

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2011 IL App. (3d) 100231-U

Order filed December 1, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD JUDICIAL DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 12th Judicial Circuit Will County, Illinois
Plaintiff-Appellee,)	
v.)	Appeal No. 3-10-0231 No. 08-CF-736
CHERROD L. MOORE,)	Honorable Richard C. Schoenstedt Judge, Presiding.
Defendant-Appellant.)	

JUSTICE WRIGHT delivered the judgment of the court.
Justices Lytton and O'Brien concurred in the judgment.

ORDER

- ¶ 1 *Held:* Although the police detained defendant at the scene of a homicide for purposes of officer safety, defendant remained in custody while isolated in a more secure, lower level area of the police station for more than 14 hours after defendant's handcuffs were removed and the officers' safety concerns dissipated. The trial court's finding that defendant was not under arrest following the removal of handcuffs at the police station was contrary to the manifest weight of the evidence. Defendant's conviction and sentence are reversed. The cause is remanded to the trial court for a new trial.
- ¶ 2 The trial court denied defendant's amended motion to suppress statements and

defendant's subsequent motion to quash arrest and suppress evidence. Following a stipulated bench trial, the trial court found defendant guilty of two counts of first degree murder and sentenced defendant to 20 years imprisonment.

¶ 3 On appeal, defendant claims that the trial court erred by denying both his amended motion to suppress statements and his motion to quash arrest and suppress evidence. We reverse defendant's conviction and sentence and remand the cause to the trial court for a new trial.

¶ 4 **FACTS**

¶ 5 On April 24, 2008, a Will County grand jury issued a bill of indictment against defendant and co-defendants, Reginald D. Chandler-Martin, Justin C. Harper, Tyrell Jackson, and Courtney L. Mayes. The indictment charged defendant with two counts of first degree murder, one count of home invasion and one count of armed robbery, resulting from an incident on April 1, 2008, in which John Rosales was shot and killed.

¶ 6 **Procedural History**

¶ 7 On November 10, 2008, defendant filed a motion to suppress statements pursuant to sections 114-11 and 103-2.1 of the Code of Criminal Procedure (725 ILCS 5/114-11, 5/103-2.1 (West 2006)) claiming that at the time of questioning, defendant was not free to leave and that the multiple, videotaped custodial interrogations were not accurately recorded requiring suppression of all videotapes. On January 21, 2009, defendant filed an amended motion to suppress statements which set forth the same, original allegations and adopted the allegations contained in co-defendant Tyrell Jackson's amended motion to suppress, claiming the police violated the eavesdropping statute (720 ILCS 5/14-1(a) *et seq.* (West 2006)). In addition, on April 27, 2009, defendant filed a separate motion to quash arrest and suppress evidence.

¶ 8 On May 27, 2009, the court denied defendant's amended motion to suppress statements and later denied defendant's motion to reconsider this ruling. On September 9, 2009, the court denied defendant's separately filed motion to quash arrest and suppress evidence and later denied defendant's motion to reconsider this ruling.

¶ 9 Following defendant's waiver of jury, the State *nolle prosequied* one count of home invasion and one count of armed robbery. Thereafter, the court conducted a stipulated bench trial on November 12, 2009, on the two counts of first degree murder. On November 18, 2009, the court found defendant guilty of first degree murder based upon accountability. On February 19, 2010, the trial court denied defendant's posttrial motion and sentenced defendant to 20 years in the Illinois Department of Corrections.

¶ 10 Amended Motion to Suppress Statements

¶ 11 On January 21, 2009, the trial court held a joint hearing on defendant's amended motion to suppress statements, together with the co-defendants' motions to suppress statements. The following is a summary of the witnesses presented, relevant to this appeal, and their respective testimony.

¶ 12 Kevin Fasana

¶ 13 Kevin Fasana, an officer with the Naperville police department, testified that on April 1, 2008, at approximately 12:30 a.m., he responded to a call of "shots fired" at the residence located at 2511 Sheehan in Naperville, Illinois. Fasana explained that the area consists of a series of townhouses with a common driveway. When he arrived, he saw two male black subjects standing in the driveway. He testified that due to the nature of the call and "not knowing their involvement," he drew his weapon and ordered the subject to the ground with arms out to the

side. Fasana said the two subjects complied. Fasana did a quick pat down and found neither subject was armed. Fasana said he “covered them” while officers Wagner and Rimdzius handcuffed the two subjects, but they were not under arrest. He said that the subjects were handcuffed because one of the subjects had blood on him, and Fasana did not have a description of who was involved in the shooting. Therefore, “for officers’ safety” the subjects were handcuffed until he figured out the subjects’ involvement.

¶ 14 Courtney Mayes told him that he and defendant were at their friend’s house at 2511 Sheehan Drive, unit 101, with two other white males. According to Mayes, Rosales was in the house “dying.” Mayes told him that two masked subjects kicked in the door, screaming about money and drugs. Mayes also told him that one of the men had a gun, that he heard a gunshot, and that Rosales was bleeding. He then turned Mayes and defendant over to officers Wagner and Rimdzius, so he could search the residence.

¶ 15 After he secured the house, Fasana stated that he went outside and saw Mayes and defendant with Wagner and Rimdzius. He stated that Mayes and defendant were still handcuffed and that they were not free to leave. Fasana explained that the other officers did a more thorough search of Mayes and defendant, but did not find any weapons.

¶ 16 Matthew Wagner

¶ 17 Matthew Wagner, a police officer with the Naperville police department, testified that he worked patrol in a marked squad car, wearing a full uniform, on April 1, 2008. At approximately, 12: 30 a.m., he responded to a “shots fired” call by going to 2511 Sheehan Drive where he saw Fasana “had two black males on the ground at gun point.” Wagner said that he drew his weapon and “covered” the two subjects while Fasana and Erdman went to the residence.

Wagner said that the two males remained on the ground until another officer, Rimdzius, arrived and assisted him in handcuffing the two men. He and Rimdzius searched the two subjects but did not find any weapons. Wagner told the subjects they were detained but not under arrest.

¶ 18 Wagner described the situation as “very dynamic.” He stated that defendant had blood on him, and he did not know if defendant “was a victim or not or suspect.” Wagner said that after being handcuffed, defendant and Mayes remained sitting on the ground. A few minutes later, he placed defendant into his squad car, and Rimdzius placed Mayes in his squad car. Wagner closed the doors of the squad car. He estimated 15 minutes passed.

¶ 19 By that time, the detectives arrived and told him to take defendant to the police department. After arriving at the police department, he “brought” defendant into the front lobby and then “brought” defendant downstairs to the interview rooms. Shortly thereafter, Liberio told him to uncuff defendant. After uncuffing defendant, he sat with defendant and waited for the detectives to interview defendant. After the detectives arrived, he sat outside the door, waiting for further instructions. He stated that the interview rooms at the police department are located in a secure area and that in order to leave, a person would have to pass by several police officers.

¶ 20 On cross-examination, he stated that Mayes and defendant were handcuffed first and then patted down at the scene. He estimated that defendant remained handcuffed for 20 to 30 minutes. When asked at what point he no longer felt his safety was in jeopardy after encountering defendant and Mayes, he stated, “[a]s soon as we basically had them in handcuffs after the pat-down which revealed no weapons, the threat was minimized.” He stated that at this point, only one or two minutes had passed. However, he continued to leave the subjects in handcuffs.

¶ 21

Michael Rimdzius

¶ 22 Michael Rimdzius, a police officer with the Naperville police department, testified that when he arrived at 2511 Sheehan Drive on the night in question, he saw Fasana standing, with his weapon drawn, near two men on the ground. He approached with his weapon drawn, and Fasana told him to handcuff both subjects. After handcuffing the men, he searched Mayes. He later placed Mayes in his squad car and transported Mayes to the police department. Rimdzius agreed that both defendant and Mayes were secured in interview rooms and were not free to leave the station.

¶ 23

Elena Deuchler

¶ 24 Elena Deuchler, a detective with the Naperville police department, testified she met with defendant at approximately 2:50 a.m. on April 1, 2008, at the police department. She described defendant as being upset, crying, shaking and visibly distraught. She told defendant that she was sorry for what happened, that he was not under arrest, and that he was free to leave. Deuchler asked defendant to stay and talk to her about what happened. Defendant told her that Rosales was a good friend and that he would stay and do whatever was needed to find out what happened.

¶ 25 She said that she did not advise defendant of his *Miranda* rights, and she did not record her interview with defendant. Defendant told her that he and his cousin, Mayes, went to Rosales' house at about 10 p.m. Defendant described a number of different people coming and going. Defendant said that he and Rosales were playing a video game for money and smoking "weed." Defendant told her that Mayes got a couple of telephone calls and then two guys came through the door screaming to get to the ground. He and Mayes went to the ground, but Rosales and Smith just stood there. Rosales said "take whatever" and then there was a gunshot. Defendant

said that Rosales was holding his neck, saying “they shot me.”

¶ 26 During the interview, she asked defendant for his clothes because she noticed defendant had vomit and blood on his clothing. Defendant said the blood came from Rosales and also said that he urinated on himself when “it happened.” She discussed the possibility of evidence and asked if he would be more comfortable in something else. Deuchler gave defendant an orange jumpsuit to wear, and she took his clothes into evidence.

¶ 27 She asked defendant for permission before looking at his cellular telephone. He agreed, and then she took defendant’s cell phone. She asked defendant to provide a written statement, and then she left defendant alone in the interview room.

¶ 28 At 4:45 a.m., she interviewed defendant for a second time, this time with detective Liberio. At the end of the interview, she asked defendant to wait as there was still more that needed to be done. Defendant agreed to stay.

¶ 29 Donald Bisch

¶ 30 Donald Bisch, a detective with the Naperville police department, testified that on April 1, 2008, at approximately 12:30 a.m., he traveled to 87th and Sheehan where Rosales’ car had been found. At that location, he and Deuchler spoke with a witness named Barry who was not handcuffed and not under arrest.

¶ 31 Later, he and Deuchler met with defendant at approximately 2:50 a.m. on April 1, 2008. He described defendant wearing casual clothes and being upset. He stated that Deuchler told defendant that “we needed him to be cooperative and write a statement as to what happened and to focus on what we were doing so that we can get the information we needed for the investigation.” According to Bisch, Deuchler specifically told defendant that he was not under

arrest. Bisch's account of the interview was consistent with Deuchler's account.

¶ 32 James Griffith

¶ 33 James Griffith, a detective in the investigations division with the Naperville police department, testified that he believed defendant's first interview occurred at 3 a.m., and the second interview occurred at 5 a.m. Following the second interview [State's exhibit 4a], defendant waited in the "soft" interview room, was not handcuffed, and according to Griffith, defendant was free to leave but just "[w]aiting." Griffith explained to the court that the third interview [State's exhibit 4c] occurred at 6:15 p.m. on April 1, 2008, and was accurately recorded. However, defendant's fourth and fifth interviews [State's exhibit 4d and 4e], which occurred at 8:00 p.m. on April 1, 2008, and 2:30 p.m. on April 2, 2008, did not accurately record because the sound was terrible.

¶ 34 During the third interview, Griffith recalled defendant stated that he and the others planned to rob Rosales and that he and Mayes would go to Rosales' house and then place a telephone call when it was a good time for the others to come into Rosales' house. Defendant did not make the telephone call because his telephone did not work, but Mayes placed the telephone call. At that time, Jackson and Martin came into Rosales' house wearing masks. Defendant said that a shot was fired, and Jackson and Martin left. At the end of the third interview, defendant was handcuffed and taken to the jail area.

¶ 35 During the fourth interview, defendant gave a written statement providing more details. Defendant said that they planned the robbery on the prior day. During the fifth interview, Griffith thought defendant said the silver gun, used in the shooting, belonged to him, but could not recall anything else.

¶ 36 Later, he testified that at 2 or 3 a.m. on April 1, 2008, the police interviewed Eric Smith and Michael Barry who were also present in the Rosales house. The police learned from the interviews that the two of them, Rosales, defendant and Mayes were at the house when two masked men came into the residence and shot Rosales. Barry and Smith said that the masked men fled; Rosales ran from the house; and they followed. Barry and Smith said that Mayes made and received telephone calls shortly before the shooting.

¶ 37 Nick Liberio

¶ 38 Nick Liberio, a detective with the Naperville police department, testified that at approximately 12:30 a.m. on April 1, 2008, sergeant Cunningham asked him to report to the police department because of a homicide. After arriving at the department, he saw officers Rimdzius and Wagner “bring in” defendant and Mayes to the interview rooms. He described the interview rooms being located “in the middle of our investigation or near our investigations on the lower level of the building.” Liberio recalled both Mayes and defendant being handcuffed.

¶ 39 Liberio said that he believed defendant was a witness and asked Wagner and Rimdzius to remove the handcuffs. Liberio said that he told defendant why he was handcuffed, due to the “uncertainty as to what their involvement was.” Liberio said that he apologized for any inconvenience and told defendant that the police would be “taking a statement shortly.” According to Liberio, defendant agreed to stay and help. He testified that he explained to defendant that he was not under arrest and free to go, but that he wanted to obtain a statement from defendant. Liberio said that defendant never asked if he could leave.

¶ 40 Liberio said that he conducted an interview with defendant at approximately 4:45 a.m. because they “had a question or a concern” about defendant’s “involvement in this incident.”

Liberio said that he told defendant he was a witness and that he “needed to get a statement.”

Liberio identified exhibit 4a in court as the videotape of defendant’s interview conducted at 4:45 a.m. on April 1, 2008, but agreed he did not inform defendant that the interview would be recorded.

¶ 41 At 3:40 p.m. on April 1, 2008, Liberio said that he “released” defendant after locating both defendant and Mayes and bringing them to the lobby of the police department. He told defendant that the police were still working, had interviews to complete, but told defendant “to leave, take a break, do what they needed to do, asked if they [defendant and Mayes] would mind coming back tomorrow morning to assist.” According to Liberio, defendant agreed.

¶ 42 At that time, Mayes indicated that he did not have the keys to his car. Liberio told them to wait, and while Liberio was looking for the keys, Cunningham contacted him by telephone at approximately 3:55 p.m. Cunningham told him “not to let them leave and to secure them both” because Cunningham received information by telephone indicating that defendant and Mayes were involved. Liberio approached defendant and Mayes, told them he received new information, and asked if they would step back into an interview room to “confront them with this information.” At this time, defendant and Mayes were not free to leave, but Liberio did not tell defendant that he was under arrest until 4:45 p.m. He identified exhibit 4b as the videotape of defendant being placed in the interview room at 3:55 p.m.

¶ 43 After interviewing Mayes, he and Griffith interviewed defendant at 6:15 p.m. on April 1, 2008. Defendant was advised of his *Miranda* rights and signed a written form. Defendant confessed that he was involved in the robbery, but that there was not any plan for the murder to occur. Liberio identified exhibit 4c as the videotape recording of defendant’s interview at 6:15

p.m. on April 1, 2008.

¶ 44 Later, Liberio saw defendant in the jail, and defendant stated that he was very upset and wanted to talk. He took defendant to the interview room at the jail and began interviewing defendant at approximately 7:30 or 7:40 p.m. on April 1, 2008, reminding defendant that his *Miranda* warnings were still in effect. Defendant was upset and told Liberio that he “screwed up” and “planned this over a month ago,” admitting it was his idea to rob Rosales of his drugs. He did not intend for anyone to be shot. According to Liberio, defendant described “something went awry and that Mr. Jackson had shot Mr. Rosales.” Defendant said the plan involved he and Mayes going to Rosales’ house and that there would be a telephone call as the signal for Jackson and Martin to come into the house. Defendant said that the silver gun used by Jackson was his gun. Defendant also prepared a written statement at Liberio’s request. Liberio identified exhibit 4d as the videotape recording of the interview at approximately 7:40 p.m. on April 1, 2008. He stated that the video accurately depicted the interview, but that the audio worked very poorly.

¶ 45 On April 2, 2008, at 2:30 p.m., he interviewed defendant at the jail interview room to clear up a few issues. Again, he advised defendant of his *Miranda* rights. Defendant agreed to speak with him, and the interview lasted 20 or 25 minutes. Liberio identified exhibit 4e as the videotape recording of the interview conducted on April 2, 2008. Liberio said that the audio did not properly record.

¶ 46 Defense Witnesses

¶ 47 The defense called defendant who testified that he was interviewed by two police officers at 2:50 a.m. on April 1, 2008, in the lower level of the police department. He stated that he considered himself in custody at that time and not free to leave. Defendant denied that any

officer told him that he was free to leave during the interview at 2:50 a.m. The prosecutor did not cross-examine defendant.

¶ 48 Court's Ruling on Amended Motion to Suppress Statements

¶ 49 After taking the matter under advisement at the conclusion of the hearing on April 27, 2009, the parties appeared before the court for a ruling on defendant's amended motion to suppress statements on May 27, 2009. On that date, the court advised the parties that it had issued a written decision in the case after considering the testimony and credibility of the witnesses, the exhibits admitted into the record, the case law authority and arguments presented by the attorneys.

¶ 50 In regard to exhibit 4a, the court found that on April 1, 2008, officer Fasana found two male subjects standing in the driveway and ordered them to the ground at gunpoint. Fasana patted down the subjects and placed them in handcuffs. The court found that defendant was detained and not free to leave.

¶ 51 The court noted defendant was transported to the Naperville police department, a place of detention as defined by statute, but found that after the police removed defendant's handcuffs at the station, defendant was no longer detained, not under arrest, and free to leave at the time defendant when he made the statement contained in exhibit 4a. The court believed that a reasonable person in defendant's position would not have considered himself in custody when the statement in exhibit 4a was made. After finding exhibit 4a was recorded by the police without the knowledge or consent of defendant, the court ruled that exhibit 4a was not admissible at trial due to a violation of the eavesdropping statute

¶ 52 Next, the court stated that section 103-2.1 of the Code of Criminal Procedure (725 ILCS

5/103-2.1 (West 2006)) did not apply to exhibit 4b “as no question was asked and therefore no custodial interrogation occurred.” Therefore, exhibit 4b was admissible.

¶ 53 The court found that at the time defendant made the statements contained in exhibits 4c, 4d, and 4e, defendant was in custody, and the questions asked were reasonably likely to elicit incriminating responses. Law enforcement knew defendant was a suspect in a murder investigation and that the statements were made at a place of detention. The court further found that exhibits 4d and 4e “are recordings that are not substantially accurate because the audio failed to record properly.” The court found that the police did not intentionally alter the recordings and that although unknown to the officers, “proper, substantially accurate recording was not feasible.”

¶ 54 The court further found that defendant was not mistreated, abused or harassed and that the police did not advise defendant what to say. The court concluded by a preponderance of the evidence that defendant’s statements were voluntarily given and reliable. Therefore, the court concluded that exhibits 4c, 4d and 4e were admissible.

¶ 55 Hearing on Motion to Quash Arrest and Suppress Evidence

¶ 56 On August 31, 2009, the court conducted a hearing on defendant’s motion to quash arrest and suppress evidence. The parties submitted a stipulation to the court which allowed the court to consider the evidence produced at the hearing on defendant’s amended motion to suppress statements when considering defendant’s motion to quash arrest and suppress evidence. The parties also stipulated that if called to testify in regard to defendant’s motion to quash arrest and suppress evidence, detective Cunningham would testify consistent with the contents of the police report provided to the court.

¶ 57 According to the report, Cunningham, “received an anonymous tip” on April 1, 2008, at 3:55 p.m. concerning the Rosales homicide investigation. The report detailed the information Cunningham received from the anonymous, female caller.

¶ 58 Court's Ruling on Motion to Quash Arrest and Suppress Evidence

¶ 59 After hearing arguments, the court took the motion to quash arrest and suppress evidence under advisement. On September 9, 2009, the court denied defendant’s motion to quash arrest and suppress evidence based on its previous findings that the police did not arrest defendant until approximately 4 p.m. after receiving the anonymous tip. The court found that the informant’s call had “sufficient indicia of reliability, and that with that information, along with other information known to the police, probable cause existed for the arrest of the defendant at approximately 4:00 o’clock on April 1, 2008.”

¶ 60 ANALYSIS

¶ 61 On appeal, defendant raises three claims of error. First, defendant argues that the trial court should have quashed defendant’s arrest and suppressed all evidence because the officers did not have probable cause to place defendant in custody at the scene and did not later develop probable cause to arrest defendant at the police station. Second, defendant argues that even if the officers developed probable cause after he was transported to the police station, the trial court should have allowed defendant’s motion to suppress all his statements because defendant's interviews were not accurately recorded as required by statute. Third, defendant argues that since the trial court concluded the first interview was recorded by the police in violation of the eavesdropping statute, the court should have suppressed all of his subsequent statements as the fruit of the initial eavesdropping violation.

¶ 62 The State contends that the police released defendant from custody upon arrival at the police station and that defendant's initial statements to the police were voluntarily made. The State submits that subsequently, the police properly arrested defendant based on probable cause that developed from an anonymous phone call which the police received at approximately 3:55 p.m. on April 1, 2008. The State agrees some of the recordings of defendant's statements, after his arrest, were not accurate, but argues since accurate recordings were not feasible, the contents of those statements should be admitted. Finally, the State argues these subsequent statements did not result from the initial, recorded conversation which the court found violated the eavesdropping statute.

¶ 63 Turning to the issue of whether defendant was arrested at the scene, the case law provides that a reviewing court should consider the totality of the circumstances and ask "whether a reasonable person, innocent of any crime, would have believed that he was not free to leave." *People v. Williams*, 303 Ill. App. 3d 33, 40 (1999). A reviewing court should consider the following factors when determining if an arrest occurred: (1) the time, place, length, mood and mode of the encounter between the defendant and the police; (2) the number of police officers present; (3) any indicia of formal arrest or restraint, such as the use of handcuffs or drawing of guns; (4) the intention of the officers; (5) the subjective belief or understanding of the defendant; (6) whether defendant was told he could refuse to accompany police; (7) whether the defendant was transported in a police car; (8) whether the defendant was told he was free to leave; (9) whether the defendant was told he was under arrest; and (10) the language used by officers. *People v. Jackson*, 348 Ill. App. 3d 719, 728 (2004); See *People v. Willis*, 344 Ill. App. 3d 868, 875 (2003); *People v. Delaware*, 314 Ill. App. 3d 363, 370 (2000); *People v. Williams*, 303 Ill.

App. 3d at 40; *People v. Wallace*, 299 Ill. App. 3d 9, 17-18 (1998); *People v. Lenius*, 293 Ill. App. 3d 519, 534-35 (1997).

¶ 64 In this case, it is undisputed that multiple, uniformed officers arrived in squad cars at 2511 Sheehan in Naperville, Illinois, at approximately 12:30 a.m. on April 1, 2008. Kevin Fasana, the first Naperville police officer to arrive, drew his weapon, ordered defendant to the ground, and conducted a quick pat down for weapons. Fasana stated that defendant was handcuffed “for officers’ safety” while he secured the house. After several more minutes, other officers conducted a more thorough search of defendant without discovering any weapons.

¶ 65 Additionally, Wagner testified that he no longer felt his safety was in jeopardy “[a]s soon as we basically had them in handcuffs after the pat-down which revealed no weapons, the threat was minimized.” He stated that at this point, only one or two minutes had passed. At this point, we conclude the concerns for officer safety no longer justified the use of handcuffs.

¶ 66 Nonetheless, Wagner did not remove the handcuffs, and defendant remained on the ground. Officer Wagner testified that he was in full uniform and stood guard over the “two black males on the ground” while Fasana and Erdman went inside to search the residence. Wagner testified he told defendant and Mayes they were detained but not under arrest while the handcuffed men were allowed to remain sitting on the ground. Shortly thereafter, defendant was placed in the back seat of a squad car where he remained, alone and handcuffed, until he was transported to the police station.

¶ 67 Based on officer Wagner’s testimony, we conclude a reasonably innocent person ordered to the ground at gunpoint, searched and then placed alone in a marked squad car while handcuffed during the passage of 20 to 30 minutes would not feel that he would be free to leave

the scene based on these circumstances. Consequently, we conclude defendant was placed under arrest at the scene in the absence of probable cause.

¶ 68 In this case, based on a lack of probable cause to arrest, defendant requested the court to exclude videotapes of defendant. For purposes of review, defendant's first interview took place at 2:50 a.m. on April 1, 2008, was not videotaped, and was not the subject of defendant's motion to quash arrest and suppress evidence. Defendant's second interview, State's exhibit 4a, took place at 4:45 a.m. on April 1, 2008, was accurately recorded, and was suppressed by the trial court based on a violation of the eavesdropping statute.¹ The trial court's denial of defendant's request to exclude exhibits 4b, 4c, 4d, and 4e is the ruling at issue in this appeal.

¶ 69 When denying defendant's request to suppress exhibits 4b, 4c, 4d, and 4e, the trial court found that defendant was no longer detained after arriving at the police department and was free to leave because the police removed defendant's handcuffs and offered him food, water and the use of the bathroom. According to the court, defendant voluntarily remained at the station, and during this time, the police developed probable cause to arrest defendant based upon an anonymous tip. Consequently, the trial court determined defendant's statements were both voluntary and admissible. We disagree.

¶ 70 State's exhibit 4b is a videotape of defendant wearing an orange jump suit while sitting alone in an interview room of the Naperville police department. State's exhibit 4b was videotaped at approximately 4 p.m. on April 1, 2008, approximately 14 hours after defendant's handcuffs were removed after his arrival at the station. State's exhibit 4c, a videotape of

¹ The court excluded State's exhibit 4a after finding that the recording violated the eavesdropping statute, and this exhibit is not the subject of this appeal.

defendant's third interview, was accurately recorded two hours later at 6:15 p.m. on April 1, 2008. Defendant's fourth interview depicted in State's exhibit 4d occurred at 7:40 p.m. on April 1, 2008. The fifth interview with defendant, State's Exhibit 4e, took place at 2:30 p.m. on April 2, 2008.

¶ 71 By all accounts, defendant was transported to the police station in handcuffs and taken to an interview room in a restricted area on the lower level of the station. While Detective Liberio apologized for holding defendant in handcuffs and directed officer Wagner to remove the handcuffs shortly after arrival, defendant testified that he did not feel free to leave. Moreover, Wagner sat with defendant after removing the handcuffs and waited with defendant until the detectives began the first interview at 2:50 a.m. on April 1, 2008. Even though during this first interview, Deuchler assured defendant he was not under arrest, Officer Rimdzius concluded, based on his observations, that after Mayes and defendant were placed in separate interview rooms, neither man was free to leave the station. In addition, Deuchler took defendant's clothing and cellular telephone and replaced defendant's clothing with clean jail fatigues.

¶ 72 Following this first interview with Deuchler and Bisch, defendant sat alone in an interview room for nearly two hours before he was re-interviewed by Deuchler and Liberio at 4:45 a.m. on April 1, 2008. Thereafter, defendant remained in the lower level of the police station, separated from Mayes, for approximately 11 more hours without the officers telling defendant again that he was free to leave. Finally, at 3:40 p.m. on April 1, 2008, the officers made it clear that defendant could leave the station by bringing defendant upstairs into a public lobby. However, within minutes, defendant was told that the police needed to speak with him again, and thereafter, at 4:45 p.m., the police told defendant that he was under arrest.

¶ 73 We previously concluded the police arrested defendant at the scene and continued the detention after placing him in the squad car, while handcuffed, after officer safety concerns disappeared. We note this unlawful detention continued while defendant was transported to the police station. Having arrived at the police station in the custody of the police, we note that while handcuffs were removed, defendant remained in the company of officer Wagner, who sat with defendant, until the first interview occurred. Then, defendant was asked to surrender his clothing and cell phone, was given jail fatigues to wear, and remained separated from Mayes for nearly 13 additional hours without any further assurance from the police that he could leave the interview room or the station.

¶ 74 Based on the circumstances outlined above, we conclude the trial court's finding that defendant voluntarily remained at the police station for over 14 hours is contrary to the manifest weight of the evidence in this case. Accordingly, all statements and other evidence subsequently obtained after the unlawful arrest, including State's exhibits 4b, 4c, 4d and 4e, must be suppressed as the fruit of this unlawful arrest. See *Brown v. Illinois*, 422 U.S. 590, 600-02 (1975); *People v. Townes*, 91 Ill. 2d 32, 39 (1982); *People v. Elliot*, 314 Ill. App. 3d 187, 191-93 (2000).

¶ 75 Harmless Error

¶ 76 Finally, we consider the State's argument that even if the trial court erred, the resulting error was harmless because of the overwhelming evidence of guilt. Defendant responds that without defendant's incriminating statements, the remaining admissible evidence was not overwhelming.

¶ 77 With the exception of two stipulations that were read into the record, the record on appeal

only contains an itemized list of the 25 stipulations and more than 100 exhibits presented to the court during the stipulated bench trial, and not the individual stipulations and exhibits. Without a more complete record, it is difficult to consider the State's contention that the error is harmless. Moreover, defendant admitted in these statements to the officers that he planned the armed robbery and provided the weapon which was used to shoot and kill the victim, Rosales, in this case. In light of these extremely damaging and incriminating statements, we conclude the error should not be considered harmless based on this record.

¶ 78 Therefore, defendant's conviction and sentence are reversed. The cause is remanded to the trial court for further proceedings consistent with this order. Since our decision on the issue regarding the absence of probable cause is outcome determinative, we find it unnecessary to consider defendant's other contentions of error.

¶ 79 **CONCLUSION**

¶ 80 The judgment of the circuit court of Will County is reversed, and the cause is remanded to the trial court for further proceedings consistent with this order.

¶ 81 Reversed and remanded.