No. 125722

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, -vs- ANDREW SALAMON Petitioner-Appellant	)))))))))))	Appeal from the Appellate Court of Illinois, No. 1-16-0986. There on appeal from the Circuit Court of Cook County, Illinois , No. 12 CR 2706. Honorable Erica L. Reddick, Judge Presiding.

BRIEF AND ARGUMENT FOR PETITIONER-APPELLANT

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Where Police Procured Andrew Salamon's Statement by Employing a Tactic of Keeping Him in Isolated Detention and Denying Him His Statutory Right to a Phone Call for the Purpose of Securing Counsel for Approximately 24 Hours, at Which Time He Acquiesced and Made a Statement, the Police Conduct Rendered Salamon's Statement Involuntary. 12

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NATURE OF THE CASE

Andrew Salamon was convicted of first degree murder, armed robbery and burglary after a jury trial and was sentenced to 37 years.

This is a direct appeal from the judgment of the court below. No issue is raised challenging the charging instrument.

ISSUE PRESENTED FOR REVIEW

Where police procured Andrew Salamon's statement by employing a tactic of keeping him in isolated detention and denying him his statutory right to a phone call for the purpose of securing counsel for approximately 24 hours, at which time he acquiesced and made a statement, whether such conduct renders Salamon's statement involuntary.

JURISDICTION

Andrew Salamon, Petitioner-Appellant, appeals the First District Appellate Court's unpublished order affirming the denial of leave to file a successive post-conviction petition. This Court granted leave to appeal on March 25, 2020. Jurisdiction lies in this Court, therefore, pursuant to Article VI, Section 6, of the Illinois Constitution, and Supreme Court Rule 315(a).

STATUTE INVOLVED

725 ILCS 5/103-3(a) (2011):

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*. (Emphasis added).

STATEMENT OF FACTS

Andrew Salamon was charged with the first degree murder of Robert Gonzalez, armed robbery, and burglary. (C. 39-48) The first degree murder charges were based on a theory of accountability; that on October 4, 2009, Salamon accompanied Raymond Jackson to help him rob Gonzalez's bar, and Jackson killed Gonzalez during the course of the armed robbery and burglary.

Motion to Suppress Statement

Salamon moved to suppress his statement, alleging that the police improperly initiated contact with him after he invoked his right to an attorney, and that they did not allow him access to a phone call to contact an attorney until after he had been in custody for 25 hours,[1] in violation of 725 ILCS 5/103-3(a). (C. 79) Salamon and Detective Timothy Thompson testified at the hearing on the motion. (R. KK1)

Salamon testified that on November 15, 2010, the police contacted him and said they wanted to speak with him. (R. KK8) Salamon met Detectives Thompson and Gillespie at the police station, accompanied by his friend, Apolio Retema. (R. KK9, 20) They asked him about a man named Raymond Jackson, and eventually revealed that they wanted to talk about the murder of Gonzalez, at which point Salamon said he would only speak with an attorney present. (R. KK10) The detectives told him he did not need one, but Salamon insisted and the detectives told him he was free to go and he left. (R. KK28-30) Salamon was at the station for 15 to 20 minutes. (R. KK19)

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[1]The motion alleged that the police arrested Salamon at 4:00 pm on November 9, 2009. (C. 79) Detective Thompson testified he arrested Salamon at 6:00 pm. (R. KK31) Salamon began speaking to detectives at 5:15 pm on November 10.

Salamon had no further contact with the police until a year later, when on November 9, 2011, Salamon was pulled over after leaving his job in Harwood Heights. (R. KK12, 21) The detectives approached his car with their guns drawn, pulled out a paper with his picture on it and said, "that's the guy." (R. KK12-13) The police handcuffed him and put him in a police car. (R. KK12-13, 20) The detectives, who were the same detectives he talked to a year prior, told him it was his last chance to cooperate, and that they could "do this the easy way or the hard way." (R. KK13) Salamon immediately said he wanted a lawyer, and they stopped asking him questions. (R. KK14, 21)

They arrived at the police station and the police read him his *Miranda* rights and put him in a locked interrogation room. (R. KK14, 30-2) Salamon repeatedly said that he wanted a lawyer and repeatedly asked for a phone call. (R. KK15-17, 26-27) The police told him he would have to wait for a phone call. (R. KK27) Salamon acknowledged that the police took him to the bathroom, provided him with food and water, and gave him contact lens solution when he needed it. (R. KK22-3) Each time he was taken to the bathroom, the police told him he needed to cooperate and everything would be okay. (R. KK15-16)

The next day, while still in the locked interrogation room, Salamon cried and then began kicking and banging on the walls and locked door, repeatedly screaming for a lawyer and for a phone call. (R. KK16, 24, 26) Detective Moriarty eventually opened the door, and Salamon told him he wanted to speak to Thompson and Gillespie about making a deal. (R. KK25) The detectives asked if he was initiating contact, Salamon said yes, and they again read him his *Miranda* rights. (R. KK25)

Detective Thompson testified that at approximately 6:00 pm on November 9, 2011, they stopped Salamon and arrested him. Members of a federal fugitive apprehension team assisted with the arrest. (R. KK31, OO12) The detectives brought Salamon to Area 3 and after they *Mirandized* him, Salamon invoked his right to counsel. (R. KK32) The police stopped talking to him, and provided him with food and drink. Thompson denied that he told Salamon it was time to talk about the case while taking him to the bathroom. (R. KK33-34) Thompson stated that Salamon was handcuffed to the wall on at least "some occasions." (R. KK44)[2]

A little after 5:00 pm, Detective Moriarty told Thompson that Salamon had been kicking on the door while Thompson had been "out on the street." (R. KK35) Thompson acknowledged that from the time of Salamon's arrest until he said he wanted to speak to Thompson, Salamon was not allowed to use the phone, and had no way to contact an attorney. (R. KK43) Thompson asserted that it was their procedure to not allow a suspect to make a phone call until after the booking process is complete. (R. KK39)

After hearing that Salamon had asked to see him, Detective Gillespie entered the interrogation room, and Salamon said he was ready to talk. (R. KK35) Gillespie asked if he was reinitiating contact; Salamon said yes, Gillespie advised him of his rights, and Salamon spoke to both Gillespie and Thompson. (R. KK25, 35) At 2:30 am, Salamon gave a videotaped statement to the Assistant State's Attorney (ASA). During his statement, Salamon again said he wanted a lawyer and asked for a phone call. He was told he would get a call after he was charged. (St. Exh.

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[2]Thompson's partner, Detective Gillespie, testified at trial that Salamon remained handcuffed the entire time he was in the interrogation room and that the handcuffs were removed only to take him to the bathroom. (R. UU42)

38) After giving his statement, Salamon was booked.[3] (R. KK39, St. Exh. 38)

The trial court found that Salamon had told the police that he wanted to speak to a lawyer and to make a phone call. (R. KK53) The court noted that no phone call was provided until he was processed, but that was due to police department procedure. (R. KK54) The court then ruled that Salamon reinitiated contact when he banged on the wall and asked to speak to the detectives, and the police gave him *Miranda* warnings again. (R. KK52-3) The court noted that while the police were slow in providing Salamon a phone call, their actions were not improper, and denied Salamon's motion to suppress his statement. (R. KK52-5)

Trial

Sam Kelfino testified that he is a 54-year-old contractor who was friends with Roberto Gonzalez, the decedent and former owner of O'Lanigan's bar. (R. TT27) On September 11, 2009, Kelfino was remodeling the exterior of the bar for Gonzalez. (R. TT27-8) Kelfino was outside the bar when Raymond Jackson, who had a reputation as a neighborhood bully, approached him and threatened him if he did not move. (R. TT29-31, 35-6) Jackson then hit Kelfino in the mouth, and Kelfino, a professional boxer, hit Jackson in the face, causing him to fall down unconscious. (R. TT32, 36, 39) When Jackson came to, Gonzalez was outside laughing at him and would not let him in the bar. (R.TT33) Jackson was upset and eventually taken away by ambulance. (R. TT37) About a week later, Jackson called Kelfino. Jackson told Kelfino to say the fight happened in the bar so he

[3] Although Salamon's entire time in custody was recorded, the Office of the State Appellate Defender was unable to obtain the video of the entire 24 hours Salamon spent in the police interrogation room, despite diligent efforts. The video that was entered into evidence during the trial was edited to contain only Salamon's statement to the police and State's Attorney.

could sue the bar, but Kelfino refused. (R. TT34) Kelfino never saw Jackson again. (R. TT38)

Jose Santos, who at the time of trial had five prior theft convictions, (R. TT57), testified he had known Jackson for over ten years, and described him as a dangerous man from a rival gang. (R. TT40, 54) One night at the end of September, 2009, after Jackson and Kelfino fought, Santos went out with Jackson to look for Kelfino, but they did not find him. (R. TT41-2)

On October 3, 2009, the night leading up to Gonzalez's death, Jackson came to Santos' house sometime before midnight with another man, whom Santos did not know. (R. TT43-5) Santos met them at their car and got into the back seat. Jackson was in the front passenger seat and the second man was in the driver's seat. (R. TT44-45) They sat in the car and discussed doing a burglary at O'Lanigan's bar. (R. TT46) Santos said they were expecting to get $5,000 from the burglary. (R. TT48) The plan was for Jackson to look for a box of money in the basement, while the second man broke into the slot machines and Santos acted as lookout. (R. TT49) Santos claimed the second man said he had a crowbar. (R. TT49) During the time that they waited for the bar to close, Santos decided not to participate because he thought something could go wrong. (R. TT50) When Santos initially spoke to police, he described the second man only as a white male, between the ages of 19 and 25. (R. OO32, UU17) Santos told police that Jackson introduced the other man only as "Shorty." (R. OO32) Several months later, in February 2010, the police showed Santos a photo array containing Salamon's photograph and he identified Salamon as the second man who had come to his house with Jackson. (R. TT51-2) When asked to identify him in court, Santos

looked at Salamon and responded, "that looks like him over there." (R. TT41)

Iuliaa Valzona was working the night shift as a bartender at O'Lanigans the night of the murder. (R.TT59-60) When the bar closed at 3:00 am, she and Gonzalez locked the door and counted the money. (R. TT61) That was the last time she saw him alive. (R. TT61)

On October 4, 2009, at 4:47 am, Officer Emmert Gourthier responded to a burglary alarm going off at 2335 West Montrose. (R.TT70-2) He and Officer Lutzow arrived in marked cars and uniform. (R. TT73) They entered the rear door of the bar. (R. TT74-5) Gourthier did not see any pry marks on the door and nobody was inside the bar. (R.TT95) There were no signs that the bar had been ransacked. (R. TT96-8)

The officers exited the bar, noticed a trail of blood, and found Gonzalez lying between two cars. (R. TT78-9) They called for an ambulance, and the paramedics transported Gonzalez to the hospital where he later died. (R. TT108)

Carol Kolek, Gonazalez's life partner, testified that they owned O'Lanigan's Bar and Grill together. (R. TT19) The last time she saw Gonzalez alive was Saturday morning, October 3, 2009. (R. TT19) She testified that the nightly take in the bar varied, but was never as much as $5,000. (R. TT23) They had poker machines, but Lolek did not know if Gonzalez took the money out that night. (R. TT23)

Dr. Stephen Cina from the Cook County Medical Examiner's Office testified that Gonzalez's died from cranial cerebral blunt force injuries due to multiple impacts to the head and that the manner of death was homicide. (R. UU66)

Detective Gillespie went to the crime scene after the incident occurred. He learned that a padlock to the outside door and Gonzalez's keys were missing. (R. UU37) Gillespie spoke to Kelfino, who told him he suspected Jackson had committed the murder because of the prior altercation between Jackson and Kelfino, and because Jackson was looking for retaliation and reimbursement for hospital bills. (R.UU16) On November 6th, 2009, Gillespie and his partner, Detective Thompson interviewed Jose Santos, and they learned that he had had a conversation with Jackson and another man the night of the murder. (R. UU16)

On January 10, 2010, Gillespie obtained Jackson's cell phone records. (R. UU17) Jackson's phone had "pinged" a cellphone tower at 4740 North Western Avenue on the night of the incident, which is the closest cell tower to O'Lanigan's bar. (R. OO100-1) Gillespie further examined the phone records to see who Jackson had talked to on the night of the murder and ran the numbers through the Chicago police department database. (R. UU18) He traced one of the numbers Jackson had called back to Salamon, created a photo array containing Salamon's picture, and showed it to Santos on February 5, 2010. Santos identified Salamon as the man he had seen in the car with Jackson. (R. UU17-19, 34-5) Approximately nine months later, on November 15, 2010, Gillespie called Salamon and asked to speak to him. Salamon agreed to meet him at the police station. (R. UU36) Gillespie spoke to Salamon, but did not arrest him. (R.UU21-2)

Apolonio Retama testified that he is a friend of Salamon's and has known him for 15 years. (R. TT138) In the fall of 2010, Salamon called him and said he had done something bad. (R. TT138-9, 147) Salamon told Retama he thought he was "going down" for murder, after going with Jackson to rob a bar because

Jackson wanted to get even with the bar owner. (R. TT140-1) According to Retama, Salamon said they went after closing and ransacked the cash register and bar. (R. TT42) The owner appeared and grabbed Salamon on the shoulder. (R. TT42-3) Salamon punched him in the head, and Jackson hit him repeatedly with a pipe, and Salamon thought he died. (R. TT142-3) Salamon did not tell him where the crime happened or that he had a crowbar. (R. TT149, 150-1)

Retama told Salamon to turn himself in, and he went with Salamon to the police station sometime in the fall of 2010, and waited for four hours while Salamon spoke to the police. (R. TT143-44, 147) He said Salamon was scared and shaking when he came back, and Retama had to drive him home. (R. TT145)

Gillespie testified that he arrested Salamon a year later on November 9, 2011. (R. UU22-3) The police kept him in a locked interview room with a chair and table, and kept him handcuffed him to the wall by one arm, except when he ate or went to the bathroom. (R. UU40-3) Salamon was fed multiple times, and given cigarettes to smoke and contact lens solution. (R. UU45-6)

ASA Mikki Miller, testified that she interviewed Salamon on November 10, 2011. (R. UU69-71) She spoke with the detectives and reviewed the police reports before taking a statement at 8:00 pm. (R. UU71-2) She advised him of his *Miranda* rights and he agreed to speak with her. (R. UU72) The interrogation was recorded on video and played for the jury. (R. UU72-3)

In his statement, Salamon said that Raymond Jackson recruited him to help Jackson rob O'Lanigan's bar, and specifically the poker machines. (St. Exh. 38) He went with Jackson to meet with Santos, Jackson told Santos the plan, and Santos declined to participate. (St. Exh. 38) Salamon saw that Jackson had

a pipe but thought it was just for protection and intimidation. (St. Exh. 38) Salamon repeatedly denied ever touching Gonzalez; he saw Jackson hit Gonzalez with the pipe multiple times. (St. Exh. 38) Salamon continued to deny touching Gonzalez, even after the police confronted him with statements from others saying Salamon told them he hit Gonzalez. (St. Exh. 38) He said he did not help drag Gonzalez's body between two parked cars. (St. Exh. 38) Jackson gave Salamon Gonzalez's keys, Salamon entered the bar, but heard the alarm and turned around and left without going inside. (St. Exh. 38) Jackson wiped down the pipe with baby wipes, which Salamon believed showed that Jackson had this planned out all along. (St. Exh. 38) When they drove away, Jackson threw the pipe in a garbage can, and Salamon threw the keys out the window somewhere. (St. Exh. 38) Salamon only spoke to Jackson once after that and never saw him again. (St. Exh. 38) Salamon was scared for his life because of Jackson. (St. Exh. 38)

The parties stipulated that none of the recovered items he received from the crime scene tested positive for the presence DNA or otherwise connected Salamon to the crime. (R. UU96-8)

During deliberations, the jury asked to watch the video or read a transcript of Salamon's interview with ASA Miller, and the video was sent back to the jury. (R. VV67-70) The jury found Salamon guilty of first degree murder, armed robbery, and burglary. (C. 143-5; R. VV71)

Salamon filed a motion for new trial on December 4, 2015. (C. 150-1) He made several claims, including that the court erred in denying his motion to suppress statements. (C. 150-1) On March 17, 2016, the court denied the motion. (R. ZZ4-5)

Salamon was sentenced to a total of 33 years in prison: 25 years for the

first degree murder, eight years on the armed robbery to run consecutive to the murder sentence, and four years on the burglary to run concurrent to the eight years. (R. ZZ28-9; C. 185)

On direct appeal, Salamon asserted that his statement to the police was involuntary because the police did not provide him with his statutory right to a phone call to secure an attorney, and instead kept him in a locked interrogation room handcuffed to a wall for approximately 24 hours. The appellate court ruled that "neither a lengthy detention nor the denial of telephone access mandates a finding that the statement was given involuntarily," but that these are factors to be considered among the totality of circumstances, and that in light of the remainder of the relevant circumstances, Salamon's statement was voluntary. *People v. Salamon*, 2019 Il App (1st) 160986-U ¶¶ 60-62. The court went on to note that even if the statement was not voluntarily given, any error in its admission could be considered harmless. *Id*. at ¶¶ 63-64.

This Court granted leave to appeal on March 25, 2020.

ARGUMENT

Where Police Procured Andrew Salamon's Statement by Employing a Tactic of Keeping Him in Isolated Detention and Denying Him His Statutory Right to a Phone Call for the Purpose of Securing Counsel for Approximately 24 Hours, at Which Time He Acquiesced and Made a Statement, the Police Conduct Rendered Salamon's Statement Involuntary.

In evaluating the voluntariness of a statement, courts are to consider the totality of the circumstances. Although Andrew Salamon was an adult, he had no prior experience with the criminal justice system beyond some minor cannabis-related arrests. He was in custody in a locked room for approximately 24 hours before he acquiesced and talked to the police. While length of detention alone is not dispositive, what dispels any notion that Salamon's statement was voluntary was the subtle yet powerful police tactic of keeping him isolated from the outside world – overnight and through the next day – without providing him a phone call to secure his right to counsel. The confluence of a lengthy isolated detention coupled with a lack of access to counsel rendered Salamon's statement involuntary. This is in accord with both United States Supreme Court and Illinois law which has long recognized the import of access to counsel and the detrimental impact of isolated confinement. Therefore, this Court should reverse the finding of the lower courts and find that Salamon's statement must be suppressed.

The Prohibition on Involuntary Statements

"[A] defendant in a criminal case is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary confession, without regard for the truth or falsity of the confession, and even though there is ample evidence aside from the confession to support the conviction."

Jackson v. Denno, 378 U.S. 368, 376 (1964); *Haley v. Ohio*, 332 U.S. 596, 599 (1948); U.S. Const., amend. XIV; Ill. Const. 1970, art. I, § 2. At a suppression hearing, the State must prove by a preponderance of the evidence that a confession was voluntary. *People v. Braggs*, 209 Ill.2d 492, 505 (2003); 725 ILCS 5/114-11(d) (West 2011). Constitutional suppression issues are reviewed under a bifurcated standard of review: factual findings are reversed only if they are against the manifest weight of the evidence, but the ultimate legal conclusion about whether suppression is warranted is reviewed *de novo*. *In re Christopher K.*, 217 Ill.2d 348, 373 (2005).

The Supreme Court has recognized that, "[e]ven for an adult, the physical and psychological isolation of custodial interrogation can undermine the individual's will to resist and ... compel him to speak where he would not otherwise do so freely. Indeed, the pressure of custodial interrogation is so immense that it can induce a frighteningly high percentage of people to confess to crimes they never committed." *J.D.B. v. N. Carolina*, 564 U.S. 261, 269 (2011). A confession is not voluntary unless it is made "freely, voluntarily, and without compulsion or inducement of any sort." *People v. Gilliam*, 172 Ill.2d 484, 500 (1996). If there is evidence that the suspect's "will was overcome at the time he or she confessed," the confession must be suppressed. *Id.* Voluntariness is determined by considering the totality of the circumstances, including the defendant's personal characteristics; the legality and duration of the detention and questioning; and whether any threats, promises, deception, guilt, or otherwise coercive tactics were used in inducing the confession. *Id.* at 500-01; *see also*, *e.g.*, *People v. Melock*, 149

Ill.2d 423, 449-50 (1992); *Brewer v. Williams*, 430 U.S. 387, 392-93, 399 (1977); *People v. Travis*, 2013 IL App (3d) 110170, ¶54; *People v. Wead*, 363 Ill.App.3d 121, 143-45 (1st Dist. 2005).

Factual Summary of the Motion to Suppress Hearing

The facts of this case are generally not in dispute. Salamon testified that on November 15, 2010, he learned that the police wanted to talk to him about a crime that had occurred in October of 2009, and he voluntarily went to the police station. (R. KK8-9) At that time, he told the police he did not want to talk without a lawyer present and the police responded that he was free to leave. (R. KK28-30) A year later, on November 9, 2011 at 6:00 pm, the police pulled Salamon over as he was driving home from work. (R. KK11, 31) The police ran up to his vehicle with their guns drawn. (R. KK12) They took Salamon from his car, handcuffed him, and transported him to the police station. (R. KK12-13) He immediately indicated he wanted to speak to a lawyer. (R. KK14, 21) The police gave him his *Miranda* warnings and placed him in an 8 by 10 foot windowless interrogation room, and handcuffed him to the wall. (R. KK14, UU42-43) Salamon repeatedly told the police he wanted a lawyer and repeatedly asked for a phone call. (R. KK14-17, 27) The officers simply told him he would have to wait. (R. KK27) The next day Salamon began screaming while kicking and banging on the locked door trying to get a phone call. (R. KK26-27) An officer entered the locked room, and Salamon again asked for a phone call. At 5:15 pm, Salamon finally agreed to speak to the detectives. (R. KK16-17, 32)

Similarly, while Detective Timothy Thompson testified that he did not

remember if Salamon had asked for a phone call, he acknowledged that from the time Salamon first indicated he wanted an attorney, Salamon was not allowed to use the phone and had no way to contact an attorney. (R. KK43-44) Thompson claimed that it was their normal procedure to not allow a phone call until after the booking process is complete. (R. KK39) A little after 5:00 pm on the following day, another detective told Thompson that Salamon had been kicking on the door. (R. KK34) Detectives Gillespie and Thompson entered the interrogation room and Salamon agreed to cooperate with them. (R. KK35) They gave him his *Miranda* warnings again, and he gave a statement first to the police, and then to an Assistant State's Attorney (ASA). (R. KK25, 35) After giving a videotaped statement to the ASA, Salamon was finally booked. (R. KK. 39) Thompson provided no justification for the policy of withholding a phone call until the booking process was complete. Nor did he explain why it took 24 hours to book Salamon.

In denying the motion, the trial court agreed that the police were "slow in providing a phone call," but found there was nothing legally improper in their conduct so as to violate *Miranda* or Salamon's constitutional rights. (R. KK55)

Long-Standing Principles Governing The Use of Incommunicado Detention and Their Application to this Case

As far back as 1963, the United States Supreme Court recognized the powerful and coercive effect of an incommunicado detention. *Haynes v. Washington*, 373 U.S. 503, 513-15 (1963). There, the Supreme Court found defendant's statement was involuntary where the police held him for 16 hours and refused his requests to call an attorney and his wife. 373 U.S. at

508. The Court noted that neither defendant's prior contacts with police nor his other incriminating admissions negated the coercive effect of an incommunicado detention used to secure the written confession. *Id*. at 514. While noting that the police expressly conditioned the defendant's access to a phone call on his providing a statement, the Court in *Haynes* also emphasized "that even apart from the express threat, the basic techniques present here – the secret and incommunicado detention and interrogation – are devices adapted and used to extort confessions from suspects." 373 U.S. at 514.

Here, the police held Salamon in custody for 24 hours, during which time they ignored his repeated requests for a phone call to contact an attorney or family member and told him he would have to wait. The police may not have explicitly conditioned Salamon's access to a phone call on his giving a statement or overtly intimidated him with raised voices or threats of physical harm. Instead, the police employed a subtle yet effective tactic that exploited a right which a suspect holds most dear, depriving him of access to that most basic and universally accepted right to counsel. The police overcame Salamon's will by conveying a message that he would not receive access to a phone call to secure an attorney until he made a statement. This method of impeding Salamon's most basic constitutional right to the aid and advice of an attorney must weigh heavily against finding his statement to be voluntary.

Indeed, the very purpose of Illinois' long-standing statutory mandate is to protect suspects from the coercive impact of incommunicado detention

and to ensure access to counsel. Within a year of the Supreme Court's ruling in *Haynes*, the Illinois legislature enacted 725 ILCS 5/103-3 (a) (West 2011) which provides:

> 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*.

725 ILCS 5/103-3(a). (Emphasis added).

This Court has long recognized that the "purpose of the statute is to permit a person held in custody to notify his family of his whereabouts. . . so that arrangements may be made for bail, representation by counsel and other procedural safeguards that the defendant cannot accomplish for himself while in custody." *People v. Prim*, 53 Ill.2d 62, 69 (1972); *See also*, *People v. Green*, 2014 IL App (3d) 120522, ¶ 55 (same).

Since this Court in *Prim* first recognized the import and purpose of this statute, Illinois reviewing courts have considered the impact of police refusal to provide a phone call where a suspect has asked to call a family member. But it has not squarely addressed the impact of refusal to allow a phone call when a suspect is asking to contact an attorney. There is no question the police in this case violated section 103-3(a) where, at approximately 24 hours, they still had not allowed Salamon to make a phone call for that purpose. Thus, this case presents the question of the impact of non-compliance with section 103-3(a) when it implicates a suspect's expressed desire to contact counsel.

In *Prim*, this Court found that there was no consequential violation of

the statute, emphasizing that defendant's mother was with him at the time of arrest, was aware of the charges against him, and knew where he was being held. Thus, the defendant had an opportunity to access the safeguards that the statute was intended to protect. *Prim*, 53 Ill.2d at 69-70. Since then, reviewing courts have similarly given less weight to denial of a phone call where the suspect was not specifically seeking to secure his right to counsel. *See, People v. Green*, 2014 IL App (3d) 120522, ¶ 55 (statement not involuntary even if it was conditioned on the promise to see his family as the statute does not give the defendant the right to have a family member present for interrogation and there was no indication he was trying to secure legal assistance); *People v. Williams*, 2017 Il App (1st) 142733, ¶35 (court found statement that was given after less than five hours in custody was voluntary because even though police denied suspect his request for a phone call, the suspect did not indicate that he was seeking an attorney, but only that he wanted to check on the status of his newborn son); *But see*, *People v. Sanchez*, 2018 IL App (1st) 143899, ¶ 73 (in finding statement involuntary, court considered, among other factors, that the officers told the defendant that he could not call his mother, thereby violating section 103-3(a)). In other words, in cases where the suspect had not indicated that he wanted a phone call to obtain an attorney, but was seeking to contact a family member, courts have considered denial of a phone call as one component among the totality of circumstances to be weighed in determining the voluntariness of a statement, along with the suspect's physical traits and mental abilities.

In contrast here, the nature of the statutory violation – refusal of

access to an attorney – must weigh heavily against finding Salamon's statement voluntary. Certainly, the presence of an attorney serves a very different and more significant role than the presence of a family member, and the necessity of an attorney's role cannot be erased by a person's perceived physical and mental abilities. Significantly, Mr. Salamon was arrested when he was driving home from work. He had no means to notify his family of his whereabouts and nobody knew where he was. Unlike in *Prim*, the police rendered Salamon powerless to secure the intended statutory protections of access to counsel. In refusing Salamon a phone call where Salamon specifically asked to contact an attorney, the police did not just commit an innocuous or technical violation of the statute. They flagrantly contravened the recognized spirit and purpose of the statute, long-recognized by this Court, and employed a tactic of incommunicado detention and deprivation of access to counsel. Indeed, had an attorney been at the police station asking to see Salamon, the police could not have legally precluded him from doing so. *See, People v. McCauley*, 163 Ill. 2d 414, 445 (1994) (In Illinois, it is a violation of state due process for the police to prevent a suspect who is exposed to interrogation from receiving the immediately available assistance of an attorney). In this case, the police impeded Salamon's right to an attorney at an even earlier opportunity, preventing him from making even an initial contact with an attorney.

Notably, both judicial and legislative actors have recently recognized the need to better enforce compliance with section 103-3(a). In *People v. Sanchez*, 2018 IL App (1st) 143899, ¶ 73, the appellate court found that the

police violated the statute when they told the defendant that he could not call his mother. Not only did it consider this fact in finding Sanchez's statement involuntary, it opined that "[w]e also recommend the consideration of possible sanctions against the officers for violating section 103-3(a) of the Code, which establishes the suspect's right to make phone calls." *Id*. at ¶88. Similarly, in this case, the appellate court acknowledged in a footnote a consent decree negotiated between the City of Chicago and the State of Illinois that, *inter alia*, requires the Chicago police to post signs in the police station advising suspects of their right to an attorney and to provide suspects access to a phone call as soon as practicable. *See, People v. Salamon*, 2019 Il App (1st) 160986-U ¶ 60, fn 10. ("*Salamon*") Finally, on February 18, 2020, a member of the Illinois House of Representatives introduced House Bill 4796 proposing an amendment to section 103-3(a) to require that suspects be provided up to *three phone calls within an hour of arrival at their place of custody* and further, that statements obtained in violation of the provision will be presumed inadmissible. 101st Ill. Gen. Assem., House Bill 4796, 2019 Sess. Where various agents throughout Illinois are increasingly taking additional steps to protect the rights of criminal detainees in Illinois, and specifically their right to a phone call, the flagrant conduct of the police here in disregarding the existing statutory mandate and denying Salamon his specific requests for a phone call for 24 hours was egregious and must be rectified.

It is hard to imagine a case where law enforcement's violation of Illinois' statutory mandate requires a consequence more than this one. Here,

Salamon was completely at the mercy of the police officers and locked alone in an interrogation room for approximately 24 hours. Not only were his requests to contact an attorney denied, he could not even contact his family to tell them where he was. This Court must give full weight to the flagrant conduct of the police in disregarding the existing statutory mandate and find Salamon's statement to be involuntary.

The Appellate Court's Failure to Properly Weigh the Full Impact of the Statutory Violation in this Case

In its ruling, the appellate court acknowledged that the police locked Salamon in a room and refused his repeated requests to his statutory right to a phone call. Yet the court found that when considered in conjunction with the totality of circumstances, Salamon's statement was voluntary. In so doing, the court minimized the nature of the violation and its impact, and therefore its ruling was in error.

First, the appellate court suggested that "neither a lengthy detention nor the denial of telephone access mandates a finding that the statement was given involuntarily." *Salamon* at ¶60. This assertion fails to acknowledge the powerful interplay of these two factors. Length of detention is a commonly considered factor in evaluating the voluntariness of a statement resulting from custodial interrogation. *See People v. White*, 117 Ill. 2d 194, 223-24 (1987) (noting the coercive impact of a lengthy detention). Refusal of access to a phone call to secure an attorney and isolation from the outside world exacerbated an already potentially coercive tactic.

The appellate court further downplayed the powerful effect of the police officer's methods by suggesting that Salamon did not argue that his

booking was "purposely delayed." *Salamon,* at ¶61. But where there has been such a flagrant disregard of the statute, Salamon made a *prima facie* case that the statement was involuntary and the burden was not on Salamon to show the violation had a nefarious purpose. Rather, the burden was ultimately on the State to prove that the statement was voluntary. 725 ILCS 5/114-11(d). Even so, it is hard to see how allowing 24 hours to pass without providing Salamon with something so simple yet so important as a phone call could not be purposeful. Although Detective Thompson claimed that it was their policy to allow a phone call only after the booking process was complete, he offered no justification for this policy or explanation as to why they could not book Salamon more quickly or efficiently.

The appellate court also reasoned that section 103-3(a) does not provide for an explicit remedy, and suggested that in light of the totality of the circumstances, other factors saved the voluntariness of the statement. *Salamon,* at ¶¶ 61-62. As an initial matter, while the statute does not currently specify a remedy, Illinois' long-standing mandate codified in section 103-3(a) demonstrates Illinois' commitment to this constitutional safeguard. Thus, such a blatant violation of the statute that results in denial of the very safeguards it was intended to protect must be given significant weight within the traditional "totality of circumstances" test and should lean heavily in favor of the remedy of suppression. Otherwise, the police have no incentive to respect or comply with this statutory mandate.

Moreover, the appellate court was wrong to find that in spite of the lengthy and isolated detention, the presence of other factors supported a

finding of voluntariness. The court observed that Salamon was 25 years old, had prior experience with the criminal justice system, did not exhibit diminished physical or mental capabilities and evidenced an understanding of his *Miranda* rights. *Salamon,* at ¶ 62. The court also noted that police abided by Salamon's initial invocation of his rights by ceasing any questioning. *Id*. However, when considered against the backdrop of the isolated and lengthy confinement coupled with the deprivation of an ability to secure his right to counsel, these factors do nothing to ensure confidence in the voluntariness of Salamon's statement.

First, Salamon's prior experience with law enforcement consisted of nothing other than a few cannabis arrests. (C. 162) He had not previously been interrogated or kept in custody for any serious felony. Nor is the impact of the detectives' tactics mitigated by Salamon's perceived physical and mental capabilities. Indeed, while reviewing courts have previously suggested a person's physical and mental abilities might diminish the impact of a parental or familial absence, the average physically and mentally fit person is still not equipped with the knowledge and services that a lawyer can provide, or to deal on his own against members of law enforcement who are using the full extent of their authority to try to obtain incriminating evidence from him. *See McCauley*, 163 Ill.2d at 223-224. ("Our State constitutional guarantees simply do not permit police to delude custodial suspects, exposed to interrogation, into falsely believing they are without immediately available legal counsel.")

Second, the notion that Salamon had been informed of his rights and

purportedly evidenced an understanding of those rights, only compounds the coerciveness of the police conduct. In his previous encounter with these detectives, Salamon was asked to voluntarily come in for questioning. At that time, Salamon invoked his right to counsel and the police respected that invocation. (R. KK30) In the encounter at issue here, the police presented a much stronger show of force when they pulled Salamon over on his way home from work, approached him with guns drawn, assisted by a "fugitive apprehension unit," arrested him, and handcuffed him to a wall in a locked interrogation room. (R. KK31, OO12, UU42-43) While the police previously honored his rights when he invoked his right to counsel, this time they inexplicably denied him access to a phone call. If the police had not allowed Salamon a phone call within five hours, or 12 hours, or 20 hours, what would give him any assurance that the police would ever honor that right? *See Haynes*, 373 U.S. at 514 ("[T]he petitioner was alone in the hands of the police with no one to advise or aid him, and he had 'no reason not to believe that the police had ample power to carry out their threats' to continue, for a much longer period, if need be, the incommunicado detention."). Salamon's understanding of his rights became meaningless where he was powerless to invoke those rights when the police blatantly conveyed an intent to persist in impeding his means to secure his right to counsel.

Similarly, the fact that the police ceased questioning once he invoked his right to counsel is also meaningless. *Salamon,* at ¶ 62. To the contrary, this played into the police tactic of isolation. The point of ceasing questioning is to protect a suspect from succumbing to interrogation while he waits for an

attorney to arrive. But Salamon had no means to even secure an attorney. The detectives turned their duty to cease questioning, intended to shield a suspect, into a sword to further the impact of his isolation.

In this vein, the appellate court in its order tangentially suggested that Salamon did not argue in his brief that his reinitiation or waiver of counsel was involuntary, and suggested that he forfeited this argument. *Salamon*, at ¶¶ 54-55. However, in his brief, Salamon asserted that "where he could not reasonably believe that any attempt to invoke the rights he was told about, specifically, his right to counsel, would be respected. Instead, the police conduct conveyed to Salamon that, regardless of his rights, he would be held and questioned until he told police what they wanted to hear." (See Deft Br. 21) In other words, police conduct rendered Salamon's *Miranda* rights effectively non-existent, and his reinitiation was neither voluntary nor valid. Rather, reinitiation with police was his only means to secure a phone call and communication with the outside world. Moreover, Salamon's actions of reinitiating contact with police and subsequently agreeing to give a statement were all part of a single action induced by his desire for contact with a lawyer. Indeed, it appears that Salamon correctly understood the message conveyed by the police as it was the giving of an inculpatory statement that finally precipitated access to a phone call. (St. Ex. 38, KK39)

In this case, law enforcement created a subtly coercive tactic under the guise of normal police procedure and of honoring a suspect's right to remain silent. Where Salamon could only effectuate his right to counsel by cooperating with the police, his statement was not voluntary.

Admission of Salamon's Statement Was Not Harmless Beyond a Reasonable Doubt.

Finally, the appellate court found that even if the trial court erred in admitting the statement, any error was harmless, suggesting that the remaining evidence would have been sufficient to sustain a conviction, even absent Salamon's statement. *Salamon,* at ¶ 63. This Court has recognized three approaches to determine whether an error is harmless beyond a reasonable doubt: (1) whether the error contributed to the defendant's conviction; (2) whether the other evidence in the case overwhelmingly supported the defendant's conviction; and (3) whether the excluded evidence would have been duplicative or cumulative. *People v. Lerma*, 2016 IL 118496, ¶ 33. Certainly, the improperly admitted statement here contributed to Salamon's conviction and it was not duplicative. Rather, confessions are uniquely viewed as one of the most powerful forms of incriminating evidence that can be presented at a criminal trial. *See People v. Simpson*, 2015 IL 116512, ¶ 36 ("a confession is the most powerful piece of evidence the State can offer, and its effect on a jury is incalculable.") (citing *People v. R.C.*, 108 Ill.2d 349, 356); *People v. Davis*, 393 Ill.App.3d 114, 133-34 (1st Dist. 2009) ("[B]ecause confessions frequently constitute the most persuasive evidence against a defendant, the admission of an unlawfully obtained confession rarely is harmless error"); *People v. Halmon*, 225 Ill.App.3d 259, 278 (1st Dist. 1992) ("A voluntary confession is of convincing character and constitutes the highest and most damaging type of evidence known to law"); *People v. Strong*, 316 Ill.App.3d 807, 815 (3d Dist. 2000) ("The admission of an involuntary confession is unlikely to be harmless given the heavy weight

typically accorded confessions by the trier of fact.").

Moreover, examination of the remaining evidence reveals that Salamon's case is not one of the rare cases where admission of an involuntary statement can be deemed harmless. The appellate court recounted the other evidence introduced against Salamon, but failed to meaningfully address the weaknesses with this remaining evidence. This Court must not remove from the jury its role and responsibility to weigh the strengths and weaknesses of the properly admitted evidence, in the absence of the wrongly obtained and most incriminating evidence against Salamon.

The appellate court first considered Apolonio Retema's testimony that Salamon purportedly made some incriminating statements to him. *Salamon* at ¶ 64. However, Retema's testimony was too vague and problematic to ensure that use of Salamon's statement was harmless beyond a reasonable doubt. Retema claimed that Salamon told him he went with Jackson to rob a bar because Jackson wanted to retaliate against the owner. (R. TT141) Salamon also purportedly told him that he hit the bar owner with a fist while Ray hit him with a pipe, and that they then ransacked the bar and cash register. (R. TT142-143) Retema could not remember precisely when he had spoken to Salamon, only that it was in the fall of 2010. (R. TT147) Though Jose Santos had claimed that Salamon had a crowbar to break into the bar, Retema knew nothing about a crowbar. (R. TT49, 149) Retema did not even know the name of the bar that the men had tried to rob. (R. TT149) And no explanation was provided at trial as to why Salamon would suddenly confess to Retema a year after the offense had occurred.

More significantly, Retema's testimony conflicted with the police testimony on two key points. First, Retama claimed that Salamon told him they had ransacked the bar and the cash register. (R. TT142, 150) The police said that there was no indication that the bar had been ransacked, or that anything was damaged or otherwise amiss. (R. TT93, 96, OO29) There was no testimony that money had been taken and the only things missing were a padlock and Gonzalez's keys to the bar. (R. UU37)

Second, Retema claimed that after his conversation with Salamon, he told Salamon to turn himself in, that he accompanied Salamon to the police station, and that he waited four hours while Salamon remained with the officers. (R. TT141, 144) At the motion to suppress, Detective Thompson testified that the police initiated this meeting with Salamon and they asked Salamon to take a polygraph. (R. KK28-29) Salamon declined and said he wanted to talk to a lawyer, and Thompson told him he was free to leave. (R. KK30) Salamon testified that this initial encounter lasted 15 to 20 minutes. (R. KK19) Indeed, if Thompson told Salamon he was free to leave after he asked for a lawyer, it is unlikely that Salamon was there for four hours as Retema suggested. Moreover, if Salamon went to turn himself in as Retema claimed, it makes no sense that Salamon declined to talk to the police and had no further contact with them for another year.

The appellate court also briefly noted that Jose Santos implicated Salamon in the crime. *Salamon* at ¶ 64. Santos had five prior theft convictions. (R. TT52-53, 57) *See People v. Spates*, 77 Ill.2d 193, 203 (1979) (theft is a crime of dishonesty). Additionally, Santos' testimony suffers from

two significant weaknesses that undermine its reliability: Santos' ability to identify Salamon as the man who had been with Jackson and his motive to extricate himself from the crime.

First, Santos claimed that he entered the back seat of the car with Jackson and another man whom he had never seen before, and that they made plans to rob a bar. (R. TT45-46, 55) It was before midnight when Santos entered the car, and Santos did not testify to the available lighting. (R. TT50) Santos described the second man to the police only as a white male, aged 19 to 25. (R. OO32) Santos told Detective Gillespie that he never saw either man again. (R. OO31) Santos did not identify Salamon as the second man until four months after the offense when the police showed him a photo array containing Salamon's picture. (R. OO11, 22) Santos' identification at trial was less than certain; he merely said, "that looks like him over there." (R. TT44)

Second, Santos was motivated to put the blame elsewhere. It was Santos who the police first connected to this crime. The police immediately suspected Jackson as being involved because of his prior altercation with the decedent. (R. OO24) In November of 2009, shortly after the offense, the police talked to Santos, who had known Jackson for 10 years. (R. OO19, TT54) Santos told the police that he initially agreed to participate in the robbery but claimed that he later changed his mind because he was afraid something could go wrong. (R. TT49-50) Santos, who has a proclivity to theft and stealing, certainly was motivated to extricate himself from involvement with this burglary. Although Santos identified Salamon as the man who had

been with Jackson from a photo array in February of 2010, the police made no effort to contact or speak to Salamon until November of 2010. (R. OO22, KK28) The police had a brief encounter with Salamon and did not contact him again until November of 2011. (R. KK30) In other words, from the time of Santos' purported identification of Salamon in February 2010 until November of 2011, the police did not believe they had probable cause to arrest Salamon. Certainly Santos' testimony is not sufficient to render the admission of the statement harmless.

The final piece of circumstantial evidence noted by the appellate court was that Detective Gillespie checked Jackson's phone records and learned that Jackson had made a couple of calls to Salamon on the night of the offense. *Salamon*, at ¶ 64. However, Detective Gillespie testified that there were also many other numbers found on Jackson's phone records. (R. OO43, UU18) Gillespie ran the numbers through a Chicago police database. Santos had described a white male and Gillespie found Salamon's photo in the database. (R. UU18) Also, although Jackson's phone "pinged" a tower close to the scene of the crime, there was no evidence that Jackson was ever charged with or convicted of the crime. Although the State's theory at trial was that Salamon assisted Jackson with this crime, there is no assurance that Jackson was in fact the principal offender. Circumstantial evidence that Jackson made a phone call to Salamon was too attenuated of a link in the chain to confidently connect Salamon to this offense. Nor did any physical evidence link him to the crime.

The appellate court relied on *People v. Mitchell*, 152 Ill.2d 274 (1992) to

support its finding of harmless error. *Salamon*, at ¶ 64. But the evidence in this case is not of the overwhelming nature of the evidence used to support a harmless error finding in *Mitchell*. There, it was undisputed that the defendant had been at the scene of the crime on the night of the murder. *Id*. at 328-329. Physical evidence that was undeniably connected to the crime was found in defendant's basement. *Id*. A witness was with defendant on the night of the murder and he testified that defendant left the witness's car for 10 minutes, and when he returned, told the witness he had killed two people and showed the witness a bloody knife which was found in the defendant's basement. *Id*.

The evidence in this case is not similarly so damning to ensure that a jury would have convicted Salamon absent his statement. The jury had reason to question the credibility of Retema and Santos. Clearly, the jury was focused on Salamon's statement as they asked for and were allowed to view the video-recorded statement during deliberations. (R. VV67) While the remaining evidence might have appeared to be somewhat corroborative of Salamon's statement, it is not certain that it would otherwise lead to a conviction. Rather, it is likely that in the absence of Salamon's statement, the trier of fact would give less credence to the testimony of the witnesses. Should this Court determine that Salamon's statement was involuntary, Salamon should have an opportunity to fully challenge the witnesses and cross-examine them as to their motives and other potential weaknesses in their testimony, and a jury should have an opportunity to deliberate this case in the light of properly admitted evidence.

Conclusion

In sum, the police utilized a subtle yet powerful tactic to extract a statement from Andrew Salamon when they kept him isolated, handcuffed to a wall in a locked interrogation room. The police refused his repeated requests to contact an attorney and gave him every reason to believe that the only way he would ever find his way out of that room would be if he gave a statement. Under these conditions, Salamon's statement was not voluntary and should be suppressed, and the cause remanded for a new trial.

CONCLUSION

For the foregoing reasons, Andrew Salamon, petitioner-appellant, respectfully requests that this Court reverse the appellate court's ruling, find that Salamon's statement should be suppressed, and remand for a new trial.

Respectfully submitted,

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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 or words contained in the Rule 341(d) cover, the Rule 341(h)(1) 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, is 33 pages.

/s/Linda Olthoff
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Supervisor

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2019 IL App (1st) 160986-U
No. 1-16-0986

SECOND DIVISION
December 24, 2019

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ANDREW SALAMON, Defendant-Appellant.	)	Appeal from the Circuit Court of Cook County. No. 12 CR 2706 The Honorable Erica L. Reddick, Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Lavin concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's first degree murder, armed robbery, and burglary convictions affirmed where the circuit court properly denied his pretrial motion to suppress his statement.

¶ 2 Following a jury trial, defendant Andrew Salamon was convicted of first degree murder, armed robbery, and burglary. On appeal, defendant seeks reversal of his convictions, arguing that the circuit court erred in denying his pretrial motion to suppress the inculpatory statement that he made to law enforcement officials after his arrest. He argues that the statement was obtained in

contravention of his constitutional and statutory rights. For the reasons explained herein, we affirm the judgment of the circuit court.

¶ 3 BACKGROUND

¶ 4 In the early morning hours of October 4, 2009, 69-year-old Robert Gonzalez was physically attacked outside of the local bar that he owned. Approximately 15 hours after the assault, Gonzalez succumbed to his injuries and died. A police investigation into the crime ensued and defendant and another man named Raymond Jackson[1] became suspects relatively early on in the investigation. Defendant, however, was not arrested in connection with the crime until approximately two years later. At that time, he was charged with multiple offenses, including murder, armed robbery, and burglary.

¶ 5 Suppression Proceedings

¶ 6 Following his arrest, defendant filed a motion to suppress a statement he made to the officers investigating Gonzalez's death and to an Assistant State's Attorney (ASA). In the filing, defendant contended law enforcement officers impermissibly obtained the statement after he invoked his constitutionally protected right to speak with counsel. He further argued that the officers violated his Illinois statutory right to a phone call despite his repeated requests to make a call, which deprived him of his right to contact an attorney and rendered his statement involuntary. The circuit court presided over a hearing on defendant's motion.

¶ 7 At the hearing, defendant testified that the first encounter he had with police officers investigating Gonzalez's death occurred on November 15, 2010. On that date, he received a phone call from a detective who had "some routine questions" for him about an unspecified matter. In response to

[1] The record contains no evidence as to whether Jackson was also charged in connection with Gonzalez's death. At the oral argument held in the matter, the Assistant State's Attorney who argued the case had no information about Jackson.

the call, defendant met with Detectives Thompson and Gillespie at the police station. At the station, the detectives began asking him questions about Raymond Jackson, a man defendant knew, in relation to a "serious matter," specifically a murder. At that point, defendant informed the detectives that he "would be more comfortable speaking with an attorney first before [he] talked to them." In response, the detectives told him that he was "free to go," and defendant left the station.

¶ 8 Defendant's next encounter with law enforcement occurred nearly one year later on November 9, 2011. On that date, he was pulled over by two police cars as he was driving home from work. After he stopped his vehicle, several officers displaying their handguns surrounded him and ordered him out of his car. Defendant was then handcuffed and placed in the back of one of the police cars. The two detectives with whom he had spoken a year earlier were also in the car. The detectives warned him that it was his "last chance to cooperate," but defendant responded that he "did not wish to cooperate" and reiterated that he "wanted to speak to a lawyer." The detectives ultimately escorted him to an interrogation room at the police station and advised him of his *Miranda* rights. Defendant again repeated that he wanted to "speak to a lawyer;" however, he was not permitted to use a telephone to call an attorney or members of his family. He spent the night alone in the interview room. He was only permitted to leave the room to use the bathroom. During those bathroom breaks, officers continually urged him to cooperate with their investigation.

¶ 9 Defendant testified that he made repeated requests for a phone call, stating: "I know I was screaming for it. I asked for it several times. I said I wanted a phone call. I know I was banging on the door, kicking the door saying I want a phone call." He relayed his desire for a phone call to multiple officers; however, none of the officers permitted him the use of a telephone. Sometime on November 10, 2011, after he invoked his right to an attorney and after his repeated requests for

a phone call were ignored, defendant provided a statement to the detectives. Shortly thereafter, he provided a videotaped statement to an ASA.

¶ 10 On cross-examination, defendant estimated that his first interview with detectives in 2010 lasted "maybe 15 minutes." On that occasion, he drove himself to the interview and was never handcuffed or given *Miranda* admonishments. The detectives simply spoke to him for a short time and inquired whether he would be willing to submit to a polygraph examination; however, when he responded that he would be more comfortable doing so with an attorney present, the detectives told him that he was free to leave and defendant left the station.

¶ 11 When asked to provide further details about his interaction with officers following his November 9, 2011, arrest, defendant recalled that detectives activated electronic recording equipment when they entered the interview room. He acknowledged that when he told the detectives that he did not wish to speak to them without an attorney present, they stopped asking him questions and left the interview room. Although he remained in the interview room overnight, he was provided with food and water and was escorted to the bathroom on at least three or four occasions. He was also given contact lens solution when he experienced problems with his eyes. Defendant confirmed that detectives did not question him about any crime after he requested an attorney; however, the officers who escorted him to and from the bathroom urged him to cooperate with their investigation. Defendant recalled that he started crying and pounding on the interview room's walls sometime on November 10, 2011. When an officer opened the door, defendant indicated that he wanted to speak to Detectives Thompson and Gillespie. Shortly thereafter, the detectives reentered the interview room. At that point, the detectives again admonished defendant of his *Miranda* rights, explaining that they needed to do so because he had initially declined to speak with them without an attorney present. After being readmonished, defendant admitted that he

provided the detectives with a statement. He provided another statement to an ASA who arrived sometime thereafter.

¶ 12 On redirect examination, defendant testified that when he began pounding on the interview room's wall, he did so because he wanted to call his mother so that she could find him an attorney. When Detectives Thompson and Gillespie reentered the interview room, however, they informed him that he would have to "wait" for a phone call. Ultimately, he was never provided with an opportunity to make a phone call.

¶ 13 Detective Timothy Thompson testified that he met defendant for the first time on November 15, 2010, when defendant drove himself to the police station to speak with them at their request. He confirmed that on that occasion, defendant was not under arrest, handcuffed, or given *Miranda* warnings. He recalled that he and his partner, Detective Gillespie, simply had a conversation with defendant and asked if he would be willing to take a polygraph. Defendant, however, declined and indicated that he wanted to have an attorney with him before doing so. In response to defendant's invocation of his right to counsel, the detectives informed defendant that he was free to leave and he did so.

¶ 14 Detective Thompson next encountered defendant on November 9, 2011, the date that defendant was arrested in connection with Gonzalez's murder. Following his arrest, defendant was transported to the Area North Police Station. Shortly after 6 p.m., defendant was placed in an interview room. Detective Thompson testified that he activated the room's electronic recording system and immediately advised defendant of his *Miranda* rights. After being advised of his rights, defendant indicated that he wanted to speak with an attorney. At that point, Detective Thompson and his partner ceased speaking to him and left the room. Detective Thompson testified that he did not ask defendant any questions or speak to him about the homicide and robbery at issue until

sometime around 5:15 p.m. the following day, after defendant reinitiated contact with them. He confirmed that defendant was provided with food, water, and contact lens solution during the time that he remained at the station. Defendant was also given bathroom breaks. Detective Thompson recalled that he personally escorted defendant to the bathroom at least once; however, he denied that he spoke to defendant about the case on that occasion.

¶ 15 Sometime after 5 p.m. on November 1, 2011, his colleague, Detective Moriarty, informed him that defendant was kicking the door of the interview room. When he and his partner entered the interview room, defendant stated that he was "ready to talk." Given that defendant had initially declined to speak with them, he was informed that he would need to be re-*Mirandized*. After Detective Thompson re-admonished defendant, he proceeded to speak with them about Gonzalez's murder.

¶ 16 Detective Thompson testified that the electronic recording instrument remained "continuously" activated from the time that defendant was initially brought into the interview room on November 9, 2011, to the time that defendant gave his statement the following day.[2] The equipment was also activated when defendant provided another statement to ASA Miki Miller. Detective Thompson acknowledged that defendant was not afforded an opportunity to make a phone call until after he spoke to ASA Miller. He explained, however, that pursuant to Area North's procedure, arrestees are not "normally" given phone access until after the booking process is completed. Defendant was not booked until he provided his statement to them and to ASA Miller.

¶ 17 On cross-examination, Detective Thompson testified that he "d[id not] specifically recall" whether defendant asked to make a phone call after he invoked his right to counsel following his 2011

[2] The record on appeal only contains a video recording of the statement that defendant provided to ASA Miller. Video footage of the hours that defendant spent in custody confined to the interview room has not been provided to this court.

arrest, but admitted that defendant "could have" done so. He also acknowledged that defendant remained locked in the interview room for approximately 24 hours after he first requested to speak to an attorney. Given that defendant remained confined to the interview room, defendant had no means to contact an attorney during that time. Detective Thompson confirmed that defendant remained handcuffed and locked alone in the interview room until he reinitiated contact with the officers around 5 p.m. on November 10, 2011.

¶ 18 After hearing the aforementioned testimony, the court denied defendant's motion to suppress, explaining its ruling as follows:

> "The Court after considering the evidence and the arguments finds that the statements were not taken in violation of the defendant's rights as to *Miranda* warnings. The Court does find that considering all of the evidence that has come forth that the defendant did reinitiate contact with the police. That the police did provide detailed *Miranda* warnings to the defendant at that time. The defendant indicated that he understood the warnings and that he waived them and did, in fact, agree to speak with the police.
>
> That the police were slow in providing a phone call. Certainly the Court understands the argument of counsel with respect to his ability to access a phone call and attorney services during the time. But the Court does not find improper conduct on the part of the police or conduct violating *Miranda* warnings or any constitutional rights.
>
> As such the motion to suppress statements is denied."

¶ 19 Thereafter, the cause proceeded to trial.

¶ 20 Trial

¶ 21 At trial, Sam Kelfino testified that he had known Gonzalez, the owner of O'Lanigan's bar, for 30 years and described him as a "good friend." In September 2009, Gonzalez had hired Kelfino, who

worked as a contractor, to remodel the exterior of the establishment. On September 11, 2009, Kelfino spent the day working on the remodel. At the end of his workday, Kelfino went home, showered, and then returned to the bar with his girlfriend later that evening. Sometime that evening when Kelfino stepped outside of the bar to smoke a cigarette, he was approached by Raymond Jackson. Kelfino explained that he knew Jackson "briefly" as he had encountered him once or twice before and described him as the "neighborhood bully." Kelfino was standing by a pole located near the entrance of the bar when Jackson approached him and ordered him to move. When Kelfino did not immediately respond to his order, and Jackson stated that they could "do this the hard way or the easy way." He then "swung and hit" Kelfino in the mouth with his fist. Kelfino, who was a former professional boxer, responded by punching Jackson in the right side of his face. Jackson was knocked out by Kelfino's punch and fell the ground. As Jackson lay unconscious on the ground, the police were called. When Jackson regained consciousness, he wanted to enter the bar, but Gonzalez refused him entry. Kelfino recalled that Jackson became "upset" at Gonzalez because Gonzalez "was kind of laughing at him because he got knocked out" and did not allow him into the bar. Jackson was ultimately taken to the hospital.

¶ 22 Kelfino testified that Jackson called him approximately one week after their altercation and asked Kelfino "to go in cahoots with him" and falsely say that their altercation had occurred inside of the bar so that Jackson could file a lawsuit and recover money from the bar. Kelfino, however, declined Jackson's request.

¶ 23 Iulia Valozna, a bartender at O'Lanagan's, started her shift on October 3, 2009, at 7 p.m. and worked until 3 a.m. on October, 4, 2009, which is the time the bar closed. That night, the bar was "slow" and "quiet." Once the last customer left, Valozna and Gonzalez counted the money and Gonzalez paid her what she was owed. Valozna estimated that the bar only brought in "maybe"

$400-450 that evening. The two then prepared the bar for business the next day, a process that lasted approximately 30 minutes. Afterwards, Valozna exited the bar through the rear door. Gonzalez followed her to the door and watched out the window to ensure that she made it safely to her car. Valozna testified that Gonzalez was responsible for setting the alarm after she left the building. She never saw Gonzalez alive after that night.

¶ 24 Jose Santos, an acquaintance of Jackson's for 10 years, testified that one evening toward the end of September 2009, he was with Jackson and they were looking for Sam Kelfino. The two men went to a bar called "June's," which was located around the corner from O'Lanagan's, but they were unable to find Kelfino that evening. Santos recalled that as they were searching for Kelfino, Jackson was concealing a "lead pipe" in his shirt sleeve. The pipe was about a foot and a half long and had tape wrapped around the handle.

¶ 25 Santos next saw Jackson on the evening of October 3, 2009. On that occasion, Jackson and defendant drove over to Santos's house. Santos had not met defendant prior to that evening and Jackson introduced him as his friend, Andrew. Santos entered the backseat of the vehicle and the three men had a conversation "about doing a burglary" at O'Lanagan's. Based on their estimations of the bar's proceeds, the men expected the robbery to yield $5,000. During the course of the conversation, the men agreed that Santos would act as the "watch out" while defendant broke into the bar's gambling machines and Jackson recovered a box of money from the lower level of the bar. According to Santos, defendant was planning on using the crowbar that was in his possession to break into the bar's gambling machines. Because this discussion occurred before midnight and the bar did not close until 2 or 3 a.m., Santos instructed Jackson and defendant to return and pick him up later. Although Santos was initially planning on being involved in the burglary, he testified

that he started feeling that "something was going to go wrong" and that he ultimately decided not to go to O'Lanagan's with defendant and Jackson later that night.

¶ 26 After the crime, Santos was asked to view a photo array, which contained six pictures. Defendant's picture was included in that array and Santos identified him as the man he had seen with Jackson the night of the robbery.

¶ 27 On cross-examination, Santos testified that he knew Jackson from the neighborhood and that they had been members of rival gangs. He considered Jackson to be dangerous and testified that he was often high on drugs, particularly crack cocaine. On the night that he went with Jackson to look for Kelfino, Santos called one of his friends to let him know he was with Jackson in case he disappeared. Santos admitted that he had five prior convictions for retail theft.

¶ 28 Apolonio Retama, defendant's friend for the past 15 years, testified that he received a phone call from defendant sometime in the Fall of 2010 and defendant relayed that he had "d[one] something bad." In response, Retama invited defendant over to his house to talk in person, and defendant did so. During their subsequent conversation, defendant, who was visibly upset, expressed his concern that he was going to "go[] down for murder." Defendant explained that he "went with [Jackson][3] to a bar" to "help [Jackson] rob it." According to defendant, Jackson wanted to rob the bar because he had been involved in a fight at the bar and "he wanted to get even with the owner" who had thrown him out. After hearing Jackson's story, defendant "agreed to go with him to rob the place." Defendant told Retama that he and Jackson arrived at the bar "sometime after closing" to "ransack[] the cash register and the bar." While they were there, they "ran into the owner." When the bar owner grabbed defendant's shoulder, defendant punched the owner's head with a closed

[3] In his confession to Retama, defendant referred to Jackson as "Ray."

fist and Jackson "hit the guy with a pipe." According to defendant, Jackson continued to "hit the guy [with the pipe] until he died."

¶ 29 After hearing defendant's account of what had occurred, Retama urged him to turn himself in to police. Defendant agreed to talk to law enforcement officials and Retama accompanied him to the police station. Retama sat in the waiting room while defendant spoke to detectives. He estimated that defendant was "gone with the officers" for approximately four hours. When defendant returned, he was "scared" and "shaking." The two then left the police station together. Retama testified that no one else was present during the conversation that he had with defendant in the Fall of 2010.

¶ 30 On cross-examination, Retama acknowledged that defendant never specifically told him where the murder occurred or identified the bar in question. Defendant also never said anything about possessing a crowbar himself. Moreover, defendant "didn't tell" Retama whether he and Jackson had actually entered the bar.

¶ 31 Thomas Schultz testified that he works as a project manager at Keith Technologies, the company that installed the alarm system at O'Lanagan's. The alarm system had panels installed at the front and back doors of the establishment. A motion detector was installed at the front door as well, which was designed to detect movement within the bar. The system could be armed or disarmed at either point of egress and data reflecting the arming and disarming of the system was stored within the alarm panels. A person making entry at either location would have 30 seconds to input the proper code before the alarm would be triggered. In the event that the alarm was triggered, a signal would be sent to the monitoring company, and an employee from that company would then contact the client.

¶ 32 Schultz testified that he reviewed the data stored in O'Lanagan's alarm panels as well as the reports maintained by the monitoring company reflecting the system's use on October 4, 2009. The data reflects that the system was armed at 4:23 a.m. on October 4, 2009. The rear door was subsequently breached at 4:26 a.m., and the alarm was triggered. The rear door was then closed and opened again one minute later. After the alarm was triggered, the monitoring company made phone calls to two different numbers, but was unable to obtain a response. As a result, the monitoring company notified the Chicago police. The establishment's motion detector was triggered by movement within the building at 4:43 a.m., which may have signaled the arrival of the responding officers. Schultz testified that he inspected O'Langan's alarm system the next morning and found that it was in proper working order.

¶ 33 Chicago Police Officer Emmert Gouthier testified that he was dispatched to investigate the sounding of an alarm at O'Lanagan's, a bar located at 2335 West Montrose at approximately 4:47 a.m. on October 4, 2009. At the time of the dispatch, he was on routine patrol in the area and he estimated that he arrived at the bar within two or three minutes after receiving the dispatch. Shortly thereafter, he was joined by Officer Lutzow, who had also been assigned to investigate the alarm. The two officers first approached the front door and found that it was "locked and secure." There were no broken windows or other signs of forced entry visible from the front of the bar. The officers then walked to the rear of the building and Officer Gouthier discovered that the rear door was unlocked. The officers entered the bar and found it empty. When the officers exited the building, Officer Gouthier heard a "growling noise." He shined his flashlight on the ground to locate the source of the noise and noticed "traces of blood" on the sidewalk. He followed the trail of blood and discovered Gonzalez lying on the ground between two vehicles that were parked in the bar's rear parking lot. Officer Gouthier observed a "lot of blood" pooled around Gonzalez's

head and immediately used his radio to call for an ambulance. As they waited for the ambulance to arrive, Officer Lutzow spoke to the Gonzalez, but he was unresponsive. Officer Gouthier walked around the scene and observed blood, a cell phone, and a pair of glasses on the grass parkway.

¶ 34 On cross-examination, Officer Gouthier testified that there were no pry marks by the rear door. Although the officers found that rear door was unlocked, it was shut when they arrived at the scene. In his opinion, the bar did not appear to have been ransacked.

¶ 35 Carol Thornton, a paramedic with the Chicago Fire Department, was dispatched to O'Lanagan's bar at approximately 4:46 a.m. on October 4, 2009. When she encountered Gonzalez at that location, Thornton conducted a preliminary assessment of his physical condition. At that time, he was breathing on his own and was making "grumbling" and "groaning" noises; however, he was unable to respond verbally to any commands. Thornton observed two lacerations on his head that were approximately four to five inches in length. In an effort to stop the bleeding, Gonzalez packed Gonzalez's wounds with gauze. She also provided Gonzalez with supplemental oxygen and used a C-collar and a long board to immobilize him before transporting him to Illinois Masonic Hospital. When he arrived at the hospital, Gonzalez was still alive and breathing on his own; however, he remained non-verbal and unresponsive.

¶ 36 Dr. Stephen Cina, chief medical examiner at the Cook County Medical Examiner's Office and a qualified expert in the area of forensic pathology, reviewed Gonzalez's autopsy report that was completed by a former member of his office. The report contained findings that were made following external and internal examinations of Gonzalez's body. The external examination revealed that Gonzalez had "three large lacerations on the back of his head," which were caused by "blunt force" trauma. In addition, Gonzalez had "some skull fractures which resulted in

bleeding into the tissues around his eye," as well as an abrasion on his right wrist, and several bruises on his right forearm. The internal examination provided additional evidence of skull fractures as well as evidence of bleeding and bruising of the brain. Given the nature of Gonzalez's injuries, Dr. Cina believed that he had been struck by a weapon that was relatively narrow, but heavy enough to be wielded with force, such as a pipe, crow bar, or baseball bat. Based on his examination of the autopsy report, Dr. Cina opined that Gonzalez died as a result of "cranial cerebral blunt force injuries" that were caused by "multiple impacts to the head." He classified the manner of Gonzalez's death as a homicide.

¶ 37 Mikki Miller, an ASA, with the Cook County State's Attorney's Office, testified that she conducted an interview with defendant on November 10, 2011, at approximately 8 p.m. at the Area North police station. Detective Gillespie was also present for the interview, which lasted approximately 30 minutes and was recorded on video. Based on her review of the recording, Miller testified that it fairly and accurately depicted her interaction with defendant. The recording was then published to the jury.

¶ 38 In the recording, defendant stated that he had met Jackson "through friends," but that they had only spoken 5 or 6 times prior to October 3, 2009. That evening, defendant went out for drinks with Jackson. When he picked Jackson up, defendant observed him wrapping a metal pipe with black tape. Jackson told defendant that he had been to a bar recently where he had been in an altercation and that the owner of the bar had laughed at him, which "really pissed [Jackson] off." Jackson explained that he was going to take the pipe with him "just in case" he needed it "for protection." Defendant and Jackson then went to a local bar and had drinks. While they were drinking, Jackson proposed robbing the bar owner who had laughed at him. Jackson explained that there were several poker machines at O'Lanagan's and estimated that they could walk away

with $50,000 if they emptied the machines after the bar closed. Defendant did not have any money so he agreed to take part in the robbery. Specifically, he agreed to act as the "lookout" while Jackson would enter the bar and would take the money.

¶ 39 The two men went to three or four other bars that evening and consumed one or two drinks at each establishment. They agreed that O'Lanagan's would be the last stop and that defendant would enter the bar, have a drink, and take a look around to see if there were any cameras inside. Defendant did so. When he joined Jackson in the car, Jackson stated that he "kn[e]w somebody that c[ould] help [them] out." Following Jackson's directions, defendant drove to Santos's[4] house. Defendant had not met Santos before that evening. When they reached Santos's house, he joined the two men in defendant's car and Jackson told him about their plans for the robbery. Santos, however, ultimately declined to take part in the crime because he was on parole.

¶ 40 At that point, defendant and Jackson left Santos's house and drove around for a while as they waited for O'Lanagan's to close. As defendant was driving, Jackson leaned out of the car window and smashed the window of a parked car with his metal pipe. Jackson explained that he wanted to "test" out the pipe, but defendant thought he was crazy. Defendant then drove back to O'Lanagan's and the two men watched people leave the bar. After a period of time, Jackson approached the rear door of the bar and found it locked. Jackson saw Gonzalez inside of the bar and he told defendant that he would get the keys to the bar from Gonzalez. When defendant inquired how Jackson was going to do that, Jackson responded that he was "a persuader." Shortly thereafter, Gonzalez exited the bar via the rear door. When he did, he noticed defendant, who was standing there with his hood pulled over his head. Gonzalez began walking away from him. At that point, Jackson then "swung" at Gonzalez, who stumbled and fell to the ground. Jackson continued hitting

[4] In the recording, defendant refers to Santos by his nickname, "Mentos."

Gonzalez with the pipe and defendant could tell from the manner in which Jackson attacked Gonzalez that there was a "personal" issue between the men. Defendant yelled at Jackson to stop hitting Gonzalez because the pipe was "not part of the plan."

¶ 41 Once Jackson stopped striking Gonzalez with the pipe, he dragged Gonzalez's body in between two cars that were in the rear parking lot. He then gave defendant the keys that he had recovered from Gonzalez. Defendant used the keys to open the rear door, but he immediately heard beeping noises, which he believed was an alarm. As a result, he never actually entered the bar. Instead, he "took off" back to his car. When he reached his vehicle, defendant observed Jackson using baby wipes to clean the pipe. At that point, defendant stated that he knew that Jackson had "planned" to attack Gonzalez. As the two men drove away from the scene, Jackson put his hands down defendant's pocket looking from the money, but defendant explained that he had never entered the bar because of the alarm. Jackson then instructed defendant to keep quiet about what had happened. Defendant recalled that he "flipped" Gonzalez's keys out of his car window as he was driving and that Jackson disposed of the pipe in a garbage can near his house. When they arrived at Jackson's house, defendant noticed that there was blood on the passenger seat. Defendant subsequently used soap and water to clean his car.

¶ 42 Two days later, Jackson called defendant to make sure that he was "keeping his mouth shut." Defendant assured Jackson that he was and Jackson responded, "good." According to defendant, that was the last occasion that he talked to Jackson. Approximately one year later, defendant learned that the police wanted to talk to him. He told his friend Apolonio Retama[5] about the events that transpired at the bar and Retama accompanied him to the police station. Defendant did not recall if he told Retama that he personally touched Gonzalez, but stated that he "never touched the

[5] In the recording, defendant refers to Retama by his nickname, "Polo."

guy at all." If he had told Retama that he had touched Gonzalez, defendant explained that he likely did so to avoid looking "like a bitch."

¶ 43 Detective John Gillespie testified that he was dispatched to O'Lanagan's bar on October 4, 2009. After he went to the scene to "look around," he returned to the Area North police station. Later that day, he had a conversation with Sam Kelfino, who relayed his suspicions that Jackson had attacked Gonzalez. Kelfino described about the altercation he had with Jackson several weeks earlier and explained that Jackson "was looking for retaliation and reimbursement for his hospital bills." Detective Gillespie continued his investigation and interviewed Jose Santos on November 6, 2009. During the interview, Santos informed him that Jackson and another man had approached him and discussed burglarizing O'Lanigan's bar. Santos did not know the name of the other man, but described him as a "white male in his early 20's." Based on the information he had been provided, Detective Gillespie subpoenaed Jackson's cell phone records to ascertain "who he might have been talking to before the murder occurred." Jackson's records established that defendant was one of the individuals that Jackson called around the time of the murder. After obtaining defendant's name, Detective Gillespie searched for defendant in the police database. His search revealed that defendant matched the description of the unknown individual provided by Santos. As a result, Detective Gillespie included defendant's picture in a six-person photo array that he subsequently showed to Santos. After viewing the photo array, Santos identified defendant as the man who had been with Jackson when they discussed the burglary.

¶ 44 Thereafter, on November 15, 2010, Detective Gillespie and his partner, Detective Thompson, interviewed defendant at the Grand and Central station. Defendant was not arrested at that time and Detective Gillespie continued his investigation. Defendant was eventually arrested for his involvement in the crime on November 9, 2011, when he was apprehended by the Fugitive Unit.

Following his arrest, defendant was transported to Area North and was taken to an interview room, which was equipped with a table, chair, a bench, and a ring affixed to the wall. Detective Gillespie testified that defendant was immediately handcuffed to the wall to ensure officer safety. Defendant remained in the interview room for more than 24 hours. During that time, he was kept handcuffed to the wall except for the occasions when he was taken to the bathroom or when he was given cigarettes, food, and something to drink.

¶ 45 After presenting the aforementioned testimony, the State presented a series of stipulations. Pursuant to the first stipulation, the parties agreed that if called upon to testify, Ruben Ramos, a forensic scientist with the Illinois State Police Forensic Scientist Command, would testify that he received various evidence collected in connection with the crime as well as DNA standards taken from both defendant and Jackson. None of the evidence collected at the crime scene that was suitable for DNA analysis and comparison was found to match the DNA profiles of either defendant or Jackson. The parties further stipulated to the testimony of Sheila Dougherty, a forensic scientist in the fingerprint section of the Illinois State Police Forensic Sciences Command and an expert in the field of fingerprint analysis. If called as a witness, Dougherty would testify that she received several items collected in connection with the crime, but was unable to find any fingerprints suitable for analysis and comparison on any of those items. Finally, the parties stipulated that in January 2010, Detective Gillespie subpoenaed Jackson's cell phone records. Those records revealed that Jackson's cell phone pinged a cell phone tower at 4740 North Western Avenue on October 4, 2009, at 4:04 a.m. That tower is located approximately 4 blocks away from O'Lanagan's bar. The records further revealed that Jackson's cell phone pinged a different cell phone tower located at 2802 North Milwaukee Avenue on October 4, 2009, at 4:44 a.m.

¶ 46 After presenting the aforementioned evidence, the State rested its case-in-chief. The defense rested without calling any witnesses and the parties delivered closing arguments. After receiving the relevant instructions, the jury commenced deliberations and returned with a verdict finding defendant guilty of burglary, armed robbery, and first degree murder. Defendant's posttrial motion was denied and the cause subsequently proceeded to a sentencing hearing where the State presented evidence in aggravation and the defense presented evidence in mitigation. After considering the evidence presented, the court sentenced defendant to 25 years' imprisonment for first degree murder, 8 years' imprisonment for armed robbery, to be served consecutively to the first degree murder sentence, and 4 years' imprisonment for burglary, the sentence to be served concurrently with his armed robbery sentence. Defendant's postsentencing motion was denied and this appeal followed.

¶ 47 ANALYSIS

¶ 48 On appeal, defendant argues that the circuit court erred in denying his pretrial motion to suppress his inculpatory statement. Specifically, he argues that the statement was improperly obtained in contravention of his constitutional and statutory rights because it was made after he invoked his right to an attorney and after officers precluded him from making a phone call while he was in custody.

¶ 49 The State responds that the circuit court properly denied defendant's motion to suppress where defendant, after initially invoking his right to counsel, voluntarily reinitiated contact with police, waived his *Miranda* rights, and admitted to his role in Gonzalez's murder.

¶ 50 As a general rule, a circuit court's ruling on a motion to suppress is subject to a bifurcated two-prong standard of review. *Ornelas v. United States*, 517 U.S. 690, 699 (1996); *People v. Johnson*, 237 Ill. 2d 81, 88 (2010). Pursuant to this standard, a reviewing court will afford great deference

to the circuit court's factual findings and will disregard those findings only where they are against the manifest weight of the evidence. *Johnson*, 237 Ill. 2d at 88; *People v. Lopez*, 2013 IL App (1st) 111819, ¶ 17. The circuit court's ultimate legal finding as to whether suppression is warranted, however, is subject to *de novo* review. *People v. Colyar*, 2013 IL 111835, ¶ 31; *People v. Bartelt*, 241 Ill. 2d 217, 234 (2011). Accordingly, "[a] court of review 'remains free to engage in its own assessment of the facts in relation to the issues presented and may draw its own conclusions when deciding what relief should be granted.' " *People v. Gherna*, 203 Ill. 2d 165, 175-76 (2003) (quoting *People v. Crane*, 195 Ill. 2d 42, 51 (2001)). When conducting this analysis, a reviewing court may consider the evidence presented at trial in addition to the evidence presented during the earlier suppression hearing. *People v. Almond*, 2015 IL 113817, ¶ 55.

¶ 51 With respect to the admissibility of a suspect's statement, federal and state constitutional mandates prohibit the admission of any statement that was made involuntarily (*People v. Nicholas*, 218 Ill. 2d 104, 118 (2005); *People v. Jones*, 2014 IL App (1st) 120927, ¶ 48). The admission of a defendant's involuntary statement in a criminal trial amounts to a denial of due process of law. See *Jackson v. Denno*, 378 U.S. 368, 376 (1964)) (explaining that "a defendant in a criminal case is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary confession without regard for the truth or falsity of the confession [citation], and even though there is ample evidence aside from the confession to support the conviction").

¶ 52 Throughout the years, courts have recognized that the conduct of law officials may affect the voluntariness of a suspect's statement. See *J.D.B. v. North Carolina*, 564 U.S. 261, 268 (2011) (quoting *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977) (observing that "[a]ny police interview of an individual suspected of a crime has 'coercive aspects to it' " and creates a risk that a statement obtained from a suspect is not the product of the suspect's free will). Custodial police

interrogations, in particular, which involve isolation and other "inherently compelling pressures" (*Miranda v. Arizona*, 384 U.S. 436, 467 (1981)) " 'heighte[n] the risk' " that any statements procured during such an interrogation are not the product of the suspect's free choice (*J.D.B.*, 564 U.S. at 268-69 (quoting *Dickerson v. United States*, 530 U.S. 428, 435 (2000)). Recognizing this risk, the United States Supreme Court "adopted a set of prophylactic measures designed to safeguard the constitutional guarantee against self-incrimination" and mandated that a suspect who is the intended subject of a custodial interrogation or its functional equivalent " 'must be warned that he has the right to remain silent, that any statement he does make may be used as evidence against him, and that he has the right to the presence of an attorney, either retained or appointed.' " *Id.* at 269 (quoting *Miranda*, 384 U.S. at 444).

¶ 53 If, after being informed of the right to have counsel present, a suspect invokes his right to an attorney, the custodial interrogation must cease until the suspect is provided with the opportunity to confer with an attorney and to have counsel present during any subsequent questioning. *Miranda*, 384 U.S. at 474; *People v. Olivera*, 164 Ill. 2d 382, 389 (1995). This rule is " 'designed to prevent police from badgering a defendant into waiving his previously asserted *Miranda* rights.' " *Davis v. U.S.*, 512 U.S. 452 (1994) (quoting *Michigan v. Harvey*, 494 U.S. 344, 350 (1990)). Accordingly, once a suspect invokes his right to counsel, law enforcement personnel are precluded from questioning him or from engaging in any conduct designed to elicit an incriminating response from the suspect until counsel has been made available unless the accused initiates further communications, exchanges, or conversations with police. *Edwards v. Arizona*, 451 U.S. 477, 484 (1981); *Olivera*, 164 Ill. 2d at 389-90.

¶ 54 In this case, there is no dispute that following defendant's arrest for Gonzalez's murder, he was taken to an interview room, informed of his *Miranda* rights, and that he invoked his right to

counsel. There is likewise no dispute that in response to defendant's request for counsel, detectives properly ceased their efforts to converse with defendant about the crime. See *Miranda*, 384 U.S. at 474; *Olivera*, 164 Ill. 2d at 389. Defendant was then left him alone in the interview room, where he remained handcuffed for approximately 24 hours.[6] During that time, defendant was permitted several bathroom breaks and was provided with food, drink, and contact lens solution. He was not, however, afforded access to a telephone or provided with any other means to contact an attorney. It was only after defendant remained isolated in an interview room for approximately 24 hours that he reinitiated contact with police and expressed his willingness to make a statement to the detectives. After being re-informed of his *Miranda* rights and waiving his right to counsel, defendant made a statement to the authorities.

¶ 55 In his appellate brief, defendant raises no argument concerning the voluntariness of his decision to reinitiate contact with police and waive his right to an attorney after initially invoking his right to counsel; rather, he only contests the voluntariness of the statement that he provided after he reinitiated contact with police and after he waived his *Miranda* rights. At oral argument, however, his appellate attorney suggested for the first time that defendant's decision to reinitiate contact with Detectives Thompson and Gillespie and waive his right to counsel was likewise involuntary. We note that the voluntariness of an admission and the knowing, voluntary, and intelligent waiver of the right to counsel after a suspect reinitiates contact with police are "discrete inquiries." *Edwards*, 451 U.S. at 484. Having failed to raise the issue of the voluntariness of his decision to reinitiate contact with police and waive his right to counsel in his appellate brief, that issue is not

[6] In his appellate brief, defendant argues that his pre-statement detention lasted 25 hours. Based on the record, it appears defendant was placed in an interview room sometime after 6 p.m. on November 9, 2011, and that he reinitiated contact with police sometime after 5 p.m. on November 10, 2011, and provided a statement to Detectives Thompson and Gillespie. He provided a second statement to ASA Miller at approximately 8 p.m. It thus appears from the record that defendant was detained slightly less than 24 hours before he provided his first statement. Since the timing of the beginning and end of defendant's pre-statement detention is not specific, we will refer to the length of defendant's pre-statement detention as one that lasted "approximately 24 hours."

properly before this court. See Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018) ("Points not argued are forfeited and shall not be raised in the reply brief, in *oral argument*, or on petition for rehearing) (Emphasis added.); see also *Elementary School District 149 v. Schiller*, 221 Ill. 2d 130, 143 n.2 (2006) (finding that an argument raised by the plaintiffs for the first time at oral argument was forfeited). Accordingly, the only issue before this court is whether the statement that defendant made after he reinitiated contact with law enforcement personnel and waived his right to counsel was made voluntarily.

¶ 56 " 'The test for voluntariness of a statement is whether the individual made the statement freely, voluntarily, and without compulsion or inducement of any kind, or whether the individual's will was overcome at the time of the confession.' " *People v. Hughes*, 2015 IL 117242, ¶ 31 (quoting *People v. Morgan*, 197 Ill. 2d 404, 437 (2001)). A confession is deemed voluntary "if is the product of free will, rather than the inherently coercive atmosphere of the police station." *Nicholas*, 218 Ill. 2d at 118; see also *People v. Sandifer*, 2017 IL App (1st) 142740, ¶ 64 (recognizing that when a defendant's will is overborne, his "confession cannot be considered the product of a rational intellect and free will"). To determine the voluntariness of a statement, courts employ a totality of the circumstances analysis to evaluate the circumstances surrounding the statement including: the presence or absence of *Miranda* warnings; the defendant's age, intelligence, education and experience at the time of his detention and interrogation; the duration of the interrogation; the presence or absence of any physical or mental abuse during the detention and interrogation; and the legality of the detention. *Nicholas*, 218 Ill. 2d at 118; *People v. Jones*, 2014 IL App (1st) 120927, & 48. Under a totality of the circumstances analysis, no single factor is controlling. *In re G.O.* 191 Ill. 2d 37, 54 (2000); *Jones*, 2014 IL App (1st) 120927, ¶ 48. When reviewing a circuit court's ruling as to the voluntariness of a defendant's confession, the court's

factual findings will be upheld unless they are against the manifest weight of the evidence. *People v. Braggs*, 209 Ill. 2d 492, 505 (2003). Factual findings are against the manifest weight of the evidence " 'only when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence.' " *Jones*, 2014 IL App (1st) 120927, ¶ 50 (quoting *Eychaner v. Gross*, 202 Ill. 2d 228, 252 (2002)). The circuit court's ultimate legal finding as to whether suppression is warranted, however, is subject to *de novo* review. *Braggs*, 209 Ill. 2d at 505; *People v. Kronenberger*, 2014 IL App (1st) 110231, ¶ 28.

¶ 57 At the time of his arrest, defendant was a 25-year-old high-school graduate who was gainfully employed as a maintenance supervisor at a property maintenance company. He had one prior conviction for possession of cannabis, for which he received a period of supervision, but he had never been arrested for, or convicted of, a serious or violent criminal offense or been the subject of a lengthy police interrogation.[7] Defendant does not dispute that his arrest was supported by probable cause[8] or that he was properly and adequately informed of his *Miranda* rights. Instead, he highlights the duration of his detention and contends that his lengthy detention, during which his repeated requests for a phone call to contact an attorney were denied, "rendered the protections of *Miranda* meaningless" and "had a coercive effect on him that rendered his statement involuntary." Defendant further argues that the statement was also obtained in violation of section 103-3 of the Illinois Code of Criminal Procedure of 1963 (Code or Code of Criminal Procedure),

[7] We note that Apolonio Retama testified that he accompanied defendant to his first meeting with detectives investigating Gonzalez's murder and estimated that the meeting lasted 4 hours. Defendant and Detective Thompson, however, both agreed that the first interview was very brief and concluded when defendant declined to submit to a polygraph test without an attorney present.

[8] Defendant did file a motion to quash his arrest in the circuit court in which he contested the propriety of his arrest. Following a hearing, the circuit court denied the motion, finding that defendant's arrest was supported by probable cause because police had "information sufficient" to believe that a crime had been committed and that he was a "willing participant in the commission of that crime." Defendant does not contest the court's ruling or raise any arguments concerning probable cause on appeal.

which codifies the right of arrestees to communicate with their attorneys and family members "by making a reasonable number of telephone calls." 725 ILCS 5/103-3(a) (West 2008).

¶ 58 In support, defendant cites to the United States Supreme Court's decision in *Haynes v. State of Washington*, 373 U.S. 503 (1963) and this court's decision in *People v. Sanchez*, 2018 IL App (1st) 143899. In *Haynes*, the court found that a statement made by a defendant following a prolonged period of "incommunicado detention" was involuntary. In that case, the defendant was held for 16 hours following his arrest for robbery before he signed a written statement detailing his involvement in the crime. Over those 16 hours, the defendant's repeated requests that he be allowed to call his wife and an attorney were denied and he was told that his access to a telephone was contingent upon his cooperation with law enforcement personnel. Although there was no evidence that the defendant was physically abused in any way or deprived of food, water, or rest, the court found that the statement that the defendant ultimately signed after being held in custody for 16 hours was involuntary because it "was obtained in an atmosphere of substantial coercion and inducement created by statements and actions of state authorities." *Id.* at 513. The court emphasized that the defendant was kept "alone in the hands of police, with no one to advise or aid him, and he had 'no reason not to believe that the police had ample power to carry out their threats,' to continue, for a much longer period if need be, the incommunicado detention—as in fact was actually done." *Id.* at 514 (quoting *Lynumn v. Illinois*, 372 U.S. 528, 534 (1963)). Also significant was the fact that there was no "indication in the record that prior to signing the written confession, or even thereafter, [defendant] was advised by the authorities of his right to remain silent, warned that his answers might be used against him, or told of his rights respecting consultation with an attorney."[9] *Id.* at 510-11. Ultimately, in finding the statement involuntary, the court observed that

[9] *Haynes* was decided before the United States Supreme Court issued its ruling in *Miranda*, which mandated that suspects in custody be informed of their rights.

the record reflected that the defendant "at first resisted making a written statement and gave in only after consistent denials of his requests to call his wife, and the conditioning of such outside contact upon his accession to police demands." *Id.* The court reasoned that "[c]onfronted with the express threat of continued incommunicado detention and induced by the promise of communication with and access to family [defendant] understandably chose to make and sign the damning written statement." *Id.* The court concluded that "given the unfair and inherently coercive context in which made, that choice cannot be said to be the voluntary product of a free and unconstrained will, as required by the Fourteenth Amendment." *Id.*

¶ 59 In *Sanchez*, 2018 IL App (1st) 143899, this court relied on *Haynes* to find a statement made by an arrestee after spending 12 hours in custody, during which time he was not permitted a telephone call, to be likewise involuntary. In that case, the 18-year old defendant was arrested for murder absent probable cause after police encountered him near the scene of the crime approximately 30 minutes after a shooting. *Id.* ¶ 6. He was transported to the police station and placed in an interrogation room, where he remained for 12 hours until he confessed. ¶¶ 8, 73. During that time, the defendant asked several times to call his mother, but was not permitted access to a telephone until he cooperated with the authorities. ¶¶ 22-24. In finding that the defendant's confession was involuntary, we noted: "[Defendant was 18 years old, with no criminal background, at the time of the interrogation. Police arrested him without probable cause and held him for 12 hours before he confessed. Most notably, the detectives told [defendant] he could not call his mother until he told them the truth about the shooting, and they told him they already knew he shot [the victim]." *Id.* ¶ 73. Based on those facts, we found the case indistinguishable from *Haynes*. *Id.* ¶¶ 74-75. We further found that the officer's actions in refusing to permit the defendant to call his mother constituted a violation of section 103-3(a) of the Code. ¶ 75.

¶ 60 Here, as in *Haynes* and *Sanchez*, defendant was subjected to a prolonged detention during which he was denied access to a telephone. Indeed, his detention, which lasted approximately 24 hours, exceeded the 16-hour detention at issue in *Haynes* and the 12-hour detention at issue in *Sanchez*. Although the length of a defendant's pre-detention statement and the denial of a defendant's request for a phone call are relevant factors when considering the totality of the circumstances of a defendant's statement, neither a lengthy detention nor the denial of telephone access mandates a finding that the statement was given involuntarily. See, *e.g.*, *People v. Nicholls*, 42 Ill. 2d 91, 101 (1969) (finding that the defendant's statement was voluntary where it was made after he had been detained for 34 hours because the circumstances of a defendant's detention was simply one factor "to be considered in determining if [the]confession was voluntary"); *People v. Williams*, 2017 IL App (1st) 142733, ¶ 30 (finding that the circuit court did not err in denying the defendant's motion to suppress his statement where "[t]he totality of the circumstances demonstrate[d] that [his] unsuppressed statements were voluntarily given, despite the denial of his request to make a phone call"). Indeed, when considering the totality of the circumstances, we find that there are important facts in this case that distinguish it from *Haynes* and *Sanchez*. Notably, defendant, unlike the defendant in *Haynes*, was informed of his rights on more than one occasion while he was in police custody. Moreover, defendant evidenced an understanding of his rights by first invoking his right to counsel and then by waiving his rights after reinitiating contact with police. In addition, unlike the defendants in *Haynes* and *Sanchez*, defendant's use of a telephone in this case was never conditioned upon his cooperation with law enforcement. Indeed, at the suppression hearing, defendant testified that he was simply told he had to "wait" for a phone call. Although it is true that defendant was not ultimately provided with access to a telephone during his pre-statement detention, Detective Thompson explained it was Area North's general practice not to provide

arrestees with telephone access until after the booking process was completed. Defendant was not booked until after he provided statements to detectives and ASA Miller. We note that there is no evidence in the record as to the typical length of time pursuant to which Area North arrestees are booked; however, defendant does not argue that his booking was purposely delayed in order to prevent him from making a phone call. Defendant, however, citing section 103-3 of the Code, does argue that the officers' failure to provide him with a phone call during his lengthy detention violated his statutory right to communicate with an attorney or family member.

¶ 61 As explained above, section 103-3 of the Code of Criminal Procedure codifies the right of arrestees to communicate with an attorney and a family member and provides as follows:

> "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." (Emphasis added.) 725 ILCS 5/103-3(a) (West 2008).[10]

The underlying purpose of the statute is to "permit a person held in custody to notify his family of his whereabouts and to notify them of the nature of the offense with which he is charged so that arrangements may be made for bail, representation by counsel and other procedural safeguards that the defendant cannot accomplish for himself while in custody." *People v. Prim*, 53 Ill. 2d 62,

[10] In a recently entered consent decree between the City of Chicago and the State of Illinois, which was approved by the United States District Court for the Northern District of Illinois, Eastern Division, on January 31, 2019, the Chicago Police Department (CPD) is now required to take additional steps to advise suspects of their right to an attorney and to provide them with access to a telephone. See 17-CV-6260, Document 703-1. Specifically, in accordance with the terms of the consent decree, the CPD must "prominently display signs both in rooms of police stations or other CPD locations that hold arrestees or suspects and near telephones which arrestees or suspects have access to. These signs will state: a. that arrestees and suspects have the right to an attorney; b. that if an arrestee cannot afford an attorney, one may be appointed by the court for free; and c. the telephone numbers for the Cook County Public Defender, and any other organization appointed by the Cook County Circuit Court to represent arrestees." *Id.* ¶ 30. Moreover, the consent decree requires the CPD to "provide arrestees access to a phone and the ability to make a phone call as soon as practicable upon being taken into custody." *Id.* ¶ 31.

69-70 (1972). The statute does not define the phrase "reasonable time;" however, Black's Law Dictionary defines the term reasonable as that which is "fair, proper, or moderate under the circumstances" or "sensible." Black's Law Dictionary (11th ed. 2019). In addition, the "statute contains no remedy for an alleged violation." *Williams*, 2017 IL App (1st) 142733, ¶ 29. As such, courts evaluating the voluntariness of a statement made following a purported violation of section 103-3(a) of the Code have considered a defendant's deprivation of access to a telephone to be simply one of the factors to be examined when examining the totality of the circumstances that preceded the defendant's statement. See, *e.g.*, *Id.* ¶¶ 29-36; *People v. Green*, 2014 IL App (3d) 120522, ¶¶ 53-62. Accordingly, even if we were to agree with defendant that the officers in the instant case violated his rights under section 103-3(a) of the Code by failing to provide him access to a telephone during his pre-statement detention, the totality of the circumstances do not support a finding that his statement was involuntary.

¶ 62 We reiterate that defendant was 25-year-old adult at the time he gave his statement. Although he had not been in serious criminal trouble prior to his arrest in the instant case, he did have some prior experience with the criminal justice system. He did not exhibit diminished mental capacity or physical infirmity. Moreover, although his pre-statement detention was lengthy, he was provided with food, drink, bathroom breaks, and contact lens solution. In addition, defendant was informed of his *Miranda* rights on several occasions and evidenced an understanding of those rights. Importantly, the officers abided by defendant's initial invocation of his right to an attorney and only conversed with him about the case when defendant, himself, reinitiated contact with police and waived his right to an attorney after he was again advised of his *Miranda* rights. Ultimately, based on our consideration of the totality of the circumstances, we agree with the circuit court that defendant's statement to authorities was voluntary.

¶ 63 Even if this court was to agree with defendant that his statement was involuntary, the admission of an involuntary statement does not automatically mandate the reversal of his conviction; rather, it is subject to harmless error review.[11] See *People v. Wrice*, 2012 IL 111860, ¶ 67 (citing *Arizona v. Fulminante*, 499 U.S. 279, 310 (1991), a case in which the United States Supreme Court liked the admission of an involuntary statement to be "similar in both degree and kind to the erroneous admission of other types of evidence" and concluded that such errors are also subject to harmless error review). To ascertain whether the erroneous admission of evidence is harmless, courts may focus on the error to determine whether it contributed to the conviction; analyze the other evidence to ascertain whether there is overwhelming properly admitted evidence that supports the conviction; and consider whether the improperly admitted statement is cumulative or duplicative of the properly admitted evidence. *People v. Patterson*, 217 Ill. 2d 407, 428 (2005); *People v. Sandifer*, 2017 IL App (1st) 142740, ¶ 73. Because "[c]onfessions carry 'extreme probative weight,' " courts have recognized that "the admission of an unlawfully obtained confession is rarely harmless error." *People v. Harris*, 2012 IL App (1st) 100678, ¶ 76 (quoting *People v. St. Pierre*, 122 Ill. 2d 95, 114 (1988)). Nonetheless, where the evidence against a defendant is overwhelming or where the involuntary statement is duplicative of other properly admitted evidence, the admission of an involuntary statement will be deemed harmless. See, *e.g.*, *People v. Mitchell*, 152 Ill. 2d 274, 328-29 (1992) (finding that the admission of the defendant's involuntary statement was harmless where the evidence of his guilt was overwhelming because the defendant also confessed his guilt to someone other than the police and physical evidence also linked him to the crime); *Sandifer*, 2017 IL App (1st) 142740, ¶¶ 74-77 (finding the admission of the defendant's

[11] This rule does not apply to physically coerced confessions, however. See *Wrice*, 2012 111860, ¶ 84 (distinguishing confessions that result from psychological coercion from those resulting from police brutality or physical coercion, holding: "use of a defendant's *physically coerced* confession as substantive evidence of his guilt is never harmless error") (Emphasis added.)

involuntary statement was harmless "in light of th[e] overwhelming evidence of [his] guilt, which included evidence that the victim and two eyewitnesses identified defendant as the perpetrator of the crime as well as DNA evidence linking him to the crime).

¶ 64 In this case, defendant's videotaped statement was not the only evidence of his involvement in Gonzalez's death. Notably, defendant confessed his involvement in the robbery of a bar and the murder of a bar owner to his long-time friend Apolonio Retama. See *Mitchell*, 152 Ill. 2d at 328-29 (finding that the erroneous admission of the defendant's statement was harmless where the defendant also confessed his guilt to someone else). Although defendant did not specifically identify the bar, he told Retama that he went with Jackson intending to rob a bar and that Jackson repeatedly hit the bar owner with a pipe when they encountered him after the bar had closed. Dr. Cina testified that Gonzalez's injuries were consistent with being struck with a narrow object such as a pipe. In addition, Jose Santos also implicated defendant in the crime. He testified that on October 3, 2010, he was approached by Jackson and defendant who proposed robbing O'Lanagan's. Moreover, cell phone data presented at trial established that defendant and Jackson were in contact around the time of Gonzalez's murder and that Jackson's cell phone "pinged" a tower located near O'Lanagan's. Given the aforementioned evidence against defendant, we find that any purported error in the admission of his statement was harmless.

¶ 65 CONCLUSION

¶ 66 The judgment of the circuit court is affirmed.

¶ 67 Affirmed.

Notice of Appeal (Rev. 11/07/03) CCCR 0603

TO THE Appellate COURT OF ILLINOIS
IN THE CIRCUIT COURT OF COOK COUNTY
CRIMINAL BUREAU

PEOPLE OF THE STATE OF ILLINOIS

v.

ANDREW SALAMON

Case No. 12 CR 0270601
Trial Judge ERICA L. REDDICK
Court Reporter
Attorney
Appeal Check Date
Appeal Bond NONE

NOTICE OF APPEAL

An appeal is taken from the order or judgment described below:
Appellant's Name: ANDREW SALAMON
Appellant's Address: Illinois Dept of Corrections
Appellant's Attorney:
Address:
Offense: MURDER/STRONG PROBABILITY TO KILL/INJURE - MURDER/BURGLARY FEL BURG ArmRobbery
Judgment: Guilty of First Degree Murder x3, ARMED ROBBERY, BURGLARY
on a VERDICT OF GUILTY
Date: NOVEMBER 6th, 2015
Sentence: 25 years on Ct 2,3,4 8 years count 6 4 years count 9
Date Notice Filed:

FILED
MAR 17 2016
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

x Appellant

VERIFIED PETITION FOR REPORT OF PROCEEDINGS AND COMMON LAW RECORD

Under Supreme Court Rules 605-608 Appellant requests the Court to order; (1) the Official Court Reporter to transcribe an original and the copy of the proceedings, file the original with the Clerk and deliver the copy to the Appellant, or upon Appellant's written request to the Appellant's attorney of record, and (2) the Clerk to prepare the Record on Appeal.

The Appellant, being duly sworn, states that at the time of his/her conviction, s/he was and s/he now is unable to pay for the Record or an appellate lawyer.

x Appellant

SUBSCRIBED and SWORN TO before me this _____ day of _____, _____

Notary Public

ORDER

IT IS ORDERED; 1. ANDREW SALAMON appointed as counsel on appeal, and 2. the Record and Report of Proceedings be furnished to appellant without fees.

FILED
MAR 17 2016

DATE: 17 March, 2016 ENTER: Erica L Reddick 2038
Judge Judge's No.

I acknowledge receipt: Court Reporter

A-37

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

No. 125722

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, -vs- ANDREW SALAMON Petitioner-Appellant	))))))))))	Appeal from the Appellate Court of Illinois, No. 1-16-0986. There on appeal from the Circuit Court of Cook County, Illinois , No. 12 CR 2706. Honorable Erica L. Reddick, Judge Presiding.

NOTICE AND PROOF OF SERVICE

Mr. Kwame Raoul, Attorney General, 100 W. Randolph St., 12th Floor, Chicago, IL 60601, eserve.criminalappeals@atg.state.il.us;

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Mr. Andrew Salamon, Register No. Y12092, Western Illinois Correctional Center, 2500 Rt. 99, Mt. Sterling, IL 62353

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 August 3, 2020, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the petitioner-appellant in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court.

/s/Alicia Corona
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