

NOTICE
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2026 IL App (5th) 250232

NO. 5-25-0232

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	St. Clair County.
	)	
v.	)	No. 20-CF-20
	)	
HOWARD DOOLIN,	)	Honorable
	)	Robert B. Haida,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE SHOLAR delivered the judgment of the court, with opinion.

Justice Bollinger concurred in the judgment and opinion.

Justice McHaney concurred in part and dissented in part, with opinion.

OPINION

¶ 1 Following a jury trial, defendant, Howard Doolin, was convicted of first degree murder for the deaths of James Shafer (720 ILCS 5/9-1(a)(1) (West 2020)) and Curtisha Warner and Marcelene Braggs (*id.* § 9-1(a)(3)); armed robbery of Roneka Fair (*id.* § 18-2(a)(4)); and aggravated battery with a firearm against both Fair and Warner (*id.* § 12-3.05(e)(1)). At sentencing, the trial court merged the aggravated-battery conviction involving Fair into the armed-robbery conviction and merged the aggravated-battery conviction involving Warner into both felony-murder convictions. The trial court sentenced defendant to three consecutive terms of natural life imprisonment for the murder convictions, consecutive to a 43-year term of imprisonment for armed robbery, followed by 3 years of mandatory supervised release. Defendant

raises three issues on appeal: (1) whether the aggravated battery with a firearm lacked an independent felonious purpose sufficient to support his felony-murder convictions, (2) whether he was denied a fair trial because the trial court failed to comply with Illinois Supreme Court Rule 431(b) (eff. July 1, 2012) during *voir dire* in a closely balanced case, and (3) whether trial counsel rendered ineffective assistance by permitting inadmissible and prejudicial evidence to be presented to the jury. For the following reasons, we affirm in part, reverse in part, and remand with directions.

¶ 2

I. BACKGROUND

¶ 3

A. The Investigation

¶ 4 The record demonstrated that Officers Sharp and Boyd were on duty together in the early hours of December 23, 2019. A little before 4 a.m., they received a report of a vehicle accident at 18th Street and St. Clair Avenue in East St. Louis, Illinois. When they arrived, they saw a burning SUV crashed against a telephone pole. There were two women at the scene, one hanging out of the car and one lying right next to the car. While removing the women from the vehicle, the officers discovered that the driver, Curtisha Warner, had sustained gunshot wounds. The passenger was identified as Marcelene Braggs. About five minutes later, they heard gunshots coming from the direction of 25th Street and State Street. Officers Sharp and Boyd proceeded to 25th Street and State Street, where Fair was lying in the eastbound lanes of State Street. Fair told Officer Sharp that she had been shot, and he observed a gunshot wound to her stomach. Fair kept saying, “Why did they shoot me? I gave them—I gave my money.”

¶ 5 Within five minutes of arriving at 25th Street and State Street, the officers heard gunshots coming from the area of 25th Street and Louisiana Boulevard. Officer Boyd headed to the area and saw a White man, later identified as Shafer, on the ground in a pool of blood at a Citgo gas station. The man appeared to have been shot. A gas station security guard gave a description of a Black

man wearing a lime green hat running from the alley beside the gas station toward a vehicle that traveled west on Louisiana Boulevard and then north on 25th Street. Fair survived her injuries, but Shafer did not.

¶ 6 A 911 call, later published to the jury, was placed at approximately 3:53 a.m. During the call, the caller reported that her niece had been shot in the leg and that they were being chased. Approximately one minute into the call, the sound of a collision could be heard. Raven Williams testified that, while driving to work that morning, she came upon a gray-blue SUV that had crashed into a utility pole and was beginning to catch fire. She and another motorist removed two women from the vehicle before it became engulfed in flames.

¶ 7 Illinois State Police sergeant Travis Irwin was assigned to investigate the incident at 18th Street and St. Clair Avenue. When he arrived a little after 5 a.m., he saw a silver Dodge Durango had struck a pole. Through the course of his investigation, Sergeant Irwin obtained information that the shooting of Warner and Braggs had occurred near a shuttered bar on the corner of 11th Street and Lake Avenue. Sergeant Irwin went to that location on December 27 and found a red blood-like substance on the roadway, later determined to be blood from Warner, and three spent 9-millimeter shell casings. A person who lived in a residence on the corner advised that he heard gunshots on December 23 but did not report it. Sergeant Irwin obtained surveillance video from two locations along 15th Street, which showed a silver Dodge Durango pass by at approximately 3:53 a.m., followed 11 seconds later by a silver car. The surveillance videos were later published to the jury.

¶ 8 Warner had three gunshot wounds to the left and right thighs, but they did not cause her death. Rather, Warner died from blunt trauma to her abdomen resulting from the car crash.

Braggs's death was determined to have occurred as a result of thoracoabdominal blunt trauma consistent with an automobile accident.

¶ 9 Police obtained surveillance videos of the shooting at 25th Street and State Street, which depicted Fair walking down the street toward the intersection, then turning toward a vehicle parked there. The subjects in the video are difficult to make out. After a short time, a vehicle left the intersection, and Fair appears not to be moving as much as before.

¶ 10 Paramedic Heather Kloeppel responded to the scene of the shooting at 25th Street and State Street just after 4 a.m. on December 23, 2019. Fair, who had been shot in the abdomen, was on the ground in the eastbound lane near the curb, complaining of pain. A single 9-millimeter shell casing was recovered from the scene. Fair survived her injuries but later died in an unrelated homicide, rendering her unavailable for trial.

¶ 11 Police also obtained surveillance video from the Citgo gas station, which showed Shafer arriving at the gas station in a black Mercedes at approximately 3:54 a.m., then hanging out at the gas station for about 25 minutes. Portions of the surveillance footage were later published to the jury. In the videos, Shafer can be seen standing near the gas pumps and talking to two other men. At one point, Shafer walks out of the camera view, toward the back side of the gas station. A dark blue medium-sized SUV can be seen in the parking lot. Later, the blue SUV starts pulling out of the gas station, and people in the area of the gas pumps react as if they hear a noise. Shafer walks back into view and stumbles to the ground. A vehicle turns from the direction of the shooting onto 25th Street and follows the blue SUV.

¶ 12 Illinois State Police investigator Michael Hentze responded to the scene of the shooting at 25th Street and Louisiana Boulevard in the early morning hours of December 23, 2019. Hentze prepared a crime-scene sketch depicting seven discharged cartridge casings found along the side

of the convenience store, a cell phone, three areas of a blood-like substance, and a towel. Hentze collected the cartridge cases and submitted them to the lab for testing.

¶ 13 Andre Williams, a deputy with the St. Clair County Sheriff's Department, assisted in the investigation of the Shafer shooting and found a silver Nissan Sentra automobile associated with the offense about six blocks away from the gas station. Inside the car was a spent shell casing sitting on the driver's seat. The Nissan was towed and processed. No fingerprints were found inside or outside the car. Shafer died from gunshot wounds to his legs that damaged major arteries.

¶ 14 Timothy Johnson was a forensic scientist with the Illinois State Police, specializing in firearms identification. Johnson received the seven fired cartridge cases obtained from 25th Street and Louisiana Boulevard, the one fired cartridge case located in the Nissan, the three fired cartridge cases obtained from 11th Street and Lake Avenue, and the one fired cartridge case obtained from 25th Street and State Street. After comparing the microscopic patterns of the cartridge cases, Johnson opined that they were all fired from the same unknown firearm.

¶ 15 Shortly after the shootings, police located the Nissan abandoned several blocks from the Shafer shooting. Investigators determined that the vehicle had been rented by Jolanda Davis (Jolanda), who was dating defendant. After Jolanda provided investigators with inconsistent accounts of the events, they interviewed her son, Damorion Davis (Damorion). Based upon information developed during the investigation, police ultimately identified defendant as the suspect in the shootings.

¶ 16 The State charged defendant with eight counts: (1) first degree murder of Shafer, (2) being an armed habitual criminal, (3) armed robbery of Fair, (4) aggravated battery with a firearm of Fair, (5) aggravated battery with a firearm of Warner, (6) unlawful use of a weapon by a felon,

(7) first degree felony murder of Warner, and (8) first degree felony murder of Braggs.¹ Counts VII and VIII charged felony murder, alleging that the predicate forcible felony was the aggravated battery with a firearm committed against Warner.

¶ 17 B. Fitness Proceeding

¶ 18 During trial preparations, defense counsel raised the issue of defendant’s fitness for trial based upon his review of records from the Social Security Administration, which indicated that defendant had vision impairments as well as mental and psychological disabilities. On May 26, 2022, the trial court found that defense counsel had raised a *bona fide* doubt as to defendant’s fitness and entered an order appointing Dr. Daniel J. Cuneo, a clinical psychologist, to evaluate defendant’s fitness to stand trial. On August 16, 2022, Dr. Cuneo issued his report, concluding that, despite defendant’s impairments and limitations, he was fit to stand trial.

¶ 19 On August 19, 2022, the trial court addressed Dr. Cuneo’s report, stating:

“THE COURT: All right. Based upon counsel’s stipulation as to Dan Cuneo’s qualifications and also to his findings that [defendant] is fit to stand trial, and also [defendant’s] stipulation that—to the findings of Dan Cuneo, I will find that [defendant] is fit to stand trial, and we will schedule the matter for a jury trial the week of November 14th, that’s a Monday commencing at 8:30 in the morning.”

¶ 20 C. Pretrial Rulings

¶ 21 Before trial, the State moved to use three of defendant’s prior convictions for impeachment purposes: (1) a 2015 Missouri conviction for unlawful possession of a firearm, (2) a 2014 Illinois conviction for possession of controlled substances with intent to deliver, and (3) a 2012 Missouri

¹Before trial, the trial court severed the armed habitual criminal and unlawful use of a weapon by a felon counts to be tried separately. The State ultimately nol-prossed those charges.

conviction for second degree robbery. Over defense objection, the court ruled that the robbery and controlled-substances offenses were admissible but excluded the 2015 firearm conviction.

¶ 22

D. *Voir Dire*

¶ 23 At the start of *voir dire*, the trial court advised the potential jurors in groups about the principles outlined in Illinois Supreme Court Rule 431(b) (eff. July 1, 2012). As to each of the four principles, the trial court first asked each group if there was anyone “that does not understand the concept.” Then, as to each principle, the trial court asked: “can you apply that principle *** as it relates to the charges?” At no point did the court ask the prospective jurors if they accepted any of the four Rule 431(b) principles.

¶ 24

E. Jury Trial

¶ 25

1. Master Sergeant Jarran Riley’s Testimony

¶ 26 Master Sergeant Jarran Riley testified that he served as the lead investigator assigned to investigate the multiple shootings that occurred in East St. Louis on December 23, 2019. During the investigation, Sergeant Riley learned that the Nissan found near 25th Street and Louisiana Boulevard was leased to Jolanda. When Sergeant Riley interviewed Jolanda, she initially reported that her vehicle had been stolen and identified another individual as a possible suspect. After investigating that individual, Sergeant Riley determined he was not involved. Sergeant Riley further testified that Jolanda provided investigators with different accounts of the events during multiple interviews.

¶ 27 Following his interviews with Jolanda, Sergeant Riley interviewed her son, Damorion, who provided investigators with information concerning the shootings. The State then questioned Sergeant Riley concerning his interview with Damorion as follows:

“Q. And after speaking with him and meeting with him, did he—did you have any reason to feel that he was the one behind all this?

A. No, I did not.

Q. And why is that?

A. So, based on my training and experience, it’s been approximately thirteen years of doing this job, and then prior to this, I was also an investigator in a different entity with the Offices of the Inspector General, part of my ability to interview people is to elicit true answers in addition to evaluate deceptive behavior and non-deceptive behavior. And while in interviewing him and talking to him, I—I listened to his story, I had him repeat his story, and then I also observed his behavior and mannerisms throughout the time he was telling the story, and there was nothing based off of my experience or my gut that gave any inclination that he was being deceptive with the story that he provided.”

Defense counsel did not object to this testimony. On cross-examination, Sergeant Riley testified that Damorion had never been a suspect in the investigation. Sergeant Riley explained that he interviewed Damorion because he continued to follow and explore all leads in the case and because Damorion lived at the residence.

¶ 28 After interviewing Damorion, Sergeant Riley identified defendant as a suspect. Sergeant Riley testified that investigators obtained surveillance footage, interviewed additional witnesses, and reviewed cellular telephone records during the course of the investigation. Surveillance footage showed a silver vehicle leaving the Citgo station immediately after the Shafer shooting, consistent with the observations of the security guard. Cellular telephone records reflected communications between Jolanda and Damorion during the relevant time period. Although investigators never recovered the firearm used in the shootings, Sergeant Riley testified that

Jolanda later admitted disposing of it. Damorion later testified for the State and identified defendant as the shooter in each of the offenses.

¶ 29 On cross-examination, Sergeant Riley acknowledged that Jolanda provided investigators with multiple inconsistent accounts before eventually implicating defendant. He further acknowledged that investigators recovered no forensic evidence directly linking defendant to the shootings. Instead, the investigation relied largely upon the statements of Damorion and Jolanda, together with surveillance footage, cellular telephone records, and other evidence obtained during the investigation.

¶ 30 **2. Jolanda's Testimony**

¶ 31 Jolanda testified that defendant was living with her in December 2019. After he returned home for winter break, Damorion's black Camry was stolen. Jolanda rented the Nissan for him, and she continued driving her blue Ford Edge. She testified that both defendant and her son, Damorion, had access to the Nissan. After an argument between Jolanda and defendant, Damorion accompanied defendant as they left in the Nissan. Approximately 20 minutes later, Jolanda received a call directing her to meet them in East St. Louis.

¶ 32 When she got there, she saw defendant and Damorion sitting in the Nissan at a Citgo gas station. Jolanda parked near the gas pumps and sat in the car for a few minutes. Then, she said, she saw defendant get out of the driver's side of the car, holding a black gun. He walked into an area that she could not see, then she heard three to four gunshots. Jolanda saw defendant run back to the passenger side of the Nissan, with the gun in his hand. She pulled out of the gas station, and the Nissan followed behind her. She did not know where to go, but she got a call from defendant on Damorion's phone, and he told her where to go. Jolanda parked at a house, and then Damorion

and defendant parked the Nissan and got into her car. Jolanda drove them home, and as they drove, defendant was crying and saying, “[I]t was either me or them.”

¶ 33 On December 23, defendant borrowed Jolanda’s Ford Edge. When he did not return it as he promised, Jolanda reported it stolen. When defendant eventually returned, Jolanda drove defendant and her children toward Cahokia while looking for a place for defendant to stay so that she could notify police of his whereabouts. As they were driving home, they encountered police officers. Although defendant told her to keep driving, Jolanda stopped the vehicle, and officers arrested defendant. Jolanda later testified that, after defendant was arrested, he repeatedly called her from jail asking her to retrieve “Derek’s wallet” from beneath the passenger seat of her Ford Edge. Instead of a wallet, she found a black handgun, which she discarded. She acknowledged that she initially concealed this fact from investigators before later admitting it after receiving immunity.

¶ 34 3. Damorion’s Testimony

¶ 35 Damorion testified that, in December 2019, he was a student at the University of Illinois Springfield but returned home to live with his mother, Jolanda, during the holiday break. When he arrived home, he learned that Jolanda was dating defendant. On the evening of December 23, 2019, Damorion witnessed an argument between defendant and Jolanda. According to Damorion, defendant became upset and asked Jolanda to accompany him when he left the residence. When Jolanda refused, Damorion offered to accompany defendant instead, and the two left together in the Nissan.

¶ 36 Damorion testified that he sat in the front passenger’s seat while defendant drove them to East St. Louis, which took about 10 minutes. Defendant stopped the car in what looked like a residential area. There, on the opposite side of the street, was a black SUV with a woman standing

outside it. Damorion testified that defendant motioned the woman to come over and, as she neared, defendant pulled out a gun and shot her three times through the open car window. After she was shot, she got back into the SUV and drove off. Defendant and Damorion chased the SUV for a “little bit.” Damorion testified that, once they saw flashing lights, they stopped their chase.

¶ 37 Next, defendant and Damorion drove to another part of East St. Louis and stopped at a stoplight, where there was a woman begging for change. According to Damorion, defendant said “[H]ey, I have some fire-ass girl in here.” The woman approached the driver’s side and spoke with defendant. According to Damorion, defendant told the woman, “give me everything you got” and “this is not a game.” Defendant fired a shot into the air, and the woman gave him a dollar. Defendant drove forward a little bit, then stopped, leaned out the window, and shot the woman. Damorion testified defendant stated, “[O]nce you start killing, you have to keep killing, you got to paint this entire city red if I have to.”

¶ 38 Defendant and Damorion drove to a brick house with a driveway and sat there for a little while. Defendant did not have a phone, so he asked Damorion to use his phone to call his mother. Damorion called Jolanda, but defendant took the phone out of his hand. Defendant told Jolanda to come and get them, and then he hung up. Then, he called back and told her to meet them at a gas station. According to Damorion, defendant said, “I know where this guy’s at,” and they drove to a gas station. Jolanda pulled up in her blue Ford Edge right after them.

¶ 39 Within five minutes after they arrived, Damorion saw a light-skinned man walk from inside the gas station and behind the building, and defendant said, “[T]hat’s him right there.” Defendant told Damorion to give him a green bandana that Damorion was wearing at the time; defendant put the bandana over his face. Defendant then got out and told Damorion to get into the driver’s seat and not to get out no matter how many gunshots he heard. Damorion climbed into the driver’s seat.

Defendant went back behind the building, and Damorion heard gunshots. Damorion could not see the area where the shooting took place. After the gunshots, defendant ran back to the car, and Damorion did not see where the other man went. When defendant returned, he told Damorion to unlock the doors, but Damorion fumbled with the locks. Once Damorion got the doors unlocked, defendant got into the back seat and told him where to drive. According to Damorion, Jolanda left the gas station after them and followed. Damorion followed defendant's directions and stopped on a street across from some houses. Damorion and defendant got out of the Nissan and got into Jolanda's Ford Edge, with Damorion sitting behind the driver's seat and defendant sitting in the front passenger seat. Jolanda then drove them back home. Damorion testified that, as they drove home, they passed one of the victims and defendant said, "[Y]eah, I did that, you see that, I did that."

¶ 40 When they arrived home, Damorion and his mother sat downstairs on the couch and talked, while defendant went upstairs and went to sleep. Damorion testified that he and Jolanda did not call the police after the incident because he was afraid of defendant. Damorion agreed that he did speak to the police after defendant was arrested.

¶ 41 On cross-examination, Damorion testified that he saw defendant with a handgun one night before the incident. Defendant had the gun wrapped in a cloth. Defendant put the gun in Damorion's hand, then told him not to touch it and took it back. Damorion denied ever taking the gun to his mother's car. Damorion also testified that, after the incident, he saw defendant lift up his mother's bed and saw that there was a box of ammunition under the bed. Damorion acknowledged he gave a statement to the police on January 2, but he did not recall telling the investigator that he wore the green bandana because he thought something might go down and did not want anyone to see his face.

¶ 42

4. Rodney Wilson's Testimony

¶ 43 Rodney Wilson testified that he is assigned to intelligence at the St. Clair County jail. Part of his job is to monitor jail calls. The State introduced recorded jail calls, which were published to the jury, in which defendant directed others to retrieve what he referred to as his brother's "wallet" from beneath the passenger seat of Jolanda's Ford Edge.

¶ 44

5. Motion for Directed Verdict

¶ 45 At the close of the State's case in chief, defense counsel moved for a directed verdict on the felony-murder counts. Counsel argued that the State could not prove felony murder because there was "not an independent felonious intent." Counsel asserted that the aggravated battery with a firearm was complete once Warner was shot and that the subsequent pursuit constituted "a separate incident from the aggravated battery." Counsel further argued that Warner died from blunt-force trauma sustained when her vehicle struck a utility pole, rather than from the gunshot wound, and maintained that the aggravated battery had concluded before the fatal collision. Counsel contrasted those facts with a traditional felony-murder scenario in which a killing occurs during the continuous commission of a predicate felony, such as an armed robbery.

¶ 46 The State responded that the felony-murder theory remained applicable because the victims were killed while attempting to escape from the aggravated battery. The State argued that the pursuit and resulting crash remained part of a continuous course of conduct flowing from the forcible felony. The trial court agreed, finding that the issue presented "a course of conduct determination" and concluding that a reasonable jury could find the shooting and subsequent crash were contemporaneous and occurred during the course of the aggravated battery. The court denied defendant's motion for a directed verdict.

¶ 48 Defendant testified that he had been dating Jolanda since August 2019 and was living with her in December 2019. He and Jolanda argued on the evening of December 23, 2019, but he denied leaving the residence with Damorion or participating in any of the shootings. Instead, he testified that he spent the night with family and friends before returning to Jolanda's residence the following morning. He further testified that he later drove to the Citgo gas station where Shafer had been shot and observed police investigating the scene.

¶ 49 Defendant stated that, on December 24, Jolanda gave him a gun wrapped in a towel and asked him to dispose of it, although she did not explain why. He denied possessing or using a firearm during the shootings. Defendant acknowledged that, while in jail, he made recorded telephone calls directing others to retrieve what he described as a "wallet" from beneath the passenger seat of Jolanda's vehicle, and he admitted the item was actually a firearm. He explained that he wanted the gun removed because, as a convicted felon, he feared being prosecuted for possessing a firearm.

¶ 50 During direct examination, defense counsel questioned defendant concerning his prior convictions. Defendant acknowledged prior convictions for robbery and possession of a controlled substance. Defense counsel then asked whether defendant had ever been convicted of a firearm-related offense, and defendant responded, "No." Outside the presence of the jury, the State argued that defendant had opened the door to impeachment with his 2015 Missouri conviction for unlawful possession of a firearm. The trial court agreed.

¶ 51 On cross-examination, the State impeached defendant with the certified copy of his 2015 Missouri conviction for unlawful possession of a firearm, which was admitted as State's exhibit 105. Also, during cross-examination, defendant acknowledged that, during a recorded jail call with

Jolanda, he told her, “I put Derek [sic] wallet up under the front seat of your car,” and that he similarly told his sister that he had left the “wallet” in Jolanda’s vehicle. Defendant maintained that Damorion had actually placed the firearm under the seat and explained that he used the coded language in the calls because he wanted the firearm removed to avoid being charged as a felon in possession of a firearm.

¶ 52

F. Jury Instruction Conference

¶ 53 During the jury instruction conference, the trial court noted that defense counsel’s directed-verdict argument applied to the proposed felony-murder instructions. Counsel objected to the instructions, arguing that the aggravated battery and the subsequent pursuit were separate events and that the victims died from blunt-force trauma sustained in the collision rather than from the gunshot wound. The State responded that the predicate aggravated battery set in motion the chain of events culminating in the fatal crash. The trial court modified one instruction to specify that the predicate aggravated battery with a firearm was committed against Warner but otherwise overruled defendant’s objections. The jury was instructed that it could convict defendant of felony murder if it found that the deaths resulted “as a direct and foreseeable consequence of a chain of events set into motion” by the aggravated battery with a firearm.

¶ 54

G. Jury Deliberations and Verdict

¶ 55 Prior to deliberations, the trial court advised the parties that State’s exhibit 105, the certified copy of defendant’s 2015 Missouri firearm conviction, would accompany the jury into deliberation. Defense counsel stated that he preferred the exhibit not be sent to the jury but raised no objection. The jury retired to deliberate and later returned guilty verdicts on all counts.

¶ 56

H. Posttrial Motions and Sentencing

¶ 57 Following the jury’s verdicts, defense counsel filed a posttrial motion asserting, *inter alia*, that the State failed to prove defendant guilty beyond a reasonable doubt, that the trial court erred in barring the defense’s proposed witnesses, and that the felony-murder charges were based on an improper predicate offense. After a hearing, the trial court denied the motion. The court thereafter proceeded with sentencing.

¶ 58 Following merger of the remaining counts, the trial court sentenced defendant to three consecutive terms of natural life imprisonment for the murders of Shafer, Warner, and Braggs. The court also imposed a consecutive 43-year sentence for the armed robbery of Fair, to be followed by a 3-year term of mandatory supervised release.

¶ 59 On January 26, 2023, defendant filed a *pro se* pleading titled “Motion to Reconsider,” asserting that the trial court had allowed members of the state’s attorney’s office, victim’s family members, and law enforcement witnesses to remain in the courtroom while the jury was deliberating and viewing a DVD entered into evidence. Simultaneously with his motion, he filed a *pro se* notice of appeal. Defense counsel subsequently filed a notice of appeal on February 3, 2023, asserting there was insufficient evidence for a conviction.

¶ 60

I. First Direct Appeal

¶ 61 The Office of the State Appellate Defender was appointed to represent defendant on March 18, 2023. Through counsel, defendant raised four arguments: (1) the trial court erred by finding defendant fit to stand trial based solely on defendant’s and his counsel’s stipulations as to his fitness, (2) defendant was denied a fair trial because the trial court incorrectly questioned prospective jurors about the principles outlined in Illinois Supreme Court Rule 431(b) (eff. July 1, 2012) in a closely balanced case, (3) defendant received ineffective assistance of counsel, where

his trial counsel failed to prevent the admission of inadmissible and prejudicial evidence, and (4) remand for a preliminary *Krankel* inquiry (see *People v. Krankel*, 102 Ill. 2d 181 (1984)) was required because the trial court did not inquire into defendant's *pro se* posttrial claims of ineffective assistance of counsel. *People v. Doolin*, 2024 IL App (5th) 230053-U, ¶ 2. On June 25, 2024, this court held that the trial court erred by finding defendant fit to stand trial based solely on the stipulation of the parties and, accordingly, remanded for a retrospective fitness hearing. *Id.* ¶¶ 11-12.

¶ 62 J. Retrospective Fitness Hearing

¶ 63 On remand for a retrospective fitness hearing, the parties agreed it was not necessary to obtain a new fitness evaluation or call Dr. Cuneo to testify. Neither side submitted new evidence. The trial court summarized the procedural history of the case, making particular note of its observations of defendant during the pretrial proceedings. The trial court ruled that, based on its own observations and findings, as well as its review of the record and Dr. Cuneo's report, defendant had been fit to stand trial at the time of the trial in November 2022. Defendant filed a second notice of appeal.

¶ 64 K. Second Direct Appeal

¶ 65 Following the trial court's determination on remand that defendant was fit to stand trial, defendant pursued this appeal, raising three issues. He argues that (1) the aggravated battery with a firearm lacked an independent felonious purpose sufficient to support his felony-murder convictions, (2) he was denied a fair trial because the trial court failed to comply with Rule 431(b) during *voir dire* in a closely balanced case, and (3) trial counsel rendered ineffective assistance by permitting inadmissible and prejudicial evidence to be presented to the jury.

¶ 66 Before briefing on the merits, the State moved to strike defendant’s first issue, arguing that it exceeded the scope of the limited remand because it had not been raised during the original appeal and was therefore barred under the law-of-the-case doctrine. After the limited remand, but before this appeal was resolved, our supreme court decided *People v. Bush*, 2023 IL 128747, which clarified the application of the merger doctrine to assaultive predicate felonies. Because the question presented is governed by the law in effect at the time of our decision and defendant’s first claim turns upon the principles clarified in *Bush*, we denied the State’s motion to strike and proceed to consider the merits of that claim.

¶ 67 II. ANALYSIS

¶ 68 Defendant argues that the aggravated battery with a firearm committed against Warner could not serve as the predicate felony supporting the felony-murder convictions arising from the deaths of Warner and Braggs because it lacked an independent felonious purpose. He contends the aggravated battery constituted the completed act of violence directed at Warner, while the subsequent pursuit and fatal collision were separate events. Accordingly, because Warner and Braggs ultimately died from blunt-force injuries rather than the gunshot wounds, defendant maintains the aggravated battery could not serve as the predicate felony under the merger doctrine as reaffirmed in *Bush*. For the following reasons, we affirm in part, reverse in part, and remand with directions.

¶ 69 A. Felony Murder

¶ 70 1. Curtisha Warner

¶ 71 Defendant argues that the aggravated battery with a firearm committed against Warner could not serve as the predicate felony supporting his felony-murder conviction because it lacked an independent felonious purpose. We agree.

¶ 72 Whether a charged offense may serve as the predicate felony supporting a conviction for felony murder presents a question of law, which we review *de novo*. *Id.* ¶ 39. Under section 9-1(a)(3) of the Criminal Code of 2012, a person commits first degree murder when, “in performing the acts which cause the death,” he or she is committing or attempting to commit a forcible felony other than second degree murder. 720 ILCS 5/9-1(a)(3) (West 2020). Although aggravated battery with a firearm is statutorily classified as a forcible felony, our supreme court has long recognized that not every forcible felony may serve as the predicate felony for felony murder. See *People v. Davison*, 236 Ill. 2d 232, 239-40 (2010); *People v. Morgan*, 197 Ill. 2d 404, 447 (2001).

¶ 73 As the supreme court recently reaffirmed in *Bush*, the merger doctrine excludes predicate felonies that “ ‘arise from and are inherent in the act of murder itself.’ ” *Bush*, 2023 IL 128747, ¶ 44 (quoting *Morgan*, 197 Ill. 2d at 447). In determining whether a predicate felony merges with the homicide, the inquiry focuses upon defendant’s conduct and whether the predicate felony was inherent in and arose out of the killing. *Id.* ¶ 43. The court explained that the doctrine applies where “the predicate felony’s sole purpose is to effectuate an act of physical violence contemplating death.” *Id.* ¶ 44. Conversely, the merger doctrine does not apply where the predicate felony has a felonious purpose independent of such violence. *Id.*

¶ 74 In explaining the doctrine, the *Bush* court reaffirmed both *Morgan* and *People v. Pelt*, 207 Ill. 2d 434 (2003), observing that each involved “singular acts of assaultive conduct that directly caused the victims’ deaths.” *Bush*, 2023 IL 128747, ¶ 44. The court further explained that courts generally examine the “gravamen” or “essential characteristic” of the predicate felony to determine whether it has an independent felonious purpose. *Id.* ¶ 45. Where, as here, aggravated battery is alleged as the predicate felony, the relevant inquiry is whether “the conduct charged contemplates

death.” *Id.* If it does, the aggravated battery cannot serve as the predicate felony; if it does not, the offense may properly serve as the predicate. *Id.*

¶ 75 Applying those principles here, the sole predicate felony alleged in support of the felony-murder charge was the aggravated battery with a firearm committed against Warner. The State relied upon that same aggravated battery as the predicate felony for the felony-murder counts involving both Warner and Braggs. The evidence established that defendant motioned Warner into the street before shooting her three times at close range. Although Warner ultimately died from injuries sustained during the ensuing collision rather than from the gunshot wounds themselves, that circumstance does not alter our application of the merger doctrine. The aggravated battery with a firearm consisted of the same singular assaultive conduct directed toward Warner upon which the State relied as the predicate for her felony-murder charge.

¶ 76 As in *Morgan* and *Pelt*, the predicate felony was not committed to accomplish some objective independent of the homicidal violence itself. Rather, the shooting constituted the very act of physical violence contemplated by the merger doctrine. See *id.* ¶ 44; *Morgan*, 197 Ill. 2d at 458; *Pelt*, 207 Ill. 2d at 442. That Warner survived the shooting long enough to drive away and ultimately died from injuries sustained during the ensuing collision does not transform the aggravated battery into an offense committed with an independent felonious purpose. The charged aggravated battery remained the assaultive conduct directed toward Warner, and nothing about the manner in which her death ultimately occurred supplied that conduct with a separate felonious objective.²

²*Bush* illustrates that the manner or timing of the victim’s death is not, standing alone, dispositive of the merger inquiry. In explaining that aggravated battery may serve as a predicate felony where “the conduct charged does not contemplate death,” the court cited *People v. Viser*, 62 Ill. 2d 568, 579 (1975), which upheld felony-murder convictions predicated on aggravated battery where the victim died weeks after being struck and punched by multiple defendants. *Bush*, 2023 IL 128747, ¶ 45. Although *Viser* was superseded by statute as explained in *Bush*, the *Bush* court cited *Viser* for the limited purpose of illustrating

¶ 77 The State nevertheless argues that the aggravated battery remained a proper predicate felony because Warner's death occurred during a continuous sequence of events beginning with the shooting and ending with the fatal collision. We do not disagree that the evidence may establish a causal connection between the shooting and Warner's death. That argument, however, does not resolve the merger question. Even if Warner's death occurred during a continuous sequence of events following the shooting, the aggravated battery with a firearm could support a felony-murder conviction only if it was a legally permissible predicate felony. As explained above, it was not. Because the aggravated battery merged with the homicidal conduct under *Bush*, the State's continuous-course theory does not render that offense a legally sufficient predicate felony capable of sustaining defendant's felony-murder conviction for Warner.

¶ 78 To hold otherwise would permit the State to accomplish precisely what the merger doctrine is designed to prevent—the transformation of homicidal assaultive conduct into felony murder merely by charging the assaultive conduct itself as the predicate felony. Accordingly, we conclude that the aggravated battery with a firearm committed against Warner lacked an independent felonious purpose and therefore could not serve as the predicate felony supporting defendant's felony-murder conviction for Warner.

¶ 79 2. Marcelene Braggs

¶ 80 Defendant next argues that the aggravated battery with a firearm committed against Warner likewise cannot serve as the predicate felony supporting his felony-murder conviction arising from Braggs's death. Although Braggs was not the victim of the aggravated battery, the dispositive

circumstances in which aggravated battery may properly serve as the predicate felony for felony murder. *Id.* ¶ 45 & n.3.

question remains whether the aggravated battery charged by the State was a legally sufficient predicate felony to support the felony-murder conviction.

¶ 81 The State responds that Braggs's death presents a different circumstance because she was not the victim of the aggravated battery. According to the State, the aggravated battery committed against Warner remained a qualifying predicate felony for purposes of Braggs's death because Braggs died during the continuous sequence of events initiated by the shooting. Relying upon principles of proximate cause and continuous course of conduct, the State maintains that Braggs's death was a direct and foreseeable consequence of the aggravated battery and therefore falls within the felony-murder statute.

¶ 82 The State's argument concerning proximate cause and continuous course of conduct does not, by itself, resolve the merger question. Even if Braggs's death was a direct and foreseeable consequence of the shooting and occurred during a continuous course of conduct, the aggravated battery against Warner could support the felony-murder conviction only if it was a legally permissible predicate felony. The question, therefore, is whether Braggs's status as a different victim alters our conclusion that the aggravated battery against Warner lacked an independent felonious purpose. We conclude that it does.

¶ 83 In concluding that it does, we note that there is no supreme court case law directly on point for this principle. While *Bush* clarified and reaffirmed the merger doctrine, it remained silent on this specific issue. See *Bush*, 2023 IL 128747. We therefore look to one of our own cases, *People v. Tyler*, 2021 IL App (5th) 180476-U, and its predecessor, *People v. McGee*, 345 Ill. App. 3d 693 (2003), in deciding whether the conviction that could not serve as a predicate felony in the murder of Warner can nonetheless serve that purpose in the murder of Braggs.

¶ 84 In *Tyler*, the defendant went to a “probate party” for a fraternity at a bar, then subsequently to an “after party” at a house known as “Sigma House” in Carbondale, Illinois. *Tyler*, 2021 IL App (5th) 180476-U, ¶ 5. While he was at the after party, a physical fight broke out within the house, and gunshots were fired outside the house. *Id.* As a result, Greenlee, who attended the Sigma House after party, was injured, and Beaty, a neighbor who was in his own apartment at the time, was killed. *Id.* The State charged the defendant with the felony murder of Beaty in two counts, alleging the aggravated battery with a firearm of Greenlee as the predicate felony in one count and aggravated discharge of a firearm at Sigma House for the other. *Id.* ¶ 6. The *Tyler* court rejected the defendant’s argument that his case was analogous to *People v. Space*, 2018 IL App (1st) 150922, *Morgan*, 197 Ill. 2d 404, and *People v. O’Neal*, 2016 IL App (1st) 132284. *Tyler*, 2021 IL App (5th) 180476-U, ¶¶ 65-74. Instead, this court ruled that there was a separate felonious purpose because the defendant “intended to shoot Greenlee, and in the act of shooting and injuring Greenlee, he shot Beaty,” resulting in Beaty’s death. *Id.* ¶ 74. More specifically, the *Tyler* court ruled that the predicate felony had “an independent felonious purpose *other than killing Beaty*.” (Emphasis added.) *Id.* In summary, in the *Tyler* decision, this court answered the question that *Bush* did not ask: does it matter whose death is contemplated by the predicate felony? See *id.*

¶ 85 In reaching its ruling, the *Tyler* court relied upon *McGee*, finding its facts to be analogous. *Id.*; *McGee*, 345 Ill. App. 3d 693. In *McGee*, the defendant saw a rival gang member named Donnyal Thomas approach his vehicle with a gun drawn and began firing on him. *McGee*, 345 Ill. App. 3d at 694-96. McGee then shot at Thomas and, in so doing, hit and killed an innocent bystander, an 18-month-old child out in a stroller with his mother. *Id.* The State charged McGee with felony murder for the killing of the 18-month-old, with aggravated discharge of a firearm acting as the predicate felony. *Id.* The original disposition for *McGee* was filed on the same day

the Illinois Supreme Court filed *Pelt*, and *McGee* was reexamined in light of that case. *Id.* at 697. The *McGee* court concluded that the purpose of the predicate felony was not to kill the 18-month-old child but rather that it had the “independent felonious purpose of discharging a firearm at a rival gang member,” ruling that contemplating a different victim did allow aggravated discharge of a firearm to act as a predicate felony in that instance. *Id.* at 697-99.

¶ 86 Both of these cases stand for the proposition that a predicate felony having a different victim or, more saliently, a different *intended* victim creates an independent felonious purpose for the purposes of the felony-murder merger doctrine, and despite the principled objections of our esteemed and learned colleague in dissent, we decline to depart from that reasoning. The felony-murder merger doctrine exists to prevent the State from “effectively eliminat[ing] both the second degree murder statute and the need to prove an intentional or knowing killing in most murder cases.” *Bush*, 2023 IL 128747, ¶ 47. Allowing the felonious purpose of a predicate felony to take into account, and even turn on, who that predicate felony intended to kill does not undermine this purpose. Indeed, it allows it to function as intended, preventing the State from “ ‘bootstrap[ing] practically all killings with dangerous weapons into murder simply by showing that the assault out of which the death arose was a felony’ ” (*id.* (quoting *Baker v. State*, 225 S.E.2d 269, 271 (Ga. 1976))) while also accomplishing the purpose underlying the felony-murder statute, which is to “limit the violence that accompanies the commission of forcible felonies, so that anyone engaged in such violence will be automatically subject to a murder prosecution should someone be killed during the commission of a forcible felony” (*People v. Belk*, 203 Ill. 2d 187, 192 (2003)). We believe this balance to be the correct one and thus find that the predicate felony underlying Braggs’s murder does have an independent felonious purpose. On the other hand, the predicate felony underlying Warner’s murder does not have an independent felonious purpose because the

purpose of that underlying felony contemplated the death of Warner, rather than Braggs. As such, the merger doctrine does not apply to the murder of Braggs, and that conviction stands.

¶ 87

B. Rule 431(b)

¶ 88 Defendant next argues that he was denied a fair trial because the trial court failed to comply with Illinois Supreme Court Rule 431(b) (eff. July 1, 2012) in a closely balanced case. Specifically, he maintains that, although the trial court correctly advised the prospective jurors of the four fundamental principles of law necessary for a fair and impartial criminal trial, it failed to ascertain whether the jurors accepted those principles, instead asking only whether they could “apply” them. Defendant’s Rule 431(b) claim is directed to his convictions generally, including his convictions arising from the shootings of Shafer and Fair. He maintains that identity was the central disputed issue at trial and that the State’s case depended principally upon the testimony of Jolanda and Damorion Davis, whose credibility he vigorously challenged. According to defendant, because no physical evidence or other eyewitness testimony independently identified him as the perpetrator of the offenses, the jury’s verdicts ultimately depended upon whether it credited the Davises’ account or his denial of involvement. He therefore contends that the evidence was closely balanced and that the trial court’s alleged Rule 431(b) violation constitutes first-prong plain error requiring a new trial.

¶ 89 The guarantee that a defendant receive a fair and impartial jury includes the right to an adequate *voir dire* to identify unqualified jurors. *Morgan v. Illinois*, 504 U.S. 719, 729-30 (1992); *People v. Gregg*, 315 Ill. App. 3d 59, 65 (2000); U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § 8. Illinois Supreme Court Rule 431(b) (eff. July 1, 2012) requires the trial court to ask prospective jurors whether they understand and accept four fundamental principles applicable to a criminal trial: (1) that defendant is presumed innocent of the charges against him, (2) that, before

a defendant can be convicted, the State must prove him guilty beyond a reasonable doubt, (3) that defendant is not required to offer any evidence on his own behalf, and (4) that, if defendant does not testify, it cannot be held against him. These four principles are commonly known as the *Zehr* principles. *People v. Zehr*, 103 Ill. 2d 472, 477 (1984). Although Rule 431(b) does not require the trial court to recite each principle separately before obtaining a response, it does require the court to (1) instruct prospective jurors on all four principles, (2) ask whether they understand those principles, and (3) ask whether they accept those principles. *People v. Birge*, 2021 IL 125644, ¶ 34.

¶ 90 “The language of Rule 431(b) is clear and unambiguous.” *People v. Thompson*, 238 Ill. 2d 598, 607 (2010). Trial judges must “ask each potential juror whether he or she understands and accepts each of the principles in the rule.” *Id.* Though prospective jurors may be questioned individually or as a group, the rule requires “an opportunity for a response from each prospective juror on their understanding and acceptance of those principles.” *Id.* The trial court’s failure to ascertain whether prospective jurors understand and accept the four *Zehr* principles constitutes error. *People v. Belknap*, 2014 IL 117094, ¶ 45. Whether the trial court complied with Rule 431(b) presents a question of law reviewed *de novo*. *Id.* ¶ 41.

¶ 91 Defendant acknowledges that he forfeited this issue by failing to object during *voir dire* or raise it in a posttrial motion but argues that the claim is reviewable under the first prong of the plain-error doctrine because the evidence was closely balanced. See *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007); *People v. Sebby*, 2017 IL 119445, ¶ 48. Under either prong of the plain-error doctrine, however, the reviewing court must first determine whether a clear or obvious error occurred. *Thompson*, 238 Ill. 2d at 613; *Birge*, 2021 IL 125644, ¶ 24.

¶ 92 The State responds that the trial court complied with Rule 431(b) because its questions sufficiently ascertained both the prospective jurors’ understanding and acceptance of the *Zehr* principles. Accordingly, the State contends that, because no Rule 431(b) error occurred, defendant cannot establish plain error.

¶ 93 Here, the trial court explained each of the four *Zehr* principles and, after confirming that the prospective jurors understood each principle, repeatedly asked whether they could apply that principle if selected to serve as jurors. During its discussion of the presumption of innocence, for example, the court asked whether anyone failed to understand the principle before asking, “If you are selected as a juror in this case, can you apply that principle of presumption of innocence to [defendant] ***? If you don’t think you can, please raise your hand.” The trial court employed the same procedure with respect to each of the remaining *Zehr* principles. No prospective juror indicated an inability to apply any of the principles. Defendant contends the trial court nevertheless failed to comply with Rule 431(b) because it never expressly asked whether the prospective jurors accepted the *Zehr* principles. We disagree.

¶ 94 Although Rule 431(b) requires the trial court to ascertain both understanding and acceptance, our supreme court has not held that the trial court must employ the precise word “accept” to satisfy that requirement. In *People v. Wilmington*, 2013 IL 112938, ¶ 32, the supreme court recognized that asking whether prospective jurors disagreed with the *Zehr* principles and receiving no response “may be arguable” as equivalent to ascertaining acceptance, but the court did not resolve that question because the trial court had independently failed to ascertain whether the jurors understood the principles. The supreme court again acknowledged, but did not resolve, that question in *Belknap*, 2014 IL 117094, ¶ 46, because the trial court there likewise failed to ascertain the prospective jurors’ understanding of the principles. Thus, neither decision forecloses

the use of terminology other than the word “accept” where the questioning otherwise ascertains the prospective jurors’ acceptance of the *Zehr* principles.

¶ 95 This court addressed that question in *People v. Brown*, 2019 IL App (5th) 160329. There, the trial court asked prospective jurors whether they understood the *Zehr* principles and whether they could “follow” or “apply” them if selected as jurors. *Id.* ¶ 14. We held that those questions sufficiently ascertained acceptance, reasoning that “no rational potential juror who participated in that process would believe that by agreeing that he or she ‘can’ follow and/or apply the principles *** retained some sort of subjective right not to follow and/or apply them” during deliberations. *Id.* ¶ 16. Accordingly, we concluded that asking prospective jurors whether they could follow or apply the principles was “tantamount to ensuring they accept them.” *Id.*

¶ 96 The same reasoning applies here. After confirming that the prospective jurors understood each *Zehr* principle, the trial court asked whether they could apply that principle if selected to serve as jurors. A prospective juror who affirmatively represents that he or she can apply a principle in deciding defendant’s case has sufficiently indicated acceptance of that principle for purposes of Rule 431(b). See *id.* Accordingly, the trial court’s use of the word “apply,” rather than “accept,” did not constitute a Rule 431(b) violation. Because no error occurred, defendant cannot establish plain error, and we need not determine whether the evidence was closely balanced.

¶ 97 C. Ineffective Assistance of Counsel

¶ 98 Defendant next contends that trial counsel rendered ineffective assistance by permitting inadmissible and prejudicial evidence to be presented to the jury. Specifically, he argues that counsel (1) elicited testimony that opened the door to impeachment with his otherwise excluded prior firearm conviction and (2) failed to object when Sergeant Riley improperly vouched for the credibility of the State’s principal witness, Damorion. Defendant maintains that his convictions

turned upon a credibility contest between himself and Jolanda and Damorion and that counsel's errors improperly tipped that contest in the State's favor by undermining his own credibility while enhancing Damorion's credibility. His ineffective-assistance claim is directed at his convictions generally, including those arising from the offenses committed against Shafer and Fair. He therefore contends that counsel's errors, considered individually and cumulatively, prejudiced the defense and require a new trial.

¶ 99 The State responds that defendant failed to establish either deficient performance or resulting prejudice under *Strickland v. Washington*, 466 U.S. 668 (1984). According to the State, counsel's questioning regarding the prior firearm conviction reflected a reasonable trial strategy, while Sergeant Riley's testimony was not improper credibility bolstering and therefore would not have supported a meritorious objection. Alternatively, the State argues that, even assuming counsel performed deficiently, defendant cannot establish prejudice in light of the substantial evidence supporting the convictions.

¶ 100 Defendant's claim of ineffective assistance of counsel is governed by the familiar two-prong test announced in *Strickland*. See *People v. Veatch*, 2017 IL 120649, ¶ 29. Under *Strickland*, a defendant must demonstrate both that counsel's performance fell below an objective standard of reasonableness and that counsel's deficient performance prejudiced the defense. *People v. Valdez*, 2016 IL 119860, ¶ 14 (citing *Strickland*, 466 U.S. at 687-88). To establish prejudice, a defendant must demonstrate a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *People v. Evans*, 209 Ill. 2d 194, 219-20 (2004) (citing *Strickland*, 466 U.S. at 694).

¶ 101 Failure to satisfy either prong of the *Strickland* test defeats a claim of ineffective assistance of counsel. *People v. Hibbler*, 2019 IL App (4th) 160897, ¶ 88. Accordingly, where it is easier to

dispose of a claim on the ground that defendant cannot establish prejudice, a reviewing court may proceed directly to the prejudice prong without determining whether counsel's performance was deficient. *People v. Johnson*, 2021 IL 126291, ¶ 53; *People v. Coleman*, 183 Ill. 2d 366, 397-98 (1998). Indeed, “ ‘[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.’ ” *Johnson*, 2021 IL 126291, ¶ 54 (quoting *Strickland*, 466 U.S. at 691). Thus, a defendant must establish actual prejudice and not merely speculate that prejudice may have resulted. *id.* ¶ 55. Whether counsel rendered ineffective assistance presents a mixed question of fact and law, and the ultimate question is reviewed *de novo*. *People v. Peterson*, 2015 IL App (3d) 130157, ¶ 222.

¶ 102

1. Prior Firearm Conviction

¶ 103 Defendant first argues that trial counsel rendered ineffective assistance by eliciting testimony concerning his prior conviction for unlawful possession of a firearm after the trial court had excluded that conviction from evidence before trial. According to defendant, counsel's questioning unnecessarily opened the door to impeachment with otherwise inadmissible evidence and effectively nullified the court's favorable evidentiary ruling. The State responds that counsel's questioning reflected a reasonable trial strategy intended to portray defendant as candid with the jury and to explain his familiarity with firearms. Alternatively, the State argues that defendant cannot establish prejudice because the isolated reference to the prior conviction did not affect the outcome of the trial.

¶ 104 We need not determine whether counsel's questioning fell below an objective standard of reasonableness because defendant cannot establish prejudice under *Strickland*. See *Johnson*, 2021 IL 126291, ¶ 53; *Coleman*, 183 Ill. 2d at 397-98. Even assuming counsel performed deficiently by eliciting testimony that opened the door to impeachment with defendant's otherwise excluded

firearm conviction, defendant must establish a reasonable probability that, absent counsel's error, the jury "would have had a reasonable doubt respecting guilt." *Johnson*, 2021 IL 126291, ¶ 54 (citing *Strickland*, 466 U.S. at 695).

¶ 105 The challenged evidence consisted of a brief reference to defendant's prior firearm conviction followed by impeachment with the certified copy of that conviction. Although the State thereafter impeached defendant with the certified copy of the conviction, it did not explore the underlying facts of the offense, repeatedly emphasize the conviction during trial, or rely upon it as substantive evidence of defendant's guilt. Rather, the State's case rested principally upon Damorion's eyewitness testimony identifying defendant as the shooter, together with Jolanda's testimony concerning defendant's conduct before, during, and after the offenses. Other evidence corroborated significant aspects of Damorion's account of the events, even where it did not independently establish the identity of the shooter. Surveillance footage documented the movements of the Nissan, and cellular telephone records corroborated portions of the sequence of events. Most notably, Braggs's 911 call provided objective corroboration of the duration and chronology of the pursuit. During the call, Braggs reported that Warner had been shot, and approximately one minute later, the crash can be heard, lending support to Damorion's testimony that the vehicles continued for "a little while" before the crash occurred. The defense nevertheless thoroughly cross-examined both Damorion and Jolanda concerning inconsistencies in their statements and their motives to testify, and those credibility issues were fully presented to the jury.

¶ 106 Viewed in the context of the entire record, there is no reasonable probability that the brief disclosure of defendant's prior firearm conviction affected the jury's verdict. See *Strickland*, 466 U.S. at 694. Although much of the corroborating evidence confirmed the chronology and surrounding circumstances rather than independently identifying defendant as the shooter, the

jury's determination did not rest upon Damorion's testimony in isolation. The jury heard Damorion's identification of defendant, Jolanda's account of defendant's conduct surrounding the offenses, the objective evidence consistent with significant portions of Damorion's account, and the defense's challenges to the credibility of both witnesses. Considering that evidence as a whole, defendant has not demonstrated a reasonable probability that, absent counsel's error, the jury would have had a reasonable doubt as to his guilt. Accordingly, he has failed to establish prejudice sufficient to undermine confidence in the outcome of the trial, and his ineffective-assistance claim fails regardless of whether counsel's questioning constituted deficient performance. See *Johnson*, 2021 IL 126291, ¶ 53; *Coleman*, 183 Ill. 2d at 397-98.

¶ 107

2. Improper Credibility Bolstering

¶ 108 Defendant next argues that trial counsel rendered ineffective assistance by failing to object when Sergeant Riley testified that, based upon his training and experience in detecting deception, he did not believe Damorion was being deceptive during his interview with law enforcement. According to defendant, Sergeant Riley's testimony improperly vouched for Damorion's credibility and invaded the exclusive province of the jury to determine witness credibility. The State responds that Sergeant Riley merely explained the course of the investigation and the investigative techniques he employed during the interview. Alternatively, the State argues that, even if the testimony was objectionable, defendant cannot establish prejudice because the evidence of guilt was substantial.

¶ 109 A police officer may testify concerning the course of a criminal investigation where such testimony explains the progress of the investigation. *People v. Bounds*, 171 Ill. 2d 1, 48 (1995). A witness may not, however, comment upon the veracity of another witness because determining witness credibility is the province of the jury. *People v. Munoz*, 398 Ill. App. 3d 455, 487 (2010).

In *Munoz*, a detective testified that he did not believe defendant's versions of the events and ultimately stated that he did not believe defendant " 'ever told [him] the truth.' " *Id.* Although the detective's earlier statements arguably explained the sequential logic of the investigation and why he continued questioning defendant, the court held that his ultimate statement no longer served that purpose and had "no apparent purpose other than to invade the province of the jury and tell them who to believe." *Id.* at 488.

¶ 110 The court in *People v. Davila*, 2022 IL App (1st) 190882, ¶ 52, likewise recognized the danger of permitting a police officer, as a recognized authority figure, to inform the jury that it should believe a portion of the prosecution's case. There, detectives repeatedly vouched for the reliability of the State's eyewitness identification, describing the eyewitness's memory as " 'dead on' " and " 'accurate' " and expressing their personal belief that the witness was not mistaken. *Id.* ¶ 55. The court held that the statements improperly bolstered the eyewitness's trial testimony and were highly prejudicial because of their repetitive nature and the detectives' status as authority figures. *Id.* ¶ 56.

¶ 111 In assessing the effect of the improper statements, the *Davila* court emphasized that the detectives had repeatedly vouched for the State's single eyewitness identifying the defendant as the shooter, thereby usurping the jury's role in determining credibility. *Id.* ¶ 61. The court further observed that there was no physical evidence tying the defendant to the crime, the defendant had neither confessed nor made an unequivocally incriminating statement, and the State's case rested entirely upon witness credibility with only minimal circumstantial evidence connecting the defendant to the shooting. *Id.* ¶¶ 68-69. Finally, the videotaped interrogation containing the improper statements featured prominently at trial and during the State's closing argument, and the jury requested to view the video during deliberations. *Id.* ¶ 70.

¶ 112 *Munoz* likewise found prejudice in light of the particular evidentiary posture of that case. The evidence was relatively closely balanced, and the ultimate issue was whether the jury believed the State’s account or defendant’s claim that the victim committed suicide. *Munoz*, 398 Ill. App. 3d at 489. Under those circumstances, the detective’s testimony that he never believed the defendant told the truth essentially instructed the jury not to believe the defendant, a concern heightened by the detective’s status as a police officer and “ ‘figure of authority.’ ” *Id.* The court therefore concluded that the improper testimony prejudiced the outcome of the trial. *Id.*

¶ 113 Here, Sergeant Riley testified not only concerning the progression of the investigation but also that, based upon his training and experience, his observations of Damorion’s demeanor, and his “gut,” he had no indication that Damorion was being deceptive. In doing so, Sergeant Riley went beyond merely explaining the course of the investigation and expressed an opinion concerning Damorion’s credibility. Even assuming counsel’s performance was deficient for failing to object to that testimony, however, defendant cannot establish prejudice under *Strickland*. See *Johnson*, 2021 IL 126291, ¶ 53; *Coleman*, 183 Ill. 2d at 397-98.

¶ 114 The circumstances here are materially different from those presented in *Davila* and *Munoz*. Although Damorion provided the principal eyewitness account identifying defendant as the shooter, the jury was not required to assess his credibility based solely upon his word or Sergeant Riley’s opinion of his truthfulness. Rather, the State presented evidence against which the jury could independently evaluate significant portions of Damorion’s account. Jolanda testified concerning defendant’s conduct before, during, and after the offenses, including his use of the Nissan and his conduct following the shootings. Surveillance footage documented movements of the Nissan consistent with portions of Damorion’s account, while cellular telephone records corroborated aspects of the sequence of events. Braggs’s 911 call provided further objective

corroboration of that chronology: Braggs reported that Warner had been shot, and the crash can be heard approximately one minute later, consistent with Damorion's testimony that the pursuit continued "for a little while" before the crash. Forensic testing further established that cartridge casings recovered from the three shooting scenes had been fired from the same unknown firearm, lending support to Damorion's account of a connected sequence of shootings.

¶ 115 Other evidence permitted the jury to evaluate the credibility of the competing accounts offered by Damorion and defendant. Defendant testified that Damorion placed a firearm beneath the passenger seat of Jolanda's vehicle. The jury, however, heard defendant's recorded jail calls concerning that firearm, and defendant acknowledged on cross-examination that he told Jolanda, "I put Derek wallet up under the front seat of your car," and similarly told his sister that he had left the "wallet" in Jolanda's vehicle. Defendant explained those statements, maintaining that Damorion had actually placed the firearm beneath the seat and that he used the coded language because he wanted the firearm removed to avoid a felon-in-possession charge. Thus, the jurors did not need Sergeant Riley's assessment of Damorion's truthfulness to resolve the conflict between Damorion's account and defendant's testimony; they heard the recorded statements themselves, defendant's explanation for them, and the testimony of the other witnesses, and could assess their respective credibility for themselves. Defense counsel also thoroughly cross-examined Damorion and Jolanda concerning inconsistencies in their statements, their motives to cooperate with law enforcement, and other matters bearing upon their credibility, and counsel vigorously argued those credibility issues during closing argument.

¶ 116 Nor was Sergeant Riley's challenged testimony comparable in scope or effect to the improper credibility testimony in *Davila* and *Munoz*. In *Munoz*, the evidence was relatively closely balanced, and the ultimate issue was whether the jury believed the State's account or the

defendant's claim that the victim committed suicide. *Munoz*, 398 Ill. App. 3d at 489. In *Davila*, police repeatedly vouched for the State's single identifying eyewitness in a case that rested entirely upon witness credibility with only minimal circumstantial evidence connecting the defendant to the shooting. *Davila*, 2022 IL App (1st) 190882, ¶¶ 61, 68-69. The improper statements also featured prominently at trial and during closing argument, and the jury requested to view the interrogation containing those statements during deliberations. *Id.* ¶ 70. Here, by contrast, Sergeant Riley's challenged testimony constituted a brief portion of a lengthy trial, was not repeated or emphasized during closing argument, and was presented in a case in which the jury had evidence independent of Riley's opinion with which to evaluate Damorion's account.

¶ 117 Accordingly, viewed in the context of the entire record, there is no reasonable probability that, had counsel objected and Sergeant Riley's testimony been excluded, the result of the proceeding would have been different. See *Strickland*, 466 U.S. at 694. Even assuming counsel's performance was deficient for failing to object, defendant has not established prejudice sufficient to undermine confidence in the outcome of the trial. See *Johnson*, 2021 IL 126291, ¶ 53; *Coleman*, 183 Ill. 2d at 397-98. Moreover, because neither of defendant's ineffective-assistance claims establishes prejudice under *Strickland*, he cannot demonstrate that the cumulative effect of counsel's alleged errors undermines confidence in the outcome of the trial.

¶ 118 III. CONCLUSION

¶ 119 For the foregoing reasons, we reverse defendant's felony-murder conviction for the death of Warner because the aggravated battery with a firearm committed against Warner lacked an independent felonious purpose and therefore could not serve as the predicate felony supporting that conviction under *Bush*.

¶ 120 The reversal of this conviction does not disturb the jury's separate finding that defendant committed aggravated battery with a firearm against Warner. The predicate felony underlying felony murder is a lesser-included offense of felony murder. *Space*, 2018 IL App (1st) 150922, ¶ 61; see *People v. Rosenthal*, 394 Ill. App. 3d 499, 508 (2009). Moreover, where a felony-murder conviction is reversed because aggravated battery with a firearm cannot serve as the predicate felony, the reviewing court may preserve the finding of guilt on the aggravated battery and remand for sentencing on that offense. *Space*, 2018 IL App (1st) 150922, ¶ 73; *Rosenthal*, 394 Ill. App. 3d at 508. Here, the jury returned a separate guilty verdict on count V, finding defendant guilty of aggravated battery with a firearm against Warner. Accordingly, we remand with directions to enter judgment and sentence defendant on count V in accordance with the jury's verdict and the applicable statutory sentencing provisions.

¶ 121 Affirmed in part and reversed in part; cause remanded with directions.

¶ 122 JUSTICE McHANEY, concurring in part and dissenting in part:

¶ 123 I concur in the majority's judgment in all respects other than its affirmance of the defendant's felony-murder conviction arising from the death of Marcelene Braggs. I agree with the majority that the aggravated battery against Curtisha Warner cannot serve as the predicate felony for Warner's felony-murder conviction, and I concur in the majority's resolution of the defendant's remaining claims. I respectfully dissent only from the majority's conclusion that the same aggravated battery may nevertheless serve as the predicate felony for the felony murder of Braggs.

¶ 124 As I interpret it, the question presented is a narrow one: Can the same aggravated battery, which the majority concludes cannot serve as the predicate felony for Warner's felony murder

because its sole purpose was to effectuate an act of physical violence contemplating the death of Warner, nevertheless serve as the predicate felony for Braggs’s felony murder?

¶ 125 The manner in which the State charged these offenses is central to my analysis. Count V charged the defendant with aggravated battery with a firearm against Warner, alleging that he “knowingly and by means of discharging a firearm caused an injury to [Warner]” by shooting her in the leg.” Counts VII and VIII then identified that same aggravated battery with a firearm as the predicate forcible felony for the felony murders of Warner and Braggs. Count VII alleged that the defendant pursued Warner’s vehicle after shooting her and that the ensuing collision caused Warner’s death. Count VIII alleged the same predicate felony and pursuit but alleged that the collision caused Braggs’s death. Thus, the State did not allege separate predicate felonies for the two homicide counts. Instead, it relied upon the same aggravated battery, the shooting of Warner, to support both.

¶ 126 In my view, neither *McGee* nor *Tyler* addressed the narrow question presented here. Both cases support the proposition that conduct directed against one person may, under the circumstances presented there, support conviction for felony murder of another person. In *McGee*, however, Thomas survived, and in *Tyler*, Greenlee survived. Accordingly, neither court had occasion to decide whether the same predicate felony, which could not serve as the predicate for the felony murder of the person against whom the conduct was directed, could nevertheless serve as the predicate for the felony murder of a different person who died. See *McGee*, 345 Ill. App. 3d at 697-99; *Tyler*, 2021 IL App (5th) 180476-U, ¶¶ 71-74.

¶ 127 *Bush* likewise did not expressly address the narrow question presented here. Although the shooting in *Bush* killed Jones and injured Gulley, the felony-murder conviction before the supreme court concerned Jones, and the predicate felony was mob action. *Bush*, 2023 IL 128747, ¶¶ 3, 39-

41. The court therefore did not confront the circumstance presented here: the State’s use of the same aggravated battery against Warner as the predicate felony for two felony-murder counts, coupled with the determination that the aggravated battery cannot serve as the predicate felony for Warner’s own felony murder.

¶ 128 *Bush* does, however, provide the principles that govern the merger inquiry. In discussing *Pelt*, the supreme court explained that, although it had mentioned the “felonious purpose” test, its “focus was exclusively on the defendant’s conduct.” *Id.* ¶ 43. Quoting *Pelt*, the court stated: “ ‘Our task here is to discern from defendant’s conduct whether defendant’s aggravated battery was an act that was inherent in, and arose out of, the killing of the infant.’ ” *Id.* (quoting *Pelt*, 207 Ill. 2d at 442). The court then explained that “[t]he merger rule only applies where the predicate felony’s sole purpose is to effectuate an act of physical violence contemplating death.” *Id.* ¶ 44.

¶ 129 The *Bush* court did not address how the phrase “contemplating death” applies when the State relies upon the same aggravated battery as the predicate felony for felony-murder charges arising from two deaths. More specifically, the court did not decide whether “contemplating death” refers to death generally or to the death of the particular person whose death forms the basis of the felony-murder charge. The majority adopts the latter interpretation. Indeed, the majority concludes that the aggravated battery lacks an independent felonious purpose as to Warner because “the purpose of that underlying felony contemplated the death of Warner, rather than Braggs.” I do not read *Bush* that way.

¶ 130 Given *Bush*’s focus on the defendant’s conduct and the predicate felony’s sole purpose, I would not determine that purpose by reference to whose death forms the basis of the felony-murder charge. I therefore do not read *Bush* to permit the same predicate felony to produce a different

result under the merger doctrine solely because the felony-murder charge concerns the death of a different person.

¶ 131 Applying the principles articulated in *Bush*, I would conclude that the aggravated battery against Warner cannot serve as the predicate felony for Braggs’s felony murder. For both felony-murder counts, the State relied upon the same predicate felony: the aggravated battery with a firearm charged in count V against Warner. The conduct constituting that predicate felony was likewise the same: the defendant’s shooting of Warner. Because count V charges a single aggravated battery based on that shooting, I see no basis in the charged offense for assigning that felony a different sole purpose when it is used to support Braggs’s felony-murder count.

¶ 132 I agree with the majority’s conclusion that the aggravated battery against Warner lacked an independent felonious purpose and therefore could not serve as the predicate felony for Warner’s felony-murder conviction. In addressing Braggs’s felony-murder conviction, however, the majority explains that “the purpose of that underlying felony contemplated the death of Warner, rather than Braggs.” In my view, the fact that Braggs, rather than Warner, is the person whose death forms the basis of count VIII does not change the sole purpose of the aggravated battery charged in count V.

¶ 133 For these reasons, I would reverse the defendant’s felony-murder conviction arising from Braggs’s death and respectfully dissent from that portion of the majority’s judgment.

People v. Doolin, 2026 IL App (5th) 250232

Decision Under Review: Appeal from the Circuit Court of St. Clair County, No. 20-CF-20; the Hon. Robert B. Haida, Judge, presiding.

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