

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2014 IL App (4th) 120996-U

NO. 4-12-0996

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

November 12, 2014

Carla Bender

4th District Appellate

Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	McLean County
DAKODA DASHON PHERIGO,)	No. 11CF737
Defendant-Appellant.)	
)	Honorable
)	James E. Souk,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.

Justices Pope and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* Where the evidence was not closely balanced and defendant could have avoided the admission of the undisclosed statement with an objection, the trial court did not err by denying defendant's motion for a mistrial.

¶ 2 In September 2011, a grand jury indicted defendant, Dakota Dashon Pherigo, with one count of aggravated battery (720 ILCS 5/12-4.2(a)(1) (West 2010)), two counts of aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(1), (a)(2) (West 2010)), and one count of burglary (720 ILCS 5/19-1(a) (West 2010)). After an April 2012 trial, a jury found defendant not guilty of aggravated battery with a firearm and guilty of the other three charges. In June 2012, the McLean County circuit court sentenced defendant to concurrent prison terms of 14 years for one count of aggravated discharge of a firearm, 9 years for another count of aggravated discharge of a firearm, and 5 years for burglary. Defendant then filed a *pro se* motion to reconsider his sentence. After an October 2012 hearing, the court denied defendant's motion to

reconsider his sentence.

¶ 3 Defendant appeals, arguing (1) the trial court erred by declining to declare a mistrial based on the prosecutor's failure to disclose defendant's alleged jailhouse statement to his codefendant and (2) he is entitled to a new trial because the jury returned legally inconsistent verdicts. We affirm.

¶ 4 I. BACKGROUND

¶ 5 The four indictments were all related to defendant's alleged actions on June 23, 2011. The aggravated-battery indictment (count I) alleged that defendant, "or one for whose conduct he was legally responsible, knowingly and without legal justification caused injury to Jesus Garcia, by discharging a firearm in that he shot Jesus Garcia with a shotgun." Count II alleged defendant or someone for whose conduct he was legally responsible committed aggravated discharge of a firearm by knowingly discharging a firearm in Jesus's direction. Count III asserted defendant or someone for whose conduct he was legally responsible committed aggravated discharge of a firearm by knowingly discharging a firearm at the building located at 904 West Grove Street, Bloomington, Illinois, which he should have known was occupied and the firearm was discharged from a place outside the building. The burglary indictment (count IV) contended defendant or someone for whose conduct he was legally responsible knowingly and without authority entered the building of Walmart with the intent to commit a theft therein.

¶ 6 On Monday, April 9, 2012, the trial court commenced a jury trial on the aforementioned indictments. The State presented the testimony of (1) Richard Beoletto, a Bloomington police officer; (2) Tina Sigler, a resident at 904 West Grove Street and the mother of Jordan Graham; (3) Julian Kent Sigler (Kent), Tina's husband; (4) John Garland, a resident at 813 West Grove Street; (5) Scott Mathewson, a Bloomington police officer; (6) Diana Gehrt, an

acquaintance of defendant; (7) Jesus, a victim; (8) Stephen Norton, an asset protection associate at Walmart; (9) Jaime Garcia, Jesus's brother; (10) Dustin Johnson, a forensic scientist; (11) Dalton Starkey, a codefendant; (12) Martin Krylowicz, a Bloomington police officer; (13) Jack McQueen, a Bloomington police officer; and (14) Matthew Dick, a Bloomington police detective. The State also presented the video and audio recording of defendant's August 25, 2011, statement to Detective Dick; the Walmart surveillance video from June 23, 2011; and numerous pictures. The parties had a few stipulations. Defendant did not present any evidence. The evidence and testimony relevant to the issues on appeal are set forth below.

¶ 7 Tina testified that, on June 23, 2011, she lived at 904 West Grove Street in Bloomington, Illinois, with her husband, Kent, and three children, which including her son, Jordan Graham. Graham was 17 years old and a member of the Latin Kings gang. At around 10:30 p.m. that evening, she heard three rapid booms. Kent testified he heard three quick bags that sounded like a shotgun. Kent went outside and heard another shot down the street. After turning on the porch lights, he observed fresh damage to his front porch from buck shot spray.

¶ 8 Jesus, the victim of the later shot, testified that he was residing at 507 West Grove Street in Bloomington on the night of the incident. That night, he came home, shut his car door, and heard a gunshot. Jesus was shot in the head. He saw neither any vehicles in the area nor who shot him. Jesus did not know defendant. Jaime Garcia, Jesus's brother, testified Jesus was a member of the Latin Kings.

¶ 9 Starkey testified he was a member of the Hard Heads gang, which had an ongoing conflict with the Latin Kings in June 2011. On the evening of June 23, 2011, he was driving his truck around town with defendant, Juan Torres, and Emonte Kohl. Starkey had not known defendant for very long and did not hang out with him very much. They first drove around

Grove Street looking for a fight because "[e]veryone felt like fighting." Starkey knew Graham lived on Grove Street and that he was a Latin King. At the intersection of Lee and Grove Streets, Starkey saw Graham, Rob Gilliam, and Anthony Gibbs, all of whom were Latin Kings. Starkey stopped the truck, and everyone attempted to get out. Starkey explained it was difficult to get out of the bed of his pickup truck because the bed had a topper and the flap for the topper would not stay up on its own. Defendant was able to get out of the back of the truck, but Kohl did not. Graham came running toward them, and Starkey heard someone yell, "they got a gun." Starkey assumed it was Graham who had the gun because he kept messing with the waistband of his pants. Starkey, Torres, and defendant quickly got back into the truck. As they were driving away, Torres started talking about shooting Latin Kings and asking who wanted to shoot. Kohl indicated he wanted to shoot. Starkey drove back to Roosevelt Street around where defendant's brother lived and talked about what to do next. The group decided to go to Walmart to get bullets.

¶ 10 The four returned to Starkey's truck with Torres in the passenger seat and defendant and Kohl in the back. At Walmart, Torres, Kohl, and defendant went in first while Starkey locked the truck. Everyone went straight to the sporting goods section. Once there, Starkey went to the baseball bats, and defendant and Torres headed in a different direction. Starkey did not see anyone remove the bullets from the shelf. When Starkey saw Kohl and defendant walking towards the exit, he began walking to the exit. They all met up at the truck. This time defendant sat in the passenger seat, and Torres was in the back with Kohl. Starkey observed defendant had around six loose bullets. Starkey drove the truck to Torres's home to get the gun. Torres's mother and brothers were home, so Torres could not get the gun until they left. Once Torres's mother left, Starkey saw Torres pull the gun wrapped in a blanket out of Torres's

abandoned van. Starkey was not sure where defendant was when Torres got the gun from the van. Torres put the gun in the back of the truck, and the same four people got back into the truck. Defendant said nothing about not wanting to get back in the truck.

¶ 11 When they got back in the truck, Starkey was driving, Torres was in the passenger seat, and defendant and Kohl were in the bed of the pickup. They drove by Graham's house on Grove Street to point it out to Kohl, who did not know where Graham lived. It was about 10 p.m. Starkey assumed defendant pointed out where Graham lived because defendant knew the location. They drove around the block and headed back to Graham's house. Starkey slowed down, and Kohl started shooting at the house. According to Starkey, the plan was for defendant to hold open the window at the back of the topper while Kohl fired the gun. However, Starkey did not see defendant lift up the window because he was driving. Kohl shot three times, and Starkey drove away quickly.

¶ 12 As he was driving down Grove Street, a truck pulled in front of Starkey, Starkey recognized the truck as belonging to Jesus. Jesus pulled over and parked his truck. As Starkey drove by the truck, Torres told Starkey to stop. Starkey did so, and Torres opened the door and got out. Torres asked for the gun, which he received through the window in between the topper and the truck's cab. Starkey did not know who passed the gun forward. Torres stepped a couple of feet away from Starkey's truck and shot the gun. Torres got back into the truck, and defendant drove off.

¶ 13 Starkey further testified Kohl had stated he did not know how to load a shotgun. Defendant did know how to load one because he had dealt with guns before. Starkey believed defendant used gloves while he loaded the shotgun for Kohl. However, he did not see defendant do so and did not know from where the gloves came. After shooting Jesus, Starkey drove to

Steven Phillips' home, where they left the gun, bullets, and gloves. Starkey left Phillips' house by himself and drove to Torres's home. After about 45 minutes, everyone else, including defendant, arrived at Torres's home. They eventually left Torres's home and went to Roosevelt Street. At around 2 or 3 a.m. on June 24, 2011, defendant's mom came out on the porch with her cellular telephone (phone) and had an article about the shooting on her phone. Additionally, Starkey identified everyone in the group on the Walmart surveillance video and noted defendant was the one with the long sleeves.

¶ 14 On cross-examination, Starkey admitted he first denied having anything to do with the June 23, 2011, shootings. Starkey eventually received the same charges that defendant did. Pursuant to a plea agreement, the most serious aggravated-discharge-of-a-firearm charge was dismissed, and Starkey pleaded guilty to the other one. Starkey also agreed to testify truthfully in this case. Additionally, Starkey denied anyone offered defendant money to shoplift.

¶ 15 During redirect examination, the prosecutor asked Starkey the following questions:

"Q. Did anyone ever talk to you about what to say, other than to tell the truth?

A. I mean a couple of people inside the jail had brought up ideas, trying to get myself out of the situation.

Q. Such as whom?

A. I mean people I have been in the blocks with or in jail with and also while we were in GED class, me and [defendant] were talking.

Q. Did you ever speak to [defendant] about what you were

going to say in this case?

A. I told him I was planning to talk to Detective Dick.

Q. All right, and did [defendant] ever talk to you about what to say to Detective Dick?

A. Yes, we talked about it several times.

Q. What did he say?

A. He said to try to follow the same story as he said.

Q. And what was his story?

A. That he was paid to steal bullets and that he didn't know nothing about the shooting and that I didn't know much about the shooting either, stuff like that."

Defense counsel made no objections during the aforementioned questioning and, on recross-examination, asked Starkey some questions about his prior denial of being involved in the shootings. After Starkey's questioning was over, defense counsel moved for a mistrial, asserting it never should have been mentioned that his client was in jail and he was unaware defendant had made any statements to and discussed this case with Starkey. The State noted that it had learned of the statements the Friday before trial when it met with Starkey in the presence of his attorney. The prosecutor admitted not disclosing the information and did not have a reason for failing to disclose defendant's statement to Starkey. The prosecutor did note Starkey was a known witness and believed defense counsel had people talk to Starkey. Defense counsel admitted he had not interviewed Starkey before trial. The trial court reviewed the matter over lunch, including reading the transcript of defendant's statement to Detective Dick. The court denied the motion, finding (1) defendant failed to object to the testimony, which with an objection, could have been

cut off quickly; (2) the jury's learning defendant was in custody at some point was insufficient to warrant a mistrial; and (3) the undisclosed statement was not prejudicial enough to warrant a mistrial. The court offered to instruct the jury to disregard the jail conversation and/or the fact someone has been in jail should not be used against them but defense counsel requested nothing more be said about the jail conversation.

¶ 16 Norton, the Walmart employee, testified that, within a week of the theft, he found a case of shells with five shells missing. The missing shells were Winchester 20-gauge target load shells. Johnson, the forensic scientist, testified the shell casing found in the 500 block of West Grove Street was shot from the gun recovered near 2513 Bunn Street, which was in a gym bag with one Winchester 20-gauge shotgun shell and six more Winchester 20-gauge shotgun shells inside a white glove. At most, the shotgun could hold three shells at a time. Moreover, Johnson testified the gun was typically shot using both hands but could be fired with one hand. Johnson explained it would be more difficult to use with one hand, but it was possible to use only one hand.

¶ 17 Gehrt testified she had known defendant for three to four years and went to the police station on June 29, 2011, to give information about the shootings on Grove Street. Defendant and Cameron Allen had been hanging out at her house, and Gehrt, who wears two hearing aids, heard them laughing and saying something about a shooting. Gehrt asked defendant what he was talking about, and defendant responded he and two others were in a truck and they were the ones involved in the shooting on Grove Street. Defendant said he did not do the shooting but was with the two people who did. Defendant refused to tell her who the other two people were. Defendant also mentioned the target of the shooting was a "high-rank Latin King." Defendant was smiling while he told Gehrt about the shooting. On cross-examination,

when asked if defendant was not proud of his actions, Gehrt described defendant as "bragging" about the shootings. Gehrt's ability to hear defendant's statements was not challenged on cross-examination.

¶ 18 The State also presented the videotape with audio of defendant's August 26, 2011, statement to Detective Dick. At first, defendant denied any participation in the shootings. His story changed several times, but in the end, it was pretty similar to Starkey's testimony. Defendant denied being in a gang. Moreover, he claimed Torres had a bat when he exited the truck when they saw Graham and his friends near Lee Street. Defendant also indicated the Latin Kings did not yell at him. He admitted stealing the bullets at Walmart but stated he refused at first. He later "choked up" and stole the bullets because he was afraid of Torres. After obtaining the gun, defendant stated it was Kohl who loaded the gun, not himself. Defendant also denied holding the window open so Kohl could shoot. Defendant claimed he was surprised when Kohl began firing at Graham's home but could not escape from the truck. Defendant also told Detective Dick that, the day after the shooting, he was hanging out at his brother's house with Torres, Starkey, and Kohl, and his mother made an "ugly a** face" at the other three boys and told defendant he should not be hanging out with them.

¶ 19 After hearing all of the events and the parties' arguments, the jury found defendant not guilty of aggravated battery with a firearm but guilty of the two counts of aggravated discharge of a firearm and one count of burglary. Defendant did not file a posttrial motion. On June 1, 2012, the trial court sentenced defendant to concurrent prison terms of 14 years for the first count of aggravated discharge of a firearm, 9 years for the second count of aggravated discharge of a firearm, and 5 years for burglary. On June 6, 2012, defendant filed a *pro se* motion to reconsider his sentence. After an October 1, 2012, hearing, the court denied

defendant's motion to reconsider his sentence. On October 23, 2012, defendant filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 606 (eff. Mar. 20, 2009). Thus, this court has jurisdiction under Illinois Supreme Court Rule 603 (eff. Oct. 1, 2010).

¶ 20

II. ANALYSIS

¶ 21

A. Mistrial

¶ 22 Defendant first asserts the trial court should have granted his motion for a mistrial based on the prosecution's failure to disclose defendant's alleged jailhouse statements to Starkey. The State asserts defendant has forfeited this issue by failing to raise it in a posttrial motion. See *People v. Enoch*, 122 Ill. 2d 176, 186, 522 N.E.2d 1124, 1130 (1988). Defendant disagrees and argues that, even if the issue is forfeited, this court should review the issue for plain error or ineffective assistance of counsel. Since the first step of reviewing an issue for plain error is determining whether an error occurred (*People v. Sargent*, 239 Ill. 2d 166, 189, 940 N.E.2d 1045, 1059 (2010)), we begin our analysis by examining that issue and will only address the State's forfeiture issue if the need arises.

¶ 23 "A mistrial should be granted where an error of such gravity has occurred that the defendant has been denied fundamental fairness such that continuation of the proceedings would defeat the ends of justice." *People v. Nelson*, 235 Ill. 2d 386, 435, 922 N.E.2d 1056, 1083 (2009). A reviewing court will not disturb a trial court's denial of a mistrial absent a clear abuse of discretion. *Nelson*, 235 Ill. 2d at 435, 922 N.E.2d at 1083. A clear abuse of discretion occurs when "the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court." *People v. Hall*, 195 Ill. 2d 1, 20, 743 N.E.2d 126, 138 (2000).

¶ 24 In this case, it is uncontested the State violated criminal discovery rules by failing to disclose defendant's alleged statement to Starkey. While Illinois courts do not condone nondisclosure by the State, our supreme court has stated the failure to comply with discovery rules does not require a new trial in every instance. *People v. Lovejoy*, 235 Ill. 2d 97, 120, 919 N.E.2d 843, 856 (2009). A new trial should only be granted when the defendant, who bears the burden of proof, demonstrates he or she was prejudiced by the discovery violation and the trial court failed to eliminate the prejudice. *Lovejoy*, 235 Ill. 2d at 120, 919 N.E.2d at 856. Illinois courts consider several factors "when determining whether a new trial is warranted, including the closeness of the evidence, the strength of the undisclosed evidence, and the likelihood that prior notice would have helped the defense discredit the evidence." *Lovejoy*, 235 Ill. 2d at 120, 919 N.E.2d at 856. Another factor is the willfulness of the State in failing to disclose the statement. *People v. Weaver*, 92 Ill. 2d 545, 560, 442 N.E.2d 255, 261 (1982). Additionally, when determining if actual surprise or prejudice existed, courts consider the remedies sought by the defendant, such as whether the defendant requested a continuance. *Lovejoy*, 235 Ill. 2d at 120, 919 N.E.2d at 856.

¶ 25 *1. State's Willfulness*

¶ 26 In this case, the State acknowledges it did not disclose defendant's statement to Starkey to defense counsel. However, the record shows Starkey was a codefendant and known witness, whose testimony was primarily about the shooting; the State learned of the statement shortly before trial; the undisclosed statement was inconsistent with defendant's actual statement to police; and the State did not appear to intentionally ambush defendant with the statement as around five or six questions lead up to the undisclosed statement. Thus, this case is vastly different from the ones cited by defendant. See *People v. Tripp*, 271 Ill. App. 3d 194, 204, 648

N.E.2d 241, 248 (1995) (undisclosed statement was an entire area of the State's case against defendant, the defendant had made a discovery request after the State had learned of the undisclosed evidence, and the State surprised the defendant with the motive testimony); *People v. Agyei*, 232 Ill. App. 3d 546, 555, 597 N.E.2d 696, 702 (1992) (the witness's testimony was solely about the undisclosed confession). Accordingly, while the State's handling of defendant's statement to Starkey was improper, its actions were negligent and not as egregious as those in the cases highlighted by defendant.

¶ 27

2. Closeness of the Evidence

¶ 28

Defendant contends the evidence at his trial was close and came down to his credibility versus Starkey's credibility. However, very few differences existed in their description of the night of the shootings. Thus, this case presents a very different situation from the one in *People v. Boucher*, 62 Ill. App. 3d 436, 438, 379 N.E.2d 339, 341 (1978), where the defendant denied having any contact with his codefendant/State witness on the date in question. In fact, in defendant's voluntary statement to police, in which defendant gave several different versions of what occurred on the night in question, defendant admitted the following: (1) being with Starkey and the other two men when they encountered the Latin Kings on the street, (2) going with the other three to Torres's home where he heard Torres and Kohl test shoot a gun once and saw something covered with a towel put into the back of the truck, (3) stealing the bullets from Walmart that were used in the shootings, (4) being in the truck with the other three during the shootings at Latin King related targets, (5) leaving the scene of the shootings in the truck with the other three, and (6) being with the other three the next morning when his mother learned of the shootings and expressed her disapproval of defendant's companions. Moreover, defendant never reported the incident to the police and only requested to talk to the police after

his arrest on the charges in this case. In addition to defendant's own changing story to the police, the State presented the Walmart surveillance video showing defendant in close proximity to the other three at Walmart on the night of the shootings. It also presented the testimony of Gehrt that defendant was at her residence a few days after the shootings and was "bragging" about being with the two individuals when they committed the shootings. According to Gehrt, defendant further stated the target of the shootings was "a high-rank Latin King." Several witnesses testified the shooting victim was a Latin King, and a Latin King resided at the home where the first three shots were fired.

¶ 29 Moreover, in addition to the undisclosed statement, the only additional information Starkey added that defendant highlights was defendant pointed out Graham's home to Kohl, loaded the gun for Kohl, and held up the flap on the back of the truck for Kohl to shoot. Defendant fails to cite any legal authority on accountability that shows the additional evidence Starkey provided beyond defendant's own admissions was necessary to prove defendant guilty of aggravated discharge of a firearm based on an accountability theory. Here, Starkey's additional testimony only strengthens an already strong case for the State, and thus, contrary to defendant's assertion, this case did not come down to whether the jury believed Starkey or defendant. Accordingly, we find defendant has failed to show the evidence was closely balanced.

¶ 30 *3. Strength of the Undisclosed Evidence*

¶ 31 Defendant contends his undisclosed statement was powerful evidence because of the closeness of the evidence and the case depending on a question of credibility. As we have explained with the prior factor, credibility was not a major issue, considering defendant's admissions to Detective Dick and the other corroborating evidence. The undisclosed statement had little weight, considering defendant admitted to stealing the bullets from Walmart without

mentioning the others paid him to do so. Defendant also admitted to having knowledge of the gun and being with the others before and after the commission of the shootings. Such circumstances contradict his denial of knowing about the shootings. Additionally, the jury received Illinois Pattern Jury Instruction, Criminal, No. 3.17 (4th ed. 2000), which provides, in part, that "[w]hen a witness says he was involved in the commission of a crime with the defendant, the testimony of that witness is subject to suspicion and should be considered by you with caution." That instruction further weakened the weight of the undisclosed statement since Starkey participated in the shootings. Accordingly, we disagree with defendant the undisclosed statement was powerful credibility evidence.

¶ 32 *4. Prior Notice*

¶ 33 Defendant further argues that, if he had prior notice of the statement, he may have been able to discredit the undisclosed statement or change trial strategy to account for it. However, Starkey was a known witness, whom the defense failed to interview before trial. Given defendant's known statements to Gehrt, it should not have been too much of surprise defendant talked about the shootings with a codefendant. Our supreme court has stated that, "where defendant has not interviewed the known witness, any claim of surprise and prejudice is negated." *People v. Pasch*, 152 Ill. 2d 133, 193, 604 N.E.2d 294, 319 (1992). Additionally, defense counsel asked Starkey on cross-examination, which was before the testimony of the undisclosed statement, whether anybody had offered defendant money to shoplift the bullets. Such a question indicates defense counsel was aware of some claims that defendant was paid to shoplift the bullets, which further negates any claim of surprise and prejudice from the undisclosed statement.

¶ 34 Moreover, this case is distinguishable from the supreme court's decision in

Weaver cited by defendant. There, the defense counsel informed the court the defendant denied having made the statement. *Weaver*, 92 Ill. 2d at 560, 442 N.E.2d at 261. Moreover, the defense counsel explained that, if he had had the opportunity, he would have (1) taken a statement from the witness who gave the undisclosed admission made during a telephone conversation; (2) interviewed the witness's mother, who was also present at the alleged admission, and any other individuals who should have seen the witness before or after the conversation; and (3) checked to see if a long-distance call had in fact been made. *Weaver*, 92 Ill. 2d at 561, 442 N.E.2d at 261. Here, defendant just claims he may have been able to discredit the undisclosed statement but has not even denied making the statement. Accordingly, we note the prior notice factor does not indicate defendant was prejudiced by the undisclosed statement.

¶ 35

5. Remedies Sought by Defendant

¶ 36

As the trial court pointed out, defense counsel could have objected to Starkey's testimony and avoided the problem altogether. Instead, he let the undisclosed statement come in and moved for a mistrial after the witness was done testifying. A review of the State's questioning of Starkey, which is set forth in the background section of this order, indicates defense counsel had several opportunities to object to the State's line of questioning. This was not a situation where the witness just blurted out the undisclosed statement with just one question. The State asked several questions that led up to Starkey testifying about the undisclosed statement. Moreover, defendant declined the trial court's offer to admonish the jury to disregard Starkey's testimony about the undisclosed statement. Defendant also did not seek a continuance to address the new evidence. Our supreme court has noted its disapproval of a defendant requesting the most drastic measures, such as a mistrial, when a less drastic measure could have been sought. See *People v. Robinson*, 157 Ill. 2d 68, 78-79, 623 N.E.2d 352, 357-58

(1993).

¶ 37 Accordingly, after reviewing the factors set forth by our supreme court and the other relevant factors in this case, we find defendant failed to establish prejudice from the undisclosed statement. Thus, the trial court did not err by denying defendant's motion for a mistrial, and we need not address whether plain error occurred or whether defendant was denied effective assistance of counsel by counsel's failure to preserve the issue.

¶ 38 B. Legally Inconsistent Verdicts

¶ 39 Defendant also asserts he is entitled to a new trial because the jury's acquittal of him on the aggravated-battery-with-a-firearm count was inconsistent with its finding him guilty of aggravated discharge of a firearm against Jesus. However, he recognizes this court is bound by our supreme court's decision in *People v. Jones*, 207 Ill. 2d 122, 134, 797 N.E.2d 640, 647 (2003), where it overruled *People v. Klingenberg*, 172 Ill. 2d 270, 665 N.E.2d 1370 (1996), and held defendants in Illinois could no longer challenge convictions solely on the basis they were legally inconsistent with acquittals on other charges. Defendant raises the issue solely to preserve it for further appeal. Accordingly, we continue to follow *Jones* and deny defendant's request for a new trial.

¶ 40 III. CONCLUSION

¶ 41 For the reasons stated, we affirm the judgment of the McLean County circuit court. As part of our judgment, we grant the State's request that defendant be assessed \$75 as costs for this appeal.

¶ 42 Affirmed.