No. 129133

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court of Illinois, Fourth Judicial District, No. 4-21-0716
Plaintiff -Appellee,	)	
v.	)	There on Appeal from the Circuit Court of the Sixth Judicial Circuit, Champaign County, Illinois, No. 20 CF 156
MICHAEL D. CHATMAN,	)	The Honorable Randall Rosenbaum,
Defendant-Appellant.	)	Judge Presiding

BRIEF OF PLAINTIFF-APPELLEE PEOPLE OF THE STATE OF ILLINOIS

KWAME RAOUL
Attorney General of Illinois

JANE ELINOR NOTZ
Solicitor General

KATHERINE M. DOERSCH
Criminal Appeals Division Chief

KATHERINE SNITZER
Assistant Attorney General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601
(872) 272-0784
eserve.criminalappeals@ilag.gov

Counsel for Plaintiff-Appellee
People of the State of Illinois

E-FILED
9/27/2023 1:55 PM
CYNTHIA A. GRANT
SUPREME COURT CLERK

ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS

Page(s)

POINTS AND AUTHORITIES

NATURE OF THE CASE

Following a jury trial, defendant was convicted of first degree murder and sentenced to 55 years in prison. Defendant appeals the appellate court's judgment affirming that conviction. No issue is raised on the charging instrument.

ISSUES PRESENTED FOR REVIEW

The trial court admitted the out-of-court statement of Dominique Collins after finding that defendant engaged in wrongdoing intended to render Collins unavailable to testify and that Collins was in fact unavailable. The issues presented are:

1. Whether the trial court's finding that Collins was unavailable to testify was not against the manifest weight of the evidence, where the People made reasonable, good-faith efforts to secure his presence at trial after defendant's wrongdoing caused Collins to leave the state and cut off all contact with detectives.

2. Whether the purported error was harmless beyond a reasonable doubt.

JURISDICTION

On January 25, 2023, this Court allowed defendant's petition for leave to appeal. Accordingly, jurisdiction lies under Supreme Court Rules 315 and 612(b).

RULE OF EVIDENCE INVOLVED

Rule 804. Hearsay Exceptions; Declarant Unavailable

(a) Definition of Unavailability. "Unavailability as a witness" includes situations in which the declarant-

* * *

(5) is absent from the hearing and the proponent of a statement has been unable to procure the declarant's attendance (or in the case of a hearsay exception under subdivision (b)(2), (3), or (4), the declarant's attendance or testimony) by process or other reasonable means.

* * *

(b) Hearsay Exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

* * *

(5) Forfeiture by Wrongdoing. A statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.

STATEMENT OF FACTS

I. The Murder of Ricky Green

Just after midnight on March 23, 2018, as their car was being followed by police, defendant and Ricky Green jumped out of the car and ran. R1562-64.[1] Police soon received a report of gunshots and discovered Green lying in the street. R947-48, 954. Green died at the hospital from two gunshot wounds, R955-56, and defendant was later charged with Green's murder, C8.

[1] Citations to the common law record appear as "C__," to the sealed common law record as "CS__," to the report of proceedings as "R__," to the People's trial exhibits contained in the filed pdf as "E__," to the People's video exhibits contained on a USB drive and on disks as "Exh. __," and to defendant's opening brief as "Def. Br.__."

II. Pre-Trial Motion to Admit Dominique Collins's Statement

In December 2019, during the investigation of Green's death, police spoke with Dominique Collins in a recorded interview. R92.[2] Collins told police that he saw defendant between 7:00 and 9:00 on the morning after Green's murder at the home of his (Collins's) brother, Davonte McCormick. R92; C105. Defendant was barefoot, "appeared to have been running or have 'done some shit,'" and bragged about shooting Green. C105. Defendant said that he and his friend "Scrilla" (Michael Simmons) had planned to steal Green's gun. R92; C105. When they jumped out of the car and ran, defendant snatched Green's gun, and Green gave chase and tried to take the gun back. R92; C105. Defendant was afraid Green would "beat his ass" or shoot him, so defendant shot Green. R92; C105.

While in pre-trial detention at the county jail, defendant made many calls to family and friends, which were recorded by the jail recording system. On the calls, defendant repeatedly expressed concern about who was providing information to police and attempted to find out who was cooperating with the police. C105-06.[3]

---

[2] Videos of Collins's statements to police were admitted at the pre-trial hearing as Exhibit 1, R90-92, and the disk is included in the record on appeal. Folder 754i- Tag56968 contains the video of Collins's initial statement to police and folder 754r- Tag66738 contains the video of Collins's later statement regarding the threats he received from defendant's friends and family.

[3] Quotes are taken from the People's "Motion in Limine to Admit Statements of Dominique Collins Due to Forfeiture by Wrongdoing," C104-12, and

Then, in February and March 2020, after defendant learned that Collins had talked to police, defendant talked to his father and McCormick (Collins's brother) about preventing Collins from testifying. C107-08, 109-10. He did not expressly tell them to threaten or intimidate Collins, but they both implied in their responses that they would ensure that Collins stopped cooperating and did not testify. Defendant's father told defendant that they knew who was "getting down on him" and could "put pressure on that little hooker." C107. On another call, defendant's father said that he just needed to "get the word to the motherf*** street, is this mother*** did this, and then motherf*** be able to take care of s*** on our end." C109. Defendant's father went on to say, "just let me handle this s*** on this end. All I gotta find out, really for real is, who the main motherf*** they depending on to get on that motherf*** stand." *Id.* Talking to Collins's brother, McCormick, defendant said, "[y]our brother is foul as hell, though, on my life" and accused Collins of lying. C107. McCormick responded that Collins was not there anymore, and defendant did not need to worry. *Id.* Defendant also told an unknown caller that Collins had been cooperating but had since moved out of state. C109. And on another call, an unknown person said that Collins's information "don't hold no weight," to which defendant responded, "No it don't[,] bro. He's going to have to come to court. You know what I'm saying?"

---

recordings of the jail calls were admitted at the pre-trial hearing as Exhibit 2, R90-92.

C109. And while talking to his mother about the witnesses' statements, defendant remarked, "if they don't come to court, you know what I'm saying?" C107.

Around the time defendant discussed Collins on the jail phone, Collins began receiving threats and left Illinois. C108; R95-97. Detectives went to Iowa to meet with Collins on March 12, 2020. C108; R95-97. Collins told police that he was scared and that he had been receiving messages, on his phone and via social media, threatening his life and the lives of his family members. R95-97; C108. Defendant's aunt had posted on Facebook that Collins had given a statement to police, information that could only have come from someone with access to the discovery materials in defendant's case. C108. Collins also received a call from McCormick asking if he had been snitching. C108. Collins told police that defendant's father was a gang member, who Collins believed "may be able to orchestrate gang activity and cause him harm." C108; R96.

Based on those threats and defendant's recorded jail calls, the People filed a motion in limine seeking to admit Collins's statements under the forfeiture by wrongdoing doctrine if Collins was unavailable for trial. C104-13; R89-111. Under Illinois Rule of Evidence 804(b)(5), which codified the common-law doctrine, a hearsay statement is admissible if "offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness." C110

(quoting Ill. R. Evid. 804(b)(5)). The proponent must "show both the wrongdoing and that the defendant intended by his actions that the witness would be unavailable." C111 (citing *People v. Stechly*, 225 Ill. 2d 247, 277 (2007)). The People argued that, although he had not personally threatened Collins, defendant's recorded jail calls showed that he coordinated with his family members and "us[ed] threats to dissuade Collins from cooperating as a witness." *Id*. The People asked the trial court to make a finding of wrongdoing and admit Collins's statements if he was unavailable for trial, C113, "with the understanding that [the People] still have to try to get Mr. Collins at any jury or a bench trial" and demonstrate "good faith efforts," R92.

The trial court found that the People had demonstrated wrongdoing and demonstrated that defendant intended to make Collins unavailable. R110-11. Specifically, the court found that over the course of multiple phone calls to family members and friends, defendant repeatedly tried to learn who was going to testify against him and made sure his family knew that "something has to be done about that." R109. Defendant did not give specific orders, *id.*, but he was clearly trying to determine "who the snitches were, find out what they were going to say," and have his family stop them from coming to court to testify, R111. Accordingly, the court found that the People had proved defendant's wrongdoing by a preponderance of the evidence. *Id.*

The court deferred ruling on whether the People had made reasonable, good-faith efforts to secure Collins's testimony until the final pre-trial hearing. *Id.*

The case was initially set for trial in May 2021. R134-35. At the pre-trial hearing, Detective Jeremiah Christian testified about his efforts, which had been unsuccessful, to locate Collins so that the People could present his testimony at trial. R141-54. Christian explained that he posted that he was looking for Collins on the "I-board," a program that shares information among many Illinois law enforcement agencies, but he did not receive any responses. R142-43. Christian had met with Collins in Iowa prior to the hearing on defendant's wrongdoing, and he contacted law enforcement officials in Davenport, Iowa and learned that they had not had any recent contact with Collins. R144. Christian did not recall the date he last visited Iowa, but believed it was in the second half of 2020. R151. Demetria Chatman, defendant's mother, who was "tangentially related" to Collins, told Christian that she had not had any contact with him. R145. Christian also listened to recorded jail calls, in which defendant discussed his conversations with his lawyer and indicated that he and his counsel had not been able to contact Collins. R146-47. Christian learned that Collins was in Indianapolis at one point, but only to attend a show, and he was unable to find any additional information on his whereabouts. R147. No one detectives spoke to knew Collins's whereabouts. R151. Because Collins was not a missing person, but rather "a person that doesn't want to be found," he could not be

listed as "missing" in the LEADS database. R150. Christian also testified that he did not believe that subpoenas could be entered into any FBI database. *Id*.

The trial court found that the People's efforts to locate Collins and secure his testimony, although unsuccessful, were reasonable. R152-54. As a result of threats, Collins "didn't want to be found," and no one detectives spoke to provided any information about his whereabouts. R153. The court concluded, "based on the totality of the circumstances," that "the State has used good faith efforts and used reasonable means and effort" to locate Collins and bring him to court to testify. R154. Thus, Collins's statement was admissible because defendant had procured Collins's unavailability through wrongdoing. *Id.*

After defendant's trial date was continued to September 2021, the trial court held a second pre-trial hearing regarding the People's further efforts to locate Collins. R479-504. Christian detailed the additional efforts he had made since the previous hearing. R479-500. He again posted on the "I-board" that he was looking for Collins and officers in Champaign and surrounding counties viewed the post more than 250 times, but he did not receive any responses. R481-82. He also checked databases for addresses for Collins, R483, and then visited those addresses. Along with another detective, he attempted to contact Collins at addresses on Green Street and Springfield Avenue in Champaign. R483-84. At the first address, which a

database showed Collins had recently used, there "appeared to be no one inside." *Id.* The database showed Collins had lived at the second address in 2018, but there was no answer at the door and it appeared vacant. R484-85. Christian also visited Collins's brother's address, but no one came to the door, although he suspected there were people inside. R485. Additionally, Christian went to an Iowa address he had obtained through a database, but no one was there, and Christian "really had no reason to think [Collins] lived there anymore[.]" R486. He then visited two prior addresses for Collins in Kendall County. R487. The database showed Collins may have used the first address in July 2020, but there was no response when Christian rang the doorbell. 486-87. At the second address, he attempted to contact the apartment listed for Collins, as well as the occupants of the other apartments in the building, but there was no answer. R487-88.

Although Collins is "quasi-related" to the Chatman family through his mother's prior relationship to a Chatman relative, none of defendant's family members provided any information on Collins's whereabouts. R488. Christian spoke to defendant's mother, who said she did not know where Collins was. R500. Finally, Christian explained that the last time he dialed the phone number that he had for Collins, a voice he did not recognize told him he had the wrong number. R496. Christian did not recall when he made that call, but said it had "been some time." *Id.*

On cross-examination, Christian testified that LEADS, a police database, could not be used to serve a subpoena and that police did not seek a warrant for Collins. R495. While the People sought warrants to secure the testimony of other witnesses in the case, as the trial court observed, those witnesses "had been served with a subpoena and Mr. Collins had not." R503. The People knew where the other witnesses were, *see* C195-96; R501, but the prosecutor explained that the People "were never able to serve Mr. Collins with a subpoena. Therefore, [she] could not have obtained a contempt proceeding for Mr. Collins" because "[t]here was no court order that he was . . . not in compliance with." *Id.* The trial court found that the People had sufficiently demonstrated by a preponderance of the evidence that Collins remained unavailable, and thus the court held that his prior statement to police was admissible at trial. R503-04.

III. Trial

The trial testimony established that on the afternoon before Ricky Green's murder, defendant and his friend Michael Simmons (a/k/a "Scrilla," R857-58) planned to steal Green's gun. R1414-15; E87. They discussed their plan over text messages. Defendant asked Simmons if he had "the 357 [magnum revolver]." E87; R1439. They then continued:

> DEFENDANT [1:46:15 p.m.]: F*** Ricky bro that's petty stains we need bucks
>
> SIMMONS [1:47:20 p.m.]: Bro that pipe is a key factor that can lead to bands period n*** we need pipes period u can die with that cash on you but ain't no dying wit that glizzy period

E87. Detective Christian testified that "stains" is slang for robbery and "pipes" and "glizzy" are slang for guns. R1439-40. Thus, defendant planned to commit a robbery and to bring guns for protection.

Around 8:50 p.m., defendant texted Simmons that Green was ready, and that defendant was on his way. E87. Facebook messages from defendant's account showed that defendant invited Green to go out and that he picked up Green around 9:55 p.m. E155-57. Later in the evening, defendant and Simmons texted again:

> SIMMONS [10:32:43 p.m.]: I got the 7 on me
>
> DEFENDANT [10:47:26 p.m.]: Be smooth I got this
>
> DEFENDANT [10:47:33 p.m.]: That's why I'm not texting u
>
> DEFENDANT [10:50:28 p.m.]: His s*** so nice stop texting me though he can see my phone

E87.

Defendant, Simmons, and Green went to a party, where they were drinking and smoking. R1546. They then left and picked up Kotia Fairman. R850-51, 1548. Defendant then heard from his mother, who asked them to pick her up from the Shadowwood trailer park. R1560-61. When they arrived at the trailer park, they saw police in the area, so they parked near the entrance. R1561-62.

Around midnight, Calvin Wilson flagged down police near his trailer in the Shadowwood trailer park. R814. Wilson was dating defendant's mother, Demetria Chatman, and told police that they had argued and Demetria

refused to leave. *Id.* By the time the police finished another call and arrived at Wilson's trailer, Demetria had left. *Id.* Wilson told police that defendant might have information and described the car defendant was in. R882.

Shortly after midnight, police saw a silver Malibu that matched Wilson's description of the car he saw defendant riding in. R887-88. When they approached, the car drove away. R889-90. Officers tried to intercept the car and found it parked diagonally in the middle of the street with its front doors open. R893-94, 941-42, 1000. Fairman was walking around the car. R893-94. Defendant, Green, and Simmons were no longer in the car. R895. Inside the car, officers found Simmons's ID, defendant's cellphone, and a .357 revolver. R944, 946, 1076, 1092, 1095.[4]

As the officers approached the Malibu, they heard yelling, R898, 1009, and gunshots, R895. At 12:11 a.m., another officer responded to a call of shots fired in the Shaddowwood trailer park, at an address about a hundred yards from where the Malibu was stopped, R947-48, and discovered Green lying the street, R954. The responding officer saw blood pooling near Green's groin from an apparent gunshot wound. R955. Officers rendered first aid until paramedics arrived to take Green to the hospital, R955-56, where he later died, R1112-13. The cause of his death was two gunshot wounds, one to the groin and another to his shoulder. R1138.

[4] Defendant later pleaded guilty to unlawful possession of the revolver. R1582-83.

Near Green's body, police found two spent shell casings, one live round, and one deformed projectile. R1026, 1028, 1037, 1038-41. The casings matched other shell casings recovered from a crime scene about a month earlier, when Green had fired a gun into the air and hit power lines. R1101. A size 9 brown Timberland left boot was also found near Green's body. R1035. A brown Timberland right boot was found under a nearby parked car. R1086-87. Forensic testing determined that DNA on the left Timberland boot was consistent with defendant's DNA profile. R1267-68. The probability of a random match is "approximately one in 460 trillion individuals," and there are only approximately 7.8 billion people on earth. R1268.

At around 2:00 a.m., defendant knocked on Wilson's door and said he needed help. R816. Wilson did not open the door. *Id.*

Defendant then knocked on Alexandrinique Anderson's door and asked to use her phone. R915-17. Defendant was barefoot, and his jeans were dirty. R916, 918. He told Alexandrinique that he had come from the Shaddowwood trailer park, where he had been attacked by "some Mexicans" and had to defend himself. R917-18.

During their investigation into Green's death, detectives interviewed Collins, who provided information and was willing to wear a wire to record other conversations. R1450-51, 1452, 1454. However, after defendant and his father discussed Collins "being a snitch," Collins received threats, and the

police were unable to contact him again. R1452-53. The video recording of Collins's statement to police was played for the jury. R1455-56; E214 (video).[5] On the video, Collins said that on the morning after Green's murder, defendant arrived at Collins's brother's home without any socks or shoes. E214 at 2:42:30-40. Defendant told Collins that he tried to take Green's gun and run, but Green chased him, so defendant turned around and shot him twice. *Id.* at 2:43:00-40. Defendant then ran away. *Id.* at 2:43:48-50.

Defendant also confessed to Dennis Griham while they were housed in the same cell block of the county jail. R1176. Griham testified that had never heard of Ricky Green or Michael Simmons before defendant mentioned them, and he had not seen any news accounts of Green's murder. R1177, 1194. Defendant told Griham that he and Simmons had told Green they had a "lick." R1177. They picked up Green and "rolled around for a little while" before ending up at the "Shaddowland" trailer park. R1178. There was a female in the car with them. R1179. When defendant and Green got out of the car, defendant "tussl[ed]" with Green over Green's gun, and defendant "accidentally shot Mr. Green in the chest twice." *Id.* Defendant then ran and hid under a trailer, because police were in the trailer park. R1179-80. During the tussle, defendant lost his Timberland boot, and he lost the other

[5] The disk containing the video of Collins's statement is labeled "People's Exhibit 153."

boot while running away. *Id.* Defendant wrapped his shirt around his feet to keep warm. R1181. Defendant told Griham that he disassembled the gun he took from Green, but he did not tell Griham where he hid it. *Id.*

Griham contacted detectives to report defendant's confession, but he was not promised anything in exchange for his testimony. R1182-84, 1560. The prosecutor did not object to Griham's request to be referred for drug court, but that request was ultimately denied. R1184. At the time of trial, Griham was serving a three-year sentence for DUI and a concurrent sentence for violation of probation on a theft case. R1184-85, 1205-06. After defendant guessed that Griham was talking to police, Griham was threatened by other inmates and had to be moved to another cell block. R1197-98, 1465.

Detective Christian testified that many of the details of Green's murder were not known to the public because they were not part of the local press coverage. R1462-64. The local newspaper, which reported on the murder, did not report that defendant left his Timberland boots at the crime scene, that there was a female in the car, that defendant and Green met up and drank before the murder, that there was a struggle over the gun, or that Green was shot twice. *Id.* Similarly, there was no newspaper coverage regarding the fact that defendant later disassembled the gun. R1462.

Two days after the murder, police interviewed defendant for the first time. R1224, 1301; E97 (video), 259 (video), 98-140 (transcript).[6] Defendant's feet bore small cuts and scrapes. R1234-36; *see* E65-68. During this initial police interview, defendant admitted fleeing from the silver Malibu when police approached but said that everyone in the car split up as they ran. E97 at 1:37:20-33, 1:43:33-37. He then went to his cousin Devonte McCormick's home. R1232. Defendant claimed he did not know there was a gun in the car and repeatedly denied having worn boots on the night of the murder. E97 at 1:45:45-1:46:06, 1:43:39-51, 1:48:20-33, 1:51:19-22, 2:07:57-2:08:10. In fact, defendant claimed he never wears boots. E110. Defendant denied shooting Green or knowing anything about the shooting. E97 at 2:13:52-55, 2:15:13-19, 2:28:47-49.

Police interviewed defendant again in October 2019. R1448-49; E213 (video).[7] During this second interview, defendant again denied shooting Green. E213 at 4:49:17, 4:51:38-51. He said that he jumped out of the car to run from police. *Id*. at 4:40:08-17. He heard shots and ran faster and lost his shoes. *Id*. at 4:48:10-18. He never saw Green's gun and never saw where Green ran. *Id*. at 4:41:48, 4:48:07, 5:13:28-35.

---

[6] The disks containing the videos are labeled "People's Exhibit 94 (93)" and "People's Exhibit 157."

[7] The disk containing the video of defendant's second interview with police is labeled "People's Exhibit 152."

Feriana Anderson testified that defendant called her from jail and asked her to say that he was at her home at the time of Green's murder. R930-31.

Detective Christian reviewed hundreds of recordings of defendant's jail calls. R1465. Several recordings were played for the jury, and the transcripts were admitted as exhibits. R1468-79; E215 (video); E216-58 (transcript).[8] Many of the calls were made when defendant was in custody on a gun possession charge, before he was charged with Green's murder. On the calls, defendant expressed concern that he would be charged with Green's murder and discussed a number of shifting accounts, trying to find one that would help him avoid a conviction.

In March 2018, defendant called his mother, panicking, threatening to kill himself, and asking her to post bond for him. E216-17; R1473-74. He repeatedly said he would be charged with Green's murder and if his mother did not post bond quickly, "[t]hey're going to have me here for homicide." E217. When his mother told him he could not be charged with something he did not do, defendant responded, "I am just saying. They going to." E218.

Then, during an April 2018 call, defendant told an unidentified man, "we all run out the car and it was a homicide." E223; R1475. Defendant said he left his phone in the car and Simmons left his identification. E224-25.

[8] The disk containing recordings of defendant's jail calls is labeled "People's Exhibit 154."

Defendant worried that the police had his phone and would be able to see all of his messages. E225. "[The police] come on my old Facebook . . . and I'm damned. F***s all over my information and s***, bro. But yeah they just charged me with that little gun[.]" *Id.*

During another April 2018 call, defendant worried that Simmons had talked to police. E230-31. He said no one really knew what happened, and people should "keep my name out yo mouth, pop-pop, keep my name out of your mouth." E231.

In February 2020, after defendant was charged with Green's murder, defendant told his father that another prisoner (Griham) asked him "weird questions" and turned out to be "a police." E326. After that, the other inmates "made his ass walk off the deck," *i.e.* made Griham leave the cell block, and threatened to beat him up. E236; R1477. Defendant's father told him to stop talking to Griham. E236.

During a subsequent call with his father, in March 2020, defendant said he saw a news article on his case and believed Simmons was cooperating with police. E239. Defendant said that he told the police that he knew nothing about Green's death, but Simmons "[was] admitting." *Id.* He said Simmons was not there, but his ID was. *Id.* Defendant claimed he did not know anything because "I've been ran. I've been gone. . . . I heard a shot." *Id.* Defendant also told his father, "I wasn't there." E240.

In August 2020, defendant told his aunt that Simmons asked him to sign an affidavit attesting that Simmons was not in the car. R1483; E242. He speculated that if both he and Simmons claimed Simmons was not there, it would undermine Griham's testimony and create reasonable doubt at trial. E244.

Then, in September 2020, defendant asked his aunt to do some research for him. E253; R1486. He said that he was intoxicated on the night of the murder and reasoned that he was mentally impaired and not responsible for his actions, and therefore that his case should be dismissed. E253. In March 2021, defendant told his aunt that he was considering arguing self-defense "because . . . I got consistent evidence with that[.]" E255; R1486. Because there were no witnesses to the shooting, defendant said, "its my word against the dead[.]" E257. This was the first time that defendant discussed any basis for self-defense. R1487-88.

Defendant testified in his own defense. R1542-1627. He claimed that the text messages between him and Simmons were not about robbing Green. R1542-43. Instead, he, Simmons, and Green had planned to steal guns from Green's friends. R1542-43, 1553. When police approached the car, they ran because they had guns and drugs. R1562-64. Defendant grabbed a gun from under the seat when he got out of the car. R1564, 1566. As they ran, Green came up behind him and demanded his gun back. R1567. Defendant told him they should get away from the police first, but Green became aggressive

and started attacking him. R1567-69. Defendant was scared because Green was much bigger than he was. *Id.* Green started to grab him, and he was afraid Green would take the gun. R1570. Defendant cocked the gun to scare Green. R1571. He tried to run, but Green continued to attack him, and defendant fired once. R1572. Green became even more aggressive, and defendant fired again. R1574-76. Green stopped grabbing him, and defendant ran and hid under a red car. R1576. He disassembled the gun and claimed not to remember where it ended up. R1615-16.

Defendant also claimed he never went to Devonte McCormick's house and never saw Collins on the morning after the murder. R1578-79. According to defendant, Collins was lying to get out a traffic warrant. R1601-02. And, defendant claimed, Griham asked many questions about his case and then twisted his words and made up a story. R1585-87.

At the close of trial, the court instructed the jury, including on the law regarding felony murder. R1664-82. The jury instructions stated that a person is guilty of felony murder "when he commits or attempts to commit the offense of robbery, and the death of an individual results as a direct and foreseeable consequence of a chain of events set into motion by his commission of or attempt to commit the offense of robbery," and that "[i]t is immaterial whether the killing is intentional or accidental." R1675. During deliberations, the jury sent three notes. CS6-8; R1770, 1774, 1779. The first two notes asked to see exhibits. CS7-8; R1770, 1774. In response to the first

note, the court advised the jurors that they would soon be receiving exhibits and should consider them along with all the evidence in the case. R1772. In response to the second note, the court allowed additional exhibits to be sent to the jury. R1776-78. The third note asked: "Can we have any definition of how long (*i.e.* timeline) an attempt of robbery is relevant? What qualifies the end of the attempt? If the robbery complete? If later the victim tries to get it back, is there timeline." CS6; R1779. In response to this note, the court told the jury that they had "all the instructions of law and . . . should continue with their deliberations." R1783.

The jury found defendant guilty of felony murder. R1785; C453-55. The jury left the verdict forms for the other murder charges blank, and the trial court treated those verdict forms as an acquittal on the other counts. C453-55. Defendant moved for a new trial, arguing, among other things, that the People did not meet their burden to prove forfeiture by wrongdoing to admit Collins's statement. C424-30. The court denied the motion, R802-810, and sentenced defendant to 55 years in prison, C500.[9]

IV. Appeal

Defendant appealed, arguing that the trial court erred by finding Collins to be an unavailable witness and admitting Collins's statement. The appellate court affirmed. *People v. Chatman*, 2022 IL App (4th) 210716, ¶ 64.

[9] Defendant was initially sentenced to 60 years, R855, but his sentence was reduced to 55 years after a motion to reconsider, *see* C493-94; R1862.

Noting that defendant did not challenge the finding that he "engaged or acquiesced in the wrongdoing," the court focused its analysis on the trial court's finding that the People had demonstrated that Collins was unavailable. *Id.* ¶ 46. The court reasoned that, to demonstrate that a witness is unavailable, the People must make a reasonable, good-faith efforts "to procure their presence at trial." *Id.* ¶ 55. Recognizing that "[w]hat constitutes good-faith reasonable efforts will depend on the facts of each case," the court found that the People had made such efforts here. *Id.* ¶¶ 56, 61. The court explained that, "[u]nder the circumstances, Christian and the State were limited in what they could do to locate Collins." *Id.* ¶ 61. After Collins cut off contact with the police, "efforts to contact him were difficult," and the "[p]eople who were likely to have information on his location were unlikely to cooperate with law enforcement." *Id.* The court further noted that "because Collins was never served, and thus never failed to appear, no basis existed for issuing a warrant." *Id.* ¶ 63. Thus, the appellate court held, the trial court's finding that the People had made reasonable, good-faith efforts to locate Collins and bring him to court to testify was not against the manifest weight of the evidence because the People had made "continuing efforts to locate Collins, and [there was] no evidence of any leads which Christian and the State failed to follow up on." *Id.* ¶ 64.

STANDARDS OF REVIEW

This Court may hold that the trial court erred in admitting Collins's statement only if the Court also holds that the court's findings that defendant procured Collins's unavailability through wrongdoing and that the People made reasonable, good-faith efforts to locate Collins are against the manifest weight of the evidence. *People v. Peterson*, 2017 IL 120331, ¶ 39. A finding is against the manifest weight of the evidence only if "the opposite conclusion is clearly evident" or the finding "is unreasonable, arbitrary, or not based on the evidence presented." *Id.*

Whether an error is harmless presents a legal question that is reviewed *de novo*. *People v. Herron*, 215 Ill. 2d 167, 174 (2005).

ARGUMENT

I. The Trial Court Did not Err in Admitting Collins's Statement, Because Defendant's Wrongdoing Made Collins Unavailable Despite the People's Reasonable, Good-Faith Efforts to Locate Him.

Defendant's wrongdoing made Collins unavailable to testify, so his statement to police was admissible under Illinois Rule of Evidence 804(b)(5).

The Sixth Amendment's Confrontation Clause provides that "i]n all criminal prosecutions, the accused shall enjoy the right. . . to be confronted with the witnesses against him," U.S. Const. Amend. VI, and the rules of evidence generally prohibit the admission of out-of-court statements as hearsay, Ill. R. Evid. 802. However, a defendant who causes the absence of a witness is not entitled to benefit from his own wrongdoing. *Peterson*, 2017 IL

120331, ¶ 18 (citing *Reynolds v. United States*, 98 U.S. 145 (1879)). Thus, a defendant "who obtains the absence of a witness by wrongdoing forfeits the constitutional right to confrontation." *Davis v. Washington,* 547 U.S. 813, 833 (2006); *accord Peterson*, 2017 IL 120331, ¶ 33.

Similarly, the doctrine of forfeiture-by-wrongdoing provided a common-law exception to the rule against hearsay. *People v. Hanson*, 238 Ill. 2d 74, 97 (2010). That exception is now codified in Rule 804(b)(5), which provides that "[a] statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness" is "not excluded by the hearsay rule if the declarant is unavailable as a witness[.]" Rule 804(b)(5) and the exception to the Confrontation Clause are coextensive. *See Hanson*, 238 Ill. 2d at 97 (Rule "is coextensive with the common law doctrine."); *Giles v. California*, 554 U.S. 353, 358, 367 (2008) (Confrontation Clause incorporates common-law forfeiture-by-wrongdoing exception to the hearsay rule).

To admit a statement under Rule 804(b)(5), the People must prove both wrongdoing and unavailability by a preponderance of the evidence. *Peterson*, 2017 IL 120331, ¶ 37. Thus, "the State must establish that defendant, more likely than not, 'engaged or acquiesced in wrongdoing' and that such wrongdoing was 'intended to, and did, procure the unavailability of the declarant as a witness.'" *Id.* (quoting Ill. R. Evid. 804(b)(5)). And the People must also demonstrate that they made a reasonable, good-faith effort to

secure the witness's testimony at trial. *People v. Torres*, 2012 IL 111302, ¶ 54. Here, the trial court found that the People had demonstrated both that defendant engaged in wrongdoing intended to procure Collins's unavailability and that he was, in fact, unavailable because the People had made reasonable, good-faith efforts to secure his presence at trial; those findings were not against the manifest weight of the evidence, and accordingly the trial court's decision to admit Collins's statement under Rule 804(b)(5) should be affirmed.

A. The trial court's finding that defendant engaged in wrongdoing intended to procure Collins's unavailability was not against the manifest weight of the evidence.

There is no dispute, and the record amply supports the trial court's finding, that defendant "engaged or acquiesced in wrongdoing that was intended to . . . procure the unavailability of [Collins] as a witness." Ill. R. Evid. 804(b)(5).

Defendant intended to caused Collins's unavailability by directing his family members to threaten Collins and prevent him from testifying. R110-11. During phone calls to various friends and family members, defendant repeatedly tried to find out who was providing information to police and make sure his family took action to prevent them from testifying against him. C105-09; R111. When defendant learned that Collins had provided information to police, defendant talked to his father and Collins's brother, both of whom gave responses

that implied that they would ensure that Collins did not testify. C107-08, 109-10. Defendant's father told defendant that he would "put pressure on that little hooker." C107. And Collins's brother, McCormick, told defendant that Collins was not around anymore and defendant did not need to worry. C107. As a result, Collins received threats to his life and the lives of his family members. R95-97; C108.

Thus, the trial court's finding that defendant "engaged or acquiesced in wrongdoing that was intended to" make Collins unavailable to testify, Ill. R. Evid. 804(b)(5), is not against the manifest weight of the evidence.

B. The trial court's finding that Collins was unavailable because the People were unable to secure his attendance despite reasonable, good-faith efforts was not against the manifest weight of the evidence.

The trial court's finding that Collins was unavailable also was not against the manifest weight of the evidence. Rule 804(a)(5) provides that a witness is unavailable where he or she "is absent from the hearing and the proponent of a statement has been unable to procure the declarant's attendance . . . by process or other reasonable means." Ill. R. Evid. 804(a)(5). The Illinois rule is similar to the federal rule, *see* Fed. R. Evid. 804(a)(5), and is intended to incorporate the common-law understanding of unavailability, *People v. Nixon*, 2016 IL App (2d) 130514, ¶ 49. To show that the witness is unavailable, the

proponent must make reasonable, good-faith efforts to secure the witness's presence at trial. *Torres*, 2012 IL 111302, ¶ 54 (quoting *Ohio v. Roberts*, 448 U.S. 56 (1980), *overruled on other grounds by Crawford v. Washington*, 541 U.S. 36 (2004)); *People v. Kent*, 2020 IL App (2d) 180887, ¶ 97.

Reasonable, good-faith efforts depend on the facts and circumstances of each case. "A good-faith effort . . . is not an ends-of-the-earth effort," *United States v. Chun Ya Cheung*, 350 F. App'x 19, 23 (6th Cir. 2009), and need only be reasonable under the circumstances, *United States v. Smith*, 928 F.3d 1215, 1228 (11th Cir. 2019) ("there is no bright line rule for reasonableness," which "inquiry necessarily is fact-specific and examines the totality of the factual circumstances of each particular case"). This means that the prosecution is not required to take "futile" actions to locate a witness. *Torres*, 2012 IL 111302, ¶ 54. For instance, if the witness has died and there is "no possibility of procuring the witness . . . 'good faith' demands nothing of the prosecution." *Id.* (quoting *Roberts,* 448 U.S. at 74-75). On the other hand, "if there is a possibility, albeit remote, that affirmative measures might produce the declarant, the obligation of good faith *may* demand their effectuation." *Id.* (emphasis in original). In other words, "when a witness disappears before trial, it is always possible to think of additional steps that the prosecution might have taken to secure the witness' presence," but the prosecution need not "exhaust every avenue of inquiry, no matter how unpromising." *Hardy v.*

Cross, 565 U.S. 65, 71-72 (2011) (denying habeas corpus relief on Sixth Amendment Confrontation Clause claim).

Here, the trial court found People made reasonable, good-faith efforts to find Collins and secure his attendance at trial, and that finding is not against the manifest weight of the evidence. After receiving numerous threats from defendant's family and friends, Collins left his home and family in Illinois and fled to Iowa. He initially met with detectives in Iowa, but then stopped responding to officers, and the final time Christian dialed Collins's phone number, a voice he did not recognize told him he had the wrong number. R496. Christian contacted Iowa law enforcement, who were not able to provide any additional information on Collins's whereabouts. R144. Thus, it appeared that Collins had gone into hiding to escape the threats and avoid testifying.

Despite this, investigators tried repeatedly to locate Collins and followed up on all available leads. Detectives sought information from other Illinois law enforcement agencies through I-board, R142-43, 481-82, and from Iowa law enforcement, R144. They also searched databases for possible addresses, R483, and looked for Collins at the addresses they found in Champaign, Kendall County, and Iowa, R483-88. But they were unable to find Collins at any of these addresses. *Id.* At one Champaign address, there "appeared to be no one inside." R483-84. At another, there was no answer and it appeared vacant. R484-85. At one of the two Kendall County

addresses, there was no response when Christian rang the doorbell. R486-87. While at the other Kendall County address, detectives attempted to speak to the occupants of each apartment in the building, but again no one answered. *Id*. Detectives also visited an Iowa address, but found "no reason to think [Collins] lived there anymore[.]" R486. Detectives attempted to contact Collins through his brother but no one answered the door at the brother's home either, although police suspected people were inside. R485. Defendant's mother told Christian she did not know where Collins was, R500, and none of defendant's other family members provided any information on Collins's whereabouts. R488. Indeed, no one detectives spoke to provided information on Collins's whereabouts. R151. Finally, detectives listened to recordings of jail calls between defendant and his friends and family; those calls indicated that defendant and his counsel could not find Collins. R146-47. In short, although detectives made many efforts to locate Collins, they were unsuccessful because he did not want to be found.

Similar efforts have been considered reasonable where a witness "was in hiding, and had a strong incentive not to be found." *Smith*, 928 F.3d at 1230. In *Smith*, the witness, an undocumented immigrant, recorded a videotaped deposition statement regarding the defendant's smuggling activities. *Id.* at 1221-22. After the witness was released from immigration detention, the government was unable to contact her despite attempts to find her through her uncle, her former attorney, and her boyfriend. *Id.* at 1222-

24. Under those circumstances, the federal court held, despite having "extremely limited information regarding [the witness's] whereabouts," the prosecution made reasonable, good-faiths effort by following up on all of the available leads. *Id.* at 1230-31; *see also United States v. Thomas*, 705 F.2d 709, 712 (4th Cir. 1983) (government acted reasonably when it tried unsuccessfully to locate witness for service after he disappeared). Similarly, in *People v. Smith*, the Illinois Appellate Court held that the People had made reasonable, good-faith efforts by attempting to locate and serve a witness three times and at two different addresses, contacting the Illinois Department of Public Aid, speaking with security at the witness' former apartment building, and checking with the jail and morgue. 275 Ill. App. 3d 207, 215 (1st Dist. 1995). Here, too, detectives visited all potential addresses they could find for Collins and followed up on all viable leads.

For his part, defendant argues that either Christian or prosecutors should have obtained a subpoena for Collins, Def. Br. 29, 41, but that would have been futile because there was no realistic prospect that he could be located for service. As courts have recognized, a witness who goes into hiding can be particularly difficult to locate, and the proponent of the witness's testimony is required to issue subpoena only if it is likely to be successful. *See Hardy*, 565 U.S. at 71 ("[w]e have never held that the prosecution must have issued a subpoena if it wishes to prove that a witness who goes into hiding is unavailable"). In *Christie v Hollins*, for example, the federal court

found that the defense's efforts to bring the witness to court were reasonable where the investigator had contacted the witness's mother to alert her of the trial date and attempted to reach out to the witness's agent and friend, but "nothing in the record support[ed] a belief that [the witness] could have been located to effect service of a subpoena." 409 F.3d 120, 125 (2d Cir. 2005). Likewise, nothing in this record suggests that Collins could have been successfully served with a subpoena. And defendant's suggestion that Collins could have been served by mail, Def. Br. 41, ignores that neither detectives nor prosecutors had a current mailing address for him.

Defendant also argues that the People should have sought a warrant for Collins's arrest, *see* Def. Br. 41, but the trial court would have denied any request for a warrant for failure to comply because the People would not have been able to demonstrate that Collins was served. *See*, *e.g.*, *People v. Hicks*, 133 Ill. App. 2d 424, 435 (1st Dist. 1971) (where defense witness was not properly served, court did not infringe defendant's rights by refusing to compel the witness's attendance); *People v. Winfield*, 113 Ill. App. 3d 818, 833 (1st Dist. 1983) ("while a bench warrant is occasionally the only means to insure the appearance of a reluctant witness [citation omitted], defendant's constitutional rights are not infringed by the court's refusal to issue a bench warrant in the absence of proper service of a subpoena"); *People v. McDonald*, 322 Ill. App. 3d 244, 247 (3d Dist. 2001) ("Where confinement is contemplated for one not charged with a crime, a court should be very circumspect in

granting material witness bonds."). Defendant points out that the People did obtain warrants for two other witnesses, Def. Br. 41, but, as the trial court explained, each of those witnesses "had been served with a subpoena and Mr. Collins had not." R503. The People knew where the other witnesses were, *see* C195-96; R501, but by the time that the trial subpoenas were issued in April 2021, C195-96, they could not locate Collins. *See* C108-09 (detectives' last contact with Collins was in 2020). The trial court's finding that the People were unable to serve a subpoena on Collins is not against the manifest weight of the evidence.

Similarly, law enforcement could not seek to detain Collins as a material witness because they did not know where to find him. The material witness statute, 725 ILCS 5/109-3(d), "authorizes a court to commit a material witness to the custody of the sheriff *only* after the witness has refused to agree in writing to appear at trial." *People v. Johns*, 2016 IL App (1st) 160480, ¶ 12 (emphasis in original).

The other efforts that defendant suggests are similarly impracticable and do not undermine the reasonableness of the People's efforts. Contrary to defendant's argument, Def. Br. 46, police could not enter Collins's name in the LEADS database. Christian testified that the LEADS database cannot be used to serve a subpoena on a witness, R495, and Collins was not wanted on a warrant, was not a suspect in a crime such that a warrant could be issued for him, and was not a missing person, R150, 495. While the LEADS manual

provides that a person may be entered as a missing person if "there is reasonable concern for his/her safety," that person must also be "missing." *LEADS 3.0 Manual*, "Missing Persons Chapter," https://isp.illinois.gov/Law Enforcement/LEADS3Manual (last accessed Sept. 27, 2023). There is no evidence that Collins's family had reported him missing, and an adult is not "missing" simply because the police do not know where he is. As the trial court found, Collins simply "[did not] want to be found." R153.

Finally, defendant argues that detectives should have sought to contact Collins using his last known phone number. Def. Br. 29, 35. However, Christian attempted to contact Collins at that number, and an unknown voice responded that he had the wrong number. R496. It was reasonable to conclude that repeated calls to the same number were unlikely to lead to additional information.

The People's efforts to find Collins here stand in stark contrast to the cases defendant cites in which courts found that the proponent failed to demonstrate reasonable, good-faith efforts to secure a witness's attendance at trial. *See* Def. Br. 36-39. For starters, *People v. Payne*, 30 Ill. App. 3d 624 (1st Dist. 1975) on which defendant places heaviest reliance, *see* Def. Br. 34-36, bears little resemblance to this case. In *Payne*, a robbery victim testified at an initial trial, which ended in a mistrial, but did not appear at the subsequent trial and his prior testimony was admitted. 30 Ill. App. 3d at 625. No wrongdoing by the defendant was alleged. *Id.* The reviewing court

found that prosecutors failed to demonstrate reasonable, good-faith efforts to locate the witness because they failed to take identifiable steps that might have led them to the witness, and, in addition, the police officer took no notes and could not provide details regarding his efforts to find the witness. *Id.* at 626, 629-30. Here, by contrast, not only was there evidence that defendant engaged in wrongdoing that sent Collins into hiding from police, Christian described the efforts detectives took to find Collins (including searching for, and then visiting, his known addresses), and the trial court concluded that there was nothing more that detectives could have done.

Payne, like the other cases defendant cites, simply illustrates that, while the government must follow up on available information, its efforts fall short only if there are available steps that likely would have led them to the missing witness. In *United States v. Lynch*, for example, the evidence showed that the government knew generally where the witness was and could have located her through additional efforts. 499 F.2d 1011, 1024 (D.C. Cir. 1974). Similarly, in *People v. Brown*, the prosecutor knew the witness had moved to Tennessee but made no effort to contact him there. 47 Ill. App. 3d 616, 621-22 (1st Dist. 1977); *see also Perricone v. Kansas City Southern Ry. Co.*, 630 F.2d 317, 321 (5th Cir. 1980) (opposing side was able to locate witness with short search after trial); *United States v. Mann,* 590 F.2d 361, 366 (1st Cir. 1978) (government permitted witness, a juvenile foreign national, to leave the country, despite knowing she would be difficult to locate); *State v. Rivera*, 51

Wash. App. 556, 560-61 (1988) (police officer did not contact witness' mother to find out where witness was, even though he knew they lived together); *Fresneda v. State*, 483 P.2d 1011, 1017 (Alaska 1971) (prosecutor did not attempt to determine witness' location, even though prosecutor knew witness had enlisted in military).

Defendant also cites cases where prosecutors failed to compel testimony from an out-of-state witness, but that was not a viable approach here. *See* Def. Br. 38, 39 (citing *Government of Virgin Islands v. Aquino*, 378 F.2d 540, 550 (3d Cir. 1967); *State v. Sweeney*, 723 P.2d 551, 554 (Wash. Ct. App. 1986)). While the Uniform Act to Secure the Attendance of Witnesses from Within or Without a State in Criminal Proceedings ("Uniform Act"), 725 ILCS 220/3, would allow the People to seek a court order to compel Collins to come to Illinois to testify, it would be impossible to obtain such an order without first locating Collins. The Uniform Act allows an Illinois court to issue a certificate stating that a witness is required, which "may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this state to assure his attendance in this state." 725 ILCS 220/3. But that certificate must be "presented to a judge of a court of record in the county in which the witness is found." *Id.* Because the People did not know where to find Collins, they could not present the certificate in an out-of-state court to secure his attendance.

Here, there were not obvious steps that the People could have taken to locate Collins, and, as noted, defendant does not suggest any promising avenues for investigation. Again, "[a] good-faith effort…is not an ends-of-the-earth effort[.]" *Chun Ya Cheung*, 350 F. App'x at 23. On the facts presented, the trial court's finding that the People made reasonable, good-faith efforts to find Collins was not against the manifest weight of the evidence. The appellate court's judgment should be affirmed.

II. Alternatively, Any Error in Admitting Collins's Statement Was Harmless Beyond a Reasonable Doubt.

In any event, any error in admitting Collins's statement was harmless beyond a reasonable doubt, providing an alternate ground for affirmance. "[T]he mere fact that the jury was presented with improperly admitted statements does not, in and of itself, constitute reversible error." *Kamlager v. Pollard*, 715 F.3d 1010, 1018 (7th Cir. 2013). The improper admission of an out-of-court statement is "subject to harmless-error review." *In re Rolandis G.*, 232 Ill. 2d 13, 43 (2008).

Because the admission of Collins's statement implicated defendant's right to confront a witness against him, "[t]he test [for harmless error] is whether it appears beyond a reasonable doubt that the error at issue did not contribute to the verdict obtained." *People v. Stechly*, 225 Ill. 2d 246, 304 (2007); *see also In re Brandon P.*, 2014 IL 116653, ¶ 50. In evaluating harmlessness, a reviewing court may conduct three analyses: (1) "examine the other properly admitted evidence to determine whether it

overwhelmingly supports the conviction," (2) "focus on the error to determine whether it might have contributed to the conviction," or (3) "determine whether the improperly admitted evidence is merely cumulative or duplicates properly admitted evidence." *Rolandis G.*, 232 Ill. 2d at 43. Here, any error was harmless beyond a reasonable doubt under any of these analyses.

Any error was harmless under the first test because the other properly admitted evidence of defendant's guilt was overwhelming. A person commits felony murder when he "commits or attempts to commit a forcible felony other than second degree murder, and in the course of or in furtherance of such crime or flight therefrom, he . . . causes the death of a person." 720 ILCS 5/9-1(a)(3). Robbery is a forcible felony. 720 ILCS 5/2-8. Thus, the relevant intent for this offense is defendant's intent to commit a robbery, rather than his intent to kill. *People v. Jones*, 376 Ill. App. 3d 372, 387 (1st Dist. 2007) ("Felony murder derives its mental state from the underlying intended offense."). Indeed, "[t]he lack of an intent to kill for felony murder distinguishes it from the other forms of first degree murder, which require the State to prove either an intentional killing or a knowing killing." *People v. Davis*, 213 Ill. 2d 459, 471 (2004). Accident and self-defense are not available as defenses to a felony murder charge. *See People v. Moore*, 95 Ill. 2d 404, 411 (1983) (self-defense); *People v. Pugh*, 157 Ill. 2d 1, 16 (1993) (accident). Thus, if defendant killed Green during the course of a robbery, he is guilty of felony murder.

It is undisputed that defendant shot Green; indeed, defendant admitted at trial that he did so. R1572, 1574-76. The only dispute was whether defendant shot Green during the course of a robbery or whether, as defendant testified, he did so in self-defense. On that point, the People's evidence overwhelmingly demonstrated that defendant had robbed Green. Text messages between defendant and Simmons established that they had planned to rob Green before they met up with him. R1414-15; E87. And Collins's statement was not defendant's only confession to having planned the robbery: Griham testified that defendant told him that Green was killed while defendant executed the plan to steal Green's gun. R1177-79. And Griham's testimony was consistent with other evidence, including defendant's own testimony. For instance, although these details had not been publicly reported, Griham knew that a woman was in the car with defendant, Simmons, and Green, R1179, that defendant lost his Timberland boots, R1179, 1180, that he wrapped his shirt around his feet to keep warm, R1181, and that he disassembled the gun, *id*. Finally, defendant's flight from police and his attempts to identify and intimidate potential witnesses provided additional evidence of his guilt. *See People v. Harris*, 225 Ill. 2d 1, 23 (2007) (flight is evidence of consciousness of guilt); *People v. Rogers*, 2014 IL App (4th) 121088, ¶ 21 (threatening witness is evidence of consciousness of guilt).

Similarly, the purported error was harmless under the second test because the admission of Collins's statement could not have contributed to defendant's conviction. Defendant's trial testimony was the only evidence that contradicted the People's case that he killed Green while robbing him of his gun, and thus defendant's case relied on his credibility. But defendant's testimony was not credible. Defendant offered no satisfactory explanation for the text messages he exchanged with Simmons showing that they planned to rob Green, claiming implausibly that they had intended to rob someone else. R1542. And defendant's testimony was inconsistent with the account he gave in his police statements, where he denied shooting Green. E97 at 2:13:52-55, 2:15:13-19, 2:28:47-49; E213 at 4:49:17, 4:51:38-51. In addition, defendant's conduct after the murder showed him trying to cobble together a story to avoid a conviction: he asked Feriana Anderson to provide a false alibi, R931, and sought to concoct an after-the-fact defense, exploring intoxication and other theories in his recorded jail calls, E216-18, 223-25, 233, 236, 239-40, 242-44, 253, 255, 257; *see*, *e.g.*, *People v. Hansen*, 327 Ill. App. 3d 1012, 1018 (1st Dist. 2002) (attempt to establish false alibi shows consciousness of guilt).

Indeed, given the strength of the other evidence against defendant, the People's case did not meaningfully rely on Collins's statement. Although the prosecutor discussed Collins's statement in closing, it comprised only a small part of her argument, covering only 4 out of 24 transcript pages. *See* R1690-92, 1694-95, 1682-1706. The bulk of the prosecutor's closing argument

focused on defendant's statements to police and during the recorded jail calls, as well the text messages defendant exchanged with Simmons, all of which showed that defendant was lying when he denied at trial that he had planned to, and in fact did, rob Green of his gun. R1686-90, 1695-98, 1700-03, 1705. The prosecutor also relied heavily in her closing argument on Griham's testimony that defendant had confessed to him. R1692-95.

And contrary to defendant's suggestion, the People did not argue facts not in evidence in closing. Defendant asserts that "the prosecutor improperly argued" that, after defendant learned about Collins's statement in discovery, Collins was "told that he better not come to court." Def. Br. 46. This statement simply summarized Christian's testimony that after defendant labeled Collins "a snitch," defendant's father told defendant that he would "take care of it." R1452-53. Christian testified that this "ultimately. . . led to me not being able to find . . . Collins." R1453.

Finally, any error was harmless under the third test because Collins's statement was cumulative. As explained, Collins's statement was not the only evidence that defendant had confessed to killing Green during a planned robbery: Griham also testified that defendant confessed to him that he shot Green while attempting to steal his gun. And the text messages defendant exchanged with Simmons corroborated Griham's account. Collins's statement providing the same information was cumulative and therefore harmless.

Contrary to defendant's argument, Def. Br. 46, the jury's notes and its decision not to convict him on the non-felony murder counts do not undermine the conclusion that any error in admitting Collins's statement was harmless beyond a reasonable doubt. Regarding the jury notes, "there is no indication in the record that the jury at any time had reached an impasse or that the jurors themselves considered this a close case." *People v. Wilmington*, 2013 IL 112938, ¶ 35. The jury sent three notes. R1770, 1774, 1779; CS6-8. The first two notes asked to see exhibits, CS7-8, and the third read: "Can we have any definition of how long (*i.e.* timeline) an attempt of robbery is relevant? What qualifies the end of the attempt? If the robbery complete? If later the victim tries to get it back, is there timeline," CS6; R1779. None suggested that the jurors had reached an impasse, that they considered the evidence close, that that they believed the People's witnesses were not credible, or that they otherwise relied on Collins's statement. The notes simply asked to see evidence or sought guidance on the law. Indeed, the third note suggests that the jury properly considered whether the murder took place during the course of a robbery, which was appropriate for the felony murder charge on which the jurors ultimately reached agreement.

Similarly, the jury's decision not to convict defendant on the other counts does not indicate that any error in admitting Collins's statement was not harmless beyond a reasonable doubt. As the trial court stated, felony murder was "the State's main theory" at trial. C453. The jury found

defendant guilty on that theory and did not make any finding on the counts of knowing or intentional murder. C453-55. But an acquittal on the other counts does not undermine the felony murder conviction. In finding defendant guilty, the jury determined that defendant shot Green while intending to rob him. As such, he was guilty of felony murder, regardless of whether he intended to kill Green. *See Davis*, 213 Ill. 2d at 471. Because the remaining counts would have required a finding of intent to commit murder, *see* 720 ILCS 5/9-1(a)(1)-(2), the jury's acquittal on those counts is entirely consistent with the felony murder conviction.

In short, defendant's testimony was the only evidence that he acted in self-defense. And given the other evidence and defendant's varying account, no reasonable jury would have believed him even if Collins's statement had been excluded. Collins's statement supported the People's case, but it did not contribute to the verdict against defendant. Therefore, even if the trial court erred by admitting Collins's statement, that error would be harmless beyond a reasonable doubt. Thus, this Court should affirm defendant's conviction on this alternate ground.

CONCLUSION

This Court should affirm the appellate court's judgment.

September 27, 2023

Respectfully submitted,

KWAME RAOUL
Attorney General of Illinois

JANE E. NOTZ
Solicitor General

KATHERINE M. DOERSCH
Criminal Appeals Division Chief

KATHERINE SNITZER
Assistant Attorney General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601
(872) 272-0784
eserve.criminalappeals@ilag.gov

Counsel for Plaintiff-Appellee
People of the State of Illinois

RULE 341(c) CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 43 pages.

/s/ Katherine Snitzer
KATHERINE SNITZER
Assistant Attorney General

PROOF OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On September 27, 2023, the foregoing **Brief of Plaintiff-Appellee People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, which served the person named below at the following registered email address:

Christofer R. Bendik
Assistant Appellate Defender
Office of the State Appellate Defender First Judicial District
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
1stdistrict.eserve@osad.state.il.us

/s/ Katherine Snitzer
KATHERINE SNITZER
Assistant Attorney General