2013 IL App (5th) 110364-U

NO. 5-11-0364

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Effingham County.
	)	
v.	)	No. 10-CF-162
	)	
RANDAL E. DYE,	)	Honorable
	)	Kimberly G. Koester,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Justices Welch and Wexstten concurred in the judgment.

ORDER

¶ 1 *Held*: The State presented sufficient evidence to prove beyond a reasonable doubt that the defendant did not act in self-defense when he punched the victim. The defendant was not prejudiced by admission of evidence that he claimed to have a gun.

¶ 2 The defendant, Randal E. Dye, appeals his convictions for aggravated battery and reckless driving, arguing that (1) he was not proven guilty of aggravated battery beyond a reasonable doubt because the State presented insufficient evidence to refute his claim of self-defense and (2) the State presented irrelevant and prejudicial evidence that he told bystanders that he had a gun. We affirm.

¶ 3 The charges at issue in this appeal stem from an altercation that took place at a tavern during the early morning hours of August 1, 2010. The defendant was seated at the bar in the Blue Mound Tavern when Angel Waller walked into the tavern. Waller is the mother of the defendant's son and his on-again, off-again girlfriend. She was angry at the defendant

because he had not returned her phone calls or responded to her text messages. When she walked into the tavern, Waller thought that the defendant was about to put his arm around a woman standing near him at the bar. She pulled the woman's hair and confronted the defendant. The defendant got down from his barstool, turned to face Waller, and punched her in the face. According to most of the witnesses who testified at trial, Waller did not strike or attempt to strike the defendant before he hit her. Waller, however, testified that she punched the defendant twice in the mouth before he hit her. Waller was knocked to the floor.

¶ 4 Patrons at the bar intervened almost immediately. The defendant was pulled away from Waller and escorted to the parking lot. Many of the patrons in the bar went out to the parking lot to see what was going on. The defendant began walking toward his truck, then turned back toward the crowd of people gathered near the entrance. According to some witnesses, he said that he had a gun; however, their accounts varied considerably. One witness thought the defendant said that if he had his gun with him, he would shoot the people who had escorted him from the bar. Another thought the defendant asked where Angel Waller was and said that he had a gun in his truck. No witnesses actually saw the defendant brandish a gun. At this point, the defendant got into his truck, backed out of his parking space, and drove toward the crowd at least twice before leaving. The defendant drove fast enough to fling rocks from the gravel parking lot, and bystanders had to move out of the way to avoid being hit.

¶ 5 Angel Waller left the Blue Mound Tavern as soon as bar patrons pulled the defendant away from her. She sustained a bruise on her face as a result of the defendant's blows. Initially, Waller resisted the attempts of investigating officers to interview her regarding the events at the Blue Mound Tavern. The defendant, however, called the sheriff's department and reported that his ex-girlfriend, Angel Waller, hit him at the Blue Mound Tavern. He was subsequently arrested and charged with aggravated battery (720 ILCS 5/12-4(b)(8) (West

2010)) and reckless driving (625 ILCS 5/11-503 (West 2010)).

¶ 6 After the defendant was arrested, Waller filed a letter with the court stating that the defendant did not harm her, she was not even at the Blue Mound Tavern on the night in question, and she would not testify in the case against him. Nearly three months later, Detective Bill Arnold was able to interview Waller. She told him that when she went to the Blue Mound Tavern that night, she was in violation of a court order prohibiting her from contacting the defendant. She admitted, however, that the defendant hit her. She further admitted that he hit her more than once even after she was knocked to the floor. In January 2011, shortly before the defendant's trial, Waller filed a second letter with the court. This time, she stated that she did not know whether the defendant was the person who hit her. She thought that she may have been hit by the woman whose hair she pulled.

¶ 7 The matter came to trial in February 2011. Because the differences in the testimony of the witnesses are at issue in the defendant's argument, we will set out their testimony in some detail.

¶ 8 The State presented the following testimony regarding the defendant's altercation with Angel Waller inside the bar. Amber Booher, a bartender who was working at the Blue Mound Tavern when the events at issue took place, testified that the defendant was sitting at the bar with a friend. He had been there for approximately an hour before the altercation began. Booher testified that she went to the back room for a few minutes, and when she returned, she saw the defendant get off his barstool and turn around to face Waller. Then, she testified, "he just started punching her." Booher stated that Waller attempted to defend herself by holding her hands in front of her face, but she did not hit the defendant. The defendant punched Waller in the face two or three times. Booher testified that he hit Waller hard, and Waller fell to the floor. She further testified that the defendant did not appear to be angry before the incident, but during and after the altercation, he appeared to be

"enraged."

¶ 9 Booher testified that bar patrons pulled the defendant off of Waller and escorted him to the parking lot. She did not see whether Waller was injured and did not know where Waller went after the incident. She acknowledged that she did not see what took place just prior to the defendant punching Waller because she was in the back room. She noted, however, that she was in the back room for less than five minutes.

¶ 10 Dick Evans also testified for the State. He was at the Blue Mound Tavern that night to hear the Crazy Horse Band perform. His cousin, Marty Evans, who also testified in this case, is the lead singer of the Crazy Horse Band. We note that there are three witnesses in this case whose last name is Evans. For the sake of clarity, we will refer to these witnesses by their first names. Dick testified that he was sitting at a table about 10 feet away from the bar with several friends and family members. Just after the band finished playing, he saw Angel Waller walk to the bar and pull Holly Hendricks' hair. He could not hear all that Waller said to Hendricks, but he did hear her ask Hendricks if she had been "messing with her man." Waller then approached the defendant. The defendant got up from his barstool and confronted Waller. Dick testified that the defendant threw three or four "full roundhouse punch[es]" before being pulled away from Waller by other patrons. He testified that Waller did not strike the defendant. He saw blood coming from Waller's nose or mouth. The defendant appeared to be very angry during the altercation.

¶ 11 J.R. Evans, Dick's son-in-law, testified that he saw the defendant turn around and start striking Angel Waller in the back of her head. J.R. did not see what led up to the altercation. He testified that the defendant hit Waller aggressively, swinging hard and punching her with a closed fist. He did not see Waller strike the defendant. He did not see Waller fall. J.R. and other patrons helped pull the defendant off of Waller, but J.R. stayed in the bar while the others escorted the defendant to the parking lot. On cross-examination, J.R. testified that he

was facing away from the bar initially, and the defendant was already hitting Waller when J.R. turned around.

¶ 12 Holly Hendricks testified that she was at the bar with her boyfriend, Kyle Kelly. Kelly was seated at the bar near the defendant, but Hendricks was ready to leave and was standing next to Kelly, waiting for him. She testified that "out of nowhere," she felt someone grab her hair and pull her back. She testified that the defendant pulled Waller off of her, and the two then "got into a physical altercation." Hendricks testified that the defendant "just snapped" and was "in a rage." He "jumped out of the chair," grabbed Waller, and began hitting her hard with a closed fist. Asked whether she saw Waller hit the defendant, Hendricks replied: "I couldn't really tell. It was all happening too quickly. But it seemed like it was coming from both sides, but it seemed like he definitely had the upper hand. He was a lot bigger." Hendricks did not think Waller fell. On cross-examination, Hendricks testified that she thought the defendant struck the first blow, but she was not certain. She also testified that she was quite shaken up by the incident.

¶ 13 Kristy Hallmark, another bar patron, testified that she was sitting at the bar when the events at issue transpired. She stated that the defendant appeared to be flirting with a "thinner brunette girl" when Waller approached and grabbed the girl by the hair. Hallmark testified that the defendant then punched Waller. She testified that he struck Waller so hard that she could hear it over the music, which was very loud. She said, "It sounded like a two by four had broken." Hallmark saw the defendant hit Waller three times. She next saw Waller step back to try to get away from the defendant. Waller then fell to the floor. Hallmark did not see Waller strike the defendant or attempt to strike him or push him.

¶ 14 Truman Rhodes testified that he noticed the defendant and his friend about an hour before the incident because they were loud. Rhodes testified that Waller approached the defendant, and the two began yelling at each other. He testified that Waller "reached up in

the air open-handed and acted like she was going to hit him." Rhodes did not see Waller strike the defendant, however. Instead, the defendant punched Waller at least twice. The first time, he was sitting on his barstool. According to Rhodes, the defendant then "got up and he really hit her. He knocked her down." Rhodes and another patron got the defendant into a headlock and escorted him out of the bar. On cross-examination, Rhodes acknowledged that he was facing away from the bar when the defendant and Waller began yelling at each other. Rhodes did not see whether Waller was injured.

¶ 15 Angel Waller was the lone defense witness. She testified that at the time the incident occurred, there was an order prohibiting her from having contact with the defendant. She explained that the order was entered in a domestic battery case against her, which was subsequently dismissed. Waller testified that in spite of the order, she attempted to call the defendant "probably 30 to 50" times that day, but he did not answer any of her calls. She also sent him approximately 30 to 50 text messages, but he did not respond. Waller testified that this angered her, so she went looking for the defendant to confront him.

¶ 16 Waller testified that she walked into the Blue Mound Tavern and saw the defendant sitting at the bar next to Hendricks. She thought he was about to put his arm around Hendricks. Waller approached them, pulled Hendricks' hair, and asked the defendant, "Who is this bitch?" She testified that the defendant turned around to face her. When he did so, Waller let go of Hendricks' hair and punched the defendant in the mouth as hard as she could. She testified that she hit him twice. After the second punch, the defendant stood up and hit her once. Waller fell to the floor, dazed. She was hit a second time while she was lying on the floor. She assumed that it was the defendant who hit her, but she was not certain. Waller testified that she saw herself as the aggressor in the incident. She insisted that her intent was to continue hitting the defendant "as long as [she] could."

¶ 17 On cross-examination, Waller was asked if she was afraid of the defendant. She

replied no. However, she was confronted with a recording of a phone call between her and the defendant while the defendant was in jail awaiting trial on these charges. During that call, Waller told the defendant that she was afraid of him. Waller acknowledged telling the defendant that, but she explained that she was only afraid of the defendant when he was drunk. Waller also acknowledged that during the phone call, the defendant told her not to testify that she was afraid of him.

¶ 18 The State's attorney asked Waller, "This is not the first time that Randy has battered you, is it?" Waller initially refused to answer. When told that she had to answer the question, she replied: "No. We have battered each other, yes."

¶ 19 Waller was then questioned about a previous incident in which she reported a domestic disturbance and applied for an order of protection against the defendant. Waller acknowledged that she requested an order of protection. In support of her request, Waller alleged that after breaking up with the defendant and moving out of the home they had shared, she returned to the home to retrieve some of her belongings. The defendant threw her to the floor. Waller acknowledged making these allegations. She further acknowledged that she later decided she did not wish to press charges. In addition, Waller acknowledged that she wrote letters to the court and prosecutor asking that the defendant be released from jail.

¶ 20 The prosecutor questioned Waller about the various inconsistent statements she had made regarding the events at issue, including the two letters she sent to the court and her interview with Detective Arnold. Waller acknowledged making the statements. Significantly, she acknowledged telling Detective Arnold that the defendant hit her "a couple of more times" after she was knocked to the floor. Waller admitted that she lied in her first letter when she wrote that she was not present when the events at issue unfolded. She testified that she lied because she was afraid charges might be filed against her if she told the

truth.

¶ 21 The State presented the following testimony regarding what took place in the parking lot after the defendant was escorted from the bar. Amber Booher testified that she and several other people went outside to see what happened. She saw the defendant walking toward his truck with his friend. She heard him say, "I've got a gun." Then, the defendant got into his truck, backed up, and drove toward the crowd gathered outside the entrance to the bar. Booher testified that the defendant then backed up and drove towards the crowd a second time. She explained that the parking lot is gravel, and the defendant spun his tires and kicked up gravel both times he made passes at the crowd. She testified that two or three of the people gathered outside had to move to get out of the way because the defendant "came close to hitting them."

¶ 22 Dick Evans' testimony was mostly consistent with Booher's. He testified, however, that the defendant asked where Waller was and said, "I got a gun in my truck and I'm going to shoot her." He also testified that the defendant revved his truck and drove toward the crowd three or four times. J.R. Evans did not go outside immediately after the defendant was escorted out. He testified that he went out approximately three minutes later. At that point, he saw the defendant drive his truck toward the crowd four or five times. His testimony was otherwise consistent with that of Dick Evans and Amber Booher. Kristy Hallmark also testified that the defendant kicked up gravel with his truck in the parking lot. She testified that he made two passes at the crowd before leaving.

¶ 23 Truman Rhodes testified that the defendant walked out of the bar quietly and Rhodes thought at this point that "everything seemed to be over." He testified that the defendant started walking toward his truck, but then turned around, started walking back toward the crowd, and said, "If I had my gun, I would shoot you guys." Then the defendant got into his truck. Rhodes testified that he never saw the defendant brandish a gun. Rhodes then testified

that the defendant drove his truck toward the crowd twice before leaving the parking lot. He stated that no one was hit, but he thought it looked like the defendant was trying to hit people with the truck.

¶ 24 Marty Evans likewise testified that the defendant started walking toward his truck, then turned around and walked toward the crowd. According to Marty, the defendant said that he had a gun. However, Marty did not see a gun. The defendant then got into his truck, backed out of his parking space, and drove "right towards the crowd." Marty had to get out of the way to avoid being hit. He testified that the defendant made two passes at the crowd before leaving.

¶ 25 A jury found the defendant guilty. The court subsequently sentenced the defendant to 10 years in prison. After the defendant's posttrial motions were denied, he filed the instant appeal.

¶ 26 The defendant first argues that he was not proven guilty beyond a reasonable doubt of aggravated battery because the State did not present sufficient evidence to disprove his claim that he acted in self-defense. We disagree.

¶ 27 Self-defense is an affirmative defense which must be raised by a defendant. Once the defendant properly raises a claim of self-defense, the State must prove beyond a reasonable doubt that the defendant did not act in self-defense in addition to providing proof beyond a reasonable doubt of each element of the offense charged. *People v. Lee*, 213 Ill. 2d 218, 224-25, 821 N.E.2d 307, 311 (2004); *People v. Jeffries*, 164 Ill. 2d 104, 127, 646 N.E.2d 587, 597-98 (1995). In order to require the State to disprove a defendant's claim of self-defense, however, the defendant must present at least some evidence of each of the elements of self-defense. *Jeffries*, 164 Ill. 2d at 127-28, 646 N.E.2d at 598; *People v. Dickey*, 2011 IL App (3d) 100397, ¶ 14, 961 N.E.2d 816. Those elements are: (1) the defendant was threatened with unlawful force; (2) the defendant was not the aggressor; (3) the danger of harm was

imminent; (4) the defendant's use of force was necessary to prevent the threatened harm; (5) the defendant "actually and subjectively" believed both that the danger of harm existed and that the force used was necessary to prevent the threatened harm; and (6) the defendant's beliefs were objectively reasonable. *Lee*, 231 Ill. 2d at 225, 821 N.E.2d at 311 (citing 720 ILCS 5/7-1 (West 1998); *Jeffries*, 164 Ill. 2d at 127-28, 646 N.E.2d at 598). "If the State negates *any one* of the self-defense elements, the defendant's claim of self-defense must fail." (Emphasis in original.) *Jeffries*, 164 Ill. 2d at 128, 646 N.E.2d at 598.

¶ 28 It is important to note that a defendant claiming self-defense is only justified in using force "*to the extent* that he reasonably believes that such conduct is necessary to defend himself ***." (Emphasis added.) *People v. Belpedio*, 212 Ill. App. 3d 155, 160, 569 N.E.2d 1372, 1375 (1991). Thus, a claim of self-defense will fail where the defendant uses "an amount of force that was unnecessary and excessive under the circumstances." *Belpedio*, 212 Ill. App. 3d at 163, 569 N.E.2d at 1377. In addition, a claim of self-defense does not justify the use of force once the initial aggressor "abandons the quarrel." *Belpedio*, 212 Ill. App. 3d at 161, 569 N.E.2d at 1376.

¶ 29 Here, the defendant does not contend that the State failed to prove any of the elements of aggravated battery, and the State concedes that the defendant presented at least some evidence of each element of self-defense. The only issue is whether the State provided sufficient evidence to prove beyond a reasonable doubt that the defendant did not act in self-defense.

¶ 30 As with all sufficiency-of-the-evidence claims, we consider the evidence in the light most favorable to the prosecution to determine whether any reasonable trier of fact could have found beyond a reasonable doubt that the defendant did not act in self-defense. In making this determination, we must keep in mind that it is the function of the jury, not this court, to assess the credibility of the witnesses and resolve any inconsistencies in their

testimony. *Lee*, 213 Ill. 2d at 225, 821 N.E.2d at 311.

¶ 31 The defendant argues that the State failed to disprove all six elements of self-defense. We need not consider his arguments relating to all six elements. As we have already noted, the defendant's claim of self-defense fails if the State's evidence is sufficient to disprove even one of the elements.

¶ 32 We first consider the defendant's claim that the State failed to disprove that he was threatened with unlawful force by Angel Waller or that he was not the aggressor. In support of this argument, the defendant points out that multiple witnesses testified that Waller pulled Holly Hendricks' hair before any punches were thrown, thus establishing that Waller was the initial aggressor. The defendant also points to the testimony of Holly Hendricks and Truman Rhodes. He notes that Hendricks believed that Waller approached Dye first, but "did not see who threw the first punch." He asserts that Rhodes "saw Waller cock her arm back as if to punch Dye, just as Waller claimed to have done." We are not persuaded.

¶ 33 We first note that the defendant mischaracterizes Rhodes' testimony. As previously discussed, Rhodes testified that he saw Waller raise her hand as if she were going to slap the defendant. He specifically testified that her hand was open. Rhodes also testified that he did not see Waller strike the defendant. In addition, we note that there is no dispute that Waller pulled Hendricks' hair and angrily confronted the defendant before the defendant struck her. Standing alone, however, this evidence does not support a finding that the defendant reasonably believed the force he used was necessary to prevent Waller from harming Hendricks, the defendant, or anyone else.

¶ 34 Hendricks' testimony merits further discussion. Although it is true that her testimony provides at least some support for the defendant's claim that Waller punched him, her testimony does *not* support his claim that Waller was the initial aggressor. As previously discussed, Hendricks was not even certain that Waller hit the defendant at all, although she

said that it "seemed to be coming from both sides." Hendricks testified on cross-examination that she thought the defendant threw the first punch but was not certain of this. On direct, however, she testified that the defendant "jumped" off of his barstool, grabbed Waller, and began hitting her. Thus, although Hendricks expressed some uncertainty, she testified that the defendant was the initial aggressor.

¶ 35 Moreover, four additional witnesses testified that Waller never even attempted to strike the defendant or harm him in any way. It was for the jury to resolve the inconsistencies in this testimony.

¶ 36 The defendant further contends that the State failed to disprove his claim that he had an actual and subjective belief that a danger existed which required him to respond with force. He contends that Angel Waller's testimony established his belief "that a danger existed for him and force was necessary to stop the barrage of punches Waller was raining down on him." He further contends that the State "presented no evidence [to] dispute Waller's testimony." This argument fails for two reasons.

¶ 37 First, as we have just discussed, Waller's testimony was contradicted by the testimony of several State witnesses. In addition, the State presented evidence that (1) Waller initially refused to be interviewed by police investigating the incident; (2) she made three prior inconsistent statements regarding the events at issue; (3) after the defendant battered Waller on one previous occasion, she wrote letters asking that he not be prosecuted; and (4) the defendant told Waller how to testify in this case. All of this evidence casts considerable doubt on Waller's credibility as a witness. It was for the jury to weigh the conflicting evidence, and the jury in this case had ample reason to reject Waller's testimony and believe the testimony of the other witnesses.

¶ 38 Second, even if Waller's testimony is to be believed, it does not support a claim of self-defense because Waller acknowledged that the defendant continued to punch her after

she was knocked to the ground, dazed. As we explained earlier, a claim of self-defense will fail if the evidence shows that the defendant continued to use force after the initial aggressor "abandon[ed] the quarrel." *Belpedio*, 212 Ill. App. 3d at 161, 569 N.E.2d at 1376. We find that the State's evidence was sufficient to disprove his claim of self-defense beyond a reasonable doubt.

¶ 39 The defendant next argues that he was denied a fair trial because of the "irrelevant and highly prejudicial" testimony that he claimed to have a gun. He acknowledges that he forfeited this issue by failing to object to the testimony at trial and failing to raise the issue in his posttrial motions. He urges us to consider his arguments either under the plain error doctrine or as a claim of ineffective assistance of counsel. We find neither doctrine applicable.

¶ 40 Under the plain error doctrine, we may consider an error despite the defendant's forfeiture if the evidence in the case is closely balanced or the error was "so serious that the defendant was denied a substantial right, and thus a fair trial." *People v. Herron*, 215 Ill. 2d 167, 178-79, 830 N.E.2d 467, 475 (2005); see also Ill. S. Ct. R. 615 (eff. Aug. 27, 1999). To support a claim of ineffective assistance of counsel, a defendant must show that defense counsel's performance fell below an objective standard of reasonableness and that the defendant was prejudiced by his attorney's deficient performance. *People v. Albanese*, 104 Ill. 2d 504, 525, 473 N.E.2d 1246, 1255 (1984) (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). In order to show prejudice, the defendant must show that but for counsel's unprofessional error, a more favorable result was reasonably probable. *Strickland*, 466 U.S. at 694.

¶ 41 Here, the evidence supporting the aggravated battery charge was overwhelming. We have discussed that evidence at length. The evidence supporting the charge of reckless driving was undisputed. Six witnesses testified to seeing the defendant drive erratically in

the parking lot. The only defense witness was Angel Waller, who did not see what occurred in the parking lot because she had already left the scene. Thus, we will not consider the defendant's arguments under the closely balanced prong of the plain error doctrine. Nor do we believe that a different result was reasonably probable had counsel objected, which defeats the defendant's claim that counsel was ineffective for failing to object.

¶ 42 In addition, we cannot find that the claimed error was of such a magnitude that it deprived the defendant of a substantial right or a fair trial. He argues that evidence that he may have had a gun was irrelevant because neither charge alleged either the use of a gun or the threat to use a gun. He further contends that the testimony was prejudicial because Illinois courts have recognized that evidence of weapons is "particularly prejudicial." We find that any error was harmless and certainly did not rise to the level of plain error.

¶ 43 As the defendant correctly contends, the general rule is that neither a weapon itself nor testimony about the weapon is admissible unless there is evidence to connect the weapon to the offense charged. *People v. Suerth*, 97 Ill. App. 3d 1005, 1013, 423 N.E.2d 1185, 1192 (1981). This is because without a connection to the offense at issue, evidence concerning a weapon is not normally relevant. *Suerth*, 97 Ill. App. 3d at 1013, 423 N.E.2d at 1193. Moreover, in many cases, evidence related to a weapon creates " 'the potential for prejudicial inferences' " that " 'exceeds any legitimate purpose identified by the State' " for its admission. *People v. Evans*, 373 Ill. App. 3d 948, 960, 869 N.E.2d 920, 931 (2007) (quoting *People v. Vincent Jackson*, 154 Ill. App. 3d 241, 246, 507 N.E.2d 38, 42 (1987)).

¶ 44 Evidence of an unrelated weapon may be unduly prejudicial where, for example, it leads to an incorrect inference that the weapon was the weapon used in the offense. See *People v. Prentiss Jackson*, 195 Ill. App. 3d 104, 112, 551 N.E.2d 1025, 1029 (1990) (explaining that when there *is* evidence connecting the weapon to the crime, evidence of a weapon properly allows a jury to draw such an inference). Undue prejudice may also result

when an improperly admitted weapon is displayed in front of the jury. See *Suerth*, 97 Ill. App. 3d at 1013, 423 N.E.2d at 1193. In addition, evidence that a defendant is in possession of a gun when arrested may prejudice a defendant by leading jurors to infer that the defendant was armed during the commission of the offense. See *People v. Limon*, 405 Ill. App. 3d 770, 773, 940 N.E.2d 737, 739-40 (2010) (finding defendant's possession of a gun when arrested 11 days after a robbery unduly prejudicial because it created this inference).

¶ 45 Despite the potential for prejudice, even the erroneous admission of weapons evidence is often found to be harmless error. *Evans*, 373 Ill. App. 3d at 960, 869 N.E.2d at 932. The potential for prejudice from such evidence is greatly mitigated where other evidence makes it clear to the jury that the weapon was not used in the crime. *Evans*, 373 Ill. App. 3d at 961, 869 N.E.2d at 932-33; *Vincent Jackson*, 154 Ill. App. 3d at 246, 507 N.E.2d at 42. The potential for prejudice is also reduced when the weapon is not displayed to the jury. *Evans*, 373 Ill. App. 3d at 961, 869 N.E.2d at 933; *Prentiss Jackson*, 195 Ill. App. 3d at 114, 551 N.E.2d at 1030. Further, if the improper references to a weapon play a "nominal role" in the trial, this, too, will limit the potentially prejudicial effect. *Evans*, 373 Ill. App. 3d at 960-61, 869 N.E.2d at 932-33. Moreover, as with any other claimed error, admission of a weapon will be deemed harmless where the evidence of the defendant's guilt is overwhelming. *Evans*, 373 Ill. App. 3d at 960, 869 N.E.2d at 932; *Prentiss Jackson*, 195 Ill. App. 3d at 113-14, 551 N.E.2d at 1030; *Vincent Jackson*, 154 Ill. App. 3d at 246-47, 507 N.E.2d at 42.

¶ 46 Here, no weapon was used in committing either offense. Therefore, evidence that the defendant owned a gun or had a gun in his truck was not relevant to any issue. However, evidence that the defendant *said* he had a gun was relevant to show his state of mind when he drove his truck in the parking lot. Relevant evidence is evidence which tends to prove or disprove any fact at issue or make the defendant's guilt more or less probable. *Limon*, 405 Ill. App. 3d at 771-72, 940 N.E.2d at 738 (citing *People v. Wheeler*, 226 Ill. 2d 92, 132, 871

N.E.2d 728, 750 (2007)). There was some evidence to suggest that the defendant's anger had subsided once he was pulled away from Waller and escorted to the parking lot. Thus, the testimony that he threatened the people who had escorted him from the tavern was relevant to show that he was still in an agitated state when he got into his truck. This makes it more probable that he drove with reckless disregard for the safety of the people gathered in the parking lot, as alleged in the indictment.

¶ 47 However, the testimony was presented with no limiting instruction. This left the jury with four possible inferences to be drawn. As previously noted, one witness testified that the defendant said he would shoot the men who had escorted him out of the bar if he had his gun, another testified that the defendant said he had a gun in his truck, and two others testified only that he said he had a gun. The jury could have inferred from this that (1) the defendant was merely making an idle threat; (2) the defendant owned a gun, but did not have it with him; (3) the defendant had a gun in his truck; or (4) the defendant had a gun with him the entire time, including while he was committing the aggravated battery inside the tavern. As noted, this last inference carried the potential for prejudice. See *Limon*, 405 Ill. App. 3d at 773, 940 N.E.2d at 739-40.

¶ 48 Considering this testimony in the context of the entire trial, however, we find that any prejudice was minimal. In arguing to the contrary, the defendant points out that the State's attorney referred to the defendant's statement in his opening statement and that "no less than four witnesses" testified to hearing it. However, their testimony was brief and the defendant's reference to a gun was not mentioned in the State's closing argument. In addition, no witness testified to seeing the defendant brandish a gun, and two witnesses specifically testified that he did not do so. All of these facts tend to minimize the potential for prejudice.

¶ 49 Moreover, the evidence in this case was overwhelming. In the face of this

overwhelming evidence, the evidence that the defendant said he had a gun almost certainly played no role in the jury's verdict. We therefore conclude that, even assuming evidence of the defendant's statement was admitted in error, any error was harmless beyond a reasonable doubt and did not constitute plain error. We also find that defense counsel's failure to object did not constitute ineffective assistance of counsel for these same reasons.

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

¶ 51 Affirmed.