No. 129627

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. MICHEAIL WARD, Defendant-Appellee.	))))))))))	Appeal from the Appellate Court of Illinois, First Judicial District, No. 1-19-0364 There on Appeal from the Circuit Court of Cook County, Illinois, No. 13 CR 5242 The Honorable Nicholas Ford, Judge Presiding.

BRIEF AND APPENDIX OF PLAINTIFF-APPELLANT PEOPLE OF THE STATE OF ILLINOIS

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NATURE OF THE CASE

Following a jury trial, defendant was convicted of first degree murder and aggravated battery with a firearm. The appellate court reversed, holding that the trial court erred in denying defendant's motion to suppress his custodial confession because defendant unambiguously invoked his Fifth Amendment right to remain silent before making the confession and the detectives who questioned him did not scrupulously honor that invocation. The appellate court further held that the error in admitting defendant's custodial confession was not harmless. The People appeal. No question is raised on the charging instrument.

ISSUES PRESENTED FOR REVIEW

1. Whether the general rule that an appellate court reviewing a trial court's ruling on a motion to suppress must defer to the trial court's factual findings unless they are against the manifest weight of the evidence applies when the evidence presented at the suppression hearing was a videorecording.

2. Whether defendant's invocation of his right to remain silent was scrupulously honored, such that his subsequent custodial confession was admissible, where the detectives who were questioning defendant at the time immediately ended the interview and different detectives waited more than five hours before resuming the interview.

3. Whether any error in the admission of defendant's confession to the second set of detectives was harmless beyond a reasonable doubt because the other evidence of his guilt — including separate confessions to three friends — was overwhelming and the content of his custodial confession was cumulative of other evidence.

JURISDICTION

On September 27, 2023, this Court allowed the People's petition for leave to appeal. Jurisdiction thus lies under Supreme Court Rules 315(a), 604(a)(2), and 612(b)(2).

STATEMENT OF FACTS

Defendant and codefendant Kenneth Williams were charged with first degree murder and two counts of aggravated battery with a firearm for their roles in the January 29, 2013, shooting in a Chicago park that killed 15-year-old Hadiya Pendleton and injured two of her classmates, Lawrence Sellers and Sabastian Moore. C2341-2502.[1] Defendant and Williams were tried simultaneously before separate juries. (Williams's convictions are not at issue in this appeal.)

[1] "C__," "R__," "SR__," "PE__, and "A__" refer to the common law record, report of proceedings, supplemental report of proceeding, the People's trial exhibits, and this brief's appendix, respectively. The record includes two copies of the supplemental report of proceedings, each with different pagination. This brief cites the version from the electronic file labeled "19-0364 1of1 Supp1."

I. Motion to Suppress

Before trial, defendant moved to suppress his custodial confession, arguing (among other things) that detectives improperly questioned him after he invoked his right to remain silent. C530-63. At the motion hearing, the trial court reviewed a videorecording of defendant's custodial interviews (along with a transcript of the interviews) and heard argument from counsel. SR286-349.

A. Custodial interviews

Defendant was arrested near midnight on February 9, 2013, R849-51, and placed in an interview room at the police station a short time later, PE124 (Disk 1, File 1) at 00:21:40. At 12:34 a.m., Detectives John Halloran and John Murray entered the room, introduced themselves, and told defendant that they wanted to talk to him about a shooting that happened on January 29, 2013. *Id.* at 00:34:40–00:34:55. Detective Halloran recited the *Miranda* warnings to defendant, and defendant waived his rights and agreed to speak with the detectives. *Id.* at 00:34:55–00:35:23; *see* C565-66.

Defendant initially denied involvement in the shooting. When asked where he was around the time of the shooting, defendant said that he left his house near 59th Street and King Drive at "like 2:05" that afternoon, drove his mother's car to 63rd Street and Hyde Park Avenue to pick up his brother and a friend from school at "like 2:18 [or] 2:20," and then drove to another friend's

house at 42nd Street and Indiana Avenue, arriving there around 2:45 p.m. PE124 (Disk 1, File 1) at 00:35:23–00:42:20; *see* C566-78.

When the detectives told defendant that they did not believe his story and had evidence that he was with Williams around the time of the shooting, defendant responded, "Mother fucking Kenneth." PE124 (Disk 1, File 1) at 00:49:45–01:07:40; *see* C588-97. Defendant then repeated the story about picking up his brother and a friend from school and going to another friend's house, but this time said that he also picked up Williams along the way. PE124 (Disk 1, File 1) at 01:07:40–01:12:05; *see* C597-601.

After the detectives told defendant that they had evidence that he was the shooter, the following exchange occurred at 1:41 a.m.:

Halloran:	You think you have nowhere to go because we've already thrown at you we know you're the shooter and you really don't have [*sic*]. You can't turn and say, yeah, but Kenny was the shooter. Yeah, I was there but I was driving and Kenny was the shooter. You really can't do that. You can explain why you were the shooter.
Defendant:	I ain't got nothing else to say.
Halloran:	You want to take a break? You can take a break. You don't want to talk to me, you don't have to talk to me. You got nothing else to say? Alright man, when you want something, I want you to bang on that door real loud, okay? 'Cause I'm gonna be in another room.

PE124 (Disk 1, File 2) at 01:41:35–01:42:12; *see* C617-18. The detectives then left the interview room at 1:42 a.m. PE124 (Disk 1, File 2) at 01:42:25.

At 3:17 a.m., Halloran and Murray reentered the interview room and told defendant that they had a few more questions. PE124 (Disk 1, File 4) at 03:17:20–03:18:05; *see* C620. At 4:01 a.m., after defendant continued to deny involvement in the shooting, the following exchange occurred:

Halloran:	You're not equipped to lie your way through this. That's not gonna happen. You are equipped to set a couple of things straight. You are equipped to tell the world who you really are. You are equipped to try to ease some of the burden and pain that you have caused. Only you can do that. You watch the news, you watch these dramas. You watch these shows. A man tells the family I am sorry, it helps. It helps that family.
Murray:	And it helps that man. Don't be worried about setting a time frame on when you're going to get out. Things change daily. [Inaudible] tough, sure they're gonna get tough.
Halloran:	Why'd this happen? Why'd this happen? This time, that day, that park — why did it happen?
Defendant:	Got nothing to say.
Halloran:	You got nothing to say? Alright, we'll take a break.

PE124 (Disk 1, File 4) at 04:01:35–04:02:56; *see* C641-42. The detectives then left the interview room at 4:03 a.m. PE124 (Disk 1, File 4) at 04:03:00.

Shortly after 7 a.m., Halloran and Murray took defendant to be photographed and fingerprinted. PE124 (Disk 2, File 2) at 07:02:30–07:02:58;

see C642. After they returned to the interview room at 7:16 a.m., the following exchange occurred:

Halloran:	Alright, well now that you're awake and you see you're being processed for this murder any thoughts? Still gonna try to lie your way out of it?
Murray:	It's real simple. If you don't want to say nothing about it, if you don't want to say nothing about it then just tell us I'm done talking. Okay, that's fine, alright. Just so we don't have to keep coming in here and bothering you.
Defendant:	[Inaudible] say nothing else about it.
Halloran:	Can't hear you.
Defendant:	I don't want to say nothing else about it.
Halloran:	You don't want to talk about it. OK, alright man.

PE124 (Disk 2, File 3) at 07:17:35–07:18:18.[2] The detectives then left the interview room at 7:18 a.m. PE124 (Disk 2, File 3) at 07:18:20.

Around 12:30 p.m., two different detectives, Scott Reiff and Cullen Murphy, entered the interview room. PE124 (Disk 3, File 3) at 12:31:02. Defendant asked whether he was under arrest or still being investigated, and Reiff said that he was under arrest. *Id.* at 12:31:50–12:32:02; *see* C648. Reiff then told defendant that there was extensive evidence against him and advised him to tell his side of the story before he was identified in lineups.

[2] The interview transcript describes defendant's responses in this exchange as inaudible. C643. This brief relies on the video.

PE124 (Disk 3, File 3) at 12:32:40–12:34:58; *see* C649-50. Defendant said that he told his story to the other detectives, but when Reiff and Cullen said that defendant's earlier story was a lie, defendant agreed. PE124 (Disk 3, File 3) at 12:42:47–12:43:01; *see* C656.

Eventually, defendant confessed to the shooting. He explained that he and Williams were driving around when they saw that members of a rival gang who had recently killed defendant's friend were in the park. Defendant said that Williams gave him the gun and threatened to kill him if he did not do the shooting, so he got out of the car, fired multiple shots into the park, and then ran back to the car. He said that Pendleton was not a target of the shooting, but that one of the supposed gang members in the park used her as a human shield. PE124 (Disk 3, File 3) at 12:59:55–13:16:47; *see* C673-94.

B. Trial court ruling

Defendant argued that his confession should be suppressed because the detectives ignored his earlier invocations of his right to remain silent. C531-49. Specifically, defendant argued that he invoked that right three times: at 1:41 a.m., when he said, "I ain't got nothing else to say"; at 4:01 a.m., when he said, "Got nothing to say"; and at 7:16 a.m., when he said, "I don't want to say nothing else about it." C532-35; SR292-303.

The trial court denied the motion. SR349. As relevant here, the court concluded that defendant did not unambiguously invoke his right to remain silent. SR342-46. Instead, the court found that, viewed in the context of the

"prolonged dialog[ue]" between defendant and the detectives and defendant's initial attempt to establish an alibi, defendant's statements that he had nothing else to say could reasonably be construed to mean that he could not "add anything to" what he already said, not that he "wish[ed] to say nothing further." SR344.

II. Trial

The case then proceeded to trial. Nine former students at King College Preparatory High School testified that on the day of the shooting, they and Pendleton walked to nearby Harsh Park — a small playlot on Oakenwald Avenue south of 44th Place — after completing their final exams. SR932-35, 1178-80, 1217-18, 1238-39, 1258-60, 1281-82, 1322-24, 1342-43, 1385-87. Unbeknownst to the students, Harsh Park was in the territory of a Gangster Disciples faction called "4-6 Terror," which was "at war" with a rival faction known as "SUWU," of which defendant and Williams were members. R743-44, 966-68, 974-76, 996; SR1583. In recent months, 4-6 Terror members had wounded Williams and killed another SUWU member in separate shootings. R976-78, 991-92.

After arriving at the park, the students sat on the playground equipment, talked, and smoked marijuana. SR937, 1261-62, 1282-83, 1324-25. When it started to rain, they gathered under a canopy. SR938. Moments later, a gunman fired at them from the alley behind the park. SR940-42. As they ran to escape, Pendleton slowed, grabbed her chest, and fell. SR943-44.

She had been shot in the back and died at a hospital later that day. R546; SR1583-84. Sellers and Moore were hit in the leg and foot, respectively; they were treated for their injuries and survived. SR1221-25, 1243-47.

At trial, one of the students, Stephan Abdul, identified defendant as the shooter with one "hundred percent" certainty. SR1394-95. When Abdul viewed a lineup after defendant's arrest, he could not definitively identify the shooter but stated that defendant looked similar to the shooter based on his stature and skin tone. SR1428, 1637-38. At trial, Abdul explained that "something substantially stood out to [him] about" defendant in the lineup. SR1400. Although Abdul described the shooter as having dreadlocks, he acknowledged that defendant did not have dreadlocks at the time of the lineup. SR1390, 1399. Abdul explained that his "thoughts of . . . what [the shooter] looked like [had] changed over the years," but he denied having been influenced by media coverage of the case. SR1424, 1429.

No other student was asked to identify the shooter at trial, but the jury heard testimony that five students tentatively identified defendant in lineups or photo arrays. When independently viewing lineups after defendant's arrest, SR1633, Lazerick Bowdry said that defendant looked similar to the shooter, but that he was only fifty percent sure, SR1190, 1204, 1637; Danetria Huston said that defendant looked similar to the shooter, but that she was not a hundred percent sure, SR1268, 1276, 1631-32; and Kyra Caldwell and Veronica Hansberry said that defendant and another person in

the lineup both looked similar to the shooter, SR1632-34. Jordan Dillon did not identify anyone as the shooter in the lineup he viewed, but when shown a photo array a few days earlier, he had said that defendant looked like the shooter, but that he was not a hundred percent sure. SR1351-56, 1606-09.

Ronald Evans, who lived across the street from Harsh Park, testified that he heard gunshots around 2:15 p.m. SR982-88. He looked out his third-floor window and saw a man with a gun running north through the alley behind the park. SR989. Evans described the man as a short-haired black man wearing a hooded sweatshirt that was the same shade of blue as the hooded sweatshirt defendant was wearing when he was arrested. SR989-92, 1018-19; R855. When the man reached the mouth of the alley, he got in the front passenger seat of a small white Nissan. SR992-97. The car then immediately drove away, going east on 44th Place before turning north on Oakenwald. SR995.

The People introduced state records showing that defendant's mother owned a white Nissan Sentra. R846. Defendant had been driving that car two days before the shooting, when he was stopped for a traffic infraction. R821-28. And he was driving that same car when he was arrested about ten days after the shooting. R849-51. Several days before defendant's arrest, detectives took Evans to view a white Nissan parked in front of defendant's home. SR1606, 1670-71. Evans said that the car was the same make, model, and color as the car the gunman had entered. SR1001-03.

Demetrius Tucker, a SUWU member, testified that on the afternoon of the shooting, he and fellow SUWU member Ernest Finner saw defendant and Williams in defendant's white Nissan near 39th Street and Indiana Avenue. R549, 555-59. At trial, Tucker claimed that he could not remember who was driving the car and that, after he and Finner got in the car, no one spoke. R560-63. He testified that defendant and Williams eventually dropped Finner off and then drove Tucker to his home near 39th and Lake Park Avenue. R563.

But in Tucker's earlier grand jury testimony, which was introduced as substantive evidence under 725 ILCS 5/115-10.1, Tucker testified that when he and Finner got in defendant's car on the afternoon of the shooting, Williams was driving and defendant was in the front passenger seat. R790. Tucker testified to the grand jury that, in the car, Williams was "acting weird" — "looking back and forth [and] side to side" — and said that he and defendant had just done a "drill," which Tucker understood to mean a shooting. R791-93.

At trial, Tucker denied making those statements to the grand jury but also claimed that detectives had threatened to charge him with violating his probation if he did not implicate defendant. R585-89, 608, 612-13. In both his grand jury testimony and an earlier signed statement, however, Tucker said the detectives had treated him well and made no threats. R673-74, 796.

Finner's grand jury testimony was also introduced as substantive evidence after he claimed at trial that he could not remember any interaction with defendant and Williams on the day of the shooting or with defendant at a gang meeting a week later. SR1048-56. Before the grand jury, Finner testified that on the afternoon of the shooting, he and Tucker saw defendant and Williams near 39th and Indiana in a white car that Finner recognized as belonging to defendant's mother. R745-49. Williams was driving and defendant was in the front passenger seat. R749. After he and Tucker got in the car, Finner noticed that Williams seemed "nervous." R750-51. Williams then said that he and defendant had just done a "drill," which Finner understood to mean a shooting. R752. Williams explained that he and defendant had been looking for 4-6 Terror members, when they saw a group of people in the park. R752-53. Williams said he recognized some of the people as former classmates who might be able to identify him if he got out and started shooting, so defendant did the shooting instead. R753-54. At that point in the conversation, defendant got mad and told Williams to stop talking. R755.

Finner also told the grand jury that at a gang meeting on February 8, 2013, defendant expressed anger that Williams had been talking about the shooting and "trying to put [defendant] under the bus" when it was Williams who had "pointed out" the victims to defendant. R756-59.

At trial, Finner claimed not to remember testifying before the grand jury and answered "I don't remember" in response to every question he was asked about that testimony. SR1080-1110. He also claimed that detectives threatened to revoke his parole and have his mother fired from her job if he did not tell them what they wanted to hear. SR1128-31. In his grand jury testimony, however, Finner stated that the detectives had treated him "with respect" and did not make any threats or promises. R769-70.

Another SUWU member, Tyron Lawrence, testified that on the day of the shooting, he saw defendant, Williams, Finner, and Tucker in a white car at a gas station at 35th Street and King Drive. R393-97. At trial, Lawrence testified that defendant and Williams were in the front seats, but he claimed not to remember who was driving. R397. Before the grand jury, however, he testified that Williams was driving. SR1552.

Three surveillance videos that were introduced at trial corroborated Tucker, Finner, and Lawrence's accounts of encountering defendant and Williams in the white car shortly after the shooting. The first video, from a camera near 39th and Indiana, showed two people running toward a white car at 2:29 p.m. on the day of the shooting. SR1618-20; PE4. Before the grand jury, Finner testified that the video showed him and Tucker running toward defendant's mother's car. R775-78. The second video showed a red car and a white car pulling into a gas station at 35th and King Drive at 2:34 p.m. R398-401; PE5. Lawrence testified that he and others were in the red

car, and that defendant, Williams, Finner, and Tucker were in the white car. R400-02.

The third video, from a camera at 39th and Lake Park, showed a white car parking in front of a residential building at 2:40 p.m. SR1622-25; PE3. The driver and a back-seat passenger got out of the car and walked away, while the person in the front passenger seat got out, walked around to the driver seat, and drove away. SR1622-25; PE3. Before the grand jury, Finner identified the men as Williams, Tucker, and defendant. R778-79. And in an earlier statement to a detective, Finner identified defendant as the front-seat passenger. SR1624.

In grand jury testimony that was admitted as substantive evidence, Jarod Randolph, another SUWU member, testified that defendant confessed to the shooting on multiple occasions. SR1565-66. The day after the shooting, defendant called Randolph and said "that a little girl got killed on [4-6]." SR1557-59. Defendant further explained that he and Williams had "went through" and he "popped out," which Randolph understood to mean that defendant "jumped out the car shooting." SR1559. In later face-to-face conversations, defendant told Randolph "how he [felt] bogus as hell" about the shooting and "wished he would have never done it." SR1560-62.

At trial, Randolph claimed not to recall those conversations. R484-90. Although a defense investigator testified that Randolph told him that detectives coerced his grand jury testimony by telling him they would charge

him with a parole violation for appearing with a gun in a music video, R1165, Randolph testified at trial that he did not recall making that statement, R513-14, 518-19.

FBI Special Agent Joseph Raschke testified as an expert in historical cell site analysis. SR1742. Raschke determined that at 2:19 and 2:20 p.m. on the day of the shooting, a cell phone associated with Williams connected with a tower that provided coverage to an area that included Harsh Park, indicating that Williams's cell phone was in the vicinity of the crime scene near the time of the shooting. SR1760-61. Then, at 2:29 p.m. — the same time that surveillance footage showed the white car at 39th and Indiana, SR1618-20; PE4 — Williams's cell phone connected with a tower that provided coverage to an area that included 39th and Indiana. SR1761-62. And at 2:40 p.m. — when surveillance footage showed the white car at 39th and Lake Park, SR1622-25; PE3 — Williams's cell phone connected with a tower that provided coverage to an area that included 39th and Lake Park. SR1762-63.

Raschke also determined that between 2:01 and 2:07 p.m. — about 15 minutes before the shooting, *see* SR986-88 — a cell phone associated with defendant connected multiple times with a tower near 39th and King Drive and once with a tower near 47th and King Drive, indicating that during that period, defendant's cell phone was in an area where those towers provided overlapping coverage, likely closer to the tower near 39th Street. SR1767.

And at 2:30 p.m. — shortly before surveillance footage showed the white car at the gas station at 35th and King Drive, R398-402; PE5 — defendant's cell phone connected with a tower that provided coverage to an area that included 35th and King Drive. SR1767-68.

The People also introduced defendant's custodial statements. SR1854-65, 1920-24. As described above, *see supra* pp. 3-4, 7, defendant initially denied involvement in the shooting, claiming that he had been picking up his brother and a friend from school, before eventually confessing that he shot at the people in the park thinking that they were rival gang members who had recently killed his friend.

Defendant called several witnesses, including an expert who testified about factors that can affect an eyewitness's ability to accurately recall details of a perceived event, including stress, weapon-focus, the functional duration of the encounter, and exposure to post-event information. R1086-1130.

After deliberations, the jury found defendant guilty of first degree murder and two counts of aggravated battery with a firearm, and further found that defendant personally discharged the firearm that caused Pendleton's death. SR2106-07. The trial court denied defendant's motion for a new trial and sentenced him to 84 years in prison. SR49, 132.

III. Appellate Court Decision

The appellate court reversed. A37, ¶¶ 126-27. It rejected defendant's challenge to the sufficiency of the evidence, A22-26, ¶¶ 87-96, but held that the trial court erred in denying defendant's motion to suppress his custodial confession, A26-37, ¶¶ 97-124.[3]

The appellate court noted that it generally applies a bifurcated standard of review to a trial court's ruling on a motion to suppress, assessing the trial court's factual findings for "clear error" and its "ultimate legal ruling" *de novo*. A26, ¶ 99. But the appellate court declined to apply that bifurcated standard here. *Id.* Instead, it held that *de novo* review of the trial court's factual findings was appropriate because the evidence at the suppression hearing consisted solely of the videorecording of defendant's custodial interviews and no live testimony. *Id.*

Applying that standard, the appellate court concluded that defendant invoked his right to remain silent by saying, "I ain't got nothing else to say," "Got nothing to say," and "I don't want to say nothing else about it," because "[a]ll three" statements "indicated that [defendant] was done talking." A34-35, ¶ 119. The People argued that the record did not establish that defendant made the third statement given that the interview transcript described his comment as inaudible. A30, ¶ 107. The appellate court noted that Detective

[3] The appellate court did not address additional contentions that defendant raised on appeal. A1, ¶ 1. If this Court reverses the appellate court's judgment, it should remand for the appellate court to consider those claims.

Halloran's response — "You don't want to talk about it. Okay, alright man" — "suggests that" defendant made the statement. *Id.* But the court found it unnecessary to resolve that question because its holding did not "rely[ ] on just this last statement, but rather all of the statements together." *Id.*

The appellate court also held that the detectives did not "'scrupulously honor[ ]'" defendant's invocations of his right to remain silent — and that defendant's subsequent confession to Detectives Reiff and Cullen was thus inadmissible — because the latter detectives questioned defendant about the same crime and did not provide a fresh set of *Miranda* warnings. A35, ¶ 120 (quoting *People v. R.C.*, 108 Ill. 2d 349, 353 (1985)).

Finally, the appellate court held that the erroneous admission of that confession was not harmless. Initially, the appellate court noted that the People forfeited the harmless error argument by raising it for the first time in a supplemental brief filed shortly before oral argument. A35, ¶¶ 121-22. Nevertheless, the appellate court addressed and rejected the argument on the merits. A35-36, ¶ 122. It reasoned that the admission of defendant's custodial confession was not harmless because "confessions carry extreme probative weight" and because the remaining evidence of defendant's guilt was "not overwhelming." A36, ¶ 124 (cleaned up). In particular, the court noted that "[n]o physical evidence directly linked [defendant] to the shooting," that the lone eyewitness who positively identified him as the shooter "only became 100% positive of that identification at trial," and that the witnesses

who implicated defendant before the grand jury recanted that testimony at trial. A36-37, ¶ 124.

STANDARDS OF REVIEW

Determining the appropriate standard of review is a question of law that this Court decides *de novo*. *Beggs v. Bd. of Educ. of Murphysboro Cmty. Unit Sch. Dist. No. 186*, 2016 IL 120236, ¶ 52. As explained more fully below, *see infra* pp. 20-21, a bifurcated standard of review applies to a trial court's ruling on a motion to suppress. Under that standard, the reviewing court defers to the trial court's factual findings unless they are against the manifest weight of the evidence, but reviews the trial court's ultimate legal ruling *de novo*. *People v. Lindsey*, 2020 IL 124289, ¶ 14. Finally, this Court reviews *de novo* whether the erroneous admission of evidence was harmless. *People v. Garstecki*, 234 Ill. 2d 430, 437 (2009).

ARGUMENT

The appellate court applied the wrong standard of review and erred in reversing defendant's convictions.

As an initial matter, although it does not appear to have been critical to the outcome, this Court should clarify that the appellate court employed the wrong standard of review when it stated that it would give no deference to the trial court's factual findings because the trial court did not hear live testimony at the suppression hearing. Because our legal system entrusts primary factfinding responsibility to trial courts, appellate deference to a

trial court's factual findings is warranted regardless of the nature of the evidence that the trial court considered, with review only for manifest error.

In addition to clarifying the proper standard of review, this Court should reverse the appellate court's judgment for two independent reasons. First, although defendant unambiguously invoked his right to remain silent when he said, "I don't want to say nothing else about it," the appellate court erred in holding that the detectives did not scrupulously honor that invocation. Second, in light of the overwhelming evidence of defendant's guilt and the cumulative nature of his custodial confession, the appellate court wrongly concluded that any error in the admission of that confession was not harmless.

I. A Trial Court's Factual Findings Are Entitled to Deference Regardless of Whether the Court Heard Live Testimony.

This case provides the Court with an opportunity to clarify that when an appellate court reviews a trial court's ruling on a motion to suppress, it must defer to the trial court's factual findings unless they are against the manifest weight of the evidence, whether the evidence presented at the suppression hearing was live testimony or documentary evidence, such as a videorecording. *See People v. Washington*, 2023 IL 127952, ¶ 70 (Rochford, J., specially concurring) (explaining that "it is in the interest of judicial economy to set forth the correct standard" of review).

This Court has long "appl[ied] the familiar two-part standard of review announced by the United States Supreme Court in *Ornelas v. United States*,

517 U.S. 690, 699 (1996)," to the review of a trial court's ruling on a motion to suppress. *People v. Lindsey*, 2020 IL 124289, ¶ 14; *see In re G.O.*, 191 Ill. 2d 37, 46-50 (2000) (adopting *Ornelas* standard). Under that two-part standard, a reviewing court first "give[s] deference to the factual findings of the trial court" and may "reject those findings only if they are against the manifest weight of the evidence." *Lindsey*, 2020 IL 124289, ¶ 14. The reviewing court then considers *de novo* "the legal effect of those facts" and hence "the trial court's ultimate ruling on the motion." *Id.* This standard demands deference to "the trial court's findings of historical fact" and "any inferences drawn from those facts by the fact finder." *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006).

Here, the appellate court reasoned that it owed the trial court's factual findings no deference and could review them *de novo* because the only evidence at the suppression hearing was the videorecording of defendant's custodial interviews, which the appellate court itself could view. A26, ¶ 99. This Court has similarly stated that *de novo* review of a trial court's factual findings is appropriate where the trial court considered only documentary evidence such as a videorecording or transcripts because, in such circumstances, "the trial court was in no superior position than any reviewing court to make findings." *Addison Ins. Co. v. Fay*, 232 Ill. 2d 446, 453 (2009); *see also People v. Radojcic*, 2013 IL 114197, ¶¶ 34-36 (invoking same rationale for *de novo* review of trial court's ruling on application of crime-

fraud exception to attorney-client privilege where trial court considered only grand jury transcripts, but noting that "the only 'finding' the trial court made was . . . not a factual one, but rather a legal one"); *People v. Oaks*, 169 Ill. 2d 409, 447-48 (1996) (reviewing trial court's ruling on suppression motion *de novo* because "the record contain[ed] both a videotape and a transcript of the interrogation, so that neither the facts nor the credibility of witnesses [was] in issue").

But permitting *de novo* review of a trial court's factual findings when those findings are based on documentary evidence gives short shrift to the trial court's primary role as the finder of fact and ignores the extent to which courts may reasonably draw different inferences from the same evidence. It is true that one oft-cited rationale for appellate deference to a trial court's factual findings — "the reality that the [trial] court is in a superior position to determine and weigh the credibility of the witnesses, observe the witnesses' demeanor, and resolve conflicts in their testimony," *Radojcic*, 2013 IL 114197, ¶ 34 — applies only when the trial court heard live testimony. But "[t]he rationale for deference to the original finder of fact is not limited to the superiority of the trial judge's position to make determinations of credibility." *Anderson v. Bessemer City*, 470 U.S. 564, 574 (1985). It is also premised on a recognition that a trial court's "major role is the determination of fact, and with experience in fulfilling that role comes expertise." *Id.* For that reason, requiring deference to a trial court's factual findings even when the findings

are "based solely on video or documentary evidence, best advances the interests of justice in a judicial system that assigns different roles to trial courts and appellate courts." *State v. S.S.*, 162 A.3d 1058, 1069 (N.J. 2017); *see also United States v. Santos*, 403 F.3d 1120, 1128 (10th Cir. 2005) ("The increasing availability of videotapes of traffic stops due to cameras mounted on patrol cars does not deprive district courts of their expertise as finders of fact, or alter our precedent to the effect that appellate courts owe deference to the factual findings of district courts.").

That does not mean that an appellate court plays no role in reviewing a trial court's factual findings that are based on video or other documentary evidence. To the contrary, under the two-part standard for reviewing a trial court's suppression ruling, an appellate court must set aside factual findings that are "against the manifest weight of the evidence," *Lindsey*, 2020 IL 124289, ¶ 14, meaning that the findings are "unreasonable, arbitrary, or not based on the evidence presented," *People v. Chatman*, 2024 IL 129133, ¶ 34 (cleaned up). So, for example, if a trial court were to make a factual finding that was clearly unsupported or contradicted by the video evidence it considered at a suppression hearing, the appellate court would not be bound to defer to the finding. But there is no sound basis for permitting an appellate court to substitute its judgment for that of the trial court "[w]hen more than one reasonable inference can be drawn from the review of a video recording." *S.S.*, 162 A.3d at 1070.

In this case, the appellate court's legal conclusions that defendant unambiguously invoked his right to remain silent and that detectives failed to scrupulously honor the invocation do not appear to rest on a rejection of any factual finding by the trial court, but instead on an independent assessment of "the legal effect of" undisputed facts. *Lindsey*, 2020 IL 124289, ¶ 14; *see State v. Rogers*, 760 N.W.2d 35, 47-49 (Neb. 2009) (explaining that such "mixed questions of law and fact" require deference to a trial court's factual findings and "independent" review of "[w]hether those facts suffice to meet the constitutional standards"). Nonetheless, the appellate court's incorrect articulation of the standard of review that applies when a trial court makes factual findings based on video evidence threatens to cause confusion in future cases. Given that trial courts today regularly review videorecorded confessions and other police-citizen encounters when ruling on suppression motions, it is imperative that this Court take this opportunity to make clear that the general rule of deference to a trial court's factual findings applies in such circumstances.

II. The Trial Court Properly Admitted Defendant's Custodial Confession Because Detectives Scrupulously Honored His Earlier Invocation of His Right to Remain Silent.

Under any standard of review, the appellate court erred in concluding that defendant's custodial confession was inadmissible. While the appellate court wrongly held that defendant unambiguously invoked his right to remain silent by saying, "I ain't got nothing else to say," and "Got nothing to say," the People agree that defendant's subsequent statement — "I don't want

to say nothing else about it" — was an unambiguous invocation of that right. Contrary to the appellate court's further holding, however, that invocation was scrupulously honored when the detectives immediately ended the interview and different detectives waited more than five hours before further questioning defendant.

Before questioning a person who is in custody, officers must warn the person that he has the right to remain silent. *Miranda v. Arizona*, 384 U.S. 436, 479 (1966). If the person indicates that he wishes to remain silent, the interrogation must cease. *Id.* at 473-74. But this rule applies only if the person invokes the right to remain silent "unambiguously." *Berghuis v. Thompkins*, 560 U.S. 370, 381 (2010). "The key inquiry, then, is whether a reasonable officer under the circumstances would understand the defendant's statements as an unequivocal invocation of the right to remain silent." *Smith v. Boughton*, 43 F.4th 702, 709 (7th Cir. 2022). If a person unambiguously invokes his right to remain silent, any statement obtained through subsequent questioning is admissible only if the person's "right to cut off questioning was scrupulously honored." *Michigan v. Mosley*, 423 U.S. 96, 104 (1975) (cleaned up).

The appellate court held that, before making his custodial confession to Detectives Reiff and Murphy, defendant invoked his right to remain silent three times to Detectives Halloran and Murray by saying, "I ain't got nothing else to say," "Got nothing to say," and "I don't want to say nothing else about

it," because "[a]ll three" statements, in the appellate court's view, "indicated that [defendant] was done talking." A35, ¶ 119.[4] The appellate court erred in concluding that the first two statements unambiguously invoked defendant's right to remain silent, but the People agree that the third statement was an unambiguous invocation of that right.

The first statement — "I ain't got nothing else to say" — came at the end of a lengthy exchange in which the detectives told defendant that they knew the alibi he had given was false and urged him to "explain why you were the shooter." C617-18; *see also* C588-618. In context, the detectives reasonably could have understood defendant not to be expressing a desire to terminate the questioning, but stating that he was sticking to his story, reiterating his supposed alibi, and continuing to deny involvement in the shooting. *See United States v. Simpkins*, 978 F.3d 1, 12 (1st Cir. 2020) (defendant telling officers that he had "nothing to say" could reasonably be construed as "part and parcel of [his] pattern of disavowal"); *State v. Woods*,

[4] Confusingly, while the appellate court concluded that defendant invoked his right to remain silent "three times," A35, ¶ 119, it also declined to determine whether defendant actually made the third statement because it was "not relying on just this last statement, but rather all of the statements together," A30, ¶ 107. But the appellate court did not explain how it could rely on a statement if that statement was not in fact made. Nor did it provide support for the proposition that the cumulative effect of multiple statements — some separated by several hours — may be to unambiguously invoke the right to remain silent if none of the statements was individually an unambiguous invocation of the right. However, because the People agree that defendant made the third statement and that it alone unambiguously invoked his right to remain silent, *see infra* pp. 27-28, this Court need not address these questions.

374 N.W.2d 92, 98-99 (S.D. 1985) (defendant stating, "I've said everything I'm gonna say," and "I don't have anything to say," could reasonably be construed "to evince a persistence in an alibi and not to cut off questioning").

The second statement — "Got nothing to say" — was made in response to the detectives urging defendant "to ease some of the burden and pain that you have caused" by explaining why the shooting happened. C641-42. Given that context, the detectives could have reasonably interpreted defendant's response to mean that he did not want to discuss why the shooting happened, and not that he did not want to answer any questions about the shooting at all. *See People v. Aldridge*, 68 Ill. App. 3d 181, 186-87 (4th Dist. 1979) (defendant telling detectives, "[Y]ou got the story now," and "there's nothing I want to add to it," did "not show a desire for all questioning to cease but rather indicate[d] defendant's reluctance to convey to the officers all the details of the offense"), *aff'd* 79 Ill. 2d 87, 95 (1980).

However, the People agree that defendant's third statement — "I don't want to say nothing else about it" — unambiguously invoked his right to remain silent. In the appellate court, the People disputed that defendant made this statement because the interview transcript described his comment as inaudible. A30, ¶ 107; *see* C643. But after further reviewing the video of the interview, the People concede that defendant audibly stated, "I don't want to say nothing else about it," PE124 (Disk 2, File 3) at 07:17:35–07:18:18, and that any contrary finding would be against the manifest weight of the

evidence. Given the context in which defendant made the statement — in response to the detectives telling him, "If you don't want to say nothing about it . . . then just tell us I'm done talking," C643 — a "reasonable officer under the circumstances would understand defendant's statement[ ] as an unequivocal invocation of the right to remain silent." *Smith*, 43 F.4th at 709; *see Jones v. Harrington*, 829 F.3d 1128, 1139-40 (9th Cir. 2016) (holding that "I don't want to talk no more" was unambiguous invocation of right to remain silent).

But defendant's unambiguous invocation of his right to remain silent did not bar the admission of the confession he made more than five hours later because, contrary to the appellate court's holding, the detectives scrupulously honored the invocation.[5] In determining whether a defendant's invocation of his right to remain silent was scrupulously honored, courts "consider whether (1) the police immediately halted the initial interrogation after the defendant invoked his right to remain silent; (2) a significant amount of time elapsed between the interrogations; (3) a fresh set of *Miranda* warnings were given prior to the second interrogation; and (4) the second interrogation addressed a crime that was not the subject of the first

[5] Although the People did not make this argument below, *see* A34, ¶ 120, it is properly raised here because the appellate court addressed it on the merits, and because it is "well settled" that when "the appellee in the appellate court . . . brings the case to this court on appeal, that party may raise any issues properly presented by the record to sustain the judgment of the trial court, even if those issues were not raised in the appellate court," *People v. Wells*, 2023 IL 127169, ¶ 29 (cleaned up).

interrogation." *People v. Nielson*, 187 Ill. 2d 271, 287 (1999) (citing *Mosley*, 423 U.S. at 104-05). Also relevant is "whether the subsequent interrogation was by a different officer." *People v. Easley*, 148 Ill. 2d 281, 304 (1992).

Although some courts deem "the provision of a fresh set of *Miranda* rights" to be "[t]he most important factor," *United States v. Hsu*, 852 F.2d 407, 411 (9th Cir. 1988), and others characterize both fresh *Miranda* warnings and the time between interviews as the "crucial" factors, *People v. Chambers*, 261 Ill. App. 3d 123, 129 (4th Dist. 1994), no single factor is "predominant or dispositive," *United States v. Montgomery*, 555 F.3d 623, 633 (7th Cir. 2009). Rather, "the touchstone remains whether a review of the circumstances reveals that the suspect's rights were fully respected." *United States v. Abdallah*, 911 F.3d 201, 214 (4th Cir. 2018) (cleaned up).

Here, the record shows that defendant's invocation of his right to remain silent was fully respected. To start, when defendant invoked that right by saying, "I don't want to say nothing else about it," Detectives Halloran and Murray "immediately halted" the interview. *Nielson*, 187 Ill. 2d at 287; *see* PE124 (Disk 2, File 3) at 07:17:35–07:18:20; C643-44. Indeed, the detectives immediately ceased their questioning even after defendant's earlier, ambiguous statements that he had "nothing else to say" and "nothing to say," *see* C617-18, 641-42, further evidencing that defendant's right to cut off questioning was "fully respected," *Abdallah*, 911 F.3d at 214 (cleaned up).

The "crucial" factor of the time between defendant's invocation of his right to remain silent and the resumption of questioning, *Chambers*, 261 Ill. App. 3d at 129, also supports the conclusion that his right to remain silent was scrupulously honored. Indeed, at more than five hours, the time between defendant's invocation of his right to remain silent to Detectives Halloran and Murray at 7:17 a.m., *see* PE124 (Disk 2, File 3) at 07:17:35–07:18:20, and the resumption of questioning by Detectives Reiff and Murphy at 12:30 p.m., *see* PE124 (Disk 3, File 3) at 12:31:02, was far longer than the slightly "more than two hours" that this Court found to be "a significant amount of time" in *Nielson*, 187 Ill. 2d at 289-90.

To be sure, Detectives Reiff and Murphy did not deliver fresh *Miranda* warnings before questioning defendant, and they questioned him about the same crime as Detectives Halloran and Murray had. But neither factor is decisive. *See Nielson*, 187 Ill. 2d at 290 ("although the second interrogation addressed the same crime as the first interrogation, this alone does not preclude a finding that the defendant's right to remain silent was scrupulously honored"); *Weeks v. Angelone*, 176 F.3d 249, 268 (4th Cir. 1999) ("The fact that incomplete *Miranda* warnings, or no warnings at all, are given prior to the second interrogation is not decisive."). In the end, those factors do not outweigh the other factors that support a conclusion that defendant's invocation of his right to remain silent was scrupulously honored, namely, that the detectives immediately halted the interview when defendant invoked

the right and that two different detectives then waited more than five hours before asking defendant further questions.

Given the totality of these circumstances, the appellate court erred in holding that defendant's right to remain silent was not scrupulously honored and that his custodial confession was therefore inadmissible. Accordingly, the appellate court erred in reversing defendant's convictions on that basis.

III. Any Error in Admitting Defendant's Custodial Confession Was Harmless Beyond a Reasonable Doubt.

Even if defendant's custodial confession was inadmissible, the appellate court wrongly concluded that its erroneous admission was not harmless beyond a reasonable doubt.[6]

A conviction should be affirmed despite the erroneous admission of a confession elicited in violation of *Miranda* when it is "clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error." *Neder v. United States*, 527 U.S. 1, 18 (1999). In making that assessment, a reviewing court should "(1) focus on the error to determine whether it might have contributed to the conviction, (2) examine the other evidence in the case to see if overwhelming evidence supports the conviction, and (3) determine whether the improperly admitted evidence is merely

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[6] Although the appellate court alternatively held that the People forfeited a harmless error argument by raising it too late, A35, ¶¶ 121-22, the People may raise the argument in this Court under the "well settled" rule that when "the appellee in the appellate court . . . brings the case to this court on appeal, that party may raise any issues properly presented by the record to sustain the judgment of the trial court, even if those issues were not raised in the appellate court," *Wells*, 2023 IL 127169, ¶ 29 (cleaned up).

cumulative or duplicates properly admitted evidence." *People v. Salamon*, 2022 IL 125722, ¶ 121. Here, these factors demonstrate that the admission of defendant's custodial confession was harmless beyond a reasonable doubt.

To start, the other evidence of defendant's guilt was overwhelming. It included defendant's separate confessions to three friends on multiple occasions; his incriminating statements (including false exculpatory statements) to detectives before invoking his right to remain silent; eyewitness testimony identifying defendant as the shooter or as looking like the shooter, and describing the hooded sweatshirt he was wearing when he was arrested as the same color as the hooded sweatshirt the gunman wore; testimony, surveillance videos, and cell site location data placing defendant and Williams near Harsh Park shortly after the shooting in a car of the same make, model, and color as the getaway car, with defendant in the seat of the car that the gunman was seen entering after the shooting; and evidence that defendant's mother owned such a car and of defendant's gang retaliation motive for the shooting. *See Salamon*, 2022 IL 125722, ¶¶ 123-27 (finding erroneous admission of custodial confession harmless where, among other things, the defendant separately confessed to a friend).

Defendant made his first confession shortly after the shooting, when he tacitly admitted to his role as the shooter by angrily telling Williams to stop talking after Williams explained to Finner and Tucker that defendant had just shot at a group of 4-6 Terror members. R752-55; *see People v. Soto*,

342 Ill. App. 3d 1005, 1013 (2d Dist. 2003) (describing tacit admission rule). The next day, defendant expressly confessed to being the shooter when he told Randolph that "a little girl got killed on [4-6]" and that he had been the one who "popped out" when he and Williams "went through," meaning that he had "jumped out [of] the car shooting." SR1557-59. Over the next week, defendant confessed twice more that he was the shooter, telling Randolph that "he [felt] bogus as hell" about the shooting and "wished he would have never done it," SR1560-62, and telling Finner that Williams was "trying to put him under the bus" when Williams had been the one who "pointed out" the victims to him, R758.

The appellate court agreed that these confessions "tied [defendant] directly to the shooting," but it discounted their probative value because Finner, Tucker, and Randolph "largely recanted" their grand jury testimony at trial. A36-37, ¶ 124. This Court, however, has long recognized that recantations are "regarded as inherently unreliable." *People v. Morgan*, 212 Ill. 2d 148, 155 (2004); *see also People v. Brooks*, 187 Ill. 2d 91, 132 (1999). And here, the recantations are particularly suspect, such that the jury would have discredited them regardless of whether defendant's custodial confession was admitted.

For one thing, as the appellate court recognized, Finner's and Tucker's accounts before the grand jury "were not only consistent with each other but were corroborated in part by video footage." A24, ¶ 94. And, as the appellate

court also explained, "a reasonable inference could be drawn that [Finner, Tucker, and Randolph] recanted at trial because they did not want to testify in court against a fellow gang member." *Id.* Indeed, given the nature of the recantations — in particular, Tucker's incredible assertion that no one said a word after he and Finner got in the car with defendant and Williams, R563, and Finner's outlandish claim that he could not even remember testifying before the grand jury and blanket response of "I don't remember" to every question asked of him on direct examination about the events to which he previously testified, SR1080-1110 — that is the *only* reasonable inference to draw.

Defendant also made incriminating statements to the detectives after his arrest, before making any of the statements that the appellate court construed as invocations of his right to remain silent. Initially, defendant gave the detectives a false alibi, denying that he had been with Williams on the day of the shooting and claiming that he was driving from 59th and King Drive to 63rd and Hyde Park, *see* C566-78, at a time when cell site location data established that he was instead near 39th and King Drive, *see* SR1767. Those false exculpatory statements are "probative of [his] consciousness of guilt." *People v. Hommerson*, 399 Ill. App. 3d 405, 410 (2d Dist. 2010) (cleaned up). And when the detectives confronted defendant with evidence that he was Williams at the time of the shooting, defendant responded, "Mother fucking Kenneth," PE124 (Disk 1, File 1) at 00:49:45–01:07:40; *see*

C588-97 — lending corroboration to Finner's grand jury testimony that defendant twice expressed anger at Williams for talking about their roles in the shooting, *see* R755-59.

Defendant's confessions to his friends and pre-invocation incriminating statements to the detectives were further corroborated by the numerous eyewitnesses who identified defendant as the shooter with varying degrees of confidence. Abdul testified that he was one "hundred percent" certain that defendant was the gunman, SR1394-95, although he was less certain when he identified defendant in a pretrial lineup, SR1428, 1637-38. Five other students identified defendant as looking similar to the shooter in a lineup or photo array. SR1190, 1204, 1268, 1276, 1354-55, 1606-09, 1631-37. While most of these identifications were "equivocal," evidence that defendant looked like the shooter is nonetheless "probative" of his guilt, *United States v. Moore*, 936 F.2d 1508, 1520-21 (7th Cir. 1991), and corroborative of his multiple confessions to his friends. Moreover, the fact that multiple witnesses independently identified the same person, even tentatively, reduces the probability of error. *See United States v. Williams*, 522 F.3d 809, 812 (7th Cir. 2008) ("Even if the risk that any one identification would be mistaken is substantial, the risk that multiple witnesses would make the same error is smaller.").

There was also powerful circumstantial evidence connecting defendant to the shooting. After hearing gunshots at 2:15 p.m., Evans saw a man

wearing a blue hooded sweatshirt and holding a gun get in the front passenger seat of a white Nissan Sentra that then fled north. SR982-97, 1001-03, 1606, 1670-71; R846. When defendant was arrested about ten days later, he was driving his mother's white Nissan Sentra and wearing a blue hooded sweatshirt. R849-55; SR1018-19.

And witness testimony, surveillance footage, and cell site location data placed defendant and Williams near Harsh Park in the getaway car, with defendant in the front passenger seat, moments after the shooting. For instance, at 2:19 p.m., Williams's cell phone used a tower that provided coverage to Harsh Park, indicating that the phone was near the crime scene just four minutes after the shooting. SR1760-61.

At 2:29 p.m., just 14 minutes after the shooting, Finner and Tucker saw defendant in the front passenger seat of a white Nissan Sentra that Williams was driving near 39th and Indiana, a short distance northwest of Harsh Park. R555-61, 746-49, 790. Finner's and Tucker's accounts were corroborated by surveillance footage that captured Finner and Tucker running toward the car, R775-78; SR1618-20; PE4, and cell site location data showing that Williams's cell phone used a tower providing coverage to that area at the same time, SR1761-62.

Five minutes later, at 2:34 p.m., Lawrence saw defendant in the front passenger seat of a white car (with Williams in the driver seat and Finner and Tucker in the back seats) at a gas station at 35th and King Drive. R393-

402; SR1552. That account was corroborated by surveillance footage showing a white car at the gas station at 2:34 p.m., R399-402; PE5, and cell site location data showing that defendant's cell phone used a tower providing coverage to that area just minutes earlier, at 2:30 p.m., SR1767-68.

Finally, at 2:40 p.m., as Williams's cell phone used a tower providing coverage to 39th and Lake Park, SR1762-63, a surveillance camera in that area captured defendant moving from the front passenger seat to the driver seat of a parked white car, as Williams and Tucker exited the car and walked away, R778-79; SR1622-25; PE3.

The evidence also established defendant's gang retaliation motive for the shooting. As a gang expert explained, members of the 4-6 Terror faction, which claimed Harsh Park as its territory, had recently wounded Williams and killed another member of defendant's and Williams's rival SUWU faction in an ongoing war between those gangs. R966-68, 974-79, 991-92.

Despite this overwhelming independent evidence of defendant's guilt, the appellate court held that the admission of defendant's custodial confession was not harmless because "confessions carry extreme probative weight" and are thus "rarely . . . harmless." A36, ¶ 124 (quoting *People v. St. Pierre*, 122 Ill. 2d 95, 114 (1988)) (cleaned up). But this Court has explained that "the erroneous admission of a confession may be harmless in certain circumstances," including where "the substance of [the erroneously admitted] confession was cumulative and duplicated other evidence that was properly

admitted at trial." *Salamon*, 2022 IL 125722, ¶¶ 122, 127. That is the case here.

In his confession to detectives, defendant explained that he thought the students in the park were members of a rival gang that had recently killed one of his friends and that he shot at the students at Williams's urging. C673-94. But the People's gang expert independently testified about the ongoing gang war between SUWU and 4-6 Terror that established defendant's motive for the shooting in Harsh Park. R966-68, 974-79, 991-92. And defendant relayed the same details of the shooting in conversations with Randolph and Finner, saying that he "popped out" of the car and shot the "little girl . . . on [4-6]," SR1559, after Williams "pointed out" the victims, R758. The jury likewise heard Williams's statements to Finner and Tucker minutes after the shooting explaining that he and defendant had seen people in the park who they believed were 4-6 Terror members and that defendant did the shooting because Williams feared he would be recognized. R752-54. Defendant's later recitation of those details to the detectives was cumulative.

Finally, nothing in the record suggests that, despite the overwhelming independent evidence of defendant's guilt and the cumulative nature of his custodial confession, the admission of that confession still somehow contributed to his conviction. To the contrary, the prosecution did not focus the jurors' attention on the custodial confession or stress its importance to their deliberations. Indeed, the prosecution did not mention defendant's

custodial statements until page 25 of its 32-page closing argument. SR1978-2011. It then devoted only four pages to that evidence, about half of which focused on defendant's false alibi rather than his confession. SR2003-06. And the prosecution stressed that the strength of the other evidence established defendant's guilt even without the custodial statements. SR2002-03.

In sum, any error in admitting defendant's custodial confession was harmless because the record establishes "beyond a reasonable doubt that the result [of defendant's trial] would have been the same absent the error." *Salamon*, 2022 IL 125722, ¶ 121. For this reason as well, the appellate court erred in reversing defendant's convictions.

CONCLUSION

This Court should reverse the appellate court's judgment and remand for the appellate court to consider defendant's remaining claims.

March 6, 2024

Respectfully submitted,

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RULE 341(c) CERTIFICATE OF COMPLIANCE

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. I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 40 pages.

/s/ Eric M. Levin
ERIC M. LEVIN
Assistant Attorney General

APPENDIX

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2023 IL App (1st) 190364

SIXTH DIVISION
March 31, 2023

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

No. 1-19-0364

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 CR 5242
	)	
MICHEAIL WARD,	)	Honorable
	)	Nicholas Ford,
Defendant-Appellee.	)	Judge Presiding.

PRESIDING JUSTICE MIKVA delivered the judgment of the court, with opinion.
Justices Oden Johnson and Tailor concurred in the judgment and opinion.

OPINION

¶ 1 A jury found defendant Micheail Ward guilty of first degree murder (720 ILCS 5/9-1(a)(1) (West 2018)) and aggravated battery with a firearm (*id.* § 12-3.05(e)(1)) and also determined that he personally discharged a firearm that caused great bodily harm or death to another person (730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2018)). The trial court sentenced Mr. Ward to a total of 84 years in prison. On appeal, Mr. Ward argues that (1) the evidence was insufficient to find him guilty of the offenses beyond a reasonable doubt, (2) the trial court erred in not suppressing his custodial statements because the detectives who interrogated him violated his right to remain silent, (3) the trial court abused its discretion in denying his motions to admit two expert witnesses relative to these custodial statements, (4) it was plain error for the trial court not to ask the potential jurors

whether they accepted the principles set out in Illinois Supreme Court Rule 431(b) (eff. July 1, 2012), (5) several statements in the prosecutor's rebuttal at closing argument deprived Mr. Ward of a fair trial, (6) Mr. Ward's arrest, pursuant to an investigative alert, should have been quashed as a constitutionally unreasonable seizure, and (7) we should remand to the trial court to determine whether his 84-year *de facto* life sentence was unconstitutional as applied to him because he was 18 years old at the time of these crimes.

¶ 2 We conclude, for the following reasons, that the evidence was sufficient to support Mr. Ward's convictions. We also find that the trial court should have suppressed Mr. Ward's inculpatory statements to detectives because he clearly and unequivocally invoked his right to remain silent, that invocation was not scrupulously honored, and the error was not harmless. We therefore reverse the trial court's ruling on that motion and remand for a new trial.

¶ 3 I. BACKGROUND

¶ 4 This case stems from the January 29, 2013, shooting of 15-year-old Hadiya Pendleton, and 17-year-olds Lawrence Sellers and Sabastian Moore. Mr. Sellers and Mr. Moore survived their injuries, but Ms. Pendleton died as a result of her wounds. Mr. Ward and his codefendant Kenneth Williams, who is not a party to this appeal, were charged with the first degree murder of Ms. Pendleton, as well as the aggravated batteries of Mr. Sellers and Mr. Moore. The State also alleged that Mr. Ward personally discharged the firearm that proximately caused Ms. Pendleton's death.

¶ 5 A. Pretrial Motions

¶ 6 The defense moved to quash Mr. Ward's arrest and suppress any resulting evidence on October 7, 2014. The trial court denied the motion, concluding that the police had probable cause to arrest Mr. Ward.

¶ 7 On February 18, 2016, the defense also moved to suppress Mr. Ward's statements to the

police, arguing that he had invoked his right to remain silent three times, but that "his invocations were never scrupulously honored by Detectives." The trial court denied that motion. The trial court found that Mr. Ward did not invoke his right to remain silent and that his statements were not involuntary. The court made clear it had watched the recordings of Mr. Ward's interrogation and concluded that "[t]he nature of [Mr. Ward]'s actions [did] not point to an unequivocal assertion of his right to remain silent."

¶ 8 On August 28, 2017, the trial court allowed the defense to reopen the motion to suppress and present the testimony of Dr. Richard Ofshe, an expert on the "impact of interrogation methods on [a] suspect[']s decision making." After hearing Dr. Ofshe's testimony and additional argument, the court again ruled that Mr. Ward's statements were admissible.

¶ 9 Defense counsel filed pretrial motions to admit at trial Dr. Ofshe's testimony "regarding the phenomenon of false confessions," and testimony from retired detective James Trainum "regarding police procedure and interrogation methods." The trial court denied both motions.

¶ 10 B. Trial

¶ 11 The witnesses agreed that the shooting occurred at Harsh Park, at approximately 4462 South Oakenwald Avenue in Chicago. Harsh Park is bordered on the east by Oakenwald Avenue and on the west by a fence and an alley. At approximately 2:15 p.m. on January 29, 2013, a group of students from Dr. Martin Luther King Jr. College Preparatory High School (King High School) were at the park when a Black man opened fire on the group from the alley. The students ran, and three of them—Ms. Pendleton, Mr. Sellers, and Mr. Moore—were hit by gunfire.

¶ 12 1. The State's Case

¶ 13 The State introduced the testimony of nine King High School students who witnessed the shooting, another eyewitness who lived across the street from the park, and multiple law

enforcement and other witnesses who participated in the case investigation. The State also called four witnesses whom the State maintained had spoken with Mr. Ward in the days after the shooting. Each of these witnesses made statements about the events that incriminated Mr. Ward to detectives, to assistant state's attorneys (ASAs), and before the grand jury, but recanted all or part of those statements at trial. Because the sufficiency of the evidence is at issue in this case, we will describe the trial evidence in some detail.

¶ 14 a. The King High School Students

¶ 15 The King High School students ranged in age from 15 to 18 years old at the time of the shooting. Each testified that on January 29, 2013, they had final exams and were released from school early—between 12:45 and 2 p.m. The day was unseasonably warm, and the group walked to Harsh Park to hang out and smoke marijuana. They were sheltering from the rain beneath a canopy at the park when a Black man fired a gun in their direction from the adjoining alley. The students scattered and ran to Oakenwald Avenue. The students each heard between three and six shots and gave limited and varied descriptions of the shooter. Several of the students were facing the alley when the shooting began.

¶ 16 Stephen Abdul was the only student who positively identified Mr. Ward as the shooter, though he did not become certain of that identification until trial. He identified three individuals he thought had "similar characteristics" to the shooter from the photo arrays he was shown on January 31, 2013. Those arrays did not include Mr. Ward, and Mr. Abdul told the detectives he did not see the actual shooter in the photos. Mr. Abdul testified that, on February 10, 2013, he picked Mr. Ward out of an in-person lineup as the shooter and it was "a pretty solid answer," although he was not 100% sure. Mr. Abdul also later agreed on cross-examination that he did not actually make an identification at the in-person lineup, but instead made a statement of similarity.

¶ 17 Mr. Abdul's testimony was that he had seen "something move" in his peripheral vision, had noticed "some image moving towards the alley," and, when he looked over, "there was a guy with a gun who raised the gun and started to shoot." Mr. Abdul said the shooter was between 5 feet, 11 inches and 6 feet, 1 inch tall, "[m]edium size," with dark skin. He also remembered "dreadlocks of some sort," a "blue top and a blue jacket" and "khaki pants, maybe cargo pants," with "a hood or a hat."

¶ 18 Mr. Abdul was shown a blue hoodie and a black and gray hat at trial. He identified the color of the hoodie as the same blue color he had seen the shooter wearing. As to the hat, he said, "I do remember a black garment on his head." On cross-examination, Mr. Abdul agreed that he told a detective on January 30, 2013, that the shooter had worn a black hat or cap over dreadlocks, in addition to having dark skin and long arms, and that Mr. Ward did not have dreadlocks. Mr. Abdul agreed that the whole thing happened very quickly; he saw the shooter as shots were being fired, and then fled from the park. Mr. Abdul also agreed that most of his friends discussed what had happened later on Facebook, that he had kept up with the case on social media, and that he had seen photos of Mr. Ward and Mr. Williams on the news.

¶ 19 Of the remaining students, some viewed both a photo array and an in-person lineup in the days after the shooting, while others viewed only an in-person lineup. Mr. Ward was not included in the photo arrays shown until February 5, 2013, but was included in all of the in-person lineups. The students viewed the arrays and lineups independently from one another and were all either unable to identify anyone from the lineups or pointed out Mr. Ward as someone who looked similar to the shooter. Three (Klyn Jones, Mr. Moore, and Mr. Sellers) were unable to make any identification, and one (Jordan Dillon) selected Mr. Ward from a photo array as looking similar to the shooter but was unable to pick him out at the lineup. Two of the students (Lazerick Bowdry

and Danetria Hutson) picked Mr. Ward from the lineup as looking similar to the shooter, and two (Kyra Caldwell and Veronica Hansberry) picked out both Mr. Ward and another individual from the lineup as looking similar to the shooter.

¶ 20 b. Ronald Evans

¶ 21 The only eyewitness who was not a student at King High School was Ronald Evans, a former police officer with the Chicago Police Department from 1994 to 2007. Mr. Evans was not asked to and did not identify Mr. Ward in open court. At the time of trial, Mr. Evans had been convicted in a federal case of wire fraud and money laundering (case No. 12 CR 3 0042) and for fraud and making a false statement (case No. 13 CR 3 0082). Mr. Evans maintained that he did not benefit in any way from his cooperation in this case, as the charges against him were federal and he still served time in prison.

¶ 22 On January 29, 2013, Mr. Evans lived on the third floor of a multi-unit building at 4431 South Oakenwald Avenue. At approximately 2 p.m. on that day, Mr. Evans was in his bedroom when he glanced out of the window facing Oakenwald Avenue to check the weather, which was unseasonably warm—in the 60s, and raining. He noticed "a lot" of high school students, "maybe a total of 20," walking east on 44th Place and then south on Oakenwald Avenue.

¶ 23 About 15 or 20 minutes later, Mr. Evans heard "several loud reports that [he] believed to be gunshots." He was a couple of feet from the window and had an unobstructed view of a Black teenager in the alley behind the vacant lot "running northbound with a firearm in his hand." Mr. Evans testified that the teen was wearing a blue hooded sweatshirt—describing it as "a really unique color of blue, not navy blue"—jeans, and no hat, and said the teen had a "low hair cut" with no dreads or braids. Mr. Evans then saw the teen get into a white four-door Nissan parked at the mouth of the alley at 44th Place, facing toward Mr. Evans's residence. Mr. Evans saw the teen

put the gun in the pocket of his hooded sweatshirt and get into the front passenger seat of the car, which "immediately left the scene," going east on 44th Place, then north on Oakenwald Avenue away from the park. Mr. Evans could not tell if there were others in the vehicle with the shooter and the driver. Mr. Evans's view was of the rear of the car as it drove away, and he did not notice anything distinctive about it.

¶ 24 Just after midnight on January 31, 2013, Mr. Evans went to the police station and viewed a photo array that included several Suwu gang members, including Mr. Williams, but that did not include Mr. Ward. Mr. Evans testified that one of the individuals in the array—Mr. Williams—"just grabbed [his] attention," but that man had dreadlocks or braids, unlike the teen he had seen running. Mr. Evans told detectives that the man "caught [his] eye but the shooter did not have dreads."

¶ 25 Mr. Evans was shown a blue hooded sweatshirt at trial and said it was the same color as the one the individual he had seen running from the shooting was wearing. On cross-examination, Mr. Evans agreed that he could not say for sure whether it was the actual sweatshirt the shooter had been wearing, only that it was the same color. Mr. Evans did not remember saying this, but the parties stipulated that, if called, Sergeant Kruega would testify that on January 29, 2013, Mr. Evans told him that the shooter was wearing "a light or royal blue colored jacket."

¶ 26 On February 2, 2013, a detective took Mr. Evans near Mr. Ward's home at 362 East 59th Street to see if a white four-door sedan was the vehicle in which the shooter had fled. Mr. Evans testified that the car was the same make and model, had the same number of doors, and had the same type of wheels, but there was nothing to distinguish it from another car of the same type.

¶ 27 c. The Recanting Witnesses

¶ 28 Ernest Finner, Demetrius Tucker, Tyron Lawrence, and Jarod Randolph, individuals

affiliated with the Suwu gang, all initially gave statements or grand jury testimony, or both, implicating Mr. Ward as the shooter in this case but recanted in part or in full at trial.

¶ 29 i. Ernest Finner

¶ 30 Mr. Finner's pretrial handwritten statement was introduced at trial through testimony from George Canellis, who was a judge at the time of trial but was an ASA at the time of the investigation, and who we will refer to as ASA Canellis. His statement was that on January 29, 2013, Mr. Finner and Demetrius Tucker attended an orientation at "Ada S. McKinley School." They left school a little bit after 2 p.m. to walk to a friend's house at 41st Street and Indiana Avenue. Mr. Finner was wearing a red Bulls jacket, and Mr. Tucker was wearing a dark top. It was raining. When they were near 39th Street and Indiana Avenue, Mr. Finner heard a car horn coming from Mr. Ward's mother's car, a white car that Mr. Finner had seen and ridden in multiple times. Mr. Williams was driving, and Mr. Ward was in the front passenger seat. Mr. Ward told them to hop in, so they did. Mr. Williams was not acting like himself. He seemed "all nervous" and was "constantly looking all over the place from side to side, to the back, and in the mirror." Mr. Williams then said that he and Mr. Ward "had just done a drill"—Mr. Finner understood this to mean a shooting—involving the 4-6 Terror (a rival gang) and that he and Mr. Ward had been looking for 4-6 Terror members when they drove by the park and saw a group of people. Mr. Williams said he saw some students from King High School and was afraid they would recognize him if he did the shooting, so he and Mr. Ward switched spots and Mr. Ward did the shooting.

¶ 31 According to Mr. Finner's handwritten statement, Mr. Ward then became angry and said Mr. Williams should not be saying anything. Mr. Finner did not want to have anything to do with Mr. Ward or Mr. Williams after hearing what they had done and asked to be dropped at home. Mr. Finner identified still photographs from surveillance footage of himself and Mr. Tucker walking

in the rain before they got into Mr. Ward's mother's car.

¶ 32 In his statement, Mr. Finner also referenced a Suwu meeting on February 8, 2013, at which he and Mr. Ward were present. The meeting was called because of "the heat" that members of the Suwu were getting from the police about the shooting. At the meeting, Mr. Ward was upset at Mr. Williams for "running his mouth about Micheail shooting the girl." Mr. Ward told everyone at the meeting to lay low and he did not want to hear anything more about the shooting.

¶ 33 Mr. Finner noted in his statement that he had been treated fine by the police and the ASA, and that he was allowed to sit with his mother at the station. She told him to tell the truth, which he did. No threats or promises were made to him, and he gave the statement freely and voluntarily.

¶ 34 Video recordings that corroborated portions of Mr. Finner's statement were published to the jury and are included in the record on appeal. One, recorded at around 2:29 p.m. on January 29, 2013, was from a camera near 39th Street and Indiana Avenue. The video shows two individuals—one in a red jacket and one in a dark top—running toward a white vehicle on the street. During his statement, Mr. Finner viewed stills from the video and identified the white car as Mr. Ward's mother's car, himself in the red jacket, and Mr. Tucker in the dark top. The other video was from a Chicago Housing Authority (CHA) security camera at 3983 South Lake Park Avenue, recorded at approximately 2:39 p.m. on January 29, 2013. That video shows a white four-door car park and three individuals exit—from the driver's seat, the front passenger seat, and the rear passenger-side seat. The front passenger—who is wearing a dark or black t-shirt—takes the driver's seat, then drives away, while the other two individuals depart on foot. Sergeant Velma Guerrero, who interviewed Mr. Finner before he gave his statement, testified at trial that Mr. Finner identified Mr. Ward as the person who got out of the front passenger seat, Mr. Tucker as the rear passenger, and Mr. Williams as the initial driver in stills from the CHA camera.

¶ 35 A transcript of Mr. Finner's grand jury testimony was also published to the jury and was consistent with Mr. Finner's statement to ASA Canellis. Michael Delacy, formerly an investigator for the State, testified that Mr. Finner also reiterated the veracity of his prior statements at a meeting with ASA Brian Holmes on November 3, 2013, at which Mr. Delacy was also present, and Mr. Finner told ASA Holmes that he "felt fine, but he was concerned for his mother's health."

¶ 36 At trial, Mr. Finner testified that he did not remember his whereabouts on January 29 or February 8, 2013, meeting with ASA Canellis on February 10, 2013, testifying before the grand jury on February 11, 2013, or meeting ASA Holmes on November 3, 2013. Mr. Finner also said he did not remember giving a handwritten statement to ASA Canellis, but when he was shown the statement, he did agree that his signature appeared on the bottom of all 10 pages and his initials appeared next to a correction.

¶ 37 On cross-examination, Mr. Finner testified that he was on parole in 2013 and if he violated his parole, he would have to serve the remaining 1.5 years of his 3-year sentence. He said that on February 9, 2013, his parole officer told him to come in for a "drug drop," and when he arrived, he was pulled from his mother's car and put in handcuffs. Mr. Finner said the officers threatened to charge him with a "dirty drop," a violation of his parole, and said they would cause his mother to lose her job if he did not cooperate with them. He then told them what they wanted to hear.

¶ 38 ii. Tyron Lawrence

¶ 39 Mr. Lawrence largely adhered to his grand jury testimony, only changing his testimony at trial with respect to a few details. Mr. Lawrence testified that at approximately 2:30 p.m. on January 29, 2013, he was in a reddish vehicle with Anthony Pearson and Nurldon Green. Mr. Pearson was driving, Mr. Green was in the front passenger seat, and Mr. Lawrence was in the back seat next to a backpack. They drove to the BP gas station at 35th Street and Martin Luther King

Jr. Drive (King Drive) and pulled in. There, Mr. Lawrence got out of the car with the backpack and passed the bag to the occupants of a white car. Mr. Lawrence said Mr. Finner and someone else whose name he did not know were in the back of the car, along with Mr. Ward and Mr. Williams in the front, though he did not remember who was driving.

¶ 40 The video surveillance from the BP gas station was shown, and Mr. Lawrence identified the car he was in, the other white car that Mr. Ward and Mr. Williams were in, and the moment when he passed the bag over to the white car. Mr. Lawrence said he did not recognize the white car and did not agree that it belonged to Mr. Ward's mother.

¶ 41 Mr. Lawrence agreed that on February 26, 2013, he was picked up by Detective John Halloran and shown both a video of him rapping, "Scary Movie," and video footage from the BP gas station. The Scary Movie video was published to the jury. Mr. Lawrence identified himself in the video doing an "upside-down signal," a gang symbol for "4-6K," a rival gang of Suwu. Mr. Lawrence identified Mr. Ward, Mr. Williams, and Jarod Randolph—who had a revolver—in the video. At the time, Mr. Lawrence was on probation for a drug case he had picked up in 2011 and maintained that the detectives who questioned him threatened to charge him with "[a]ssocation to murder" if he did not cooperate. They wanted to know what was in the bag that he passed to the white car, but he said there was nothing in the bag. Mr. Lawrence understood that he had to tell the detectives the truth because they had him on video. He said he was questioned for about 18 hours, was not fed, and then was taken directly to testify before the grand jury.

¶ 42 Jennifer Sexton, formerly an ASA, testified that Mr. Lawrence told the grand jury that he recognized the white car as "[Mr. Ward]'s mother's car," that he saw Mr. Finner and Mr. Tucker—whom he identified by name before the grand jury—in the backseat, and that Mr. Williams was driving.

¶ 43 iii. Demetrius Tucker

¶ 44 Mr. Tucker's handwritten statement, which was presented to the jury by ASA Canellis, was that he got into the back of Mr. Ward's car, and that Mr. Williams was driving while Mr. Ward was in the front passenger seat. Mr. Tucker said that Mr. Williams was acting strange, kept looking around a lot, and then said they had just done a drill, which Mr. Tucker knew meant a 4-6 Terror shooting. Mr. Tucker said Mr. Ward also said they had done a drill.

¶ 45 Mr. Tucker testified before the grand jury, and his grand jury testimony was consistent with his handwritten statement. Mr. Tucker also agreed before the grand jury that he had been treated well, had not been threatened or promised anything, and had spoken to the police and ASA Canellis freely and voluntarily.

¶ 46 At trial, Mr. Tucker testified that he could not recall who was driving the white Nissan when he was picked up, and that "no one said a word" while they were all in the car. Mr. Tucker agreed he spoke with ASA Canellis, but denied saying anything about the murder. Mr. Tucker was shown the statement he gave to ASA Canellis, but said he did not recognize it and denied much of the statement, though he agreed he had signed the document on each page. Mr. Tucker said he was not allowed to review his statement or make corrections, he did not give his statement freely or voluntarily, and he told ASA Canellis that he was not treated fine by the police.

¶ 47 On cross-examination, Mr. Tucker agreed he told defense counsel that the police told him that "if [he] d[idn't] tell them what happened [he] w[ould] get ten years added to the time that [he was] already on probation for." When Mr. Tucker continued to deny having any knowledge about the shooting, the police officers told him to say that Mr. Williams did a drill.

¶ 48 iv. Jarod Randolph

¶ 49 Mr. Randolph's grand jury testimony was presented at trial by former ASA Sexton. Mr.

Randolph told the grand jury that he received a phone call from Mr. Ward on January 30, 2013, and Mr. Ward told him that "a little girl got killed on [4-6]. Him and Kenny went through. He popped out." Mr. Randolph said he knew Mr. Ward was talking about Ms. Pendleton and that "popped out" meant that he "jumped out of the car shooting." Mr. Randolph told Mr. Ward they could not talk about it on the phone and hung up. Mr. Randolph said he discussed Ms. Pendleton's murder again with Mr. Ward in person on January 31, 2013. Mr. Ward "explained how he feel bogus as hell. He wish I would never did it. He regret it. Things like that." Mr. Randolph said he spoke with Mr. Ward again on February 1, 2013, and Mr. Ward said the "exact same thing he said the day before"—"how much he regret, he remorseful, wished he would have never done it, how sorry he was." Mr. Randolph said that the Suwu had a meeting on February 8, 2013, and that Mr. Ward was at the meeting, but Mr. Williams was not. At the meeting, they discussed that someone was "talking about the murder [of Ms. Pendleton] a lot," and that "nothing needed to be said about it. Phones or in person. Period."

¶ 50 At trial, Mr. Randolph testified that he did not remember speaking with Mr. Ward between January 30 and February 8, 2013, meeting with the police and an ASA on February 26, 2013, or testifying before the grand jury.

¶ 51 On cross-examination, Mr. Randolph said he did not recall being on parole in February 2013, but agreed that he would not want to get in trouble while on parole because that would require him to return to prison. He insisted he never made a rap video and did not recall the police showing him the "Scary Movie" video. When the video was played for him at trial, Mr. Randolph said he remembered the video but did not remember being shown the video by the police. Mr. Randolph testified that he did not recall telling an investigator for the defense named Brad Thompson in May 2014 that "because there was a music video he appeared in with a gun the police

were using that to threaten to violate his parole or charge him on a new case," or, as Mr. Thompson later testified, that "[he] gave [the police] the statement because he was told *** he would be violated for parole if he didn't tell them what they wanted to hear." Mr. Randolph invoked his right to remain silent when asked if a portion of the video showed him with a gun in his hand.

¶ 52 d. Law Enforcement Witnesses and Forensic Evidence

¶ 53 Law enforcement personnel and forensic experts provided extensive testimony regarding the investigation of the January 29, 2013, shooting. That testimony is summarized here to the extent necessary to assess the sufficiency of the evidence.

¶ 54 The assistant medical examiner who completed Ms. Pendleton's autopsy testified that the cause of her death was a gunshot wound to her back and the manner of death was homicide.

¶ 55 Sergeant Jose Lopez, an expert in criminal street gang investigations and a member of the department's gang intelligence unit, was early to the scene. He knew that Harsh Park was 4-6 Terror territory. When he learned that the offender had fled north from the scene, in the direction of the rival Suwu gang's territory, a gang shooting became law enforcement's theory of the case. Sergeant Lopez explained that 4-6 Terror was Suwu's most significant rival at the time, although Suwu was also "at odds with So Icy Boys to the south." Sergeant Lopez testified that there had been shootings between Suwu and 4-6 Terror in the time leading up to the shooting in this case. He told the jury that in July 2012, Mr. Williams had been the victim of a shooting. A member of 4-6 Terror was identified as a suspect, but was never charged because Mr. Williams would not cooperate with police. In September 2012, a Suwu member named Dejuan Jackson was murdered, and the suspect identified was also a 4-6 Terror member.

¶ 56 Sergeant Lopez explained that gangs use social media, including YouTube, "quite a bit," and that disrespect can be shown to a rival gang through lyrics or by showing a rival gang's hand

sign upside down.

¶ 57 On cross-examination, Sergeant Lopez disagreed that he had concluded that Suwu must be involved in the shooting based only on the fact that the shooter fled north. He maintained, however, that it was his experience "that once offenders do a shooting, you take the most direct route back to your own territory." Sergeant Lopez acknowledged that 4-6 Terror also had problems with the Young Money street gang but said that all the evidence the police compiled had led to Suwu.

¶ 58 Detective Abdalia Abuzanat, who was an evidence technician in 2013, testified that no cartridge casings or fired bullets were found at the scene and that this was "consistent with a firearm being a revolver," which does not eject cartridges when fired.

¶ 59 Sergeant Guerrero testified that a database search for white Nissans in the area of the murder indicated that a 2012 hard-top, four-door, Nissan Sentra was pulled over in the early morning hours of January 27, 2013, and that Mr. Ward was the driver. The officer who initiated that stop noted that Mr. Ward was 18 years old, 5 feet, 8 inches tall, 163 pounds with a medium build, brown eyes, short hair, and a dark complexion.

¶ 60 Chicago police officer Kevin Kilroy testified that he arrested Mr. Ward at approximately 11:55 p.m. on February 9, 2013. Mr. Ward was pulled over around 6600 South King Drive while driving his mother's white Nissan. Officer Kilroy searched Mr. Ward, who was wearing a blue sweatshirt at the time of his arrest, and recovered Mr. Ward's cell phone, eventually turning it over to an investigating detective. Mr. Ward's car was not searched at that time but was impounded and inventoried. Mr. Williams was also arrested at the same time and location, though he had been the passenger in a different vehicle. Mr. Williams's cell phone was also recovered at that time.

¶ 61 Mary Wong, a forensic scientist, analyzed the gunshot residue (GSR) test kits received from the front of Mr. Ward's mother's car and did not get a positive result. Ms. Wong said this

might be explained by a shooting having occurred outside the car. The washing of hands and wiping of surfaces or the passage of 10 days could also contribute to a negative finding. On cross-examination, Ms. Wong testified that GSR can be identified on clothing, but she was not consulted about testing clothing in this case. And while GSR can also be identified on a shooter's hands, she explained that there is only a "six hour window" for such tests.

¶ 62 Joseph Raschke, a special agent with the FBI and a member of its cellular analysis team, was qualified as an expert in historical cell site analysis. He explained that cell site analysis was not a science, that the "cell tower used can only be seen if a call is made or received," and that while "[m]ost of the time," service is provided by the closest cell site, that does not necessarily happen every time. Agent Raschke testified that Mr. Williams's phone showed calls made at 2:19 and 2:20 p.m. on January 29, 2013, using a cell site that "provide[d] coverage to the crime area." At 3:33 p.m., Mr. Williams's cell phone made a call to Mr. Ward's phone, hitting off the cell tower closest to the crime scene, but then hit a cell site a couple of miles away during a call at 3:36 p.m.

¶ 63 Mr. Ward's phone showed several calls made between 2:01 and 2:07 p.m. that hit off two different towers, located near 39th Street and King Drive and 47th Street and King Drive, which Agent Raschke said indicated a presence between the two but "likely closer" to the 39th Street tower. The phone showed no activity until 2:30 and 2:31 p.m., hitting off a cell tower with a sector encompassing the BP gas station at 352 East 35th Street. The next several calls from Mr. Ward's phone occurred from 2:54 through 2:57 p.m. and hit off the initial two overlapping towers. Finally, multiple calls from Mr. Ward's phone from between 3:00 and 3:33 p.m. used a tower that encompassed Mr. Ward's residence.

¶ 64 e. The Interrogation and Mr. Ward's Statements

¶ 65 The State called two of the detectives who questioned Mr. Ward after his arrest. Detective

Halloran interrogated Mr. Ward with a partner in the earlier morning hours of February 10, 2013, between approximately midnight and 7 a.m. Detective Scott Reiff interrogated him on the afternoon of February 10, 2013. Video recordings of those interactions were published to the jury. It was during Detective Reiff's interview that Mr. Ward gave his incriminatory statements, a recording of which was likewise published to the jury. In addition, a transcript of the entire interrogation was entered into evidence. We have reviewed both the recording and the transcript and summarize Mr. Ward's statements to the detectives as follows.

¶ 66 During the last interrogation, before giving his statements, Mr. Ward said, "[i]t's hard." When asked what was hard, he responded, "it ain't no point in sayin' nothin' 'cause even if—even if I was never—even if I didn't do it I—and I still in this predicament. I'm still getting' a honey years." At some time before he gave his statements, Mr. Ward discussed the relationship between Suwu and 4-6 Terror, and then the murder of Dejuan Jackson, saying, "[t]hat was the final straw. It was over with. *** I loved that boy and they killed him. They shot him in the head." Mr. Ward said, "[t]hat s*** hurted—hurted me to a point where everybody had to go, but not that girl though. That girl had nothin' to do with it. She was just there." Mr. Ward said he and Mr. Williams were together in his mother's Nissan Sentra, and he was driving. Mr. Williams had the gun, but when asked what kind, Mr. Ward said, "I don't know what kind of gun it is." As the detectives asked more about the gun, Mr. Ward said, he "knew a revolver" and "[i]t wasn't a revolver." Later he said, "I honestly don't know what type of gun it was, I really don't." Mr. Ward also said that he "didn't see no [*sic*] shell cases."

¶ 67 Mr. Ward said they drove by the park and there "[w]asn't just no King kids. They was deep as f*** in that park. Like thirty of they [*sic*] ass out there." Mr. Ward said as they were driving, they saw "Zac," a member of 4-6 Terror. Mr. Ward said he parked the car at 45th Street and

Greenwood Avenue. Mr. Williams did not want to do the shooting because he said his arm was "f*** up" from when he had been shot. Mr. Ward said he did not want to do it either, but Mr. Williams told Mr. Ward that he "was dead" if he did not do it. Mr. Williams got into the driver's seat and gave Mr. Ward the gun. Mr. Ward did not have to walk far, and when asked if there was a fence, said, "I ain't [*sic*] need to get close to the fence." Mr. Ward saw Zac "[a]nd like four other boys and it was like they separate from the crowd." Mr. Ward agreed he was trying to shoot Zac and said "as they runnin' off they—they grab a girl and they threw her in front and she got shot." Mr. Ward said Zac threw Ms. Pendleton. Mr. Ward said he fired the gun six times. Then Mr. Ward ran back to the car, he gave the gun back to Mr. Williams, and they drove off.

¶ 68 At some point they drove somewhere so Mr. Williams could pick up his book bag "right before we pick Ernest and them up"—someone "handed it to him." Mr. Ward said they then picked up Mr. Finner and Mr. Tucker, and Mr. Williams "get to tellin' everybody." When asked what was said, Mr. Ward said, "[w]asn't nothin' really said." Mr. Ward said that they then went to the gas station on 35th Street and King Drive. He got gas, they dropped off Mr. Finner, and then he dropped off Mr. Tucker and Mr. Williams at Lake Park Avenue and 39th Street. Mr. Ward said he was not a member of Suwu: "I am Lake Park, we[']re not Suwu.*** I'm not Suwu. I don't gang bang, it's not what I was raised to do."

¶ 69 Detective Reiff testified that the mention of the BP gas station was the first time the detectives had heard of that. A number of details Mr. Ward had provided did not fit with what the police had learned, however. Detective Reiff agreed that no one indicated there were gang members in the park or that someone named "Zac," "Delfo," or "Deandre" was present, and that no one said that Ms. Pendleton was used as a shield, that there were 30 members of 4-6 Terror in the park, or that four outsiders rushed toward the group as they sat under the canopy. On redirect

examination, however, Detective Reiff agreed that the facts that Mr. Ward got "wrong" in his statements were ones that would tend to mitigate his involvement in the crime. Detective Reiff also agreed that a revolver might have been used in the shooting because no shell casings were found at the scene. Although Mr. Ward said it was not a revolver, Detective Reiff pointed out that "he was very unsure about what the gun was."

¶ 70 The State then rested, and the defense motion for a directed verdict was denied.

¶ 71 2. The Defense Case

¶ 72 a. Dr. Geoffrey Loftus

¶ 73 The defense first called Dr. Geoffrey Loftus, an expert in the field of human perception and memory. Dr. Loftus testified that he had been conducting research since the 1960s, primarily on human perception and memory. Dr. Loftus explained that any perceived event presents a vast amount of information, while a person's memory contains a "sparse" amount of information in comparison. In addition, "there are other factors at work *** that limit what information about the event you're going to get into your memory." He testified that witnesses also "can and do supplement their original memory via conscious experience with post[-]event information," which "allows them to plug the gaps in their original memory," to "fill the holes" and to "sort of create a better story, a better picture in their memory of what it was that happened during this original event." He classified post-event information as "dubious" because it is unclear whether such information is accurate or inaccurate. Dr. Loftus testified that, generally, a person ends up with a single memory and cannot distinguish "between the information they got via conscious experience and the information they got post[-]event." Dr. Loftus said that post-event information can come from talking to friends, from interviewers, from just trying to think things through, from reading about the event in the news media, and from overhearing other witnesses talking.

¶ 74 Dr. Loftus discussed several factors that could affect a witness's memory: (1) "weapon focus," meaning that "when there is a weapon in the scene, people tend to pay attention to it compared to if there's a benign object," (2) functional duration, which means the actual amount of time a person has to pay attention to information that might be relevant later on and (3) the amount of stress, with high stress potentially diminishing a person's ability to remember.

¶ 75 b. Law Enforcement Witnesses and Forensic Evidence

¶ 76 Officer Eric Szwed, a forensic investigator with the Chicago Police Department, said he was one of the officers assigned to process the white Nissan Sentra in this case in February 2013. He and his team photographed the car, which Officer Szwed testified had lettering at the top of the back windshield. They also searched for firearms evidence in the vehicle but did not discover any.

¶ 77 Detective Salvador Esparza testified that, on February 1, 2013, he was assigned to run two names—Micheail Ward and Kenny Williams—through the contact card database to see if either individual had been stopped in a white vehicle. The contact card for Mr. Ward was produced. Detective Esparza never ran an open search for white vehicles in the area of Harsh Park and was not asked to search for any other names.

¶ 78 Brad Thompson testified that he was a private investigator hired by the defense to interview Jarod Randolph. Mr. Randolph failed to keep three appointments with Mr. Thompson, but eventually did meet with him in May 2014. Mr. Randolph told him that the police threatened him with a parole violation for appearing in a music video with a gun and that "he gave the statement to the police because he was told his parole would be violated if he didn't tell them what they wanted to hear." Mr. Thompson also agreed that Mr. Randolph said, "the police had a story they wanted to hear and [Mr. Randolph] repeated what the police or the prosecutor told him."

¶ 79 Beau Bradshaw, an investigator for the Cook County Public Defender's Office, testified

that he took pictures in 2018 of 45th Street and Greenwood Avenue, where Mr. Ward said in his statement that Mr. Williams dropped him off on the day of the shooting, and Harsh Park was about three or four blocks away from that intersection, while Kennicott Park was one block away.

¶ 80 3. Verdict and Sentencing

¶ 81 The jury found Mr. Ward guilty of first degree murder and found that he had personally discharged a firearm that proximately caused the death of another. The jury also found Mr. Ward guilty of aggravated battery. The trial court denied his motion for a new trial.

¶ 82 At sentencing, the trial court indicated it had considered all the factors in aggravation and mitigation, including that Mr. Ward was "young," and sentenced him to a total of 84 years in prison—70 years for the murder (45 years, plus a 25 year firearm enhancement) to be served consecutively with a 14-year sentence for the aggravated battery. Mr. Ward's motion to reconsider his sentence was denied, and this appeal followed.

¶ 83 II. JURISDICTION

¶ 84 Mr. Ward's motion to reconsider his sentence was denied on January 14, 2019, and he timely filed his notice of appeal that same day. We have jurisdiction pursuant to article VI, section 6, of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6) and Illinois Supreme Court Rules 603 (eff. Feb. 6, 2013) and 606 (eff. Dec. 11, 2014), governing appeals from final judgments of conviction in criminal cases.

¶ 85 III. ANALYSIS

¶ 86 For the reasons set out in this opinion, we conclude that Mr. Ward clearly and unequivocally invoked his right to remain silent and the custodial statements he gave to detectives were therefore improperly admitted at his trial. But double jeopardy bars retrial if the evidence was not sufficient, so we first address Mr. Ward's argument that the evidence was insufficient.

¶ 87 A. Sufficiency of the Evidence

¶ 88 "Where the evidence presented at trial, including the erroneously admitted evidence, was sufficient to support [the] defendant's conviction, retrial is not barred by double jeopardy." *People v. Brown*, 363 Ill. App. 3d 838, 850-51 (2005). Mr. Ward argues that the evidence was insufficient to find him guilty of the offenses beyond a reasonable doubt because the students' identifications of him, the recanted statements, and Mr. Ward's own statements were all unreliable and because there was no forensic evidence tying Mr. Ward to the shooting. For the following reasons, we find that the evidence was sufficient to support Mr. Ward's convictions.

¶ 89 "The State has the burden of proving beyond a reasonable doubt each element of an offense." *People v. Gray*, 2017 IL 120958, ¶ 35 (citing *Jackson v. Virginia*, 443 U.S. 307, 315-16 (1979), and *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009)). "When the sufficiency of the evidence supporting a criminal conviction is challenged, '[t]he relevant inquiry is whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " *People v. Ramos*, 2020 IL App (1st) 170929, ¶ 57 (quoting *People v. Ward*, 215 Ill. 2d 317, 322 (2005)). The role of the reviewing court is not to retry the defendant. *Gray*, 2017 IL 120958, ¶ 35. Instead, "it is the responsibility of the trier of fact to resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from the facts." *Id.* Therefore, "on questions involving the weight of the evidence or the credibility of the witnesses," we defer to the findings of the trier of fact, and we will find that the evidence was insufficient to support the conviction only if it was "so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of the defendant's guilt." *Id.*

¶ 90 Mr. Ward spends much of his brief arguing that, when considered in light of the factors set

forth by the United States Supreme Court in *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972), the students' "identifications" of him were insufficiently reliable to support his convictions. Only one the students—Mr. Abdul—positively identified Mr. Ward as the shooter. Mr. Abdul's in-court identification was undermined by his statements prior to trial that he was not 100% positive of his identification and by his admission that he saw pictures of Mr. Ward in the news prior to the trial. But even without any of the students' testimony, the evidence was sufficient to support Mr. Ward's convictions. Viewed in the light most favorable to the State, the remaining evidence includes (1) the testimony of Mr. Evans, (2) the testimony and prior inconsistent statements of the recanting witnesses—Mr. Finner, Mr. Tucker, Mr. Lawrence, and Mr. Randolph, (3) Mr. Ward's custodial statements, (4) video-recorded footage corroborating the statements, and (5) the historical cell site analysis testimony.

¶ 91 Mr. Evans testified that he saw the shooter—wearing a blue jacket the same color as the one recovered from Mr. Ward—get into a car of the same make and model as Mr. Ward's mother's car. In their trial testimony and prior statements, Mr. Finner and Mr. Tucker said that Mr. Williams and Mr. Ward picked them up shortly after the time of the shooting in Mr. Ward's mother's white Nissan, and that Mr. Williams said they had "done a drill" and Mr. Ward had done the shooting. Mr. Lawrence testified that he saw Mr. Williams, Mr. Ward, Mr. Finner, and Mr. Tucker in Mr. Ward's mother's car shortly after the time of the shooting at a gas station at 35th Street and King Drive. Mr. Randolph told the grand jury that in multiple conversations with Mr. Ward in the days after the shooting, Mr. Ward expressed regret and remorse at committing the shooting. Mr. Ward himself confessed to the shooting, mentioned picking up Mr. Finner and Mr. Tucker, said he stopped at the gas station, and mentioned Mr. Williams getting his backpack. The State published video recordings corroborating a number of details from these accounts, including that (1) Mr.

Finner and Mr. Tucker were picked up at 2:29 p.m. in Mr. Ward's mother's car, (2) Mr. Ward's mother's car was at the gas station at 2:34 p.m., and (3) Mr. Williams parked Mr. Ward's mother's car near 39th Street and Lake Park Avenue at 2:39 p.m. when Mr. Ward exited the front passenger seat and got into the driver's seat of the car. Finally, the State's historical cell site analysis expert testified that the cell sites that Mr. Williams's and Mr. Ward's phone hit off between approximately 2:00 and 3:30 p.m. were consistent with this evidence as to where they were at those times.

¶ 92 Although it is partly circumstantial, considering all the above evidence, we certainly cannot say that no rational trier of fact could have found Mr. Ward guilty of the offenses beyond a reasonable doubt.

¶ 93 Mr. Ward argues that the statements of the recanting witnesses were "unworthy of belief" because each of the four men was on probation or parole at the time, and thus had a reason to lie to assist the police, and all except Mr. Randolph testified at trial that they were threatened with probation or parole violations when they gave their prior statements. But a recanted prior inconsistent statement alone can support a conviction, "even without corroborating evidence." *People v. Cox*, 377 Ill. App. 3d 690, 700 (2007). It is for the trier of fact to resolve conflicts and weigh the evidence. *People v. Armstrong*, 2013 IL App (3d) 110388, ¶ 26. And when it comes to recanted statements, the trier of fact must "weigh the statement, weigh the disavowal and determine which is to be believed." *Id.* ¶¶ 26-27.

¶ 94 Here, the recanted statements were not only consistent with each other but were corroborated in part by video footage. Each of the four recanting witnesses belonged to the same gang to which Mr. Ward was alleged to belong, and, looking at the evidence in the light most favorable to the State, as we are required to do, a reasonable inference could be drawn that they recanted at trial because they did not want to testify in court against a fellow gang member. Most

importantly, the jury heard each of the recanting witnesses' live testimony and were made aware of all the reasons to doubt the veracity of their prior statements during cross-examination. The jury, by its verdict, appears to have believed the prior statements over the recantations, and we "may only disturb the jury's finding as to credibility when the evidence is so improbable or unsatisfactory as to raise a reasonable doubt of guilt." *People v. Dempsey*, 242 Ill. App. 3d 568, 586 (1993). That is simply not the case here.

¶ 95 Mr. Ward also argues that his own custodial statements are unworthy of belief. Mr. Ward contends that his statements resulted from coercive interrogation tactics known to produce false confessions, citing a journal article about these tactics. See Wyatt Kozinski, *The Reid Interrogation Technique & False Confessions: A Time for Change*, 16 Seattle J. For Soc. Just. 301 (2018). However, counsel questioned the detectives about these techniques on cross-examination, the detectives acknowledged much of what occurred, and the jury viewed the interrogation recordings. Mr. Ward's statements did include many details that were inconsistent with the other evidence—that he was dropped off at 45th Street and Greenwood Avenue, that the park was full of 4-6 Terror members, and that Ms. Pendleton was used as a shield. Nonetheless, the jury heard Mr. Ward's statements and heard the testimony of two of the interrogating detectives. Mr. Ward's trial counsel questioned the detectives about the way they treated Mr. Ward on cross-examination, and the jurors saw for themselves the video recordings of those encounters. Counsel also drew out during cross-examination every detail Mr. Ward provided in his statements that did not match other evidence. It is true, as Mr. Ward argues in his brief, that a defendant's statement need not be believed if it is contradicted by other evidence. *People v. Wiley*, 205 Ill. 2d 212, 227 (2001). But it is for the jury to weigh the credibility of a defendant's confession. *People v. Pecoraro*, 144 Ill. 2d 1, 11 (1991). Here, the jury weighed the evidence surrounding Mr. Ward's statements, including

the reasons to disbelieve them, and still found him guilty beyond a reasonable doubt. We do not find this so unreasonable or improbable that we would conclude the evidence presented was insufficient to support the jury's findings of guilt.

¶ 96 In short, the evidence was sufficient to sustain Mr. Ward's convictions, and there is no double jeopardy bar to retrial.

¶ 97 B. The Use of Mr. Ward's Custodial Statements

¶ 98 We turn now to Mr. Ward's claim that the statements he made to the police were obtained in violation of his right to remain silent. After each of the three times Mr. Ward alleges he invoked his right to silence, the detectives took a break but then eventually resumed questioning him. After being held for approximately 12 hours, Mr. Ward ultimately made several inculpatory statements to a second team of detectives.

¶ 99 This court generally applies a two-part standard of review when examining a trial court's ruling on a motion to suppress; we review a trial court's findings of fact for clear error but review *de novo* the trial court's ultimate legal ruling as to whether suppression was required. *People v. Lance*, 2021 IL App (1st) 181665, ¶ 27 (citing *People v. Ludemann*, 222 Ill. 2d 530, 542 (2006)). Here, however—except for Dr. Ofshe's expert testimony, presented by the defendant at the hearing on the reopened motion to suppress, about the impact of interrogations on a suspect's decision making—there was no live testimony heard on the motion. Instead, the trial court based its decision on the recordings of Mr. Ward's interrogation and listened to argument of counsel. As we concluded in *Flores*, because we are essentially reviewing the same evidence as the trial court, our review is *de novo*. *People v. Flores*, 2014 IL App (1st) 121786, ¶ 35.

¶ 100 When a defendant moves to suppress his statements to the police, " 'the State has the burden of proving the confession was voluntary by a preponderance of the evidence.' " *Id.* ¶ 36

(quoting *People v. Braggs*, 209 Ill. 2d 492, 505 (2003)). Mr. Ward contends that his statements were not voluntary based on the detectives' alleged violation of his right to remain silent.

¶ 101 Both the United States and Illinois Constitutions include the right to not be a witness against oneself. See U.S. Const., amend. V; Ill. Const. 1970 art. I, § 10. In order to protect that right, "interrogation must cease once the individual indicates in any manner and at any time prior to or during a custodial interrogation that he wishes to remain silent." (Internal quotation marks omitted.) *Flores*, 2014 IL App (1st) 121786, ¶ 37. A statement taken after an individual invokes the right to silence " 'cannot be other than the product of compulsion, subtle or otherwise.' " *People v. Hernandez*, 362 Ill. App. 3d 779, 785 (2005) (quoting *Miranda v. Arizona*, 384 U.S. 436, 474 (1966)). "A defendant may invoke his or her right to silence either verbally or through nonverbal conduct that clearly indicates a desire to end questioning." *Flores*, 2014 IL App (1st) 121786, ¶ 37. But if the defendant makes a verbal invocation, the "demand to end the interrogation must be specific." (Internal quotation marks omitted.) *Id.*

¶ 102 Mr. Ward maintains that he invoked his right to silence three times: at 1:41 a.m., when he said, "I ain't got nothin' else to say"; at 4:03 a.m., when he said he "[g]ot nothin' to say"; and at 7:17 a.m., when he said, "don't want to say nothing else about it." Both the recording and the transcript of the interrogation, which differ in some respects as noted below, are included in the record on appeal. We have reviewed them both and find that they provide the following context for these three statements.

¶ 103 Mr. Ward was placed in the interrogation room at around 12:22 a.m. on February 10, 2013, and two detectives—Detectives Halloran and Murray—began questioning him at 12:34 a.m. Detective Halloran said that they were there to discuss the January 29 shooting, then gave Mr. Ward the warnings required by *Miranda*, 384 U.S. 436, which included advising him that he had

the right to remain silent. When asked whether he understood, Mr. Ward said he did. Detective Halloran said, "understanding these things, do you want to answer some questions we have for you concerning the shooting we're investigating?" Mr. Ward responded, "yes sir."

¶ 104 Detective Halloran then explained that Mr. Ward's name came up during the detectives' investigation, and they wanted to speak with him. The detectives questioned Mr. Ward about the crime, doing most of the talking, sometimes yelling more than talking. Mr. Ward maintained that he was not involved in the shooting. At 1:41 a.m., the following exchange occurred:

> "[DETECTIVE HALLORAN]: You think you have nowhere to go because we've already thrown at you we know you're the shooter and you really don't have. [*sic*] You can't turn around and say, yeah, but Kenny was the shooter. Yeah, I was there but I was drivin' and Kenny was the shooter. You really can't do that. You can explain why you were the shooter.
>
> [MR. WARD]: I ain't got nothin' else to say.
>
> [DETECTIVE HALLORAN]: You want to take a break?
>
> [MR. WARD]: [no response]
>
> [DETECTIVE HALLORAN]: You can take a break.
>
> [MR. WARD]: [no response]
>
> [DETECTIVE HALLORAN]: You don't want to talk to me, you don't have to talk to me. You got nothin' else to say?
>
> [MR. WARD]: [no response]
>
> [DETECTIVE HALLROAN]: Alright, man."

Our notations of Mr. Ward's lack of response come from our viewing of the recording and not from the transcript, which includes only dialogue and not a failure to respond.

¶ 105 The detectives left the room and did not begin questioning Mr. Ward again until 3:17 a.m. Mr. Ward again maintained he was not at the park where the shooting occurred. Then, after approximately 46 minutes, at 4:03 a.m., the following exchange occurred:

"[DETECTIVE HALLORAN]: Why'd this happen? Why'd this happen? This time, that day, that park—why did it happen?

[MR. WARD]: Got nothin' to say.

[DETECTIVE HALLORAN]: You got nothin' to say? All right, we'll take a break, all right."

¶ 106 The detectives again left the room and Mr. Ward slept on the floor of the interrogation room until approximately 7:02 a.m., when he was taken out of the room for fingerprinting. The detectives returned to the room with Mr. Ward at 7:17 a.m., and the following exchange occurred:

"[DETECTIVE HALLORAN]: You went to sleep. All right, well now that you're awake and you see you're being processed for this murder any thoughts? Still gonna try to lie your way out of it?

[DETECTIVE MURRAY]: [inaudible] it's real simple. If you don't want to say nothin' about it, if you don't want to say nothin' about it then just tell us I'm done talkin'. Okay, that's fine, all right. Just so we don't have to keep comin' in here and botherin' you.

[MR. WARD]: (inaudible)

[DETECTIVE HALLORAN]: Can't hear you.

[MR. WARD]: (inaudible)

[DETECTIVE HALLORAN]: You don't want to talk about it. Okay, alright man."

At that point the detectives again left the room and these two detectives did not question Mr. Ward any further.

¶ 107 Mr. Ward says in his brief that, in response to the detective saying, "[c]an't hear you," he said, "I don't want to say nothing else about it." The State disputes this because the record does "not indicate the nature of his response." We note that what Detective Halloran said next suggests that Mr. Ward's claim about his own response is accurate. Nevertheless, because we are not relying on just this last statement, but rather all of the statements together, we need not make any determination as to exactly what Mr. Ward said that caused the detectives to leave the room at the end of the 7:17 a.m. exchange.

¶ 108 As noted, after that exchange, Detectives Halloran and Murray did not resume questioning Mr. Ward. At approximately 12:31 p.m., Detective Reiff and his partner resumed the interrogation without re-Mirandizing Mr. Ward. And it was during this final interrogation that Mr. Ward gave his inculpatory statements.

¶ 109 In support of his argument that those statements should have been suppressed, Mr. Ward cites several cases in which the court found a defendant had invoked his right to silence, including *Flores*, 2014 IL App (1st) 121786, and *People v. R.C.*, 108 Ill. 2d 349, 352 (1985). In *Flores*, just after the defendant was Mirandized and indicated he understood each of his rights, the following exchange took place:

> "DETECTIVE: Okay. You've been here before, right?
>
> DEFENDANT: Yeah.
>
> DETECTIVE: Okay, Uh—Robert Macias has been in here. Robert has been saying some things about you—
>
> DEFENDANT: Um-huh.
>
> DETECTIVE: —and we wanted to talk to you about them. You want to talk to us about that?

DEFENDANT: Not really, no." (Internal quotation marks omitted.) *Flores*, 2014 IL App (1st) 121786, ¶ 31.

The court then explained that after this exchange,

"The detective continued to ask questions, and when he asked [the] defendant if he had anything to say about the gun, [the] defendant shook his head indicating no. The detective followed that and asked, 'you don't know something about the gun?' [The] [d]efendant answered no. A few minutes later, the detective said that he wanted to hear what [the] defendant ha[d] 'to say about it.' [The] [d]efendant responded that he 'ain't gonna say nothing about nothing.' " *Id.* ¶ 32.

¶ 110 The *Flores* court found the defendant's statement of "[n]ot really, no" was a clear and unequivocal invocation of his right to remain silent and that, "even if [the] defendant's initial response was unclear *** his later comment that he 'ain't gonna say nothing about nothing,' unequivocally showed that he had invoked his right to remain silent." *Id.* ¶¶ 55, 57.

¶ 111 In *R.C.*, 108 Ill. 2d at 352, "[a]fter being advised of his rights, [the defendant] stated that he did not wish to talk to [the officer]," and the officer continued to question the defendant. The court found that the defendant's statement that he did not want to talk to the officer was an invocation of his right to silence that "was not 'scrupulously honored' " and that, in fact, "it was not honored at all." *Id.* at 354.

¶ 112 In both *Flores* and *R.C.*, the court found an invocation of the right to silence where the defendants clearly indicated they did not want to talk shortly after they were Mirandized and, when asked whether they wished to talk to the officers, clearly responded in the negative. *Flores*, 2014 IL App (1st) 121786, ¶ 31; *R.C.*, 108 Ill. 2d at 352; see also *Hernandez*, 352 Ill. App. At 785-86 (finding an unequivocal invocation of the right to silence when the defendant answered, " '[n]o,

not no more' " to the question of "whether, '[u]nderstanding these rights, [he] wish[ed] to talk to [them] now"); *People v. Brown*, 171 Ill. App. 3d 993, 995, 998 (1988) (finding that the defendant invoked his right to remain silent when, after being readvised of his *Miranda* rights, he answered the question " '[u]nderstanding these rights to you wish to talk to us now?' " by saying, " '[n]o' " and concluding that the questioning should have immediately ceased).

¶ 113 Because Mr. Ward made his first statement that he did not want to talk to the detectives approximately an hour after he was Mirandized, and his remaining two statements hours after that, this case is not aligned *temporally* with *Flores* or *R.C.* However, a recent decision of this court, *People v. Cox*, 2023 IL App (1st) 170761, has made clear that the temporal distance between *Miranda* warnings and an alleged invocation is not always determinative in considering whether a defendant has invoked his right to silence.

¶ 114 In *Cox*—which was issued after the parties submitted their briefs, but which Mr. Ward was given leave to cite as additional authority—the defendant told the detectives at least 45 minutes into his interrogation, " 'I don't wanna answer no more questions, 'cause I can't help you. And I don't wanna dig myself into a hole.' " *Id.* ¶¶ 45-46. At that point, the detectives temporarily stopped questioning him but resumed three hours and 55 minutes later. *Id.* ¶ 46. This court found that the facts of the case were "analogous to those in *Flores*, *Hernandez*, and *Brown*" and that the defendant's statement was a clear and unequivocal invocation of the right to the remain silent. *Id.* ¶ 52. *Cox* makes clear that a gap between the warnings and the alleged invocation of the right to remain silent is not determinative.

¶ 115 As *Cox* also reminds us, the response of the interrogators can support a defendant's claim that he has clearly cut off questioning. Mr. Ward made three statements throughout his interrogation that he argues were invocations of the right to silence—"I ain't got nothin' else to

say" at 1:41 a.m., "[g]ot nothin' to say" at 4:03 a.m., and "don't want to say nothing else about it" at 7:17 a.m. This is similar to *Cox*, where the police left for even longer—almost four hours—although there it only occurred one time.

¶ 116 Our supreme court made clear in *People v. Nielson*, 187 Ill. 2d 271, 287 (1999), that a questioning officer's reaction to a purported invocation is often relevant. The court found that by ceasing their questioning and immediately returning the defendant to his cell after he placed his hands over his ears and chanted " 'nah nah nah,' " the officers in that case had "interpreted [the] defendant's conduct as an expression of his desire to terminate the interview" and that this bolstered the court's conclusion that the defendant had invoked his right to remain silent. *Id.* In short, in this case, as in *Cox* and the other cases that Mr. Ward relies on, we believe the evidence demonstrates that he invoked his right to remain silent.

¶ 117 The State relies on two cases—*People v. Aldridge*, 79 Ill. 2d 87 (1980), and *People v. Kronenberger*, 2014 IL App (1st) 110231—where the court did not find an invocation of the right to remain silent. The supreme court in *Aldridge* did not provide details as to exactly what statements the defendant alleged were invocations of his right to silence, but those details are in the appellate court decision that the supreme court affirmed. See *People v. Aldridge*, 68 Ill. App. 3d 181, 186-87 (1979). As the appellate court described it, after being formally charged with murder, the defendant

> "approached a jailer and expressed his desire to confess the crime with which he had been charged. He signed a waiver of rights form and was also orally advised of his *Miranda* rights. *** During this interrogation, [the] defendant several times indicated a desire not to continue describing the details of the offense, but the officers continued to question him." *Id.* at 184.

The statements relied on by the defendant included, after answering a question, his statement, " 'so anyway have you got enough?' " and his response, when asked whether he took a certain road, of " '[y]es, I guess that would be it. *** I think you got enough, you got the story now.' " *Id.* at 186. Based on these and similar statements, the defendant argued before the appellate and supreme courts that he had invoked his right to remain silent; both courts disagreed. *Id.*; *Aldridge*, 79 Ill. 2d at 95. The supreme court concluded that "[r]ather than attempting to terminate the questioning altogether, [the] defendant merely resisted answering questions concerning particular details of the offense to which he had confessed." *Aldridge*, 79 Ill. 2d at 95.

¶ 118 In *Kronenberger*, 2014 IL App (1st) 110231, during a short conversation, the defendant had given the police some details about the crime but denied being the shooter. *Id.* ¶ 37. About 10 minutes after that conversation, the detectives reentered the interrogation room, at which time one detective asked the defendant, " '[a]re you done talking to me? Are you done talking to all of us?' " and the defendant responded, " '[y]eah.' " *Id.* The court found this was not a clear and unequivocal invocation of his right to remain silent, explaining that it was "unclear from the defendant's response whether he wished to invoke his constitutional right to silence or whether he, after having spoken to [the detective] in the earlier 14-minute conversation, had nothing else to tell the detectives." *Id.* ¶ 37.

¶ 119 This case is different than *Aldridge* and *Kronenberger*. In contrast to those cases, there was nothing about Mr. Ward's statements that suggested he simply did not want to provide further details about the crime because he believed the police already had enough information. Rather, in each of his statements, Mr. Ward said that he had "nothing" to say. The State suggested at oral argument that having nothing to say is different than not wanting to answer any more questions, but we find this to be a distinction that, in this case at least, is without a difference. In contrast to

the cases the State relies on, Mr. Ward's assertion of his desire to stop answering questions did not come in the context of an ongoing back and forth with the detectives. All three times that Mr. Ward invoked his right to remain silent, he indicated that he was done talking and the detectives left the interrogation room. This does not fit into the State's scenario of a defendant who simply wants to change the subject.

¶ 120 Once a defendant has invoked his right to silence, "the interrogation may be resumed and any statement resulting from renewed questioning is admissible only if the suspect's right to remain silent was 'scrupulously honored.' " *R.C.*, 108 Ill. 2d at 353 (quoting *Michigan v. Mosley*, 423 U.S. 96, 103-04 (1975)). The State does not even suggest in its brief that that was the case here, relying solely on its argument that there was no invocation. Here, the detectives temporarily halted the interrogation each time Mr. Ward said he had nothing else to say, nothing to say, and did not want to say anything else. However, Mr. Ward was never given a fresh set of *Miranda* warnings, and the detectives never interrogated Mr. Ward about anything other than the shooting of Ms. Pendleton. The statements Mr. Ward made after he invoked his right to remain silent are therefore inadmissible, and the trial court erred in denying his motion to suppress them.

¶ 121 In its initial response brief, the State did not argue in the alternative that any error here was harmless. Two days before oral argument, however, the State asked to file a supplemental response brief in part to argue just that—if the admission of Mr. Ward's statements was in error, it was harmless. We allowed the State to file the supplemental brief.

¶ 122 We first note that under our supreme court rules, both appellees and appellants forfeit any points not argued in their initial briefs. See Ill. S. Ct. Rs. 341(h)(7) ("Points not argued [by appellant in the opening brief] are forfeited"); 341(i) (requiring that appellee briefs comply with Rule 341(h)(7)) (eff. Oct. 1, 2020). Regardless of the State's forfeiture of this argument, we agree

with Mr. Ward that in light of the remaining evidence, we cannot say it appears beyond a reasonable doubt that the admission of his confession did not contribute to the jury's finding of guilty. *Cox*, 2023 IL App (1st) 170761, ¶ 56.

¶ 123 In support of its harmless error position, the State largely relies on its closing argument at trial—both on how relatively little time the State spent on Mr. Ward's confession (approximately only four pages in over twenty-five of closing argument transcript) and on the assertion there that, even without the confession, the jury could find Mr. Ward guilty beyond a reasonable doubt. But closing arguments are not evidence. *People v. Sanders*, 2020 IL App (3d) 180215, ¶ 13. More importantly, the question before us is not whether the State believed at trial that the evidence was sufficient to sustain a guilty verdict without Mr. Ward's confession; rather, the question is whether the State can "prove beyond a reasonable doubt that the jury verdict would have been the same absent the error." *People v. Thurow*, 203 Ill. 2d 352, 363 (2003).

¶ 124 As our supreme court has recognized, "[c]onfessions carry 'extreme probative weight,' and therefore the admission of an unlawfully obtained confession rarely is harmless error." *People v. St. Pierre*, 122 Ill. 2d 95, 114 (1988). And although we have found the evidence was sufficient, it was certainly not overwhelming. No physical evidence directly linked Mr. Ward to the shooting. Just one of the students—Mr. Abdul—positively identified Mr. Ward as the shooter, but he only became 100% positive of that identification at trial. We are not convinced that, as the State contended at oral argument, Mr. Abdul's identification alone would be enough to sustain Mr. Ward's conviction. Mr. Abdul was not certain of his identification of Mr. Ward as the shooter in an in-person lineup just days after the shooting and, contrary to the State's position at oral argument, Mr. Abdul acknowledged at trial that he had kept up with the case on social media and saw photos of Mr. Ward. The only other evidence that tied Mr. Ward directly to the shooting were

statements from alleged fellow gang members who largely recanted at trial. The remaining evidence was largely circumstantial—Mr. Evans who said the shooter drove a white car similar to Mr. Ward's mother's car and wore a sweatshirt the same color blue as the one recovered from Mr. Ward, and testimony that Mr. Ward's and Mr. Williams's cell phones hit cell towers that were consistent with the State's theory of the case. Particularly in light of the "extreme probative weight" confessions carry, we simply cannot say this is one of those rare cases where it is beyond reasonable doubt that the jury would have found Mr. Ward guilty even without his confession. The admission of his inculpatory statements at trial was not harmless.

¶ 125 VI. CONCLUSION

¶ 126 For the foregoing reasons, we reverse the trial court's denial of Mr. Ward's motion to suppress his statements and remand for a new trial without the use of any inculpatory statements he made after invoking his right to remain silent.

¶ 127 Reversed and remanded.

TO THE APPELLATE COURT OF ILLINOIS
IN THE CIRCUIT COURT OF COOK COUNTY
CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS	)	
	)	
	)	**Case No:** **13 CR 524201**
vs.	)	**Judge:** **FORD**
	)	**Attorney:** **KOEHLER**
	)	

MICKIEAL WARD

NOTICE OF APPEAL

An Appeal is taken from the order of judgment described below:

APPELLANT'S NAME: Mickieal Ward
APPELLANT'S ADDRESS: Dept. of Corrections
APPELLANT'S ATTORNEY: Office of the State Appellate Defender
ATTORNEY'S ADDRESS: 203 North LaSalle Street, 24th Floor, Chicago, IL 60601
ATTORNEY'S EMAIL: 1stDistrict@osad.state.il.us
OFFENSE: Murder, Aggravated Battery x 2
JUDGMENT: Guilty Murder
DATE OF JUDGMENT: 8/22/2018
SENTENCE:

Julie Koehler
APPELLANT/APPELLANT'S ATTORNEY

VERIFIED PETITION FOR REPORT OF PROCEEDINGS COMMON LAW RECORD AND FOR APPOINTMENT OF COUNSEL ON APPEAL

Under Supreme Court Rules 605-608, appellant asks the Court to order the Official Court Reporter to transcribe an original and copy of the proceedings, file the original with the Clerk and deliver a copy to the Appellant; order the Clerk to prepare the Record on appeal, and to appoint the State Appellate Defender as counsel on appeal. Appellant, being duly sworn, says that at the time of his conviction he was and is now unable to pay for the Record or to retain counsel on appeal.

Julie Koehler
APPELLANT/APPELLANT'S ATTORNEY

ORDER

IT IS ORDERED that the State Appellate Defender be appointed as counsel on appeal and the Record and Report of Proceedings be furnished to appellant without cost, within 45 days of receipt of this Order.
Dates to be Transcribed: 1/12/15, 3/22/16, 5/10/16, 6/16/16, 7/12/16, 2/13/16, 1/23/17, 2/23/17, 6/6/17, 6/27/17, 7/19/17, 8/28/17, 12/20/17, 3/29/18, 6/18/18, 7/11,/18, 7/27/18, 8/13/18, 8/14/18, 8/15/18, 8/16/18, 8/17/18, 8/20/18, 8/21/18, 8/22/18, 1/14/19

ENTERED
JUDGE NICHOLAS FORD-1756
JAN 14 2019
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

DATE: 1-14-2019 ENTER: JUDGE

A38

A38

IN THE CIRCUIT COURT OF COOK COUNTY

PEOPLE OF THE STATE OF ILLINOIS)
V.)
MICHEAIL WARD)
Defendant

CASE NUMBER 13CR0524201
DATE OF BIRTH 08/09/93
DATE OF ARREST 02/09/13
IR NUMBER 2062909 SID NUMBER 016631191

ORDER OF COMMITMENT AND SENTENCE TO ILLINOIS DEPARTMENT OF CORRECTIONS

The above named defendant having been adjudged guilty of the offense(s) enumerated below is hereby sentenced to the Illinois Department of Corrections as follows:

Count	Statutory Citation	Offense	Sentence	Class
035	720-5/9-1(a)(1)	MURDER/INTENT TO KILL/INJURE	YRS. 070 MOS.00	M
	and said sentence shall run concurrent with count(s) ___ ___ ___ ___			
150	720-5/12-3.05(e)(1)	AGG BATTERY/DISCHARGE FIREARM	YRS. 014 MOS.00	X
	and said sentence shall run consecutive to count(s) 001 ___ ___ ___			
___	_____	_____	YRS. ____ MOS. ___	___
	and said sentence shall run (concurrent with)(consecutive to) the sentence imposed on:			
___	_____	_____	YRS. ____ MOS. ___	___
	and said sentence shall run (concurrent with)(consecutive to) the sentence imposed on:			
___	_____	_____	YRS. ____ MOS. ___	___
	and said sentence shall run (concurrent with)(consecutive to) the sentence imposed on:			

On Count ___ defendant having been convicted of a class _ offense is sentenced as a class x offender pursuant TO 730 ILCS 5/5-5-3(C)(8).

On Count ___ defendant is sentenced to an extended term pursuant to 730 ILCS 5/5-8-2.

The Court finds that the defendant is entitled to receive credit for time actually served in custody for a total credit of 2166 days as of the date of this order Defendant is ordered to serve 0003 years Mandatory Supervised Release.

IT IS FURTHER ORDERED that the above sentence(s) be concurrent with the sentence imposed in case number(s) _____ _____ _____ _____
AND: consecutive to the sentence imposed under case number(s)
_____ _____ _____ _____ _____

IT IS FURTHER ORDERED THAT COUNT 35 DEFT IS SENTENCED TO 45YRS PLUS 25YRS AS PERSON ___ WHO DISCHARGED FIREARM; COUNT 15 IS CONSECUTIVE TO COUNT 35; SENTENCE TOTAL__ IS 84 YEARS; M/S NOLLE ALL OTHER COUNTS_____

IT IS FURTHER ORDERED that the Clerk provide the Sheriff of Cook County with a copy of this Order and that the Sheriff take the defendant into custody and deliver him/her to the Illinois Department of Corrections and that the Department take him/her into custody and confine him/her in a manner provided by law until the above sentence is fulfilled.

DATED JANUARY 14, 2019
CERTIFIED BY P GLIKIS
DEPUTY CLERK
VERIFIED BY _____

ENTERED
JUDGE NICHOLAS FORD-1756
JAN 14 2019
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

ENTER: 01/14/19
JUDGE: FORD, NICHOLAS R. 1756

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CCG N305
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CERTIFICATE OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On March 6, 2024, the **Brief and Appendix of Plaintiff-Appellant People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, which provided service of such filing to the following persons:

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