2024 IL App (4th) 221078

NO. 4-22-1078

FILED
November 21, 2024
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ALLEN J. NASH JR., Defendant-Appellant.	)	Appeal from the Circuit Court of Boone County No. 21CF253 Honorable Robert C. Tobin III, Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court, with opinion.
Justices Doherty and Lannerd concurred in the judgment and opinion.

OPINION

¶ 1 Absent police misconduct, the exclusionary rule does not apply.

¶ 2 In this case, defendant, Allen J. Nash Jr., sought to suppress evidence the police collected during an inventory search of defendant's vehicle. The police conducted that search after a Law Enforcement Agencies Data System (LEADS) search showed that defendant had an outstanding warrant. However, the police were not aware that the warrant had, in fact, been withdrawn by the issuing court months before the traffic stop.

¶ 3 Because the record demonstrates that the police (1) properly inquired as to the validity of the warrant at the time of the search and (2) could not have known that the warrant was still active in the system due to a clerical error, we conclude that the trial court properly denied defendant's motion to suppress.

¶ 4 The purpose of the exclusionary rule, which is to prevent and discourage police

misconduct, would not be served by suppressing the evidence because no police misconduct is present in this case.

¶ 5 I. BACKGROUND

¶ 6 A. Defendant's Trial, Conviction, and the Issues He Raises on Appeal

¶ 7 In October 2021, the State charged defendant with (1) two counts of armed violence (720 ILCS 5/33A-2 (West 2020)), (2) two counts of possession with intent to deliver (720 ILCS 570/401(a)(1)(B), (a)(2)(A) (West 2020)), and (3) one count of aggravated unlawful use of a weapon (720 ILCS 5/24-1.6(a)(1), (a)(3)(A-5), (a)(3)(C), (d)(1) (West 2020)).

¶ 8 In January 2022, defendant filed a motion to suppress evidence, in which he asserted that the police stopped his vehicle in September 2021 and searched both him and his vehicle without "a valid search or arrest warrant." In April 2022, the trial court conducted a hearing on defendant's motion to suppress at which (1) the arresting officer was the sole witness and (2) the court limited the issues to the validity of the traffic stop. The court denied the motion to suppress. Defendant subsequently filed a second motion to suppress, alleging that the warrant was invalid. The court denied that motion without a hearing.

¶ 9 In November 2022, following a one-day trial, a jury convicted defendant on all counts. The trial court later sentenced him to an aggregate term of 25 years in prison.

¶ 10 Defendant appeals, arguing error occurred regarding (1) his motion to suppress and (2) closing arguments at trial. Specifically, regarding the motion to suppress, defendant asserts that the trial court erred by limiting the scope of the suppression hearing and refusing to conduct a hearing on his second motion to suppress. Alternatively, defendant contends that if the court properly limited the motion to suppress, defense counsel rendered ineffective assistance by failing to raise the validity of the warrant for defendant's arrest as a ground to suppress the evidence from

the stop in his first motion.

¶ 11 Regarding closing arguments, defendant argues the trial court erred by (1) sustaining the State's objections to portions of defendant's closing arguments and (2) overruling defendant's objection to portions of the State's argument in rebuttal.

¶ 12 We disagree and affirm.

¶ 13 B. The Charges Against Defendant

¶ 14 In October 2021, the State charged defendant with two counts of armed violence (720 ILCS 5/33A-2 (West 2020)), two counts of possession with intent to deliver (720 ILCS 570/401(a)(1)(B), (a)(2)(A) (West 2020)), and one count of aggravated unlawful use of a weapon (720 ILCS 5/24-1.6(a)(1), (a)(3)(A-5), (a)(3)(C), (d)(1) (West 2020)). The indictment alleged that defendant committed these offenses on September 21, 2021.

¶ 15 The two armed violence counts alleged that defendant was armed with a handgun while in possession of heroin (count 1) and cocaine (count 2). Count 3 alleged that defendant possessed heroin (between 100 and 400 grams) with the intent to deliver, and count 4 alleged that defendant possessed cocaine (between 15 and 100 grams) with the intent to deliver. Count 5 alleged that defendant carried an uncased, loaded, and immediately accessible handgun in his vehicle without a license to do so.

¶ 16 C. Defendant's Motion To Suppress

¶ 17 In January 2022, defendant filed a motion to suppress, alleging, "On September 21, 2021[,] petitioner was searched and his automobile was searched at or near I-90 Westbound at MP 24.25, Belvidere IL." The motion contained no factual assertions regarding why the police searched defendant and his vehicle. The remainder of the motion contained mostly boilerplate statements, such as (1) the fourth amendment protects against unreasonable searches and seizures,

(2) the exclusionary rule prohibits the introduction of evidence obtained in unreasonable searches, and (3) the police obtained physical evidence from the search pertaining to defendant's guilt. The motion asserted, "The search of [defendant's] person was without the benefit of a valid search or arrest warrant." The motion sought the suppression of physical evidence seized and any statements made by defendant after the arrest.

¶ 18 D. The Initial Hearing on Defendant's Motion To Suppress

¶ 19 In February 2022, the trial court conducted a hearing on defendant's motion to suppress, and the following exchange occurred:

> "[THE COURT:] Counsel, you filed a motion to suppress. Do you want to set that for hearing?
>
> [DEFENSE COUNSEL]: Yes, Judge, if we can schedule that for a hearing.
>
> THE COURT: I just want to clarify. I read through the motion. It appears the only issue that is addressed is whether or not [defendant] had a valid warrant for his arrest at the time on that day. Is that all that you were seeking to expound on?
>
> [DEFENSE COUNSEL]: It's a problem with causation as well, that they had a right to stop—
>
> THE COURT: Well, that's not in the motion though.
>
> [DEFENSE COUNSEL]: I believe—
>
> THE COURT: And again, not trying to nitpick here.
>
> [DEFENSE COUNSEL]: No, I understand.
>
> THE COURT: I got to know what we're going to be hearing so that, A, I do a little bit of homework in advance and then secondly—

[DEFENSE COUNSEL]: It's a motion for the stop all together.

THE COURT: Which paragraph?

[DEFENSE COUNSEL]: If I can amend it. Pardon me.

THE COURT: So which paragraph are you addressing probable cause for the stop—well, actually reasonable and articulable suspicion?

[DEFENSE COUNSEL]: Right. Judge, let me see what—well, it should have been in my motion. I apologize if it's not.

(Brief pause.)

[DEFENSE COUNSEL]: Judge, I'll amend it. I'm going to add on a paragraph—and I'll get it to the Court—advocating there was no probable cause for the stop.

THE COURT: Okay. So really all you're going to be contesting is whether or not there was reasonable and articulable suspicion to stop the vehicle on that day?

[DEFENSE COUNSEL]: Exactly, Judge. Yes, Your Honor.

THE COURT: Okay. Based upon that then, I would guess we won't need much more than a half hour of time I wouldn't think.

[DEFENSE COUNSEL]: It shouldn't be long at all, Judge."

¶ 20 Thereafter, the trial court worked with the parties to schedule a date in April 2022 for a hearing on the motion to suppress. During their discussion, no witness was mentioned other than the arresting officer. The court stated that the hearing was "for the amended motion to suppress." However, defense counsel did not file an amended motion prior to the next hearing on his motion to suppress.

¶ 21 E. The Second Hearing on Defendant's Motion To Suppress

¶ 22 In April 2022, the trial court conducted a hearing on defendant's motion to suppress. Trooper Anthony Parisi of the Illinois State Police testified that on September 21, 2021, around 1 p.m., he was parked near mile marker 24 on I-90 when he was passed by a car driven by defendant. Parisi noticed that defendant's vehicle had what he believed were illegally tinted windows and did not have a front license plate. Parisi then initiated a traffic stop of defendant's vehicle.

¶ 23 Parisi testified that he intended to issue a warning ticket at that point. At some point, he asked defendant to exit the vehicle and defendant complied. The following exchange between the trial court and defense counsel then occurred:

"Q. Okay. And at that time when you asked [defendant] to exit the vehicle, was he free to leave at that point?

[THE PROSECUTOR]: Objection.

THE COURT: Basis?

[THE PROSECUTOR]: Beyond the scope for the probable cause for the stop.

THE COURT: Yeah, it's just the stop, right?

[DEFENSE COUNSEL]: Yes.

THE COURT: So he's already been stopped?

[DEFENSE COUNSEL]: Pardon me?

THE COURT: He's already been stopped?

[DEFENSE COUNSEL]: We understand that, Judge, but there's also as he's under arrest—there's an arrest, too. We're trying to quash the arrest.

THE COURT: No, it's—I thought it was just the stop.

[DEFENSE COUNSEL]: He's not free to leave.

THE COURT: It was the stop only. I mean, we talked about this when I said that—when we talked about—

[DEFENSE COUNSEL]: It's a motion to quash the arrest, Your Honor.

THE COURT: We talked about this.

[DEFENSE COUNSEL]: Yes.

THE COURT: You said you were only contesting whether it was a reasonable and articulable suspicion for the stop.

[DEFENSE COUNSEL]: And arrest.

THE COURT: Okay. So, just looking at the motion, where does it contest probable cause for an arrest? Which paragraph?

[DEFENSE COUNSEL]: I'm just looking for my copy of the motion. I apologize.

THE COURT: It's okay. Take your time.

[DEFENSE COUNSEL]: Judge, you are correct. I'm sorry. May I proceed?

THE COURT: Okay. So, objection is sustained.

[DEFENSE COUNSEL]: Okay.

THE COURT: Beyond the scope."

¶ 24 Parisi then testified that he eventually searched the vehicle as an inventory search because the vehicle was going to be towed. He acknowledged that he had neither a warrant nor defendant's consent to search the vehicle.

¶ 25 Parisi testified that he conducted the inventory search after he placed defendant

under arrest. Parisi explained that he arrested defendant because he "was wanted on a warrant" that Parisi believed was "out of [the] Chicago Police Department." The following exchange then occurred:

"Q. Okay. And how did you verify that this was actually a warrant from Chicago?

[THE PROSECUTOR]: Objection.

THE COURT: Hold up. Sustained, beyond the scope.

[DEFENSE COUNSEL]:

Q. So, your search—your seizure of [defendant], your stop of [defendant] and holding [defendant] was based on this warrant, correct?

[THE PROSECUTOR]: Objection.

THE COURT: Sustained.

[DEFENSE COUNSEL]: Judge, I found my motion to suppress evidence.

THE COURT: Right.

[DEFENSE COUNSEL]: And it indicates not just we're talking about a stop, there's a—

THE COURT: Which paragraph are you referring to?

[DEFENSE COUNSEL]: Paragraph 2.

THE COURT: This is the Fourth Amendment of the United States Constitution—

[DEFENSE COUNSEL]: Right.

THE COURT: —guarantees the right of persons to be secure from unreasonable search and seizure of their person, house, papers, and effects.

[DEFENSE COUNSEL]: Right.

THE COURT: Other than being a statement of law, what fact or allegation in there would suggest that there's a violation?

[DEFENSE COUNSEL]: Well, he was seized unreasonably. He shouldn't have been held.

THE COURT: That's not in here. We actually went over this because this was really a lousy pleading in the first place, and you identified—I asked you in court last time what exactly you were contesting. You said you were only contesting the stop as being reasonable and articulable suspicion and you told me—though you didn't—you told me you would amend the motion and file it prior to today's hearing. You didn't do that, but that's what you limited it to. Based upon that, it's stop only, reasonable and articulable suspicion, so I believe that anything beyond that is beyond the scope."

¶ 26 Defense counsel continued his redirect examination by confirming with Parisi that "the reason for the stop was the tinted windows and the front plate." Counsel then attempted to ask if "the search was based on this warrant," the State objected, and the trial court sustained the objection. Counsel indicated he had nothing further.

¶ 27 Counsel did not present any further evidence and stood on the written motion when asked for argument. The trial court denied the motion to suppress.

¶ 28 F. Defendant's "Motion To Quash Arrest and Suppress Evidence"

¶ 29 Later in April 2022, defendant filed a second motion to suppress, titled "Motion to Quash Arrest and Suppress Evidence." That motion alleged that (1) "[defendant] was lawfully stopped in his automobile by the Illinois State Police" for "minor traffic violations, to wit: tinted

windows and no front license plaint," and the police originally intended to give defendant a warning "citation"; (2) the police ordered defendant out of the vehicle without a valid reason or probable cause that a crime was being committed; (3) during defendant's continued detention, other officers arrived, and the police learned that defendant had a warrant for his arrest; and (4) the arrest warrant was not valid and no other basis to support the detention and search of defendant existed. This second motion therefore asked to suppress the "[c]ontraband" that the police found as a result of the warrantless search, as well as any statements defendant made during his detention following his arrest.

¶ 30 In May 2022, the trial court conducted a hearing at which defense counsel asked the court to set his second motion to suppress for an evidentiary hearing. The court refused, explaining that a defendant could not file multiple motions to suppress without "new evidence." The court stated, "You don't keep getting little bifurcated bites of the apple. I'm not hearing any more motions to suppress." Defense counsel responded that he was not getting a "second bite" because the court had improperly limited the scope of the first suppression hearing and prevented counsel from asking about the validity of the warrant. The court pointed out that counsel could have made that specific allegation in his original motion when the court addressed the basis for the motion with defense counsel prior to the hearing. The court also noted that despite counsel's saying he would file an amended motion, counsel did not do so prior to the scheduled hearing. The court made clear it was denying the new motion to suppress because defendant's claims could have and should have been in his first motion to suppress.

¶ 31 G. Defendant's Motions *in Limine*

¶ 32 1. *Defendant's Motion To Exclude the Audio Portion of the Recording of Defendant's Stop and Arrest*

¶ 33 Defendant sought to exclude the audio portion of the video recording from the police car of the traffic stop and search because defendant used explicit, abusive, and offensive language directed at the officers. Defense counsel argued that defendant's statements were irrelevant to any issues at trial and could prejudice the jury against defendant.

¶ 34 The State agreed to redact the audio but requested that it be allowed to solicit similar information from the officers when they testified because, the State argued, defendant's behavior went to his consciousness of guilt. The State noted that defendant repeatedly claimed that the police planted the drugs found in his vehicle.

¶ 35 The trial court ruled that the State could ask, and the witnesses could describe, in general terms, how defendant behaved and spoke to the officers—that he was combative and cursing—but could not go into details. In response, defense counsel stated he would have no objection if the prosecutor wished to ask leading questions of the officers regarding this matter, and the court indicated that was a good idea.

¶ 36 2. *Defendant's Motion* in Limine *Regarding the Cook County Warrant*

¶ 37 Defendant's second motion *in limine* concerned the outstanding warrant for his arrest from Cook County. Defendant asserted that although his arrest by the Illinois State Police was based on that warrant, the warrant had in fact been quashed and recalled on May 25, 2021, four months before his arrest in this case. Defendant asserted that because of a clerical error, the order quashing the arrest was not entered into the court system until December 2021. He requested an order from the court prohibiting the State from introducing evidence of the warrant as the purpose of the arrest, noting that the legality of the arrest had already been ruled upon by the court and the arrest therefore had no further relevance in the case.

¶ 38 In October 2022, when the trial court conducted a hearing on this motion *in limine*,

the State expressed its concerns about the jury's hearing only that the state police made a traffic stop, put defendant in handcuffs in the back of the police car, impounded defendant's car, towed it, and then searched it. The State added, "[I]t almost raises the spectre of what the defendant was saying on the scene, that it's dirty cops and so now an explanation is just why are the State police taking this black guy's car when all he did was" violate traffic laws. The State claimed that without "a full picture," the state police would be put in a negative light.

¶ 39 The trial court indicated the State's concerns were valid and stated the court would allow the officers to testify that there was a warrant for defendant's arrest but would not allow a discussion of the underlying charge or anything of that nature.

¶ 40 The trial court and attorneys then discussed whether the jury would be told that a warrant had been quashed and recalled, even though the state police did not know that, and the court indicated that that information would be helpful to take "a little bit of a bite" out of the negative connotation that existed for defendant that there was a warrant for his arrest.

¶ 41 During further discussion on this point, defense counsel reviewed the history of the charge that had been filed against defendant in Cook County that was the basis of the warrant for his arrest and how, when that case was dismissed on May 25, 2021, the arrest warrant was recalled. Defense counsel agreed that "[t]here was no way at the time of this arrest for the [state police] to know there really wasn't a warrant when [an officer] checked the system," but counsel nonetheless argued that he did not want the jury to think defendant was "a bad guy" because "[h]e's got this warrant out there when he had nothing. That case was dismissed totally."

¶ 42 The trial court thought both counsel had good points and suggested that they "figure out a way" that the appropriate information regarding the warrant could get before the jury.

¶ 43 Prior to the beginning of the November 2022 jury trial, the trial court and the

attorneys discussed again the recalled Cook County warrant, and the court stated again its ruling that "the fact of the warrant comes in" and the police can discuss how they checked to see if the warrant was valid and the actions they took in response. The prosecutor then told defense counsel that Parisi had been given the history of the Cook County warrant and could testify about that subject if defense counsel were to ask him. The court additionally indicated that Parisi could testify regarding what the state police were required to do when they believed the arrest warrant to be valid.

¶ 44 H. The Jury Trial

¶ 45 1. *The State's Evidence*

¶ 46 In November 2022, the trial court conducted defendant's jury trial. The officers involved in the stop, arrest, and inventory search of defendant and his vehicle testified. The State also played for the jury—without audio—portions of a dash camera video of the traffic stop and subsequent search. That evidence generally established that defendant was stopped on I-90 for illegally tinted windows. Defendant was angry, confrontational, verbally aggressive, and reluctant to follow orders, which resulted in multiple officers arriving to assist Parisi. Those officers testified that defendant continued to be combative and verbally abusive throughout the entire encounter. Officers determined defendant had an active warrant for his arrest and placed him under arrest.

¶ 47 The officers conducted an inventory search of the vehicle and located heroin and cocaine in the center console of the car and a loaded handgun under the driver's seat. On cross-examination, the officers confirmed that they wore latex gloves when handling the gun and drugs and explained they did so to preserve the evidence for forensic testing, including possible fingerprint and DNA testing. The State introduced photos taken during the search showing where the gun and drugs were located.

¶ 48 The parties agreed to four stipulations that were read to the jury. Those stipulations stated that various experts with the Illinois State Police Crime Lab examined and tested the drugs and firearm recovered from the vehicle. If called to testify, those experts would state that (1) the handgun was working properly, (2) defendant did not have a firearm owners identification (FOID) card or concealed carry license, (3) one of the substances was heroin weighing 100.4 grams, and (4) the other substance was cocaine weighing 25.6 grams.

¶ 49 We highlight the following testimony, which is relevant to this appeal.

¶ 50 a. Anthony Parisi

¶ 51 Illinois State Trooper Parisi testified consistently with his earlier testimony at the suppression hearing. On direct examination, the State asked about the traffic stop, and the following exchange occurred.

> "Q. And once in your squad car, what, if anything, did you do at that point?
>
> A. I conducted a LEADS inquiry and [a Secretary of State] inquiry to determine the status of the defendant's driver's license as well as perform any warrant checks.
>
> Q. And in doing the warrant check, you did discover that there was an outstanding warrant from Cook County; is that accurate?
>
> A. That's correct.
>
> Q. And that warrant was confirmed to be in the system and was to be executed, is that correct, as well?
>
> A. That's correct.
>
> Q. And in addition to doing it through the computer, you also had dispatch check; is that accurate?

A. That's correct.

Q. Subsequently have you learned that actually that warrant should have been taken out of the system in May of 2021?

A. Just this week I learned of that.

* * *

Q. And when you got back to your squad car, what, if anything, did you do?

A. I read the defendant his *Miranda* rights.

Q. And while you were reading those, what, if anything, was the defendant doing?

A. He was continuing to be verbally combative, yelling, and swearing in my back seat.

Q. Once you got through those *Miranda* warnings, did you ask if he understood them?

A. Yes.

Q. And how did he respond when asked if he understood?

A. He did not acknowledge my question. He just continued with his previous behavior of yelling and swearing."

¶ 52 On cross-examination, the following exchange took place.

"Q. But LEADS says to you he has an outstanding warrant from Cook County?

A. That's correct.

Q. Now, fast forward. We realize that, in fact, that Cook County warrant was quashed and recalled months before that; correct?

A. I know that now, yes.

Q. At the time, though, for whatever reason, LEADS indicated it was still live?

A. Yes.

Q. So that's what you believed at the time?

A. LEADS and then the originating agency confirmed that warrant.

Q. I mean, you never physically paper looked at it; right?

A. I was sent a confirmation from the originating agency through our telecommunications technician.

Q. And we learn later that through whatever error, it was wrong; right?

A. Yes.

Q. We learned later?

A. Yes.

Q. So at that moment in September of '21, you were under the belief that there was an active warrant for [defendant]; correct?

A. That's correct.

Q. And following your rules, you had to place him under arrest?

A. Yes.

Q. And that was your procedure; you went out and you handcuffed [defendant] and told him he was under arrest for this warrant from Cook County; correct?

A. Yes."

¶ 53 b. James Normoyle

¶ 54 The State called James Normoyle, a sergeant with the Illinois State Police, who testified that he was instructed by his superior officer to assist with the traffic stop and inventory search. After getting information from other officers, Normoyle went to speak with the defendant. Normoyle's conversation with defendant occurred after Parisi had read defendant his *Miranda* rights. See *Miranda v. Arizona*, 384 U.S. 436 (1966). Normoyle testified about his conversation with defendant, as follows:

> "Q. And you talked to the defendant while he was still in the back of the squad car actually?
>
> A. That's correct. He had his feet out of the squad car and was in the back of the squad car.
>
> Q. How did that conversation begin?
>
> A. At that point I explained to him who I was and asked if he would be willing to talk to me. He indicated that he would.
>
> Q. And once he said that he'd be willing to talk to you, did you tell him anything about how that conversation would be memorialized or if it would be memorialized?
>
> A. Yes. I told him—or I requested the ability to audio record our conversation.
>
> Q. What, if anything, did the defendant say when you indicated you wanted to audio record it?
>
> A. He called me a bitch and told me he no longer wanted to speak with me."

¶ 55 Defendant did not object to any of the above testimony.

¶ 56 The remainder of Normoyle's testimony consisted of his assisting with evidence

collection and processing and did not mention anything further about talking with defendant.

¶ 57 c. Greg Melzer

¶ 58 Greg Melzer, a sergeant with the Illinois State Police, testified as an expert in the field of narcotics and the intent to deliver narcotics. Melzer testified that based on his training and experience, the amount of drugs recovered and how they were packaged led him to conclude they were for delivery in the drug trade and not for personal use. A single use amount of heroin or cocaine weighed between one- and two-tenths of a gram. In Boone County in 2021, one gram of either drug cost at least $100, meaning the value of the drugs recovered from defendant's car totaled between $8700 and $9600.

¶ 59 On direct examination, the following exchange occurred:

"Q. Through your training and your experience dealing with people delivering larger quantities of heroin like this, are there different ways that people transport that amount of heroin—

A. Yes.

Q. —or for different purposes?

A. Yes.

Q. Could you explain to the jury those different purposes?

A. Well, there's a variety of stages a lot of times that go into transporting narcotics, in this case heroin, for delivery. In this case this could be a purchase that the defendant made and then intended to sell it himself at a either reduced level—you know, a small amount, grams or possibly even ounces, or he could just be passing it on to somebody else. You don't know without him—without him saying or telling you what he was doing, you don't know exactly what the purpose is or

how exactly that delivery would happen."

¶ 60 Defendant cross-examined him to confirm that he could give only an educated guess at what the purpose of the drugs would be or what would be done with them.

¶ 61 Defendant chose not to testify and offered no evidence.

¶ 62 2. *Closing Arguments*

¶ 63 a. The State's Argument

¶ 64 The State argued that the gun was immediately accessible to defendant because it was under the driver's seat where he could reach down and grab it. The State further argued that "we know" the gun was immediately available because it was loaded with a round in the chamber and there were thousands of dollars of drugs in the center console. In other words, defendant needed the gun to be immediately accessible in case he needed to protect himself or the drugs he was delivering.

¶ 65 b. Defendant's Argument

¶ 66 Regarding defendant's disruptive behavior and outbursts during the traffic stop, defense counsel agreed that defendant acted foolishly but asserted that if defendant knew he had a gun and drugs in the car "when the officer said all I'm doing is giving you a traffic warning ticket, why would he be so argumentative and abusive?" Counsel continued, "[I]f he knew he had that stuff, he's getting a get-out-of-jail-free card; right? Instead, he's going to make a ruckus and make a fuss and make a fight[?]" (We note that the context of counsel's argument suggests that he was asking a rhetorical question of the jury in order to demonstrate how defendant's behavior would be contrary to common sense.) Defendant argued that the State had presented the jury with "a lot of maybes, a lot of this is possibly what happened," but that such scenarios could not amount to proof beyond a reasonable doubt "if there's no evidence of that, there's no proof of that, that's

reasonable doubt."

¶ 67 Regarding the troopers' testimony, defense counsel "apologize[d]" if the jury thought counsel "was trying to get under [the troopers'] skin. *** I wanted to get the answers so that you can go back to the jury room and have the answers. We [(the defense)] don't want to hide things. We wanted you to know."

¶ 68 Defense counsel then argued as follows:

> "We also saw how Trooper Kromm—she's the one that recovered the gun, right, and I asked her many different ways—and we saw she's a thin small woman. She's not a big woman. She's nothing close to [defendant]. And I asked Trooper Parisi if [defendant]—you saw his pictures. Was he about the same size when this happened. And I asked her how she was able to get access—how she made this gun accessible because that's the key. The State is going to say, well, you know what, it's right where—he could reach under his seat and grab this gun. He can't reach under that seat and grab that gun.
>
> [THE PROSECUTOR]: Objection.
>
> [DEFENSE COUNSEL]: You're seeing him.
>
> THE COURT: Hold up, hold up. Why don't you guys approach.
>
> (Sidebar discussion held at the bench and outside the hearing of the jury.)
>
> [THE PROSECUTOR]: It assumes facts not in evidence and that is not—that is not a proper argument.
>
> THE COURT: There's no testimony as to the size of the driver's area. I don't know any reasonable inference that can be drawn from that so I'm going to sustain that. There's nothing to suggest he couldn't reach it.

(The following proceedings were had in the presence of the jury.)

THE COURT: So, folks, I'm sustaining that. There's no evidence as to whether or not the size of the driver's area of whether or not [defendant] could or could not reach there. The only testimony you've heard is that of Trooper Kromm as to her ability to obtain that.

[DEFENSE COUNSEL]: Thank you, Judge.

You saw pictures of the car. It's a sedan; right? Many of you are drivers. You can take your own life's experiences into this courtroom. Okay? Whatever you've done. You've had cars. You've driven. You've reached under your seat, you haven't reached under your seat. So what they're saying is—I asked Trooper Kromm how did you get the gun, and I wanted to find out. Was she sitting in the front seat, did she reach between her legs and get—no. And you'll see. She was kneeling down outside of the car and she reached her arm underneath the seat to find that gun. That gun was not readily accessible to somebody driving or sitting in that car. That gun was not accessible to somebody sitting and driving in that car. That person would have to—and if it's a large person—and I don't know the size of the—how far back the seat is. If it's a large person, it may very well be difficult to reach underneath the front seat to grab something from underneath that front seat, but you can use your own life experiences if you're drivers, if you had sedans.

That's—so that's one of the issues. That's one of the issues that the State must prove, and you can't go back there and say, well, maybe he could have reached that gun, he possibly could have reached that gun. That's not proof beyond a reasonable doubt."

¶ 69 Defense counsel then argued that the State also left many "unanswered questions or presumptions" concerning whether defendant possessed the drugs with the intent to distribute them. Specifically, defense counsel asserted that Melzer offered possible scenarios of "what could have happened" but agreed that he could not say with certainty what defendant intended to do with the drugs. Counsel pointed out that Melzer testified that the police did not recover any other items associated with dealing drugs that Melzer had found in other raids, such as scales, packaging materials, or other substances to "cut" or dilute the drugs before sale. Counsel told the jury that defendant was presumed innocent and the State had to overcome that presumption; "if you have too many presumptions but not proof, if you have too many maybes, if you have too many this is what could have happened, you can't fill in those blanks just because you want to find him guilty."

¶ 70 Defense counsel continued:

> "We're here—and it really comes down to a couple of things, and one of the things that I was—maybe you were waiting to hear. I don't know. The way these things today are handled—and I asked detective—Trooper Parisi and I asked everybody did you wear gloves when you handled these things. When you handled the gun, when you handled the drugs, did you use gloves. I asked them that for a specific reason. The Illinois State Police Crime Lab, which we've heard stipulations about a couple of things about—we heard about weight of the drugs, we heard that they're able to tell that this gun was a functioning gun, but what didn't we hear? What didn't we hear? We didn't hear that there were fingerprints or it was submitted for fingerprints and that [defendant's] fingerprints were anywhere on this gun. We didn't hear any testimony of that they submitted the bag—the plastic bag with the drugs or the magazine for the gun, that that was submitted and it come back and

they say, well, [defendant] sure as heck knew he had a gun because his fingerprints were all over this gun. [Defendant] surely knew about the drugs. His fingerprints were all over this plastic bag. And now we hear about DNA. That's everything—all these TV shows—Illinois State Police, they do that too. They do that too. And that's even better than fingerprints. It's a thousand times better than fingerprints.

[THE PROSECUTOR]: Objection.

THE COURT: Sustained. There's no evidence regarding the quality of DNA.

[DEFENSE COUNSEL]: Well, if they submitted it for DNA, we would know about it and if [defendant]—

[THE PROSECUTOR]: Objection.

THE COURT: Sustained. There's no evidence as to—regardless of whether there would have been DNA on any of those, and if so, what that would tell. So there's no evidence whatsoever regarding the DNA or the lack thereof.

[DEFENSE COUNSEL]: You're right.

Because it was never submitted. It was never submitted so there is no evidence of DNA.

You know, I'm hoping—I posed questions to you folks, too, and I'm hoping that some of the questions that you are going to go back and ask amongst yourselves—I'm hoping I answered some of them, and if there's some different theories and things that could have or maybe happened, then you—maybe that relates to doubt or reasonable doubt, but you decide. You know, we don't—we've been told for years—I can't give you a number. I can't say what theoretically. It's

not like a civil case. Some of you folks I know were like in civil juries where they say it's 51 percent to 49—

[THE PROSECUTOR]: Objection.

THE COURT: You're not going to get a definition for reasonable doubt from this attorney nor is [the prosecutor] going to give you any. So we're not going to talk about reasonable doubt anymore so move on.

[DEFENSE COUNSEL]: Okay. Thanks, Judge.

So you'll get enough instructions about that and the judge is going to read those to you too."

¶ 71 Defense counsel concluded by thanking the jury for its service, emphasizing that the State would have the last word in rebuttal argument, and encouraging the jury to consider how counsel might have responded to what the State was about to argue if he had the opportunity.

¶ 72 c. The State's Rebuttal

¶ 73 In rebuttal, the State argued the following:

"Counsel said they didn't want to hide anything. Not true. [Defendant] did. He ran his mouth that whole time, cursed those troopers up and down, swore at them, insulted them. He got a moment, but he was asked to give a statement. Yeah, I'll do it. Special Agent Normoyle said, great, I'm going to audio record that. Wouldn't that be nice? Wouldn't that show knowledge and intent to be able to lay the facts out and discuss it and he's running his mouth the whole time. Here's his chance. Let's get it on that record. I'd like to audio record that. Nope, I'm not going to talk to you now. You're a bitch. What's that say about his state of mind? Here's the answer to that. He knows he can't say anything on there because it's going to

be a lie because he can't talk his way out of thousands of dollars worth of drugs and a loaded gun.

[DEFENSE COUNSEL]: Judge, I'm going to object to this. I think we're getting awfully close, Judge. You know where I'm—

THE COURT: I'm going to overrule. I'll allow it to stand.

[THE PROSECUTOR]: Crimes happen. We all know that. There's not an instruction list. There's not a preplanned manifest of how to deliver drugs: Step one, step two, step three. Inferences have to be made and that's why we have trials obviously.

So can Sergeant Melzer tell you what this defendant was going to do with all those drugs? No. He was honest about that and now he's getting—trying—people are trying to ding him for that because he's being honest and saying I don't know what he's doing. Maybe he's a mule. Maybe he's just a link in the chain of the drug game and he's driving this package from Point A to Point B to give to somebody else. Maybe he, the defendant, was going to take this and cut it up and sell it at different quantity levels. Sergeant Melzer was honest with you and told you he can't answer that question. Nobody can—well, one person can (indicating).

[DEFENSE COUNSEL]: Objection, Your Honor.

THE COURT: I'll sustain that. Just strike that last comment.

[THE PROSECUTOR]: But the thing that he's clear on and I think that we all know from common sense is that drugs are about money and so we know—I mean, this is just commonsense stuff that drugs are going to get taken and delivered some place and sold and a profit be made.

> Folks, I'm not going to beat this horse. The judge is going to tell you in an instruction—it's the first one he reads. There's a line in there, 'You should consider all the evidence in the light of your own observations and experience in life.' In your own experience in life.
>
> A man driving his own car by himself with a bunch of drugs under his elbow and a gun under where he's sitting. We know why. It's about money. A gun is about protection. He's guilty of all counts, and I'd ask you to find him so."

¶ 74 The trial court then instructed the jurors and sent them to deliberate. One of those instructions was that the jury could not consider in any way the defendant's decision not to testify.

¶ 75 3. *The Motion for Mistrial*

¶ 76 Immediately after the jury retired to deliberate, defendant moved for a mistrial. Defendant argued that the State improperly commented on defendant's invoking his right (1) to remain silent by declining to be interviewed by Normoyle and (2) not to testify at trial by physically gesturing toward defendant in front of the jury while stating that "one person knows" what the drugs were for. The State argued that the comments were "fair game" because defendant did not invoke his right to remain silent and instead chose to speak to officers. The trial court agreed with the State, noted that it sustained defendant's objection, and instructed the jury that it could not consider defendant's choosing not to testify.

¶ 77 4. *The Verdict*

¶ 78 The jury found defendant guilty of all counts.

¶ 79 I. Sentencing

¶ 80 In December 2022, the trial court conducted a sentencing hearing at which it first addressed defendant's posttrial motion. Defendant argued that the trial court erred by (1) denying

his motion to suppress and limiting the scope of the hearing, (2) sustaining the State's objections during his closing argument, and (3) denying his motion for mistrial based on the State's improper rebuttal arguments commenting on his not testifying. The court denied the motion.

¶ 81 The trial court sentenced defendant to 15 years in prison on counts 1 and 2, the armed violence convictions, and ordered them to be served concurrently. The court sentenced defendant to 10 years in prison on count 3 and 6 years on count 4, to be served concurrently with each other. The court also sentenced defendant to two years in prison for aggravated unlawful use of a weapon, which was count 5, to be served concurrently with all other counts.

¶ 82 The trial court further specified how those prison terms were to be served in its written sentencing order, in which it wrote the following: "Counts 1 and 2 are to run concurrent to each other. Counts 3 and 4 are to run concurrent to each other. Counts 1 and 2 are to be served consecutively to Counts 3 and 4. Count 5 is to run concurrently to all the other Counts." In other words, defendant received an aggregate sentence of 25 years in prison.

¶ 83 This appeal followed.

¶ 84 II. ANALYSIS

¶ 85 Defendant appeals, arguing error occurred regarding (1) his motion to suppress and (2) closing arguments. Defendant asserts that the trial court erred by limiting the scope of the suppression hearing and refusing to conduct a hearing on his second motion to suppress, which raised a different ground. Alternatively, defendant contends that if the court properly limited the motion to suppress, defense counsel rendered ineffective assistance by failing to raise the validity of the warrant as a ground to suppress the evidence from the stop in his first motion.

¶ 86 Regarding closing arguments, defendant argues the trial court erred by (1) sustaining the State's objections to his closing arguments based on reasonable inferences from

the evidence and (2) overruling his objection to the State's argument in rebuttal about his refusal to speak with the police.

¶ 87 We disagree and affirm.

¶ 88 A. The Trial Court Properly Denied Defendant's Motions To Suppress

¶ 89 Defendant first argues that the trial court erred when it (1) limited the scope of the first motion to suppress and (2) barred counsel from litigating the second motion to suppress. Specifically, defendant asserts that Illinois law does not prohibit a defendant from filing multiple motions to suppress as long as the grounds raised in those motions are separate and distinct from grounds previously raised. Alternatively, assuming the court's refusal to consider a second motion was proper, defendant contends that defense counsel rendered ineffective assistance by failing to clearly raise the issue of the warrant's validity in the first motion to suppress.

¶ 90 Although the State defends the trial court's refusal to consider the second motion, the State concedes that defense counsel had no legitimate reason for failing to include the issue of the validity of the warrant in his original motion. Nonetheless, the State contends that defendant was not prejudiced by counsel's failure because the record demonstrates that the police acted appropriately and no basis existed to suppress the evidence obtained from the inventory search subsequent to defendant's arrest. We agree.

¶ 91 Because defendant's arguments lack any substantive merit, we need not address whether the trial court erred by limiting the scope of the hearing on defendant's initial motion to suppress.

¶ 92 1. *The Applicable Law*

¶ 93 a. Ineffective Assistance of Counsel

¶ 94 "To demonstrate ineffective assistance of counsel, a defendant must show that

(1) the attorney's performance fell below an objective standard of reasonableness and (2) the attorney's deficient performance prejudiced the defendant in that, absent counsel's deficient performance, there is a reasonable probability that the result of the proceeding would have been different." *People v. Jackson*, 2020 IL 124112, ¶ 90, 162 N.E.3d 223 (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). "A reasonable probability is a probability which undermines confidence in the outcome of the trial." *People v. Sturgeon*, 2019 IL App (4th) 170035, ¶ 84, 126 N.E.3d 703. We address only the second prong of what a defendant must show to demonstrate ineffective assistance of counsel because this record contains no basis to conclude that the trial court's ruling on defendant's motion to suppress would have been different.

¶ 95 b. The Exclusionary Rule

¶ 96 In *Herring v. United States*, 555 U.S. 135 (2009), the United States Supreme Court discussed the fourth amendment's protection against unreasonable searches and seizures, as well as when the exclusionary rule should apply to bar evidence that the police may have seized in violation of that amendment. In *Herring*, a case factually quite similar to the present case, the Court wrote the following:

> "The Fourth Amendment forbids 'unreasonable searches and seizures,' and this usually requires the police to have probable cause or a warrant before making an arrest. What if an officer reasonably believes there is an outstanding arrest warrant, but that belief turns out to be wrong because of a negligent bookkeeping error by another police employee? The parties here agree that the ensuing arrest is still a violation of the Fourth Amendment, but dispute whether contraband found during a search incident to that arrest must be excluded in a later prosecution.
>
> Our cases establish that such suppression is not an automatic consequence

> of a Fourth Amendment violation. Instead, the question turns on the culpability of the police and the potential of exclusion to deter wrongful police conduct. Here the error was the result of isolated negligence attenuated from the arrest. We hold that in these circumstances the jury should not be barred from considering all the evidence." *Id.* at 136-37.

¶ 97 In *Herring*, the defendant was arrested and subsequently searched, leading the police to discover contraband on his person, when the police made a traffic stop on the defendant because they had been informed—incorrectly—that there was a warrant for his arrest in a neighboring county. *Id.* at 137-38. In fact, that warrant had been recalled, but "[f]or whatever reason, the information about the recall of the warrant" for the defendant did not appear in the database the sheriff's department used. *Id.* at 138.

¶ 98 The defendant made a motion to suppress this evidence, but that motion was denied, and he was convicted. The question before the Court was whether the exclusionary rule should apply under these circumstances.

¶ 99 As the Supreme Court explained, the Eleventh Circuit Court of Appeals had concluded in this case that somebody in the neighboring county should have updated the computer database to reflect the recalled arrest warrant. *Id.* at 140. The Eleventh Circuit further concluded that this error was negligent but did not find it to be reckless or deliberate. *Id.* The Supreme Court wrote, "That fact is crucial to our holding that this error is not enough by itself to require the extreme sanction of exclusion." (Internal quotation marks omitted.) *Id.*

¶ 100 In affirming the Eleventh Circuit, the Supreme Court made the following observations:

> "The fact that a Fourth Amendment violation occurred—*i.e.*, that a search

or arrest was unreasonable—does not necessarily mean that the exclusionary rule applies. *** [O]ur precedents establish important principles that constrain application of the exclusionary rule.

*** We have repeatedly rejected the argument that exclusion is a necessary consequence of a Fourth Amendment violation. [Citations.] ***

*** '[T]o the extent that application of the exclusionary rule could provide some incremental deterrent, that possible benefit must be weighed against [its] substantial social costs.' [Citation.] ***

***

*** The exclusionary rule was crafted to curb police rather than judicial misconduct; court employees were unlikely to try to subvert the Fourth Amendment; and 'most important, there [was] no basis for believing that application of the exclusionary rule in [those] circumstances' would have any significant effect in deterring the errors." *Id.* at 140-42.

¶ 101 The Court ultimately concluded as follows:

"To trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system. As laid out in our cases, the exclusionary rule serves to deter deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence. The error in this case does not rise to that level." *Id.* at 144.

¶ 102 The Court added this important caveat:

"We do not suggest that all recordkeeping errors by the police are immune

from the exclusionary rule. ***

If the police have been shown to be reckless in maintaining a warrant system, or to have knowingly made false entries to lay the groundwork for future false arrests, exclusion would certainly be justified under our cases should such misconduct cause a Fourth Amendment violation." *Id.* at 146.

¶ 103 2. *This Case*

¶ 104 We conclude that defendant was not prejudiced by defense counsel's failure to adequately argue against the validity of the warrant in his initial motion to suppress because the police officers did not engage in any misconduct by relying on the facially valid warrant for defendant's arrest. Indeed, this would be a particularly inappropriate case in which to find police misconduct, given that Parisi could have relied on LEADS showing an outstanding warrant for defendant but chose to take the extra step of requesting the state police dispatch technician to inquire about the warrant's validity with personnel from Cook County, from which the warrant issued.

¶ 105 At trial, Parisi explained that after initiating the traffic stop of defendant, LEADS showed an outstanding arrest warrant for defendant from Cook County. Nonetheless, Parisi still asked dispatch to confirm the validity of the warrant by checking with the originating agency. Parisi stated that he "was sent a confirmation from the originating agency through our telecommunications technician." Having confirmed that (1) the LEADS information was accurate and (2) defendant had an outstanding arrest warrant that was to be executed, Parisi was required by Illinois State Police policy to arrest defendant pursuant to that warrant.

¶ 106 Defendant has not suggested what more Parisi should—or even *could*—have done to discover that the warrant was, in fact, no longer valid. Parisi followed best practices by

requesting his dispatch to verify with the originating agency that the information in LEADS was correct, and as a result, Parisi received confirmation from that agency.

¶ 107 Defendant asserts on appeal that suppression of evidence may be appropriate even when the arresting officers relied in good faith upon what appeared to be an active warrant, if other law enforcement personnel were reckless or grossly negligent in keeping accurate records or giving accurate information to officers in the field. However, even accepting the merits of that contention, the record in this case contains nothing to suggest that the Cook County officials engaged in any misconduct in their recordkeeping.

¶ 108 In addition, defense counsel never suggested in any of his motions or arguments in the trial court that Cook County law enforcement personnel were reckless or grossly negligent in their recordkeeping; to the contrary, counsel indicated that the warrant was not removed from the system due simply to a garden-variety clerical error.

¶ 109 Defendant contends that the absence of evidence in the record necessitates a remand to determine if such evidence exists. We disagree. Given that counsel was well aware of the issue and properly preserved it throughout the trial court proceedings, counsel's failure to present any evidence or even suggest to the court that such evidence exists leads us to conclude, on the record before us, that counsel could not locate any such evidence.

¶ 110 3. *Defendant's "Motion To Quash Arrest and Suppress Evidence"*

¶ 111 At the April 2022 hearing on defendant's initial motion to suppress, when the trial court noted that defendant's motion to suppress raised only the question of whether the officer's stop of defendant's vehicle was appropriate, defense counsel argued that, contrary to what he had earlier indicated to the court, he sought to go beyond the circumstances of the initial stop and also discuss the search the police later conducted of defendant's vehicle. During counsel's discussion

with the court, counsel asserted that his motion was "a motion to quash the arrest," and he explained that "we're trying to quash the arrest." Defendant titled his second motion to suppress, which was filed in April 2022, as a "Motion to Quash Arrest and Suppress Evidence."

¶ 112 This court has repeatedly—and strongly—criticized the notion that there is any such thing as "a motion to quash arrest and suppress evidence," and this case is an example of the confusion the notion of the existence of such a motion can cause.

¶ 113 In *People v. Ramirez*, 2013 IL App (4th) 121153, ¶¶ 56-61, 996 N.E.2d 1227, this court discussed at length why a defendant seeking to suppress evidence due to allegedly unlawful police conduct must file a motion titled "motion to suppress evidence." We explained in *Ramirez* why, under Illinois criminal procedure, there exists no such thing as a "motion to quash arrest" when that motion is based upon allegedly unlawful police conduct. *Id.* Other cases in which this court has rejected the notion that there is any such thing as a "motion to quash arrest and suppress evidence" are the following: *People v. Hansen*, 2012 IL App (4th) 110603, 968 N.E.2d 164; *People v. Dunmire*, 2019 IL App (4th) 190316, 160 N.E.3d 113; *People v. Evans*, 2017 IL App (4th) 140672, ¶ 13, 73 N.E.3d 139; *People v. Winchester*, 2016 IL App (4th) 140781, ¶¶ 22-24, 66 N.E.3d 601 (collecting cases).

¶ 114 Regarding motions to suppress generally, we also wrote the following in *Ramirez*:

> "Motions to suppress filed pursuant to section 114-12 of the Code [of Criminal Procedure of 1963 (725 ILCS 5/114-12 (West 2010))] must clearly set forth *at a minimum* the following:
>
> (1) **The title of the motion should be motion to suppress evidence.** ***
>
> (2) **The motion to suppress must clearly identify the evidence**

sought to be suppressed. ***

(3) **The motion must state facts showing wherein the search and seizure were unlawful.**" (Emphases in original.) *Ramirez*, 2013 IL App (4th) 121153, ¶ 59.

¶ 115 The trial court in this case was clearly frustrated by defense counsel's failure to follow the statutory guidelines on what a motion to suppress must contain. Had counsel complied with those guidelines, the record would have been clear regarding precisely what relief defense counsel was seeking and why.

¶ 116 The pernicious practice of titling motions to suppress as "motions to quash arrest and suppress evidence," with all the trouble and confusion that practice has caused, began in the Cook County criminal courts and has—regrettably—oozed into other courts in Illinois, as shown by this case. Seven years ago, in *Evans*, 2017 IL App (4th) 140672, ¶ 13, this court urged trial courts to *sua sponte* reject such motions on their face, explaining as follows:

"At the outset, we must comment on defendant's pretrial 'motion to quash arrest and suppress evidence.' 'This title is improper because defendant is not challenging his arrest as void but challenging whether the arresting officer had probable cause or reasonable suspicion. A proper title for such a motion is "motion to suppress evidence." ' *People v. Winchester*, 2016 IL App (4th) 140781, ¶ 22, 66 N.E.3d 601 (citing *People v. Hansen*, 2012 IL App (4th) 110603, ¶ 63, 968 N.E.2d 164 ('defendants should stop filing such motions and should instead file only motions to suppress evidence')). Since deciding *Hansen*, we have repeatedly reiterated the impropriety of titling motions to suppress evidence as 'motions to quash arrest' and indicated defense counsel should cease filing such motions. *Id.*

¶¶ 24-27 (citing several cases reiterating the *Hansen* decision). Noting the lack of success in our effort to make this message clear, we recently called upon trial courts to *sua sponte* reject such motions and 'give the counsel who filed the inappropriate motion the opportunity to file a proper motion to suppress under section 114-12 of the [Code of Criminal Procedure of 1963 (Criminal Procedure Code) (725 ILCS 5/114-12 (West 2014))].' *Id.* ¶ 30. We disapprove of filing meaningless motions to 'quash arrest' when the goal is to suppress evidence, and we again call upon trial courts to *sua sponte* reject such motions on their face."

¶ 117 B. Closing Arguments

¶ 118 Next, defendant argues that the trial court erred by (1) sustaining three of the State's objections during his closing argument and (2) overruling three of his objections during the State's rebuttal.

¶ 119 1. *The Applicable Law*

¶ 120 In *People v. Jackson*, 2020 IL 124112, ¶ 78, 162 N.E.3d 223, the Illinois Supreme Court addressed the defendant's contention that the prosecutor's closing argument was improper because the prosecutor mischaracterized two pieces of evidence. Rejecting those contentions, the supreme court wrote the following:

"Generally, prosecutors have wide latitude in the content of their closing arguments. [Citation.] They may comment on the evidence and on any fair and reasonable inference the evidence may yield, even if the suggested inference reflects negatively on the defendant. A reviewing court will consider the closing argument as a whole, rather than focusing on selected phrases or remarks. [Citation.]

> The standard of review applied to a prosecutor's closing argument is similar to the standard used in deciding whether a prosecutor committed plain error. [Citations.] A reviewing court will find reversible error only if the defendant demonstrates that the remarks were improper and that they were so prejudicial that real justice was denied or the verdict resulted from the error." *Id.* ¶¶ 82-83.

¶ 121 The Illinois Supreme Court has long held that a "prosecutor may also respond to comments by defense counsel which clearly invite a response." *People v. Hudson*, 157 Ill. 2d 401, 441, 626 N.E.2d 161, 178 (1993); see *People v. Glasper*, 234 Ill. 2d 173, 204, 917 N.E.2d 401, 420 (2009) ("Statements will not be held improper if they were provoked or invited by the defense counsel's argument."). In addition, a "trial court can cure erroneous statements made during arguments by giving proper jury instructions on the law ***, telling the jury arguments are not evidence and should be disregarded if not supported by the evidence, or by sustaining an objection and instructing the jury to disregard the improper statement." *People v. Kallal*, 2019 IL App (4th) 180099, ¶ 35, 129 N.E.3d 621.

¶ 122 2. *This Case*

¶ 123 a. Alleged Errors During Defendant's Closing Argument

¶ 124 Defendant claims that the trial court erred by sustaining the State's objections to defendant's arguments that (1) he was too large to access the gun under the driver's seat in the small car, (2) the State did not present any fingerprint or DNA evidence, and (3) the evidentiary standard in criminal cases is higher than in civil cases.

¶ 125 The State responds that the trial court did not err by sustaining the State's objections during closing arguments because no evidence was presented at trial about the size of the car or whether defendant could reach under the seat. We disagree with the State and view defense

counsel's argument as appropriate based upon inferences the jury would be permitted to draw. After all, the jury could see defendant in open court during the trial, and the jury had also seen pictures of the sedan he was driving. Accordingly, the State should not have objected to defense counsel's argument, and the trial court should not have sustained that objection.

¶ 126 However, no error occurred because after the trial court sustained the State's objection, defense counsel immediately made the same argument and even expanded upon it. This time, the State made no objection to counsel's argument, perhaps due (appropriately so) to second thoughts about whether defense counsel's argument was objectionable.

¶ 127 We reach this same conclusion regarding the State's objection to defendant's argument about the lack of fingerprint and DNA evidence. Although the trial court sustained the State's objection and stated that no DNA evidence was presented, defense counsel nonetheless proceeded to argue to the jury, without further objection by the State, that (1) Parisi testified that the police officers were careful to preserve potential fingerprint or DNA evidence while handling the gun and (2) the State did not present any evidence that such testing was conducted, even though the State did present other test results from the Illinois State Police Crime Lab.

¶ 128 Again, defendant's argument was entirely proper, and he in fact made that argument to the jury notwithstanding the trial court's sustaining the State's earlier objection. Accordingly, we conclude no error occurred because defendant was not prejudiced.

¶ 129 Defendant's final contention of error regarding his closing argument is that the trial court incorrectly sustained the State's objection to defense counsel's contrasting the burden of proof in civil cases with the reasonable doubt standard in criminal cases. We disagree. The trial court was correct to prohibit defense counsel in his argument from any attempt to either (1) quantify reasonable doubt or (2) compare it to the lesser burden a plaintiff has in civil case.

¶ 130 In *People v. Downs*, 2015 IL 117934, ¶ 19, 69 N.E.3d 784, the Illinois Supreme Court wrote the following:

> "This court has long and consistently held that neither the trial court *nor counsel* should define reasonable doubt for the jury. [Citations.] The rationale behind this rule is that 'reasonable doubt' is self-defining and needs no further definition. [Citations.] ('[R]easonable doubt needs no definition and it is erroneous to give instructions resulting in an elaboration of it.') ***." (Emphasis added.)

¶ 131 The supreme court also noted that Illinois Pattern Jury Instructions, Criminal, No. 2.05 (4th ed. 2000) similarly provides no definition of reasonable doubt. *Downs*, 2015 IL 117934, ¶ 20.

¶ 132 The trial court was well within its discretion when it determined that defense counsel should not be permitted to quantify the State's burden of proof, particularly by comparing it to civil cases.

¶ 133 b. The State's Rebuttal Argument

¶ 134 Regarding the defense objections made during the State's rebuttal argument, defendant claims the trial court erred by overruling his objections to the State's arguments that (1) his attorney's statement that defendant did not want to "hide" anything was contradicted by defendant's refusal to give a recorded statement to Normoyle and (2) that "no one knows—well, one person knows (indicating to defendant)," what defendant intended to do with the drugs.

¶ 135 i. *The State's Comments That Defendant Declined To Give a Recorded Statement*

¶ 136 Defendant first argues that the trial court erred by overruling his objection to the State's commenting on the fact that he declined to give a recorded statement to Normoyle. The relevant portion of the State's rebuttal is as follows:

> "Counsel said they didn't want to hide anything. Not true. [Defendant] did. He ran his mouth that whole time, cursed those troopers up and down, swore at them, insulted them. He got a moment, but he was asked to give a statement. Yeah, I'll do it. Special Agent Normoyle said, great, I'm going to audio record that. Wouldn't that be nice? Wouldn't that show knowledge and intent to be able to lay the facts out and discuss it and he's running his mouth the whole time. Here's his chance. Let's get it on that record. I'd like to audio record that. Nope, I'm not going to talk to you now. You're a bitch. What's that say about his state of mind? Here's the answer to that. He knows he can't say anything on there because it's going to be a lie because he can't talk his way out of thousands of dollars worth of drugs and a loaded gun."

¶ 137 Defendant chose to speak to the police before declining to give a recorded statement to Normoyle, and in these initial contacts, Parisi described defendant as "verbally combative," "angry," and "argumentative" at the location of the roadside stop. In the pre-custodial portion of defendant's encounter with police, no *Miranda* warnings were required. *People v. Gonzalez*, 184 Ill. 2d 402, 423, 704 N.E.2d 375, 385 (1998) (prearrest roadside questioning pursuant to a traffic stop does not require *Miranda* warnings).

¶ 138 Eventually, the traffic stop evolved into a custodial arrest, and Parisi appropriately gave defendant *Miranda* warnings. Any statements made by a defendant after receiving the *Miranda* warnings would be admissible if that defendant knowingly and voluntarily made those statements. *People v. Mora*, 2023 IL App (2d) 210653, ¶ 42, 229 N.E.3d 278.

¶ 139 The police ultimately transported defendant to a different location, the Illinois Tollway maintenance garage. En route, defendant's combative statements continued. Parisi

testified that once at the maintenance garage, defendant was "reluctant to get out of the vehicle because he did not want to go into the squad room," going so far as to pull away from officers and reenter the back seat of the squad car after initially stepping out of the vehicle. Stringer testified that defendant's "demeanor was worse than it was on scene. Increasingly belligerent, screaming at officers and refus[ing] to get out of Trooper Parisi's vehicle to be brought in to be processed or interviewed."

¶ 140 At that location, Normoyle spoke with defendant at that location in the back seat of the squad car in which he had been transported. Defendant initially indicated a willingness to speak with Normoyle, who then asked that he be allowed to audio record the conversation. Normoyle testified that, at this point, defendant "called me a bitch and told me he no longer wanted to speak with me." Although defendant continued to be verbally combative throughout his time at the maintenance garage, he made no further statements to Normoyle or any other officer after defendant refused to give a recorded statement.

¶ 141 The record shows that after initially speaking freely to the police—albeit in a confrontational and abusive manner—he later invoked his right to silence. A defendant can invoke his right to remain silent after he had initially waived that right and responded to officers' questions. See *People v. Patterson*, 217 Ill. 2d 407, 445, 841 N.E.2d 889, 910-11 (2005). As the supreme court emphasized in *Patterson*, "Once the right to remain silent has been waived, it can be invoked only by a defendant's positive assertion that he wants to remain silent." *Id.*

¶ 142 Normoyle's testimony establishes that defendant made such a positive assertion. After being told that Normoyle would record their conversation, defendant told Normoyle "he no longer wanted to speak with" him. This is the kind of "simple, unambiguous statement[ ]" that a defendant does "not want to talk with the police" that is sufficient to invoke the right to remain

silent. *Berghuis v. Thompkins*, 560 U.S. 370, 382 (2010).

¶ 143 If defendant had reversed course again and made statements to the police after refusing to give a recorded statement to Normoyle, doing so would likely constitute another waiver of his right to remain silent. See *State v. Graham*, 660 P.2d 460 (Ariz. 1983) (*en banc*) (finding admissible a defendant's statements made after police turned off recording device at his request). Here, however, the record shows no subsequent election by defendant to continue speaking with police after he refused Normoyle's request to give a statement once Normoyle told him it would be recorded.

¶ 144 The *reason* defendant changed his mind about speaking to Normoyle does not matter. The reasons for a defendant's change of mind about speaking to the police are irrelevant as long as it is clear that he did, in fact, decide to stop speaking with them.

¶ 145 This is also not a case in which a defendant had given a full statement to the police but then balked at memorializing it. See *People v. Christiansen*, 116 Ill. 2d 96, 120, 506 N.E.2d 1253, 1263 (1987) (holding that a defendant who gave multiple inculpatory statements could not object to testimony that he declined to reduce one of them to writing).

¶ 146 Although Normoyle's testimony regarding defendant's refusal to give Normoyle a recorded statement should not have been admitted into evidence, defendant did not object to its admission. Similarly, defendant does not argue on appeal the inadmissibility of that testimony. Instead, defendant focuses on (1) the prosecutor's comments about Normoyle's testimony and (2) the trial court's alleged error in overruling defendant's objection to those comments.

¶ 147 It is generally error for the State to comment on a defendant's post-arrest silence. See *People v. Pinkett*, 2023 IL 127223, ¶ 31, 226 N.E.3d 1149, 1157 (holding that it was error for the state to comment on the defendant's post-arrest silence in opening statement). Here, the

prosecutor's own words make clear that he was inviting the jury to draw a negative inference from defendant's failure to give a recorded statement to Normoyle. The remarks in question served little purpose but to comment on defendant's invocation of his right not to speak to the police despite their request that he do so. Accordingly, the prosecutor's remarks were improper.

¶ 148 The State's argument is unpersuasive that the prosecutor's remarks in rebuttal were simply a response to defense counsel's statement in closing argument that "[w]e don't want to hide things." Although we agree that the State may "respond to comments by defense counsel that clearly invite a response" (*People v. James*, 2021 IL App (1st) 180509, ¶ 39, 200 N.E.3d 430), here, the prosecutor's comments exceeded any legitimate response.

¶ 149 Defense counsel's statement was his attempt to "apologize" if the jury felt he was "trying to get under [the troopers'] skin" in his cross-examination of them. It was in this context that counsel then stated, "We don't want to hide things. We wanted you to know." Counsel's statement about his own in-trial tactics did not invite or justify the State's comment on defendant's post-arrest invocation of his right to remain silent.

¶ 150 Nonetheless, as the Illinois Supreme Court has held, an improper comment on a defendant's invocation of his right against self-incrimination does not require automatic reversal. *People v. Hart*, 214 Ill. 2d 490, 517, 828 N.E.2d 260, 275 (2005). Instead, such improper comments, like other constitutional errors, are subject to harmless error analysis (*id.*), and a reviewing court will not reverse a conviction if the court concludes that the State has proved beyond a reasonable doubt that the jury verdict would have been the same absent the error. *People v. Salamon*, 2022 IL 125722, ¶ 121, 202 N.E.3d 283.

¶ 151 Here, we conclude that the State has done so because the evidence of defendant's guilt is overwhelming. Defendant was the sole owner and occupant of the vehicle, and the gun and

drugs the police found were easily within reach of the driver's seat. Defendant was agitated, uncooperative, and verbally abusive towards the investigating police officers throughout the entirety of the traffic stop, including after (1) he was told he would be given a written warning instead of a traffic ticket and (2) he was given the *Miranda* warnings. Defendant's overall demeanor, considered in light of his proximity to the gun and drugs, is strong evidence of his consciousness of guilt, as the State argued. Accordingly, we conclude that the State's improper comment did not contribute to the guilty verdict, which was supported by overwhelming evidence.

¶ 152 ii. *The State's Comment That "One Person Knows"*

¶ 153 The State contends that the prosecutor's comment during rebuttal closing argument that "one person knows (indicating defendant)" was merely a continuation of the same permissible argument we just described. Melzer testified that the only way to know for certain what would happen to the drugs the police found in defendant's car would be to speak with defendant. We disagree with the State.

¶ 154 Our earlier discussion of defendant's interaction with the police concerned whether he asserted his right to remain silent when he was in police custody. The prosecutor's comment at issue here was directed not to defendant's interactions with police, but to defendant's not testifying at trial. This comment clearly called to the jury's attention that defendant, who had exercised his right not to testify, *could* have testified about what he intended to do with the drugs in his car and cleared the matter up. Accordingly, the prosecutor's comment was improper.

¶ 155 However, as we earlier concluded, any such error is harmless in light of the substantial evidence of defendant's guilt. In *People v. Howard*, 147 Ill. 2d 103, 147-48, 588 N.E.2d 1044, 1062-63 (1991), a death penalty case in which the supreme court affirmed the defendant's convictions and sentence, the supreme court addressed the same issue before us—namely, a

prosecutor's remark in closing argument improperly commenting on and drawing attention to the defendant's not testifying at his trial—and wrote the following:

> "Although comment on a defendant's failure to testify is constitutional error, the error does not inevitably require that the defendant be granted a new trial. [Citation.] Notwithstanding the occurrence of constitutional error at trial, a criminal conviction may be affirmed if the reviewing court is able to conclude, upon examination of the entire record, that the error was harmless beyond a reasonable doubt. [Citations.]
>
> We conclude that the error occurring in the case at bar was harmless beyond a reasonable doubt. In the case at bar, the evidence of the defendant's guilt was overwhelming. *** In these circumstances, we conclude that the prosecutor's brief comment was harmless beyond a reasonable doubt."

See also *People v. Kliner*, 185 Ill. 2d 81, 157, 705 N.E.2d 850, 888 (1998), in which the supreme court cited approvingly its earlier decision in *Howard* and wrote the following: "[A]n error resulting from a comment on the defendant's failure to testify does not require reversal where the reviewing court is able to conclude upon an examination of the entire record that the error was harmless beyond a reasonable doubt."

¶ 156 This opinion is already long enough without our reciting again the evidence of defendant's guilt. Suffice it to say that, as did the supreme court in *Howard*, we conclude that the prosecutor's error in this case was harmless beyond a reasonable doubt because the evidence of defendant's guilt was overwhelming. In addition, the trial court in this instance sustained defendant's objection to the remark in question, thereby diminishing—at least in part—any prejudice to defendant.

¶ 157 Nonetheless, we caution prosecutors to avoid arguments that could be seen as commenting on a defendant's election not to testify at trial. A reviewing court's conclusion, as in this case, that a prosecutor's error in closing argument was harmless beyond a reasonable doubt is entirely fortuitous, and it is unprofessional and unacceptable for a prosecutor to engage in improper conduct in the hope that the strength of the State's case will overcome that conduct. We admonish prosecutors to avoid any comments that could be viewed as impermissibly commenting on a defendant's election not to testify. This issue—literally—should never arise.

¶ 158 III. CONCLUSION

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

¶ 160 Affirmed.

Decision Under Review:	Appeal from the Circuit Court of Boone County, No. 21-CF-253; the Hon. C. Robert Tobin III, Judge, presiding.
Attorneys for Appellant:	James E. Chadd, Santiago A. Durango, and Mark D. Fisher, of State Appellate Defender's Office, of Ottawa, for appellant.
Attorneys for Appellee:	Tricia L. Smith, State's Attorney, of Belvidere (Patrick Delfino, Thomas D. Arado, and Justin A. Nicolosi, of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.