SIXTH DIVISION
April 26, 2019

No. 1-16-0235

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 09 CR 9146 (03)
	)	
LONNIAL ROUNDTREE,	)	Honorable
	)	Mary Margaret Brosnahan,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Delort and Justice Connors concurred in the judgment.

ORDER

Held: We reverse defendant's convictions and remand for a new trial. The cumulative number of errors present in defendant's proceeding below cast doubt on the fairness of his trial.

¶ 1 Defendant-appellant, Lonnial Roundtree, was arrested by Chicago Police on suspicion of first-degree murder and aggravated battery in the shooting of Raymond Washington and Kenneth Fuqua. Defendant proceeded to trial where a jury convicted him of intentional first-degree murder in the death of Washington and personally discharging a firearm during the commission

of the offense. He was also convicted of the aggravated battery in the shooting of Kenneth Fuqua along with personally discharging a firearm in the commission of that offense. Defendant filed a motion for a new trial, which the trial court denied. The trial court sentenced defendant to 60 years on the first-degree murder charge and 20 years on the aggravated battery charge to be served consecutively.

¶ 2 Defendant raises several issues on appeal. Defendant argues (1) the trial court erred when it deferred ruling on the admissibility of the *Lynch* evidence he wished to present until after he testified, (2) the trial court erred when it refused to reveal the identity of a confidential informant with knowledge of Washington's violent character, (3) the trial court denied him a fair trial when it gave the initial aggressor jury instruction, (4) the State misrepresented the law during closing argument by arguing the initial aggressor instruction required the jury to find defendant guilty even if they believed his self-defense claim, (5) his trial counsel was ineffective for failing to seek a serious provocation instruction, (6) he was denied a fair trial when the State used a void conviction to attack his credibility, (7) the trial court failed to comply with the requirements of Illinois Supreme Court Rule 401(a), and (8) the trial court's reliance on a void prior conviction and inaccurate assessment of several mitigating factors denied him a fair sentencing hearing.

¶ 3 After reviewing the record and relevant case law, we agree with defendant that there were several errors present in the proceeding below. We conclude the number of errors present denied defendant a fair trial and in the interests of justice a new trial is required.

¶ 4 JURISDICTION

¶ 5 On October 10, 2013, a jury found defendant guilty of first-degree murder and aggravated battery and that he personally discharged a firearm during the commission of both offenses. On November 20, 2015, the trial court sentenced defendant to 80 years in prison.

Defendant timely filed a motion to reconsider which the trial court denied on December 9, 2015. A notice of appeal was filed on the same day. Accordingly, this court has jurisdiction pursuant to article VI, section 6, of the Illinois Constitution and Illinois Supreme Court Rules 603 and 606, governing appeals from a final judgment of conviction in a criminal case entered below. Ill. Const. 1970, art. VI, § 6; Ill. S. Ct. Rs. 603, 606 (eff. Feb. 6, 2013).

¶ 6 BACKGROUND

¶ 7 Defendant-appellant, Lonnial Roundtree (hereinafter "defendant"), along with co-defendants Reginald Royal and Terrance Hilson, were charged with first-degree murder in the shooting death of Raymond Washington, attempted murder of Kenneth Fuqua, and aggravated battery with a firearm against Kenneth Fuqua. Defendants Roundtree and Royal were tried before separate juries in the same proceeding, while Hilson opted for a bench trial.

¶ 8 Prior to trial, defendant filed a motion seeking to identify a confidential police informant who was a "high ranking member of the Four Corner Hustlers," as well as any consensual overhear recordings and associated reports or documents. The motion argued there were audio and video recordings of conversations between the informant and other gang members relating to "several criminal enterprises" including discussions involving murder victim Washington, defendant and co-defendant Royal. Defendant claimed one such discussion was between the informant and Jeremie George where they talked about Washington's return to the drug trade and Washington's recruitment of George and another individual, LaQunntos Jordan, to kill defendant and co-defendant Royal. The alleged discussion occurred two days before Washington's death. The police also recorded a conversation between the informant and Donnell Elkins, where Elkins acknowledged the hit on defendant. After engaging in an *in camera* inspection of the recordings,

the trial court denied the motion. The court found the informant had no personal knowledge of the events at issue in the case and the statements were "rank hearsay."

¶ 9 Defense counsel also filed numerous motions to admit evidence pursuant to *People v. Lynch*, 104 Ill. 2d 194 (1984). The motion asserted that defendant would rely on the affirmative defense of self-defense and therefore defendant would seek to admit evidence of Washington's violent character and reputation. The motion argued that Washington was a high-ranking member of the Four Corner Hustlers gang and had put a hit out on defendant and co-defendant Royal. After surviving several attempts on their lives, defendant, Royal, and Hilson attempted to meet with Washington to resolve the issue. When they encountered Washington, defendant and Royal claimed Washington attempted to shoot them first and they fired in self-defense.

¶ 10 Based on defendant's affirmative defense of self-defense, the motion sought to present testimony of Antoine Sutton, Seneca Moore, Chicago Detective Luis Munoz, David Cross, and Anthony Williams in order to demonstrate Washington's violent reputation and violent prior acts pursuant to *Lynch*. The State responded that the trial court should deny the motion because its evidence would demonstrate defendant and Royal were the aggressors and could not claim self-defense.

¶ 11 After considering the issue, the trial court declined to rule on defendant's *Lynch* motion. In reserving ruling, the trial court noted that "based on the State's proffer" the evidence would demonstrate defendant and Royal shot Washington and Fuqua, and that "there is nothing coming into evidence about any kind of fight ahead of time." Given that defendant could refuse to testify, "it would be impossible to make that [*Lynch*] ruling at this juncture." As part of its order reserving the *Lynch* issue for trial, the trial court denied defendant's request to discuss the *Lynch* material in his opening statement.

¶ 12 Defendant then filed a "Proffer in Support of Motion *in Limine* Pursuant to *People v. Lynch* and IRE 404 and 405." The motion summarized defendant's proposed testimony. It set forth that on the day of the incident someone attempted to shoot defendant and Royal. The pair then met with Terrence Hilson, Washington's cousin, in an attempt to secure a meeting with Washington so a resolution could be found. Hilson set up the meeting and the three men drove to Washington's location. Defendant would testify that upon exiting the vehicle, Washington saw them, "took a step backwards and reached for his waistband." Knowing Washington had just tried to have them killed, defendant thought Washington was pulling a gun, so defendant pulled his own firearm and shot at Washington.

¶ 13 At the hearing on this motion, defense counsel again reiterated defendant's intention to raise an affirmative defense of self-defense through his own testimony. Counsel argued the need to discuss the *Lynch* material in opening statements and to question the State's witnesses in support of this theory in order to present a complete picture of defendant's theory of the case. The trial court again stated that the *Lynch* material was premature and would put "the cart before the horse." On the eve of trial, defense counsel presented another motion pursuant to *Lynch* but the trial court maintained its prior position on the matter.

¶ 14 The State's first witness was Kenneth Fuqua, a Chicago Housing Authority inspector. Fuqua testified that on April 23, 2009, he had an appointment to inspect a building owned by Raymond Washington located at 3816 West Flournoy St. The building was adjacent to a north-south alley that branched off of Flournoy, an east-west street. Fuqua arrived about 1:00 p.m. and proceeded to inspect the first floor, basement, and backyard while Washington followed. Fuqua did not see Washington with a gun, but he did not pat him down or search him. Around 1:30 p.m.

or 1:45 p.m. the pair went into the alley, where Fuqua checked the building's foundation and outside structure.

¶ 15 While standing near the iron fence adjacent to the alley and looking up at the roof, Fuqua heard gun shots. As a former member of the armed forces, Fuqua was familiar with the sound of gun fire. Fuqua turned to his left (south towards Flournoy St.) and saw co-defendant Royal standing ten feet away holding a gun. He identified Royal in court. Royal then shot Fuqua, who went down and played dead. He saw another individual about 10 feet from Royal but could not remember any physical traits. Fuqua heard between twenty and thirty shots before hearing an unknown individual yell, "Let's go" and hearing a car drive off. Before the shooting, he did not hear anyone say anything, was not looking at Washington and had not noticed the car drive up.

¶ 16 After the shooting stopped and the car had left, Fuqua dialed 9-1-1 on his cell phone and then noticed Washington was lying, unmoving, in the alley. The medical examiner established that Washington had been shot or grazed more than 30 times: three entered front to back, fourteen entered back to front, twelve struck his extremities, and one grazed his left side. Most, but not all, of the shots had an "upward" or "slightly upward" trajectory.

¶ 17 While waiting for the police to arrive, Fuqua noticed several unknown individuals entering the alley and yell but he could not identify what they were yelling. He did not notice these individuals approach Washington or take anything off his body. However, he admitted that he was not focused on these individuals as he had been shot in the groin.

¶ 18 At the time of the shooting, Chicago police officers Alisha Knight and Grayland Watson were in an unmarked police car at the intersection of Independence Blvd. and Harrison St. Their vehicle was traveling south on Independence, about to turn right on Harrison, when both officers heard gunshots to their right. Knight heard two sets of 8 to ten shots separated by a few seconds.

Watson could not remember if there was a gap. When the officers looked through a vacant lot to their right, they saw two men in an alley, and a person on the ground. Both officers identified the men as defendant and co-defendant Royal.

¶ 19 Watson drove onto Flournoy, where the officers saw the two men enter a gray Toyota Camry that had been parked on Flournoy, just east of the alley. The officers followed the Camry, and observed two black objects thrown out of the passenger side when it turned on to Springfield Ave. Subsequently, the police located two firearms at 710 South Springfield Ave.: a 9 mm Glock Model 17 that could hold up to 19 bullets and a .40-caliber Springfield Armory that could hold 13 bullets. Both firearms were empty and forensic testing later revealed defendant's fingerprints on the Springfield Armory magazine and that co-defendant Royal's DNA could not be excluded as being on the Glock. Forensic testing also revealed that defendant and co-defendant Royal tested positive for gunshot residue.

¶ 20 The officers noticed the car come to a brief stop and observed defendant and co-defendant Royal leave the vehicle. Officer Knight chased and apprehended defendant, while other officers detained co-defendant Royal. A short time later, the car crashed into an iron fence between Springfield Ave. and Avers Ave. Officer Watson apprehended co-defendant Hilson, who had been driving the car. A fourth individual from the car fled the scene and was never arrested.

¶ 21 Sergeant Daniel Gallagher was the lead detective on the case. At about 1:30 p.m. on April 23, 2009, he received a call about a shooting and ongoing chase that started near 3816 West Flournoy St. About 5 to ten officers and an ambulance were present when he arrived. The main entrance of Washington's building on Flournoy was open when the police arrived, and a knit cap or ski mask was on the floor between that door and the door to the first floor apartment. It was

never tested for DNA, gunshot residue, hair samples, or anything else. Officers knocked at the second-floor apartment, but no one answered and it was not entered. Two cell phones were discovered on a blood spot in the alley next to the building. They were never tested for fingerprints or DNA, and the police never established who owned them.

¶ 22 Gallagher saw Washington being loaded into the ambulance, and Fuqua was still in the alley. Gallagher tried to interview Washington but he was unresponsive. After speaking with Fuqua, Gallagher began looking for a black man with dreadlocks. After learning the chase had resulted in several arrests, Gallagher had Royal transported back to the scene, where Fuqua identified Royal as the person who just shot him. Fuqua was taken to the hospital for surgery and was released the next day.

¶ 23 The police recovered 30 cartridge casings from around the scene of the shooting. Thirteen .40 caliber casings and four fired bullets from the scene matched the Springfield Armory, and seventeen 9mm casings matched the Glock. Eight fired 9mm bullets returned inconclusive tests, but the Glock could not be ruled out. The casings were located just inside the alley, at the mouth of the alley, and just outside the alley, in front of a south-facing garage on the east side of the alley. There was also a casing on top of a garbage bag at the back of the alley.

¶ 24 Firearms expert Marc Pomerance explained that cartridge casing can be ejected several feet when a gun is fired, can bounce off hard surfaces like concrete, and can be kicked or moved around by people or vehicles in the area. Based on this, the exact location of a shooter cannot be determined by the location of a casing. The police did not recover a firearm from Washington's body, but Pomerance agreed that it was possible a third gun was fired during the shooting. Pomerance and forensic investigator Victor Rivera both testified that unlike semi-automatic weapons, revolvers do not expel cartridge casings. Sgt. Gallagher and Rivera admitted that

Washington could have been tested for gunshot residue, but was not. The alley at issue continued south on Flournoy, but Gallagher did not direct any investigators to look for fired bullets or other evidence in that location. Likewise, Rivera did not look for any evidence, including shell casings or fired bullets in the south part of the alley.

¶ 25 Pursuant to its pretrial ruling, the trial court refused to allow the defense to cross-examine Sgt. Gallagher using a report he authored that indicated Washington led the Four Corner Hustlers and that the shooting was the result of a conflict within that gang.

¶ 26 The State rested and defendants moved for a directed verdict, which the trial court denied. The defense again asked the trial judge to rule on its *Lynch* motions. Defense counsel filed a "supplemental proffer" further detailing the proposed testimony from Roundtree, Cross, George, Det. Munoz, Moore and Williams about Washington's violent reputation and involvement in other shootings. The trial court again deferred its ruling until after defendant testified. The trial court also ruled that defendant could be impeached with his aggravated unlawful use of a weapon (AUUW) conviction from 2006.

¶ 27 Defendant took the stand in his own defense. At the time of the shooting, he was 20 years old, worked as a barber at Blue Print on Madison St. and Lotus Ave., and was taking small business classes at Morton College. He grew up on the west side of Chicago, but lived with his mom in Cicero. Apart from the single prior AUUW conviction, his criminal record consisted of juvenile and misdemeanor offenses. He had known Royal, Washington, and Hilson since his early teens.

¶ 28 Defendant testified that at about 11:00 a.m. or noon on April 23, 2009, he was in Hilson's rental car with Royal, Hilson, and Gregory Baddy near the 3800 block of West Flournoy St. They were on their way to meet Raymond Washington, whom defendant feared. Upon arriving at

Washington's location, Hilson parked in front of the garage on the east side of the alley. Washington was at the mouth of the alley, about five to seven feet away from another individual, whose back was turned. When Roundtree exited the car, Washington turned towards him, reached into the right-hand side of his waistband, and took a step back. Roundtree saw a black object that "looked like a revolver." Defendant saw the barrel of it. Believing Washington was about to shoot him, defendant took his own gun out and started firing in Washington's direction. He just kept shooting. Royal began shooting at the same time. It happened so fast defendant said he had no time to think. Defendant went into shock and could not move; Baddy had to pull him back into the car.

¶ 29 After hearing this account, the judge ruled that Roundtree "put self-defense in play," and allowed him to testify about any violent character evidence of Washington of which he had direct knowledge. The judge still refused to decide whether the defense could present any other evidence of Washington's violent character and deferred ruling until after defendant's cross-examination.

¶ 30 Defendant explained that Washington was the chief of the Four Corner Hustlers and that his nickname was "Blood," or "Big Four." The Fours typically operated in Capitol Hill, which is the area "between Laramie to Austin and from Jackson to [Lake Michigan] [*sic*]." He admitted that co-defendant Royal and himself were Unknown Vice Lords, while Hilson, Washington's cousin, was a member of the Four Corner Hustlers. Washington was not defendant's gang boss and he feared Washington given his previous encounters with the man.

¶ 31 Defendant testified that sometime before December 2008, he was standing outside at Lorel Ave. and Madison St. after school. This was located in Four Corner Hustler territory. Washington pulled up in a blue car, rolled down its tinted windows, and told defendant to get

inside. Washington had a gun on his lap. Washington inquired what defendant was doing in the area and then informed the defendant he would have to put in some "work" if he was going to be in this area. Washington then proceeded to offer defendant $20,000 to kill "Black," who was in a nearby barber shop. Defendant declined the offer, but indicted he would do something else for the money. After having the offer declined, Washington informed defendant that he would kill him if he ever saw him in the Capitol Hill area again.

¶ 32 Sometime later, defendant saw Antoine Sutton at a gas station near Chicago St. and Lorel Ave. Sutton, a member of the Four Corner Hustlers, asked defendant what he was doing outside. Sutton informed defendant that Washington had put a hit out on him and specifically asked Sutton to kill defendant. Defendant believed Sutton and hid out in his house for a few days because he was scared. When he finally left his home to head back to school, defendant made sure to arm himself with a gun every time he left.

¶ 33 Defendant then testified to several attempts on his life. In December 2008, defendant was in his car trying to exit a gas station at Laramie Ave. and Jackson Blvd. when a car tried to block him. Defendant was able to make the turn, but a brown-skinned passenger in the other car opened fire. Defendant ducked down, hit the gas, and escaped onto the Eisenhower Expressway, but was shot in the right side of his back.

¶ 34 A few months later, just after midnight on April 23, 2009, defendant was outside a liquor store at Laramie Ave. and Adams St. with Baddy, Hilson, and Royal. As they waited for some people to exit the store so they could enter, defendant noticed a man in a black hooded sweatshirt approaching them with his hand at his waist. Defendant's experience told him that the man was reaching for a gun, so defendant grabbed the man's arm and a struggle ensued. Royal helped disarm the attacker, whose gun fell to the ground and discharged into the air. Royal retrieved the

gun and the pair beat the man. Defendant identified the man as Lawrence Logan, a friend of Washington's and a member of the Four Corner Hustlers. Forensic evidence taking after the shooting of Washington showed that spots of Logan's blood were on defendant's jeans, Royal's shoes, and inside the Camry.

¶ 35 Later the same day, around 12:30 or 1:00 p.m., defendant and Royal were stopped at a red light at Homan Ave. and Madison St. in Royal's Suburban. Defendant turned to his left and saw a car pull up with its door open. Jeremie George, known as "Lil Four," got out of the car, raised his gun and shot at them. Defendant ducked when he saw the gun. Bullets struck the vehicle and shattered its windows. Royal blew through the red light, drove a few blocks and pulled into a gas station at Washington St. and Homan Ave. where they had planned to meet Hilson. Defendant told Hilson what had just occurred and stated that he needed to talk to Washington because people kept trying to kill him. Defendant had seen Hilson and Washington talk things out with another person to resolve a dispute and defendant hoped to accomplish the same. Hilson called Washington and then they drove to Washington's location.

¶ 36 After explaining the three attempts on his life, defendant again claimed Washington pulled a gun on him right after he stepped out of the car and he acted in self-defense. He did not know where he struck Washington. Defendant conceded he tried to evade the police after the shooting because he did not want to get locked up. When arrested by police, defendant was scared and did not believe the police would help him. Because of this, he lied and said he was with his girlfriend and was arrested for urinating in the alley after taking out the trash at her place.

¶ 37 After defendant finished his testimony, the judge concluded that there was a dispute as to whether defendant or Washington was the aggressor. In reaching this decision the trial court

stated, "So does going over to a location with a weapon in your pocket, does that make you *per se* the initial aggressor? My answer is no, it does not." Given this finding, the trial court ruled that Jeremie George and Antoine Sutton, who were Four Corner Hustlers, and David Cross, an Unknown Vice Lord, could testify. The court limited Sutton's testimony. Sutton could not testify that Washington had a reputation for being armed and ordering hits on people. The trial court also excluded the testimony of Detective Munoz and two additional Four Corner Hustlers, Moore and Williams. In the trial court's opinion, the proffer of Williams – that he had been shot by Fours on Washington's orders – to be "conclusory," and that it would be improper and irrelevant for Detective Munoz and Moore to testify about Washington's violent reputation.

¶ 38 Sutton, George, and Cross each took the stand and agreed that Washington was the "chief" of the Four Corner Hustlers, and the gang's territory was Capitol Hill. Sutton testified that Washington asked him to kill defendant, but he refused and informed defendant instead. He explained that defendant had not done what Washington had asked "so I guess [Washington] wanted to get rid of him." Sutton was not defendant's friend, but they had seen each other around and knew some of the same people. Sutton agreed that he had numerous prior felony convictions.

¶ 39 George testified that Washington told him and LaQunntos Jordan that he had problems with defendant. Washington offered them close to $20,000 to kill defendant. George denied accepting the offer and denied shooting at defendant on April 23, 2009. He admitted that he was in prison for shooting another individual. George explained that the two gangs did not interact much outside of prison, but members were on friendly terms inside of prison. He was not defendant's friend.

¶ 40 In rebuttal, the State submitted a certified statement of conviction, indicating that defendant had been convicted of AUUW.

¶ 41 After hearing closing arguments, the jury convicted both defendant and co-defendant. The jury found defendant guilty of first-degree murder in the death of Washington and guilty of aggravated battery in the shooting of Fuqua. The jury also found both defendants personally discharged a firearm in the commission of both offenses. Hilson was acquitted.

¶ 42 Defendant had a new private attorney for post-trial motions, but complained that she was not doing enough to investigate trial counsel's failures. He decided to fire this private attorney and brought a *pro se Krankel* motion alleging ineffective assistance of trial counsel. The trial court conducted a *Krankel* hearing and questioned defendant concerning his ineffective assistance of counsel claims. Eventually, the trial court denied the *Krankel* motion. After denying the motion, the court inquired if defendant wanted to continue *pro se*, which he did.

¶ 43 Another attorney did make an appearance but withdrew a short time later for medical reasons. Defendant then filed a *pro se* motion for a new trial, but this was denied by the trial court. Defendant agreed to be represented by the public defender at sentencing. After reviewing the aggravation and mitigation factors, the trial court imposed a sentence of 60 years for the first-degree murder (including a 20-year firearm enhancement) to be served consecutively to a 20-year sentence for the aggravated battery with a firearm. Defendant's total sentence was therefore 80 years.

¶ 44 Defendant timely filed his notice of appeal.

¶ 45 ANALYSIS

¶ 46 In his first issue before this court, defendant argues the trial court committed several errors related to his claims pursuant to *People v. Lynch*, 104 Ill. 2d 194 (1984). Defendant contends that the trial court's misapprehension of *Lynch* caused it to (1) refuse to rule on the admissibility of defendant's proposed *Lynch* material until after defendant's testimony, (2)

prohibit defense counsel from referencing Washington's violent reputation in his opening statement, and (3) exclude several *Lynch* witnesses who would support defendant's contention that Washington was a violent man. The State responds that the trial court properly exercised its discretion when it required defendant to first testify and raise the issue of self-defense before admitting any *Lynch* testimony.

¶ 47 Evidentiary rulings, including whether to grant a motion *in limine*, are within the sound discretion of the trial court and should not be reversed absent an abuse of that discretion. *People v. Caffey*, 205 Ill. 2d 52, 89 (2001). A trial court abuses its discretion when its ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court. *Id.* Where the trial court's ruling is based on a misunderstanding of the law, such a misunderstanding represents an abuse of discretion. *People v. Porter-Boens*, 2013 IL App (1st) 111074, ¶ 10.

¶ 48 In *Lynch*, our supreme court held that "when the theory of self-defense is raised, the victim's aggressive and violent character is relevant to show who was the aggressor, and the defendant may show it by appropriate evidence, regardless of when he learned it." *Lynch*, 104 Ill. 2d at 200. In reaching this holding, the court determined that a victim's aggressive or violent character could support a defendant's self-defense theory in two ways. *Id.* at 199-200. The court recognized that "the defendant's knowledge of the victim's violent tendencies necessarily affects his perceptions of and reactions to the victim's behavior." *Id.* at 200. The court also recognized that "evidence of the victim's propensity for violence tends to support the defendant's version of the facts where there are conflicting accounts of what happened." *Id.*

¶ 49 The State argued and the trial court accepted that the admission of *Lynch* evidence would be premature. The State claimed that its evidence would not present any evidence of self-defense

and that the event was an "ambush" and "execution" of Washington. Defendant's motion *in limine* did include a proffer that the defendant would testify and his testimony would show Washington drew his gun first. The trial court accepted the State's proffer of what the evidence would show and decided a ruling on defendant's motion *in limine* would be "premature" and "put the cart before the horse."

¶ 50 The State's prematurity argument was specifically addressed by the *Lynch* court. In *Lynch*, one of the arguments raised by the State was that the evidence was "inadmissible because [it is] offered without a proper foundation." *Lynch*, 104 Ill. 2d at 204. The *Lynch* court recognized that generally a "defendant may not introduce evidence of the victim's character until some evidence has been presented that the victim was, or appeared to be, the assailant, and that the defendant therefore acted in self-defense" but the court, in the next sentence, recognized the reason for the rule was to "ensure such character evidence is not admitted unless self-defense is at issue in the case." *Id.* The *Lynch* court noted that in its case "self-defense was going to be an issue. In fact, it was the only contested issue." *Id.* at 204-05. The court concluded that in such instances, "where the evidence will surely be admissible sooner or later, we do not think the State has the right to exclude it solely on the ground of prematurity." *Id.* As in *Lynch*, the matter of self-defense was the only contested issue confronting the trier of fact in this case because defendant never disputed that he shot Washington.

¶ 51 After reviewing the relevant case law and the facts of this case, we conclude the trial court abused its discretion when it deferred its ruling on defendant's *Lynch* material. In reaching this conclusion, we do not share the trial court's view that it needed to wait for defendant's actual testimony introducing evidence of self-defense to rule and ultimately allow the introduction of *Lynch* material. *People v. Patrick*, 233 Ill. 2d 62, 73 (2009) (a trial court abuses its discretion

when it has sufficient information to rule on a motion *in limine* regarding the admissibility of prior convictions).

¶ 52 The State made it abundantly clear that the evidence it would introduce would in no way raise the issue of self-defense. The State continuously maintained that its evidence would demonstrate defendant and co-defendant Royal were the aggressors and the murder was an "ambush" and "execution" of Washington. Given the State's only eyewitness, Fuqua, was not looking at either Washington or defendant at the time of the incident, the only evidence of self-defense would come from the defendant himself.

¶ 53 We are extremely mindful, as was the trial court, that pursuant to his fifth, sixth, and fourteenth amendment rights under the United States Constitution, defendant could have declined to testify at his own trial. *Rock v. Arkansas*, 483 U.S. 44, 51-53 (1987). However, it is well established that in order for the jury to receive a self-defense instruction, there must be *some* evidence introduced to support it being given and where no evidence is presented; such an instruction should not be given. *People v. Everette*, 141 Ill. 2d 147, 156 (1990) (a criminal defendant is entitled to a self-defense instruction even when the evidence is slight). Where, as happened here, the defendant seeks to introduce *Lynch* evidence and his only means of raising the affirmative defense of self-defense is through his own testimony, defendant is essentially conceding that he will waive his fifth amendment right and testify in his own defense.

¶ 54 We are not concerned that defendant could raise the issue in a proffer, discuss self-defense and the expected *Lynch* evidence in an opening statement, and then introduce *Lynch* evidence but refuse to testify. Such a scenario would certainly be fatal to the defense. In such an instance defendant would not be entitled to a self-defense instruction because there would not even be slight evidence to support giving it. *Id.* Moreover, many courts have recognized the

ruinous effect of promising certain testimony or evidence in an opening statement and failing to present it. *People v. Briones*, 352 Ill. App. 3d 913, 918 (2004) (citing both state and federal cases emphasizing the damaging effect on credibility when a party promises evidence in an opening statement and then fails to present it). Defendant, along with advice from counsel, should be able to make such a decision after considering both the benefits and the risks. Ultimately, the choice of whether or not to testify remains with defendant. *People v. Medina*, 221 Ill. 2d 394, 403 (2006).

¶ 55 The State and defendant's proffers at the start of the proceedings provided the trial court with all the necessary information needed to render a decision on defendant's *Lynch* motion *in limine*. In reaching this conclusion, we are not persuaded by *People v. Guyton*, 2014 IL App (1st) 110450, the lone case the State uses to support its position. *Guyton* contains a similar factual scenario to the case at bar, but in that case, the appellate court ruled that it was not an abuse of discretion to limit defendant's ability to discuss the "specific facts" of the *Lynch* evidence. *Id.* ¶¶ 50-52. The appellate court's reasoning appears to be based on the fact that where defendant's testimony is the only evidence raising self-defense; such a pretrial ruling on *Lynch* evidence will be premature. *Id.*

¶ 56 We are not persuaded *Guyton* calls for the same outcome. Notably, *Guyton* does not contain any reference to *Patrick*. In *Patrick*, our supreme court held that a trial court abuses its discretion when it defers ruling on a motion *in limine* when it has all the necessary information to make a proper ruling. *Patrick*, 233 Ill. 2d at 73. The court noted that early rulings "permit defendants and defense counsel to make reasoned tactical decisions in planning the defense ***." *Id.* at 70. We further note the trial court in *Guyton* allowed "limited reference to *Lynch* material during opening statements," while the trial court in this case allowed no reference. *Guyton*, 2014

IL App (1st) 110450, ¶ 51. We find *Guyton* distinguishable and are persuaded that *Patrick* calls for a different outcome here. The trial court had all the necessary information it needed to make a pretrial ruling. Its decision to wait for the testimony of defendant deprived him of discussing *Lynch* material in opening statements and questioning the State's witnesses (specifically Sgt. Gallagher).

¶ 57 Given the factual circumstances of this case, the trial court's refusal to rule was unreasonable. See *Lynch*, 104 Ill. 2d at 205 (concluding that where the evidence will be admissible sooner or later, the State does not have the right to seek its exclusion based on prematurity). It should have granted the defendant's pretrial motion *in limine* and allowed defense counsel to discuss defendant's self-defense testimony and the *Lynch* evidence he would introduce. See *People v. May*, 276 Ill. 332, 337 (1916) (opening statements allow a party to prepare the jury's mind for the evidence to heard, the nature of the action and defenses).

¶ 58 In defendant's next *Lynch* issue, he argues the trial court improperly excluded several of his witnesses and testimony that would have bolstered his claim that Washington was a violent person. After defendant raised the issue of self-defense, the trial court did allow defendant to present some *Lynch* evidence. The defendant along with David Cross, Antoine Sutton, and Jeremie George all presented evidence as to Washington's penchant for violence. Defendant was not allowed to present the testimony of Det. Munoz, Seneca Moore, or Anthony Williams. The trial court also precluded Sutton from testifying that Washington was "always armed with a gun and would always have a body guard."

¶ 59 Like all evidence, the admission of testimony is within the sound discretion of the trial court, and a reviewing court will not reverse the trial court absent a showing of an abuse of that discretion. *People v. Becker*, 239 Ill. 2d 215, 235 (2010). When a defendant raises the issue of

self-defense, *Lynch* provides that evidence of a victim's aggressive and violent character may be introduced via "appropriate evidence." *Lynch*, 104 Ill. 2d at 200. Where a conviction is not present, a defendant must present sufficient proof of the victim's violent crimes, and "a prior altercation or an arrest, without a conviction, can be adequate proof of violent character when supported by firsthand testimony as to the victim's behavior." *People v. Cook*, 352 Ill. App. 3d 108, 128 (2004). Reputation evidence may also be utilized as *Lynch* evidence, but a reputation witness must have "adequate knowledge of the person queried about" and such reputation evidence "must be based upon contact with the subject's neighbors and associates rather than upon the personal opinion of the witness." *People v. Moretti*, 6 Ill. 2d 494 (1955).

¶ 60 The proffer from Detective Munoz stated that he could "intelligently speak to the methods and leadership structure of the Four Corner Hustlers" and was "uniquely qualified to address the reputation of Ray Washington and Washington's penchant for violence." Detective Munoz also wrote the supplemental report summarizing the consensual overhears, which pertained to Washington's return to the drug trade, his recruitment of hitmen to kill defendant and other gang activities.

¶ 61 Based on defendant's proffer and the relevant case law, we agree that the trial court properly excluded Detective Munoz. While Detective Munoz is described as having knowledge of Washington and the Four Corner Hustlers, he is not alleged to have "firsthand" knowledge of Washington's violent behavior. Additionally, the record does not establish that he had sufficient knowledge to testify as to Washington's reputation in the community. Nothing in the proffer demonstrates his knowledge of Washington came from Washington's neighbors or associates. Any knowledge gained from the consensual overhears would be hearsay (*People v. Caffey*, 205 Ill. 2d 52, 88 (quoting *People v. Olinger*, 176 Ill. 2d 326, 357 (1997))) and general allegations of

Washington's criminal activity are not admissible *Lynch* material. *Lynch*, 104 Ill. 2d at 199-200 (evidence must be of victim's aggressive and violent character).

¶ 62 Next, defendant contends that the trial court erred in refusing to allow Seneca Moore to testify. Defendant argues, Moore, a member of the Four Corner Hustlers (Washington's gang), would have been familiar with Washington's associates and could give reputation evidence as to Washington's violent character. *Moretti*, 6 Ill. 2d at 523-24. However, we agree with the State that defendant could not call Moore for the express purpose of testifying that Washington tried to have Moore killed. Moore's proffer demonstrates that Washington was not one of the individuals who made an attempt on Moore's life and Moore only learned of Washington's alleged involvement from his girlfriend. The girlfriend's statements to Moore about Washington's involvement would be inadmissible hearsay. *Caffey*, 205 Ill. 2d at 88.

¶ 63 Defendant also argues the trial court improperly excluded Anthony Williams, another Four Corner Hustler. Like other members of the Four Corner Hustlers, Williams knew Washington's associates and his reputation for violence. Williams would have testified that Washington threatened him for allowing David Cross to sell drugs in Four Corner territory. A short time later, Williams was shot by several of Washington's soldiers. The trial court denied admission of Williams' testimony because it found it "specious" and "conclusory."

¶ 64 Given this proposed testimony, the trial court should have allowed Williams to testify as a *Lynch* and reputation witness. Not only did Williams have knowledge of how Washington was perceived in the community, he had firsthand experience with Washington's threats of violence. Shortly after Washington's threats, men Williams knew to work for Washington tried to kill him. Unlike Moore, Williams had firsthand knowledge. *Cook*, 352 Ill. App. 3d at 128. These actions are strikingly similar to defendant's own experience with Washington and could have bolstered

the reliability of defendant's own testimony in the eyes of the jury. The trial court's ruling that Williams' testimony is "specious" and "conclusory" finds no support in the record and is arbitrary.

¶ 65 Defendant argues that Antoine Sutton should have been allowed to testify as to Washington's reputation for being a "ruthless person" and someone who "always carried a gun or had a body guard." The trial court excluded this portion of Sutton's testimony because, in the court's view, Sutton could not testify to "his personal opinion" and Washington's reputation for being armed was not "relevant under *Lynch*."

¶ 66 We disagree with the trial court's view of Sutton's testimony and conclude that he should have been allowed to testify as to the above matters. Sutton, a Four Corner Hustler himself, would have been familiar with Washington and his associates, allowing him to testify as to Washington's reputation. Additionally, the proposed testimony that Sutton knew Washington always carried a gun would support defendant's self-defense theory. *Lynch*, 104 Ill. 2d at 199-200; *People v. Cervantes*, 2014 IL App (3d) 120745, ¶ 34 (two defense witnesses testified that the victim was known to carry a screwdriver or knife). Sutton's proposed additional testimony was admissible and relevant under *Lynch*, and the trial court's ruling to the contrary was unreasonable and contrary to law.

¶ 67 Based on the above, we conclude the trial court abused its discretion when it held Sutton and Williams could not testify. The trial court's ruling denying admission of their testimony was arbitrary and unreasonable.

¶ 68 In his next issue, defendant argues the trial court erred when it refused to reveal the identity of the informant whose voice was contained in the consensual overhears. Illinois Supreme Court Rule 412(j)(ii) provides, "[d]isclosure of an informant's identity shall not be

required where his identity is a prosecution secret and a failure to disclose will not infringe the constitutional rights of the accused." Ill. S. Ct. R. 412(j)(ii) (eff. Mar. 1, 2001). In determining when disclosure is required, each case must be decided on its own facts, balancing the public's interest in protecting the flow of information against the individual's right to prepare a defense. *People v. Hannah*, 2013 IL App (1st) 111660, ¶ 32. A trial court's ruling on a motion to produce a confidential informant will not be disturbed absent an abuse of discretion. *Id.*

¶ 69 After considering defendant's argument concerning the informant's proposed testimony, we conclude the trial court did not abuse its discretion. Defendant acknowledges that the informant does not have any direct knowledge of the events at issue here and would only have, at a minimum, knowledge of Washington's violent reputation. Our courts have regularly rejected a defendant's attempt to reveal a confidential informant's identity when the informant "was neither a participant [n]or material witness to the essential elements of the offense." *People v. Velez*, 204 Ill. App. 3d 318, 326 (1990). Here, the informant was not critical to defendant's case because the informant was neither a participant nor a witness.

¶ 70 Even though he was a Four Corner Hustler and could potentially provide relevant *Lynch* information, defendant presented the testimony of several other Four Corner Hustlers. Defendant contends the informant had "intimate knowledge about gang operations," and was recorded discussing "several criminal enterprises," but this information is not relevant *Lynch* testimony. As the trial court repeated throughout the proceedings to defense counsel, Washington's potentially illegal non-violent actions were not admissible under *Lynch*. The informant was not a critical witness, and any potential *Lynch* evidence he could have provided would only be cumulative of the evidence provided by witnesses who were also members of the Four Corner Hustlers. *People v. Vega*, 107 Ill. App. 3d 289, 291-92 (1982). The defendant failed to meet his

burden demonstrating disclosure was necessary for his defense (*People v. Clark*, 2013 IL App (2d) 120034, ¶ 33) and the trial court did not abuse its discretion when it denied defendant's request.

¶ 71 Defendant next asserts the trial court committed reversible error when it provided the jury the initial aggressor instruction because this instruction was unsupported by the evidence. This court reviews a trial court's decision to provide the jury with a specific instruction in a case for an abuse of discretion. *People v. Hammonds*, 399 Ill. App. 3d 927, 938 (2010).

¶ 72 At trial, the jury was instructed on defendant's theory that he acted in self-defense (720 ILCS 5/7-1 (West 2016)) and was also instructed on the theory that defendant had an unreasonable belief that self-defense was justified, warranting a conviction for second degree murder (720 ILCS 5/9-2(a)(2) (West 2016)). In addition to these two instructions, the State requested and the trial court provided, over defendant's objection, the following initial aggressor instruction:

> "A person who initially provokes the use of force against himself is justified in the use of force only if the force used against him is so great that he reasonably believes he is in imminent danger of death or great bodily harm, and he has exhausted every reasonable means to escape danger other than the use of force which is likely to cause death or great bodily harm to the other person." See Illinois Pattern Jury Instructions, Criminal, No. 24-25.09 (4th ed. 2000).

This instruction provides that a person may not provoke the use of force, retaliate, and then claim self-defense. *People v. Fleming*, 155 Ill. App. 3d 29, 32 (1987). Both the State and defendant are entitled to have the jury presented with instructions regarding their theory of the case, and only slight evidence regarding a party's theory justifies giving an instruction. *People v. Barnard*, 208 Ill. App. 3d 342, 349-50 (1991). A trial court errs when it submits a jury instruction when there is no evidence to support it. *People v. Williams*, 168 Ill. App. 3d 896, 902 (1988).

¶ 73 Self-defense and whether the defendant was the initial aggressor represent questions of fact for the jury to resolve. *People v. Crue*, 47 Ill. App. 3d 771, 773-74 (1977). "An initial aggressor instruction is warranted by the evidence when the State presents evidence showing the defendant to be the aggressor or, where the case involves a question of whether he was the aggressor." *People v. Salcedo*, 2011 IL App (1st) 083148, ¶ 37 (citing *People v. Brown*, 406 Ill. App. 3d 1068, 1079 (2011)). When an initial aggressor instruction is given along with justifiable use of force instruction, the jury is able to resolve the evidence pursuant to either hypothesis, and the submission of the former does not assume the defendant acted as the initial aggressor. *People v. Floyd*, 262 Ill. App. 3d 49, 56 (1994). The giving of both instructions permits the jury to identify the initial aggressor. *People v. Toney*, 337 Ill. App. 3d 122, 138 (2003). The purpose of the initial aggressor rule is to ensure that the defendant did not "provoke the quarrel and take advantage of it" by claiming self-defense to "justify the homicide." *Adams v. People*, 47 Ill. 346, 379 (1868).

¶ 74 Under the State's theory of the case, upon arriving at the scene defendant and co-defendant, Royal, exited their vehicle and immediately started to shoot at Washington and Faqua. The State denied Washington had a gun. Faqua did not see the vehicle approach, did not see either occupant exit, and did not see whether they were visibly armed. He also testified that no one said anything prior to shooting. Under defendant's theory, he went to find Washington in the hopes of having the hit on him removed. Upon reaching Washington's location, Washington noticed defendant and co-defendant exit the vehicle. Washington reacted by reaching for a revolver. Upon seeing Washington reach for a gun, defendant pulled his gun and shot Washington. Defendant testified that their firearms were concealed upon exiting the car.

¶ 75 Under either the State or defense's theory of the case, defendant took no action to provoke Washington into drawing his own firearm. *People v. Williams*, 168 Ill. App. 3d 896, 902-03 (1988) (trial court erred in giving instruction where no evidence was presented that defendant provoked the rival gang into using force against him). In *People v. Brown*, 406 Ill. App. 3d 1068, 1080 (2011), this court found the instruction was properly given because "the State argued defendant became the aggressor when he shot the three victims after they had abandon the initial confrontation." In *People v. De Oca*, 238 Ill. App. 3d 362, 368 (1992), the evidence supported giving the instruction because "the testimony indicates that the fistfight had ended and then the situation transformed into a different encounter when defendant displayed a loaded shotgun and shouted at the crowd which had gathered at the corner." Recently, in *People v. Salcedo*, 2011 IL App (1st) 083148, ¶ 39, we concluded the evidence supported giving the instruction because after the initial encounter, the evidence demonstrated the defendant could have become the initial aggressor when he displayed a weapon and chased down the victim. In this case, the State never presented any evidence of an initial encounter or a predicate action taken by defendant which provoked Washington.

¶ 76 We cannot accept the State's contention that "defendant's actions of going in search of Washington with a loaded gun clearly made him the aggressor." The State presented no evidence that Washington knew defendant was armed nor did the State present any evidence that defendant exited the vehicle with his gun already drawn in order to provoke Washington into pulling out his own firearm. *De Oca*, 238 Ill. App. 3d at 367 (a defendant may become the initial aggressor by pointing a loaded gun). Fuqua did not hear any words exchanged prior to the shooting. *Barnard*, 208 Ill. App. 3d at 350 (mere utterance of words is conduct which may qualify a defendant as the initial aggressor). Even the trial court recognized that mere arrival at

Washington's location did not make defendant the initial aggressor, "[s]o does going over to a location with a weapon in your pocket, does that make you *per se* the initial aggressor? My answer is, no, it does not."

¶ 77 Before this court, the State contends that since Washington put a hit on defendant, defendant should have known that arriving at Washington's location would provoke him into shooting at defendant. To accept the State's argument would in effect sanction Washington's criminal activity of putting a hit on defendant. We will not accept such a proposition, and since no evidence demonstrated defendant provoked Washington into drawing a weapon, the trial court abused its discretion in giving the initial provocation instruction.

¶ 78 We can also not say the inclusion of this instruction represented harmless error. Under harmless error "the State must prove beyond a reasonable doubt that the jury verdict would have been the same absent the error." *People v. Thurow*, 203 Ill. 2d 352, 363 (2003). The State took full advantage of the instruction in its rebuttal closing. The prosecutor stated:

> "Let's take defendant's logic all the way through. Let's just assume what he told us is true just for a hot moment. Let's do it, let's take it to the nth degree. So they are saying they have the right to defend themselves. That, 'I was so afraid of Raymond Washington, this man that would kill anything. He was a terrible man.' Blah, blah, blah. ['']Now he looks at me and makes that motion to his wais and I know what time it is and I'm going to dump a whole magazine at him.['] All right, so that's what we're doing here.
>
> *But wouldn't the reverse also be true? Because like remember a few minutes ago when Judge Brosnahan read you a set of instructions about initial aggressor?*
>
> [The prosecutor then read the initial aggressor instruction to the jury]
>
> Under the defendant's theory, let's suppose Raymond, as bad as he was, that he had it out for the defendant and he was gonna kill him. He tried to kill him in December, tried to kill him two times on April 23rd. Once at the liquor store, once at Madison and Homan. Terrible events that day.

> Let's assume all that is true. So these guys go to where Raymond Washington is. What, under the guise of making peace? Peace? They go to his building. So remember, they are already out of the car when Raymond looks at them and goes like this. But they are out of the car and Raymond goes like this. Here is two guys he has tried to kill two times that day. He is looking right at them. Doesn't he have a right to defend himself if that's the scenario they would like?
>
> [Objections from defense counsel]
>
> *When defendant went to Raymond Washington it was an escalation, if everything he's saying is true. He escalated the conflict.* You don't negotiate peace and go to somebody's house. You are not going to sing 'Kumbaya' with guns. You're not doing it. It didn't happen that way. It's fantasy." (Emphasis added).

The State's comments in rebuttal took full advantage of the initial aggressor instruction. The State argued that even if the jury believed defendant's version of events in its entirety; the inclusion of the initial aggressor instruction meant the jury would still have to convict defendant in the murder of Washington. *People v. Henderson*, 142 Ill. 2d 258, 323 (1990) (a defendant suffers substantial prejudice by a closing argument comment if it is impossible to say whether or not it resulted in the verdict of guilt). The State cannot demonstrate the jury would have reached the same conclusion absent the instruction's inclusion. Accordingly, the error was not harmless beyond a reasonable doubt. *Chapman v. California*, 386 U.S. 18, 24 (1967).

¶ 79 Defendant also argues several other jury instructions failed to properly convey the law to the jury. Defendant points out that while the issue instruction for first-degree murder contained the "not justified" language in the third proposition, the definitional instruction of first-degree murder contained no justification language. Defendant also points out that the issue and definitional instructions for aggravated battery did not include a reference to justification. Defendant concedes that this issue was not properly preserved. *People v. Piatkowski*, 225 Ill. 2d 551, 564 (2007).

¶ 80 Illinois Supreme Court Rule 451(c) provides that substantial defects are not waived by failure to make timely objections if the interests of justice require. *Id.* This rule "is coextensive with the plain-error clause of Supreme Court Rule 615(a)" and construed identically. *Id.* The question of whether the jury instructions accurately stated the applicable law is reviewed *de novo*. *People v. Parker*, 225 Ill. 2d 551, 564 (2007). In *People v. Rios*, 318 Ill. App. 3d 354, 362-64 (2000), this court, relying on *People v. Huckstead*, 91 Ill. 2d 536 (1982), and *People v. Casillas*, 195 Ill. 2d 461 (2000), held that a court should look at the "totality of the circumstances" to determine whether the exclusion of certain language in jury instructions constituted error.

¶ 81 When viewed with the initial aggressor instruction error, we conclude, the conflict between the issue instruction and definitional instruction of first-degree murder along with the failure to include the "without justification" language in both the issue and definitional instructions for aggravated battery constituted an error.

¶ 82 In regards to the first-degree murder instruction, we find this case distinguishable from *Rios*. *Rios* held that where the definitional instruction of first-degree murder does not contain the "without justification language" but the issue instruction does, and the self-defense instruction is given, the three instructions complement each other and there is no conflict. *Rios*, 318 Ill. App. 3d at 362. In reviewing the totality of the circumstances, the *Rios* court emphasized how both the State and defense properly conveyed the justification issue in their respective closing arguments. *Id.* at 363-64. Unlike *Rios*, the prosecutor in this case, told the jury that even if they believed defendant's version of events, the initial aggressor instruction meant defendant could not act with justification. This was the last thing the jury heard before deliberating.

¶ 83 In regards to the aggravated battery instructions, neither the definitional nor the issue instruction correctly stated the law. The jury was also not informed of the doctrine of transferred intent with regard to the affirmative defense of self-defense. *People v. Getter*, 2015 IL App (1st) 121307, ¶ 36 ("Under the doctrine of 'transferred intent,' the 'specific intent to kill one person in self-defense [may] be transferred to third parties ultimately affected by the acts of self-defense.' ") (quoting *People v. Smith*, 94 Ill. App. 3d 969, 973 (1981)). The aggravated battery instructions failed to properly convey the law. *People v. Pinkney*, 322 Ill. App. 3d 707, 717 (2000) (instructions should correctly convey the applicable principles of law so a jury can arrive at a conclusion that is in agreement with the law and the facts).

¶ 84 Defendant next argues that the State misrepresented the law during its rebuttal closing argument. Initially, we reject the State's contention that the issue has been forfeited. Defense counsel did object to the State's statements during rebuttal and defendant's *pro se* post-trial motion argues the trial court erred in overruling his objections during the State's rebuttal. Even if not properly preserved, forfeiture is a limitation on the parties and not this court. *People v. Curry*, 2018 IL App (1st) 152616, ¶ 36.

¶ 85 We have already determined that the initial aggressor instruction was given in error. A public prosecutor has wide latitude in closing arguments, but he "is not allowed to misstate the law or facts of the case," and "is not allowed to diminish its burden of proof." *People v. Carbajal*, 2013 IL App (2d) 111018, ¶ 29. Moreover, a prosecutor's misstatements in rebuttal are especially prejudicial, because a defendant lacks the ability to respond. *People v. Davilla*, 236 Ill. App. 3d 367, 383 (1991).

¶ 86 The prosecutor's statements in rebuttal prejudiced defendant because it removed the State's burden to prove that defendant acted without justification. If the jury believed everything

defendant said was true, then they would find he acted in self-defense. Defendant testified that his gun was not visible and it was Washington who immediately pulled out a gun. However, the State told the jury that in such an instance, Washington would have been justified in pulling a gun since he had tried to have defendant killed and could have believed defendant was there for revenge. The prosecutor in effect told the jury it does not matter which story to believe, the defendant is guilty either way. The State's rebuttal diminished the burden of proof it needed to convict defendant.

¶ 87 Defendant also argues the trial court improperly allowed the State to impeach him with a void AUUW conviction from 2006. The State acknowledges the AUUW is void and should not have been utilized at trial but argues it was harmless error. We disagree.

¶ 88 We find the case relied upon by the State, *People v. Scott*, 2015 IL App (1st) 131503, ¶¶ 40-42, to be distinguishable. In that case, this court found the inclusion to be harmless for several reasons: (1) it was only briefly mentioned in rebuttal, (2) defendant was not subject to cross-examination about it, (3) the prosecution did not argue defendant's credibility had been impeached, and (4) the jury was instructed it was not evidence of guilt. Unlike *Scott*, here, the State, in rebuttal, told the jury to evaluate the credibility of the defense witnesses and to keep in mind they were all felons. Moreover, the defendant's credibility was essential to his case. We cannot say the use of the void conviction was harmless beyond a reasonable doubt.

¶ 89 Even if one or two of the errors above could have had a *de minims* effect on defendant's trial, the collective effect of the errors found above denied defendant a fair trial. "[I]ndividual trial errors may not require a reversal, [but] those same errors considered together may have the cumulative effect of denying defendant a fair trial." *People v. Speight*, 153 Ill. 2d 365, 376 (1992). We are mindful that "when a defendant's right to a fair trial has been denied, [courts]

must take corrective action so that [it] may preserve the integrity of the judicial process." *People v. Blue*, 189 Ill. 2d 99, 138 (2000). " 'Whether guilty or innocent' " individuals subject to criminal proceedings are " 'entitled to a fair, orderly, and impartial trial.' " *Id.* (quoting *People v. Bull*, 185 Ill. 2d 179, 214 (1998). While defendant does not need to be accorded a perfect trial, an individual defendant does deserve a fair trial. *People v. Easley*, 192 Ill. 2d 307, 344 (2000). In this case an error occurred at every part of defendant's trial. Regardless of the weight of the evidence, defendant did not receive a fair trial. In order to preserve the "trustworthiness and reputation of the judicial process" we must order a new one be held. *Blue*, 189 Ill. 2d at 139.

¶ 90 In reversing and remanding, we decline to reach defendant's ineffective assistance claim or the issues he raises regarding the post-trial and sentencing phase.[1]

¶ 91 CONCLUSION

¶ 92 For the foregoing reasons, we reverse defendant's convictions for first-degree murder and aggravated battery and remand for a new proceeding consistent with this order.

¶ 93 Reversed and remanded for a new trial.

[1] On remand, we caution against using defendant's void AUUW conviction.