
IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 2022 CR 0918101
	)	
ADAM LUJANO,	)	The Honorable
	)	Thomas J. Byrne,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE WILSON delivered the judgment of the court, with opinion.
Presiding Justice Oden Johnson concurred in the judgment and opinion.
Justice Mikva specially concurred, with opinion.

OPINION

¶ 1 Defendant Adam Lujano was convicted of three counts of attempted first degree murder and was sentenced to 15 years' imprisonment. On appeal, he argues the State failed to prove him guilty beyond a reasonable doubt, the trial court erred when it responded to the jury's question, and the trial court abused its discretion when it allowed gang-related evidence to be admitted. For the following reasons, we affirm the judgment of the circuit court.

¶ 2 **BACKGROUND**

¶ 3 Lujano was charged by indictment with six counts of attempted first degree murder, one count of aggravated battery/discharge of a firearm, and two counts of aggravated discharge of a firearm. Prior to trial, the State dismissed counts I, III, and VI of attempted first degree murder and count VII of aggravated battery/discharge of a firearm. The State proceeded to trial on the remaining counts.

¶ 4 After receiving admonishments, Lujano elected to represent himself throughout the proceedings. Prior to trial, the State filed a motion to admit evidence regarding street gangs to establish Lujano's motive. In the written motion, the State sought to introduce victim Cedric Darden's testimony regarding a conversation that took place just before the shooting, where Lujano asked Darden, "[A]ll well?" In the motion, the State explained that Darden would testify that the phrase, "All well" is associated with the Black P. Stones street gang and that it means Lujano was asking Darden if he belonged to that gang. The State explained that this evidence was critical for the purpose of establishing Lujano's motive for shooting at Darden and his partner, Dominique Cole.

¶ 5 The court granted the State's motion and explained:

"[I]f the jury didn't have a motive that was available to them, they would be left with the question, well, why did this stranger shoot this other stranger? What was the reason? It's not husband and wife. It's not girlfriend/boyfriend. It's not, you know, two guys fighting over a gambling debt. But if the State has a motive, that they can explain through the testimony, I'm inclined to allow it."

¶ 6 A jury trial was held in July 2023. Darden testified that on February 15, 2022, he accompanied his partner Cole to a BP gas station, where he remained inside their vehicle while Cole went inside. They then went to the Shell gas station down the street to purchase food from

the Subway sandwich shop next door. When they arrived there, Darden exited their vehicle and encountered Lujano, who, according to Darden, said “What’s up, you good” and then asked, “All well?” Darden testified that as a former gang member, he understood the phrase “All well” to be associated with the Black P. Stones street gang. He stated that when he told Lujano he was not “with that,” Lujano responded, “I am,” pointed a pistol at him, and threatened to “fire that motherfucker up,” before returning to his truck.

¶ 7 Darden further testified that as he and Cole left the Shell gas station and traveled north on Ashland Avenue, they observed Lujano’s truck turning to follow them. He stated that gunshots were fired as Lujano’s truck approached, and he testified that he saw muzzle flashes and the barrel of a gun. According to Darden, at one point, Lujano drove beside their vehicle, steering with one hand and firing a pistol with the other. Darden testified that Cole drove at high speed, ran a red light, and went into the wrong lane while attempting to flee. Their vehicle eventually struck a pole and caught fire. Darden testified that he injured his knee and initially could not exit the burning vehicle. He further testified that on March 24, 2022, he identified Lujano in a photo array as the person who threatened him and later pursued and fired at the vehicle.

¶ 8 Cole testified that she witnessed a verbal altercation at the BP station involving Lujano and the store clerk. Upon arriving at the Shell station, she recognized Lujano from the earlier BP incident and became frightened. She testified that she heard Lujano say “All well” to Darden and saw him point a gun at Darden, prompting her to pull Darden into the Subway store.

¶ 9 Cole testified that upon leaving the Shell station, she mistakenly drove south due to nervousness and then made a U-turn. She saw Lujano’s truck behind them and soon heard gunshots. Cole testified that when she turned, she saw Lujano firing from his truck at her vehicle. She stated that Darden covered her head and helped steer the vehicle as she drove at high speed.

Cole testified that she escaped from the vehicle after it crashed and caught fire and later discovered her arm was bleeding. She was transported to a hospital, where she received stitches and was told that her arm injury was consistent with being grazed by a bullet. She also testified that she identified Lujano in a photo array on March 24, 2022.

¶ 10 Officer Eric Liang testified that he responded to the scene of a vehicle crash and fire at Archer Avenue and Ashland Avenue. He observed the vehicle burning and saw that Cole had a laceration on her arm that was bleeding.

¶ 11 Officer Matthew Rogers testified that he responded to the same incident and recovered one .40-caliber shell casing from the area of 32nd Street and Ashland Avenue, along the path traveled during the pursuit. He inventoried the casing as evidence.

¶ 12 Detective Edward Villalobos testified that he investigated the incident, interviewed Darden and Cole, obtained surveillance footage from both gas stations, and prepared a photo array that was later shown to both victims. He testified that another detective recognized Lujano from still images derived from the surveillance footage and that he thereafter arrested Lujano. In rebuttal, Detective Villalobos testified that the complete Shell station video did not show any interaction between Darden, Lujano, and another individual. The State rested.

¶ 13 Lujano testified that he was present at both the BP and Shell gas stations but denied firing any shots. He admitted involvement in the BP station altercation with the store clerk. Regarding the Shell station, he testified that Darden “mean-mugged” him and his friend and that his friend used phrases such as “You good?” and “You well?” He stated that he left the Shell station to buy cigarettes and lottery tickets. According to his testimony, his friend later phoned to report being robbed by Darden, and Lujano pursued Darden and Cole’s vehicle only to obtain the license plate number. He admitted running multiple red lights while following the vehicle but denied possessing

or discharging a firearm. He testified that he saw their vehicle crash and catch fire but continued driving and did not contact police.

¶ 14 Officer Sang Tran testified for the defense that his report stated Cole was “shot at,” not “shot.” He noted that emergency medical technicians reported at the scene that Cole had not been shot.

¶ 15 The jury found Lujano guilty of three counts of attempted first degree murder and not guilty of aggravated discharge of a firearm. In answering special interrogatories for enhanced sentencing purposes, the jury also found that the State did not prove that Lujano personally discharged a firearm during the commission of either attempted murder. On August 31, 2023, the trial court merged one of the attempted murder counts into another and sentenced Lujano to two concurrent 15-year terms in the Illinois Department of Corrections.

¶ 16 On September 19, 2023, Lujano filed a *pro se* motion to reconsider his sentence. Because he had previously filed a notice of appeal, the circuit court struck the reconsideration motion. The appellate court later determined that the initial notice of appeal was premature and remanded for proper disposition of the postsentencing motion. On June 27, 2024, the circuit court denied the motion to reconsider, and Lujano filed a new notice of appeal. The Illinois Supreme Court subsequently issued a supervisory order on March 20, 2025, directing this court to allow amendment of the notice of appeal to reflect the correct judgment dates of July 17, 2023, August 31, 2023, and June 27, 2024.

¶ 17 ANALYSIS

¶ 18 Lujano first argues that the State failed to prove him guilty of attempted first degree murder of Cole and Darden beyond a reasonable doubt, where the State failed to show that he fired a gun or took any other substantial step towards the commission of murder with the specific intent to kill

either of them. When the trial court gave the jury the law and jury instructions, the jury was provided with special interrogatories for sentencing enhancement purposes that asked whether the State had proven beyond a reasonable doubt that Lujano was armed with a firearm or personally discharged a firearm during the commission of the offense of attempted murder. While the jury returned a guilty verdict on the attempted murder counts, it answered the special interrogatories in the negative. Therefore, Lujano argues, his conviction should be reversed where the jury's findings are inconsistent.

¶ 19 Contrary to Lujano's argument, "defendants in Illinois can no longer challenge convictions on the sole basis that they are legally inconsistent with acquittals on other charges." *People v. Jones*, 207 Ill. 2d 122, 133-34 (2003). In *Jones*, our supreme court adopted the rule put forward by the United States Supreme Court in *United States v. Powell*, 469 U.S. 57 (1984), regarding inconsistent verdicts. In *Powell*, the defendant was charged with the compound offense of using a telephone to commit certain felonies, namely conspiracy to possess cocaine with intent to distribute and possession of cocaine with intent to distribute, and the underlying predicate felony counts. *Id.* at 59-60. The defendant was acquitted of the predicate felony counts but was convicted of the compound felonies. *Id.* at 60. She appealed her conviction, alleging the verdicts were inconsistent and entitled her to a reversal of the compound felony convictions. *Id.* The *Powell* Court held that a defendant cannot challenge a conviction of a compound felony on the sole basis of being acquitted of the predicate felony. *Id.* at 68-69. The Court stated that, while it is clear that the jury made a mistake by not following the trial court's instructions that to find the defendant guilty of the compound offense, it had to find her guilty of the predicate offense, it was not clear what caused the mistake. *Id.* at 69. The Court reasoned that verdict inconsistency could be a result of a mistake or jury lenity, and as such, a reversal was not the proper remedy, and the defendant's

conviction could not be challenged on that ground. *Id.* at 68-69. The Court further stated that while a defendant cannot challenge convictions on the basis of inconsistent verdicts, a defendant still has a remedy for jury irrationality or error by the trial or appellate courts' review of the sufficiency of the evidence. *Id.* at 67.

¶ 20 We find it important to note as we have done in the past, that unlike a special interrogatory in a civil case that is provided for in the Code of Civil Procedure (735 ILCS 5/2-1108 (West 2022)), a special interrogatory has no such parallel in criminal law and is nothing more than a question to the jury about whether there should be a sentence enhancement. *People v. Jackson*, 372 Ill. App. 3d 605, 612 (2007); *People v. Ware*, 2019 IL App (1st) 160989, ¶ 54. In line with *Jones* and *Powell*, this court has consistently held that a special interrogatory answer in a criminal case that is inconsistent with a general verdict of guilt does not provide a basis to challenge the general verdict. See, e.g., *People v. Allen*, 2022 IL App (1st) 190158, ¶ 44; *Ware*, 2019 IL App (1st) 160989, ¶ 55; *People v. Alexander*, 2017 IL App (1st) 142170, ¶ 38; *People v. Reed*, 396 Ill. App. 3d 636, 646-48 (2009). This proposition holds true when the challenge is to a special finding on the firearm enhancement. See *Allen*, 2022 IL App (1st) 190158, ¶¶ 44-45; *Ware*, 2019 IL App (1st) 160989, ¶ 52; *Alexander*, 2017 IL App (1st) 142170, ¶ 38. These cases provide that, while the inconsistency itself does not provide a basis to challenge the general verdict of guilt, a defendant may otherwise challenge the sufficiency of the evidence supporting the general verdict of guilt as a check against jury irrationality. *Reed*, 396 Ill. App. 3d at 648. A sufficiency challenge is independent of any interplay between the general verdict and the special interrogatory. See, e.g., *id.* at 649 (“[T]he alleged inconsistent answer to the special interrogatory is not part of the sufficiency-of-the-evidence analysis.”).

¶ 21 In considering the evidence in the light most favorable to the State, we find that the

evidence was clearly sufficient to convict Lujano of the attempted first degree murder of Darden and Cole. A person commits the offense of attempted first degree murder when he, with the specific intent to kill, commits any act that constitutes a substantial step towards the commission of murder. 720 ILCS 5/8-4(a), 9-1(a) (West 2022). In considering a challenge to the sufficiency of the evidence, the relevant inquiry is “ ‘whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’ ” (Emphasis omitted.) *People v. McLaurin*, 2020 IL 124563, ¶ 22 (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). This court will not retry the defendant. *People v. Nere*, 2018 IL 122566, ¶ 69. The trier of fact’s role is to “assess the credibility of the witnesses, weigh the evidence presented, resolve conflicts in the evidence, and draw reasonable inferences from the evidence.” *People v. Daniel*, 2022 IL App (1st) 182604, ¶ 102. A reviewing court will not substitute its judgment for that of the trier of fact with respect to those issues. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009).

¶ 22 The record contains sufficient evidence to support the jury’s finding of guilt on the attempted first degree murder charges. Both Darden and Cole provided consistent accounts of the events leading up to the incident, describing a hostile confrontation at the Shell station in which Lujano displayed a firearm, threatened to use it, and initiated a pursuit of their vehicle ultimately firing at them and causing them to crash. The testimony of a single witness, if believed, is sufficient to sustain a conviction. See *id.* at 228. Darden and Cole’s testimony was also supported by physical evidence: a recovered .40-caliber shell casing along the route of the chase, a hole in Cole’s jacket, and an injury to her arm consistent with being shot at. Although the jury ultimately concluded that the State failed to prove the special interrogatories that Lujano was armed with a firearm and personally discharged a firearm at Darden and Cole, these were questions relating to the firearm

enhancements and have no bearing on the general verdict of guilty on the attempted first degree murder counts. See *Allen*, 2022 IL App (1st) 190158, ¶ 45; *Ware*, 2019 IL App (1st) 160989, ¶ 55; *Alexander*, 2017 IL App (1st) 142170, ¶ 38; *Reed*, 396 Ill. App. 3d at 646-48.

¶ 23 We also reject Lujano’s claim that he lacked intent to kill because he did not continue the attack after the crash. Specific intent to kill may be inferred from the circumstances of the assault and the act of firing multiple shots at two fleeing victims, an act, which natural tendency is to destroy life, provides the specific intent to kill here. See *People v. Barnes*, 364 Ill. App. 3d 888, 896 (2006) (firing a gun at an individual supports the premise that a person acts with the intent to kill). The fact that Lujano may have been a poor marksman is not a defense to attempted murder. *People v. Teague*, 2013 IL App (1st) 110349, ¶ 27 (noting that poor marksmanship is not a defense to attempted murder). Furthermore, “[t]he fact that an assailant, armed with a deadly weapon, chooses to flee when his victim cries for help, rather than choosing to inflict a fatal injury, does not negate the existence of the intent to kill.” *People v. Maxwell*, 130 Ill. App. 3d 212, 217 (1985). The fact that Lujano drove away once the victims’ car crashed reflects only a desire to avoid apprehension, not an absence of homicidal intent. The State proved Lujano guilty beyond a reasonable doubt.

¶ 24 We fully recognize that this case presents a troubling inconsistency at the heart of the jury’s verdict. Lujano was convicted of three counts of attempted first degree murder based on a charging theory and trial presentation that relied exclusively on the allegation that he personally shot at Cole and Darden as the substantial step toward the commission of murder. Specifically, the three attempted first degree murder counts the State proceeded to trial on (counts II, IV, and V) alleged that Lujano “shot at” Darden and Cole “while armed with a firearm which constituted a substantial step toward the commission of first degree murder.” In addition, count IV alleged that Lujano,

during the commission of the offense of attempted first degree murder for shooting at Cole, “personally discharged a firearm that proximately caused permanent disfigurement” to Cole. He was convicted of all three counts. Even though the jury found Lujano guilty of attempted first degree murder based on being armed with a firearm and firing it, the same jury also answered the special interrogatories by saying the State did *not* prove that he was armed with a firearm or that he personally discharged one. Because of that, the court could not impose the firearm-related sentencing enhancements for attempted first degree murder.

¶ 25 Lujano would have us find that the negative answer to the special interrogatories legally negates an essential element of the offense. In that vein, when a specific definition of the crime (such as “to wit: personally discharging a firearm”) is used to satisfy the “substantial step” element, a negative finding by the jury means the State failed to prove that exact factual allegation beyond a reasonable doubt. This argument is compelling when the sole definition of “personally discharging a firearm” is provided in Illinois Pattern Jury Instructions, Criminal, No. 4.37 (approved Apr. 29, 2016) (hereinafter IPI Criminal) (“A person is considered to have personally discharged a firearm when he, while armed with a firearm, [(knowingly) (intentionally)] fires a firearm causing the ammunition projectile to be forcefully expelled from the firearm.”). We note that the State did not proceed on count I, which did not allege “personally discharging a firearm” as the substantial step in the commission of attempted first degree murder. Thus, as encouraged by Lujano, if the jury’s negative finding directly contradicts the logical prerequisites of a guilty verdict, the conviction is legally inconsistent and irreconcilable as to an ultimate factual proposition essential to guilt under the State’s chosen theory. Thus, according to Lujano, the jury must have convicted on some unknown, unpresented theory. Nevertheless, we are bound by Illinois precedent. See *Jones*, 207 Ill. 2d at 133-34.

¶ 26 Lujano next argues that the trial court committed reversible error when it failed to properly respond to the jury's question. The State argues that Lujano forfeited any challenge to the jury instruction issue because he failed to make a timely objection to the trial court's proposed response to the jury's question during deliberations, noting that his comment was recorded as "inaudible" and that he did not submit a written alternative instruction as required under Illinois law. The State emphasizes that both a contemporaneous objection and a written posttrial motion are required to preserve the error and that, absent such preservation, appellate review is barred unless plain error applies. Lujano argues that forfeiture does not apply because he did object, asked the court to answer the jury's question in the affirmative, and asserted that this case involved no other theory of attempted first degree murder and he later raised the issue again in his posttrial motion.

¶ 27 In our view, Lujano has not forfeited this issue for review. When the jury sent the question, "Is the attempt first degree murder charge dependent upon a gun being fired," the trial judge recommended that the question be answered by telling the jury "You have the instructions on the law. Please continue your deliberations." The State agreed. Lujano responded, "Attempt murder, I would think you have to shoot somebody or have a gun with you to be an attempt murder. Wouldn't it? *** I believe you need a weapon to try to kill somebody." The court responded, "If you think about it, that is not necessarily true in all situations. You can try to kill someone with a knife, a baseball bat, a car." Lujano responded, "But that is not the situation, your Honor." Then the following colloquy occurred:

"THE COURT: That is why I'm suggesting since they heard all the evidence, that they refer to the law that we instructed the jury on. I'm not going to tell them how to interpret the facts in the case. I think that is part of the question. I

would be inclined to direct them to look at those instructions that you have and refer to those instructions and continue to deliberate.

THE DEFENDANT: How about for the attempt murder, there has to be something in the law saying what attempt murder is.

THE COURT: Yes, that is in the instructions, and that is why—that is exactly why I’m going to refer them to those instructions. I think you are absolutely right, Mr. Lujano.

MS. WILLIAMS: I know you asked the question earlier. Our opinion would be to be specific as they are specific to the attempt murder charge, that they have the law regarding the attempt murder charge.

THE COURT: Charges. I could put in the offense of first degree murder rather than the charges. They asked charge. I will try to make it as consistent with their question. So the question is this: Is the attempt first degree murder charge dependent upon a gun being fired? My answer in writing on that same note back to the jury will be as follows: You have the instructions on the law regarding the offense of attempt first degree murder. Please continue your deliberations. Does that suit both sides?

MS. WILLIAMS: Yes, your Honor.

THE COURT: Mr. Lujano?

THE DEFENDANT: (Inaudible).

THE COURT: I’ll write that out for them, and then I will tell them to keep the note too so we will have it at the end. We will be in recess until we hear something else from the jury, either a note or a verdict.”

¶ 28 After reading the colloquy between the court and the parties in its entirety, we find that Lujano properly objected to the trial court’s answer to the jury’s question. Lujano, a *pro se* defendant, proposed, albeit inartfully, that the court answer the jury’s question by instructing it that the attempted murder had to be accomplished using a gun. In essence, Lujano suggested to the court that it answer “yes” to the jury’s question. The court did not answer the jury’s question affirmatively but instead instructed it to refer back to the attempted murder instructions. We do not read Lujano’s subsequent “inaudible” response as an acquiescence to the trial judge’s ultimate response to the jury’s question. Lujano had already made clear to the court the answer that he wished the court to relay to the jury. Therefore, we will consider the issue on the merits.

¶ 29 Generally, jurors are entitled to have their questions answered. *People v. Reid*, 136 Ill. 2d 27, 39 (1990). A circuit court has a duty to instruct the jury where clarification is requested, when the original instructions are insufficient, or when the jurors are manifestly confused. *Id.* However, the court has discretion to refuse to answer a jury’s question under certain circumstances, such as

“when the jury instructions are readily understandable and sufficiently explain the relevant law, when additional instructions would serve no useful purpose or may potentially mislead the jury, when the jury’s request involves a question of fact, or when giving an answer would cause the trial court to express an opinion likely directing a verdict one way or the other.” *People v. Averett*, 237 Ill. 2d 1, 24 (2010).

A circuit court may also refuse to answer a jury’s question if the question is ambiguous and any response to the question may require “ ‘a colloquy between the court and the jury, a further explanation of the facts, and perhaps an expression of the trial court’s opinion on the evidence.’ ” *Reid*, 136 Ill. 2d at 39-40 (quoting *People v. Tostado*, 92 Ill. App. 3d 837, 839 (1981)). The circuit court has discretion in determining how best to respond to a jury question, and this court will

review any such response for an abuse of discretion. See *id.* at 38-39. An abuse of discretion will be found only where 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. McDonald*, 2016 IL 118882, ¶ 32.

¶ 30 Here, Lujano argues that the court should have answered “yes” to the jury’s question: “Is the attempted first degree murder charge dependent upon a gun being fired,” instead of instructing the jury back to the instructions that it had already been given. He argues that by not answering the jury’s question in the affirmative, the court allowed the jury to convict him of attempted murder based on some other theory that was not charged, argued, or instructed.

¶ 31 The indictment in this case relating to the charges of attempted first degree murder alleged that Lujano “shot at” Darden and Cole “while armed with a firearm which constituted a substantial step toward the commission of first degree murder” and that during the commission of the offense of attempted first degree murder for shooting at Cole, he “personally discharged a firearm that proximately caused permanent disfigurement” to Cole. Shot at, armed with a firearm, and personally discharged a firearm are not elements of the offense of attempted murder. Rather, the only required elements of attempted first degree murder are (1) that the defendant performed an act that constituted a substantial step toward committing a murder and (2) that he had the intent to kill the victim. 720 ILCS 5/8-4(a), 9-1(a)(1) (West 2022). The manner in which a defendant took a substantial step toward the commission of the offense of attempted murder is mere surplusage. *People v. Reynolds*, 178 Ill. App. 3d 756, 764 (1989); see *People v. Coleman*, 49 Ill. 2d 565, 571 (1971) (the means used to accomplish death is not an essential element of first degree murder). Whether the alleged factual basis for the substantial step of attempted first degree murder should be included in the IPI Criminal definitional instruction is a matter best left to our supreme court.

¶ 32 Before deliberation, the jury was instructed on attempted murder. It was given an instruction based on Illinois Pattern Jury Instructions, Criminal, No. 6.05x (approved Oct. 17, 2014) (hereinafter IPI Criminal No. 6.05x), which stated that:

“[a] person commits the offense of attempt first degree murder when he, with the intent to kill an individual, does any act which constitutes a substantial step toward the killing of an individual.

The killing need not have been accomplished.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.”

In addition, the jury was instructed that to convict Lujano of attempted murder the State had to prove (1) defendant performed an act constituting a substantial step toward killing an individual and (2) defendant acted with the intent to kill that individual. IPI Criminal No. 6.07x.

¶ 33 The jury instructions given here properly apprised the jury of the statutory definition of attempted murder and the proof required to convict Lujano of attempted murder. These instructions were correct in that they were complete and accurately stated the law of attempted murder. See *People v. Nash*, 2012 IL App (1st) 093233, ¶ 41 (the trial court did not abuse its discretion when it referred the jury to the previously tendered instructions in responding to the jury’s question since the instructions accurately stated the law); see also *Coleman*, 49 Ill. 2d at 571 (the means used to accomplish death is not an essential element of first degree murder). Therefore, we find that the trial court did not abuse its discretion by instructing the jury to refer back to the attempted murder instructions that it had already been given.

¶ 34 Lujano argues that the additional instructions on the sentencing enhancement for attempted murder that were given in this case (see Illinois Pattern Jury Instructions, Criminal, Nos. 27.02,

27.03 (4th ed. 2000)) were the source of the jury's confusion. With respect to the sentencing enhancement, the jury was instructed that, only if it found Lujano guilty of attempted first degree murder, it should then decide whether the State proved beyond a reasonable doubt that, during the commission of the offense, Lujano was armed with a firearm and personally discharged a firearm. Contrary to Lujano's argument, these instructions made clear that the allegations of being armed with, and personally discharging a firearm, were separate, distinct determinations that the jury was to consider only if it first found Lujano guilty of attempted murder, and that it was not to consider these allegations at all if it found Lujano not guilty of attempted first degree murder.

¶ 35 *People v. Jaimes*, 2019 IL App (1st) 142736, ¶ 54, supports our conclusion here. In *Jaimes*, during deliberations, the jury asked whether it could find the defendant guilty of first degree murder without finding him guilty on the personal discharge interrogatory. *Id.* ¶ 49. On appeal, the defendant argued that the trial court erred by merely referring the jury back to the instructions and should have clarified that the jury could not convict if it found the State failed to prove he was the shooter. *Id.* ¶ 37. We rejected that claim, holding the trial court had no obligation to further respond because the law and instructions were readily understandable and explained that Illinois law treats first degree murder and a personal discharge allegation as separate matters with separate elements. *Id.* ¶ 54. Therefore, even where death results from a gunshot wound, the State need not prove the defendant used a firearm to sustain a murder conviction. *Id.*

¶ 36 Although the instructions in *Jaimes* were for first degree murder, they were materially the same as the instructions given for attempted first degree murder in this case. See *id.* ¶¶ 53-63. As in *Jaimes*, the jury was clearly instructed on the elements of attempted murder, separately instructed on the personal discharge allegation, and told to reach the allegation only if it first found defendant guilty of attempted murder. Because the instructions for attempted murder were readily

understandable and adequately stated the law, any additional instruction would have served no useful purpose. The trial court therefore did not err by directing the jury to refer back to the instructions and continue deliberating. See *People v. Salazar*, 211 Ill. App. 3d 899, 912-13 (1991) (trial court properly declined to answer where the jury’s question concerned the elements of the offense and the jury had already been clearly instructed in the statutory language).

¶ 37 *Allen*, 2022 IL App (1st) 190158, is factually distinguishable. In *Allen*, the court received a note from the jury that “evidenced the possibility that it was considering convicting defendant on an accountability theory” despite the jury not having been instructed on accountability. *Id.* ¶ 59. Although the court agreed with defense counsel that the question should be answered in the negative, it sent the jury home for the weekend and never provided this answer to the jury. *Id.* ¶¶ 40-41. We found that the trial court’s failure to answer the jury’s question properly, or at all, was error and resulted in the jury convicting the defendant based on a theory not pursued by the State at trial. *Id.* ¶ 59.

¶ 38 Unlike *Allen*, the court in this case answered the jury’s question. Furthermore, there was no indication in this case, as it was in *Allen*, that the jury was planning to convict on a theory never presented.

¶ 39 Had the court answered the jury’s question in the affirmative as Lujano suggests, the court’s answer would have been legally incorrect. See *Jaimes*, 2019 IL App (1st) 142736, ¶ 52 (“[T]here is no requirement that the State must prove the personal discharge allegation in order to obtain a conviction on first degree murder.”); *Alexander*, 2017 IL App (1st) 142170, ¶ 43 (“personal discharge of a firearm is not an element of first degree murder”). It also would have risked an improper judicial comment on the firearm evidence that could have steered the verdict. And asking the jury to clarify the question would likely lead the trial judge into an improper

colloquy with the jury. Hence, we find the trial court acted within its discretion because it had already provided the jury correct, clear instructions on attempted murder.

¶ 40 Finally, Lujano argues that the trial court erred in admitting gang evidence, specifically Darden's testimony that Lujano said, "All well," a phrase Darden associated with the Black P. Stones, because there was no connection between the charged offenses and any gang activity. He contends the testimony was irrelevant, highly prejudicial, and served only to portray him as dangerous. The State responds that the gang reference was properly admitted because it supplied a clear motive for what would otherwise appear to be an inexplicable attack on two strangers, explained why the encounter escalated, was part of the continuous narrative of events leading to the shooting, and provided necessary context for the jury to understand Lujano's conduct. The State further asserts that any potential prejudice was outweighed by the evidence's probative value and that the remaining evidence of guilt was strong, rendering the admission harmless.

¶ 41 Gang-related evidence is admissible where it is relevant to a disputed issue, and its probative value is not substantially outweighed by its prejudicial effect. *People v. Johnson*, 208 Ill. 2d 53, 102 (2003). Evidence of gang affiliation is relevant and admissible if it tends to make the existence of any consequential fact more or less probable than it would be without the evidence. *Id.* Evidence that a defendant is a member of a gang or is involved in gang-related activity is admissible only where there is sufficient proof that membership or activity in the gang is related to the crime charged. *People v. Strain*, 194 Ill. 2d 467, 477 (2000). In addition, gang-related evidence is admissible, despite its prejudicial effect, to demonstrate a common purpose or design or to explain a motive for an otherwise inexplicable act. *People v. Patterson*, 154 Ill. 2d 414, 458 (1992). We review a trial court's evidentiary rulings with respect to gang-related evidence for an abuse of discretion. *Johnson*, 208 Ill. 2d at 102. An abuse of discretion occurs when the trial court's

decision is arbitrary, fanciful, or unreasonable to the degree no reasonable person would agree with it. *People v. Colon*, 2018 IL App (1st) 160120, ¶ 34.

¶ 42 One of the purposes for which gang evidence is admissible is to “provide a motive for an otherwise inexplicable act.” (Internal quotation marks omitted.) *People v. Villarreal*, 198 Ill. 2d 209, 233 (2001). We conclude that the gang evidence admitted at trial in this case was relevant because it provided a clear motive for conduct that would otherwise appear sudden and inexplicable. The record establishes that, moments before the shooting, Lujano initiated a gang-related exchange with Darden by asking, “All well,” a phrase associated with the Black P. Stones street gang. When Darden rejected his affiliation, Lujano immediately escalated the interaction by brandishing a firearm and threatening to shoot. This brief but pointed exchange supplied a reason for the hostility that followed. In the absence of this evidence, Lujano’s decision to chase two strangers through several blocks and fire multiple shots at their vehicle would appear random. As the State argued, this evidence “completed the story,” showing that Lujano did not act without provocation but reacted to Darden’s rebuff of his gang inquiry. The trial court therefore acted within its discretion in admitting this evidence to explain the motive behind an otherwise inexplicable violent attack.

¶ 43 Furthermore, the gang reference formed part of a continuous narrative of the events. See *People v. Pikes*, 2013 IL 115171, ¶¶ 18-20 (earlier gang-related events were properly admitted as a continuing narrative to explain why the defendants attacked the victim). The testimony in this case established that the heated exchange immediately preceded Lujano’s threatening gesture with a firearm, the ensuing chase, and the shots fired from his truck. Here, Darden’s testimony demonstrated that Lujano reacted to a perceived gang slight, thereby offering a coherent explanation for the abrupt escalation from a verbal confrontation to gunfire.

¶ 44 The probative value of the gang evidence outweighed any prejudicial effect. The State did not present extensive gang testimony; rather, it relied on a single phrase that directly connected to motive and explained the narrative. The trial court expressly limited the gang evidence to the “All well” exchange, minimizing its scope while preserving its explanatory value. Additionally, the State’s case was strongly supported by corroborating testimony, surveillance footage, physical evidence (including a .40-caliber casing), and Cole’s graze wound. These layers of independent proof diminished any risk that the jury relied on the gang reference for propensity rather than context. Therefore, we find that the trial court did not abuse its discretion in admitting the gang testimony.

¶ 45 CONCLUSION

¶ 46 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 47 Affirmed.

¶ 48 JUSTICE MIKVA, specially concurring:

¶ 49 I agree with the majority that the jury’s not guilty verdict on the charge of aggravated discharge of a firearm and negative answer to the special interrogatory do not require us to reverse Mr. Lujano’s convictions for attempted first degree murder. I agree there was no error in admitting Mr. Darden’s testimony that he understood Mr. Lujano’s use of the phrase “All well” to be associated with the Black P. Stones street gang. I agree that Mr. Lujano did not forfeit any objection to the jury instructions. Finally, I agree that there was no abuse of discretion in the trial judge’s response to the jury’s inquiry. I write separately because I part company with the majority’s conclusion that there was no source of confusion in the jury instructions (*supra* ¶¶ 34-39).

¶ 50 Specifically, on both counts of attempted murder, the jury was given the following instruction, modeled after a portion of Illinois Pattern Jury Instructions, Criminal, No. 28.04 (4th

ed. Supp. 2011):

“If you find the defendant is guilty of Attempt First Degree Murder, *** you should *then* go on with your deliberation to decide whether the State has proved beyond a reasonable doubt the allegation that during the commission of the offense of Attempt First Degree Murder the defendant was armed with a firearm and personally discharged a firearm.” (Emphases added.)

¶ 51 Through this instruction the jury was told that, only if it found Mr. Lujano guilty of attempted murder should it decide whether the State proved beyond a reasonable doubt that, during the commission of the offense, Mr. Lujano was armed with a firearm and personally discharged that firearm. This case and the two other cases the majority cites illustrate how this instruction confuses the jury. In these three cases the jury asked similar questions, and in these three cases the jury ultimately returned inconsistent verdicts. In my view, we should acknowledge this confusion and encourage the Illinois Supreme Court’s Committee on Jury Instructions in Criminal Cases (Instructions Committee) to address it.

¶ 52 While the use of a firearm is not an essential element of the offense of attempted first degree murder, it was the only action by Mr. Lujano that the State alleged, offered evidence of, or argued was the necessary “substantial step” toward the killing of the alleged victims. Similarly, in *People v. Jaimes*, 2019 IL App (1st) 142736, and *People v. Allen*, 2022 IL App (1st) 190158, cited by the majority, while the State could have charged the defendants with murder by accountability (see *People v. Ceja*, 204 Ill. 2d 332, 361 (2003) (noting that “accountability is not a separate offense, but merely an alternative manner of proving a defendant guilty of the substantive offense”)), the only theory the State charged the defendants with was that they each personally fired the gun that killed the victim.

¶ 53 The State also offered no evidence at trial that the defendant in either *Jaimes* or *Allen* was guilty by accountability, and the jury was accordingly never instructed on that theory. In *Jaimes*, the jury asked, “ ‘Can we find guilty of first degree but not guilty of discharging and aggravated?’ ” 2019 IL App (1st) 142736, ¶ 28. In *Allen*, the jury asked whether, “when considering if the State proved that defendant performed the ‘acts’ which caused the victims’ deaths ***[,] ‘acts’ [could] be broadly interpreted as meaning ‘involvement.’ ” 2022 IL App (1st) 190158, ¶ 47. In both those cases, as in this one, the jury answered “no” to the special interrogatory regarding the personal discharge of a firearm but found the defendant guilty of the underlying charge. In all three of these cases the only factual theory on which the State presented evidence was that the defendant had personally fired the gun. We affirmed in *Jaimes*, where the trial court had repeatedly tried to address the jury’s confusion (see 2019 IL App (1st) 132736, ¶¶ 48-58), and reversed in *Allen*, where the court provided no guidance (2022 IL App (1st) 190158, ¶ 65).

¶ 54 In my view, these three cases make it clear that the instructions on the underlying crime and the special interrogatory operating together can create confusion for juries and a difficult question for the court. The jury is instructed not to think about whether the defendant fired a gun until after it has determined whether the defendant is guilty of murder or attempted murder, even where the only evidence the State has presented is that firing a gun was the method of accomplishing the crime. The juries came back with verdicts in these cases finding the defendants guilty of the underlying crimes but not guilty of firing the guns.

¶ 55 As the court noted in *Allen*,

“prejudicial error results not from the *certainty* that the court’s failure to respond to the jury note caused it to convict defendant on [a theory not presented at trial], but rather

because the court’s failure to answer the jury note left the door open for the jury to convict defendant on [such a] theory.” (Emphasis in original.) 2022 IL App (1st) 190158, ¶ 60.

Here, as in *Jaimes* and *Allen*, evidence that the defendant shot the gun was the only evidence the State presented to prove a necessary element of the offense. Asking the jury to consider whether this was proved only *after* it had found that the elements of that offense were met was confusing. By instructing the jury to put off the question of whether the defendant fired the gun until it has determined whether the defendant was guilty of the underlying crime, this combination of pattern jury instruction on the underlying offense and special interrogatory on the sentencing enhancement all but invites the jury to search for a theory of guilt that is not before them. The jury here may rightly have been perplexed by this.

¶ 56 When the jury asked, “Is the attempt first degree murder charge dependent upon a gun being fired?” there was no clear right answer. If the judge answered the question “yes,” he risked misstating the law, since using a gun is not required to prove the offense of attempted first degree murder. But if the judge answered the question “no,” he invited the jury to convict on a factual basis on which the State had presented no evidence. The court responded by referencing the jury back to the instruction that set out the elements of attempted murder. That was certainly not an abuse of discretion. However, to avoid putting judges in this no-win situation, I would acknowledge that confusion exists and prompt the Instructions Committee to review the pattern jury instructions.

People v. Lujano, 2026 IL App (1st) 241402

Decision Under Review: Appeal from the Circuit Court of Cook County, No. 2022-CR-0918101; the Hon. Thomas J. Byrne, Judge, presiding.

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