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SECOND DIVISION
June 29, 2012

No. 1-11-1821
2012 IL App (1st) 111821-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County
)	
v.)	08 CR 19402
)	
ANTOINE RICHARDS,)	Honorable
)	James Rhodes,
Defendant-Appellee.)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Justice Harris concurred in the judgment.
Presiding Justice Quinn dissented.

ORDER

Held: Where trial court failed to make findings of fact on the record and defendant prevailed on motion to suppress, presumptively resolving all disputed issues of fact and credibility determinations in defendant's favor, the State failed to prove by a preponderance of the evidence that defendant's inculpatory statement was voluntary.

¶1 Defendant Antoine Richards made two inculpatory statements while he was being interrogated as part of a predatory criminal sexual assault investigation. Defendant moved to suppress his statements on the ground that they were not voluntary because defendant was suffering from an incapacitating diabetic episode when he made them. The trial court denied the motion as to the earlier of the two statements but granted it as to the other, later statement. The State appealed the trial court's order suppressing the second statement. We affirm.

¶2

BACKGROUND

¶3

Although many facts about this case are in dispute, as we will discuss in detail in our analysis, the following are not. A young girl complained to the Park Forest Police Department that defendant had sexually assaulted her. As part of their investigation into the allegations, two detectives went to defendant's home at about 3:00 p.m. in order to take him to the police station for interrogation. Defendant has numerous medical issues, the most significant for this case being diabetes and a heart condition. Prior to departing from his home with the detectives, defendant took doses of medication for his various illnesses.

¶4

At the police station, the detectives read defendant his *Miranda* warnings at 3:57 p.m. Defendant waived his rights in writing and agreed to speak with the detectives without an attorney present. About an hour into the interrogation, defendant made an inculpatory oral statement, which defendant then agreed to reduce to writing. After defendant again waived his *Miranda* rights in writing, one of the detectives wrote out defendant's statement as defendant orally recounted it. After completing the written statement, the detective discussed the statement with defendant and made some corrections, which defendant initialed. Defendant then signed the statement. This whole process took about another hour.

¶5

After the detectives reviewed defendant's statement and interviewed the victim again, they called the felony review unit of the State's Attorney's Office at about 9:00 p.m. An assistant State's Attorney (ASA) arrived about half an hour later. The ASA reviewed defendant's statement and spent some time speaking with the detectives. The detectives interviewed defendant again at 11:14 p.m., once more advising defendant of his *Miranda* rights. At 12:02 a.m., the ASA interviewed defendant herself. The ASA advised defendant that she was a prosecutor and not his attorney. Defendant waived his *Miranda* rights in writing again and

agreed to speak with the ASA. At some point during this 30- to 40-minute interview, defendant made a second inculpatory statement. This statement was substantially the same as the previous inculpatory statement, the only difference being that defendant allegedly admitted to additional sexual activity with the victim. The ASA asked defendant to reduce this statement to writing as well. Defendant initially agreed, but while the ASA was advising defendant of his *Miranda* rights in preparation for the written statement, defendant changed his mind and asked for an attorney. The ASA ended the interview immediately.

¶6 At some point during the interrogation, defendant had asked the detectives to call his wife and ask her to bring his medication to the police station for him. Defendant's wife arrived around the time of the ASA's interview and defendant received his medication at 1:05 a.m., followed by a blood glucose measurement about an hour and a half later.

¶7 Defendant was eventually charged with predatory criminal sexual assault. Prior to trial, defendant filed a motion to suppress the two inculpatory statements that he had made, asserting that he had been severely ill and in a diabetically weakened state during the interrogation because he had not received any medication and had not eaten. Defendant argued that his statements had to be suppressed because they were not voluntary.

¶8 The trial court denied defendant's motion as to the first statement to the detectives but granted it as to the second statement to the ASA. The trial court did not make any detailed findings of fact on the record, ruling only as follows:

“Your motion as to the later statement is granted. Your motion as to the initial statement is denied. It wasn't that long after his arrest. The times seem to coincide with the amount of time they said they spend talking to him, and there's just no indication that that statement was involuntarily made.

* * *

[The State]: You're suppressing the statement made to [the ASA]?"

THE COURT: Yes, because during that statement, the initial statement took an hour, so during the statement to the [ASA], 38 minutes into the discussion with the [ASA], he said, 'I want to have a lawyer.' And I'm finding that was part of the whole conversation with the [ASA] and that he asked for a lawyer, and, therefore, I'm suppressing whatever was said during that period of time that lead [sic] up to him saying, 'I want to have a lawyer.' "

¶9 The State filed a certificate of substantial impairment and notice of appeal. During a hearing at which the court and the parties discussed the issue of defendant's bond during the pendency of the State's appeal, the trial court explained its reasoning for the suppression ruling again:

"THE COURT: Based on the totality of the circumstances, I found that one of the statements should be suppressed.

* * *

Granted in part, denied in part after [defendant] had been in custody for a number of hours without any proof that any medication had been received, knowing that he was a diabetic, after calling his wife and tried [sic] to get someone to bring medication to him.

I remember that well now."

¶10 ANALYSIS

¶11 The sole question on appeal is whether defendant's statement to the ASA should be suppressed. There is a two-part standard of review for a trial court's ruling on a motion to

suppress evidence. On questions of fact, we must defer to the trial court's factual findings unless they are against the manifest weight of the evidence. See *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006). "This deferential standard of review is grounded in the reality that the circuit court is in a superior position to determine and weigh the credibility of the witnesses, observe the witnesses' demeanor, and resolve conflicts in their testimony." *People v. Richardson*, 234 Ill. 2d 233, 251 (2009). However, we are free to determine how those facts apply to the legal issues at hand, so we "review *de novo* the trial court's ultimate decision as to whether suppression is warranted." *Luedemann*, 222 Ill. 2d at 542.

¶12 As we mentioned above, although the basic timeline of defendant's interrogation is undisputed, there was a great deal of conflicting testimony about the material facts that are at issue here. There is no doubt that defendant waived his *Miranda* rights several times. Rather, the material issue at the suppression hearing was whether defendant's statements were voluntary given his physical condition, and on this point there is a stark contrast between the testimony presented by the parties.

¶13 The State presented the testimony of one of the detectives who interrogated defendant. The detective noted that he was aware that defendant was a diabetic and that he had seen defendant take some medication at his home shortly after the detectives arrived. The detective testified that defendant was cooperative throughout the interrogation. The detective advised defendant of his rights several times, and each time defendant waived his rights and expressed a clear understanding of them. Although defendant wore glasses, the detective testified that defendant had them on when he reviewed the written *Miranda* warnings and when he reviewed the written statement that the detective prepared for defendant. When he reviewed the statement, defendant initialed next to errors and revisions. The detective also testified that he provided

defendant with food at about 9:00 p.m. According to the detective, defendant never indicated that he did not understand his rights, never indicated that he felt ill or needed medication, and never showed signs of any illness or other physical condition.

¶14 The ASA also testified for the State. When she spoke to defendant, he was cooperative and agreed to speak with her after he waived his rights. Defendant never indicated that he did not understand his rights, and he initialed next to a description of each right on the written form that the ASA provided for and explained to him. Defendant never appeared ill, never indicated that he was sick or needed medication, and never mentioned that he was unable to see.

¶15 Defendant's testimony was very different. According to defendant, shortly before the detectives arrived at his house, he was feeling ill because his blood sugar was high that day. Defendant had just finished taking his medications, including a double dose of his diabetes medication, and was preparing to eat a meal when the detectives arrived at his home. Defendant stated that he was not able to eat before the detectives took him to the police station. According to defendant, when he arrived in the interrogation room the detectives took away his personal belongings, including his glasses. Without his glasses, defendant stated that he could not see clearly enough to read or write. Defendant testified that he began to feel progressively worse as the interrogation went on, including chest pains, weakness, and sweating. When the detective asked defendant to review the written statement that the detective had prepared, defendant was unable to see the paper without his glasses. Defendant stated that he did not know what he was signing and that he merely initialed and signed the paper where the detective told him to. Contrary to the detective's testimony, defendant testified that he was never given any food during the entire interrogation, and he testified that he asked the detectives at least twice to call his wife so that she could bring his medication to the police station. By the time the ASA

arrived, defendant testified that he was so sick that he could only rest his head on the table and was too sick to understand what the ASA was saying. Defendant did not recall waiving his rights or much of the conversation with the ASA, and he testified that he had thought at the time that he only spoke to the ASA for about five minutes or so before requesting an attorney.

¶16 So was defendant completely fine during the interrogation or was he suffering a diabetic collapse? The testimony of the State's witnesses was in direct conflict with defendant's testimony, making this is an issue of fact that is trial court's responsibility to resolve by choosing to credit either defendant's version of events or the detective and ASA's. What makes this case challenging, however, is that the trial court did not make any credibility determinations or other findings of fact on this point for the record. In situations like this where there are no findings of fact in the record on a material issue, there are several rules of construction that aid us in our review.

¶17 One method is to consider the facts that are implicit in the trial court's stated reasoning, which can include statements that the trial court makes at hearings subsequent to the ruling at issue. See *People v. Baez*, 241 Ill. 2d 44, 129-130 (2011) (“[C]omments by the trial court at a postsentencing hearing that shed light on claims of errors raised by the defendant are permissible; in fact, they are encouraged, to give[] the appellate court the benefit of the trial court's reasoned judgment on those issues.” (Internal quotation marks omitted.)). This is not helpful in this case, however, because the reasoning that the trial court did put on the record is contradictory and unclear. Pointing to the trial court's statement at the end of the suppression hearing that the trial court was suppressing the second statement because “[defendant] asked for a lawyer,” the State argues that the trial court retroactively (and erroneously) suppressed the second statement only because defendant invoked his fifth amendment right to counsel, not

because the statement was involuntary. In contrast, defendant points to the trial court's statement at the later hearing, at which the trial court explained that it suppressed the statement because defendant had been interrogated for hours without access to needed medication.

¶18 Both positions are plausible based on the plain language of the statements, but "[w]e ordinarily presume that the trial judge knows and follows the law unless the record indicates otherwise." See *People v. Gaultney*, 174 Ill. 2d 410, 420 (1996). As the State argues in its brief, there is no precedent for retroactively suppressing an inculpatory statement based on a defendant's invocation of the right to an attorney *after* the defendant makes the statement. Indeed, this point of law is so basic that we are only aware of one case in which that principle has been addressed. See *State v. Gilmore*, 259 N.W. 2d 846, 860 (Iowa 1977) ("The questions asked before the invocation by an accused of his right to counsel if otherwise voluntary are admissible unless excludable on some other grounds."). Given that there is no known dispute about this fundamental point of criminal procedure, there is no reason to think that the trial court mistook the law and decided to suppress the second statement based on defendant's invocation of his right to an attorney.

¶19 Still, the trial court's stated reasoning at the suppression hearing could reasonably be understood to mean that it was suppressing the statement based on invocation. There is, however, a third rule of construction that resolves the matter. "When interpreting a judgment, we strive to effectuate the trial court's intent, and, to that end, we interpret the judgment in the context in which the court rendered it. Part of that context is the pleading that sought the judgment." *People v. Wear*, 371 Ill. App. 3d 517, 530 (2007). In this case, the basis of defendant's motion was that his statement was involuntary due to his physical condition. The motion did not allege (nor did defendant ever argue) that the statement should be suppressed

because defendant invoked his right to counsel. Indeed, the entire focus of the suppression hearing, including the testimony of the witnesses and the arguments of the parties, was on defendant's physical condition. It was undisputed that defendant had waived his rights and that the interview with the ASA ended immediately after defendant invoked his right to an attorney. Moreover, all of the trial court's statements in the record, with the sole exception of the one that the State relies on, relate to the voluntariness of defendant's statement rather than invocation of his right to counsel. Under these circumstances, we must conclude that the trial court suppressed the statement on the basis of voluntariness, not on the basis of invocation.

¶20 The basis of the trial court's decision to suppress the statement ordinarily would not matter because we review *de novo* whether a statement should be suppressed. But the basis matters a great deal to the outcome of the appeal in this case because the trial court failed to make explicit findings of fact. Whenever a trial court fails to make findings of fact on the record, we "must presume that the trial court found all issues and controverted facts in favor of the prevailing party. [Citation.] Thus, we must take questions of testimonial credibility as resolved in favor of the [prevailing party], and must draw from the evidence all reasonable inferences in support of the judgment." *People v. Lagle*, 200 Ill. App. 3d 948, 954 (1990); *cf. Wear*, 371 Ill. App. 3d at 530 (discussing canons of construction). If the trial court had, in fact, suppressed the second statement on the basis of invocation, then the only material factual question would be whether defendant invoked his right to counsel before or after he made the inculpatory statement to the ASA. That question was never in dispute at the hearing, so the lack of factual findings by the trial court would be irrelevant to our review.

¶21 But the issue in dispute was voluntariness, not invocation, and the testimony regarding that issue was in direct conflict. Because defendant prevailed in the trial court and the trial court

did not make any explicit findings of fact, we must presume that the trial court resolved all issues of fact and credibility in his favor. This means that, by ruling in defendant's favor regarding the second statement, the trial court chose to credit defendant's account of his physical and mental state over that of the ASA. We are therefore bound by the trial court's implicit factual finding that defendant was so physically ill by that point that he could not understand what the ASA was saying to him and could not recall making any inculpatory statement. *Cf. Lagle*, 200 Ill. App. 3d at 954 (noting, in a similar situation where the defendant prevailed on a motion to suppress and trial court failed to make findings of fact, that "in the instant case, we are not at liberty to believe [the arresting officer's] version of the facts").

¶22 The dissent brings up several good points about this result that we think are important to highlight. In particular, the dissent quotes *In re G.O.*, 191 Ill. 2d 37 (2000), for the proposition that, when the Illinois Supreme Court adopted the U.S. Supreme Court's analytical framework for voluntariness of a confession (see *Ornelas v. United States*, 517 U.S. 690 (2000)), the Illinois Supreme Court also cautioned that "for this standard of review to function as intended, trial courts must exercise their responsibility to make factual findings when ruling on motions to suppress." *G.O.*, 191 Ill. 2d at 50. We wholeheartedly agree with the supreme court's admonition. This case is a prime example of how difficult it is for us to review a trial court's ruling when the trial court fails in its responsibility to make findings of fact on the record.

¶23 Where we part ways with the dissent is on the proper remedy in this situation. The dissent would essentially adopt a rule of *per se* reversal for any case where the trial court did not make findings of fact on the record. From our perspective, however, there are two problems with adopting such a rule. First, we can find no precedential support for a rule of *per se* reversal. Indeed, the passage from *G.O.* that the dissent quotes is *dicta*, not the holding of the case. The

relevant section of *G.O.* dealt only with the question of whether *Ornelas* should apply in Illinois state courts. See *id.* at 46-47. The Illinois Supreme Court did not hold that a trial court's failure to find facts on the record would result in *per se* reversal. Although *obiter dicta* of a court of last resort can be binding (see *People v. Williams*, 204 Ill. 2d 191, 207 (2003)), the supreme court's comments in *G.O.* do not help us resolve the remedy question. There is no doubt that the supreme court disapproves of a trial court's failure to find facts on the record, but the supreme court is silent on what the remedy should be. In the absence of clear guidance from the supreme court on this issue, we must follow our own prior decisions on this topic in the form of *Lagle* and *Wear*.

¶24 Second, there is a procedural problem with this type of rule. The dissent points out that "trial courts which wish to be affirmed on appeal would always be better off not making factual findings on motions to suppress." Perhaps, but this overlooks the fact that the State, as the appellant in this case, bears the burden of ensuring that the record is complete, not the trial court. See *People v. Cunningham*, 2012 IL App (3d) 100013, ¶ 26 (citing *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391 (1984)). Regardless of the trial court's failure to make explicit findings of fact on the record, the State neglected to take any steps to remedy the problem. Had the State simply asked the court for its findings of fact, all of these problems on appeal could have been avoided. Why then must we automatically reverse and remand for findings of fact that should have been entered on the record in the first place? We do not do so in other situations where the record is incomplete. A rule of *per se* reversal in this situation would merely allow appellants to benefit from their procedural negligence, and we can see no reason why this situation should be an exception to our ordinary rules of forfeiture.

¶25 Perhaps more importantly, this is not a remedy that the State has even asked for. The State asks only for reversal on the ground that the trial court incorrectly suppressed defendant's statement due to invocation. In fact, the State's brief does not even acknowledge that there was a material factual conflict in the testimony on the issue of voluntariness, much less that by ruling for defendant the trial court implicitly resolved that conflict in defendant's favor. Crucial to the outcome of this case is that the State does not argue on appeal the trial court's implicit factual findings were against the manifest weight of the evidence. The State merely asserts in its opening brief that there are no issues of fact or witness credibility and that our review should be *de novo*. Any challenge to the trial court's factual findings is therefore forfeit (see Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008)), so there is no reason to remand to the trial court in order for it to make factual findings on the record.

¶26 Because the State attacks only the trial court's ultimate legal conclusion rather than its findings of fact, the rest of the analysis is straightforward. In the context of a motion to suppress statements,

“the State bears the burden of proving, by a preponderance of the evidence, that the statement was voluntary. [Citations.] The State carries the initial burden of making a *prima facie* case that the statement was voluntary. Once the State makes its *prima facie* case, the burden shifts to the defense to produce some evidence that the confession was involuntary [citation], and the burden reverts back to the State only upon such production by the defense.” *Richardson*, 234 Ill. 2d at 254.

As the supreme court has summarized, the analysis is fact driven:

“The test of voluntariness 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.

In determining whether a statement is voluntary, a court must consider the totality of the circumstances of the particular case; no single factor is dispositive. Factors to consider include the defendant's age, intelligence, background, experience, mental capacity, education, and physical condition at the time of questioning; the legality and duration of the detention; the presence of *Miranda* warnings; the duration of the questioning; and any physical or mental abuse by police, including the existence of threats or promises.” (Internal quotation marks omitted.) *Id.* at 253-54.

¶27 Assuming that all disputed factual issues were resolved in favor of defendant, as we must because of the lack of findings of fact in the record, we have the following material facts. Defendant was a relatively educated person. Defendant was advised of and waived his *Miranda* rights several times. Defendant was detained and interrogated for about 10 hours, during which he was not fed and did not have access to his glasses. Defendant was diabetic and had a heart condition. He had not eaten or taken any medication since at least 3:00 p.m., at which time he was already physically affected by his medical condition. As the interrogation wore on, defendant experienced significant physical distress. Despite at least two requests, defendant was not provided with any medication. Due to the deterioration of his condition, by the time that defendant made his inculpatory statement to the ASA, he was so ill that he could not understand what the ASA was saying to him and could not remember receiving or waiving his *Miranda* rights. Defendant could not recall talking to the ASA for more than a few minutes and could not

recall what he said. Based on these facts, we must conclude that the State did not prove by a preponderance of the evidence that defendant's statement to the ASA was voluntary.

¶28 The only similar case that the State cites in opposition to this conclusion is *People v. Byrd*, 90 Ill. App. 3d 429 (1980). In that case, the defendant alleged that his statement was involuntary because he was suffering severe drug withdrawal symptoms at the time. The defendant testified that he was sweating, shaky, and nervous during the interrogation and repeatedly informed the officers of his condition. The officers, however, testified that the defendant exhibited no symptoms of illness and stated that he understood his *Miranda* rights. See *id.* at 430-32. We affirmed the trial court's denial of the defendant's motion, largely because the defendant conceded in his own testimony that he understood his *Miranda* rights when the police advised him of them. See *id.* at 434. Moreover, the defendant's physical distress was relatively minor, and we noted that "there was no evidence that the pain suffered by defendant was of such nature as to overcome his ability to understand either the *Miranda* warnings or the implications of his statement." *Id.*

¶29 Unlike *Byrd*, in this case defendant testified that he did not recall receiving *Miranda* warnings from the ASA when he spoke to her, and he also testified that he did not even remember giving her a statement. Although the ASA and the detective gave testimony that conflicted with defendant's testimony on this important point, we are bound by the trial court's factual findings and credibility determinations. In fact, in *Byrd* we were also bound by the trial court's factual findings, though in that case they favored the State rather than the defense. See *id.* ("The direct conflict between the facts related by witnesses for the defense and those testified to on behalf of the People was essentially a question of the credibility of the witnesses best resolvable by the trial court, whose determination must be sustained unless contrary to the

manifest weight of the evidence.”). Regardless of what we may think about the relative credibility of the ASA, the detective, and defendant, that issue was implicitly resolved by the trial court. As in *Byrd*, we must defer to the trial court on issues of fact and credibility, and the trial court’s implicit resolution of those issues dictates the legal outcome in this case.

¶30 CONCLUSION

¶31 The trial court’s failure to make findings of fact on the record requires us to assume that all disputed factual issues were resolved in defendant’s favor. Based on those facts, we must conclude that the State did not prove that defendant’s statement to the ASA was voluntary.

¶32 Affirmed.

¶33 PRESIDING JUSTICE QUINN, dissenting.

¶34 I respectfully dissent. Initially, the record is clear that the circuit court judge ruled that defendant's statement to the assistant State's Attorney was suppressed because the defendant invoked his right to counsel forty-five minutes into the interview. I agree with the majority that this holding violates a very basic principle of law.

¶35 I also agree with the majority that, contrary to the State's position, we should consider the trial court's subsequent statement:

"[The motion to suppress statements was] granted in part, denied in part after he had been in custody for a number of hours without any proof that medication had been received, knowing that he was a diabetic, after calling his wife and tried to get someone to bring medication to him.

I remember that well, now.

So the State is appealing?"

¶36 The majority cite the holding in *People v. Baez*, 241 Ill. 2d 44, 129-30 (2011), as permitting us to consider the trial court's second statement. I note that in *Baez*, the supreme court held that it was proper to consider statements made by the trial court explaining its denial of a posttrial motion attacking the court's imposition of the death penalty.

¶37 Here, the circuit court's second statement was made at a bond hearing held to determine whether the defendant should be released during the State's appeal of the court's order suppressing the defendant's statement to the ASA. Consequently, the State has a point in asserting that the circuit court's second statement adds little to support the circuit court's order of suppression. However, any information helps, especially considering the utter lack of factual findings by the circuit court.

¶38 I strongly disagree with the majority's holding the "[w]henver a trial court fails to make findings of fact on the record, we must presume that the trial court found all issues and controverted facts in favor of the prevailing party. [Citations.] Thus, we must take questions of testimonial credibility as resolved in favor of the [prevailing party], and must draw from the evidence all reasonable inferences in support of the judgments.' *People v. Lagle*, 200 Ill. App. 3d 948, 954 (1990)." The two cases relied upon by *Lagle* were civil bench trials in which, unremarkably, the trial courts did not explain the rationale for their decisions.

¶39 In their discussion of the holding of *Lagle*, the majority note "cf *Wear*." The appellate court in *Wear* rejected the holding in *Lagle*, saying "we will not presume that the court had an unsolicited change of mind about the facts -- that, for no apparent reason, it now chose to believe defendant over Dawdy without bothering to say so on the record." *Wear*, 371 Ill. App. 3d at 531.

¶40 As a result of their reliance on the legally unsupported holding in *Lagle*, the majority assert "[a]lthough the ASA gave testimony on this important point, we are bound by the trial court's factual findings and credibility determinations." This is a legal fiction. The trial court entered absolutely no factual findings and made no credibility determinations for this court, or the supreme court, to consider.

¶41 The majority's reliance on the holding in *Lagle* also runs counter to our supreme court's holding in *In re G.O.*, 191 Ill. 2d 37 (2000), in which the court applied the U.S. Supreme Court's holding in *Ornelas v. United States*, 517 U.S. 690 (2000), to questions involving the voluntariness of a confession:

"Consequently, in reviewing whether respondent's confession was voluntary, we will accord great deference to the trial court's factual findings, and we will reverse those findings only if they are against the manifest weight of the evidence. However, we will review de novo the ultimate question of whether the confession was voluntary. We caution that, for this standard of review to function as it is intended, trial courts must exercise their responsibility to make factual findings when ruling on motions to suppress. Reviewing courts should not be required to surmise what factual findings that the trial court made. Instead, the trial court should make clear any factual findings upon which it is relying. It is only through this synergy between the trial and reviewing courts that appellate courts can develop a uniform body of precedent to guide law enforcement officers in their determination of whether their actions may violate the constitution." *In re G.O.*, 191 Ill. 2d at 50.

¶42 Under the majority's analysis, trial courts which wished to be affirmed on appeal would always be better off not making factual findings on motions to suppress. This is because, in the absence of such factual findings, courts of review "must presume that the trial court found all issues and controverted facts in favor of the prevailing party." This holding cannot withstand any scrutiny.

¶43 For the foregoing reasons, I would vacate the trial court's order granting the motion to suppress the defendant's statement to the ASA. I would remand the case back to the circuit court with instructions for the court to make the factual findings required under *In re G.O.*, 191 Ill. 2d at 50. This court should retain jurisdiction of this case and review the circuit court's factual findings entered on remand and, only then, rule on the issue of whether the defendant's statement to the ASA should be suppressed. See *People v. Wilberton*, 348 Ill. App. 3d 82, 83 (2004) (reviewing the trial court's ruling as to attenuation entered after this court remanded the matter for an attenuation hearing on the initial appeal.)