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IN THE
COURT OF APPEALS OF INDIANA

DENNIS DITCHLEY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0911-CR-1098
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Carol Orbison, Judge
Cause No. 49G22-0809-CF-201862

August 24, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Dennis Ditchley stole credit cards from Sandra Skiles while armed with a handgun. As a result, a jury found him guilty of class A felony burglary, class B felony robbery, and class A misdemeanor carrying a handgun without a license. Ditchley challenges his convictions on several grounds; however, we affirm.[1]

Issues

Ditchley raises six issues, which we restate as follows:

I. Did the trial court abuse its discretion by denying his motion for a mistrial or a new venire based on comments made during voir dire?

II. Did the trial court abuse its discretion by limiting his cross-examination of Skiles?

III. Did the trial court abuse its discretion by admitting photographs of Ditchley and of Skiles?

IV. Did the trial court abuse its discretion by admitting a statement that Ditchley made when he was arrested?

V. Was there sufficient evidence to support his conviction of carrying a handgun without a license?

VI. Did the trial court abuse its discretion by declining to clarify the robbery instruction in response to a question from the jury?

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[1] Ditchley was also charged with possession of a handgun by a serious violent felon, carrying a handgun without a license as a class C felony, and being a habitual offender. These charges were tried in a separate phase; however, the parties reached a plea agreement while the jury was deliberating. Ditchley agreed to plead guilty to possession of a firearm by a serious violent felon and being a habitual offender, and the State agreed to dismiss the charge of class C felony carrying a handgun without a license. The parties agreed on a fixed sentence of fifty-five years on all convictions, including the burglary, robbery, and class A misdemeanor carrying a handgun without a license. Ditchley does not raise any issues relating to the charges to which he pled guilty. As we affirm his convictions of burglary, robbery, and carrying a handgun without a license, we need not address what effect a reversal would have on his plea agreement.

Facts and Procedural History

On August 6, 2008, Sandra Skiles was at home alone. Early in the afternoon, a man later identified as Ditchley rang the doorbell. When Skiles answered the door, Ditchley inquired about a truck sitting in her driveway that her roommate had put up for sale. Ditchley said that he was going to try to borrow some money to buy the truck, and he left.

About forty-five minutes later, Ditchley returned and said that he wanted to test drive the truck. Skiles told him that her roommate had the keys and would be home shortly. Ditchley then jerked the door out of Skiles's hand and demanded that she give him her money. Ditchley punched her in the face, and she fell to the floor. Ditchley then kicked her and aimed a gun at her.

Skiles led Ditchley to her bedroom and indicated that her money was in a drawer near the bed. Ditchley "slung [her] over on the bed and held [her] down with the gun." Tr. at 78. Ditchley removed some wallets from the drawer and then asked if she had any more money. Skiles said she did not, but Ditchley looked under her mattress. When a noise startled him, Ditchley "slung [her] up against [the] closet door and took the pistol and hit [her] in the face with it" before leaving. *Id*. at 79.

Skiles went next door, and her neighbor called the police. Indianapolis Metropolitan Police Officer Ryan Asher responded to the call. When he arrived, Skiles was crying and shaking. Skiles had a broken nose, and her eyes were bruised and swollen. Skiles described the attacker as "a white male, 5'10["] to six feet with a stocky build, salt and pepper-colored

hair that was combed back, with a goatee." *Id*. at 124. Skiles went to the police station and reviewed hundreds of photographs, but was unable to identify any of them as the perpetrator.

Skiles's credit cards were later used at a Meijer store. By reviewing the store's surveillance tapes, the police discovered that they had been used by Amber Ditchley, Ditchley's niece, and Debra Bernard. Amber admitted that Ditchley had given her some credit cards and told her that she "had a window of opportunity to use them, fast." *Id*. at 132. Based on this information, the police compiled an array that included a photograph of Ditchley, and Skiles identified him as the perpetrator.

Ditchley was charged with class A felony burglary,[2] class B felony robbery,[3] class A misdemeanor carrying a handgun without a license.[4] His trial began on August 31, 2009. The trial court began voir dire by asking if any of the prospective jurors knew or were related to Ditchley. One prospective juror, John Harpool, stated that he had been "locked up with [Ditchley] before." *Id*. at 4. The court dismissed Harpool; however, Ditchley requested a new venire because the jury pool had heard Harpool's statement. The trial court denied Ditchley's request, reasoning that he had been charged with serious crimes and the jury would likely already have assumed that he had been arrested and held in jail.

Later in voir dire, prospective juror Emory indicated that he might have difficulty being fair because of "something I heard the gentleman before said. That is something that is

[2] Ind. Code § 35-43-2-1.

[3] Ind. Code § 35-42-5-1.

[4] Ind. Code § 35-47-2-1.

going to stick in my head. He has obviously been in trouble before and has been in custody." *Id*. at 45. Emory was excused for cause, and Ditchley moved for a mistrial or a new venire. The court ultimately denied the motion, but offered to let him prepare an admonition during the lunch break.

When the court went back on record, Ditchley indicated that he thought an admonition would be insufficient and asked the court to question the jurors, and the court agreed to do so. Each juror was individually brought into the court room, and the court informed each juror that the comments were not part of the evidence. Each juror was asked whether he or she could judge Ditchley solely on the evidence presented at trial, and each responded affirmatively. However, one juror indicated that he did not remember hearing the comments, and another indicated that she had already forgotten about them. Therefore, Ditchley argued that the individual questioning had actually exacerbated the problem, and he again requested a new venire and also presented the court with the admonition that he prepared. The court reviewed the tendered admonition and concluded that the issue was sufficiently addressed by the individual questioning of the jurors.

The State presented testimony from Skiles, Amber, and several officers who participated in the investigation of the case. The State also offered into evidence photographs of Skiles's injuries, the photographic array from which Skiles identified Ditchley, and a photograph of Ditchley taken after his arrest. Ditchley did not present any evidence, but through cross-examination, he suggested that Skiles may have mistaken him for

his brother – Amber's father. The jury found Ditchley guilty of robbery, burglary, and carrying a handgun without a license. Ditchley now appeals.

Discussion and Decision

I. Motion for Mistrial or New Venire

Ditchley argues that the trial court abused its discretion by denying his motions for a mistrial or new venire. A trial court's determination of whether to grant a mistrial is afforded great deference because the trial court "is in the best position to gauge the surrounding circumstances of an event and its impact on the jury." *McManus v. State*, 814 N.E.2d 253, 260 (Ind. 2004), *cert. denied*. Therefore, the decision is reviewed solely for abuse of discretion. *Id*. "The denial of a motion for mistrial will be reversed only upon a showing that the defendant was placed in a position of grave peril to which he should not have been subjected." *Anderson v. State*, 774 N.E.2d 906, 911 (Ind. Ct. App. 2002). A mistrial "'is an extreme remedy that is only justified when other remedial measures are insufficient to rectify the situation.'" *McManus*, 814 N.E.2d at 260 (quoting *Mickens v. State*, 742 N.E.2d 927, 929 (Ind. 2001)). The burden is on the defendant to show that he was placed in grave peril and that no other action could have remedied the situation. *Anderson*, 774 N.E.2d at 911.

Lindsey v. State established "the proper inquiry when a jury has been exposed to potentially improper and prejudicial information." *Harris v. State*, 824 N.E.2d 432, 439 (Ind. Ct. App. 2005) (citing *Lindsey v. State*, 260 Ind. 351, 295 N.E.2d 819 (1973)). That procedure is as follows:

> Upon a suggestion of improper and prejudicial publicity, the trial court should make a determination as to the likelihood of resulting prejudice, both upon the

> basis of the content of the publication and the likelihood of its having come to the attention of any juror. If the risk of prejudice appears substantial, as opposed to imaginary or remote only, the court should interrogate the jury collectively to determine who, if any, has been exposed. If there has been no exposure, the court should instruct upon the hazards of such exposure and the necessity for avoiding exposure to out-of-court comment concerning the case. If any of the jurors have been exposed, he must be individually interrogated by the court outside the presence of the other jurors, to determine the degree of exposure and the likely effect thereof. After each juror is so interrogated, he should be individually admonished. After all exposed jurors have been interrogated and admonished, the jury should be assembled and collectively admonished, as in the case of a finding of "no exposure."

Lindsey, 260 Ind. at 358-59, 295 N.E.2d at 824.

At Ditchley's behest, the trial court spoke to each juror individually. The court informed the jurors that the references to Ditchley being in jail were not evidence and asked each juror if he or she would be able to judge Ditchley solely on the evidence presented at trial. Each juror responded affirmatively. The court gave Ditchley the opportunity to ask additional questions, but he declined. In addition, the court gave the jury the following instruction: "It is your duty to determine the facts from the testimony and the evidence admitted by the court and given in your presence, and you should disregard any and all information that you may derive from any other source …." Appellant's App. at 149.

Harpool's statement that he knew Ditchley from being "locked up" with him did not explicitly refer to past criminal history, and the jury heard during the course of the trial that Ditchley had been arrested for the instant offenses. Emory indicated that he would have trouble putting that out of his mind, and he was excused, but, when questioned by the court, none of the jurors that were ultimately seated expressed concern about their ability to remain impartial. The court instructed the jury to consider only the evidence presented at trial, and

we presume that the jury followed the court's instructions. *See Morgan v. State*, 903 N.E.2d 1010, 1019 (Ind. Ct. App. 2009), *trans. denied*. The trial court followed the *Lindsay* procedure, and Ditchley has not persuaded us that the individual questioning and the instructions provided by the court were insufficient to remedy the brief references to Ditchley's incarceration. Ditchley's argument that the court's questioning exacerbated the situation is unavailing, as Ditchley asked the court to conduct the questioning. Therefore, any error would be invited error. *See Wright v. State*, 828 N.E.2d 904, 907 (Ind. 2005) (under the doctrine of invited error, "a party may not take advantage of an error that she commits, invites, or which is the natural consequence of her own neglect or misconduct.").

II. Cross-examination of Skiles

On cross-examination of Skiles, Ditchley attempted to establish that Skiles was biased against Ditchley due to a conflict between Skiles's family and Ditchley's:

> Q And you are familiar with the Ditchley family. Is that correct?
>
> A After everything I found out, yeah.
>
> Q Actually, you knew [Ditchley's] brother was related to a family member before that. Correct?
>
> A No, sir.
>
> Q So your testimony is that you weren't aware that you had ever met [Ditchley's] brother?
>
> A Before the incident?
>
> Q Yes[.]
>
> A Yes, that is my testimony.

….

Q And you weren't aware that [Ditchley's] brother was the dad to your brother's wife?

A No, I did not. I didn't socialize with my brother that much and the woman he married because I didn't have nothing to do with her family, or her, period.

Q You were aware that the Ditchley[s] and your family have had some problems?

Tr. at 96-97.

At that point, the State objected, and a discussion was held outside the presence of the jury. The prosecutor stated:

> The State objects to the defense asking this witness about problems between her brother and the defendant's family. In her deposition she was asked – I think this is what the defense is getting at – she was asked, "Have you had any problems with the Ditchley family?" "No." And then she said it was her brother that had the issue, so the State does not believe it is relevant and does not believe it is within her personal knowledge to testify to those issues.

Id. at 99-100. The defense argued, "The witness testified that she didn't know the Ditchley family when, in fact, in [her] deposition she testified that she was aware of some bad blood between Mike Ditchley and her oldest brother. It is fair impeachment evidence in that it goes against something that she said." *Id*. at 100.

The court responded:

> I'm having trouble finding the relevance of any bad blood between . . . her brother, and the Ditchley family. She, according to my hearing of the testimony, she has little or no contact with her brother.
> ….
> I mean, it doesn't sound like bad blood between the families. It sounds like bad blood between a brother and two persons unrelated to this case.
> ….

> When was she aware that this gentleman [the defendant] was a Ditchley? After she picked him out?
>
> ….
>
> The motive arises at the point that she knows that this gentleman was a Ditchley. I accept the fact that there is bad blood between . . . certain members of the two families. But for it to become relevant, when she picked this gentleman out and pointed the finger at him, so to speak, for it to be relevant, she had to have known he was a Ditchley. Otherwise, it is totally irrelevant.
>
> ….
>
> I will sustain the State's objection, unless through questioning of this lady you can . . . she will say that she knew him to be a Ditchley when she ID'd him.

Id. at 103-09.

When the trial resumed, defense counsel questioned Skiles as follows:

Q Miss Skiles, do you know Mike Ditchley? Do you know who he is?

A Now? Or before? I mean, I don't understand.

Q Do you know him?

A Yes[.]

Q And correct me if I am wrong, but Mike is the father to your brother's wife?

….

A I'm . . . like I said, I'm not sure with my brother's family and her family, sir.

Q Do you remember giving a deposition in my office?

….

A Yes.

Q On Page Twenty-six, Line Five, I asked you, "How do you know Mike Ditchley?", and you answered, "He is the father to my brother's wife." You have no reason to think I read that incorrectly, do you?

A No. That was after a fact that I found out who he was.

Id. at 111. Later, upon questioning from the prosecutor, it was clarified that Skiles did not know the defendant at the time that she looked at the photographic array.

Ditchley argues that the trial court erred by not allowing him to further probe Skiles about the "bad blood" between their families.

> The right to cross-examine witnesses is guaranteed by the Sixth Amendment to the United States Constitution and Article I, Section 13 of the Indiana Constitution. It is one of the fundamental rights of our criminal justice system. The Confrontation Clause of the Sixth Amendment does not prevent a trial judge from imposing limits on defense counsel's inquiry into the potential bias of a prosecution witness. Rather, trial judges retain wide latitude insofar as the Confrontation Clause. Only a clear abuse of discretion warrants reversal.

Collins v. State, 835 N.E.2d 1010, 1015 (Ind. Ct. App. 2005) (citations and quotations omitted), *trans. denied*.

The record does not clearly show that Skiles's testimony was inconsistent with her statements in her deposition. To the extent that there was evidence of "bad blood" between Skiles's brother and Ditchley's brother, we agree with the trial court that Ditchley failed to show its relevance. The record reflects that Skiles had little to do with her brother and became aware of the connection between her family and Ditchley's only after she had identified him as the culprit. Ditchley has not argued that this evidence is relevant to any issue other than to establish a motive for Skiles to identify Ditchley as the assailant. Therefore, we find no abuse of discretion.

III. Admission of Photographs

Ditchley challenges the admission of the photographic array from which Skiles identified him, a photograph taken of him at the time of his arrest, and three of the photographs of Skiles's injuries. Admission of evidence falls within the sound discretion of the trial court, and we review only for abuse of discretion. *Herbert v. State*, 891 N.E.2d 67, 69 (Ind. Ct. App. 2008), *trans. denied*. An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances. *Id*.

A. Photographic Array

Ditchley did not object to the admission of the photographic array at trial. Ordinarily, failure to object at trial results in waiver of the issue on appeal; however, a party may escape waiver by showing fundamental error. *Charlton v. State*, 702 N.E.2d 1045, 1051 (Ind. Ct. 1998). "The 'fundamental error' exception is extremely narrow, and applies only when the error constitutes a blatant violation of basic principles, the harm or potential for harm is substantial, and the resulting error denies the defendant fundamental due process." *Mathews v. State*, 849 N.E.2d 578, 587 (Ind. 2006).

We have previously held that mug shots are not *per se* inadmissible:

> Instead, they are admissible if (1) they are not unduly prejudicial and (2) they have substantial independent probative value. This court has previously stated that when the perpetrator's identification is at issue, the photographs have probative value. . . . When the State has made an effort to disguise the nature of the photographs by redacting criminal information and any other information which obviously identifies the photograph as a "mug shot," the photograph is not unduly prejudicial.

Farris v. State, 818 N.E.2d 63, 71 (Ind. Ct. App. 2004) (citations and quotations omitted), *trans. denied*.

Ditchley argues that the photographic array was unduly prejudicial because it was a mug-shot-style photograph and because the jury had heard "information about Mr. Ditchley's prior incarceration" during voir dire. Appellant's Br. at 32. As already discussed, the jurors all indicated that they would be able to judge Ditchley based only on the evidence presented at trial. Furthermore, the photograph itself is not indicative of a prior criminal history. Ditchley is wearing ordinary clothing and appears in front of a plain gray background. There is no writing on or around the photograph referencing his criminal record. The photographic array was relevant to the issue of the perpetrator's identity and was not unduly prejudicial. Therefore, we conclude that its admission was not error, let alone fundamental error. *See Farris*, 818 N.E.2d at 71 (finding no abuse of discretion in admission of photographic array where identity was at issue and photographs were not unduly suggestive of criminal history).

B. Additional Photograph of Ditchley

A photograph of Ditchley taken at the time of his arrest was also admitted. Ditchley objected on the grounds that it was irrelevant and highly prejudicial. The photograph apparently was offered to show that, at the time of his arrest, Ditchley's appearance was similar to his appearance in the photograph used for the array. *See* Tr. at 171 (arresting officer testifies that Ditchley had a goatee "at that time" and that his hair "was longer than it is now"). Thus, we conclude that the photograph had some probative value.

Furthermore, we conclude that the photograph was not unduly prejudicial. Ditchley is shown wearing ordinary clothing, and there is a plain gray background. The State redacted information that apparently related to his arrest. Ditchley's argument that the jury would

infer that the two photographs were mug shots of him from two separate offenses is simply speculation. Therefore, we conclude that the trial court did not err by admitting the photograph.

C. Photographs of Skiles

On appeal, Ditchley challenges three photographs of Skiles's injuries because they are duplicative of other exhibits and are unduly prejudicial because there are tears in Skiles's eyes. Ditchley did not object to these photographs at trial, and he must therefore establish that their admission was fundamental error. *Charlton*, 702 N.E.2d at 1051.

> Photographs, as with all relevant evidence, may only be excluded if their probative value is substantially outweighed by the danger of unfair prejudice. Admission of cumulative evidence alone is insufficient to warrant a new trial. An appellant must establish that the probative value of the evidence was outweighed by the unfair prejudice flowing from it.
>
> Moreover, "[e]ven gory and revolting photographs may be admissible as long as they are relevant to some material issue or show scenes that a witness could describe orally."

Helsley v. State, 809 N.E.2d 292, 296 (Ind. 2004) (citations omitted). "Photographs that depict a victim's injuries are generally relevant and admissible." *Custis v. State*, 793 N.E.2d 1220, 1224 (Ind. Ct. App. 2003), *trans. denied*.

The photographs at issue show injuries to Skiles's face. We cannot say that the appearance of tears, by itself, amounts to fundamental error. Officer Asher testified that Skiles was shaking and crying when he arrived. When asked to rate the force of the punches on a scale from one to ten, Skiles testified that they were a ten. Therefore, the pictures reflected the trial testimony. Ditchley also argues that it was unnecessary to admit these photographs because they are similar to other photographs that showed her facial injuries but

did not show her crying. However, admission of cumulative evidence does not warrant a new trial. *Helsley*, 809 N.E.2d at 296. Therefore, we conclude that the admission of the photographs was not fundamental error.

IV. Admission of Statement

Prior to trial, the State filed a motion in limine requesting that there be "no mention of any out of court statements by the Defendant. These statements are inadmissible unless offered by the State." Appellant's App. at 100. The court granted this motion. Nevertheless, the State asked Officer Roger Gammon whether Ditchley said anything after he was arrested. Ditchley objected, contending that it was a violation of the court's order on the motion in limine. Ditchley argued that the part of the motion that said, "These statements are inadmissible unless offered by the State," was the State's argument in favor of the motion rather than an exception. The court disagreed, concluding that the order clearly meant that Ditchley's statements were not admissible unless offered by the State. Officer Gammon then testified that Ditchley said, "I'm not going to be the only one to go down for this." Tr. at 183.

Ditchley does not argue that this evidence was inadmissible, but repeats his argument that it was a violation of the order on the motion in limine. We find that the court's interpretation of its order was reasonable, and at any rate, a trial court may reconsider a ruling on a motion in limine during trial. *See State v. Lewis*, 883 N.E.2d 847, 851 (Ind. Ct. App. 2008) ("An order in limine is not a final determination of the admissibility of the evidence referred to in the motion."). Ditchley argues that he relied on his understanding that his

statement would not be admitted, but he does not explain how it prejudiced him or altered his trial strategy. Therefore, we find no error in the admission of his statement. *See Bonner v. State*, 650 N.E.2d 1139, 1141 (Ind. 1995) (a conviction will not be reversed unless error prejudices the defendant's substantial rights).

V. Sufficiency of the Evidence

Ditchley argues that there was insufficient evidence to support his conviction of carrying a handgun without a license. When reviewing a challenge to the sufficiency of the evidence, we neither reweigh the evidence nor judge witness credibility. *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005). Rather, we consider only the evidence most favorable to the verdict and the reasonable inferences supporting it. *Id*. "We affirm if there is substantial evidence of probative value from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt." *Purvis v. State*, 829 N.E.2d 572, 587 (Ind. Ct. App. 2005), *trans. denied*, *cert. denied*.

"Handgun" is defined as follows:

> "Handgun" means any firearm:
> (1) designed or adapted so as to be aimed and fired from one (1) hand, regardless of barrel length; or
> (2) any firearm with:
> (A) a barrel less than sixteen (16) inches in length; or
> (B) an overall length of less than twenty-six (26) inches.

Ind. Code § 35-47-1-6.

Ditchley argues that Skiles's testimony that the gun was "silver" and "big," Tr. at 78, was insufficient to demonstrate that he possessed a handgun as defined by Indiana Code Section 35-47-1-6. However, we conclude that Skiles's testimony as a whole supports a

conclusion that Ditchley's gun was designed or adapted so as to be aimed and fired from one hand. Skiles testified:

> So I went to my bedroom and I opened the drawer beside my bed and I said, "In there," and he slung me over on the bed and held me down with the gun. Then he took the gun and pulled the drawer open and was searching around 'cause there was just a little bit of money and wallets laying there with a rubber band.
> ….
> Something startled him; I don't know if it was a car went by or a horn, or what. When he heard that, he slung me up against my closet door and took the pistol and hit me in the face with it.

Tr. at 78-79. Skiles' testimony suggests that Ditchley was holding a gun in one hand while using the other to push her around and search for money. In addition, Skiles referred to the gun as a "pistol," which is commonly understood to be a hand-held gun. *See* Merriam-Webster's Online Dictionary, *available at* www.merriam-webster.com/dictionary (defining "pistol" as "a handgun whose chamber is integral with the barrel") (last visited Aug. 5, 2010); American Heritage Dictionary of the English Language, *available at* http://education.yahoo.com/reference/dictionary (defining "pistol" as a "firearm designed to be held and fired with one hand") (last visited Aug. 5, 2010). Therefore, we conclude that there was sufficient evidence to convict Ditchley of carrying a handgun without a license.

VI. Robbery Instruction

The jury was given the following instruction on robbery:

> The crime of robbery is defined by law as follows:
> A person who knowingly or intentionally takes property from another person or from the presence of another person by using or threatening the use of force on any person or by putting any person in fear commits robbery, a Class C felony.

> The offense is a Class B felony if it is committed while armed with a deadly weapon.
>
> Before you may convict the defendant, the state must have proved each of the following beyond a reasonable doubt:
>
> 1. The defendant, Dennis Ditchley,
> 2. knowingly
> 3. took property, that is, credit cards from the person or presence of Sandra Skiles
> 4. by using or threatening the use of force on Sandra Skiles or by putting Sandra Skiles in fear,
> 5. and when committing elements 1 through 4 defendant was armed with a deadly weapon, that is, a handgun.
>
> If the State failed to prove each of these elements beyond a reasonable doubt, you must find the defendant find the defendant not guilty of robbery, a Class B felony, charged in count II.
>
> If the State did prove each of these elements beyond a reasonable doubt, you may find the defendant guilty of robbery, a Class B felony, charged in Count II.

Appellant's App. at 140.

Thus, while the first paragraph of the instruction defined class C felony burglary, the last two paragraphs suggested that the jury's only options were to find Ditchley either guilty or not guilty of class B felony burglary. During deliberations, the jury sent out a note that asked, "Can we rule this as a Class C felony instead of a Class B felony and eliminate element #5 (deadly weapon)?" *Id*. at 159. Ditchley indicated that he wanted the court to give the jury an instruction and verdict form for the class C felony. Ditchley proposed an instruction that would track the language of Indiana Code Section 35-42-5-1, the robbery statute. Instead, the court returned the jury's question with a notation that read, "You are the judges of the facts and the law. The verdict is your decision alone to make." *Id*. at 159.

In *Crowdus v. State*, our supreme court held that once deliberations begin, the trial court generally should not give additional instructions. 431 N.E.2d 796, 798 (Ind. 1982).

The trial court should modify its instructions only when there is an error or a legal gap in the instructions. *Id*. In addition, the legislature had provided:

> If, after the jury retires for deliberation:
>
> (1) there is a disagreement among the jurors as to any part of the testimony; or
>
> (2) the jury desires to be informed as to any point of law arising in the case;
>
> the jury may request the officer to conduct them into court, where the information required shall be given in the presence of, or after notice to, the parties or the attorneys representing the parties.

Ind. Code § 34-36-1-6. Cases interpreting the statute have frequently cited the *Crowdus* rule that trial courts generally should not give additional instructions unless there is a legal gap or error in the instructions. *See, e.g.*, *Powell v. State*, 769 N.E.2d 1128, 1133 (Ind. 2002), *abrogated on other grounds by Beattie v. State*, 924 N.E.2d 643 (Ind. 2010).

First of all, we note that the instruction originally given by the court already tracked the statutory language, as did Ditchley's proposed instruction. Even if the jury interpreted the court's instruction to mean that a class C felony conviction was not an option, the latter part of the court's instruction would lead the jurors to acquit Ditchley if they believed that the State failed to prove that he was armed with a handgun. Ditchley has not shown that he was prejudiced by the court's refusal to give an additional instruction on class C felony robbery.

Finally, Ditchley argues that the cumulative effect of all the issues that he raises should result in a new trial. However, he acknowledges that "'[t]rial irregularities which standing alone do not amount to error do not gain the stature of reversible error when taken together.'" Appellant's Br. at 42 (quoting *Reaves v. State*, 586 N.E.2d 847, 858 (Ind. 1992)). Therefore, we affirm Ditchley's convictions.

Affirmed.

FRIEDLANDER, J., and BARNES, J., concur.