No. 2—08—1243
Order filed February 4, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Kane County.
Plaintiff-Appellee,	)	
v.	)	No. 07—CF—2242
EDGAR A. SANCHEZ,	)	Honorable Allen M. Anderson,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Zenoff and Burke concurred in the judgment.

ORDER

Held: Where police denied the parents of the 16-year old defendant access to him despite the parents' presence at police station, juvenile officer improperly participated in the defendant's interrogation, and police misled the defendant regarding the evidence against him, confession was involuntary and should have been suppressed; reversing trial court's denial of motion to suppress and defendant's conviction, and remanding for a new trial.

On October 3, 2008, a jury found the defendant, Edgar Sanchez, guilty of one count of first-degree murder (720 ILCS 5/9—1(a)(2) (West 2006)), and he was sentenced to 35 years in prison. The primary evidence connecting the defendant to the death of the victim, Rene Saldana, was the defendant's confession. The defendant, who was 16 years old at the time, agreed to make a statement

to the police after lengthy questioning, during which the police prevented the defendant's parents from meeting with him and lied to the defendant about the evidence against him, and the juvenile officer designated to safeguard the defendant's rights during questioning instead joined in pressuring the defendant to abandon his assertions of innocence. On appeal, the defendant argues that: (1) the trial court erred in denying his pretrial motion to suppress his confession; (2) there was insufficient evidence to convict him because the only other evidence that he left his home on the night of the murder was an unreliable statement given by a 14 year-old friend; (3) his trial counsel was ineffective because during her opening statement she told the jury that the defendant's family would testify that he was at home the night of the murder, but then she did not call them as witnesses; and (4) the trial court erred in allowing a police officer to testify as an expert in gangs. We reverse the trial court's denial of the motion to suppress, vacate the defendant's conviction and sentence, and remand for a new trial.

BACKGROUND

Many of the facts surrounding the shooting of Rene Saldana are unknown. However, it is undisputed that at approximately 3 a.m. on Sunday, July 29, 2007, the Aurora police department received a report of shots being fired at the intersection of 7th Avenue and Hinman Street on the east side of Aurora. A few minutes later, Michael Rodriguez arrived at Copley Hospital with his cousin, Saldana, who was shot and bleeding heavily. Saldana was pronounced dead at 3:30 a.m. An autopsy later determined that the cause of death was a bullet that had entered his body and opened a major artery. He had graze wounds from three other bullets, and there was no stippling or other evidence that the shooting occurred at close range. A toxicology report showed that Saldana had consumed alcohol and cannabis.

At trial, Rodriguez (who had been convicted of retail theft on several occasions, along with obstructing justice and burglary) testified that he and Saldana had been at his house drinking with friends that night. They left at one point to take his cousin Bebe home, but came right back. Rodriguez denied that he and Saldana went to another house or threatened anyone. At about 3 a.m, Saldana and Rodriguez left to get something to eat and go to Saldana's house. They were traveling in Saldana's van, a dark blue-green van with silver striping. Saldana was driving. Rodriguez was "kind of drunk" and did not know what streets they were driving on. Saldana was driving erratically and began sideswiping parked cars. At the intersection of 7th and Hinman, they decided to switch places. At the time, the van was on Hinman, but Rodriguez did not remember which direction (north or south) it was traveling. Saldana got out of the van and walked in front of it around to the passenger side, while Rodriguez slid over to the driver's seat inside the van. Several shots were fired without warning and Saldana fell into the van through the passenger side door, bleeding. Rodriguez pulled him into the van and turned left onto 7th, and drove to the hospital (later described as about a five-minute drive). As the shots were fired, Rodriguez saw someone standing in the street on Hinman, "like one house from the corner," shooting. He told the police that the shooter was about his own height, with shorter hair. He was shown photo lineups by the police but could not identify anyone. He denied knowing anything about Saldana's affiliation with any gangs.

The Aurora police accompanied Rodriguez to the intersection of 7th and Hinman, where he pointed out the location near a stop sign on the southbound side of Hinman where the van was when the shooting occurred, and where he thought the shooter was standing (near 574 7th Avenue, which was about 50 yards west of the intersection). Police found .40 caliber shell casings on the roadway west of the intersection on 7th, and found blood splatter at the northwest corner of the intersection.

There were gouges in the yard on the northwest corner. There were bullets and bullet holes in the front of the house located on the northeast corner of the intersection, 644 Hinman. The bullet holes to the van (which was impounded at the hospital) were all on the passenger side and the top near the passenger side.

It appears that the only witness to the shooting who was interviewed by the police was Luis Flores, who lived on the second floor of the house at 644 Hinman. Flores spoke Spanish and testified at trial through an interpreter. He heard about 10 shots around 3 a.m. on July 29, 2007. He went to the windows of his apartment, but could not see out of the first two he looked out of. (A tree partially blocked his view of the intersection itself.) From the third window he went to, he saw a van on 7th traveling away from his building. The van had been on Hinman when he looked out the first windows, and it had turned left onto 7th. Immediately after that, he saw a person quickly walking by on 7th in the same direction that the van went. The person was Hispanic with a "square cut" to his hair and was about 5'6" or 5'7" tall. The person had on a white shirt and had something in his hand. The police took Flores to the hospital, where he identified Saldana's van as the one he saw. The police showed him a photo lineup and he identified Raymundo Mendoza as the person he saw walking after the shots were fired, saying that the photo looked a lot like the person walking but he wasn't sure. The police then transported him to the police station, where he viewed an individual. At that point, Flores told the police that although the individual's face was similar to the person he saw, one was bigger, plumper, and a little taller than the other, so he wasn't 100% sure. The officer who interviewed Flores largely echoed this testimony, but added that, when first interviewed, Flores said the person he saw walking was between 28 and 35 years old.

The police used kits to look for traces of gunshot residue on the hands of Saldana, Rodriguez, and Mendoza. No gunshot residue was found on any of these persons' hands. However, Mendoza's hands were not tested until 20 hours after the shooting. A police officer testified that the police ordinarily do not attempt to test for gunshot residue later than six hours after a shooting.

It was the State's theory, as laid out it its opening argument at trial, that Mendoza, also known as "Pelon," shot Saldana in retaliation for a visit Saldana paid to Mendoza's house earlier that night, during which Saldana and other members of a rival gang called for Mendoza to come out and threatened to shoot him; and that Mendoza called the defendant to assist him with the shooting, which the defendant did. In support of this theory, the State put in the following evidence. At some point before the shooting, but also during the "early morning hours" of July 29, 2007, Aurora police officers received a report of a disturbance at 425 Avon Street, on the east side of Aurora. Casenia Ruiz Gonzalez testified at trial, through a Spanish-speaking interpreter, that she lived at that address in July 2007 and that Mendoza and his girlfriend Olivia were staying there with her. Mendoza came home at around 9 p.m. on the evening of July 28, 2007, and after getting him some food and getting her children ready for bed, Ruiz went to sleep. She was awakened by a dog barking and looked out her window to see seven or eight men and a black van with green lines in the alley. She did not know any of the men there, but she heard one of them call another one "Rene." They were saying they would go inside and shoot someone, and beat up everyone in there. She ran to Mendoza's room and told him to hide, because she was going to call the police and he wasn't supposed to be there. She then called the police twice. Mendoza went to the attic to hide and Olivia stayed with Ruiz, helping her with her children.

The police arrived, and Ruiz went to the front door to speak with them. She told the police that the men were looking for Mendoza and that Mendoza was not there, by which she meant that he was not downstairs with her. However, Mendoza was still in her house. When the police left, she went back upstairs and saw Mendoza coming down from the attic. She then went to Mendoza's and Olivia's room and spent the remainder of the night there with them because she was frightened. She did not tell the police that Mendoza was in the room with her for the rest of the night because they did not ask her.

Aurora police officer Michael Townsend testified that he responded to the reported disturbance at 425 Avon and spoke with Ruiz. He saw only Ruiz and another woman there, but he did not go inside. Ruiz told him that the men were looking for Mendoza and that she had told the men that he wasn't there; that she knew "Rene" was involved; and that their vehicle was a "full-sized minivan." Townsend testified that Ruiz also told him that Mendoza wasn't home, using that phrase and not the phrase "wasn't there." (After Townsend's testimony, the trial court advised the jury that his testimony was offered solely to impeach Ruiz, and not as substantive evidence.) Later that day, police detective Joseph Accardi interviewed Ruiz. Accardi testified that Ruiz told him that she recognized someone outside her house, a guy named Rene, and that she had seen him before and recognized his van. Accardi asked her if she had seen Mendoza from the time that he went to hide in her attic until 3:30 a.m. (when Ruiz told Accardi she had gone to bed), and Ruiz said no. Ruiz did not tell him that she stayed up all night in the same room with Mendoza and Olivia. He did not record his interview with Ruiz.

On July 31, 2007, the defendant was taken to the police station for questioning. Some police officers remained at his house and received permission to search his room. Officer Wolcott testified

at trial that he found the following items in the defendant's bedroom: a cell phone; a brown baseball cap with a crown and king's head on it; a black t-shirt with "Hustlaa" and crowns and dollar signs on it in gold; a newspaper with a headline about the recent arrest of 31 Latin King gang members in Aurora; and a small box with a crown drawn on it and "Goofy," "Gordo," and "Pelon rots" written on it. "Pelon" (Mendoza's nickname) had a line drawn through it, and the "t" in "rots" was a downward-facing pitchfork. There was also some graffiti on the wall of the bedroom that Wolcott described as "gang-related." Wolcott testified that he had become familiar with the gang symbols of the gangs active in Aurora over a period of years. The colors associated with the Latin Kings were black and gold and their symbols included a crown and a king's head. "Goofy" was the defendant's gang nickname, and "Gordo" was the gang nickname of David Acevedo. "Rots" written with a downward-facing pitchfork was a Latin King's way of showing disrespect, or that he did not like the person, or wanted him to die. On cross-examination, he admitted that the cap and shirt could have been bought at a store, that their possession was not illegal, and that there was no evidence that the defendant ever wore them.

Officer Jason Russell testified at trial as an expert in Aurora street gangs. He agreed with Wolcott about the colors and symbols of the Latin Kings; the gang nicknames of the defendant, Acevedo, and Mendoza; and the meaning of the word "rots" written in the manner shown on the box. The line drawn through "Pelon" also indicated a desire to "cross them out, take their life." He also testified that Mendoza, Acevedo, and the defendant had been Latin Kings. Saldana, the shooting victim, had been associated with both the Ambrose gang and the Insane Deuces, both of which were rivals of the Latin Kings. After the multiple arrests of Latin Kings about a month before Saldana's shooting, many of the lower-ranking members were trying to assert greater authority and there was

an increase in chaos within the gang and also in confrontations with other gangs, who saw the Latin Kings as more vulnerable.

The above comprises all of the physical, eyewitness, and expert evidence relating to Saldana's shooting and the investigation of the defendant. Neither the evidence from the crime scene nor the items found in the defendant's room link him to any participation in the shooting, although they suggest that he was affiliated with the Latin Kings, and knew Mendoza.

The sole evidence linking the defendant to the shooting was the defendant's confession, portions of which were echoed in a subsequent statement made by the defendant's friend, David Acevedo. The two statements were obtained as follows. On July 31, 2007, Detective Jeff Parrish, Detective Guillermo Trujillo, and three other Aurora police officers came to the defendant's house sometime between 1 and 1:30 in the morning. Trujillo, who spoke Spanish, talked with the defendant's parents while Parrish spoke briefly with the defendant. Parrish and another officer then took the defendant, in handcuffs, to the police station, arriving about 1:40 a.m. The defendant was processed and he was taken to a locked interview room on the third floor where his handcuffs were removed. The defendant was left by himself in this room for approximately one and a half hours.

During this time, the defendant's parents came to the police station and asked to see their son. Although it appears that this request was made before the police began questioning the defendant, Trujillo reported to them that the defendant was already talking and they were not needed. They eventually left the police station at about 3:45 a.m.

At 3:12 a.m. (according to Parrish's recorded notation of the time), three police officers began questioning the defendant in the interview room. The interrogation was videotaped. Detectives Jeff Sherwood and Jeff Koenings were the interrogators. Parrish was also present and began by

confirming that the defendant was 16 years old, and telling the defendant that Parrish would be acting as his juvenile advocate. Parrish told the defendant that he could ask Parrish for clarification if he did not understand a question. Parrish confirmed that the defendant could read, write, and speak English. Parrish then went over the defendant's *Miranda* rights with him and had him sign a waiver of those rights.

The police questioned the defendant over the course of approximately two hours. After the defendant was given his *Miranda* rights, he was questioned about what he was doing on Friday and Saturday. The defendant said he stayed home with his family on Friday night. On Saturday afternoon and evening, he helped his friend David Acevedo and his family move into a new house. David's mother drove him home, and he got home about 1 or 1:30 a.m. His mom, dad, and two brothers lived at his house. When he got home, everyone was asleep except his mother. His mother had been asleep but was woken by a phone call from David's mother. David's mother called from the driveway because the defendant had been in trouble in the past and so she wanted to let his mother know that the defendant was being dropped off. He went to bed after that. His house was a split level. His room was in the basement; the rest of the family and his grandmother all slept upstairs. He gave the police his cell phone number and said he had shut off his phone when he went to bed. He woke up around 1 the next afternoon, and spent the day at home. He wanted to go to a Puerto Rican parade but his mother would not let him because she knew there was a lot of trouble there. In answer to the question, "you're still a [Latin] King [gang member], aren't you?" the defendant said yes, but he was "trying to get away from all that." However, he still had a K and a G tattooed on his chest. The police wanted to take a break and asked the defendant if he wanted

anything to drink, and the defendant asked for water. The defendant was then left alone for 15 minutes, during which Parrish brought him a cup of water.

At 3:47 a.m., the questioning resumed. The police took the defendant back over the events of Saturday evening. The defendant said that he and David's family had been going back and forth between the Acevedos' old and new houses, moving, the whole time. The police asked him whether someone called a pizza place around 11 p.m., and the defendant said that he had called in an order to be delivered to his family because the pizza place didn't have the number of his house and his parents didn't speak English that well. However, he did not eat with his family; he had pizza with the Acevedos.

The police then asked him about his "buddy," Mendoza. The defendant said Mendoza wasn't his buddy and they had some issues and "don't talk no more," because he was trying to leave all that gang stuff behind him and "it ain't doin' me no good, so . . . I just don't talk to him." The defendant then said it had been a long time, perhaps since last summer, since he had talked to Mendoza, and stated that about a month earlier, Mendoza's brother had thrown a brick through the defendant's sister's car window. The police asked skeptically whether there wouldn't be phone records showing that the defendant and Mendoza had spoken shortly before 3 in the morning on Sunday, and the defendant stated adamantly that there would not be, because he was sleeping at that time. The police told him that he had received a call on his cell phone at 20 minutes before 3:00. The defendant repeated that he had not spoken with anyone at 20 to 3 in the morning; he was asleep and his phone was off.

The police then told the defendant that his mother had said she called him at that time. The defendant expressed disbelief:

"Edgar Sanchez: So, if we were to bring my mom right here, this instance [sic], this very second, very moment . . . she would say that she called me?

Det. Sherwood: Well, that's what she said here in this building.

Edgar Sanchez: Okay, can you bring her in so she could say it?

Det. Sherwood: She . . . she's gone."

The defendant stated that he knew his mother would not say such a thing, and repeated his demands to bring her in. The police repeated that she had gone home, and asked if he would like to hear the rest of the story that his mother had told them about the events of that night, "because they're extremely different than what you're telling us." However, the police then switched gears and began talking about Mendoza again.

The police told the defendant that Mendoza had told them that he called the defendant at 2:30 a.m. because Mendoza had a problem: some of the Deuces had come to where he was staying on Avon and messed with him, tried to get into his house, and threatened to kill him and his girlfriend and daughter. According to the police, Mendoza told them that he called the defendant and told the defendant that "business needs to be taken care of with these boys." The police told the defendant that just like in the newspaper article that was in his bedroom, there were a lot of "things they were listening to," including text messages. The defendant repeated that there was no possible way that Mendoza had called and spoken with him between 2:30 and 3 in the morning. The police told him that "sittin' in our evidence vault right now, is a recorded conversation between you and him during these hours of the morning." The defendant responded, "let me hear the conversation." The police then asked him if he knew what happened over the weekend, and told him that "a Deuce by the name of Rene Saldana got whacked" at 7th and Hinman shortly after 3 a.m. The defendant denied having

anything to do with that, and the police told him that his name "was brought . . . [was] all over this." When the defendant asserted that he had witnesses who would say he was at home, the police told him that he did not, because no one at his house knew whether he was there at 3 in the morning, as he was in the basement and they were upstairs. The defendant protested that they were trying to put something on him that he didn't do. The police told him that they were getting their information from the investigation, and that he was looking like a suspect, and repeated that his "name had been brought up in this." The defendant insisted that he hadn't spoken to Mendoza. When pressed about why Mendoza would say otherwise, the defendant said that he had gotten a text message from Mendoza around 6 p.m. on Saturday, saying that Mendoza would pick him up, but the defendant texted back saying that he was busy helping the Acevedos move. He did not speak with Mendoza at all. The police told him that they had all the text messages, and the defendant agreed that they probably did.

The police then confronted the defendant with his statement that he hadn't talked with Mendoza for a year. The defendant said that the only time he had actually spoken with Mendoza over the phone recently was when Mendoza called him after Mendoza's brother damaged his sister's car. At that point, Mendoza said that they should put their differences aside and the defendant agreed but told Mendoza that he wouldn't "ride for him" any more, although they were now on good terms. The police told him that they had been talking with Mendoza over the last few days, and he had told them a lot of things, and he had no qualms in talking about the defendant. Mendoza was cooperating and was "speaking very freely." The police emphasized the serious nature of the crime, a homicide, and said that they had witnesses at the scene of the crime. The defendant repeated that he had only gotten a text message from Mendoza around 6 in the evening, and had not spoken with Mendoza

later that night. The police repeated that the investigation "brings you down here" and his name was "wrapped up in this," and stated that if the defendant had simply wanted to help Mendoza out in putting a scare into the guys who were bothering him, that "may be understandable" and they were "inclined to think of something more along those lines," something that was not so serious, but they needed to hear it from him. The defendant responded that they were trying to get him to say that he did it. The police said they were not trying to say that he pulled the trigger or shot anyone:

> "Did I say you went over there alone? No. Did I say you even pulled the trigger? No. Am I saying that your name has been brought up in this? That you had a conversation with Edgar [sic] . . . and we're talking with witnesses down there that saw people that were down there? Absolutely. You [sic] name came up in the investigation, dude."

At the suppression hearing, Sherwood admitted that the police had no voice recordings or other telephone records implicating the defendant in the shooting, and no eyewitnesses reported seeing anyone who looked like the defendant at the location of the shooting. Sherwood testified that he was lying when he told the defendant this.

The police continued questioning the defendant, emphasizing that "this is serious," and asked him to think about how many conversations he had had with Mendoza. They said that they did not believe his statements that he had not spoken with Mendoza because he had lied about not speaking with Mendoza for a year. The defendant then admitted that he had messed up on that, but insisted that the only time he and Mendoza had spoken was on the one occasion when they decided to drop the problem that the defendant was having with Mendoza.

The police then showed the defendant a photo lineup. The defendant's picture appeared in the lineup, and it was circled and marked with the initials, "R.M." The police told the defendant that

Mendoza had identified him as someone Mendoza talked to just before the shooting, and advised him to tell them the truth. The defendant insisted that he was telling them the truth, and that he did not know what happened over the weekend.

The police said they were going to take a break and would get him water or food if he wanted it. Sherwood and Koenings then left the room, but Parrish stayed behind and began to question the defendant:

"Det. Parrish: You're being straight with me, right? You're not trying to trick me or anything?

Edgar Sanchez: I know . . . I'm telling you the truth, man. I don't . . . I didn't do nothing.

Det. Parrish: He was just asking . . .

Edgar Sanchez: I honestly . . . honestly don't know what happened.

Det. Parrish: He's just asking you to be straight up with him because you haven't been so far. This is no bull**** . . . I mean, this is not . . . this is what your boy is saying about you. You know, you've got no reason to lie. I mean, you know he's here . . . you know we've been talking to him for two days.

Edgar Sanchez: Honestly . . . honestly I did not have nothing to do with what he said happened. The only time when I did talk to him was when he said he was gonna . . . was when he sent me the text message that . . . that same Saturday that he was gonna pick me up.

Det. Parrish: And, he's not even really asking you about that. He's asking you about the phone call at . . . it was like 2:39 in the morning . . .

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> . . . or right around that time. That's what his is asking you about. But . . . because that's what he's saying to you."

Koenings returned to the room briefly, and then he and Parrish left together, leaving the defendant alone. During the approximately 11-minute break, the videotape shows the defendant swearing and looking upset, sitting with his head in his hands, and occasionally wiping his face as if he were crying.

The questioning resumed at 4:34 a.m. The videotape shows the defendant sniffling. The police told the defendant that, after the big arrest of Latin Kings a month earlier, "there's no more loyalty." They urged him not to be silent out of loyalty, and told him that, by not saying anything and just denying any involvement, all that was going to do was "screw [his] life up for the rest of [his] life." They spoke to him at length, urging him to "tell us what we already know" about his involvement, and telling him that, unlike older offenders, he had "a chance" because he was only 16 years old. They told him they were sympathetic to the pressure put on him by other gang members. They brought up his cousin who was in jail, and told him that he didn't want to end up like that and that he needed to let the "people who will decide" his fate "see the good" in him. After about seven minutes, the defendant began crying again. Noting his distress, Sherwood said:

> "I can see you're completely upset. You're tore up about this. I would be, too. I wouldn't think you were human unless you were upset about it. It makes me feel good to see that this actually bothers you . . . that you got a heart. I'm thinking that this is more an accident that happened."

The defendant asserted, "I didn't do it, though. * * * I didn't kill nobody. I wasn't with them." His voice began cracking. The police responded that he was "wrapped up in this knee-deep" and he

needed to explain his role. The defendant continued to deny that he was at the shooting and repeated that he was telling the truth and he had been at his house. Again, the police refused to accept this, telling him, "You were not at your house. You have no alibi. Nobody can put you at your house." The defendant continued to protest his innocence, and the police continued to tell him that he was not telling the truth. After the police told him again that he should not stay silent out of loyalty, the defendant swore and said that he didn't care anything about loyalty, he just didn't have anything to do with the shooting and didn't know anything about it. At some point, the defendant began crying again. The police repeatedly told him that the situation was serious and that he "had his whole life ahead of him" and should tell the truth, whereupon the defendant said that he didn't know what else to tell them because he was telling the truth but the police did not believe him.

The defendant then told the police that he was not going to talk to them any more because they refused to believe him. The police continued to question him, however, and the defendant responded. The police repeated the theory that "some people" were just trying to scare someone, and someone accidentally got hurt, and stated that if that were the case, the people involved might deserve a second chance. They told him that he could "fix the situation" by "stepping up" and telling them about his involvement. They asked him if he could sleep at night and he said yes, because he was not involved. They then asked him if he was a Catholic, told him that God and Jesus knew everything that happened, and asked him if he could "look Jesus in the eyes and tell Him" that the defendant had nothing to do with the shooting; the defendant said yes.

The defendant then fell silent while the police continued making statements, trying to elicit a further response. They told him that "in order to work this thing out," he had to tell them what happened after he got the phone call from Mendoza, that now was the time and he would get no other

time to explain. The defendant repeatedly stated, becoming more vehement as the questioning went on, that he was not able to explain to the police what happened because he didn't know what happened. The defendant then became agitated and began repeating that he would not talk to the police any more, bitterly accusing them trying to wreck his life by accusing him of a crime he had not committed:

> "What do you want me to explain? That IS the truth. I wasn't with them! And . . . if that's not getting in your head . . . if that's not getting you nowhere, I'm telling the truth [inaudible]. This whole investigation just . . . just f**ed up my life already! 'Cuz [sic], I'm telling you the truth! Go for it! I'm not answering no more questions. Just go on . . . and f*** up my life already. It's gonna be on your guys' conscience though . . . and I BET you guys got a lot of 'em, so . . go on! Get with it! Thanks. [Inaudible] go for it."

Eventually, after the defendant had said that he would not talk further with them a total of eight times, Sherwood and Koenings left the room, saying they would "give him a couple minutes here."

Again, Parrish stayed behind with the defendant. Parrish began by asking the defendant if he had any questions about what was going on, and said that he was not there to ask the defendant any questions. The defendant swore and said that he was screwed, and for something he didn't do and had nothing to do with. Parrish then told the defendant that "the investigation . . . put [him] in it." The defendant said he couldn't understand why he would come up in it. Parrish then began urging the defendant to abandon his claims of innocence:

> "Det. Jeff Parrish: That's what . . . that's what he's trying to explain to you. He . . . he's not trying to trick you, man. That's not . . . that's not what his deal is. If he didn't you know . . . if you weren't 16—if you were 30 or 25 . . . you wouldn't give a ***. You know,

you made your own mind up . . . you're a man then . . . you did what you did . . . whatever. But, you're 16 and you've got a niece . . . or a nephew at home, right? A couple weeks old? And you're saying that, you know . . . you want to see him grow up, you want to see your brothers grow up and do better than you . . . he's trying to reach out to you and give you a chance here.

Edgar Sanchez: I'm telling you the truth, though.

Det. Jeff Parrish: Man, there's more to it than that, and . . . and you gotta be straight with them about that if you want to help yourself out.

Edgar Sanchez: But, I don't know what . . .

Det. Jeff Parrish: Because here . . . here's the thing, man. You can sit here and you can tell them over and over again, you know . . . 'I didn't have anything to do with it, I didn't have anything to do with it.' He wouldn't be talking to you if he didn't already know that you have some sort of involvement in this.

* * *

Edgar Sanchez: If I got more information I'd tell them, though. I got exactly no information to tell them. I honestly . . . honestly did not have nothing to do with it . . .

Det. Jeff Parrish: Like I said, man . . . he's not saying . . .

Edgar Sanchez: . . . but that's not getting me nowhere.

Det. Jeff Parrish: . . . he's . . . he's not saying that you pulled the trigger, but he's stating that you have some involvement in this. And you gotta be straight about that. Even . . . you know, even if this was an accident, or . . . or whatever it was . . . you gotta be completely straight with him about it.

Edgar Sanchez: I have been straight with them, but they want me to explain what happened . . . I don't know what happened.

Det. Jeff Parrish: He's looking for the truth, man . . . that's it. He's not looking for you to tell him something that didn't happen. And this [sic] about this for a couple minutes, 'cuz [sic] he's gonna come . . . he's gonna give you one last opportunity, and then . . . and then, you know, from there it's . . . it's going to be over with, so you're not going to have an opportunity anymore. So, man, reach down deep . . ."

The defendant continued to maintain his innocence. Parrish asked him if he wanted anything, and the defendant asked to go to the bathroom. The first videotape ends after the defendant and Parrish left the interrogation room.

At the suppression hearing, Accardi testified that he had been monitoring the interrogation and the videotaping of it in an adjoining room. The bathroom break occurred at approximately 5:15 a.m. During this break, he and some other officers spoke with Sherwood and Koenings and they decided that the defendant had invoked his right to stop the questioning. Although the defendant and Parrish briefly returned to the interrogation room, Accardi testified that there was no further questioning. There was no videotape recording of the defendant's return to the room after the bathroom break or the time that passed before he was taken downstairs to the holding area. Accardi did not know who was supposed to put a new videotape in the recorder and ensure that it was working, and he did not know why the portion after the bathroom break was not videotaped.

The defendant testified at the suppression hearing. He did not describe any conversation in the interrogation room between the time he returned from his bathroom break and the time that he was taken to a holding cell. However, he testified that after Parrish had accompanied him downstairs

to the holding area, Sherwood approached them and told Parrish that he could take it from there. Sherwood then put his hand on the defendant's shoulder and told the defendant that he was "f***ed," and that he "might as well say [he] had something to do with it" because he had no alibi, everyone at his house said he wasn't there. The defendant testified that Sherwood ended his advice by urging the defendant to "step up to the plate" and told him that all the police wanted was the truth. The defendant was then taken to a holding cell.

During the suppression hearing a police officer testified that he was the officer monitoring the holding cells, and that around 8 a.m. he got a message that the defendant wanted to speak with the detectives who had been questioning him. Parrish, Sherwood, and Koenings testified that they received calls from the police station a little after 8 a.m. advising them of the defendant's request to speak with them again, but did not arrive at the station until 10 or 11 a.m. They spoke briefly with each other before joining the defendant in the interrogation room.

The videotape of the second interrogation of the defendant clearly begins after the interrogation started, with the defendant in the middle of giving an answer. At the suppression hearing, Accardi testified that, although he was still at the station and monitored the second interrogation from the adjoining room, he did not know who was supposed to have ensured that a videotape was in the recorder and it was recording before the interrogation began. Based upon the time between the start of the tape and the first time that one of the police interrogators mentions the time, the tape began at approximately 11:11 a.m. The police interrogators agreed that the second interrogation commenced shortly after 11 a.m. Koenings and Accardi both testified that the interrogation began only a few minutes before the videotape began recording. They testified that, during this time, the interrogators confirmed with the defendant that he requested to speak with them

and that he, and not they, had reinitiated the interrogation, and that he was still aware of his *Miranda* rights. It is undisputed that the defendant voluntarily reinitiated communication with the police.

Although there is no record of whatever new recollection the defendant wanted to share with the police, statements by the police in the second interrogation suggests that the defendant told police something relating to contact with Mendoza at 9 p.m. on the evening before the shooting—either that the text message from Mendoza came at 9 rather than 6 p.m., or that he briefly met up with Mendoza face-to-face at 9 p.m. However, the defendant remained firm that he had not gone with Mendoza at that time and he had not spoken with Mendoza over the telephone later around 2 or 3 in the morning. At this point, Sherwood expressed irritation at having returned to the police station for such a paltry admission. He then told the defendant that the defendant had "nothing to lose" by telling them what really happened because, unlike Mendoza, the defendant was a juvenile:

> "You need to trust that what we're telling you is the best thing for you. You're 16-years old. You're a juvenile. You've got . . . you've got the most going for you, okay? He's an adult. He fully admits calling up and saying, 'Hey, this needs to get taken care of.' He's in a * * * world of trouble. He's 19—he's an adult. But you're 16 . . . you've got a trump card. Here you go. You're a juvenile. If there's ever a time where you need to pull a trump card, it's this time right now in your life. * * * The clock's ticking on this."

Sherwood told the defendant that the police had witnesses who had seen Mendoza call and talk with the defendant at 2:30 in the morning. When the defendant stated that he did not know what to tell the police because he had not spoken with Mendoza on the telephone and was not with him that night, Sherwood told the defendant that he "couldn't be more disappointed" that the defendant was going to "throw this opportunity away." The defendant told the police that he did not want to get into

trouble with them, but he just did not have anything he could tell them. Sherwood responded that it wasn't about not getting into trouble, it was about figuring out a way to minimize the trouble that the defendant was already in. Sherwood then launched into a lengthy speech in which he told the defendant that the defendant had to come to terms with the fact that no one would come to bat for him, he had nothing to lose in coming out and saying what happened because he was only 16, nobody had his back because everyone was "flippin' like pancakes,' his little brothers needed to see him telling the truth, and it was going to be okay. Throughout this and the previous several minutes, the defendant sat silent. At approximately 11:32 a.m., he then gave a statement.

The defendant stated that Mendoza had called him around 2 in the morning and said he would pick the defendant up. The defendant went out his window and went to a park near his house to wait for Mendoza. Mendoza came to get him in a silvery white Jeep. A white Grand Am was following them. Everyone were drinking and smoking, but the defendant was not smoking. They went by a gas station and were going to go back to Mendoza's house. About this time, the other car pulled up next to the Jeep and one of the guys in it, who was talking on a cell phone, told Mendoza that he knew where some of the guys were that had started all that stuff with Mendoza. Then "they" were trying to get the defendant to go with them. The defendant got into the other car. When they got there everyone but the driver got out and stood on each corner to look out for police. The defendant heard the shots ring out, and the guys got picked back up. The police asked the defendant for more detail. Over the course of more questioning, the defendant said that the phone call from Mendoza was "maybe 2:15 . . . around that time." Mendoza didn't say anything about what happened at his house earlier during the phone call; he told the defendant about it after he had picked the defendant up. A guy named "Bones" was driving, and Mendoza and his brother were in the Jeep

too. They drove to a gas station at North and LaSalle, where the other car came up and told them that the driver knew where "the dudes" were. Mendoza told the defendant that the guys in the Grand Am would give him a gun and he should shoot, but the defendant refused. However, the defendant got into the back seat of the Grand Am. The defendant thought the shooter was the front seat passenger, because he had the gun, but the defendant did not know the names of the people in the front seat of the Grand Am. The back seat passenger introduced himself as "Crazy A." They drove down North Avenue and ended up near where the shooting took place, although the defendant did not know the streets they traveled on. It only took about 5 minutes to get there. At the scene of the shooting, he got out and was walking up and down one block watching out for police cars. He heard some shots and ran back to the Grand Am, and they drove around the block and picked up the shooter. He did not see the shooting occur, although he saw some muzzle flashes.

The police then drew a rough map of the intersection of 7th and Hinman, telling the defendant that that was where the shooting took place, and drew in a vehicle and stop sign on the northwest corner. The defendant indicated that he got out a block away and walked up and down one block, watching out for police. Although the videotape shows the defendant nodding in response to police suggestions about where the events occurred and making some hand motions, it does not show where he was pointing, and the police did not make any marks on the drawing to show where he was indicating, except for a rectangle to indicate where the Grand Am was parked, around the corner from 7th and a block away from the shooting. When the police suggested that the defendant had said that the shooter was "over here west of Hinman" the defendant agreed, saying that it was near the second or third house shown on the drawing. The defendant stated that after the shooting, the Grand Am met up with the Jeep near Mendoza's house, and "Bones" drove the defendant back

to the park near his house. He got back to his house at about 4:21 a.m., and stayed up until 5 or 6 a.m. After the defendant gave this statement, the police brought him some food. At the police's request, the defendant then viewed several photo lineups and identified Mendoza, Mendoza's brother, "Bones," and "Crazy A." The police pressed him to describe the vehicle that the shooter and others had been watching for, saying that he must have seen it from where he said he was walking, but the defendant said that he did not know what it looked like. The defendant added that he did not even know that anyone had been killed until the police told him. The videotape of the second interrogation ended at about 1 p.m., as everyone left the room.

Two Aurora police officers, Wolcott and Detective Sandra Navarette, picked David Acevedo up for questioning during the evening of that same day. David was 14 years old at the time he was interrogated. The officers initially came to David's house, where Navarette spoke with David's mother and Wolcott talked with David in an unmarked police car. Wolcott told David that they were looking into a shooting that occurred over the weekend, and David gave him a general account of his activities with the defendant over the weekend. The officers left, and then conferred and decided to bring David in for further questioning. They picked him up at a bowling alley where he had gone with friends. David arrived at the police station at about 9:30 p.m. The interrogation did not start until 11:30 p.m. Accardi and Wolcott were the interrogators. Navarette was also present. She went over the *Miranda* rights with David and told him that she would be acting as a youth officer.

David told the police that the defendant helped the Acevedos move on Friday night, and that he and the defendant had spent that night in their own homes. The next evening, the defendant called David up and invited him to come over. The defendant's mother picked David up and they returned to the defendant's house. The defendant's mother and little brothers went out to see the

Simpsons movie but returned home because it had closed, and everyone had pizza. The defendant and he were looking for parties to go to, but couldn't find any near them. They called some girls to see if they could get together. They then went outside in back of the house while the defendant smoked a cigarette. Some Deuces were having a party two houses away. The sensor light in the defendant's back yard came on and they heard footsteps and thought that the Deuces might be "hunting," so they went back inside. They played video games and waited for the girls to call them back. They eventually fell asleep around 2 a.m. The girls called back while they were asleep but the defendant had his phone on vibrate and they didn't get the voicemails until they woke up the next day.

The police then had David repeat his story, saying that they needed more details. David agreed, and said that he had forgotten that Mendoza called the defendant on Thursday at around 7 or 8 p.m. Mendoza said he was getting into it with some Ambrose gang members over on Avon near the place he had just moved into, and he needed help. The Ambrose guys had showed off their guns and tried to scare Mendoza. The defendant called David and told him about it, and asked whether they should go, and they decided not to. When asked if Mendoza was a Latin King, David said no, that Mendoza was making his own clique.

The police told David that they had been speaking with the defendant, who had told them what went on that night, and that they had left the house. Upon hearing this, David promptly agreed that they had left the house, and said that he had forgot that part. After they ate the pizza and smoked the cigarette, they decided to go down the street to the house of a girl. They started heading over there, but the defendant's phone fell out of his pocket and they could not find it in the dark. They went back to his house for a lighter to look for it but still could not find it. They saw some of the

Deuces out and that was when the sensor light went on, so they went back inside and planned to look for the phone in the morning. David went to sleep but the defendant did not. In the morning they went out and found the phone, then went back to the defendant's house.

The police then told David that the defendant had told them that he got a phone call from Mendoza, and left the house to go with him. David expressed surprise and denied that the defendant had left the house. The police told him that the defendant's statement had been "verified" and urged him to tell them everything, saying that his mother wanted him to be truthful. David said that he didn't think the defendant had left his room because David was asleep right there at the door and the defendant could not have opened it without waking David. The police advised David that the defendant already "took responsibility for what he did." David asked, "if he took responsibility then what *** do I got to do?" and asked what he had to tell them. The police said they had talked to the defendant, Mendoza, Mendoza's brother, and knew about "Bones" and everything, and that they knew David was involved in it and was holding back. They knew what actually had happened with Mendoza getting threatened, and knew about the phone call. They told David that they were focusing on a small time frame, from 2:30 to 2:45 a.m., and urged David to tell them everything. David replied that he had, and that he did not even know who got shot.

The police continued to repeat that they knew that the defendant had gotten a phone call from Mendoza around 2:30 a.m. and had left the house. David continued to express confusion and deny that this had happened, and that he knew it could not have, because the defendant did not have his phone that night. The police warned David that he was "making himself a bigger part of the puzzle" by his denials, and said they had records of the phone call. David expressed puzzlement and asked what phone the call was made to, and in response to the assertion that the defendant left his house

asked, "so, you're saying that I was asleep when Edgar left?" He then asked repeatedly, "what do you want me to say?"

The police continued to tell David that the defendant had "taken responsibility" (but would not say what they meant by this), and described the defendant as crying and upset, knowing that he messed up. David expressed surprise and dismay, and said that all he knew was that Mendoza had shot someone, and he only knew this because everyone, including Mendoza's girlfriend, was saying that he had been arrested for a shooting. David said that he knew Mendoza had a shotgun because he had seen it at Mendoza's place on Avon once when he had gone there to collect money Mendoza owed him. Mendoza told David that he was going to sell the shotgun and some rims to get the money to pay David back. David also identified "Eric" as the owner of a white Pontiac, and said that Mendoza's brother's mother owned the white Jeep.

There was a bathroom break, and the interrogation recommenced at 12:55 a.m. on August 1, 2007. The police changed tack and advised David that although the defendant had explained what happened, Mendoza and "other people" were "putting the gun in his hand" (saying that the defendant was the shooter), but the defendant was denying this. David immediately told the police that the defendant did leave and went with Mendoza, who wanted him to "handle" someone, but the defendant refused and Mendoza dropped him back off. The police told David that the defendant was "fighting for his life" because people were saying these things about him, and said David was a lifeline for him. When asked when the defendant left, David said 3:40 a.m., but added that he didn't know because he was already asleep. When asked how the defendant got out of his bedroom, David said he didn't know. According to David, in the morning the defendant said that he left and that Mendoza wanted him to handle some stuff for Mendoza but the defendant refused. The police asked

what else the defendant told him, and reminded him that he was the defendant's "only hope here" and that by talking to them he was protecting the defendant. David then recounted that the defendant told him that, after the defendant refused to carry a gun for Mendoza, they were on the verge of fighting because Mendoza called the defendant chicken, but instead the defendant just left and came home. He then woke David up and they went to look for the phone. David thought that the defendant returned around 5 a.m., but he was not sure on his times. When asked where all this happened, David said that he didn't know where the defendant and Mendoza were at, and did not ask, but they were probably at Manor Park, a little park around the corner from the defendant's house. The police told David several times that the defendant was "there when it went down." After Accardi stated that Edgar "puts himself there, and they're trying to put the gun on him" but "obviously, Edgar *** was there," David responded "yeah." However, when asked what the defendant told David about "being there," David simply repeated that Mendoza had met up with the defendant and that the defendant refused to shoot anyone, but did not indicate that the defendant had gone to the scene with Mendoza. Throughout the interrogation, David continued to maintain that the defendant had lost his phone around 1 or 2 a.m. when they went out briefly, and did not have it for the rest of the night. David said that Mendoza must have called the defendant's home phone at 2:30 a.m.

After a break, the police showed David photo lineups and asked him to identify Mendoza and anyone who might be involved or who hung out with Mendoza. David identified Mendoza, Mendoza's brother, "Crazy A," and "Bones." The interrogation ended at approximately 2:15 a.m.

The defendant was charged with first-degree murder on August 2, 2007. On September 28, 2007, the defendant filed a motion to suppress his statements, arguing that he had been denied the opportunity to meet with his parents prior to questioning and that his statements were not voluntary.

At the hearing on the motion to suppress, the trial court heard the testimony of Accardi, Parrish, Sherwood, and Koenings, who testified consistently with the summaries given above regarding the circumstances of the interrogation and videotaping. In addition, Sherwood admitted that he misrepresented the evidence when he was questioning the defendant, in that Mendoza only said that he had called the defendant and never said that the defendant was involved in the shooting. Sherwood did not tell the defendant that he could be charged as an adult. Sherwood spoke with Trujillo during the first interrogation, who "may have" told Sherwood that the defendant's parents were at the police station, but Sherwood could not say for sure and "did not discuss" with Trujillo whether the parents had asked to be present during the interrogation. Sherwood admitted that he was the one who brought the defendant upstairs to the interrogation room and then back downstairs after the first interrogation ended, but he denied speaking with the defendant outside of the interrogation room. Dean Pederson, a civilian police employee who monitored the booking unit on the morning of July 31, 2007, testified that after they served the prisoners breakfast he received a message that the defendant wanted to speak to the investigators again. Officer John Munn testified that he received this information from Pederson about 8:40 a.m. and called Parrish, Sherwood and Koenings to relay the information. Two other Aurora police officers testified that the defendant had been given *Miranda* warnings and questioned regarding a charge of criminal damage to property on April 14, 2006.

At the suppression hearing, the defense presented the testimony of the defendant's mother, Anna Martinez; Trujillo; and the defendant. Martinez testified that the police came to their house at about 1:20 a.m. on the morning of July 31, 2007, and that Trujillo spoke with her and her husband and told them that the defendant was mixed up in a death. Trujillo asked them for permission to

interview the defendant, and said that they could take the defendant by force or by permission but he would prefer permission. The defendant's father signed a permission form. Trujillo told them that the death occurred on July 29, 2007, and asked where the defendant was that night. Martinez said that the defendant was home that night, ate pizza with them and went to bed. Martinez then asked Trujillo if they could go the police station with the defendant. Trujillo told her that they could go separately after the defendant had been taken there. Martinez asked Trujillo if she and her husband could be present, and he replied that they could only be present if the defendant asked for them. The rest of the police left after about 20 or 25 minutes, and Martinez and her husband went to the police station, arriving about 2:20 a.m. They found Trujillo and asked again if they could be present with the defendant. Trujillo told them he would check. About 3:10 or 3:15, Trujillo told them that he had checked and that they were not allowed to be there, because the defendant was "already talking" and didn't need them. They stayed at the police station until about 3:45 a.m. and then went home. She did not hear from the defendant until around 2:30 p.m. the next afternoon, when the defendant called her and told her he was being charged, but he was innocent. Martinez testified that the defendant had not finished the eighth grade and had dropped out of school.

Trujillo testified that he spoke with the defendant's parents in Spanish. He agreed that the defendant's parents had told him that they wanted to be present during the interrogation. Sherwood called him while he was speaking with the parents at the police station, wanting to know whether Martinez had called the defendant’s cell phone from the home phone during the night of July 29. Trujillo relayed the question and Martinez's answer. Trujillo did not contact Parrish or advise him that the parents wished to see their son.

The defendant testified regarding the circumstances of his arrest and interrogation, and his testimony was generally consistent with that of the police officers. However, he also testified that no one explained the charges he was facing or told him that he could be tried as an adult, they just said that they wanted to ask him a few questions. During the first interrogation, he felt confused, pressured and scared. The only conversations missing from the videotapes were the conversation that Sherwood had with him when he was being returned to the lockup after 5 a.m. in which Sherwood told him that he "might as well" say that he had something to do with it, and another conversation with Sherwood that took place after the videotape of the second interrogation ended, when Sherwood praised him for giving a statement and downplayed the likelihood that the defendant would spend much time in prison, suggesting that they mainly wanted the defendant to testify against Mendoza. The videotapes of the interrogation were then played in their entirety.

The trial court denied the motion to suppress. It made the following factual findings: the defendant was 16 years old when he was interrogated; he had been interrogated and given *Miranda* warnings once before, when he was 15; the defendant appeared to be of "above average" intelligence and did not appear to have any deficit in mental capacity; the defendant had completed eighth grade and repeated ninth grade, and read, wrote, and understood English. Although the defendant was questioned after midnight, he had not risen until after noon the day before, and did not appear to be tired or under other physical impediment. The interrogations lasted about two hours each time, with breaks, and the defendant was offered food and drink. The police did not display their weapons or handcuff the defendant during the interrogation. There was no evidence of physical abuse or mistreatment. The defendant did not ask to speak with his parents, nor did he seek assistance from

anyone else. Later in its order, the trial court found that the defendant was not unfamiliar with nor confused by the interrogation process.

The trial court also found that Sherwood misrepresented the evidence of the defendant's involvement in the crime. The trial court characterized Sherwood's questioning as "persistent but not aggressive." Later in its order, the trial court found that the misrepresentations, which included the purported existence of taped conversations and eyewitness identifications of the defendant, and the defendant's mother's supposed failure to confirm that the defendant was at home, "did not result in any change or alteration of defendant's insistence that he was not involved," because the defendant did not immediately confess when told of the purported evidence against him, but instead confessed several hours later after reinitiating contact with the police. The trial court therefore concluded that the defendant's statement was not induced by police deception.

The trial court found that the defendant's parents went to the police station and asked to speak with the defendant "either before or during the first interrogation," but the parents' requests were denied, and Trujillo treated the parents "more like witnesses than parents." The trial court concluded that Trujillo "could have located the defendant to make the parents' request known to the interrogating officers but did not do so and that the parents wanted to talk to the defendant but were refused."

The trial court noted that the end of the first interrogation and the beginning of the second interrogation were missing from the videotapes, but found that the failure to record these portions was inadvertent and that the tapes were substantially accurate, although the State would not be permitted to introduce any evidence of statements that were not shown on the tapes. Regarding the defendant's account of Sherwood's statements to him outside the interrogation room, the trial court

did not make any assessment of credibility but simply found that the defendant's actions and statements did not suggest that Sherwood's off-tape statements induced the defendant to confess.

The trial court found that the defendant understood his *Miranda* rights, including the right to an attorney, the right to remain silent, and the right to exercise these rights at any time. The trial court stated that it had considered the totality of the circumstances and concluded that the State had met its burden of proving that the confession was voluntary.

The defendant's trial began on September 29, 2008, and lasted for five days. After hearing the evidence and viewing the videotapes of the defendant's confession and David's statement, the jury found the defendant guilty of first-degree murder. On December 12, 2008, after a hearing, the trial court denied the defendant's motion for a new trial and sentenced him to 35 years in prison. The defendant filed a timely notice of appeal.

ANALYSIS

On appeal, the defendant raises four arguments. He first contends that the trial court erred in denying the motion to suppress his statement to the police. Second, he argues that there was insufficient evidence that he committed the crime, because David Acevado's statement was unreliable. He next argues that he received ineffective assistance of counsel, in that his counsel told the jury during opening argument that the defendant's family would testify and provide an alibi for him, but then counsel did not call them. Finally, he contends that his rights to confront the witnesses against him were violated by the trial court's ruling permitting Russell, the "gang expert," to testify using hearsay evidence. As we find the first two issues dispositive, we do not reach the last two.

The Motion to Suppress

The defendant argues that several factors compel the conclusion that his confession was not voluntary and should therefore have been suppressed. The defendant does not challenge the trial court's findings regarding his age, intelligence, and other relevant personal characteristics, nor the finding that he was not subjected to police maltreatment. Instead the defendant asserts that his confession was not voluntary because, although his parents came to the police station and asked to be with him during questioning, the police refused to allow them to see the defendant. Moreover, Parrish, the youth officer designated to safeguard the defendant's rights during questioning, instead joined in pressuring the defendant to abandon his assertions of innocence. In addition, the police deceived the defendant regarding the evidence against him, and falsely suggested that he would receive leniency because he was only 16 years old.

Our review of the trial court's ruling on the defendant's motion to suppress involves questions of both law and fact. *People v. Richardson*, 234 Ill. 2d 233, 251 (2009). We accord great deference to the trial court's findings of fact and credibility determinations and will not reverse them unless they are against the manifest weight of the evidence. *Id.* However, the ultimate question of whether a confession was voluntary is a legal question which we review *de novo*. *Id.* In making this determination, we consider the evidence presented at trial as well as that presented at the suppression hearing. *Id.* at 252.

The requirement that a defendant's confession be voluntary flows from the due process clause of the fourteenth amendment of the United States constitution (U.S. Const., amend. XIV), under which the United States Supreme Court has condemned certain interrogation techniques which, either in themselves or in their effect on "the unique characteristics of a particular suspect," are "offensive to a civilized system of justice," and also from the fifth amendment's proscription against

compelled self-incrimination (U.S. Const., amend. V). *Id.*, quoting *Miller v. Fenton*, 474 U.S. 104, 109 (1985). Because of these constitutional concerns, a confession that is not voluntary must be excluded. *Id.* at 253. The State bears the burden of showing that the confession was voluntary. *Id.* at 254.

In considering whether a confession is voluntary, a court considers factors relating to the defendant himself, including the defendant's age, intelligence, background, experience, education, mental capacity, and physical condition at the time of questioning; and the circumstances of the questioning, including the legality and duration of the detention, whether the suspect was given *Miranda* warnings, the duration of the questioning, and the interrogator's use of threats, promises, or deception to induce the confession. *Id.* at 253-54; *In re J.J.C.,* 294 Ill. App. 3d 227, 234 (1998). None of these factors is dispositive; a court must consider all of the circumstances in the case before it. *Richardson*, 234 Ill. 2d at 253. In applying these factors the court must bear in mind the ultimate question to be answered, which is "'whether the defendant made the statement freely, voluntarily, and without compulsion or inducement of any sort, or whether the defendant's will was overcome at the time he or she confessed.'" *People v. Slater,* 228 Ill. 2d 137, 160 (2008), quoting *People v. Gilliam,* 172 Ill. 2d 484, 500 (1996).

Additional considerations come into play when the suspect being questioned is a juvenile. Our supreme court has recognized that "the taking of a juvenile's confession is 'a sensitive concern.'" *In re G.O.,* 191 Ill. 2d 37, 54 (2000), quoting *People v. Prude*, 66 Ill. 2d 470, 476 (1977). When the person being questioned is a juvenile, the greatest level of care must be used to ensure that "the confession was not coerced or suggested and that 'it was not the product of ignorance of rights or of adolescent fantasy, fright or despair.'" *G.O.,* 191 Ill. 2d at 54, quoting *People v. Simmons,* 60

Ill. 2d 173, 180 (1975) (quoting *In re Gault,* 387 U.S. 1, 55 (1967)). Because of this heightened need for sensitivity to the special needs of juveniles, under Illinois law a court evaluating the voluntariness of a juvenile's confession must also consider the "concerned adult" factor, that is, whether the juvenile had the opportunity to confer, either before or during the interrogation, with an adult interested in his welfare. *G.O.,* 191 Ill. 2d at 55. "While there is no *per se* rule that juveniles must be allowed to consult with their parents prior to questioning, courts have repeatedly held that police conduct which frustrates parents' attempts to confer with their child is particularly relevant and a significant factor in the totality of the circumstances analysis." *People v. Griffin,* 327 Ill. App. 3d 538, 545 (2002) (citing cases including *G.O.*, 191 Ill.2d at 55; *People v. McDaniel,* 326 Ill. App. 3d 771 (2001); *People v. Golden,* 323 Ill. App. 3d 892, 900 (2001); *J.J.C.,* 294 Ill. App. 3d at 235; and *In re Lashun H.,* 284 Ill. App. 3d 545, 553 (1996)). The refusal to allow parents to see their child "suggests that, at worst, the police were trying to coerce a confession and at best that they were conducting the interrogation without due regard for the suspect's age." *In re R.T.,* 313 Ill. App. 3d 422, 430 (2000). Indeed, courts have held that when a juvenile's parents are present and request to speak with the juvenile but the police prevent them from doing so, "the presumption arises that the juvenile's will is overborne." *Griffin,* 327 Ill. App. 3d at 546; *J.J.C.,* 294 Ill. App. 3d at 237.

In this case, although the trial court's ruling on the motion to suppress was generally correct in detailing the factors to be considered under the law, it failed to mention the "concerned adult" factor, despite the fact that the defense argued the applicability of that factor in this case. Thus, although the trial court expressly found that the police had prevented the defendant's parents from seeing him, it failed to attach any legal significance to this fact, instead considering it only as it might have affected the defendant's ability to understand the interrogation:

> "The Court concludes that the parents were at the police station ***, that Officer Trujillo could have located the defendant to make the parents' request known to the interrogating officers but did not do so[,] and that the parents wanted to talk to defendant but were refused. The Court concludes that the defendant was neither unfamiliar [with] nor confused by the interrogation process."

However, eliminating the juvenile's possible "confusion" about the interrogation process is not the only or even the primary reason for allowing a juvenile suspect to confer with his parents. Allowing such contact provides a juvenile with emotional support to assess his position clearly in deciding whether to give a statement, and helps to dispel the coercive atmosphere that may otherwise exist. Illinois courts have repeatedly found that police attempts to prevent parents from seeing a juvenile suspect aim to "create an intimidating atmosphere and obtain a confession." *Lashun H.,* 284 Ill. App. 3d at 555 (citing cases); see also *Griffin,* 327 Ill. App. 3d at 546. For this reason, the fact that a juvenile suspect did not ask to speak with his parents is not dispositive or even relevant, and a focus on that fact "blatantly disregards the interest of the parents in wishing to confer with their child before questioning." *J.J.C.,*, 294 Ill. App. 3d at 237 (rejecting the argument that the police were not required to allow the parents to see the minor where, after being advised that he had the right to meet with his parents, the minor had stated that it was "none of their business").

The State argues that we should disregard Illinois law regarding the concerned adult factor in favor of foreign law suggesting that police may refuse to allow parents to see their child who is being detained for questioning if the police have "good cause" to exclude the parents. The State argues that here, the possibility that the defendant's mother might become an alibi witness for him was "good cause" to prevent his mother and father from seeing him. However, the State

acknowledges that no Illinois law supports its position, and indeed even the foreign law it cites fails to support the State's argument that the police are justified in preventing parents from seeing their child before or during interrogation simply because the parents may be able to provide an alibi for their child. Common sense suggests that it would not be unusual for parents to be in a position to provide an account of their child's whereabouts or actions, and we are unaware of any court that has accepted that circumstance as a reason to deny parents the opportunity to confer with their child who is being held for questioning. To the contrary, Illinois courts have repeatedly held that, when the parents are present and have indicated an interest in seeing the juvenile, the police have an affirmative duty to stop questioning and allow the juvenile to confer with his parents. See *Griffin,* 327 Ill. App. 3d at 546; *People v. Montanez,* 273 Ill. App. 3d 844, 853 (1995); *People v. Brown,* 182 Ill. App. 3d 1046, 1053-54 (1989). Accordingly, we reject this argument.

The State further argues that the actions of the police in preventing the defendant's parents from conferring with him are not grounds for automatic suppression of the defendant's statement. The State is correct that voluntariness does not depend on any one factor and instead involves consideration of the totality of the circumstances. *Richardson*, 234 Ill. 2d at 253. However, as noted earlier, police refusal to allow parents to see their child before or during questioning is an especially important factor in the analysis. *Griffin,* 327 Ill. App. 3d at 545. As in *Griffin*, "[w]hile this factor alone does not tip the scales in favor of suppressing [the] defendant's confession, we find it contributed significantly to a coercive atmosphere and strongly weighs against a finding that [the] defendant's statement was voluntary." *Griffin,* 327 Ill. App. 3d at 546.

This lack of compliance with the "concerned adult" factor was further magnified by the conduct of the youth officer, Parrish, in this case. In *In re Marvin M.,* 383 Ill. App. 3d 693, 715

(2008), this court adopted the description given in *People v. Plummer,* 306 Ill. App. 3d 574 (1999), of a youth officer's duties with respect to the questioning of a juvenile suspect. That description included the following duties: (1) "youth officers should be required to verify whether a juvenile's parent or other significant adult has been notified of the presence of the juvenile and to determine if the parent wishes to confer with the juvenile prior to questioning"; (2) if the parent wishes to confer with the juvenile, "the youth officer should see that questioning ceases until they can confer"; (3) "youth officers should be required to verify" that the juvenile has been given his rights under *Miranda* and understands that he may be tried as an adult if that is the case"; and (4) youth officers should see that juveniles are "properly treated--that they are fed, allowed to rest if needed, given access to washroom facilities, [and] are not held in a confined space with adult suspects." *Plummer,* 306 Ill. App. 3d at 588. In sum, youth officers should see that juveniles "are not coerced in any way." *Id.*

In this case, Parrish failed in many, if not most, of his obligations toward the defendant as the defendant's youth officer. He did fulfill the fourth set of duties relating to ensuring the defendant's physical comfort during questioning, and he partially complied with the first duty, ensuring that the defendant's parents knew that the defendant was being questioned. However, he failed to determine whether the parents wished to speak with the defendant, although he was aware that the parents had come to the police station from Sherwood's telephone conversation with Trujillo as well as Sherwood's statements during the interrogation. Thus, he failed to comply with the remainder of his first duty and also failed utterly in his second duty to the defendant: ensuring that questioning ceased until the defendant and his parents could confer. Finally, although Parrish went over the defendant's *Miranda* rights, he did not advise the defendant that he could be tried as an

adult. That information would have been particularly relevant in light of the implication promoted by the interrogators that the defendant would face minimal consequences from admitting to involvement with the crime because he was a juvenile. As a result of the omission, the defendant could not have been expected to fully appreciate the gravity of the charges he would likely face nor the possible consequences of confessing. See *G.O.,* 191 Ill. 2d at 73-74 (McMorrow, dissenting) (noting the inherent contradiction between laws treating juveniles as lacking the judgment necessary to own a credit card, get a tattoo, drive a car or consume alcohol, and case law assuming that juveniles can appreciate "the life-altering consequences that will follow" their decision to waive their constitutional rights while being questioned for a crime).

Parrish's failures as a youth officer were compounded by his conduct once the questioning started, when he effectively abandoned the role of youth officer. As we noted in *Marvin M.,* there has been some debate in Illinois case law about whether a youth officer should affirmatively advocate for a juvenile suspect or merely act as a neutral observer whose job is to ensure that the juvenile is provided with the minimum legal and physical safeguards. *Id.,* 383 Ill. App. 3d at 713. Under either of these standards, however, Parrish failed to act as a youth officer and ensure that the defendant was "not coerced in any way" because, once questioning began, his conduct toward the defendant was not that of either an affirmative advocate or a neutral observer, but that of a third interrogator. During the first interrogation, Sherwood and Koenings repeatedly told the defendant that he was lying or not "being straight with them" when he told them that he had not been involved in the shooting; falsely told him that they had evidence that implicated him; and told him that they were giving him "a chance" because he was only 16. The interrogators then took a break, leaving the defendant alone with Parrish. Parrish immediately began telling the defendant the very same

things, adding his own assurances that the interrogators were "not trying to trick" the defendant. This pattern—of questioning by Sherwood and Koenings followed by a "break" in which Parrish urged the defendant to confess—was repeated twice. During the two exchanges, Parrish falsely told the defendant five times that the evidence showed that he was involved, repeatedly rejected the defendant's protestations that he did not know anything about the shooting, told him that the interrogators were trying to "reach out and give [him] a chance" because he was 16, and advised him five times that he had to "be straight" with the interrogators. Under these circumstances, we find that the defendant was effectively denied the presence of a youth officer once the initial *Miranda* explanation and waiver was completed.

Lastly, the defendant contends that the tactics of the police during interrogation contributed significantly to a coercive atmosphere. These tactics included falsely telling him that they had evidence against him, repeatedly telling the defendant that he was not "being straight with them" when he denied knowing about the shooting, and suggesting to the defendant that if he admitted involvement he would not face serious consequences because he was only 16. "A defendant's confession will be considered involuntary when the defendant's will was overborne at the time of his confession such that the confession cannot be deemed the product of a rational intellect and a free will." *People v. Minniti,* 373 Ill. App. 3d 55, 68-69 (2007). A review of the case law regarding interrogations suggests that all of the interrogation techniques about which the defendant complains are commonly used by the police and are subject to only a few legal constraints. For instance, the police may not obtain a confession through an express promise of leniency, that is, "a suggestion of a specific benefit that will follow" if a defendant confesses. *People v. Johnson,* 285 Ill. App. 3d 802, 808 (1996). Here, however, the defendant concedes that the interrogators' allusions to the youth of

the defendant were more an implied suggestion that he would suffer minimal consequences rather than express promise of leniency. The defendant cites no case in which a confession was held to be involuntary on the basis of similar implied suggestions. However, implied promises of leniency may be considered as one factor in analyzing the totality of the circumstances. *Griffin*, 327 Ill. App. 3d at 549 (police conduct that contributes to the coercive nature of the interrogation may be considered in assessing the totality of the circumstances even where it is not sufficient to invalidate the confession outright).

A second technique, police deception, has occasionally resulted in a confession being held involuntary. For instance, in *People v. Bowman,* 335 Ill. App. 3d 1142, 1154 (2002), a confession was held involuntary where it was the product of an elaborate police scheme to play on the defendant's intense fears of being sent to a particular prison. However, we have not uncovered any cases holding that interrogators' references to non-existent evidence against the defendant (such as occurred here) created such a coercive atmosphere that it rendered a confession involuntary. Instead, interrogators' reference to non-existent evidence is again one of the factors to be considered in evaluating whether a juvenile's confession was voluntary. *Griffin*, 327 Ill. App. 3d at 549. In this case, the insistence of the police that they had evidence (phone records, recordings, and witness statements) that would implicate the defendant went beyond mere "overstatement"; in reality, the police had no evidence at all implicating the defendant. The extent of the deception weighs against finding that the confession was voluntary. *Cf. Marvin M.,* 383 Ill. App. 3d at 719 (overstating the evidence against the defendant by referring to "several" witnesses rather than two did not amount to deception or trickery sufficient to have induced the confession).[1]

[1]In addition to citations to legal authority, the defendant has cited various law review

We acknowledge that the trial court concluded that the misrepresentations by the police did not induce the defendant's confession, because the false statements of the evidence against the defendant "did not result in any change or alteration of [the] defendant's insistence that he was not involved." The trial court noted that all of the false accounts of the evidence were introduced during the first interrogation, but the defendant continued to maintain his innocence throughout that interrogation and into the initial portion of the second interrogation. While we acknowledge the trial court's greater opportunity to observe witnesses, the conclusion that the interrogators' allusions to non-existent evidence implicating the defendant "did not result in any change or alteration" in the defendant's susceptibility to pressure is not supported by the evidence. The first time the police confronted the defendant with false statements of the evidence—that Mendoza had told police that

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articles and psychological studies reporting that juveniles are more susceptible to coercive techniques than adults and, as a result, are over-represented in studies of false confessions. See Drizin & Leo, *The Problem of False Confessions in a Post-DNA World,* 82 N.C. L. Rev. 891, 944 (2004); see also Scott-Hayward, *Explaining Juvenile False Confessions: Adolescent Development and Police Interrogation,* 31 L. & Psych. Rev. 53, 60 (2007) (noting one study in which 72% or more of non-culpable adolescents 16 or younger confessed to making a computer crash when presented with false evidence of their culpability, despite the threat of a significant penalty for that confession; this was about one-and-a-half times the rate at which college-age students falsely confessed under these circumstances). However, as this court has recently observed, Illinois case law in this area does not display "a concern with empirical evidence of what police tactics make confessions unreliable." *People v. Valle,* No. 2—08—0838, slip op. at 20 (Oct. 21, 2010).

he spoke with the defendant on the phone about 2:30 a.m., that Mendoza had supported this by circling the defendant's photo on a photo lineup, that the police had recorded telephone conversations between the defendant and Mendoza, and that the defendant's mother did not support his account that he was home asleep at the time of the shooting—occurred approximately 45 minutes to an hour into the first interrogation. The videotape of the first interrogation shows that, as soon as the defendant was left alone during a break following these false "revelations," he became visibly upset and began crying. When the interrogators returned to the room, the defendant continued to show emotional distress by answering questions with his voice cracking and crying, to the point that the interrogators commented on it ("I can see that you're completely upset. You're tore up about this"). Indeed, while questioning David Acevedo approximately 24 hours later, Accardi mentioned that the defendant had been crying. Thus, the trial court's finding that the false statements by the police had no effect on the defendant is against the manifest weight of the evidence. See *People v. Dennis*, 373 Ill. App. 3d 30, 46 (2007) (a "visible change in demeanor" including tears and other indications of emotional upset is one indication that the defendant's will may have been overborne).

The State argues that these final two arguments, relating to the conduct of Parrish in acting as the defendant's youth officer and the interrogators' false statements and suggestions of leniency, were forfeited because the defendant did not raise them explicitly in the motion to suppress or in the posttrial motion. The record does not support this argument. During the hearing on the motion to suppress the defendant argued that Parrish did not fulfill the role of a youth officer, that no one advised him of the charges he was facing or the fact that he could be tried as an adult, and that, to the contrary, the interrogators instead suggested to him that he was in a good position because he was a juvenile. Moreover, the defendant argued extensively that the interrogators' admitted lies

about the evidence against him increased the coercion he felt to confess. The defendant then raised these same arguments at trial, during the motion for a directed verdict. Finally, in the posttrial motion, the defendant argued that "the juvenile advocate erroneously took part in the interrogation of the defendant," that "officers implied during interrogation that the defendant would be tried and/or sentenced as a juvenile," and that his statement was coerced. The State's forfeiture argument lacks merit and we reject it.

In finding that the conduct of the police during the interrogation did not induce the defendant to confess, the trial court relied in part on the delay between the time that the police falsely asserted that they had evidence implicating the defendant and the time that the defendant eventually confessed. However, the simple fact of time passing and a break in the questioning of a suspect is an "'ambiguous factor'" that may just as easily "'amplify the coercion latent in [a] custodial setting, particularly where there are other indicia of coercion'" as dispel the effect of improper coercion. *Dennis*, 373 Ill. App. 3d at 49, quoting *People v. Lekas,* 155 Ill. App. 3d 391, 414 (1987). Here, there were "other indicia of coercion" including the absence of the defendant's parents as a result of deliberate police conduct, the conduct of the defendant's youth officer in acting as a third interrogator, and the interrogators' suggestions of leniency because the defendant was a juvenile. Accordingly, we cannot agree that the interval between the first and second interrogation itself dispelled the coercive atmosphere and ensured that the defendant's eventual confession was not the product of adolescent fear or despair. *Gault,* 387 U.S. at 55.

We conclude that the totality of the circumstances in this case shows the defendant's confession to have been involuntary, that is, that the defendant's will was overcome at the time he confessed. In reaching this conclusion, we acknowledge that the defendant's intelligence and the

fact that he had been questioned by the police once before weigh in favor of voluntariness. He was informed of his *Miranda* rights and indicated that he understood them, he agreed to speak with police at the beginning of both of his interrogations (and indeed reinitiated contact with the interrogators prior to the second interrogation), and he was offered food, drink, access to a bathroom, and was not subjected to physical abuse.

However, the other factors argued by the defendant weigh heavily against admission of the confession. The police frustrated repeated requests by the defendant's parents to speak with him before and during the questioning, denying both their requests to accompany the defendant to the police station and their attempts, after they came to the station, to see him. We also find that the defendant was deprived of contact with *any* concerned adult because the youth officer failed to safeguard several of the defendant's most important rights and improperly assumed the role of interrogator during the questioning. Moreover, the interrogation tactics used by the police, including falsely telling the defendant that there was other evidence of his involvement in the crime and suggesting that he would not face serious consequences by confessing because he was a juvenile, contributed to the coercive atmosphere. We also consider other relevant facts, including the defendant's limited education, the fact that the questioning took place during the early morning hours when most people would be asleep, and the fact that the confession came after approximately two and a half hours of interrogation and approximately 22 hours after the defendant woke up on the previous day. We conclude that the coercive atmosphere created by all of these conditions rendered the defendant's confession involuntary. Accordingly, the defendant's motion to suppress his confession should have been granted. We therefore reverse the order denying the motion to suppress and vacate the defendant's conviction and sentence.

Sufficiency of the Evidence

Having held that the defendant's confession was involuntary and should have been suppressed, we must now consider whether the evidence at trial (including, for the purposes of this analysis, the confession) was sufficient, when examined in the light most favorable to the State, to permit a rational factfinder to find the defendant guilty of participation in the shooting of Rene Saldana. If so, we must remand for a new trial. If not, double jeopardy bars retrial and we must reverse the conviction outright and enter a judgment of acquittal.

For the purposes of assessing whether retrial would violate the constitutional prohibition against double jeopardy (U.S. Const., amend. V), the law distinguishes between reversals for trial error and reversals because the evidence was insufficient to support a conviction. *People v. Olivera,* 164 Ill. 2d 382, 393 (1995). In the case of a reversal based upon a trial error (such as the admission of inadmissible evidence, like the involuntary confession in this case), the double jeopardy clause does not bar the State from retrying the defendant. *Olivera,* 164 Ill. 2d at 393. However, when a reviewing court determines that the evidence at trial was insufficient to convict the defendant beyond a reasonable doubt, "the only proper remedy is a judgment of acquittal." *Olivera,* 164 Ill. 2d at 393. In assessing the sufficiency of the evidence for this purpose, we must consider all of the evidence originally submitted at the trial, including that which we have now ruled inadmissible. *Olivera,* 164 Ill. 2d at 393. And, as always when we analyze whether any rational trier of fact could have found the defendant guilty of all of the elements of a crime beyond a reasonable doubt, we must view the evidence in the light most favorable to the State. *Olivera,* 164 Ill. 2d at 396.

Here, the evidence supporting the State's theory of the case was sparse. There was no physical or eyewitness evidence that the defendant was present at the scene of the crime, nor did the

State produce any records of the asserted telephone call from Mendoza to the defendant. The only definite link between the shooting and the defendant was the defendant's own confession. The State argues that David's statement to the police corroborates the defendant's confession that he was involved in the crime. The State also argues that the defendant's confession matched certain details about the scene and the events that were not fed to him by the interrogators.

Our own review of the record leaves us with some doubt on each of these points. David's statement provides only limited corroboration of the defendant's confession. David never stated directly that the defendant admitted that he went to the scene of the shooting with Mendoza. (The closest David came to this was answering "yeah" in response to Accardi's statement that "obviously" the defendant "was there.") David also insisted that the defendant never spoke about participating in the shooting in any way. Instead, according to David's account of the defendant's admissions, the defendant declined Mendoza's request that the defendant take the gun and almost got into a fight with Mendoza because of that, but then just went home. When told that the defendant had admitted being "there" and asked to relate more details about that, David said that he didn't know where they "were at" and hadn't asked the defendant, but then suggested that they might have been at the park around the corner from the defendant's house. Significantly, both of the interrogators later indicated that they understood David to have said that the defendant's meeting and dispute with Mendoza all took place at the park. On the second tape, Wolcott asked David, "You said when . . . when they went to the park that Edgar turned down a gun. Who'd you say ended up taking it?" Similarly, on the second tape Accardi commented that everything David had told them about "happened at the park," and David confirmed that he did not "have any details from Edgar about what happened at the scene." We are also doubtful as to the evidentiary weight to be given to David's statement as a

whole. David initially stated that the defendant had not even left his house that night. When the police told David that the defendant had admitting leaving his house, David agreed that they had left briefly shortly after midnight to go see some neighborhood girls but the defendant had lost his cell phone and they returned to the defendant's house. Not until the police told David that the defendant had admitted that he left his house, met with Mendoza, and refused Mendoza's request to carry a gun, but that some people were saying that the defendant was the shooter and the defendant needed David to help him out, did David say that the version purportedly given by the defendant was correct. At trial, David testified that the initial version he gave was correct and that he made the rest up because he felt pressured, he wanted to go home, and he wanted to help the defendant.

Similarly, the corroboration from details of the confession that had not been mentioned to the defendant during his interrogation is weak. The State asserts that the defendant told police that he walked back and forth on 7th between Hinman and Spencer, indicating that he had independent knowledge of his own location near the scene of the shooting. However, the police had already told the defendant that the shooting took place and 7th and Hinman, and the defendant did not actually state the names of any of the streets where he was walking. Rather, the defendant stated that he did not know what the streets were in the area they drove to and simply indicated the area where he was walking when shown a rough map (drawn by the interrogators) of the area around the intersection, agreeing with the interrogators when they suggested street names. Koenings conceded that the defendant did not know where the shooting occurred until the police told him, during the interrogation. Similarly, the State asserts that the defendant described the house near the shooter as "the second or third house on the north side" of 7th west of Hinman. However, the defendant simply indicated by gestures where the shooter was standing, agreed with the interrogator's description of

the spot using street names, and then (referring either to the houses drawn on the map by the police or the actual houses near the intersection, it is unclear which), agreed that the spot the interrogator was pointing to as the shooter's location was correct and was "at the second or third house." The manner in which the defendant provided these details weakens the significance of the "corroboration" provided by the location of the shell casings and the location where Rodriguez identified the shooter as standing. The State also asserts that the defendant knew the direction of the gunfire, but the defendant did not "tell" the interrogators this until after they had described to him that the gunfire would almost have been coming toward him, based upon the location of the shooter and his own location. Finally, although at trial Koenings marked the hand-drawn map to show where the defendant was walking before the shooting, where he was standing when the shooting occurred, and where he saw the shooter standing, Koenings conceded that no such markings were made during the interrogation. Instead, in marking the diagram at trial, Koenings was relying on his recollection of the areas to which the defendant had pointed during the interrogation.

We also note other discrepancies between the State's theory of how the shooting occurred and the evidence. For instance, Rodriguez testified that he and Saldana were driving around and that it was pure happenstance that they decided to switch places at the intersection of 7th and Hinman, and that the shooting began almost immediately when Saldana got out of the van. Under the State's theory, however, Mendoza picked up the defendant near his home (approximately 40 blocks away, according to an aerial photo introduced at trial) and cruised around with him, received information about Saldana's location, and was nevertheless able to drive to the intersection of 7th and Hinman several minutes *before* Saldana and Rodriguez arrived there, so that the defendant could get out of the car and walk up and down the block twice before the shooting occurred. Under the State's

theory, the shooter was in place and must have planned to shoot when the van appeared, and it was merely fortuitous that the van stopped and Saldana got out, enabling the shooter to get a clear shot. Similarly, the State made no attempt to explain the box found in the defendant's bedroom closet at the time of the arrest with the words "Pelon rots." According to the State's gang witnesses, this phrase meant that the person who wrote it disliked Pelon (Mendoza's nickname) and wished he would die.

Nevertheless, it is not our task to reweigh the evidence. *People v. Collins,* 206 Ill. 2d 237, 261 (1985). The relevant question is " 'whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (Emphasis in original.) *Id.* at 261, quoting *Jackson v. Virginia,* 443 U.S. 307, 319 (1979). The weight to be given to the witnesses' testimony, the determination of their credibility, and the reasonable inferences to be drawn from the evidence are all matters within the jurisdiction of the trier of fact. *People v. Smith,* 185 Ill. 2d 532, 542 (1999); *Collins,* 106 Ill. 2d at 261-62. Likewise, the resolution of any conflicts or inconsistencies in the evidence is also within the province of the fact finder. *Collins,* 206 Ill. 2d at 261-62. We will set aside a criminal conviction only "where the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt." *Smith,* 185 Ill. 2d at 542. In this case, when applying the requirement that we view the evidence in the light most favorable to the State, we find that the evidence was sufficient to sustain the conviction. Specifically, the defendant's confession was generally consistent with the evidence found at the scene of the shooting, and David's statement supported the defendant's confession at least to the extent that he said that the defendant admitted leaving his house, meeting with Mendoza, and refusing to carry a gun. Although we have ruled that

the defendant's confession was not voluntary and should not have been admitted, we nevertheless must consider it in evaluating the sufficiency of the evidence. *Olivera,* 164 Ill. 2d at 393. We therefore find that the evidence was sufficient and double jeopardy does not bar the retrial of the defendant on the same charges.

Remaining Arguments

The defendant also argues that his attorney was ineffective because she failed to call his family to testify despite saying in opening argument that she would do so, and that the trial court erred in permitting a State witness to testify as an expert on gangs. As we have reversed the trial court's judgment, however, we need not address these arguments.

CONCLUSION

For the foregoing reasons, we reverse the trial court's denial of the motion to suppress, vacate the defendant's conviction and sentence, and remand for a new trial.