Illinois Official Reports

Appellate Court

People v. Doehring, 2021 IL App (1st) 190420

Appellate Court Caption	THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. CHRISTOPHER DOEHRING, Defendant-Appellant.
District & No.	First District, Fourth Division No. 1-19-0420
Filed	September 30, 2021
Decision Under Review	Appeal from the Circuit Court of Cook County, No. 14-CR-2583; the Hon. William G. Gamboney, Judge, presiding.
Judgment	Affirmed in part and vacated in part; mittimus corrected.
Counsel on Appeal	James E. Chadd, Douglas R. Hoff, and Jonathan Krieger, of State Appellate Defender's Office, of Chicago, for appellant. Kimberly M. Foxx, State's Attorney, of Chicago (Alan J. Spellberg, John E. Nowak, and Joseph Alexander, Assistant State's Attorneys, of counsel), for the People.
Panel	JUSTICE LAMPKIN delivered the judgment of the court, with opinion. Presiding Justice Reyes and Justice Martin concurred in the judgment and opinion.

OPINION

¶ 1 Defendant Christopher Doehring, and codefendant Samuel Parsons-Salas, were charged in a 102-count indictment with charges stemming from a home invasion that occurred on September 21, 2009, at 3555 West Sunnyside Avenue, in which Angelina Escobar and Alex Santiago were killed. Defendant's case was severed from that of his codefendant, and after a jury trial, defendant was convicted of two counts of first degree murder (720 ILCS 5/9-1(a)(1) (West 2008)) (counts XXXIII and XXXIV), two counts of first degree murder (*id.* § 9-1(a)(2)) (counts XXXIX and XL), and two counts of home invasion (*id.* § 12-11(a)(3)) (counts LXIX and LXX).[1] The trial court imposed concurrent sentences of natural life plus a 15-year firearm enhancement on counts XXXIII and XXXIV, and concurrent sentences of 30 years on counts LXIX and LXX. The court merged the convictions in counts XXXIX and XL into the convictions in counts XXXIII and XXXIV.

¶ 2 Defendant filed a timely notice of appeal. We have jurisdiction under article VI, section 6, of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6) and Illinois Supreme Court Rule 603 (eff. Feb. 6, 2013) and Rule 606 (eff. Mar. 12, 2021), governing appeals from final judgments of conviction in criminal cases.

¶ 3 For the reasons that follow, we affirm in part and vacate in part.

¶ 4 I. BACKGROUND

¶ 5 In September of 2009, Santiago and Escobar resided together in a third-floor apartment at 3555 West Sunnyside Avenue in Chicago, Illinois. Santiago sold drugs. At approximately 9:30 p.m. on September 20, 2009, Officer K. Tierney[2] encountered Santiago and two other individuals, Kelvin Lee and Kevin Wendell, by a broken-down vehicle at 3552 West Lawrence Avenue. Officer Tierney testified that 3552 West Lawrence Avenue is between one-half mile and one mile from 3555 West Sunnyside Avenue. As is customary when an officer encounters a civilian, this encounter was recorded on a "contact card."

¶ 6 At trial, Angel Torres, who sold drugs with Santiago, testified that on September 20, 2009, sometime between 8 and 10 p.m., he and his girlfriend Brittney went to Santiago and Escobar's apartment. At some point in the evening, Brittney left so that Torres and Santiago could conduct business. Such "business" consisted of bagging up drugs (marijuana, cocaine, crack, and ecstasy) and counting money. Torres's share of the money was about $1500. At around midnight, Torres left the apartment and returned to Brittney's apartment.

¶ 7 Misael Salas testified that in 2009 he was 17 years old and often saw defendant whom he knew from the neighborhood. On September 20, 2009, at about 9 or 10 p.m., Salas and his older brother, codefendant Parsons-Salas, went to defendant's house to hang out. The three drank alcohol and smoked marijuana. Later that evening, the three got into defendant's van. Defendant drove, codefendant sat in the front passenger seat, and Salas sat in the van's back seat. Defendant said to codefendant, "let's go hit this lick," and codefendant nodded his assent. Salas explained that a "lick" meant to "take something from somebody else." Defendant parked

[1]The State nol-prossed the remaining counts before trial commenced.

[2]The record only identifies Officer Tierney's first initial.

the van in an alley by Sunnyside Avenue. Defendant and codefendant then retrieved handguns from a small slot in the dashboard and exited the van.

¶ 8 While Salas remained in the van listening to his iPod, he heard two "pops." While remaining in the rear seat, Salas picked the keys off of the van's floor and turned on the ignition. Defendant and codefendant returned to the van and their original seats, returned the firearms to the slot in the dashboard, and drove off. Salas saw his brother holding a clear plastic bag containing marijuana and cocaine. Defendant then said, "I got them, they are gone."

¶ 9 On September 21, 2009, at 1 a.m., Sharon Curtis, who resided in a building located across the street from 3555 West Sunnyside Avenue, was talking on the phone when she heard what sounded like gunshots. Curtis called 911 and, while she spoke with the operator, looked out her front window and saw a person run out of the building across the street. The person, whose face was not visible and whose gender she could not determine, stopped, paused, and ran eastbound on Sunnyside Avenue. Curtis described the individual as "small-framed" and wearing what appeared to be a flannel-like checkered shirt.

¶ 10 Officer Tierney and Officer Charlotte Gonzalez responded to the 911 call and, after speaking with Curtis, went to Santiago and Escobar's apartment, where they observed that the front door was kicked in and heard a female voice inside the apartment faintly calling for help. Upon entering the bedroom, Office Tierney observed Escobar attempting to crawl toward the door. Escobar had multiple gunshot wounds. Santiago was leaning up against the bed, apparently shot but still breathing. Officer Tierney told the dispatcher to send an ambulance, and the victims were subsequently transported to the hospital. Both Santiago and Escobar died later that day.

¶ 11 On September 21, 2009, between 1:45 a.m. and 2 a.m., Detectives Arthur Young[3] and Anthony Green were working at the Area 5 Detective Division (Area 5) at Grand and Central Avenues when they were assigned to investigate the shooting at 3555 West Sunnyside Avenue. Detective Young went up to Santiago and Escobar's third-floor west apartment and noticed that the door frame to the apartment was damaged and that parts of the door frame and deadbolt locking device were on the floor. A shoeprint was also visible on the front door.

¶ 12 Sergeant Young described the scene of the shootings. In the first bedroom, both sides of a blue sheet on the bed had blood on it, and a large pool of blood went from the bed to the floor. There was blood splatter on the wall. Three cartridge casings were found in the bedroom, along with packaged cannabis and what appeared to be crack cocaine and cash.

¶ 13 Salas testified that after his brother and defendant got back into the car, they drove to defendant's residence at 3449 North Hamlin Avenue. The three went to the apartment of defendant's friend, David Huff, who resided in a different apartment in the same building. Salas testified that Huff was a neighborhood drug addict.

¶ 14 Salas testified that his brother carried the plastic bag containing the drugs into the apartment and defendant brought both handguns inside. At some point defendant left with the guns. Defendant later returned, and everyone started smoking marijuana. Another individual, "Tony," also showed up at the apartment that morning.

¶ 15 Salas saw defendant pull his brother aside to talk and agreed that he heard defendant say words to the effect of "right when you were looking for the s*** right before I shot her she

[3]Detective Young had been promoted to Sergeant at the time of trial.

was the like begging for her life like, oh Lord, please don't kill me?" Salas also saw defendant try to cook the cocaine. Later, when Tony left the apartment, Salas's uncle picked up him and his brother and drove them home.

¶ 16 Anthony Ramirez, who was in custody at the time of trial, testified that he was 28 years old and had a pending misdemeanor driving under the influence (DUI) case. Ramirez testified that he was not in custody on the DUI case. Ramirez testified that the State did not offer him anything in exchange for his testimony.

¶ 17 In 2009, Ramirez had known defendant for 15 years and visited him weekly. Defendant drove and paid for a dark blue van that Ramirez owned but never used. Ramirez had another van that he drove. On September 21, 2009, at about 2:30 a.m., defendant called Ramirez and asked him to drive defendant home. Ramirez agreed, and upon arriving at the residence, accompanied defendant to Huff's downstairs apartment. Ramirez knew Huff through defendant and claimed that Huff was not home when they arrived. Codefendant and Salas, whom Ramirez had met on several occasions before September 21, 2009, were in the apartment.

¶ 18 Ramirez saw a quarter-pound of marijuana on a table and a revolver in defendant's hands. Ramirez testified that defendant took him to another part of the apartment that was not visible to Salas and codefendant and "said that he had just shot somebody in the neck and that [codefendant] shot the girl twice in the chest." Defendant told Ramirez that the shooting occurred in the area of Central Park and Sunnyside Avenues.

¶ 19 After spending about an hour in Huff's apartment and smoking some marijuana, Ramirez drove home and watched television. Later that morning, Ramirez saw the story about the shooting at Central Park and Sunnyside Avenues on the news.

¶ 20 Huff testified that, in September 2009, he resided at 3449 North Hamlin Avenue with his wife and three children. The three-story house had a total of four apartments in it. Huff lived in the basement apartment, and defendant lived in the attic apartment. Huff knew defendant for a few months and saw him a lot. The two were good friends and drank, played video games, and watched television together.

¶ 21 On September 20, 2009, at about 11:30 p.m., Huff was home with his three children. Huff's wife, Laura, was not home because the two argued earlier that day. Huff was in his living room watching television, and his children were asleep in bed when defendant came over and said that he was leaving to do something and would be back later. Defendant asked Huff to lock the front door. Huff agreed and fell asleep after watching television. A couple of hours later defendant called and asked Huff to open the front door. After Huff opened the door, defendant, codefendant, and Salas followed him into the apartment.

¶ 22 Huff knew Salas to be defendant's friend and had met him on many prior occasions. Huff learned that codefendant, whom he did not know, was Salas's brother. Huff asked defendant for a "rock," which he explained was crack cocaine, and defendant gave him one. At the time, Huff smoked crack cocaine. Huff testified that he no longer smoked crack and had stopped smoking it years ago.

¶ 23 Huff put the crack cocaine into his pipe, took a couple of hits, and got high. Huff testified that when defendant, Salas, and codefendant were in the kitchen, he heard defendant say that he shot someone. Huff testified that codefendant removed what appeared to be a .22-caliber

revolver from his coat along with a large ziplock bag containing marijuana. Huff saw defendant take out a handgun that had a slide on it along with some powder cocaine.

¶ 24 Huff testified that defendant's cousin, "Tony," also came over that night and that he, Salas, and codefendant stayed at Huff's apartment between 45 minutes and one hour. Shortly after Salas, Tony, and codefendant left, defendant said that he was tired and would go to sleep. Neither the drugs nor the firearms were left in Huff's apartment. Before departing, defendant told Huff to watch the news. Huff stayed up and watched the morning news broadcast of the shooting story at 3555 West Sunnyside Avenue.

¶ 25 Upon arriving home, Torres and Brittney also stayed up and watched the televised morning news report about the crime.

¶ 26 According to Salas, defendant came to his and his brother's house later that morning, and they pulled up the morning news story of the crime on their computer. Upon watching the broadcast, defendant said, "man, we just—we snoozed. You know, we could have had all that s*** right there?"

¶ 27 The parties stipulated that forensic pathologist Dr. Valerie Arangelovich conducted a postmortem examination on the remains of Escobar and Santiago on September 21, 2009. Escobar died as a result of multiple gunshot wounds to her anterior left chest and upper left side of her abdomen and left arm, while Santiago died due to a single penetrating gunshot wound to the left side of his head. Medium caliber copper-jacketed lead bullets were recovered from the victims' bodies. The manner of their deaths was ruled to be homicide.

¶ 28 On September 22, 2009, Torres told the police that he had checked on Santiago and Escobar two days earlier because they were ill. Torres admitted that he lied and told the police that he was related to Escobar because he was trying to hide the fact that he was selling drugs.

¶ 29 In the meantime, defendant continued to discuss the crime with his friends. About a week after the murders, Huff asked defendant why they shot the girl. According to Huff, defendant replied, "because you don't leave any witnesses." Huff also recounted another conversation with defendant when he told Huff that he was having nightmares "about the dude's face." When asked to clarify who the "dude" was, Huff replied, "[i]t seems like it was the one he shot, you know."

¶ 30 Similarly, Ramirez testified that defendant told him that he was having nightmares. Two months after this incident, on November 17, 2009, defendant called Ramirez and told him to come to defendant's house because Ramirez's van that defendant used was on fire. Ramirez went and saw the van, which he described as "burned to a crisp."

¶ 31 Then, on December 1, 2009, Huff left Chicago and moved to southern Illinois. Huff testified that he had children and "[i]t was time, you know, for me to go, and I went, and I left to get away from doing drugs and stuff."

¶ 32 More information regarding this crime came to light when defendant placed a phone call to Ramirez from the Cook County Department of Corrections (CCDOC). Investigator Kimberly Hoffsteadter, who was assigned to the telephone monitoring unit at CCDOC, testified about the operation of the phone system at the jail and that a call log showed that defendant placed a call that was recorded. The evidence established that defendant called Ramirez, who identified himself and defendant on People's Exhibit No. 82, a disk containing the recorded phone call. The call was played for the jury. In it, the following can be heard:

"DEFENDANT: Well, you heard about what happened before, dog, I'm saying with the two people, man.

RAMIREZ: Yeah, at CP and Sunny, Sunny?

DEFENDANT: You know [unintelligible], I'm saying, dog, you feel me? Right. The whole point is, dog, that I'm not, I have no sympathy dog, you know I'm saying I have no sympathy at all, you know, and it doesn't, one time and I can do that again, remember that s*** don't bother me, dog."

¶ 33 Ramirez clarified that he was referring to the murders that occurred at Central Park and Sunnyside Avenues.

¶ 34 On August 5, 2010, Detective Green was contacted by Officers Korhonen and Ludwik. After speaking with them, Detective Green and his partner, Detective Michael Landando, spoke with Anthony Vula. After this conversation, the detectives were looking for Huff. Detectives Green and Landando also conducted a computer search into the van fire that had occurred at 3449 North Hamlin Avenue. Based on their investigation, the detectives wanted to talk to Ramirez. Ramirez was found that same day and taken to Area 5 where, after being shown a photo array, he identified defendant and Huff.

¶ 35 Then, on September 30, 2010, Detective Green received the disk containing defendant's May 15, 2010, recorded jail phone call. After listening to the phone call, Detective Green again looked for Ramirez and reinterviewed him on October 16, 2010.

¶ 36 In October 2010, Detective Green also drove to Huff's new residence in southern Illinois to interview him. Huff identified People's Exhibit Nos. 15, 16, and 17 as photographs of Salas, codefendant, and defendant, respectively.

¶ 37 On December 5, 2010, Detective Green spoke with Salas. Salas testified that he did not go to the police of his own volition because "he wanted to be done with it." He did not initially tell the detectives that he waited in the van for his brother and defendant because he was afraid to do so. Eventually, he told them that he was in the van. Over defendant's objection that this testimony constituted an improper prior consistent statement, it was admitted at trial.

¶ 38 Over defense objection, the State was also allowed to present a portion of Salas's grand jury testimony as a prior inconsistent statement. Such testimony consisted of the following:

"I overheard Chris pull Codefendant to the side, and he was telling him like, man, right when you were looking for the s*** right before I shot her she was like begging for her life like, oh, Lord, please don't kill me."

¶ 39 In response to being asked whether defendant told Salas where he shot the victims, Salas testified:

"Yeah a couple—well, you know, Christopher talks a lot. A couple [of] weeks later he was making comments like, yeah, shot him in the neck and gave the b*** two to the stomach."

¶ 40 On December 22, 2010, Detective Green interviewed Ramirez a third time. On January 10, 2011, defendant was arrested for this incident and placed in an interview room with a functioning recording device. Defendant invoked his right to counsel, and all questioning ceased. After he was processed several hours later, defendant was returned to the interview room and requested to call his mother, Christina Barrera.[4]

[4]It was established at trial that while defendant said that Barrera was his mother, she was his aunt.

¶ 41 The detectives brought defendant to a room used by various police personnel where he was allowed to make a phone call. Throughout the day and night, police personnel would freely move in and out of this room. Since defendant was in custody, for security reasons, Detectives Green and Landando stood nearby while defendant spoke on the telephone. At trial, Detective Green testified that he stood just inside the doorway while defendant was on the phone and that, if defendant turned to look, he would have been able to see Detective Green standing nearby.

¶ 42 Detective Green overheard defendant's side of the conversation, which he subsequently documented and recounted as: "He said it was all Sammy's idea. I didn't want to do it, but Sammy talked me into it."

¶ 43 Defendant was returned to the interview room, and the recording device was reactivated. The recordings that followed were admitted into evidence and show defendant being asked by Detective Landando, "She knows where you're at? She knows you're at Grand and Central? Was she crying too?" Detective Landando then asked defendant "You okay?" and after defendant put his hands over his eyes, he stood and proceeded to punch the wall with his fist three times. The detectives then told defendant to calm down, relax, and not hurt himself so that they would not have to handcuff him.

¶ 44 The evidence at trial also established that the bullets recovered from the victims' bodies and the cartridge casings recovered from the apartment were consistent with all having been fired from the same .380/.38-caliber firearm. The parties stipulated that buccal swabs were taken from defendant, Salas, Parsons-Salas, and Ramirez. All were excluded as possible contributors to DNA samples identified in Santiago's fingernail scrapings. No DNA evidence connected defendant to the crime.

¶ 45 Additionally, Ramirez was impeached with his prior grand jury testimony that Huff was present in the apartment and was "tweaking out." Ramirez testified that "tweaking out" means using too many drugs. Ramirez was also impeached as to which room in the apartment he and defendant were in when defendant discussed the crime. Ramirez admitted telling the police he was the registered owner of the van at the scene of the fire. Ramirez also admitted that when he first spoke to the police, he lied and denied having spoken with defendant after he was arrested. When the police spoke with him the second time, they played the recorded phone call. After being confronted with the recording, Ramirez admitted knowing something about the murders.

¶ 46 The third time that the police spoke with Ramirez he hired an attorney who accompanied him to the police station because Ramirez knew that he was in trouble. Ramirez hired the attorney to tell him which questions he should and should not answer and to stop the detectives from harassing him by picking him up, handcuffing him, and disallowing him from telling family members where he was. Ramirez made it clear that he did not want to come to court and did not want to testify. At the time of the trial, Ramirez was being held in custody because he flew to California to avoid testifying.

¶ 47 After the State rested, defendant's motion for a directed finding was denied.

¶ 48 Defendant presented stipulated testimony in his case in chief that included Detective Green's grand jury testimony that he did not recall the precise words that defendant said when he made the phone call "but it's to the effect of it was Sammy's fault and I didn't want to do it, not that he didn't want to do it." Defendant also presented stipulated grand jury testimony

by Ramirez that Huff was in the apartment "tweaking out" and, in contrast to his trial testimony, that defendant talked to him while seated on Huff's sofa.

¶ 49 After the parties rested, the jury heard closing arguments and was instructed by the court. Deliberations began at 12:20 p.m., and a verdict was announced at 1:30 p.m.[5] The jury found defendant guilty of all charges.

¶ 50 The trial court imposed concurrent sentences of natural life plus a 15-year firearm enhancement on counts XXXIII and XXXIV, and concurrent sentences of 30 years on counts LXIX and LXX. The court merged the convictions in counts XXXIX and XL into the convictions in counts XXXIII and XXXIV.

¶ 51 II. ANALYSIS

¶ 52 A. Defendant's Claim That His Motion to Suppress Was Erroneously Denied

¶ 53 Defendant alleges that the trial court erroneously denied his motion to suppress statements where his conversation with his aunt was illegally overheard and where the invocation of his right to counsel was not honored when Detective Landando asked further questions that were likely to elicit an incriminatory response. Before considering each claimed error, we begin with a factual recitation of the pretrial litigation below.

¶ 54 1. Pretrial Litigation of Defendant's Motion to Suppress

¶ 55 On April 26, 2017, defendant filed a motion to suppress statements. The motion alleged that defendant invoked his right to remain silent and his right to counsel on January 10, 2011, at 6:55 p.m. Defendant alleged that detectives then unlawfully eavesdropped on a phone conversation that he was allowed to make at approximately 11:24 p.m. and that, following that conversation, the detectives asked questions designed to elicit an incriminating response. The motion sought to suppress the overheard remarks and the questions and responses that followed defendant's phone conversation with his aunt.

¶ 56 A hearing was held on defendant's motion to suppress on February 13, 2018. Testimony from the hearing established that on January 10, 2011, at 6:20 p.m., Detective Green and his partner Detective Michael Landando arrested defendant for this offense. At the time, defendant was in custody in the jail at 26th Street and California Avenue on an unrelated matter. Defendant, who was clothed in CCDOC attire, was placed in civilian street clothes, and transported to the Area 5 at Grand and Central Avenues. Defendant was Mirandized while being transported and was not questioned in the police car. See *Miranda v. Arizona*, 384 U.S. 436 (1966).

¶ 57 Upon arriving at Area 5, defendant was placed in interview room F, and a recording device was activated. Defendant was again Mirandized. Shortly after the detectives began questioning defendant, at 6:56 p.m., he invoked his right to counsel. Questioning ceased at this time. Defendant still had to be processed, however, and at 11:14 p.m. he was taken to be fingerprinted and photographed.

[5]In response to the court's question, the deputy sheriff indicated that the jury returned a verdict at 1:10 p.m.

¶ 58 After being processed, defendant was returned to the interview room at 11:24 p.m. The recording device was reactivated. Defendant then requested to make a phone call to his mother.

¶ 59 Defendant was taken to a common office area adjacent to the interview room where a phone was located. Detectives who walked around on that floor of the police station would come in and out of that office on a regular basis and would freely walk past this office area. Defendant could not be left alone in a private area to make a phone call because he was arrested on an unrelated escape charge.

¶ 60 Defendant made a phone call that lasted a few minutes. Detective Green and his partner heard defendant's end of the conversation in which he said words to the effect of "it was Sammy's fault, and I didn't want to do it." After the conversation ended, defendant was returned to the original interview room. Again, the recording device was reactivated. On the videotaped recording, Detective Landando asked: "She knows where you're at? She knows you're at Grand and Central? Was she crying too?" Detective Landando then asked defendant "You okay?" and after defendant put his hands over his eyes, he stood and proceeded to punch the wall with his fist three times. The detectives then told defendant to calm down, relax, and not hurt himself so that they would not have to handcuff him.

¶ 61 The parties then argued their respective positions. Defense counsel maintained that defendant's phone conversation should have been protected and that the detectives' act of overhearing it constituted illegal eavesdropping. Counsel additionally argued that defendant's act of punching the wall should be suppressed where the detectives' post-invocation questions were improper and likely to invoke an incriminating response.

¶ 62 The State maintained that defendant did not have a reasonable expectation of privacy in what he was heard saying on the phone and that Detective Landando's actions were not based on what he overheard but "had to do with [defendant's] care, how he was and make sure that he was all right if he needed medical attention for anything." The State relied on *People v. Outlaw*, 388 Ill. App. 3d 1072 (2009), and *Rhode Island v. Innis*, 446 U.S. 291 (1980), to support its claim that no improper interrogation occurred where the questions were not designed to elicit an incriminating response, and therefore defendant's subsequent actions were not protected.

¶ 63 The court took the matter under advisement and on May 7, 2018, ruled as follows:

> "THE COURT: What I have been able to glean from the arguments and the testimony and the report is that, in fact, the defendant did invoke his right to an attorney once he was taken into custody at 6:55 p.m. on the date in question.
>
> At 11:24 p.m. the defendant asked to make a phone call, he wants to call his mother, and at that point the defendant is taken to another room to make the phone call.
>
> After the call, the detectives returned the defendant to the interview room at 11:51 p.m. The detectives asked the defendant if his mother knows where he is and whether she is crying too, as obviously the defendant was crying at the time he was returned to the room.
>
> And as a result of that crying—the defendant is crying, he says he's angry and he punched the wall. The detectives also asked him, when they observed him crying, if he was okay.
>
> The questions asked by the detective after defendant made his phone call and invoked his right to counsel, were not in any way related to the possible charges. Asking

if the defendant's mother knew where he was or if she was crying too are not reasonably likely to elicit an incriminating response.

Certainly asking a crying individual if he was okay is highly unlikely to elicit any incriminating statement.

The officers may testify to their observations of the defendant crying, his punching of the wall, as well as the statement he was angry. I mean, I think it's pretty obvious that people who punch walls tend to be angry. The detectives did not violate the defendant's invocation of his Miranda Rights by asking these innocuous questions.

Regarding the alleged statements made by the defendant while speaking to his mother, the Court finds that it was the defendant who asked to make a phone call. Upon asking—upon the defendant's asking who he wanted to call, the defendant said his mother, although there's some part that says something about an aunt, and then he provided the name and the phone number.

There are no phones in the interview room, so the defendant was taken to another room or an office where a phone call could take place. This was an open area room, the detectives were present when the defendant made his phone call. There is no evidence they were hiding or using surveillance equipment or wire tap. The defendant did not testify, but circumstantially, it would strongly appear the defendant knew the detectives were present, that they were there when he was making the phone call.

The defendant never asked for privacy, or if he could make the phone call alone, and he was certainly not talking to an attorney, but to a family member.

This in no way, shape, or form is eavesdropping. The detectives honored his request to make a phone call to a family member by taking him to an area where he could make such a call.

As the defense has stated in their motion, the purpose of the phone call is for the defendant to notify a family member of his whereabouts and the nature of the offense so that they can make bail arrangements and/or representation for him.

Conversation between family members and the defendant are not protected communications, such as would control an attorney/client conversation.

Again, the defendant did not ask to speak to his mother alone, it appears the defendant was aware of the detectives' presence, and the detectives did not act in any clandestine matter.

The detectives could not have possibly known what the defendant would say to his family member. The statement was not recorded because the defendant requested a phone call, and that could only be honored by taking him to a room where there were phones.

I am sure the defense is not suggesting that when the defendant requests to make a phone call, that that [*sic*] call should be recorded on videotape or any other way. In any event, the recording statute does not seem to cover this particular scenario.

The detectives violated no constitutional right by honoring the defendant's request for a phone call and [to] remain in the area.

Defendant was being charged with first degree murder, they would have been derelict in their duty to leave him alone in an office where he could possibly avail himself of things that would cause harm to himself or even others. So the defendant's

motion to suppress statement is denied."

¶ 64 2. Charge That the Police Illegally Overheard His Phone Conversation

¶ 65 While conceding that he had no reasonable expectation of privacy in his phone conversation with his aunt, defendant maintains that such evidence was inadmissible because the police were statutorily required to ensure that the conversation was private. We reject this claim.

¶ 66 Issues of statutory construction involve questions of law and are reviewed *de novo*. *People v. Hammond*, 2011 IL 110044, ¶ 53. The fundamental rule of statutory construction is to ascertain and give effect to the legislature's intent, the best expression of which is the statute's plain language. *People v. Alcozer*, 241 Ill. 2d 248, 254 (2011). If a statute's language is clear and unambiguous, we will give effect to the statute's plain meaning without resorting to other aids of statutory construction. *Palm v. Holocker*, 2018 IL 123152, ¶ 21. We may not depart from a statute's plain language by interpreting it as having exceptions, limitations, and conditions that conflict with that plain language. *Hammond*, 2011 IL 110044, ¶ 53.

¶ 67 Defendant asks us to construe section 103-3 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/103-3 (West 2008)) as containing a privacy component not expressly stated in the statute. Section 103-3 provides:

> "§ 103-3. Right to Communicate with Attorney and Family; Transfers.
>
> (a) Persons who are arrested shall have the right to communicate with an attorney of their choice and a member of their family by making a reasonable number of telephone calls or in any other reasonable manner. Such communication shall be permitted within a reasonable time after arrival at the first place of custody." *Id.* § 103-3(a).

¶ 68 Defendant's argument ignores established rules of statutory construction by asking us to rewrite section 103-3 to include a limitation not expressed by the legislature. This we cannot do for "[i]t is a cardinal rule of statutory construction that we cannot rewrite a statute, and depart from its plain language, by reading into it exceptions, limitations or conditions not expressed by the legislature." *People ex rel. Birkett v. Dockery*, 235 Ill. 2d 73, 81 (2009).

¶ 69 Nor do we agree with defendant's belief that the "purpose" of section 103-3 is thwarted unless we find a "privacy" requirement though none is expressed. The purpose of section 103-3 is to permit an accused to notify his family of his whereabouts and the nature of the charges against him so that they can put in place procedural safeguards for him, including arranging for bail and representation by counsel. *People v. Prim*, 53 Ill. 2d 62, 69-70 (1972).

¶ 70 Defendant's position is also undermined by *People v. Liberg*, 138 Ill. App. 3d 986 (1985). In *Liberg*, the defendant claimed that his fourth and fifth amendment rights were violated when the police overheard him make certain statements during telephone calls made from the police station after he was arrested. *Id.* at 992. The court disagreed, finding that the defendant had no reasonable expectation of privacy in statements made at the police station where police officers were nearby and in plain view of the defendant during the phone calls. *Id.* at 992-93. The court also found that defendant's fifth amendment rights were not violated where defendant's statements were not elicited as a result of any police interrogation. *Id.* at 993. The court concluded that:

> "The reasonably likely response from a person in defendant's position would be to make telephone calls to (1) inform friends or family he had been arrested, (2) retain an attorney, and/or (3) arrange for the posting of bail. That defendant went further and made statements about the offenses was not reasonably likely to result from the actions of the police, so those statements were not elicited by police interrogation." *Id.*

¶ 71 Had the legislature intended to grant an accused the right to a private phone call, they would have said so, as they did for communications between an accused and his attorney. Section 103-4 of the Code provides that:

> "Any person committed, imprisoned or restrained of his liberty for any cause whatever and whether or not such person is charged with an offense shall, except in cases of imminent danger of escape, be allowed to consult with any licensed attorney at law of this State whom such person may desire to see or consult, *alone and in private at the place of custody*, as many times and for such period each time as is reasonable." (Emphasis added.) 725 ILCS 5/103-4 (West 2008).

¶ 72 In stark contrast to section 103-4, section 103-3 does not require that a defendant be given a "private" phone call. Even if we consider the most recent iteration of section 103-3(a-15) (which will go into effect on January 1, 2022) (Pub. Act 101-652 (eff. July 1, 2021) (amending 725 ILCS 5/103-3); Pub. Act 102-28, § 55 (eff. June 25, 2021) (amending the effective date of 725 ILCS 5/103-3)), it too only affords special protections for telephone calls placed to the public defender or an attorney, where section 103-3(a-15) prohibits such calls from being "monitored, eavesdropped upon, or recorded." The statute does not, however, provide similar protections for non-attorney communications. As such, we decline defendant's invitation to expand on the plain language of the Code by reading into it a requirement not articulated by the legislature in the new or the predecessor version of section 103-3.

¶ 73 We also reject defendant's reliance on *People v. Trzeciak*, 2013 IL 114491, ¶ 50, to support his claim that the purpose of section 103-3 is defeated unless the statute is construed to require that a defendant's communications with his family be privately conducted and not subject to being overheard by police officers. *Trzeciak* does not support defendant's claim.

¶ 74 In *Trzeciak*, our supreme court rejected the appellate court's determination that evidence was improperly admitted at trial in violation of the statutory marital privilege (725 ILCS 5/115-16 (West 2010)). *Trzeciak*, 2013 IL 114491, ¶¶ 48-49. In reviewing the scope of the statutory privilege, the court found that the marital privilege was restricted to utterances intended to convey a message and intended by the communicating spouse to be confidential. *Id.* ¶ 44. The defendant's nonverbal conduct of beating his wife, tying her up, and tossing her in his truck was not intended to convey a message and was not barred by the marital privilege. *Id.* ¶¶ 47-48. Likewise, the defendant's threat to kill the victims made to his wife was not barred by the marital privilege where it was not confidential or made in reliance on the marital privilege. *Id.* ¶ 52.

¶ 75 *Trzeciak* is inapposite where it involved a restrictive reading of the marital privilege, whereas defendant, in this case, requests an expansive interpretation of the protections expressly articulated in section 103-3. As such, *Trzeciak* does not support defendant's claim, and we affirm the trial court's denial of that portion of defendant's motion that sought to suppress his overheard conversation with his aunt.

¶ 76 3. Charge That Defendant Was Improperly Questioned
After Invoking His Right to Counsel

¶ 77 Defendant also challenges the admission into evidence of the events that followed the detectives overhearing his conversation with his aunt. Defendant maintains that Detective Landando improperly questioned him about that phone conversation and that his questions were designed to elicit the incriminating responses that followed.

¶ 78 The State agrees that defendant invoked his right to counsel and that his request to make a telephone call did not undermine his invocation and permit further interrogation.[6] The State maintains, however, that Detective Landando's questions were "innocuous, routine questions mainly asked to ascertain Defendant's well-being and not directed towards the crime." We disagree.

¶ 79 In *Miranda*, 384 U.S. at 444, the United States Supreme Court held that before an accused is subject to custodial interrogation, he must be advised of certain rights, including the right to remain silent and the right to have an attorney present. Then, in *Edwards v. Arizona*, 451 U.S. 477, 484-85 (1981), the Court held that when an accused invokes the right to counsel during interrogation, the police must immediately cease questioning unless and until "the accused himself initiates further communication, exchanges, or conversations with the police." When a defendant invokes his right to counsel, it is presumed that he is unable to proceed without counsel's advice. *Arizona v. Roberson*, 486 U.S. 675, 683 (1988).

¶ 80 The *Edwards* rule is "designed to prevent police from badgering a defendant into waiving his previously asserted *Miranda* rights." *Michigan v. Harvey*, 494 U.S. 344, 350 (1990). The *Edwards* rule is a "bright-line rule." *Smith v. Illinois*, 469 U.S. 91, 98 (1984) (*per curiam*). If the police initiate a subsequent conversation without counsel present, the accused's statements are presumed involuntary and are inadmissible as substantive evidence. *People v. Woolley*, 178 Ill. 2d 175, 198 (1997).

¶ 81 When reviewing a trial court's ruling on a motion to suppress, we apply a two-part standard of review. *People v. Eubanks*, 2019 IL 123525, ¶ 33. We will disturb the trial court's factual findings only if they are against the manifest weight of the evidence. *Id.* We review the court's ultimate legal ruling on whether the evidence should be suppressed *de novo*. *Id.*

¶ 82 We engage in a two-part analysis in determining the admissibility of statements given after the invocation of the right to counsel. See *Oregon v. Bradshaw*, 462 U.S. 1039, 1044-46 (1983). First, the court must determine whether the defendant initiated the conversation rather than the police. *Woolley*, 178 Ill. 2d at 198. If the defendant initiated the conversation, the second inquiry is "whether the totality of the circumstances, including the fact that the accused reopened dialogue with the police, shows that the accused knowingly and intelligently waived his right to the presence of counsel during questioning." *Id.* at 199.

¶ 83 In *Innis*, 446 U.S. at 294, after invoking his right to counsel, the defendant was being transported to the police station when the squad car passed a school for disabled children. When one of the officers remarked to another that " 'God forbid one of them might find a weapon with shells and they might hurt themselves,' " the defendant interrupted the

[6]In *Oregon v. Bradshaw*, 462 U.S. 1039, 1045 (1983), the United States Supreme Court noted that a request to use a telephone is so routine that it cannot represent a desire on the part of the accused to initiate further conversation post-invocation.

conversation and offered to show the officers where the gun was located. *Id.* at 294-95. The Court held that such conversation was not likely to elicit an incriminating response. *Id.* at 302-03.

¶ 84 The Court provided guidance in determining what constitutes "interrogation":

> "That is to say, the term 'interrogation' under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect. The latter portion of this definition focuses primarily upon the perceptions of the suspect, rather than the intent of the police." *Id.* at 301.

¶ 85 In *People v. Peck*, 2017 IL App (4th) 160410, ¶ 9, after the defendant invoked his right to counsel, he was informed by an officer that his girlfriend was also going to be arrested for the offense. On appeal, the defendant claimed that his attorney was ineffective for failing to move to suppress his statements following his invocation of his right to counsel. *Id.* ¶¶ 20, 28. The court agreed with the defendant that viewing the officer's words primarily from his perceptions that the statement was reasonably likely to elicit an incriminating response. *Id.* ¶ 35. As such, the remark constituted an improper continuation of the interrogation and violated the bright-line rule of *Edwards*.

¶ 86 The court concluded that trial counsel was ineffective for failing to file a motion to suppress the defendant's statements and that the admission of such statements satisfied the prejudice prong of *Strickland v. Washington*, 466 U.S. 668, 694 (1984), where the defendant's confession was the strongest piece of evidence against him and negatively impacted his ability to provide alternative theories and request jury instructions on lesser-included offenses. *Peck*, 2017 IL App (4th) 160410, ¶¶ 38, 45. As such, the defendant's conviction was reversed, and the matter remanded for a new trial. *Id.* ¶ 48.

¶ 87 In *People v. Parker*, 344 Ill. App. 3d 728, 731 (2003), after the defendant invoked his right to counsel before one detective, a different detective then read the contents of an Iowa arrest warrant to him. The detective testified that he was required to read the warrant to the defendant by law and that after reading the warrant to him the defendant made incriminatory statements. *Id.* at 733-34.

¶ 88 The court held that reading the arrest warrant to the defendant was not an "interrogation" and that the defendant knowingly and intelligently waived his right to counsel before making the incriminatory statements where he was reminded that he previously requested a lawyer, was asked whether he wanted to talk without his lawyer present, was readvised of his *Miranda* rights, and signed and initialed a written waiver of rights. *Id.* at 735-36.

¶ 89 After considering the foregoing authority, we find that defendant's invocation of his right to counsel was not scrupulously honored. First, at no point did defendant reinitiate conversation with the detectives after invoking his right to counsel. Next, while Detective Landando's first two questions were not "interrogative" in nature, the same cannot be said of his question "Was she crying too?" This question, asked with full knowledge that defendant incriminated himself in this crime in his phone call to his aunt, was not "innocuous," "routine," or "mainly asked to ascertain Defendant's well-being and not directed towards the crime." We also agree with defendant's timeline in this case, which established that Detective Landando only asked whether defendant was "okay" after asking whether defendant's mother was also crying. We

do not believe that this was a benign question but, rather, a question designed to elicit an incriminatory response, which it did.

¶ 90 We also agree with defendant that the State places mistaken reliance on *People v. Garcia*, 165 Ill. 2d 409 (1995), where *Garcia* is not analogous. Procedurally, *Garcia* is not a postinvocation case, and therefore not subject to the two-part analysis in *Bradshaw*, 462 U.S. at 1044-46. Additionally, the question asked in *Garcia*, " 'Why are you shaking?' " bears no resemblance to the improper question asked by Detective Landando. See *Garcia*, 165 Ill. 2d at 425.

¶ 91 Nevertheless, we find the error in this case to be 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 (2005). Three approaches may be utilized in making this determination: (1) focusing on the error to determine whether it may 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.* Under the first and second approaches, we conclude that this error was harmless beyond a reasonable doubt.

¶ 92 In examining the nature of the error, while defendant's actions following questioning are fairly characterized as incriminatory and were highlighted during the State's closing argument, they are far from a formal confession of guilt. The evidence stands in marked contrast to the confession erroneously admitted into evidence in *Peck*. Also, unlike *Peck*, where the court found that the "defendant's confession had an immense impact on the outcome of his case, and its admission negatively impacted defendant's ability to provide alternative theories and request jury instructions on lesser-included offenses" (*Peck*, 2017 IL App (4th) 160410, ¶ 45), the impact of the improperly elicited statement is, at most, negligible. This, in turn, leads us to apply the second approach for determining whether the error was harmless: examining the other evidence to see if it was overwhelming. *Patterson*, 217 Ill. 2d at 428.

¶ 93 Based on our review of the evidence, which we have previously recounted in detail, we conclude that the error, in this case, was harmless beyond a reasonable doubt where the evidence of defendant's guilt was indeed overwhelming. While it is true that there were inconsistencies in the account of events provided by the State's witnesses, that they were impeached, bore flaws, and possessed arguable motives for testifying as they did, when considered *in toto*, the evidence presented a clear, consistent, corroborated account of what transpired on September 21, 2009.

¶ 94 Aside from defendant's inculpatory statements to Salas, Ramirez, and Huff, the substance of two of defendant's statements is unassailable. One such statement was the overheard side of defendant's conversation with his aunt, which we have found was properly admitted at trial. The second inculpatory statement, and arguably the most damning evidence in this case, was defendant's recorded jail call to Ramirez, in which the following can be clearly heard:

> "DEFENDANT: Well, you heard about what happened before, dog, I'm saying with the two people, man.
>
> RAMIREZ: Yeah at CP and Sunny, Sunny?
>
> DEFENDANT: You know [unintelligible], I'm saying, dog, you feel me? Right. The whole point is, dog, that I'm not, I have no sympathy dog, you know I'm saying I

have no sympathy at all, you know, and it doesn't, one time and I can do that again, remember that s*** don't bother me, dog."

¶ 95 Far from standing alone, defendant's multiple inculpatory statements to his friends were corroborated by other evidence. Salas was present before, during, and after the crime and gave detailed testimony of what he witnessed that day. Physical evidence corroborated the testimony of such witnesses where it established that drugs were left at the apartment, that defendant called Ramirez to the scene where the van that defendant used was "burned to a crisp," and by the ballistic evidence that established that both victims were killed by bullets that came from a .380/.38-caliber semiautomatic firearm. Inferentially, the evidence showed that this was the gun that defendant used on September 21, 2009.

¶ 96 In conclusion, we find that the admission of defendant's post-invocation conduct following Detective Landando's improper question was harmless beyond a reasonable doubt where the nature of such evidence did not deny him a fair trial and where the remaining properly admitted evidence overwhelmingly established his guilt.

¶ 97 B. Claim That Salas's Prior Consistent Statement
Was Erroneously Introduced at Trial

¶ 98 In his next assignment of error, defendant alleges that the court erred by allowing Salas to testify about a prior consistent statement over defense objection. We begin by clarifying the testimony that is at issue:

"[THE STATE]: When you first talked to those detectives did you tell them that you were in the van waiting?

[SALAS]: Originally?

[THE STATE]: Yes.

[SALAS]: No.

[THE STATE]: Did you eventually tell them that you were in the van when your brother and the defendant left?

[DEFENSE COUNSEL]: Objection.

THE COURT: Basis?

[DEFENSE COUNSEL]: Prior consistent statement.

THE COURT: Overruled.

[SALAS]: Can you repeat the question?

[THE STATE]: Did you then tell them that you were in the van?

[SALAS]: Yes.

[THE STATE]: So you didn't tell them at first but you did tell them later?

[SALAS]: Yes.

[THE STATE]: Why didn't you tell them at first?

[SALAS]: I was scared."

¶ 99 Defendant's claim of error was preserved in his posttrial motion.[7]

¶ 100 As a general matter, proof of a prior consistent statement made by a witness is inadmissible hearsay when used to bolster a witness's testimony. *People v. Heard*, 187 Ill. 2d 36, 70 (1999). The reason behind the rule is that:

> " '[t]he danger in prior consistent statements is that a jury is likely to attach disproportionate significance to them. People tend to believe that which is repeated most often, regardless of its intrinsic merit, and repetition lends credibility to testimony that it might not otherwise deserve.' " *People v. Donegan*, 2012 IL App (1st) 102325, ¶ 52 (quoting *People v. Smith*, 139 Ill. App. 3d 21, 33 (1985)).

¶ 101 However, prior consistent statements are admissible to rebut a charge or an inference that the witness was motivated to testify falsely or that their testimony was of recent fabrication where the witness told the same story before the motive came into existence or before the time of the alleged fabrication. *People v. Williams*, 147 Ill. 2d 173, 227 (1991). Prior consistent statements are only admissible for rehabilitative purposes and not as substantive evidence. *People v. McWhite*, 399 Ill. App. 3d 637, 641 (2010).

¶ 102 The codification of this rule is found in Illinois Rule of Evidence 613(c) (eff. Sept. 17, 2019), which provides:

> "(c) Evidence of Prior Consistent Statement of Witness. Except for a hearsay statement otherwise admissible under evidence rules, a prior statement that is consistent with the declarant-witness's testimony is admissible, for rehabilitation purposes only and not substantively as a hearsay exception or exclusion, when the declarant testifies at the trial or hearing and is available to the opposing party for examination concerning the statement, and the statement is offered to rebut an express or implied charge that:
>
> (i) the witness acted from an improper influence or motive to testify falsely, if that influence or motive did not exist when the statement was made; or
>
> (ii) the witness's testimony was recently fabricated, if the statement was made before the alleged fabrication occurred."

¶ 103 Under both exceptions, the prior consistent statement must have been made *before* the alleged fabrication or motive to lie arose. *Heard*, 187 Ill. 2d at 70. These narrow exceptions do not require an explicit charge of recent fabrication or motive to testify falsely. *People v. Henderson*, 142 Ill. 2d 258, 310 (1990). Even the suggestion of recent fabrication or motive to lie is sufficient to trigger the exception. *Id.*

¶ 104 "We will not reverse a trial court's evidentiary ruling on a prior consistent statement absent an abuse of discretion." *People v. House*, 377 Ill. App. 3d 9, 19 (2007). Thus, we consider whether the trial court abused its discretion by allowing Salas to testify that he initially lied to the police but later admitted that he was in the van.

¶ 105 The State maintains that no error occurred because defense counsel suggested in opening statement that the State's witnesses would fabricate their testimony or have a motive for testifying falsely. Alternatively, the State maintains that if the prior consistent statement was

[7]Defendant's posttrial motion also claimed that the State was improperly allowed to present evidence of Salas's prior inconsistent statements that were made under oath to the grand jury. This ruling is not challenged in this appeal.

admitted prematurely, such error was "technical." Finally, the State maintains that any error was harmless at most.

¶ 106 We reject defendant's claim of error. In opening statement defense counsel argued:

> "Now, the State is going to try to meet this burden by presenting you with evidence in the form of testimony, and that testimony is going to come from that witness stand over there, and you're going to hear from Chicago police officers and detectives, and they are going to tell you that they investigated the events that happened on September 21, 2009, and that their investigation was based primarily on the words of civilians.
>
> Now, they will tell you that the civilians in question these weren't good hearted Samaritans who had information and because they had this information and because it was the right thing to do they reached out to the police. No, these were civilians who had to be hunted down and cornered and only then that's when they spoke with the police.
>
> Now these civilians now either through their history of drug use or their own prior run-ins with the law they knew that when the police come around asking questions you better have an answer for them or at least know how to pass the buck. Otherwise, it's going to fall on you. So these civilians will get on that stand and they will tell you that they lied to the police officers again and again trying to give them information that satisfied what the officers were looking for.
>
> So it's because of those civilians that Christopher was arrested and charged with murder, and it is because of those civilians that we're here today. So during the trial pay attention to what the witnesses are saying. Listen to the details and their stories, but also pay attention to why they are saying it, what motivation do they have for saying what they are saying, self-preservation, possibly some other motive; but in addition to paying attention to what evidence was presented to you, also pay attention to what evidence was not presented to you."

¶ 107 The sum and substance of the prior consistent statement were that Salas told the police that he was in the van after initially denying such fact. We believe that defense counsel's opening statement paved the way for the single response of "Yes" to the State's question, "So you didn't tell them at first but you did tell them later?"

¶ 108 Our conclusion finds support in *People v. Ursery*, 364 Ill. App. 3d 680, 687 (2006). In *Ursery*, the court found that defense counsel's opening statement suggested that the witness fabricated his testimony or had a motive to testify falsely. *Id.* The State properly responded by asking the witness on direct examination whether he made a statement to the police recounting what the defendant had told him, to which the witness replied " 'Yes.' " *Id.*

¶ 109 Here, defense counsel's opening statement suggested that the State's witnesses, of which Salas was one, would provide fabricated testimony or had a motive to testify falsely. As in *Ursery*, we find that Salas's one-word affirmation of "Yes" to the single question concerning whether he later told the police that he was in the van was not error. See also *People v. Nicholls*, 236 Ill. App. 3d 275 (1992) (defense counsel's opening statement alluding to the idea that the State's witness would provide fabricated testimony allowed admission of prior consistent statement on direct examination to rebut the inference that the testimony was fabricated).

¶ 110 Even if defendant's opening statement did not enable the State to elicit the prior consistent statement on direct examination of Salas, we would still decline to find error based on the

court's decision in *People v. Crockett*, 314 Ill. App. 3d 389, 408 (2000). In *Crockett*, the State elicited a prior consistent statement before the defendant charged the witness with having a motive to lie. *Id.* On cross-examination, however, defense counsel established that a few days prior to trial, investigators for the state's attorney told the witness that she would go to jail if she refused to testify. *Id.* at 407-08.

¶ 111 While finding that the prior consistent statement should not have been elicited before evidence of a motive to fabricate was produced, the court found the premature introduction of such evidence was a "mere technical error" where defense counsel's cross-examination of the witness established such motive. *Id.* The court found that even if such error was substantive, it was harmless in light of the overwhelming evidence of the defendant's guilt. *Id.*

¶ 112 As in *Crockett*, in this case, even if Salas's prior consistent statement was prematurely admitted during the State's direct examination of him, the cross-examination would have permitted the admission of such testimony on redirect examination where the following questions were asked and responses given during the cross-examination of Salas:

"[DEFENSE COUNSEL]: Misael, you did not call the police about anything that you testified to today, correct?

[SALAS]: That's correct.

[DEFENSE COUNSEL]: You didn't go to the police, correct?

[SALAS]: That's correct.

[DEFENSE COUNSEL]: Right?

[SALAS]: Yes.

[DEFENSE COUNSEL]: You had a computer obviously that you had mentioned. A computer pulled up the news stories, correct?

[SALAS]: Yes.

[DEFENSE COUNSEL]: Yes? Can you put your hands down from your mouth? Did you contact the police through the Internet?

[SALAS]: No.

[DEFENSE COUNSEL]: You said you didn't go to the police because you wanted to be done with it, right?

[SALAS]: Yes.

[DEFENSE COUNSEL]: That's what you told the State?

[SALAS]: Yes.

[DEFENSE COUNSEL]: And then you said that you—when the police finally got you, you didn't tell them that you were with them, with your brother and Chris, because you were scared?

[SALAS]: Yes.

[DEFENSE COUNSEL]: That's what you said?

[SALAS]: Yes.

[DEFENSE COUNSEL]: So when you said you wanted to be done with it, what did you mean?

[SALAS]: I meant I don't want to have to deal with the situation anymore. I wanted to continue with my life.

[DEFENSE COUNSEL]: All right. You were dealing with the situation because you were in it, correct?

[SALAS]: Yes and no."

¶ 113 Defense counsel later suggested that Salas had a dual motive for testifying falsely:

"[DEFENSE COUNSEL]: Were you ever charged with this case?

[SALAS]: No.

[DEFENSE COUNSEL]: Did anyone tell you that they weren't going to be charged with this?

[SALAS]: I'm sorry.

[DEFENSE COUNSEL]: Did anyone tell you that they weren't going to charge you with this case?

[SALAS]: You mean like did somebody make a deal with me?

[DEFENSE COUNSEL]: Right.

[SALAS]: No.

[DEFENSE COUNSEL]: But your understanding was they weren't going to charge you?

[SALAS]: My understanding was I hadn't, and I didn't know what was going on.

[DEFENSE COUNSEL]: Well, you could be charged right now, right?

[SALAS]: Exactly. I don't know what's going to go on.

[DEFENSE COUNSEL]: You're hoping that you're not?

[SALAS]: Of course.

[DEFENSE COUNSEL]: You know that you could be charged with murder, right?

[SALAS]: No, I did not.

[DEFENSE COUNSEL]: With a double murder, right?

[SALAS]: No, I did not.

[DEFENSE COUNSEL]: With armed robbery?

[SALAS]: No, I did not.

[DEFENSE COUNSEL]: Home invasion?

[SALAS]: No.

[DEFENSE COUNSEL]: You could be charged as an accessory for helping warm the vehicle up so they could get out of there faster, right?

[THE STATE]: Objection, asked and answered.

THE COURT: Overruled.

[SALAS]: I did not know.

[DEFENSE COUNSEL]: Well, I'm not talking about what you know. I'm talking about what you're hoping for, right?

[SALAS]: Yeah, of course, I'm hoping to make it back home.

[DEFENSE COUNSEL]: Right. And you were also hoping to help out your brother, right?

[SALAS]: In what aspect?

[DEFENSE COUNSEL]: Well, you were hoping that what you testified to would help your brother out in the long run, correct?

[SALAS]: My testimony is not going to help my brother. He is already done with this."

¶ 114 The details of what Salas initially told the police was further explored on cross-examination when Salas testified that he told the detectives that defendant and codefendant "went to do a gig" and came back to Huff's house with drugs. Salas admitted that in order to protect himself, he did not tell the detectives that he was with codefendant and defendant in the van.

¶ 115 Salas's prior consistent statement was a proper response to counsel's charge that he bore dual motives to testify falsely: his desire to evade prosecution and his desire to help his brother. This conclusion finds support in *Williams*, 147 Ill. 2d 173, and *People v. Titone*, 115 Ill. 2d 413, 423 (1986).

¶ 116 In *Williams*, the defendant alleged that a witness's grand jury testimony did not qualify as a prior consistent statement where the witness had the same motive to fabricate when she testified before the grand jury as she did at trial. *Williams*, 147 Ill. 2d at 227. The court disagreed, finding no error where defense counsel's cross-examination of the witness about her expectations of leniency on outstanding criminal charges impugned her motive to testify. *Id.* at 226-28.

¶ 117 In *Titone*, the defendant alleged that the trial court's admission of the witness's court-reported statement given to an assistant state's attorney violated the prohibition against prior consistent statement evidence. *Titone*, 115 Ill. 2d at 422. The defendant maintained that the prior consistent statement was inadmissible where the witness's motive to avoid being prosecuted existed when she gave the court-reported statement and at trial. *Id.* at 422-23. The State maintained that the witness had no reason to fabricate the earlier statement where her statement did not result from the State offering her any deal or the police threatening her. *Id.* at 423. The court rejected the defendant's claim, finding "[o]n this record we are unable to say that in admitting the statement the court erred." *Id.*

¶ 118 Based on *Williams* and *Titone*, we find that Salas's prior consistent statement was admissible to rebut a charge that his trial testimony was motivated by his desire to protect himself from being prosecuted and by his desire to protect his brother.

¶ 119 Even if such testimony was not properly admitted, we would find its admission to be harmless error under *People v. Stull*, 2014 IL App (4th) 120704, ¶ 104. In *Stull*, the court noted that the erroneous admission of a prior consistent statement rarely results in prejudice to a defendant since "[a]bsent a charge or recent fabrication or a motive to lie, a jury would place little significance on the fact that a witness said the same thing twice—that is, that the witness gave a prior statement consistent with the witness's trial testimony." *Id.* ¶ 105. Reversal based on such an error is only warranted when a reasonable probability exists that but for the improperly admitted prior consistent statement, the jury would have acquitted the defendant. *Id.* ¶ 106.

¶ 120 There is no reasonable probability that the outcome, in this case, would have differed had the jury not heard Salas's prior consistent statement. As has been previously discussed, the evidence, in this case, was overwhelming. Additionally, we note that the jury received Illinois Pattern Jury Instructions, Criminal, No. 3.17 (4th ed. 2000), which instructed that: "[w]hen a witness says he was involved in the commission of a crime with the defendant, the testimony

of that witness is subject to suspicion and should be considered by you with caution. It should be carefully examined in light of the other evidence in the case."

¶ 121 C. Sentence

¶ 122 Finally, defendant contends, and the State agrees, that one conviction for home invasion must be vacated where there was a single entry into the apartment at 3555 West Sunnyside Avenue. We accept the State's concession.

¶ 123 Under the one-act, one-crime rule, multiple convictions may not be carved from the same physical act. *People v. Coats*, 2018 IL 121926, ¶ 11. When multiple convictions are erroneously imposed, surplus convictions must be vacated. See *In re Tyreke H.*, 2017 IL App (1st) 170406, ¶ 123. A one-act, one-crime claim is reviewable under the second prong of the plain error rule. *Coats*, 2018 IL 121926, ¶ 10. We review this purely legal claim *de novo*. *Id.* ¶ 12.

¶ 124 Where defendant committed a single entry into the victims' residence, two convictions for home invasion cannot stand. See *People v. Hicks*, 181 Ill. 2d 541, 549 (1998); *People v. Cole*, 172 Ill. 2d 85, 101-02 (1996); *People v. Sims*, 167 Ill. 2d 483, 523 (1995). A sentence should be imposed on the offense that bears the more culpable mental state. *In re Samantha V.*, 234 Ill. 2d 359, 379 (2009).

¶ 125 We agree with the parties that remanding this matter would be a waste of scarce judicial resources. Both home invasion convictions are Class X felonies involving the same mental state and identical punishments and vacating one conviction will not affect defendant's sentence since such sentences were ordered to run concurrently. See *People v. Price*, 221 Ill. 2d 182, 194-95 (2006). Accordingly, we vacate defendant's conviction for home invasion in count LXX and order the mittimus be corrected to reflect one conviction for home invasion.

¶ 126 III. CONCLUSION

¶ 127 For the foregoing reasons, we vacate defendant's conviction for home invasion in count LXX pursuant to the one-act, one-crime rule but otherwise affirm the judgment of the circuit court of Cook County.

¶ 128 Affirmed in part and vacated in part; mittimus corrected.