2026 IL App (1st) 250540-U
No. 1-25-0540
Order filed November 6, 2026

NOTICE: This order was filed under Illinois Supreme Court Rule 23 and is not precedential except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT, SIXTH DIVISION

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee,

v.

MIGUEL GONZALEZ-LOPEZ, Defendant-Appellant

Appeal from the Circuit Court of Cook County.
Honorable Marc W. Martin, Judge, Presiding.
No. 22-CR-0233001

PRESIDING JUSTICE GAMRATH delivered the judgment of the court.
Justices Pucinski and Evans concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in admitting hearsay statements under the excited utterance exception, and the prosecutor's closing remark was not reversible error.

¶ 2 After a night of drinking, defendant Miguel Gonzalez-Lopez (Gonzalez-Lopez) argued with Antonio Gomez Torres and fatally stabbed him. Gonzalez-Lopez also slashed his brother, Alejandro Gonzalez-Lopez (Alejandro), who fled the apartment to seek help from a nearby friend. Police soon arrested Gonzalez-Lopez at the apartment wearing a bloodstained shirt. A jury found him guilty of first degree murder, and the court sentenced him to 45 years' imprisonment. On appeal, Gonzalez-Lopez contends that the trial court improperly admitted hearsay statements as

excited utterances in violation of both the hearsay rule and his sixth amendment confrontation right, and that the State misrepresented the DNA evidence during closing argument. We affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Pretrial

¶ 5 Before trial, the State sought two continuances because it had been unable to locate and subpoena Alejandro, believed he could be in Mexico, and was continuing to search for him. The State then filed a motion *in limine* to admit Alejandro's out-of-court statements through the testimony of his friend and neighbor, Natasha Lewis. The motion summarized the relevant facts as follows. At about 6:45 p.m. on January 26, 2022, Gonzalez-Lopez, Alejandro, and Antonio were drinking in their Arlington Heights apartment when an argument over money began. Gonzalez-Lopez picked up a kitchen knife and stabbed Antonio, continuing even as Antonio tried to stop him. When Alejandro yelled at Gonzalez-Lopez and tried to take the knife, Gonzalez-Lopez slashed his fingers and threatened to kill him. Antonio suffered over 30 stab wounds and died from his injuries.

¶ 6 Alejandro fled the apartment wearing only a T-shirt and socks, without a coat, shoes, or phone. He ran to Natasha's home and waited outside her apartment until she returned around 9 p.m. Natasha observed that Alejandro was "distraught and crying," had small cuts on his hands, and appeared "terrified, cold, talking to himself and praying." He told her that his brother had killed his friend by stabbing him in the chest and stomach and asked her to call the police. Natasha called 911 and helped translate the conversation between Alejandro and the dispatcher. She relayed that, according to Alejandro, his brother and roommate had fought around "30 minutes ago," Alejandro became scared and fled, and his brother was still holding the knife when he left. Natasha also reported minor cuts on Alejandro's hand.

¶ 7 The State argued that Alejandro's statements to Natasha and during the 911 call were admissible as excited utterances and were nontestimonial, so their admission would not violate the confrontation clause of the sixth amendment. The State asserted that Gonzalez-Lopez's attack was "sufficiently startling to produce a spontaneous and unreflecting statement" and that Alejandro was "clearly still under the stress or excitement of the event" when he spoke with Natasha. It further maintained that Alejandro's statements to Natasha were nontestimonial because she was "simply a friend of Alejandro's from which he was seeking help in an emergency." The State also argued that the 911 call was nontestimonial because "there is no question that there was an ongoing emergency," and the call focused on gathering information necessary for an adequate police response.

¶ 8 At the hearing on the motion, the court listened to a recording of the 911 call. During the call, Natasha spoke with the dispatcher, answered some questions herself, translated others for Alejandro, and relayed his responses.

¶ 9 Gonzalez-Lopez argued that "everything we know about this case basically comes from Alejandro" and that Alejandro was "just as likely to be brought in front of the grand jury." He maintained that Alejandro had at least 2 hours and 14 minutes to "wait and talk to someone" in another apartment and was no longer "still in the middle of this" when he spoke with Natasha. As to the 911 call, Gonzalez-Lopez contended that it consisted of "testimonial responses to questioning [by] the 911 operator as a law enforcement officer."

¶ 10 The court ruled that Alejandro's statements to Natasha were admissible as excited utterances because he made them "while still under the stress of excitement." Noting that no "bright line test" governs the passage of time, the court found: "Most people will go through life

without personally witnessing a relative stab another multiple times. The stress of excitement caused by this did not wear off in the two and a quarter hour period."

¶ 11 Considering the totality of the circumstances, including the startling nature of the events, Alejandro's condition when Natasha found him, the absence of intervening events, and the fact that he volunteered the statements rather than responding to law enforcement questioning, the court found the statements admissible. It also found them nontestimonial because Natasha was not a law enforcement officer and did not "interrogate Alejandro with a primary purpose of proving past events to identify or convict an offender."

¶ 12 By contrast, the court ruled that Alejandro's statements conveyed by Natasha during the 911 call were testimonial and inadmissible, citing "distinctions between Alejandro's initial statements to [Natasha] and those conveyed in the 911 call." Although the dispatcher "sought to address an emergency situation and immediate information," the court found that "the crime was neither ongoing nor in progress." It further found the dispatcher's questioning "fairly probing" and "designed to obtain identification of an offender and intended to prove facts now at issue in this murder prosecution."

¶ 13 The court also concluded that "the recording sufficiently raises the inference that Alejandro had awareness of the consequences that could attach to making a deliberate false statement to authorities." Because the dispatcher's questions "constituted interrogation directed at establishing facts of a past crime," the state and federal constitutions required an opportunity to cross-examine Alejandro about his statements. The court therefore permitted Natasha to testify only that she called the police and "conveyed the dispatcher's questions to Alejandro who provided answers."

¶ 14 B. Trial

¶ 15 At trial, the evidence established that Antonio, Alejandro, and Gonzalez-Lopez were friends who had grown up in the same Mexican village and later shared an apartment in Arlington Heights. In January 2022, Natasha Lewis lived in a nearby apartment complex comprising more than 20 three-story buildings, each with two units per floor. Natasha met Alejandro when he removed a trapped squirrel from her apartment, and the two remained friendly as neighbors. Alejandro lived in the building across the street and parking lot from Natasha's building. Because he spoke primarily Spanish and limited English, he occasionally visited Natasha for help making phone calls.

¶ 16 On January 26, 2022, Natasha returned home from school around 9 p.m. and found Alejandro sitting on the mat outside her apartment without a jacket, shoes, or cell phone. Snow covered the ground, and the vestibule was only slightly warmer than outside. Alejandro appeared "shaken up," was talking to himself, and pleaded, "Help me, help me." Natasha gave him a blanket and asked what was wrong. Crying, he replied, "I need you to call 911. He's killed someone. He's killed someone. Help me. Help me." When Natasha asked whom he meant, Alejandro gestured with his hands and said, "[M]y brother, he hurt my friend. Help me. Help me." He added, "[H]e killed him. He hurt my friend. Don't let him get me." On cross-examination, Natasha acknowledged that Alejandro had also said he left while Gonzalez-Lopez and Antonio were still fighting. As Alejandro gestured, Natasha noticed a cut on his hand.

¶ 17 Natasha called 911 and helped with the conversation with police. During the call, Alejandro remained "really shaken up." Whenever the wind rattled the building's door, he would "kind of jump" and repeat, "Don't let him get me. Don't let him get me." He also repeatedly said, "Ay Dios mío," which Natasha explained meant he was "praying to God" in Spanish. Natasha waited with

Alejandro for the police, and both spoke with the officers when they arrived. At trial, she identified photographs taken that night showing the cut on Alejandro's hand and his clothing. Surveillance cameras at the apartment complex captured relevant footage at 6:45 p.m. and 7:09 p.m. Natasha identified Alejandro in the 6:45 p.m. video, which showed him running from his apartment building toward hers.

¶ 18 Officer Johnny Cantu arrived first at the apartment complex shortly after 8:59 p.m. He knocked repeatedly on Gonzalez-Lopez's apartment door, and Gonzalez-Lopez answered about a minute later. Gonzalez-Lopez wore a yellow shirt with red stains, had a cut on his hand, and appeared "disoriented and intoxicated." Cantu handcuffed him and seated him on a sofa inside the apartment. Upon entering, Cantu saw "red droplets" near the apartment's front entrance. After checking the rest of the apartment, he found Antonio lying on a bed behind the sofa, cold to the touch. When other officers arrived, Cantu escorted Gonzalez-Lopez to his squad car, searched him, and recovered his passport from a front pocket. Officer Cantu's body-worn camera (BWC) video corroborates all this.

¶ 19 Beatriz Perez lived on the first floor of Gonzalez-Lopez's apartment building. While taking out her dogs on January 26, 2022, Perez saw wooden doors leaning against a wall in the rear hallway outside her apartment. Around 7 p.m., she heard an argument upstairs and, shortly afterward, a noise at the rear resembling someone striking her door. When she opened the door, she saw a short-haired Hispanic man in a yellow shirt, bent over with his back to her, who "smelled very much like alcohol." The wooden doors had fallen against her door. Beatriz closed her door and later spoke with police.

¶ 20 Officer Daniel Mo arrived after Cantu had handcuffed Gonzalez-Lopez. In the rear hallway, Mo found stacked doors blocking the area near the stairway. He enlisted Officer Vernon Jackson

to help move them. After Jackson pointed out blood on a doorknob, Mo found additional blood "all along the ground and the walls." Mo also discovered a knife on the floor at the bottom of the stairwell, wedged beneath a door, and secured the scene until evidence technicians recovered it. Mo's BWC documented his search of the rear hallway.

¶ 21 Assistant Cook County Medical Examiner Dr. Claire Sorensen's autopsy of Antonio revealed 35 "sharp force injuries, both incised and stab wounds." Most were incised wounds (cuts longer than they were deep) on Antonio's right shoulder, left chest, right torso, upper right arm, left hand, thighs, lower leg, and both sides of his left forearm. Dr. Sorensen opined that the forearm cuts could have been defensive wounds sustained while Antonio tried to shield his body from the knife. Antonio also had three stab wounds to his chest, abdomen, and left thigh. The chest wound caused extensive internal bleeding, and Dr. Sorensen determined that Antonio died from "multiple sharp force injuries." Toxicology testing showed a "quite high" ethanol level.

¶ 22 Amy Lilliebridge processed the crime scene. She swabbed blood near four evidence markers: two droplets on the living-room floor and two swipes or smears on the wall of "the front stairway to the building." She also recovered the knife wedged beneath a door. The knife was approximately seven inches long, had a wooden handle, and was bent where the blade met the handle. A fingerprint on the blade matched Gonzalez-Lopez's fingerprint but no other prints on the knife or handle were suitable for comparison.

¶ 23 Lawrence O'Rourke photographed Gonzalez-Lopez at the hospital. Gonzalez-Lopez's yellow shirt had bloodstains on the front, back, and sleeves, and he had a laceration on his pinky. Gonzalez-Lopez resisted being photographed, requiring officers to hold him in position. O'Rourke collected blood swabs and recovered Gonzalez-Lopez's clothing for testing.

¶ 24 Lieutenant Marissa Sanchez reviewed the surveillance footage, including a 6:46 p.m. clip, showing Alejandro running out of his apartment building, towards Natasha's building. The 7:09 p.m. video showing a man in a yellow shirt resembling Gonzalez-Lopez's walking around from the side of the building and entering the front door. No cameras covered the building's rear door. Natasha's call was the only 911 call reporting the incident.

¶ 25 The next morning, Sanchez and Detective Richard Garcia interviewed Gonzalez-Lopez at Cook County Sheriff's Police headquarters. Garcia questioned him in Spanish and translated his answers into English. The court admitted the electronically recorded interview (ERI), which included an embedded English translation, and the jury viewed it.

¶ 26 During the ERI, Gonzalez-Lopez said he lived with his brother and friend but did not know the friend's real name because "he just arrived." He later said his friend "came up as Tony Gomez" but had previously been known as "Antonio Salazar." Although Antonio had lived with him for about four months, Gonzalez-Lopez said they had met in Mexico and had known each other all their lives.

¶ 27 Gonzalez-Lopez said he was home earlier on the day of the incident with Antonio and that Alejandro was absent. Asked what had happened, he replied, "Well, nothing, only *** we were home." He also said that, in the morning, he ate breakfast while Alejandro was in his bedroom and Antonio was in the living room, where Antonio slept. Gonzalez-Lopez said he never left the apartment but did not know whether Antonio or Alejandro had left, and he could not recall what he had done before arriving at the police station.

¶ 28 Asked how blood got on his shirt, Gonzalez-Lopez answered, "Because I'm cut," but could not explain how he was injured. Nor could he explain how the two shallow cuts on his hands

produced all the blood on his shirt, other than saying it was from when he laid down and pressed his hand against it.

¶ 29 Gonzalez-Lopez said he was alone watching television when police "picked [him] up" and that Antonio was no longer in the apartment, although he did not know where Antonio had gone. He admitted being "drunk" when police arrived after drinking "seven or eight" beers. He said he had been drinking with Antonio but could not remember what happened afterward, and Alejandro was "not around when [they] were drinking." Gonzalez-Lopez recalled that Antonio owed him $1,000 but denied remembering an argument over the money. When Garcia asked, "[H]ow come there was a body in that room?" Gonzalez-Lopez replied, "I don't know, sir."

¶ 30 The parties stipulated that forensic scientist and DNA-analysis expert Lisa Ramos would testify that testing of standards from Antonio and Gonzalez-Lopez produced DNA profiles suitable for comparison. Ramos analyzed blood from the four scene markers and obtained a mixture from marker one containing at least two contributors, though only the major profile was suitable for comparison. That profile matched Gonzalez-Lopez's DNA, as did the profiles from the other three markers. A profile from blood on the front of Gonzalez-Lopez's shirt also matched his DNA. Antonio was excluded as a contributor to the DNA on Gonzalez-Lopez's shirt and the hallway wall.

¶ 31 Blood from the knife blade and cellular material from the handle yielded DNA profiles from "multiple contributors." The blade contained a partial mixture from two contributors that was "3.84 thousand times more likely if it originated from Gonzalez-Lopez and one unknown contributor than if it originated from two unknown contributors." This result provided "moderate support" for including Gonzalez-Lopez as a contributor to the blade's DNA profile.

¶ 32 The blade's partial DNA mixture was also "95.5 quadrillion times more likely if it originated from Antonio Gomez Torres and one unknown contributor than if it originated from two unknown contributors," providing "very strong support" for including Antonio as a contributor.

¶ 33 The knife handle contained a DNA mixture from three contributors that was "83.4 quadrillion times more likely if it originated from Miguel Gonzalez-Lopez and two unknown contributors than if it originated from three unknown contributors." This result provided "very strong support" for including Gonzalez-Lopez as a contributor to the handle's DNA profile.

¶ 34 The handle mixture was also "6.76 times more likely if it originated from three unknown contributors than if it originated from Antonio Gomez Torres and two unknown contributors," providing "limited support" for excluding Antonio as a contributor.

¶ 35 During closing arguments, the State argued:

> "You also heard by way of stipulation that in regards to the DNA on the handle of the knife that it was 83.4 quadrillion times more likely that the DNA on the handle of the knife originated from this defendant and two unknown contributors than if it originated from three unknown people and provided a very strong support that the DNA on the handle was the defendant's."

Shortly thereafter, the State argued, "[T]hat bloody knife had the defendant's fingerprint on it, had the defendant's DNA on the handle of the knife with the victim's blood on the blade of the knife."

¶ 36 Defense counsel emphasized that DNA testing was limited to "only four" evidence markers and identified the evidence that was not tested. Addressing the stipulated analysis, counsel noted that "we're talking about DNA that is located on different pieces of evidence." After reviewing the findings for the evidence markers, counsel argued that the DNA statistics assumed unrelated contributors, whereas Alejandro, if tested, would have been a relative: "[I]n reference to DNA

they're talking about unrelated. We know in this case we're dealing with related had they been able to test Alejandro." Counsel added, "There are three people that live in that apartment. It's going to be their DNA on everything in that apartment. Everything they touch. Every door handle. Every everything."

¶ 37 In rebuttal, the State argued: "There is no evidence in this case that having Alejandro's DNA would change the stipulation, the agreed testimony that the defendant's DNA is on the handle of that knife, that the victim's blood is on the blade of that knife."

¶ 38 The jury found Gonzalez-Lopez guilty of first degree murder. The court denied his motion for a new trial and sentenced him to 45 years' imprisonment. He appeals.

¶ 39 II. ANALYSIS

¶ 40 A. Hearsay Statements

¶ 41 Gonzalez-Lopez contends that the trial court violated the hearsay rule by admitting Alejandro's statements to Natasha under the excited utterance exception. Alternatively, he argues that the statements were testimonial and that their admission violated his constitutional right to confrontation.

¶ 42 1. Excited Utterance Exception

¶ 43 Generally, "[t]he admissibility of evidence is within the sound discretion of the trial court and will not be disturbed absent an abuse of discretion." *People v. Brand*, 2021 IL 125945, ¶ 36. An abuse of discretion occurs where the trial court's ruling is "arbitrary, fanciful, or unreasonable or where no reasonable person could take the view adopted by the trial court." *People v. Brown*, 2025 IL App (1st) 230772, ¶ 55. This applies to the trial court's admission of hearsay statements under a recognized exception. *Id.*

¶ 44 Hearsay is an out of court statement offered to prove the truth of the matter asserted and is generally inadmissible. Ill. Rs. Evid. 801(c) (eff. Oct. 15, 2015), 802 (eff. Jan. 1, 2011); *People v. Tenney*, 205 Ill. 2d 411, 432 (2002). It may nevertheless be admitted under a recognized exception, including the excited utterance exception at issue here. See Ill. R. Evid. 803(2) (eff. Jan. 25, 2023). Such statements have "enhanced reliability because when people are under physical or mental shock, the stress of the situation typically causes them to express their genuine beliefs as to facts they have just observed." *People v. Mayberry*, 2020 IL App (1st) 181806, ¶ 27.

¶ 45 The excited utterance exception allows the admission of "[a] statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition." Ill. R. Evid. 803(2). For hearsay to be admissible under this exception, (1) "there must be an occurrence sufficiently startling to produce a spontaneous and unreflecting statement," (2) "there must be an absence of time for the declarant to fabricate the statement," and (3) "the statement must relate to the circumstances of the occurrence." *People v. Sutton*, 233 Ill. 2d 89, 107 (2009). Admissibility depends on the totality of the circumstances, including "time, the mental and physical condition of the declarant, the nature of the event, and the presence or absence of self-interest." *Id.*

¶ 46 "The time factor has been described as an 'elusive' factor, 'whose significance will vary with the facts of each case.' " *People v. Williams*, 193 Ill. 2d 306, 353 (2000) (quoting *People v. House*, 141 Ill. 2d 323, 382 (1990)). The "period of time that may pass without affecting the admissibility of a statement" under this exception "varies greatly." *Id.* Courts have found statements made after even lengthy delays to be admissible. See, *e.g.*, *House*, 141 Ill. 2d at 384 (2.5 hours); *People v. Gacho*, 122 Ill. 2d 221, 241 (1988) (6.5 hours); *People v. Feliciano*, 2020 IL App (1st) 171142, ¶ 103 ("as long as two days"); *People v. Perkins*, 2018 IL App (1st) 133981, ¶

71 (1.5 hours). “The critical inquiry with regard to time is whether the statement was made while the excitement of the event predominated.” (Internal quotation marks omitted.) *Sutton*, 233 Ill. 2d at 107.

¶ 47 Gonzalez-Lopez does not meaningfully dispute that the event was sufficiently startling, aside from asserting that “Alejandro’s story changed mid-statement, suggesting that either the crime was not sufficiently startling or he had sufficient time to make up his story.” Nor does he dispute that Alejandro’s statements related to the event. Instead, he focuses on the second requirement, arguing that Alejandro had time to fabricate his account and was no longer under the stress of the event when he made the statements.

¶ 48 The trial court found that Alejandro spoke “while still under the stress of excitement.” It explained: “Most people will go through life without personally witnessing a relative stab another multiple times. The stress of excitement caused by this did not wear off in the two and a quarter hour period.” The court relied on “the startling nature of the event,” Alejandro’s condition when Natasha found him, the absence of intervening events, and the fact that he volunteered the statements rather than responding to law-enforcement questioning.

¶ 49 The trial court reasonably concluded that the excitement of the event still predominated when Alejandro spoke with Natasha. See *Sutton*, 233 Ill. 2d at 107. Alejandro had witnessed his brother pull a knife during an argument and stab or slash their roommate 35 times. When Alejandro intervened, Gonzalez-Lopez threatened to kill him, turned the knife on him, and cut his hand. Alejandro fled so abruptly that, despite the January snow, he left without a jacket, shoes, or cell phone. He went to Natasha’s apartment across the street and parking lot and, finding her absent, waited about 2 hours and 14 minutes for her return. When Natasha arrived, Alejandro appeared visibly “shaken up” and was talking and praying to himself. He initially pleaded, “Help me, help

me." After Natasha gave him a blanket, he cried and said, "I need you to call 911. He's killed someone. He's killed someone. Help me. Help me." Gesturing with his hands, he added, "[M]y brother, he hurt my friend. Help me. Help me," and "[H]e killed him. He hurt my friend. Don't let him get me." Given Alejandro's "mental and physical condition" when he spoke (*Sutton*, 233 Ill. 2d at 108), the court reasonably concluded that he had not spent the intervening time fabricating an account of the traumatic events he had just experienced. See *Gacho*, 122 Ill. 2d at 241 ("We believe it is inconceivable *** that [the victim] would have spent the time under these conditions to attempt to fabricate a story or statement about the event.").

¶ 50 In support of his argument that Alejandro's statements to Natasha were not excited utterances, Gonzalez-Lopez points to the following factors: (1) Alejandro did not "take his first opportunity to seek help," (2) he waited to make the statements to a friend who was "perhaps the only person he knew might believe him," (3) he did not have a severe injury that could have distracted him, (4) his statement to Natasha was inaccurate, and (5) his "flight" before trial evinced a self-interested motive to lie. These were all part of the totality of the circumstances bearing on the admissibility of the statements.

¶ 51 The first two factors are related. After witnessing a violent crime involving his brother and friend, Alejandro reasonably sought help from someone he knew and trusted rather than randomly knocking on a stranger's door. Although waiting for Natasha was not the quickest way to seek help, his response must be considered in light of the trauma he had just experienced and possible uncertainty about when she would return.

¶ 52 Although Alejandro's injuries were less severe than the burns in *House*, 141 Ill. 2d at 384, or the gunshot wounds in *Gacho*, 122 Ill. 2d at 241, that distinction does not support Gonzalez-Lopez's claim that Alejandro was "focused solely on fabricating his story." Given what Alejandro

had witnessed in his home, the cut on his hand was likely only one of many concerns occupying him while he waited for Natasha.

¶ 53 Gonzalez-Lopez's claim that any "inaccuracy" in Alejandro's statements showed fabrication is likewise unpersuasive. It is not clear that the statements were inaccurate. Natasha initially testified that Alejandro said Gonzalez-Lopez had killed Antonio. On cross-examination, however, she acknowledged that Alejandro said he left while Gonzalez-Lopez and Antonio were still fighting. Having seen Gonzalez-Lopez stab and slash Antonio dozens of times, Alejandro could reasonably have believed the outcome was inevitable.

¶ 54 *People v. McCoy*, 2016 IL App (1st) 130988, on which Gonzalez-Lopez relies, is distinguishable. There, the victim was shot but twice denied having been shot. *Id.* ¶ 5. This court deemed those statements "wholly inaccurate" and reasoned that, if the victim was "so disoriented as to be unaware that he was shot, then clearly he was not making his statements 'while the excitement of the event predominated.'" *Id.* ¶ 95 (quoting *Sutton*, 233 Ill. 2d at 107). The *McCoy* court distinguished those statements from the "exaggerated" facts in *United States v. Davis*, 577 F. 3d 660, 669-70 (6th Cir. 2009), and the "slightly" varied descriptions in *House*, 141 Ill. 2d at 352-53, 361. However, Alejandro's statements more closely resemble the examples in *Davis* and *House*, than the "wholly inaccurate" statements in *McCoy*.

¶ 55 Gonzalez-Lopez also argues that Alejandro's statements were self-interested because he was "the only other suspect in the stabbing." But no evidence shows that police ever arrested Alejandro or otherwise treated him as a suspect, and Gonzalez-Lopez never accused Alejandro of the stabbing, either when Cantu arrived at the apartment or during the later ERI. For the same reason, Alejandro's unexplained departure for Mexico does not undermine the trial court's findings. The cases Gonzalez-Lopez cites, *People v. Aljohani*, 2021 IL App (1st) 190692, ¶¶ 70-

71, and *People v. McDonald*, 227 Ill. App. 3d 92, 97 (1992), involved defendants, not eyewitnesses, whose flight from police or pretrial absconding showed consciousness of guilt. Gonzalez-Lopez cites no case attributing such an inference to an eyewitness who was never treated as a suspect.

¶ 56 Accordingly, the trial court did not abuse its discretion in finding that Alejandro's statements to Natasha were excited utterances "made while the excitement of the event predominated." *Sutton*, 233 Ill. 2d at 107.

¶ 57 2. Statements Were Not Testimonial

¶ 58 Gonzalez-Lopez next argues that Alejandro's statements to Natasha were testimonial and that admitting them violated his constitutional right to confront the witnesses against him. The parties dispute the applicable standard of review.

¶ 59 Our supreme court has held that "[w]hether a statement is testimonial is a question of law" reviewed *de novo*. *Sutton*, 233 Ill. 2d at 112. In a similar case, however, this court explained that "[a] reviewing court will defer to the trial court's evidentiary ruling, unless the trial court's exercise of discretion has been frustrated by an erroneous rule of law." *Brown*, 2025 IL App (1st) 230772, ¶ 112 (citing *People v. Spicer*, 379 Ill. App. 3d 441, 451 (2007), and *People v. Purcell*, 364 Ill. App. 3d 283, 286 (2006) (citing *People v. Caffey*, 205 Ill. 2d 52, 89 (2001))). Our conclusion is the same under either standard.

¶ 60 The confrontation clause guarantees that "[i]n all criminal prosecutions, the accused shall enjoy the right *** to be confronted with the witnesses against him[.]" U.S. Const., amends. VI, XIV. A testimonial out-of-court statement by a witness who does not testify at trial is inadmissible unless the witness is unavailable and the defendant previously had an opportunity for cross-examination. *Crawford v. Washington*, 541 U.S. 36, 53-54 (2004); *People v. Stechly*, 225 Ill. 2d

246, 279 (2007). The confrontation clause does not apply to nontestimonial statements. *Stechly*, 225 Ill. 2d at 279.

¶ 61 Whether a statement is testimonial depends on "whether, in light of all the circumstances, viewed objectively, the 'primary purpose' of the conversation was to 'creat[e] an out-of-court substitute for trial testimony.' " *Ohio v. Clark*, 576 U.S. 237, 245 (2015) (quoting *Michigan v. Bryant*, 562 U.S. 344, 358 (2011)). This assessment considers "all relevant information," including the parties' statements and actions, the circumstances of the questioning, and the encounter's formality. *Bryant*, 562 U.S. at 366, 369-70, 377. Statements to private individuals are therefore "much less likely to be testimonial" than statements to law enforcement officers. *Clark*, 576 U.S. at 246; see also *Crawford*, 541 U.S. at 68 (identifying police interrogations and prior formal testimony as testimonial "at a minimum"); *Brown*, 2025 IL App (1st) 230772, ¶ 118 (explaining that *Davis v. Washington*, 547 U.S. 813, 821-24 (2006), clarified that some responses to police questioning are testimonial and others are not).

¶ 62 Our supreme court has held that a statement is testimonial when it (1) is made solemnly and (2) is intended to establish a particular fact. *Sutton*, 233 Ill. 2d at 111 (citing *Stechly*, 225 Ill. 2d at 281-82). A statement is solemn if it is formal, such as one made under oath or to a police officer, or if dishonesty carries a threat of consequences. *People v. Cleary*, 2013 IL App (3d) 110610, ¶ 56 (citing *Stechly*, 225 Ill. 2d at 281-82, and *Sutton*, 233 Ill. 2d at 119-20); *Mayberry*, 2020 IL App (1st) 181806, ¶ 33. A statement is intended to establish a fact when "the declarant is acting in a manner analogous to a witness at trial, giving information about past events that could potentially be relevant to a later criminal prosecution." *Cleary*, 2013 IL App (3d) 110610, ¶ 56.

¶ 63 Alejandro's statements to Natasha were not solemn. Natasha was his friend and neighbor, not a law enforcement officer or other authority who could punish dishonesty. Given Alejandro's

physical and mental condition when Natasha found him, a reasonable person in his position would not have expected that statements made to a friend while seeking help would later be used in a prosecution. Objectively viewed, the conversation's primary purpose was not to create an out-of-court substitute for trial testimony. See *Mayberry*, 2020 IL App (1st) 181806, ¶ 34 (admitting a gunshot victim's response when a friend asked who shot him did not violate the confrontation clause).

¶ 64 Gonzalez-Lopez argues that the rulings admitting Alejandro's statements to Natasha but excluding the 911 call "cannot be reconciled" because the call occurred "seconds later." But the testimonial inquiry depends on the recipient's identity and role and the declarant's objective purpose, not merely temporal proximity. During the call, Natasha answered the dispatcher's questions, translated some questions and Alejandro's responses, and relayed additional details Alejandro had not initially given her. Thus, the circumstances of the 911 call differed from those surrounding Alejandro's initial statements to Natasha.

¶ 65 B. State's Closing Argument

¶ 66 Gonzalez-Lopez contends that the State mischaracterized the DNA evidence during closing argument, denying him a fair trial. Although he acknowledges that he forfeited the issue, he seeks review under the plain error doctrine or as a claim of ineffective assistance of counsel.

¶ 67 To establish ineffective assistance, Gonzalez-Lopez must show that counsel's performance fell below an objective standard of reasonableness and that, absent the deficient performance, there is a reasonable probability of a different result. *People v. Jackson*, 2020 IL 124112, ¶ 90 (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). Plain error review begins by determining whether any reversible error occurred. See *id.* ¶ 81.

¶ 68 Prosecutors generally have "wide latitude" in closing argument. *People v. Runge*, 234 Ill. 2d 68, 142 (2009). 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." *Jackson*, 2020 IL 124112, ¶ 82. A reviewing court considers the argument as a whole rather than isolated phrases or remarks. *Id.* The standard for reviewing prosecutorial closing argument resembles plain error review: reversal is warranted only when the remarks were improper and so prejudicial that they denied real justice or produced the verdict. *Id.* ¶ 83 (citing *Runge*, 234 Ill. 2d at 142).

¶ 69 The stipulated testimony of DNA analyst Ramos established:

> "[A] DNA profile originating from three contributors was obtained from the knife handle. The mixture of DNA profiles obtained from the knife handle is 83.4 quadrillion times more likely if it originated from Miguel Gonzalez-Lopez and two unknown contributors than if it originated from three unknown contributors. This analysis provides very strong support for inclusion of Miguel Gonzalez-Lopez."

¶ 70 During the State's closing argument, the prosecutor recalled the stipulated testimony:

> "You also heard by way of stipulation that in regards to the DNA on the handle of the knife that it was 83.4 quadrillion times more likely that the DNA on the handle of the knife originated from this defendant and two unknown contributors than if it originated from three unknown people and provided a [*sic*] very strong support that the DNA on the handle was the defendant's."

¶ 71 Gonzalez-Lopez argues that this statement misrepresented the evidence by "transposing the conditional," as used in a May 2024 report from the National Institute of Standards and Technology (NIST), and was so prejudicial that it denied him a fair trial. He maintains that this

single remark "threatened to tip the scales" against him and warrants reversal and a new trial. We disagree.

¶ 72 Viewed in context, the challenged remark may have inaccurately summarized the stipulated evidence, but it was "an isolated remark that the prosecutor made between several correct references to the DNA evidence throughout the entirety of the argument." *Jackson*, 2020 IL 124112, ¶ 85. The remark appeared within 30 pages of the State's closing and rebuttal arguments discussing numerous figures, tests, and probabilities. The evidence ultimately showed that the results "provided very strong support" for including Gonzalez-Lopez as a contributor to the DNA profile on the knife handle. In assessing a remark's effect on the verdict, we consider its brevity and isolation within the broader argument. *Runge*, 234 Ill. 2d at 142.

¶ 73 The trial court also repeatedly instructed the jury, before and after closing arguments and following numerous objections, that counsel's arguments were not evidence. Proper instructions reduce any potential prejudice from closing argument. *Jackson*, 2020 IL 124112, ¶ 87; *People v. Willis*, 409 Ill. App. 3d 804, 814 (2011). The parties also agreed that the stipulations would go back with the jury, giving it direct access to Ramos's stipulated testimony during deliberations. Thus, even apart from forfeiture, the challenged remark was not "so improper and so prejudicial that real justice was denied or that the jury's verdict may have resulted therefrom." *Jackson*, 2020 IL 124112, ¶ 88. Because no reversible error occurred, there can be no plain error. *People v. Hood*, 2016 IL 118581, ¶ 29.

¶ 74 Nor was counsel ineffective for failing to object to the State's closing remarks. Review of counsel's performance is highly deferential, and strategic decisions, including "what matters to object to and when to object," generally do not support an ineffective assistance claim unless objectively unreasonable. *People v. Bridges*, 2025 IL App (1st) 241180, ¶ 30; *People v. Pecoraro*,

144 Ill. 2d 1, 13 (1991). The right to counsel guarantees competence, not perfection. *People v. Easley*, 192 Ill. 2d 307, 344 (2000). Defense counsel challenged the DNA evidence not by disputing the numerical results, but by emphasizing that the samples had not been compared with a standard from Alejandro. Counsel may reasonably have declined to object to the State's single remark "to diffuse its importance, rather than object and draw further attention to the statement." *People v. Evans*, 209 Ill. 2d 194, 221 (2004).

¶ 75 As to prejudice, our supreme court has explained that "[t]he showing of *Strickland* prejudice in this context is similar to the prejudice that establishes reversible error for improper prosecutorial remarks: whether the guilty verdict resulted from trial counsel's failure to object." *Jackson*, 2020 IL 124112, ¶ 91. Because the challenged remark was not prejudicial enough to constitute reversible error, counsel's failure to object likewise did not cause the prejudice required under *Strickland*.

¶ 76 Accordingly, neither plain error nor ineffective assistance of counsel provides a basis to excuse Gonzalez-Lopez's forfeiture.

¶ 77 Affirmed.