravated battery and resisted arrest. In a sidebar, the

court explained that counsel could cross-examine on whether there was a search warrant in this case, but could not go into ancillary issues about general orders. The court also rejected defense counsel's argument that whether Eitel entered the house in violation of a general order was a credibility issue, explaining that counsel had been given wide latitude to test Eitel's credibility.

¶ 22 Defense counsel also attempted to introduce into evidence defendant's and Justin's phone records and testimony from phone-company employees, which purportedly showed that defendant sent text messages to Justin terminating the contract and revoking Justin's authority to enter the home. The court sustained the State's objections based on relevance. Furthermore, the court would not permit testimony regarding a civil lawsuit that Justin filed against defendant.

¶ 23 Before calling defendant to testify, defense counsel moved for a mistrial. She argued that the court restricted her ability to present certain evidence showing the "breakdown in the relationship between the Stanakers and the Pandolfis, which clearly went to their bias and them knowing they were not welcome," as well as the inability to cross-examine Eitel about the general orders. The court denied the order, stating:

> "[T]he only issue [i]n this case is the aggravated battery and the resisting arrest [*sic*]. And I have actually given the defense a great deal of leeway to go into the contracts—some issues regarding the contracts and relationships and what happened afterwards because

you asked that that be allowed to be introduced to attack the credibility of the witnesses. So despite your continued persistence to try other issues, they are not relevant in this case."

¶ 24 During defendant's examination, defense counsel attempted to introduce testimony that, based on his experiences in the military, defendant knew that he did not have to let police into his home. The court sustained the State's objection. During cross-examination, the State asked defendant whether he ever filed a complaint against the officers. He explained that although a complaint had been filed, he did not sign it or an affidavit in support "on the advice of counsel."

¶ 25 The following colloquy then occurred:

"THE STATE: Did a State's Attorney investigator try to contact your wife in this case, if you know?

DEFENDANT: I received a call from someone on the distant end identifying themselves as an investigator, and they were asking for Stacy.

THE STATE: And did you respond to that person—

DEFENSE COUNSEL: Objection, Your Honor.

THE STATE: --she's not home and she's not going to talk to you?

DEFENSE COUNSEL: Objection, Your Honor. It is illegal for the State's Attorney's Investigators to be calling and trying to talk to a

charged defendant. And when I raised that issue in court, the other prosecutor said that they would not do that. They can't talk to somebody who's represented by counsel.

THE STATE: They asked for Stacy, a witness.

DEFENSE COUNSE: Objection.

THE COURT: The—you can ask it. Overruled.

***

THE STATE: Did you respond she's not home and she's not going to talk to you?

DEFENSE COUNSEL: Objection.

DEFENDANT: No, that's not what I said.

THE COURT: Overruled.

THE STATE: What did you say?

DEFENDANT: I said you're not allowed to be calling me here and please don't call."

¶ 26 Defense counsel then moved for another mistrial, arguing that the State committed misconduct because it never disclosed any statement made by defendant to the State's Attorney's investigator, which was denied. However, the court struck the testimony and read the substance of IPI Criminal 3.10, which states: "It is proper for an attorney's investigator to interview or attempt to interview a witness for the purpose of learning the testimony the witness will give. However, the law

does not require a witness to speak to an attorney's investigator before testifying."

¶ 27 The jury convicted defendant of aggravated battery of a police officer and resisting arrest. Defendant filed a posttrial motion, which the court denied. This timely appeal followed.

¶ 28 III. ANALYSIS

¶ 29 A. Aggravated Battery of a Peace Officer

¶ 30 Defendant frames his arguments on appeal in the parlance of a Fourth Amendment violation, asserting that the police entered his house illegally. However, his actual legal arguments largely challenge the admission or exclusion of certain evidence and jury instructions, the effect of which was that he was prevented from establishing that he acted in self-defense or in defense of his dwelling in committing the acts for which he was charged.

¶ 31 Whether to admit or exclude evidence, specifically pursuant to a motion *in limine*, is a decision left to the discretion of the circuit court. *In re Leona W.*, 228 Ill. 2d 439, 460 (2008). The court's ruling on such motions will not be disturbed on review absent an abuse of that discretion. *Id.* at 460. "The threshold for finding an abuse of discretion is high." *Id.* The court's evidentiary ruling will not be deemed an abuse of discretion unless it may be said that no reasonable person would take the view adopted by the court. *Id.* Moreover, even if an abuse of discretion has occurred, we will not reverse the judgment unless "the record indicates the existence of substantial prejudice affecting the outcome of the trial." *Id.*

¶ 32 Similarly, whether or not certain instructions are given to the jury is a matter within the trial court's discretion. *People v. Mohr*, 228 Ill. 2d 53, 66 (2008). The instructions convey the legal rules applicable to the evidence presented at trial and thus guide the jury's deliberations toward a proper verdict. *Id.* at 65. There must be some evidence in the record to justify an instruction. *Id.* If there is, the trial court must determine which issues are raised by the evidence and whether an instruction should be given. *Id.* However, instructions that are not supported by either the evidence or the law should not be given. *Id.*

¶ 33 Defendant was convicted of the aggravated battery of Officer Eitel under section 12-4(a)(18), which states that in the course of committing a battery, he knew that the individual harmed was a police officer engaged in the performance of her authorized duties. 720 ILCS 5/12-4(a)(18) (West 2010).

¶ 34 Defendant's theory of the case was that the officers entered his home illegally and, therefore, he was justified in using force to defend himself and his home.[2] Accordingly, he asserted the affirmative defense of self-defense under section 7-1 of the Code, which states in part:

> "A person is justified in the use of force against another when and to the extent he reasonably believes that such conduct is necessary

[2] Although defendant also argues on appeal that his actions were justified in defense of other property under section 7-3, he did not assert that affirmative defense in the court below. Therefore, it is forfeited on appeal. *People v. Daniel*, 2013 IL App (1st) 111876, ¶ 25.

> to defend himself or another against such other's imminent use of unlawful force." 720 ILCS 5/7-1(a) (West 2010).

He also asserted the affirmative defense of defense of dwelling under section 7-2, which states in part:

> "A person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to prevent or terminate such other's unlawful entry into or attack up on a dwelling." 720 ILCS 5/7-2(a) (West 2010).

¶ 35 Defendant argues that the court would not let him present evidence that would have established that he had the right to defend himself and his dwelling from the officers' illegal entry into his home. Specifically, he sought to introduce evidence that he knew he was not required to let the police into his house because he had conducted home searches as part of his military assignment; that Eitel may have violated the police department's general orders regarding home searches; and that he sent Justin text messages revoking Justin's authority to enter his house. Without this evidence, he argued, the court refused to instruct the jury on his theory of self-defense and defense of dwelling.

¶ 36 Regardless of whether the court properly excluded that evidence, defendant's own testimony belies any claim of self-defense or defense of dwelling as justification for the aggravated battery of Officer Eitel. Asserting self-defense necessarily constitutes an admission by a defendant that he committed the crime for which he

is being prosecuted. *People v. Chatman*, 381 Ill. App. 3d 890, 897 (2008). Thus, "raising the issue of self-defense requires as its *sine qua non* that defendant had admitted [the battery] as the basis for a reasonable belief that the exertion of such force was necessary." (Internal quotation marks omitted.) *Id.* We think this principle is equally applicable in asserting defense of dwelling.

¶ 37 Nevertheless, defendant emphatically denied that he hit Eitel, stating that he "absolutely *** never made physical contact with that person [Eitel]." Thus, a self-defense or defense-of-dwelling instruction would have been inappropriate where, as here, defendant denied committing the act for which he was charged. *Id.* at 898 (citing *People v. Diaz*, 101 Ill. App. 3d 903, 915 (1981) (where a defendant asserts at trial that he never used any force against the victim, "it follows that [he] could not have reasonably believed force was necessary to protect [himself].")). To the extent that defendant argues that by pushing Justin and incidentally causing Eitel's injury, that is also insufficient to warrant a self-defense instruction. *Id.* (citing *People v. Tanthorey*, 404 Ill. 520, 530 (1949) (where the defendant testified that the injury was caused by accident and it was not his intention to shoot the victim, a self-defense instruction was properly refused)). Accordingly, the court did not err in refusing to instruct the jury on self-defense or defense of dwelling.

¶ 38 Furthermore, the trial court's decision was appropriate because defense counsel requested that the instructions be given to the jury before opening statements were made. Jury instructions are intended to convey the legal rules

applicable to the evidence presented at trial and thus guide the jury's deliberations toward a proper verdict. *Mohr*, 228 Ill. 2d at 65. Instructions that are not supported by either the evidence or the law should not be given. *Id.* At the time of opening statements, no evidence had been presented yet and it was impossible for the trial court to know what issues the jury would need to decide. See *id.* Therefore, the court did not abuse its discretion in refusing to instruct the jury on defendant's affirmative defenses before opening statements.

¶ 39 B. Resisting Arrest

¶ 40 Defendant also argues that the trial court's refusal to give the defense-of-dwelling instruction was erroneous as to the charge of resisting arrest. As stated above, it is fully within the trial court's to issue a particular jury instruction and those that are not supported by the evidence or the law may not be given. *Mohr*, 228 Ill. 2d at 66.

¶ 41 Defendant was charged with resisting arrest under section 31-1, which states:

> "A person who knowingly resists or obstructs the performance by one known to the person to be a peace officer *** of any authorized act within his or her official capacity commits a Class A misdemeanor."
> 720 ICLS 5/31-1(a) (West 2010).

Where the act of resisting is the proximate cause of an injury to the officer, the offense becomes a Class 4 felony. 720 ILCS 5/31-1(a-7) (West 2010). Section 31-1 is

read together with section 7-7, which states that a defendant is not authorized to use force to resist an arrest by a peace officer, even if he believes the arrest is unlawful and the arrest is in fact unlawful. 720 ILCS 5/7-7 (West 2010); *People v. Locken*, 59 Ill. 2d 459, 464-65 (1974). These provisions ordinarily override a claim of defense of dwelling because they specifically pertain to the use of force in an arrest situation. *City of Champaign v. Torres*, 214 Ill. 2d 234, 243 (2005).

¶ 42 Defendant argues that section 31-1 and section 7-7 do not apply here because the officers were not engaged in an "authorized act" when they entered his home illegally. He argues that under *Torres*, because the officers were not trying to make an arrest when they entered, section 31-1 should not prohibit him from using reasonable force to prevent their unconstitutional entry. See *id*. at 243; see also *People v. Swiercz*, 104 Ill. App. 3d 733, 736-37 (1982). Accordingly, he argues that he is entitled to rely on defense of dwelling to justify his actions.

¶ 43 We disagree. The testimony reflects that the acts of resistance underlying the charge occurred after defendant punched Justin. When Eitel attempted to place defendant under arrest for the battery of Justin, defendant pushed her down the stairs. Thus, Eitel was engaged in an authorized act—arresting defendant for battery—when he resisted arrest by pushing her. Accordingly, section 7-7 prevents him from resisting arrest, even if he believes the arrest to be illegal and it is in fact illegal.

¶ 44 Furthermore, defendant denied that he resisted arrest. As with the

aggravated battery charge, by denying that he committed the act of resistance, he cannot assert an affirmative defense claiming that his resistance was justified. See *Chatman*, 381 Ill. App. 3d at 898. Accordingly, a jury instruction on defense of dwelling would have been inappropriate and the court did not abuse its discretion in refusing to give it. *Id.*

¶ 45 While we are troubled by the manner of the officers' entry into defendant's house, in light of defendant's testimony at trial it may have been more efficacious for him to have challenged the validity of his arrest before trial when the court could address the underlying legal issues that he attempts to raise on appeal, either by moving to quash arrest (see *People v. Villareal*, 152 Ill. 2d 368, 373 (1992)) or by moving to dismiss the charges (see *Hilgenberg*, 223 Ill. App. 3d at 287).

¶ 46 C. Evidentiary Rulings

¶ 47 Defendant raises several additional arguments challenging numerous evidentiary rulings by the trial court. However, those arguments are forfeit because he failed to make well-developed legal arguments or provide citations to legal authority in violation of Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013). As our supreme court recently reiterated, "a reviewing court is 'entitled to have issues clearly defined with pertinent authority cited and cohesive arguments presented.' " *Bartlow v. Costigan*, 2014 IL 115152, ¶ 52 (quoting *Velocity Investments, LLC v. Alston*, 397 Ill. App. 3d 296, 297 (2010)); see also *People v. Campa*, 217 Ill. 2d 243, 269 (2005). An issue "merely listed or included in a vague

allegation of error is not 'argued' and does not satisfy Rule 341(h)." (Internal quotation marks omitted.) *Bartlow*, 2014 IL 115152, ¶ 52 (quoting *Vancura v. Katris*, 238 Ill. 2d 352, 370 (2010)). As such, those contentions are not entitled to consideration and will be deemed forfeited. *Bartlow*, 2014 IL 115152, ¶ 52; *Velocity Investments*, 397 Ill. App. 3d at 297 (a reviewing court is "not a repository into which an appellant may foist the burden of argument and research").

¶ 48 Specifically, as to defendant's argument that he was improperly questioned about his failure to file a complaint against the officers who illegally entered his home, he merely asserts that "this line of cross-examination was clearly in violation of Illinois evidence law" and his fifth amendment right to remain silent. Although defendant includes bare citations to *Doyle v. Ohio*, 426 U.S. 610 (1976), and *People v. Quinonez*, 2011 IL App (1st) 092333, he fails to explain the relevance of the cases or provide any analysis of his claims, nor does he provide pin cites directing us to the pertinent portions of the cases. *Doyle* and *Quinonez* involve the issue of a defendant's impeachment with postarrest silence. Yet defendant has given us no guidance on how those cases apply to his, the proper legal framework to be applied to his claim, or how the facts of his case align with those in *Doyle* or *Quinonez*. Under these circumstances, we find that insufficient to constitute an "argument" and we will not undertake the burden of argument and research on that issue. *Velocity Investments*, 397 Ill. App. 3d at 297.

¶ 49 Additionally, defendant contends that the State improperly cross-examined

him about a statement made to the State's Attorney's investigator that was not disclosed to the defense. He refers to a telephone call in which he spoke to a State's Attorney's investigator who was "asking for Stacy." Defendant told the investigator that he was "not allowed to be calling [defendant] here and please don't call." He contends that the conversation itself was an improper attempt by the State to have contact with a defendant represented by counsel; that the State failed to disclose the statement to the defense; and that he was improperly cross-examined with the content of the statement.

¶ 50 Defendant asserts that the conversation and its introduction at trial violated his "5th and 6th Amendment rights, his right to full and complete discovery, and hampered his ability to defend himself by shifting the burden of proof." Defendant cites no authority for these claims and, again, fails to provide any legal analysis or well-reasoned argument in support of these claims. Therefore, we will not consider them. See *Bartlow*, 2014 IL 115152, ¶ 52; *Velocity Investments*, 397 Ill. App. 3d at 297. Perhaps more to the point, his argument suggests that the investigator was improperly attempting to contact *him*, despite the fact that he and his attorney acknowledged that the investigator was attempting to contact Stacy, whom defendant listed as a witness in his initial disclosures. Thus, we disagree that the testimony implicated defendant's fifth or sixth amendment rights.

¶ 51 Moreover, as to defendant's contentions regarding disclosure and improper cross-examination, the court struck the all of the testimony pertaining to the State's

Attorney's investigator because the parties disputed whether the investigator's report regarding this attempt to contact Stacy was tendered to the defense. The court also instructed the jury pursuant to IPI Criminal 3.10 that it was permissible for the State's Attorney's investigator to interview witnesses, but witnesses are not compelled to cooperate. Therefore, any possible prejudicial effect to defendant by the testimony was cured. *People v. Mims*, 403 Ill. App. 3d 884, 897 (2010). We are not persuaded by defendant's argument that the trial court's actions further "highlighted the evidence," when, in fact, the evidence had been stricken. *Id.*

¶ 52 D. Closing Arguments

¶ 53 Finally, defendant argues that certain statements made by the State in closing argument improperly shifted the burden of proof to him. Once again, defendant has merely listed several statements that he claims were improper, but has not explained how the statements were improper or provided any case law to support these claims, aside from a bare citation to *People v. Edgecombe*, 317 Ill. App. 3d 615 (2000). Therefore, they are also forfeited. *Bartlow*, 2014 IL 115152, ¶ 52; *Velocity Investments*, 397 Ill. App. 3d at 297.

¶ 54 Nevertheless, defendant's criticisms are not well founded. The statements that he challenges are not attempts by the prosecution to shift the burden of proof to him. Rather, they were either proper comments on the credibility of his testimony or his theory of the case or they did not implicate improper burden shifting at all. As to his claim that the State suggested that a reasonable person

would have talked to the police, explained his side of the story, and avoided the confrontation, that was permissible commentary on the defendant's credibility and a test of the reasonableness of his actions, not a comment on whether he proved his innocence. See *People v. Kirchner*, 194 Ill. 2d 502, 549 (2000) (it is acceptable for the State to challenge the defendant's credibility and the credibility of his theory of defense in closing argument when there is evidence to support that challenge). *Id.* The other comments defendant complains of contain debates about Stacy's and Eitel's credibility as witnesses and do not comment directly or indirectly on whether defendant exercised his right not to testify or whether he proved his innocence. Therefore, they do not implicate improper burden-shifting. See *Edgecombe*, 317 Ill. App. 3d at 620.

¶ 55 IV. CONCLUSION

¶ 56 For the foregoing reasons, we affirm defendant's convictions.

¶ 57 Affirmed.