2021 IL App (1st) 190693-U

FIRST DISTRICT,
FIRST DIVISION
September 20, 2021

No. 1-19-0693

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. TRUMANE TOMPKINS, Defendant-Appellant.	)	Appeal from the Circuit Court of Cook County, Illinois. No. 18 CR 6765 Honorable Timothy Joseph Joyce, Judge Presiding.

JUSTICE COGHLAN delivered the judgment of the court.
Justice Pierce concurred in the judgment.
Justice Walker dissented.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in declining to give a non-Illinois Pattern Jury Instruction concerning a police officer's failure to turn on his body-worn camera. Error in admitting body-camera footage depicting marijuana recovered from defendant's co-arrestee was harmless.

¶ 2 Defendant Trumane Tompkins was convicted of unlawful use or possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2018)) and sentenced to seven and a half years' imprisonment. Defendant appeals, arguing that the trial court erred in declining to give the jury a non-Illinois Pattern Jury Instruction (non-IPI) pursuant to the Law Enforcement Officer-Worn

Body Camera Act (Act) (50 ILCS 706/10-1 *et seq.* (West 2018)) and admitting body-camera footage showing marijuana belonging to defendant's co-arrestee. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 Motion *in limine*

¶ 5 On April 23, 2018, defendant was a passenger in a car that fled from police during a routine traffic stop. After the car crashed into the side of a house, defendant and two other individuals ran from the vehicle. During a foot chase, an assisting officer saw defendant toss a red and black object, later identified to be a firearm. Defendant was charged with unlawful use or possession of a weapon by a felon.

¶ 6 Prior to trial, defendant filed a motion *in limine* seeking to bar any evidence "regarding the recovery of marijuana that allegedly was possessed by a co-arrestee." One of the body-worn camera videos depicted a bag of marijuana seized from a co-arrestee being tossed to an officer at the scene, who responded, "Holy s***." Defense counsel argued that the clip is "highly prejudicial" because of the implication that defendant is somehow involved with the bag of marijuana. Counsel suggested showing a "shorter" body-camera video of another officer "which actually shows again the gun being found where it's laying on the ground *** and there is no marijuana involved in that video."

¶ 7 The State maintained that the marijuana is shown "within seconds" of when the officer who ultimately inventories the gun sees the gun, "[s]o excluding that video in its entirety would be cutting off a very relevant portion and it's so close in time in proximity it would be hard to cut that part out." The State offered to "easily remedy" defendant's concerns through the testimony

of the officer establishing that the marijuana was not in defendant's possession and that it belonged to a co-arrestee, who was charged with its possession.

¶ 8 The court denied defendant's motion *in limine* regarding the body-camera video, stating, "I'm not going to make the State's decisions with respect to what video is better or worse from a persuasive standpoint."

¶ 9 Jury Trial

¶ 10 Officer Piotr Opacian (Opacian) testified that on the evening of April 23, 2018, he was driving in a marked police car while on duty with his partner, Officer Amaris Furlan. Around 11:00 p.m., Opacian observed a black Hyundai Sonata with an inoperable license plate light near 79th Street and Cottage Grove Avenue in Chicago, Illinois. He activated the sirens and lights and attempted to curb the vehicle. The Hyundai Sonata slowed down and pulled over to the right, but "did not make a full, complete stop and just took off at a very high rate of speed."

¶ 11 The vehicle "disobey[ed] a red light and almost [T-boned] a car at [an] intersection." He continued pursuing the vehicle, but turned off the lights and sirens. The Hyundai Sonata ran through multiple stop signs, and he lost sight of it for "[a] few seconds." When Opacian saw the vehicle again, it had "jumped over a curb" and crashed "[i]nto the side of the house" located at 7104 South Champlain Avenue.

¶ 12 A woman exited from the driver's seat, a man from the front passenger's seat, and another man from the rear passenger side of the vehicle, later identified as defendant. They all ran in "different directions." Defendant and the woman ran southbound on Champlain and the other man "ran southbound between Champlain and *** St. Lawrence in the alley." Opacian parked the squad car and pursued the suspects on foot, going southbound on Champlain.

¶ 13 Opacian "lost sight of the individuals," but saw an assisting police vehicle following defendant. Shortly thereafter, he learned that one of the individuals had been arrested near 7111 South Champlain and that a weapon had been recovered. When he arrived at that location, one of the officers directed him to a red and black Glock 22 .40 caliber with an extended magazine "between two apartment buildings behind a fence in the front gangway area" within 10 feet of the fence, and he inventoried the gun.

¶ 14 Opacian's squad car was equipped with a dash-cam that recorded the car chase, which was played for the jury. The jury was also shown footage from his body-worn camera. He explained that police officers are required to manually turn on their body-worn camera when they are "engaged in some sort of stop" or an arrest. The footage depicts, in part, another officer tossing him a bag of marijuana shortly before he sees the firearm. The marijuana was found "in [an] alley" and was "not *** recovered on scene in the location where the gun was recovered." Opacian clarified that "there is an indication that there was some narcotics that were also found on scene," but that was "from a different individual who exited the Hyundai Sonata." Again on cross examination, he explained that he "arrested somebody else" for the marijuana that was shown on the body camera footage.

¶ 15 Officer Constantino Martinez (Martinez) testified that on April 23, 2018, between 11:00 and 11:30 p.m., he was on duty in an unmarked police car with his partner, Officer Katie Blocker. They received a call to assist a marked unit with a vehicle that tried to flee during a traffic stop. While driving, he observed the marked police car in pursuit of a "black sedan" near 70th Street and Cottage Grove.

¶ 16 Martinez followed the marked police car "[a]t a safe distance but fairly close." He saw the fleeing vehicle "almost T-bone[] another car." He continued following the marked squad car

and saw the black sedan again "[a]fter it crashed into a house." The marked squad car continued westbound and pulled into an alley. Martinez drove southbound on Champlain because "[he] saw two subjects run from the vehicle, a *** female driver and a male rear passenger." Martinez identified the male as defendant.

¶ 17 When defendant "cross[ed] in front of" Martinez's vehicle, he exited and pursued defendant on foot. He ran after defendant southbound on Champlain and across the street onto the east sidewalk. Defendant "was running fast *** and he kept holding his waistband like he was holding something and he was trying to retrieve it from wherever he had it in his front waistband." Once he "retrieve[d] the item from the front waistband" defendant "toss[ed] a black and red object" over the gate in front of 7111 South Champlain. Martinez was about 10-15 feet behind defendant when he saw him toss the object. Defendant "stopped running and then just immediately put his hands up in the air," and Martinez placed him into custody.

¶ 18 Martinez explained that he was wearing a body-worn camera that night and that police officers are required to activate their body-worn camera in certain situations, including investigatory stops, traffic stops, and foot pursuits when "safe and feasible to do so." However, he failed to activate his camera that night "[d]ue to the spontaneous nature of the event, everything happened so quickly." He was "more worried about the safety of [his] partners and the erratic driving" and "wasn't thinking about turning [his] camera on at the time."

¶ 19 Officer Blocker testified that Martinez pursued a black male that fled from the crashed vehicle. She started running toward Opacian, but lost sight of him. She was running "parallel" to Martinez and could see him "out of the side of [her] eye." She saw that he "already physically had the subject in custody at that time," so she went over to them. Martinez told her that defendant threw something red "over there" and pointed to where he had apprehended defendant.

Officer Blocker used her flashlight to search the area and, "within seconds," located a gun between the gangway of a porch and a wrought iron fence. She called Opacian over to inventory the gun.

¶ 20 The parties stipulated that defendant was convicted of a qualifying felony offense for unlawful use or possession of a weapon by a felon under Illinois law.

¶ 21 Jury Instruction Conference and Closing Arguments

¶ 22 Defendant requested that the jury be given a non-IPI jury instruction concerning Martinez's failure to turn on his body-worn camera pursuant to the Act. See 50 ILCS 706/10-30 (West 2018). The Act provides that body-worn camera recordings may be used as evidence in any judicial proceeding. *Id.* "If a court or other finder of fact finds by a preponderance of the evidence that a recording was intentionally not captured *** in violation of this Act, then the court or other finder of fact shall consider or be instructed to consider that violation in weighing the evidence, unless the State provides a reasonable justification." *Id.*

¶ 23 Defense counsel argued that "the Court and the trier of fact, the jury, heard evidence that although Martinez was wearing a body-worn camera and was required to turn it on pursuant to Chicago Police Department rules, he did not, in fact, turn on his body-worn camera at any point during *** the chase and the arrest." Defense counsel requested that the jury be given the following non-IPI jury instruction:

> "You have heard testimony that Officer Martinez was wearing a body-worn camera but did not turn it on prior to or during his encounter with the defendant. If you find that the officer intentionally did not capture a recording of this encounter, then you should consider that fact when determining the weight to give to officer Martinez's testimony."

The trial court refused to give the instruction, noting that it was "somewhat confusing" as to "whether the court has to make such a finding by a preponderance of the evidence before the jury shall be so instructed or whether the finder of fact *** has to make such a finding." The court found that while the instruction tracked the statutory language, the State provided a "reasonable justification" for Martinez's failure to turn on his body camera, stating:

> "I've listened carefully to the testimony of Officer Martinez, who was involved in a quick investigation made under adrenalin inducing circumstances in connection with a high-speed chase through a residential part of town in a very short period of time. The fact that he was more concerned with his safety, fellow officer's safety and the safety of other persons, including those in the car *** strikes me as eminently reasonable justification in the face of his failure to turn on the body-worn camera in the face of the additional things he was doing at that time."

¶ 24 During closing arguments, defense counsel emphasized that "the only police officer who saw [defendant], allegedly, with what he suspected to be that gun, did not turn on his body-worn camera as is required." Counsel also asserted:

> "Now I want to briefly touch on the body-worn camera issue. It is not an after thought. It is required by Chicago Police Department officers to wear that body-worn camera and the officers that saw and you heard testimony from, they followed that requirement. They followed that rule, but Officer Martinez did not. He did not do his job that night. He has been wearing that body-worn camera for three years and you heard Opacian testify that in order to turn that body-worn camera on, you double click it and you saw that he was engaged in that chase for several minutes or at least a minute on the road and then he gets out of his vehicle and he's saying he thinks that [defendant] has

something in his waistband, but he doesn't turn his body-worn camera on. Did not follow the rules and why is that important? Because if he had you would have the information that you need before you to make your decision."

¶ 25 The jury found defendant guilty of unlawful use or possession of a weapon by a felon and he was sentenced to seven and a half years' imprisonment. On March 21, 2019, defendant filed a motion for a new trial, arguing that the trial court erred in denying his motion *in limine*, specifically by allowing the State to show the body-camera video depicting the marijuana and that the court erred in denying defendant's request to give the jury the non-IPI jury instruction on Martinez's failure to activate his body-worn camera. The court denied defendant's motion.

¶ 26 ANALYSIS

¶ 27 "A non-IPI instruction should be used only if the IPIs for criminal cases do not contain an accurate instruction and if the tendered non-IPI instruction is accurate, simple, brief, impartial, and free from argument." *People v. Ortiz*, 2017 IL App (1st) 142559, ¶ 50 (citing *People v. Pollock*, 202 Ill. 2d 189, 211-12 (2002)). The instruction must not be misleading or confusing. *Id.* The trial court's "refusal to issue a nonpattern jury instruction *** will not be reversed on appeal absent an abuse of discretion." *People v. Garcia*, 165 Ill. 2d 409, 432 (1995).

¶ 28 "The court must give a non-IPI instruction 'if the refusal to give a non-IPI instruction results in the jury not being instructed as to a defense theory of the case which is supported by some evidence.' " *People v. Ehlert*, 274 Ill. App. 3d 1026, 1037 (1995) (quoting *People v. Hanson*, 138 Ill. App. 3d 530, 540 (1985)). "Refusal to give a Non-IPI instruction does not constitute an abuse of discretion however, if there is an applicable IPI instruction and/or the essence of the refused instruction is covered by other given instructions." *People v. Nutall*, 312 Ill. App. 3d 620, 634 (2000) (citing *People v. Thomas*, 175 Ill. 3d 521, 528 (1988)). We review

the jury instructions tendered as a whole to determine whether they fully and fairly cover the law. *Nutall*, 312 Ill. App. 3d at 633 (citing *People v. Hines*, 257 Ill. App. 3d 238, 244 (1993)).

¶ 29 Defendant maintains that the trial court abused its discretion in refusing the non-IPI jury instruction because there was at least "some evidence" to support the instruction. Viewing the jury instructions as a whole, we find no abuse of discretion. First and foremost, the proposed non-IPI instruction was an inaccurate statement of the law and was therefore properly refused by the court. "Whether a court has abused its discretion will depend on whether the nonpattern instruction tendered is an *accurate*, simple, brief, impartial, and nonargumentative statement of the law." (Emphasis added.) *Pollock*, 202 Ill. 2d at 211-12 (citing *People v. Ramey*, 151 Ill. 2d 498, 536 (1992)).

¶ 30 Here, defendant's proposed non-IPI instruction omitted the statutory language, "unless the State provides a reasonable justification" in its entirety. See 50 ILCS 706/10-30. Because the non-IPI instruction was an inaccurate statement of the law, the trial court did not abuse its discretion in refusing the instruction. See, *e.g.*, *People v. Testin*, 260 Ill. App. 3d 224, 233 (1994) (holding that trial court properly refused a non-IPI instruction where the "tendered instruction is an incorrect and overly broad statement of the law"); *People v. Sequoia Books, Inc.*, 160 Ill. App. 3d 750, 759 (1987) (trial court did not abuse its discretion in denying defendant's non-IPI instructions where they were "inaccurate statements as to the applicable obscenity law in Illinois"); *People v. Bush*, 157 Ill. 2d 248, 255-56 (1993) (finding that the trial court abused its discretion in giving a non-IPI instruction that misstated the law).

¶ 31 In addition, the jury was given IPI Criminal No. 1.02, providing that, "In considering the testimony of any witness, you may take into account his ability and opportunity to observe, his memory, his manner while testifying, any interest, bias, or prejudice he may have, and the

reasonableness of his testimony considered in the light of all the evidence in the case." The jury was instructed to consider the witness's credibility in light of "all the evidence in the case," which included Martinez's failure to turn on his body camera. In addition, Martinez admitted that he failed to turn on his body-worn camera and defendant concedes that the "focal point" of his closing argument addressed how this failure undermined Martinez's credibility. See *People v. Buck*, 361 Ill. App. 3d 923, 944 (2005) (the trial court did not abuse its discretion in refusing a non-IPI jury instruction concerning factors in weighing defendant's confession where "defense counsel repeatedly informed the jury that defendant's statement was not electronically recorded" and the instruction given did not prohibit the jury from considering this fact in assessing the weight to give his statement); see also *Nutall*, 312 Ill. App. 3d at 634 (finding that the trial court did not abuse its discretion in refusing to give a non-IPI on "mere presence" where the jury was given IPI instructions on the presumption of innocence, burden of proof, and elements of the crime under an accountability theory and defense counsel argued the same points as the non-IPI instruction); *People v. Trice*, 2017 IL App (4th) 150429, ¶ 45 (finding that IPI Criminal No. 1.02 "was sufficient to instruct the jury to consider any potential interest or bias when assessing [government informant's] credibility").

¶ 32 Defendant further asserts that based on the language of the Act, the "trial judge invaded the province of the jury when he refused the instruction based on his determination that the officer had offered a reasonable explanation for failing to activate his body camera."[1] We need not address that argument because any error in refusing to give the inaccurate non-IPI instruction was harmless. See *People v. Mertz*, 218 Ill. 2d 1, (2005) ("We need not determine whether

[1] The State argues that the Act "mandating the instruction is an unconstitutional violation of the separation-of-powers-doctrine." We "will not consider a constitutional question if the case can be decided on other grounds because constitutional issues are only reached as a last resort." *People v. Stroud*, 392 Ill. App. 3d 776, 790 (2009) (citing *People v. Brown*, 225 Ill. 2d 188, 200 (2007)).

Wright's 'profiler' testimony was properly before the jury because any error in its admission was harmless beyond a reasonable doubt."); *People v. Hart*, 124 Ill. 2d 490, 517 (2005) (unnecessary to address merits of argument where error, if any, is harmless).

¶ 33 "An error in a jury instruction is harmless if it is demonstrated that the result of the trial would not have been different had the jury been properly instructed." *People v. Pomykala*, 203 Ill. 2d 198, 210 (2003) (citing *People v Johnson*, 146 Ill. 2d 109, 136 (1991)). We must determine if "the evidence of defendant's guilt was so clear and convincing as to render the error harmless beyond a reasonable doubt." *Pomykala*, 203 Ill. 2d at 210 (citing *People v. Dennis*, 181 Ill. 2d 87, 95 (1998)).

¶ 34 The evidence of defendant's guilt in this case, while circumstantial, was overwhelming. See *People v. Patterson*, 217 Ill. 2d 407, 435 (2005) ("this court has consistently held that a conviction may be based solely on circumstantial evidence"). Martinez testified that from only 10-15 feet away, he saw defendant grab at his waistband and toss a red and black object as he was running. Officer Blocker recovered the gun "within seconds" of searching for it, exactly where Martinez saw defendant toss the object, and defendant's flight from the police is circumstantial evidence "tending to show consciousness of guilt." *People v. Harris*, 52 Ill. 2d 558, 561 (1972); see also *People v. Ross*, 2019 IL App (1st) 162341, ¶ 32.

¶ 35 Moreover, as previously discussed, the jury was properly instructed regarding assessing the credibility of the witnesses and defendant's closing argument attacked Martinez's credibility by highlighting his failure to turn on his body-worn camera. Compare *People v. Parker*, 113 Ill. App. 3d 321, 330 (1983) (refusal to give non-IPI instruction on witnesses testifying under grant of immunity was harmless where IPI Criminal No. 1.02 was given and the jury was made aware of the fact that certain witnesses were testifying under grants of immunity") with *People v.*

Wheeler, 401 Ill. App. 3d 304, 314 (2010) (counsel's failure to request accomplice-witness instruction was deficient and not harmless where the evidence was closely balanced and accomplice-witness was a key witness). It therefore cannot be said that the result of defendant's trial would have been different had the jury been given the proposed non-IPI instruction.

¶ 36 Defendant also asserts that the trial court erred in admitting footage from Opacian's body-worn camera depicting the marijuana recovered from a co-arrestee "[b]ecause the marijuana shed absolutely no light on whether [defendant] committed the offense *** and its prejudicial impact was in no way remedied by the officer's testimony that [defendant's] codefendant was charged with its possession."

¶ 37 "Other crimes" evidence is admissible if it is relevant for any purpose other than showing the defendant's propensity to commit crime. *People v. Wilson*, 214 Ill. 2d 127, 135 (2005). However, "the concerns underlying the admission of other-crimes evidence are not present when the uncharged crime or bad act was *not committed by the defendant*." (Emphasis added.) *People v. Pikes*, 2013 IL 115171, ¶ 16. Therefore, in situations where defendant is not "alleged to have committed the prior offense," the "case should be judged under ordinary principles of relevance." *Id.* ¶ 20. Because it is undisputed that defendant did not possess the marijuana, we review its admission under ordinary principles of relevance.

¶ 38 Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Ill. R. Evid. 401 (eff. Jan. 1, 2011). The admissibility of evidence rests within the discretion of the trial court, and it will not be disturbed absent an abuse of discretion. *Pikes*, 2013 IL 115171, ¶ 12. We find that while the trial court erred in admitting the evidence of the marijuana, this error was harmless.

¶ 39 Defendant, relying on *People v. Lopez*, 2014 IL App (1st) 102938-B, argues that the body-camera evidence depicting marijuana was irrelevant and prejudicial. In *Lopez*, the defendant was convicted of first degree murder for his participation in the beating death of a man in a factory parking lot. *Id.* ¶ 1. The trial court admitted evidence of an attack on another man by defendant's codefendants in the same parking lot three weeks earlier. *Id.* We held that the trial court erred in admitting evidence of the prior beating because there was "no evidence at trial showing that the [] murder was tied to the prior incident," or that defendant participated in it. *Id.* ¶¶ 24, 28-29 .

¶ 40 The State maintains that "[t]he recovery of the marijuana was part of a continuing course of the events and provided motive for the black Hyundai's flight." However, in cases where the "continuing narrative exception" to other crimes evidence applies, there is a direct, "integral" connection between the evidence and the charged offense. See *People v. Rutledge*, 409 Ill. App. 3d 22, (2011) (evidence that defendant was aggressive and struck a witness prior to hitting an arresting police officer was relevant because "[w]ithout this evidence, there [was] no explanation for defendant's conduct toward [the officer]" and was an "integral and natural part" of the aggravated battery of the police officer); *People v. Manuel*, 294 Ill. App. 3d 113, 124 (1997) (evidence that defendant had arranged prior drug sales with same police informant was admissible other crimes evidence because they were a "necessary preliminary to the current offense"); *People v. Daniels*, 2016 IL App (4th) 140131, ¶ 80 (codefendant's interview "established a continuing narrative that explained the relationship" between two rival groups that led to the shooting). Here, there was "no evidence showing a connection" between the charged offense and the marijuana and it was undisputed that the drugs did not belong to defendant. See *Lopez*, 2014 IL App (1st) 102938-B, ¶ 24.

¶ 41 However, "no reasonable probability exists that the verdict would have been different had the irrelevant evidence been excluded." *People v. Lynn*, 388 Ill. App. 3d 272, 282 (2009). Opacian clearly explained that the marijuana belonged to another passenger and that it was not found where the firearm was recovered or where defendant was arrested. See, *e.g.*, *Pikes*, 2013 IL 115171, ¶ 25 (rejecting defendant's argument that he was prejudiced by irrelevant evidence of a prior shooting he was unconnected to due to an inference of "guilt by association" because defendant was clearly not involved in, or present during, the prior shooting). And, as previously discussed, the evidence of defendant's guilt was overwhelming. See *People v. Evans*, 373 Ill. App. 3d 948, (2007) (finding that even if admitting "testimony regarding two unrelated revolvers recovered along with the murder weapon was error, such error is harmless in light of the overwhelming evidence of defendant's guilt").

¶ 42 CONCLUSION

¶ 43 For the foregoing reasons, the trial court did not abuse its discretion in declining to give the proposed non-IPI jury instruction and the admission of evidence showing marijuana recovered from defendant's co-arrestee was harmless error. Accordingly, defendant's conviction is affirmed.

¶ 44 Affirmed.

¶ 45 JUSTICE WALKER, dissenting:

¶ 46 I respectfully dissent because the trial court erred when it invaded the province of the jury and made the factual finding that the State offered a reasonable justification for Officer Martinez's failure to activate his body camera. The Act clearly requires the fact finder to find whether by a preponderance of the evidence that a recording was intentionally not captured, destroyed, altered, or intermittently captured in violation of the Act, then the fact finder shall

consider that violation in weighing the evidence, unless the State provides a reasonable justification. In a jury trial, the jury, as the finder of fact, must determine whether the "State provides a reasonable justification" because reasonableness is a question of fact, rather than a question of law. *Brame v. City of North Chicago*, 2011 IL App (2d) 100760, ¶ 13. The trial court mistakenly believed that the justification for the officer's failure to activate his body camera was a question of law for the court.

¶ 47 The Law Enforcement Officer-Worn Body Camera Act is not some pointless exercise in virtue signaling. The Act is intended to address the pervasive problem of overly aggressive police tactics, especially when confronting people of color. Police, in general, are given the benefit of the doubt in allegations of abuse, so actual victims have little voice and no real opportunity to prove the course of events. Recognizing this problem, our legislature designed the Act to "provide impartial evidence and documentation to settle disputes and allegations of officer misconduct." 50 ILCS 706/10-5 (West 2016). When officers follow the law and turn on their body cameras, the fact finder sees what the officer saw. Hence, if an officer intentionally failed to activate his body camera, the Act provides that a jury should consider the violation when weighing the evidence.

¶ 48 "The sole function of instructions is to convey to the minds of the jury the correct principles of law applicable to the evidence submitted to it in order that, having determined the final state of facts from the evidence, the jury may, by the application of proper legal principles, arrive at a correct conclusion according to the law and the evidence." *People v. Hudson*, 222 Ill.2d 392, 399 (2006). A non-IPI instruction should be used when the IPIs for criminal cases do not contain an accurate instruction, and the tendered non-IPI instruction is accurate, simple, brief, impartial, and free from argument. *People v. Ortiz*, 2017 IL App (1st) 142559, ¶ 50.

¶ 49 Currently, there is no pattern jury instruction that addresses the specific issue that the Act intends to remedy, and IPI 1.02 alone is insufficient. The majority finds the proposed non-IPI instruction was an inaccurate statement of law. However, the trial court found that the instruction was well-written and closely followed the language of the Act. Here, the proposed non-IPI instruction was appropriate and substantially covered the Act. The trial court's refusal to give the instruction was an abuse of discretion.

¶ 50 The trial court's error in refusing the non-IPI instruction was not "harmless error" because evidence of guilt was not overwhelming. Officer Martinez was the only person who supposedly saw Tompkins toss the gun. Additionally, Officer Martinez testified that it is common for individuals in a high crime area to stash guns throughout the neighborhood instead of on their person. Here, there is a reasonable possibility that had the non-IPI jury instruction been given, the result of the trial would have been different. Because there was no IPI, Tompkins was entitled to the non-IPI instruction on his theory of the case. Where there was evidence of an issue with officer's failure to turn on his body camera, the trial court abused its discretion when it refused to instruct the jury on that issue. *People v. Crane*, 145 Ill. 2d 520, 526, (1991).

¶ 51 Finally, the trial court erred by including clearly irrelevant evidence. The majority concedes that "there was 'no evidence showing a connection' between the charged offense and the marijuana, and it was undisputed that the drugs did not belong to [Tompkins]." However, the majority also believes that there was no reasonable probability that the outcome would have been different without the irrelevant evidence. I disagree.

¶ 52 Tompkins was also entitled to a new trial due to the cumulative effect of the trial court's errors. "The cumulative error analysis permits the reversal of a case where each error is individually deemed harmless or not plainly erroneous and where these errors together have the

cumulative effect of denying defendant's right to a fair trial." *People v. Jones,* 2019 IL App (3d) 160268, ¶ 50. The trial court's error in allowing irrelevant evidence compounded its error of refusing to provide the non-IPI instruction. Evidence of guilt was not overwhelming because the case rested upon the credibility of one witness. See *People v. Hayes,* 183 Ill. App. 3d 752, 757-58 (1989) (reversal based upon improper comments made by prosecutor mandated because the evidence was not overwhelming and rested entirely upon the victim's credibility).

¶ 53 Cumulatively, these errors created a pattern of unfair prejudice to Tompkins. See *People v. Blue,* 189 Ill.2d 99, 139 (2000). As in *Blue,* a new trial is necessary in this case to preserve and protect the integrity of our judicial system. I would reverse and remand for a new trial. Accordingly, I respectfully dissent.