

NOTICE

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2019 IL App (4th) 170431-U

NO. 4-17-0431

IN THE APPELLATE COURT

FILED
October 4, 2019
Carla Bender
4th District Appellate
Court, IL

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Sangamon County
JERMAINE DAVIS,)	No. 14CF194
Defendant-Appellant.)	
)	Honorable
)	Brian T. Otwell,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Steigmann and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding any error in denying defendant's motion to suppress his statements to police was harmless beyond a reasonable doubt.

¶ 2 In May 2017, a jury found defendant, Jermaine Davis, guilty of eight counts of first degree murder and two counts of armed robbery. In June 2017, the trial court sentenced him to two mandatory terms of natural life imprisonment for first degree murder and two consecutive terms of 30 years' imprisonment for armed robbery.

¶ 3 Defendant appeals, arguing the trial court erred in denying his motion to suppress his statements. We affirm.

¶ 4

I. BACKGROUND

¶ 5 On February 28, 2014, the State charged defendant by information with eight counts of first degree murder (720 ILCS 5/9-1(a)(1), (2), (3) (West 2012)) for causing the deaths of Larry Grice and Andrea Pocklington, and two counts of armed robbery (720 ILCS 5/18-2(a)(2), (4) (West 2012)). On March 13, 2014, a grand jury returned superseding indictments on all counts.

¶ 6 On March 11, 2016, defendant filed a motion to suppress video- and audio-recorded statements he made to police. Defendant argued that he was subject to custodial interrogation during an interview on February 7, 2014, and had invoked his right to silence. Defendant asserted detectives failed to scrupulously honor his right to remain silent on February 7, 2014, and also during interviews on February 8, 2014, and February 10, 2014, in violation of his fifth and fourteenth amendment right to remain silent. Thus, defendant argued, his statements should be suppressed.

¶ 7 The State argued in response that defendant was not in custody on February 7, 2014, but even if he was and his statements were a product of custodial interrogation, he “reinitiated contact and clarified he was willing to speak more to detectives.” The State further maintained that any “taint of illegality had dissipated by February 8 and 10 when Defendant was allowed to rest in the Sangamon County Jail, was re-advised of his [*Miranda*] [w]arnings at three different times, and expressed an understanding of his rights and a desire to speak further.”

¶ 8 A. Hearing on Motion to Suppress Statements

¶ 9 On April 27, 2016, Judge Leslie Graves conducted a hearing on defendant’s motion to suppress statements. Detective Ryan Sims of the Springfield Police Department was the only witness to testify. The State noted at the outset of the hearing that Sims’s testimony was

to provide context for the video and audio recordings of the interviews, which were admitted into evidence and reviewed by the trial court.

¶ 10 Detective Sims testified that he and Detective Steve Dahlkamp were assigned to investigate the December 2012 murders of Grice and Pocklington. Grice was fatally shot and Pocklington stabbed to death. Sims testified he first had contact with defendant on January 24, 2013. Sims described defendant as a potential witness but not a suspect in the murders. Sims met defendant at defendant's place of employment and transported him to an interview room at the Springfield Police Department where he made a statement and responded to questions posed by Sims and Dahlkamp. Defendant reported living behind the house where the murders occurred. Defendant stated he was outside on the evening of December 30, 2012, and had observed two individuals approach the house. One individual entered the house through the front door and the other entered through the back door. Defendant heard gunshots and screaming or yelling and then observed the two individuals leave the house. During the interview, defendant also admitted to having purchased a .357 handgun from a friend of Grice's named Eric Medley. However, defendant did not implicate himself in the murders at this time. The interview lasted approximately 90 minutes and defendant was transported back to his workplace at its conclusion.

¶ 11 Sims testified he next had contact with defendant more than a year later, on February 7, 2014. Sims testified that "[a]s the investigation unfolded, we were able to locate what we believed to be the murder weapon. Based on some ballistic tests done, the [S]tate [P]olice traced the gun back through several owners. One of those individuals had said that he had acquired the gun through [defendant].” Based on this information, Sims and Dahlkamp contacted defendant's parole officer, and the parole officer made contact with defendant on behalf of the detectives. Sims testified that they “met with [defendant] outside where he had met

his parole officer. We approached him and asked him to come to the station." Defendant's parole officer was also present at this meeting. Defendant drove himself to the police station in an acquaintance's car.

¶ 12 Sims testified he and Dahlkamp interviewed defendant on February 7, 2014, in the same room where they had initially interviewed him on January 24, 2013. Sims described the interview room as “a standard room with a table, chairs in them” and “located on the second floor of the Springfield Police Department in the investigation section.” Sims testified there were three chairs and a table in the interview room which occupied the majority of the space. Defendant was seated against the far wall with the table between himself and the door. The detectives sat in the chairs closer to the door. Sims testified that, “as with every person that comes to the police station,” defendant had to be escorted to the restroom. Although the situation never occurred, Sims further testified that if defendant had attempted to leave they would not have allowed him to leave alone, explaining that “[i]t’s not typical we would let anybody in investigations without us escorting them somewhere just because there’s other people that work up there.”

¶ 13 With the preceding background in mind, we will summarize the substance of defendant's February 7, 8, and 10 recorded interviews, along with Detective Sims's relevant testimony from the suppression hearing.

¶14 1. February 7, 2014, Interview

¶ 15 The February 7, 2014, interview began at 11:30 a.m. and concluded at 8:30 p.m. At the outset of the interview, Sims informed defendant he was not under arrest but because they were at the police station they had to read him his *Miranda* rights. Sims testified he did this "to maybe lay the groundwork about what his rights were. We were unsure of what the nature of the

conversation would be." Sims reviewed defendant's contact information and informed him that they wanted to revisit the statement he gave on January 24, 2013. Defendant discussed what he had told them in the last interview. Defendant reiterated that he was in his backyard when the murders occurred and had witnessed two individuals enter the house and flee a few minutes later.

¶ 16 After discussing defendant's previous statement, Sims asked defendant if he was certain he purchased a .357 handgun from Medley. Defendant said he was certain. About 30 minutes into the interview, Sims stated he knew defendant had not purchased a .357 handgun and he wanted to talk about the gun defendant did buy. Defendant maintained that he purchased a .357 handgun but then admitted he had purchased a .22 Ruger for Sancho Mitchell (Mitchell) because Mitchell knew a person who would buy it for a higher price. Defendant stated he sold the weapon to an individual named Marcus shortly thereafter but could not remember the exact date of the transaction.

¶ 17 Approximately one hour into the interview, Sims told defendant they knew he was more involved in the murders than what he was telling them because "if you're listening to what we're saying, [the murder weapon] is coming back to you." Defendant insisted he had no involvement in the murders. Sims stated, "You were there. That's what I'm gonna tell you. You were there." Detective Sims then told defendant that this was his opportunity to say he only had a small part in the murders: "[W]e're gonna keep moving forward, this case is gonna move forward and you're either gonna get it, the biggest chunk of this, or you can try to get out from this a little bit ***."

¶ 18 Defendant then told the detectives that he sold the .22 Ruger to an individual named Black before he sold it to Marcus and that Black committed the murders and gave the gun back to him afterwards. Detective Sims told defendant his story was "the craziest thing [he had]

ever heard of." Sims insisted that defendant be truthful because the evidence pointed to him and they knew he was involved. Around this time, defendant asked if he could make a phone call to have his friend pick up the car he drove to the police station. Sims responded, "that's not where we're at, we're not at that point." Defendant replied, "I give up for real cause I'm tired, man, I'm tired, I'm beaten down," and then said, "[h]onestly, you already making me feel like I'm under arrest, I'm ready to go lay down, honestly. I'm tired, I'm beat up." Sims testified that he responded by "explain[ing] to [defendant] that we weren't certain what was going to take place at that point, that there had been no decisions made, and we were hoping to just get a statement from him about his knowledge about the incident." Sims also testified he never told defendant he was free to leave and he never told defendant that he was not under arrest.

¶ 19 At this point in the interview, Detective Sims told defendant that the investigation had "c[o]me full circle [from the January 24, 2013, interview] to [where] we're all here today. Only things have really shifted[.]" Defendant asked if he could send a text to take care of the car and the following exchange occurred approximately 90 minutes into the interview:

"[DETECTIVE SIMS]: I don't want you to get side tracked about the car.

[DEFENDANT]: No, this—.

[DETECTIVE SIMS]: We're gonna let you take care of the car, we will

let you take care.

[DEFENDANT]: I'm done, cause I'm done talking. That's why do you mind if I—I don't want to talk anymore, I want to use that right to stop talking."

The detectives then gathered their things and stood up but continued to talk to defendant while doing so:

"[DETECTIVE SIMS]: Okay. Alright.

[DETECTIVE DAHLKAMP]: Need a smoke or anything?

[DEFENDANT]: I sure do.

[DETECTIVE DAHLKAMP]: Alright. We'll uh see how things go, and just sit and relax—.

[DETECTIVE SIMS]: Send a text.

[DETECTIVE DAHLKAMP]: We're not trying to be the bad guys here, I just want you to know that, and

[DEFENDANT]: Like I can't, I feel like—

[DETECTIVE DAHLKAMP]: Just let me talk here, I don't want to seem like we're being the bad guys here, okay, obviously if you weren't in the, we've done some research on you, you, what happened doesn't match you, okay? It, you know—

[DEFENDANT]: I ain't never shot, well killed nobody,

[DETECTIVE DAHLKAMP]: Right, right, I understand that. Okay, and things happen that some, like, say [Detective Sims] drags me into it and he is not as connected to the situation as I am and he does some stupid shit and now I'm on the hook for it, and it's like, that's why we come talk to you man. It's giving you the opportunity to come out, we talk to the person that doesn't have as much to do with it as the other people, okay? And I hope you're hearing me, and hearing what I'm saying, there's some underlying reasons why I'm saying that, that maybe things might work out better for people that weren't um necessarily the evil person in this and if it's somebody, somebody maybe got trapped up because the person that did this didn't have as much at stake and they're like what the fuck did

you do, you know? So things happen out of people's control, but we try to give obviously that's why you're in here we're even talking to you.

[DEFENDANT]: Right, I know but shit it was getting frustrating.

[DETECTIVE DAHLKAMP]: I, alright."

At this point in the interview the detectives left the room.

¶20 According to the videotape of the interview, approximately four minutes later, defendant yelled into the hallway to ask if he could make a phone call. Detective Sims reentered the room and stated he did not "even know what [was going to] happen here yet, but you can do whatever you want to ***." Defendant and Sims then had the following exchange:

"[DEFENDANT]: I don't know what's gonna happen here, so I don't want to talk no more I'm frustrated, maybe we'll talk again tomorrow or something, I don't know if you want I'm just.

[DETECTIVE SIMS]: Listen, I'm gonna be willing, all I can say is this, I'll be willing to talk to you, but you have to understand we got people we got to answer to, okay.

[DEFENDANT]: I understand.

[DETECTIVE SIMS]: And I keep telling you about I just don't know if you're getting it about the seriousness of where we're at.

* * *

[DEFENDANT]: It's fucking up my life man.

[DETECTIVE SIMS]: But it can fuck it up even more, that's the problem, okay. This definitely could fuck up your life some more, let me tell you that, because the people we have to answer to, this is, I'm not saying we can't talk

tomorrow, maybe we can talk tomorrow, alright, but just at least hear me when I tell you this, there's other people that we got to answer to ***. And I'm gonna tell you right now that you are involved in it, okay? *** And either you were that guy that did some of this crazy shit that happened in that house, or you weren't, and all I'm telling you is, this is bad. *** [I]f you didn't do it, you better get on the bus here dude, [defendant] you've got to hear me, you gotta get on the bus because guess who's got the gun that did some of the whacking in the house? *** You have the gun. You have it, you had it, you did it for whatever reason, okay?"

At this point, Sims left the room.

¶21 Sims then returned after 15 minutes and questioned defendant for another 8 minutes. After being left alone the third time (for 33 minutes), defendant can be heard on the video talking to himself. Subsequently, the detectives walked into the room and asked defendant whether he was talking to himself or to them. Defendant responded he was "j just talking out loud." The detectives stayed in the room and continued the interview until defendant stated that Mitchell committed the robbery and murders but defendant had no idea beforehand it was going to happen and he had no involvement. The detectives questioned defendant further and then exited the interview room, leaving defendant alone for approximately two hours.

¶22 When the detectives returned, they told defendant they were giving him another opportunity to be truthful because the evidence showed that he went into the house where the victims were murdered and that he possessed the gun used in the crime. Defendant then admitted that he went into the house with Mitchell. He stated Grice answered the door and Mitchell pointed a gun in Grice's face while defendant rummaged through the room looking for marijuana and money. Defendant stated he could not find any money but took a bag of marijuana and

exited through the front door. When defendant was outside, he heard two or three gunshots and screaming. The detectives questioned defendant further about what happened inside the house. They also wanted to know who had the knife that was used to stab Pocklington, which led to the following exchange:

[DETECTIVE DAHLKAMP]: Who had the knife?

[DEFENDANT]: Sancho [Mitchell] had the knife, cause I didn't have it.

* * *

[DETECTIVE DAHLKAMP]: Oh man, how do you know he had the knife?

[DEFENDANT]: Cause I didn't.

[DETECTIVE DAHLKAMP]: That's not a good answer. It's not a good answer.

[DETECTIVE SIMS]: Let me ask you, let me ask you one thing.

[DEFENDANT]: I know where this is going.

[DETECTIVE SIMS]: Listen—

[DEFENDANT]: I'll get me an attorney—

[DETECTIVE DAHLKAMP]: Now listen.

[DEFENDANT]: No, this is not cool no more, I'm over here spilling my shit man.

[DETECTIVE DAHLKAMP]: I'm just trying to eliminate you from this.

[DEFENDANT]: I understand that, and—

[DETECTIVE DAHLKAMP]: And you can't even do that.

[DEFENDANT]: I told you what I know. I'm ready to go.

[DETECTIVE SIMS]: Hey take a breath for me.

[DEFENDANT]: No. I'm ready to go.

(Inaudible all speaking at once)

[DEFENDANT]: This shit is crazy. I get all this shit out.

* * *

[DEFENDANT]: I don't want to talk no more.

[DETECTIVE SIMS]: Okay.

[DEFENDANT]: I'm ready to go back home or book me."

The detectives left the room and returned after approximately one hour.

¶23 Upon reentering the interview room, Sims and Dahlkamp pressed defendant further to admit that he did not leave the house before the murders occurred. However, defendant maintained that although he participated in the robbery, he was outside when Mitchell killed Grice and Pocklington. At the end of the interview, defendant was arrested and jailed on a charge of unlawful possession of a weapon by a felon.

¶24 *2. February 8, 2014, Interview*

¶25 Detectives Sims and Dahlkamp interviewed defendant again on February 8, 2014. The interview began at 11:41 a.m. and concluded at 3:03 p.m. At the outset of the interview, Sims reminded defendant that "because we're here at the station[,] you aren't just free to walk out at this moment. I do have to remind you, you understand that your rights still apply. I read them to you yesterday. The whole, you have the right to remain silent. You understand what that means?" Defendant replied, "Yeah, I can stop talking whenever I choose to."

¶26 Sims informed defendant that he had additional questions because he believed defendant was more involved in the murders than what he had indicated the previous day.

Defendant then proceeded to discuss in more detail how he and Mitchell robbed Grice and Pocklington and that he left through the front door before Mitchell murdered them. After the detectives reiterated they believed defendant was involved in more than just the robbery, he conceded that he saw Mitchell shoot Grice in the back of the head but maintained he left while Pocklington was still alive. Again, the detectives expressed their doubt about defendant's version of the events and the following exchange occurred:

"[DETECTIVE SIMS]: *** All these details matter about what's going on. And for you to say I have no idea—that I left—no one is going to believe that [defendant]. No one is going to believe it.

[DEFENDANT]: You want me to lie?

[DETECTIVE SIMS]: No, I am not telling you that. I just want you to tell the truth.

[DEFENDANT]: I've been telling the truth.

[DETECTIVE DAHLKAMP]: You haven't been telling the truth.

[DEFENDANT]: There's no reason for us to talk anymore then. If I'm not—Take me back to my cell now because—

[DETECTIVE DAHLKAMP]: It doesn't benefit you if we do that.

[DEFENDANT]: Shit—obviously me sitting here and telling you what I know and seen, ain't benefitting me.

[DETECTIVE DAHLKAMP]: You don't leave out the front door. You don't leave after the first shot.

[DEFENDANT]: Here we go see—

[DETECTIVE DAHLKAMP]: You didn't leave after the first shot.

[DEFENDANT]: I'm done talking. I'm ready to go home.

[DETECTIVE DAHLKAMP]: You want to leave it like that huh?

[DEFENDANT]: Fucking back and forth man—.”

The detectives subsequently informed defendant the physical evidence established that two people had committed the murders and they knew he was the second person. Defendant denied killing anyone and maintained he ran out of the front door after Mitchell shot Grice.

¶27

3. February 10, 2014, Interview

¶28 Detectives Sims and Dahlkamp next interviewed defendant on February 10, 2014. This interview took place at the jail and was audio-recorded. The detectives read defendant his *Miranda* rights at the beginning of the interview, and defendant stated that he understood them. Defendant initially recounted the same story he told the detectives on February 8; that he had gone to the house with Mitchell to rob Grice, he saw Mitchell shoot Grice, and left immediately after while Pocklington was still alive. Sims told defendant that his story was not supported by the physical evidence.

¶29

Ultimately, defendant confessed during the February 10 interview to killing Grice and stated that Mitchell killed Pocklington. Defendant went on to explain that he had the gun when they entered the house and at some point Grice reached for his gun, so defendant pushed him down and shot him in the back of the head. After he shot Grice, defendant witnessed Mitchell stab Pocklington multiple times and defendant ran out of the back door as Pocklington struggled with Mitchell.

¶30

After defendant's confession, Sims and Dahlkamp transported defendant to the police station to have defendant give a final statement. Defendant's final statement was audio- and video-recorded. Before the questioning began, Sims stated, "because we moved you over

here, I need to advise you of what your rights are, it'll be like the [fourth] time I've advised you what your rights are." Defendant replied, "Okay, actually five, this will be five." Sims then read defendant his rights, defendant stated he understood them, and he proceeded to make his statement.

¶ 31 Defendant explained he and Mitchell went to the victims' house late on the night of December 30, 2012, to steal marijuana from Grice. They knocked on the door. Grice answered the door, and Mitchell pointed a gun in his face. At this time, defendant began running through the house and asked Pocklington where the marijuana was located. She pointed to a black duffel bag, and defendant grabbed the bag. Defendant yelled to Mitchell, "I got it, let's go." Mitchell replied, "can't go, *** we ain't got no mask on." At first, defendant was not concerned and still wanted to leave. However, he said, "[b]ut then it got to me like yeah, and I took the gun and shot [Grice]. I shot [Grice] in the back of the head while he was laying on the floor." Next, defendant informed the detectives, "All of a sudden, I'm hearing screaming, and I look back and she snatched into the kitchen and like blood's spilling everywhere." Defendant told Mitchell they had to leave. Mitchell grabbed the gun and shot Pocklington; he attempted to shoot her a second time but the gun jammed so he grabbed a knife. Defendant fled through the back door as Mitchell began to stab Pocklington multiple times.

¶ 32 Following arguments, Judge Graves took defendant's motion to suppress under advisement. On June 6, 2016, Judge Graves entered a written order denying defendant's motion. The court found that defendant was not in custody when he invoked his right to remain silent on February 7, 2014. The court relied on the following facts: (1) defendant drove himself to the police station; (2) he was interviewed in the same room the previous year by the same detectives and was aware of what they wanted to discuss; (3) he made statements after invoking his right to

remain silent, indicating that he subjectively believed he was not in custody; (4) he had the use of his phone; (5) the officers took breaks and gave him food, water, and cigarettes; and (6) he was not booked, handcuffed, or fingerprinted. Because the court found defendant was not in custody, it did not address whether the detectives scrupulously honored his right to cut off questioning.

¶ 33

**B. Defendant's *Pro Se*
"Motion to Rehearing of Motion to Suppress"**

¶ 34

Defendant thereafter elected to proceed *pro se* and on July 25, 2016, filed a "motion to rehearing of motion to suppress." On August 3, 2016, Judge Graves conducted a hearing on defendant's motion. At the hearing, defendant appeared *pro se* with standby counsel. Defendant argued that during the February 7, 2014, interview, he requested counsel, stating, "I know how this is going, how it's going to go. Can you all give me an attorney?" The State called Detective Sims to testify at the hearing. Sims testified the statement "seemed more *** about the arrest, which I told [defendant] *** we didn't even know where it was going to end up at that point[.] And then as—nearly immediately then as the conversation continued again, he had stated he would talk to us tomorrow, and the conversation continued."

¶ 35

Following arguments by defendant and the State, the trial court denied defendant's motion, stating the circumstances surrounding defendant's statement did not give the detectives sufficient notice that he was actually invoking his right to counsel.

¶ 36

C. Jury Trial, Sentencing, and Posttrial Motions

¶ 37

Defendant's trial commenced on May 1, 2017, and concluded on May 11, 2017. The jury convicted defendant on eight counts of first degree murder and two counts of armed robbery. In June 2017, the trial court denied (1) defendant's posttrial motion alleging the court erred when it denied defendant's motion to suppress his statements and (2) defendant's *pro se* motion alleging trial counsel provided ineffective assistance. The court sentenced defendant to

two mandatory terms of natural life imprisonment on two counts of first degree murder (finding the remaining six counts merged with his two first degree murder convictions) and two consecutive terms of 30 years' imprisonment for the armed robberies.

¶38 This appeal followed.

¶39 II. ANALYSIS

¶40 On appeal, defendant argues the trial court erred when it denied his motion to suppress his statements to Detectives Sims and Dahlkamp. Specifically, defendant asserts (1) he was in custody on February 7, 2014, when he invoked his right to remain silent and the detectives failed to scrupulously honor his right to remain silent and (2) he unambiguously invoked his right to counsel on February 7, 2014, and the detectives continued the interrogation without counsel present. Defendant further asserts his subsequent statements made on February 8 and 10, 2014, should have been suppressed due to the *Miranda* violation that occurred on February 7, 2014.

¶41 A. Standard of Review

¶42 In reviewing a trial court's ruling on a motion to suppress, we will reverse findings of fact and credibility determinations only if they are against the manifest weight of the evidence. *People v. Slater*, 228 Ill. 2d 137, 149, 886 N.E.2d 986, 994 (2008). However, we review *de novo* "the ultimate question posed by the legal challenge to the trial court's ruling on a suppression motion." *Id.* Further, we may consider the entire record on appeal. *People v. Gilliam*, 172 Ill. 2d 484, 501, 670 N.E.2d 606, 614 (1996).

¶43 Where the admissibility of a confession is challenged, "the State bears the burden of proving the confession was voluntary by a preponderance of the evidence." *Slater*, 228 Ill. 2d at 149. "The concept of voluntariness includes proof that the defendant made a knowing and

intelligent waiver of his privilege against self-incrimination and his right to counsel.” *People v. Braggs*, 209 Ill. 2d 492, 505, 810 N.E.2d 472, 481 (2003).

¶44

B. *Miranda* and the Fifth Amendment Privilege Against Self-Incrimination

¶45

The privilege against self-incrimination, found in both the United States Constitution (U.S. Const., amend. V) and the Illinois Constitution (Ill. Const. 1970, art. I, § 10), is jeopardized when, absent procedural safeguards, an individual is subjected to “custodial interrogation,” which is defined as “questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.” *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). Custodial interrogation “contains inherently compelling pressures which work to undermine the individual’s will to resist and to compel him to speak where he would not otherwise do so freely.” *Id.* at 467. In light of these compelling pressures, the Supreme Court held that the State cannot use an individual’s statements stemming from custodial interrogation unless it first demonstrates two things: (1) “the use of procedural safeguards effective to secure the privilege against self-incrimination[,]” such as warning the individual prior to questioning “that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney,” and (2) a voluntary and knowing waiver of those rights by the individual. *Id.* at 444.

¶46

“Once [the *Miranda*] warnings have been given, the subsequent procedure is clear. If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease.” *Miranda*, 384 U.S. at 473-74. Any statement taken after invocation of the right to remain silent “cannot be other than the product of compulsion, subtle or otherwise. Without the right to cut off questioning, the setting of

[custodial] interrogation operates on the individual to overcome free choice ***.” *Id.* at 474. However, invoking the right to remain silent does not “create a *per se* proscription of indefinite duration upon any further questioning by any police officer on any subject ***.” *Michigan v. Mosley*, 423 U.S. 96, 102-03 (1975). Rather, “the admissibility of statements obtained after the person in custody has decided to remain silent depends under *Miranda* on whether his ‘right to cut off questioning’ was ‘scrupulously honored.’ ” *Id.* at 104. Our supreme court has interpreted this last passage from *Mosley* “to include only the statement obtained as a result of not honoring the defendant’s right to cut off questioning. We do not think the court intended that *all* subsequent statements are to be excluded.” (Emphasis in original.) *People v. Brownell*, 79 Ill. 2d 508, 519, 404 N.E.2d 181, 187 (1980).

¶47 C. The Trial Court's Denial of Defendant's Motion to Suppress: Right to Remain Silent

¶ 48 The first issue is whether defendant was in custody for *Miranda* purposes approximately 90 minutes into the February 7 interrogation when he invoked his right to remain silent by stating, "I want to use that right to stop talking." If defendant was in custody, thus necessitating the *Miranda* protections, the second issue is whether the detectives scrupulously honored his right to cut off questioning. If the detectives failed to honor his right to end the interrogation, we must then determine whether the failure to scrupulously honor defendant's invocation of his right to remain silent required the suppression of his subsequent statements. We begin by determining whether defendant was in custody.

¶49 1. *Whether Defendant Was in Custody*

¶ 50 “The determination of whether a defendant is ‘in custody’ for *Miranda* purposes involves ‘[t]wo discrete inquiries ***: first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or

she was not at liberty to terminate the interrogation and leave.' " *Braggs*, 209 Ill. 2d at 505-06 (quoting *Thompson v. Keohane*, 516 U.S. 99, 112 (1995)). With respect to the former inquiry, the following factors are relevant in determining whether a defendant was in custody:

- “(1) the location, time, length, mood, and mode of the questioning;
- (2) the number of police officers present during the interrogation;
- (3) the presence or absence of family and friends of the individual;
- (4) any indicia of a formal arrest procedure, such as the show of weapons or force, physical restraint, booking or fingerprinting;
- (5) the manner by which the individual arrived at the place of questioning; and (6) the age, intelligence, and mental makeup of the accused.” *Slater*, 228 Ill. 2d at 150.

Courts have also considered whether a defendant “had reason to believe that he or she was the focus of a criminal investigation.” *People v. Vasquez*, 393 Ill. App. 3d 185, 190, 913 N.E.2d 60, 65 (2009); but see *People v. Gorman*, 207 Ill. App. 3d 461, 472-73, 565 N.E.2d 1349, 1356-57 (1991) (stating this factor is only relevant if the defendant actually perceives he or she is the focus of a criminal investigation). “With respect to the latter inquiry, the accepted test is what a reasonable person, innocent of any crime, would have thought had he or she been in the defendant’s shoes.” *Braggs*, 209 Ill. 2d at 506.

¶ 51 a. Circumstances Surrounding the Interrogation

¶ 52 i. *Location, Time, Length, Mood, and Mode*

¶ 53 (a). Location

¶ 54 The February 7 interrogation occurred in an interview room at the police station.

While not dispositive (see *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977)), when “the police

choose to conduct ‘non-custodial interrogations’ at the police station, there is a substantial risk that a court subsequently will disagree that the circumstances were noncustodial.” *Gornian*, 207 Ill. App. 3d at 470. “The placement of furniture, the size of the room, the presence of armed officers, whether doors were opened or closed (and if closed, whether they were locked), the transport of the suspect into the depths of a building where ingress and egress is typically controlled by security measures, all might give support to a defendant’s claim that he did not believe himself free to leave.” *Id.* at 471.

¶ 55 Here, the interview room was located in a secured section of the police station. From the video, it appears the room is windowless and during the interrogation the door remained closed. Detective Sims testified there were three chairs and a table in the interview room which occupied the majority of the space. Defendant was seated against the far wall with the table between himself and the door. The detectives, who were armed, were seated closer to the door than defendant. In our view, the “location” factor favors a finding that defendant was in custody at the relevant time. See, e.g., *People v. Gempel*, 2016 IL App (3d) 140833, ¶ 62, 48 N.E.3d 780 (concluding this factor favored a custody finding where the interrogation occurred “in a small interview room with the door closed” and the detectives “placed the defendant in the corner opposite the exit and blocked the defendant’s path to the exit by placing themselves in between the defendant and the door”).

¶ 56 (b). Time and Length

¶ 57 The interrogation on February 7 began at 11:30 a.m. and lasted approximately nine hours. As noted above, defendant invoked his right to remain silent approximately 90 minutes into the interrogation. Although the interview did begin in the middle of the day, 90

minutes is a significant amount of time to be questioned by detectives. We find the “time and length” factor is neutral.

¶ 58

(c). Mood and Mode

¶ 59 Based on our review of the record, the interview began with inquisitive questioning but quickly changed to accusative questioning. At the beginning of the interview, the detectives reviewed defendant’s contact information and discussed his previous statement. However, approximately 30 minutes into the interview, the detectives informed defendant they believed he was lying about the gun he had purchased. The detectives steadfastly discounted defendant’s version of events, and at one point Sims told defendant that his story was “the craziest thing [he had] ever heard of.” Detective Sims also told defendant that he knew defendant was involved in the crimes because the murder weapon came back to him and that “this case is gonna move forward and you’re either gonna get it, the biggest chunk of this, or you can try to get out from this a little bit ***.” We find the “mood and mode” factor favors a finding that defendant was in custody at the relevant time. See, e.g., *People v. Alfaro*, 386 Ill. App. 3d 271, 291, 896 N.E.2d 1077, 1095 (2008) (“[T]he changing tenor of the interrogation may shift a voluntary encounter into a custodial one.”); *People v. Carroll*, 318 Ill. App. 3d 135, 138-39, 742 N.E.2d 1247, 1250 (2001); *People v. Savory*, 105 Ill. App. 3d 1023, 1029, 435 N.E.2d 226, 230-31 (1982) (concluding that a change from inquisitive to accusative questioning is a factor supporting a custody determination).

¶ 60

ii. *Number of Police Officers*

¶ 61 Detectives Sims and Dahlkamp were the only officers present during the interrogation. We find the “number of officers” factor also favors a finding that defendant was in custody at the relevant time. See, e.g., *People v. Wheeler*, 281 Ill. App. 3d 447, 457, 667 N.E.2d

158, 164 (1996) (concluding this factor favored a custody finding where the defendant was interviewed by two officers); *People v. Brown*, 136 Ill. 2d 116, 126, 554 N.E.2d 216, 220 (1990) (same).

¶ 63 Defendant was alone during the interview. However, the record does not show if he requested to have friends or family present; nor does it disclose if such a request would have been granted or denied. We find this factor is neutral.

¶64 *iv. Indicia of Formal Arrest Procedure*

¶ 65 There were no indicia of formal arrest; defendant was not handcuffed, booked, or fingerprinted at any time before invoking his right to remain silent. We find the "indicia of formal arrest" factor favors a finding that defendant was not in custody at the relevant time.

¶ 66 *v. Manner by Which Defendant Arrived*

¶ 67 Defendant drove himself to the police station. While we find this factor favors a finding that defendant was not in custody at the relevant time, we note that “even if a suspect goes to the police station voluntarily or at the invitation of the police, the circumstances may eventually become custodial in nature.” *Gorman*, 207 Ill. App. 3d at 470.

¶68 vi. *Age, Intelligence, and Mental Makeup of Defendant*

¶ 69 Defendant was 33 years old at the time of the interrogation. He dropped out of school at the age of 14 but at some point obtained a G.E.D. while in prison. Defendant also suffers from mental health issues. On December 24, 2012, he was involuntarily admitted to the emergency room because of insomnia, hallucinations, and a lack of psychiatric medication. He was then transferred by ambulance to Memorial Hospital and involuntarily admitted for further

treatment. Based on these facts, we find the “age, intelligence, and mental makeup” factor slightly favors a finding that defendant was in custody at the relevant time.

¶70

b. Would a Reasonable Person
Have Felt at Liberty to Terminate the Interrogation?

¶71

Based on the circumstances at the time defendant invoked his right to remain silent, a reasonable person, innocent of any crime, would not have felt at liberty to terminate and leave the February 7 interrogation.

¶72

Although the interview began voluntarily with defendant driving himself to the police station, the circumstances turned custodial prior to defendant’s invocation of his right to remain silent. Defendant was questioned in a windowless interview room by two armed detectives. He was placed in the corner of the room with a table between himself and the closed door. While the interview began inquisitively, it became accusatory. The detectives informed defendant that they believed he was lying about the gun he had purchased, and they directly accused him of being involved in the murders. When defendant attempted to explain that he got rid of the weapon before the murders, Sims told him that his story was “the craziest thing [he had] ever heard of.” The detectives continued to discount defendant’s version of the events, and Sims warned defendant that lying was not beneficial to him, stating, “for you to lie and say I never was in there, and I never had any involvement *** , that’s even worse for you.” Sims also told defendant that the case was going to “keep moving forward, *** and you’re either gonna get it, the biggest chunk of this, or you can try to get out from this a little bit ***.”

¶73

In summary, at the time defendant invoked his right to remain silent, he was in a small, windowless room at a police station being accused of participating in a double homicide and armed robbery by two armed detectives who had been investigating the crimes for over a year; the detectives had informed him that their investigation brought them full circle to him;

they had continually discounted his version of the events; moreover, they had told defendant he was either going to get “the biggest chunk” of the liability or could “try to get out from [it] a little bit”; finally, Detective Sims told defendant that “there’s not gonna be something that you’re gonna be able to just tell us that’s cause all of us just walk away ***.” See *Alfaro*, 386 Ill. App. 3d at 298-99 (“[A] reasonable person, faced with the knowledge that the police believed him to be criminally liable for the murder of the victim, and confronted with the express disbelief of his explanations *** would not have believed that he could terminate the interview and leave the station.”).

¶ 74 The State highlights the following factors in support of its argument that defendant was not in custody when he invoked his right to remain silent: (1) “the crucial fact that defendant was interviewed *** in the same room by the same officers who interviewed him a year prior” and the fact he drove himself to the police station; (2) defendant was allowed to use his phone throughout the interview; (3) the absence of indicia of formal arrest, including the detectives having specifically told defendant he was not under arrest; and (4) defendant’s subjective belief he was not under arrest. We will address each of the above in turn.

¶ 75 First, the State points only to the similarities between the two interviews on January 24, 2013, and February 7, 2014, and ignores the key differences. For example, the first interview occurred only three weeks after the murders when defendant was considered a witness; the second interview occurred after more than a year of investigation and at a point when the detectives knew defendant had possessed the murder weapon around the time of the murders. Also, the detectives never told defendant during the first interview they thought he was lying and they never accused him of committing the crimes; conversely, during the second interview they repeatedly told him they thought he was lying and that they believed he was involved in the

crime. Detective Sims stated, “we’re gonna keep moving forward, this case is gonna move forward and you’re either gonna get it, the biggest chunk of this, or you can try to get out from this a little bit ***.” Thus, the tenor of the two interviews was entirely different. Additionally, while there is no doubt the fact that defendant drove himself to the police station on February 7 weighs against a custody finding, we again note that “even if a suspect goes to the police station voluntarily or at the invitation of the police, the circumstances may eventually become custodial in nature.” *Gorman*, 207 Ill. App. 3d at 470

¶ 76 Second, the State mischaracterizes the record by stating defendant was allowed to use his cell phone throughout the interview. It is true he was allowed to use his cell phone at certain times. However, it is also true he was denied its use at other times. For example, shortly before invoking his right to remain silent, defendant asked if he could make a call regarding the car; Sims responded, “that’s not where we’re at, we’re not at that point.” Additionally, when defendant was allowed to make a call, Sims told him to “wind it up.” Thus, while defendant was allowed to use his cell phone, contrary to the State’s suggestion, his usage was not unrestricted.

¶ 77 Third, the indicia-of-formal-arrest factor is only one of several nondispositive factors to consider, and “[a]lthough the police may tell a suspect that he is free to leave and that he is not under arrest, a suspect may still reasonably perceive that he is in custody.” *Gorman*, 207 Ill. App. 3d at 475. Moreover, the detectives here specifically told defendant he was not under arrest at the outset of the interrogation, at a time all parties agree the interview was noncustodial. However, when the interrogation began to turn custodial (*i.e.*, when the detectives continuously discounted defendant’s story and repeatedly accused him of being at the crime scene), the police never again told defendant he was not under arrest. Rather, they repeated to defendant some variation of, “we don’t even know what is gonna happen here.”

¶ 78 Fourth, although we agree defendant made statements from which it can be inferred he did not subjectively believe himself to be in custody, defendant's subjective belief is "irrelevant to our determination." *People v. Coleman*, 2015 IL App (4th) 140730, ¶ 38, 37 N.E.3d 360 (citing *Stansbury v. California*, 511 U.S. 318, 323 (1994)). Even if defendant's subjective belief was relevant, it would favor defendant. Minutes before defendant's invocation of his right to remain silent, he stated, "you already making me feel like I'm under arrest ***." Thus, it appears defendant did believe he was in custody immediately before invoking his right to remain silent. Accordingly, we reject the State's arguments and conclude defendant was in custody for *Miranda* purposes when he invoked his right to remain silent during the February 7, 2014 interview.

¶ 79 *2. Whether the Detectives Scrupulously Honored Defendant's Right to Remain Silent*

¶ 80 Having determined that defendant was in custody when he invoked his right to remain silent and, consequently, that *Miranda* applies, we next must determine whether the detectives "scrupulously honored" his "right to cut off questioning." *Mosley*, 423 U.S. at 104. The supreme court has provided the following guidance in making this determination:

"In deciding this question, courts should consider whether (1) the police immediately halted the initial interrogation after the defendant invoked his right to remain silent; (2) a significant amount of time elapsed between the interrogations; (3) a fresh set of *Miranda* warnings were given prior to the second interrogation; and (4) the second interrogation addressed a crime that was not the subject of the first interrogation." *People v. Nielson*, 187 Ill. 2d

271, 287, 718 N.E.2d 131, 142 (1999) (citing *Mosley*, 423 U.S. at 104).

The “fact that the second interrogation addressed the same crime as the first interrogation does not preclude a finding that the defendant’s right to remain silent was scrupulously honored.” *Id.* We also note that the Supreme Court has found a two-hour passage of time sufficient to satisfy the second factor. See *Mosley*, 423 U.S. at 104-06.

¶81 In considering the factors outlined in *Nielson* and *Mosley*, we conclude that the detectives failed to “scrupulously honor” defendant’s right to cut off questioning on February 7. First, the detectives did not immediately halt the interrogation after defendant invoked his right to remain silent. For *Miranda* purposes, “interrogation” is defined as “ ‘any words or actions on the part of the police *** that the police should know are reasonably likely to elicit an incriminating response.’ ” *People v. Garcia*, 165 Ill. 2d 409, 425, 651 N.E.2d 100, 108 (1995) (quoting *Rhode Island v. Imis*, 446 U.S. 291, 301 (1980)). While the detectives did stand up and gather their things after defendant invoked his right to remain silent and left shortly thereafter, they did not leave before attempting to elicit an incriminating response from defendant. Before leaving the room, Dahlkamp asked defendant if he wanted a cigarette. He then told defendant that they had done some research on him and “what happened doesn’t match you.” In response, defendant stated, “I ain’t never shot, well killed nobody.” Dahlkamp then informed defendant “that maybe things might work out better for people that weren’t *** necessarily the evil person in this ***.” While we agree with the State that simply asking defendant whether he wanted a cigarette does not constitute interrogation, we disagree that Detective Dahlkamp’s subsequent comments were not designed to elicit an incriminating response. Rather, the comments were clearly an effort to induce defendant to implicate himself in the murders by implying “things

might work out better" for defendant if he was not the most-culpable party and if he cooperated with the State. See *Brownell*, 79 Ill. 2d at 517 (finding a failure to immediately halt the interrogation where detectives ceased questioning upon the defendant's invocation of his right to remain silent but placed a picture of the victim in front of the defendant before walking out of the room).

¶ 82 Second, no significant amount of time elapsed between the various rounds of the interrogation on February 7. Only four minutes passed after defendant initially invoked his right to remain silent before Detective Sims reentered the room. When Sims reentered, defendant again stated, "I don't want to talk no more." Sims did not acknowledge defendant's statement and instead continued to interrogate him for five minutes more before leaving the room a second time. Sims returned to the room after 15 minutes and interrogated defendant for another 8 minutes before again leaving. After being left alone the third time, this time for 33 minutes, defendant can be heard on the video talking to himself. Sims reentered the room and asked defendant whether he was talking to himself or to the detectives. Defendant responded he was "[j]ust talking out loud." Sims then continued the interrogation until defendant finally implicated himself in armed robbery and felony murder.

¶ 83 Additionally, the third and fourth factors outlined in *Nielson* and *Mosley* were not satisfied. The detectives did not read defendant his *Miranda* rights after he initially invoked his right to remain silent, and the same detectives continued to question him about the same crimes. Accordingly, because none of the factors outlined in *Nielson* and *Mosely* were satisfied during the February 7 interrogation, we conclude the detectives failed to "scrupulously honor" defendant's right to cut off questioning.

¶84

The State, citing *Edwards v. Arizona*, 451 U.S. 477 (1981), argues defendant waived his right to remain silent by reinitiating contact with the detectives. While *Edwards* addresses the reinitiation of contact after a defendant's invocation of the right to counsel, as opposed to a defendant's invocation of the right to remain silent, we will address the State's argument. In *Edwards*, the Supreme Court held that once an accused has invoked his right to counsel, police cannot continue the interrogation "until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police." *Id.* at 484-85. The court later clarified that not all inquiries or statements "relating to routine incidents of the custodial relationship" will "initiate" a conversation in the sense in which that word was used in *Edwards*." *Oregon v. Bradshaw*, 462 U.S. 1039, 1045 (1983). The Supreme Court went on to explain that "some inquiries, such as a request *** to use a telephone *** are so routine that they cannot be fairly said to represent a desire on the part of an accused to open up a more generalized discussion relating directly or indirectly to the investigation." *Id.*

¶85

Here, defendant did not reinitiate contact with the detectives such that his prior invocation of his right to remain silent was nullified. Instead, he merely asked the detectives if he could make a phone call. Because this was an inquiry relating to "routine incidents of the custodial relationship," it "cannot be fairly said to represent a desire on the part of [defendant] to open up a more generalized discussion relating *** to the investigation." *Bradshaw*, 462 U.S. at 1045. Moreover, despite the trial court's finding to the contrary, defendant did not reinitiate contact when he is heard on the video talking to himself. When the detectives reentered the interview room and asked if he was talking to them, defendant specifically stated he was "[j]ust talking out loud"; Sims even testified at the suppression hearing that defendant told him he was talking to himself and not to the detectives. By simply talking to himself, defendant did not

“represent a desire *** to open up a more generalized discussion relating *** to the investigation.” *Id.*

¶ 86 The State also argues defendant waived his right to remain silent during the February 7 interrogation by stating, “maybe we’ll talk again tomorrow or something.” We find this argument unpersuasive. By stating that *maybe* he would talk to the detectives the *next day* (*i.e.*, February 8), defendant did not clearly waive his recently-invoked right to remain silent on February 7.

¶ 87 Therefore, we conclude defendant was in custody when he invoked his right to remain silent, the detectives failed to scrupulously honor his right to cut off questioning, and the trial court erred in denying defendant’s motion to suppress as it related to the February 7 statements made subsequent to the invocation of his right to remain silent.

¶ 88 *3. Whether Defendant’s Subsequent Statements Are Admissible*

¶ 89 Having concluded the detectives failed to scrupulously honor defendant’s right to remain silent, we must next determine the impact of this violation on the admissibility of defendant’s subsequent statements. Relying on *People v. Flores*, 2014 IL App (1st) 121786, 21 N.E.3d 1227, defendant argues all statements made after the detectives failed to scrupulously honor his right to remain silent should be suppressed. The State, relying on *Brownell*, argues that “only the statement obtained as a result of not honoring the defendant’s right to cut off questioning” is inadmissible.

¶ 90 In *Flores*, the defendant was questioned at a police station about his involvement in recent shootings. *Flores*, 2014 IL App (1st) 121786, ¶ 31. The defendant invoked his right to remain silent at the beginning of the interview, but the detectives continued to question him and asked if he wanted to see the codefendant’s statement. *Id.* ¶ 31, 34. The defendant stated that he

did, and then participated in the interrogation until admitting that he was the shooter. *Id.* ¶ 34. The defendant agreed to speak with an assistant state's attorney (ASA) and remained in the room. *Id.* The ASA arrived approximately four hours after the interrogation with the detectives ended. *Id.* ¶ 61. The ASA read defendant his *Miranda* rights before beginning his questioning. *Id.* The defendant ultimately gave a videotaped statement in which he confessed to the shootings. *Id.* ¶ 34.

¶91 The *Flores* court held that all of the defendant's statements were inadmissible. The court analyzed the *Nielson* and *Mosley* factors and concluded that the defendant's statements to the detectives were inadmissible because none of the factors were satisfied. *Id.* ¶ 59. The court further held that the "same test must also be applied to determine whether [the] defendant's later statements to an ASA were inadmissible." *Id.* ¶ 60. It found that because the detectives did not immediately halt the initial interrogation and the ASA questioned the defendant about the same crime, the State could not satisfy the first and fourth *Nielson* and *Mosley* factors and the defendant's later statements to the ASA were therefore also inadmissible. *Id.* ¶ 62. "While the passage of time and fresh *Miranda* warnings before the ASA interview fulfill the second and third prongs, that is not sufficient to show that [the] defendant's invocation of his right to remain silent was scrupulously honored." *Id.*

¶92 Defendant argues that *Flores* controls the outcome of the present case because, just as in *Flores*, the State here can only fulfill the second and third *Nielson* and *Mosley* prongs, and not the first and fourth prongs. Initially, we note *Flores* is factually distinguishable from the present case. In *Flores*, the defendant remained in the interview room between interrogations and a period of only four hours passed. In the present case, defendant was returned to the jail between interrogations and a period of approximately 72 hours passed between defendant

initially invoking his right to remain silent and the beginning of the February 10 interrogation. Thus, the interrogations in *Flores* were far more connected than the interrogations in this case. Moreover, to accept defendant's argument would mean that the detectives were effectively prohibited from questioning defendant about the murders ever again because they did not immediately halt questioning when he initially invoked his right to remain silent on February 7. However, no "passage in the *Miranda* opinion can sensibly be read to create a *per se* proscription of indefinite duration upon any further questioning by any police officer on any subject, once the person in custody has indicated a desire to remain silent." *Mosley*, 423 U.S. at 102-03. "[A] blanket prohibition against the taking of voluntary statements ***, regardless of the circumstances, would transform the *Miranda* safeguards into wholly irrational obstacles to legitimate police investigative activity, and deprive suspects of an opportunity to make informed and intelligent assessments of their interests." *Id.* at 102. Moreover, our supreme court has interpreted *Mosley* "to include only the statement obtained as a result of not honoring the defendant's right to cut off questioning. We do not think the court intended that *all* subsequent statements are to be excluded." (Emphasis in original.) *Brownell*, 79 Ill. 2d at 519.

¶ 93 Here, even assuming defendant invoked his right to remain silent on February 8, we conclude his voluntary statements made on February 10 were admissible. Although defendant undoubtedly invoked his right to remain silent on February 7, and arguably did as well on February 8, the detectives did not employ "repeated rounds of questioning to undermine the will of [defendant,]" which is what *Mosley* sought to prevent. *Mosley*, 423 U.S. at 102. Rather, in their questioning of defendant on February 7, the detectives gave defendant numerous breaks, and defendant continued to engage in conversation with the detectives and never persisted in a clear desire to stop talking. He also told the detectives that he might be willing to talk to them the

next day. Moreover, the February 10 interrogations occurred almost 72 hours after defendant's invocation of his right to remain silent on February 7 and over 36 hours after any arguable invocation of the same right on February 8. During this time, defendant had "an opportunity to make informed and intelligent assessments of [his] interests." *Id.* Additionally, the detectives read defendant his *Miranda* rights at the outset of each interrogation. On February 8, when Sims asked defendant if he understood his rights, defendant replied, "Yeah, I can stop talking whenever I choose to." On February 10, Sims stated, "it'll be like the [fourth] time I've advised you what your rights are." Defendant responded, "Okay, actually five, this will be five." Thus, defendant was aware of his rights, stated he understood them, and voluntarily waived them.

¶ 94 Accordingly, based on the facts of this case, and considering the *Nielson* and *Mosley* factors, we conclude that defendant's statements made on February 10, 2014, were admissible.

¶ 95 D. The Trial Court's Denial of Defendant's Motion to Suppress: Right to Counsel

¶ 96 Defendant also argues that the trial court erred in denying his motion to suppress because he unambiguously invoked his right to counsel during the February 7 interview and the detectives continued to interrogate him outside the presence of counsel. We disagree.

¶ 97 Where "a suspect makes a reference to an attorney that is ambiguous or equivocal in that a reasonable officer in light of the circumstances would have understood only that the suspect *might* be invoking the right to counsel, [Supreme Court] precedents do not require the cessation of questioning." (Emphasis in original.) *Davis v. United States*, 512 U.S. 452, 459 (1994). "Rather, the suspect must unambiguously request counsel." *Id.* "If the statement fails to meet the requisite level of clarity, *Edwards* does not require that the officers stop questioning the suspect." *Id.*

¶ 98

Here, we cannot say that defendant unambiguously requested counsel. The transcript of the February 7 interview indicates that defendant said, "I'll get me an attorney." At the hearing on defendant's *pro se* motion, he argued that he said, "Can you all give me an attorney?" On appeal, defendant "submits that he can be heard in the video saying, 'Can I get me an attorney or something?'" Moreover, after reviewing the video numerous times, this court is unable to discern exactly what defendant stated in the interview. He undoubtedly made reference to an attorney, but without knowing the words he used, we are unable to say he unambiguously requested counsel. Accordingly, we find the detectives were not required to cease questioning on that basis and the trial court did not err in denying defendant's motion.

¶ 99

E. Harmless Error

¶ 100

Finally, having found that the February 10 statements were admissible, we conclude any error in admitting the statements defendant made on February 7 and 8 was harmless. "In determining whether a constitutional error is harmless, the test to be applied is whether it appears beyond a reasonable doubt that the error at issue did not contribute to the verdict obtained." *People v. Patterson*, 217 Ill. 2d 407, 428, 841 N.E.2d 889, 901 (2005). Our supreme court has articulated three different approaches for determining whether a constitutional error is harmless: "(1) focusing on the error to determine whether it might have contributed to the conviction, (2) examining the other evidence in the case to see if overwhelming evidence supports the conviction, and (3) determining whether the improperly admitted evidence is merely cumulative or duplicates properly admitted evidence." *Id.*

¶ 101

In this case, the improperly admitted evidence (*i.e.*, defendant's statements made during the February 7 and 8 interviews) was merely cumulative of the February 10 interview. On February 7, 2014, after invoking his right to remain silent, defendant told the detectives that he

went to the victims' house with Mitchell and participated in the armed robbery but left by fleeing through the front door before Mitchell killed the victims. On February 8, 2014, defendant told the detectives a similar story, but this time he stated that he saw Mitchell shoot Grice in the back of the head and left through the front door while Pocklington was still alive. At the beginning of the February 10, 2014, interrogation, defendant told the detectives the same thing he had told them two days prior: he had robbed the victims with Mitchell, saw Mitchell shoot Grice in the head, and left while Pocklington was still alive. However, defendant ultimately confessed to killing Grice and leaving through the back door during the February 10 interrogation. He stated that he went to the house with Mitchell to rob the victims. Defendant stole a bag of marijuana and shot Grice because he did not have a mask and feared being identified. He also admitted that he witnessed Mitchell shoot Pocklington and stab her multiple times as defendant fled from the house through the back door. Thus, defendant's February 10 statements were cumulative of his February 7 and 8 statements.

¶ 102 In addition, the other evidence in this case, especially the February 10 interview, overwhelmingly supports defendant's convictions. During the February 10 interview, defendant *confessed* to having murdered Grice and witnessed Mitchell kill Pocklington. He also told the detectives, for the first time, he fled from the house through the back door, which was important when considered in the context of Detective Dahlkamp's testimony: "The scene *** told a story ***. The preliminary investigation indicated that the person who had killed Andrea had exited through the back door. There was [sic] markings, blood smears on walls, light switches. Going through the back door, so what we surmised was it was dark; the light was on; the person that committed the crime had shut the light off as they exited." Additionally, on February 10, defendant told the detectives for the first time that Grice was "wearing a plastic black watch" at

the time of the murders. Dahlkamp testified Grice's "watch had been taken off and was placed underneath his body where his watch was found." Thus, defendant confessed to murder in his February 10 interview and provided specific details not contained in his previous statements.

¶ 103 In addition to defendant's confession on February 10, there was other properly admitted evidence that supports the convictions. The State introduced Mitchell's recorded statement, which more or less mirrored defendant's confession, with the key difference being Mitchell told the detectives that defendant committed both murders. Additionally, the State presented evidence establishing defendant had possessed the .22-caliber Ruger handgun used in the murders. Caroline Kersting, a forensic scientist at the Illinois State Police Crime Lab, confirmed that the bullets recovered from the victims' bodies were fired from this same .22-caliber handgun. During their investigations Detectives Sims and Dahlkamp traced the gun to Grice and Medley. Medley was arrested on December 29, 2012, the day before the murders, and testified that he sold the gun to defendant shortly before his arrest. During the February 7, 2014, interview, before invoking his right to remain silent, defendant admitted he had purchased a .22 Ruger from Medley in December 2012 and sold it to Marcus shortly thereafter. Marcus testified that defendant sold him the weapon in March 2013. Marcus further testified that shortly after the murders defendant told him, "[d]ead body don't talk" and "it was messed up" in speaking about the murders.

¶ 104 Finally, the State presented evidence demonstrating Grice possessed a significant amount of counterfeit money prior to the murders and defendant was found in possession of counterfeit money shortly thereafter. Before invoking his right to remain silent on February 7, 2014, defendant told the detectives an acquaintance named Tyrell Woods gave him approximately \$2000 in counterfeit money. Defendant gave the money to Medley for the purpose

of purchasing marijuana. Defendant stated Medley later informed him and Woods that Medley's drug dealer pulled a gun on him because he knew the money was fake. However, Medley testified at trial that he discovered the money was counterfeit prior to attempting to make a purchase and never returned it to Woods or defendant, nor did he give them any marijuana. Medley further testified that before being taken into custody on December 29, 2012, he gave the money to Grice. During the January 24, 2013, interview, defendant stated he purchased marijuana from Grice and received counterfeit money as change. Mitchell told the detectives that during the robbery defendant kept saying to Grice, "Where the shit at what's up you know what you all did. Where my shit at? Give it up."

¶ 105 Accordingly, we conclude any error by the trial court in admitting defendant's February 7 and 8 statements was harmless beyond a reasonable doubt.

¶ 106 III. CONCLUSION

¶ 107 For the reasons stated, we affirm the trial court's judgment.

¶ 108 Affirmed.

Appendix (A) Decision of state court of Appeals

- Filed: October 4, 2019. In the Appellate Court of the 4th District, IL.
- Case no: People v. Davis, 2019 IL App. (4th) 170431-U.

Decision of court:

The court confirms that defendants February 7th and 8th, 2014 statements should be suppressed and/or invocations of right to remain silent were not scrupulously honored. But believes them to be harmless error due to defendants February 10, 2014 statement. But also suggest even without February 10, statements, sufficient evidence exist to bring about a finding of guilt.

4th district appellate court affirms the trial court.

Judgement. Appeal denied.

Appendix (B) Decision of the state circuit trial Court.

people v. Davis, 14-c-f-194

filed 6-6-16.

Before trial, Davis's original Judge was the Honorable Judge Leslie Graves (sangamon county, IL: seventh Circuit Court.) who ruled on the issues at hand on filed date June 6, 2016 "order" of Court.

The court denied suppression, stating Defendant was not in custody when he invoked miranda's right to silence, but had he been, waived any right to remain silent by re-initiating contact. Because there was no violation of the defendant right to remain silent, the Court need not address/concern with whether or not detectives scrupulously honored the right in subsequent interviews.

cause, motion to suppress hearing on defendant motion to suppress, present" Defendant Attorney Michael Harmon sam Q.W. present for the state is Derick Dion and states Attorney John mihieser Arguments heard.

In the circuit Court of the seventh judicial circuit Court of sangamon County, Illinois.

Appendix (C) Decision of the supreme court
of Illinois.

People v. Davis, Petition for leave to Appeal
#125634.

As of April 29, 2020, The supreme court of
Illinois, Denied Review, with no reason
for denial.



SUPREME COURT OF ILLINOIS

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March 25, 2020

In re: People State of Illinois, respondent, v. Jermaine Davis, petitioner.
Leave to appeal, Appellate Court, Fourth District.
125634

The Supreme Court today DENIED the Petition for Leave to Appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on 04/29/2020.

Very truly yours,

Carolyn Taft Gosboll

Clerk of the Supreme Court