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2012 IL App (3d) 090833-U

Order filed January 24, 2012

IN THE APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 21st Judicial Circuit, Kankakee County, Illinois
Plaintiff-Appellee,)	
v.)	Appeal No. 3-09-0833
AURELIUSE H. PIPER,)	Circuit No. 97-CF-750
Defendant-Appellant.)	Honorable Kathy Bradshaw-Elliott, Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices Holdridge concurred in the judgment.
Justice McDade specially concurred in the judgment.

ORDER

¶ 1 *Held:* In a prosecution for triple homicide, defendant was denied a fair trial by the erroneous admission of the victims' out-of-court statements as evidence of state of mind. However, because the evidence that was properly presented was sufficient to sustain defendant's convictions, the appellate court denied defendant's request to reverse the convictions outright and instead remanded the case for a new trial.

¶ 2 After a jury trial, defendant, Aureliuse H. Piper, was convicted of three counts of first degree murder (720 ILCS 5/9-1(a)(1) (West 1996)) and was sentenced to three concurrent terms of natural life imprisonment. Defendant appeals, arguing that: (1) he was not proven guilty beyond a

reasonable doubt of first degree murder; (2) the trial court erred in allowing the State to present testimony regarding the out-of-court statements of two of the victims as evidence of state of mind and to show the effect on the listener; (3) the trial court erred in denying defendant's and the jury's request to play for the jury the videotaped recordings of defendant's police interrogation; and (4) he was denied a fair trial by certain improper comments made by the prosecution in closing argument. We agree with defendant's second argument. Therefore, we reverse defendant's convictions and sentences and remand this case for a new trial.

¶ 3

FACTS

¶ 4 This appeal comes before this court after defendant's fourth jury trial in this case. Defendant's first two jury trials in 1999 and 2001 resulted in hung juries. Defendant's third jury trial in 2003, which resulted in defendant being convicted of the murders, was reversed and remanded for a new trial by this court on appeal. See *People v. Piper*, No. 3-03-0200 (2007) (unpublished order under Supreme Court Rule 23). Defendant's fourth jury trial was held in June of 2009 and resulted in defendant being convicted of all three murders.

¶ 5 The evidence presented at defendant's fourth jury trial can be summarized as follows. Kankakee police sergeant Gregory Foster testified that on Sunday, December 7, 1997, at about 10 a.m., he was dispatched to a residence on Greenview Avenue in Kankakee for a possible homicide. Foster was the first police officer on the scene. When Foster arrived, firefighters and emergency medical technicians were already there. As Foster approached the front door, he saw defendant come out of the residence. Defendant walked to a car parked in front of the residence and opened the trunk. Defendant told Foster that he was getting cigarettes from the vehicle. Foster looked into the trunk and saw nothing unusual or threatening inside. Foster went into the residence through the front

door and saw a woman, Michelle Edwards, seated in the living room. There was a trail of blood on the floor of the living room that lead down a hallway. At the end of the hallway was a laundry room. Inside the laundry room, there was a dead male child, M.T. Hawkins, Jr., lying face down on the floor next to a mattress. The child had a wound to his rear shoulder and a sock tied around his neck. Foster went upstairs and found two more victims in a bedroom at the top of the stairs. One victim was a man lying on his back in bed, the other was a woman lying across the man's body with her head hanging over the side of the bed. Foster noted that both victims had what appeared to be gunshot wounds to their heads. Foster recognized the adult victims as M.T. Hawkins, Sr., and Patricia Easter. Foster ushered everyone out of the house, secured the residence, and called the police station for detectives to process the crime scene. During his initial check of the residence, Foster did not see any sign of forced entry. The only two civilians alive in the residence, defendant and Edwards, were taken to the police station to give statements.

¶ 6 Former Kankakee police sergeant Ron Kilman testified that at the time of the murders, he was a crime scene technician for the police department. Kilman was called to the Greenview residence on December 7 at about 11 a.m to process the crime scene. When Kilman arrived, another crime scene technician, detective Hartman, was already there. Kilman was shown through the crime scene by Foster and Hartman. There was no sign of forced entry to the residence. Upon entering the front door of the residence, Kilman saw that there was a blood swipe on the hardwood floor in the living room around the coffee table. There was a male child in the utility room (laundry room) that was deceased. There was a sock knotted around the child's neck and some blood on his back. In the living room, it appeared that the contents of a woman's purse had been dumped out on the couch. In the master bedroom at the top of the stairs, Kilman saw a deceased female subject lying

over the top of a deceased male subject. Both subjects appeared to have been shot in the head. The woman was laying face down across the bed, parallel to the headboard, with her head on the edge of the bed. On the steps leading to the upstairs bedroom, Kilman found what appeared to be a muddy shoe print. The shoe print was compared to the other shoes in the house, but no match was found.

¶7 After the master bedroom, Kilman processed the laundry room. In the laundry room, Kilman saw the young child lying face down with a sock knotted around his neck and a small stab wound to the upper back going through his shirt. There was a mattress on the floor of the room next to where the child was lying. There was blood on the mattress, on the bedding, on the floor, and on the child's legs and socks. According to Kilman, the only way that blood would have gotten on the mattress and on the bed was if the child's body had been moved.

¶8 While at the residence, Kilman and Hartman also processed the downstairs bedroom. At the time, Kilman had no reason to believe that the downstairs bedroom had any evidentiary significance. While they were in the downstairs bedroom, Hartman got a phone call from detective Etzel about the location of a wallet and a purse in that room, which Hartman recovered. Kilman did not remember much else about the downstairs bedroom, other than it was slightly in disarray.

¶9 Kilman later processed the blue Grand Prix that defendant had been driving during the time frame of the murders. The car belonged to Hawkins, Sr. No blood was found in the car, and although some knives were found in the glove compartment of the vehicle, there was no blood on those either. Kilman testified further that defendant was cooperative in giving hair and saliva samples both before and after he was arrested. Kilman acknowledged that defendant was not tested for gunshot residue but stated that such a test was not done by the police department or by the state

crime labs at the time and that the value of such a test was considered to be limited. Detective Hartman gave a similar account as to what occurred when the house was processed for evidence.

¶ 10 The 2001 expert testimony of forensic pathologist Dr. Joseph Sapala was read to the jury. In the prior proceeding, Sapala testified that he performed the autopsies on all three victims on December 7, 1997. Sapala was assisted by coroner Jim Orison and police officer Ron Kilman. From his examination, Sapala determined that Patricia Easter had suffered three gunshot wounds: a graze wound to the left upper back, a gunshot wound to her face in the left cheek area, and a gunshot wound behind her right ear. Based on his training, experience, and examination, Sapala opined to a reasonable degree of medical certainty that Patricia died as a result of the three gunshot wounds. Sapala commented that the two gunshot wounds to the head were each fatal in and of themselves. Sapala noted that the wound behind the ear contained soot, which indicated that it was a contact wound where the gun was placed directly up against Patricia's head.

¶ 11 From his examination of Hawkins, Sr., Sapala determined that Hawkins, Sr., had been shot one time in the left side of the face in the cheek area. Sapala opined to a reasonable degree of medical certainty that Hawkins, Sr., died from that gunshot wound. Sapala noted that there was an area of stippling (burned and unburned powder) around the gunshot wound, which indicated that the wound was inflicted at a close range of approximately six inches away.

¶ 12 From his examination of Hawkins, Jr., Sapala determined that Hawkins Jr. had been stabbed in the right upper back and strangled with a sock. The stab wound was about a half-inch deep and was not fatal in and of itself. Sapala opined to a reasonable degree of medical certainty that Hawkins Jr., died from strangulation as a result of the sock being tied around his neck. Sapala also included the stab wound in his description of the cause of death. Sapala noted that he did not find any

indication that Hawkins, Jr., had been abused or mistreated. As to the time of death of the three victims, Sapala could only give a time range spanning approximately 12 hours but stated that a time of death of 3 a.m. or 4 a.m. on December 7, 1997, was not inconsistent with any information that he found during the performance of the autopsies.

¶ 13 Kankakee police sergeant Thomas Kibort testified that he was a detective for the police department at the time of the murders. The day after the murders, Kibort was sent to the Greenview residence with detective Miller to see if anything had been missed. By that time, the residence had already been processed, and the bodies had been removed. The residence was still blocked off with crime scene tape and a uniformed police officer was stationed in the front of the residence. After doing a walkthrough of the residence, Kibort checked the downstairs and Miller checked the upstairs. Kibort focused on areas other than where the bodies were found that had not been heavily processed.

¶ 14 One of the rooms that Kibort checked was the downstairs bedroom (the bedroom of defendant and Michelle Edwards). Kibort described the room as being a little messy, stating that it was cluttered with clothes and normal stuff. There was no indication that forced entry had been made into that bedroom. Kibort noticed that there were some clothes on the waterbed and on the floor. Kibort checked the waterbed and found a black wallet belonging to Hawkins, Sr., on the left side tucked down between the frame and the waterbed. As he was checking the clothes on the bed for stains, Kibort came across a pair of tan pants that had what appeared to be blood stains on them. The pants were rolled up underneath some other clothes on the waterbed. Kibort photographed the wallet and the pants, took them to the police station, and turned them over to evidence technicians.

¶ 15 During his testimony, Kibort acknowledged that he moved things around in the room while checking for evidence but denied that he staged the photographs that he took of the pants. Kibort

also denied that he planted the pants in the downstairs bedroom. In addition, Kibort stated that he was pretty sure that there was blood on other clothes in the laundry room, but he did not check that room because it had been heavily processed the previous day.

¶ 16 Forensic Scientist David Turngren testified that he was employed by the Illinois State Police Crime Lab. Turngren was qualified by the court as an expert in forensic biology, blood identification, and deoxyribonucleic acid (DNA) and blood splatter analysis. Turngren testified that he examined the tan pants that were found in the downstairs bedroom and the sock that was found tied around Hawkins, Jr.'s, neck. Upon examining the pants, Turngren found seven areas of medium velocity blood splatter: three splatters on the front right knee area, one splatter on the front bottom right leg area, one splatter on the front left pocket area, and two splatters on the bottom left leg area. Turngren compared the DNA contained in the blood splatters to the DNA contained in the blood standards that were submitted of Hawkins, Sr., Patricia Easter, Hawkins, Jr., defendant, Michelle Edwards, Mark Easter (Patricia's estranged husband), and Danny Suprenant (Patricia's teenage son). Based on his testing and expertise, Turngren opined to a reasonable degree of forensic and scientific certainty that a mixture of defendant's and Hawkins, Jr.'s, DNA was found on three areas of the pants, including one of the blood splatters on the front right knee area. In addition, a mixture of Hawkins, Jr.'s, DNA and another person's DNA was found on other areas of the pants. Defendant could not be excluded as a possible contributor of the DNA in that mixture, but all of the other persons whose standards were submitted could be excluded. Some of the other blood stains contained a mixture of the DNA of three people. Hawkins, Jr., and defendant could not be excluded as possible contributors of the DNA in those mixtures, although all of the others could be excluded.

¶ 17 Turngren examined the sock and found blood stains on it as well. Some of the stains

contained Hawkins, Jr.'s, DNA only. Other stains contained a mixture of three people's DNA. Hawkins, Jr., and defendant could not be excluded as possible contributors of the DNA in those mixtures, although all of the others could be excluded. In an additional blood stain on the sock, Hawkins, Jr.'s, DNA and a low level of another person's DNA were detected. Defendant could not be excluded as the possible contributor of that DNA, although all of the others could be excluded.

¶ 18 In cross-examination, Turngren acknowledged that it would not be uncommon for people who lived together to have each other's DNA on their clothing, and that DNA might transfer to another person's clothing in the laundry. Turngren stated that the fact that DNA was on a piece of clothing could merely mean that a person was wearing that clothing at some point. Turngren also acknowledged that blood splatter could have hit the tan pants if they were bunched up on the floor in an area where blood was spilled. Upon further questioning regarding the blood stains that defendant could not be excluded from, Turngren stated that 1 in 10 African Americans also could not be excluded, nor could 1 in 9 Hispanics or 1 in 13 Caucasians.

¶ 19 Kankakee police detective Jay Etzel testified that on December 7, 1997, at approximately 10:45 a.m., he interviewed the defendant at the police department. Following the interview, Etzel typed a statement, which defendant signed. The statement noted that defendant lived at the residence with the following people: Michelle Edwards, Hawkins, Sr., Hawkins, Jr., Patricia Easter, Danny Suprenant, Jennifer Easter, Lindsey Easter, and Jasmine Easter. Michelle was defendant's girlfriend and the sister of Hawkins, Sr. Danny, Jennifer, Lindsey, and Jasmine were Patricia's children. Another child of Patricia, Mike, stayed at the house two or three times per week.

¶ 20 Defendant's statement to the police continued by noting that in the early evening of December 6, 1997, defendant was home playing video games and cooking a roast when Patricia, Danny, and

Hawkins, Sr., got into an argument. During the argument, defendant and Michelle left the house and drove to Hopkins Park. Defendant dropped Michelle off at her friend's house and then went to a tavern with his friend, Craig Hawkins. Sometime thereafter, defendant left the tavern, picked up Michelle, and drove back to the Greenview residence to take out the roast. When they arrived, Hawkins, Sr., and Patricia were watching television, while Hawkins, Jr., and the Easter girls played. Neither Danny nor Mike was at the residence.

¶ 21 Defendant and Michelle stayed at the Greenview residence for about 10 minutes and then returned to Hopkins Park. After dropping Michelle off at Craig's house, defendant and Craig went to Rob's house. Defendant later drove Craig home and returned to Rob's house where defendant fell asleep. Defendant's statement continued by noting that after falling asleep at Rob's house, defendant woke up and went to Roger Speed's house in Hopkins Park.

¶ 22 Defendant stated that he arrived at Roger's house at about 3 a.m. on December 7, although Roger's car clock, which defendant knew to be one hour ahead, indicated that it was 4 a.m. Defendant and Roger drove around and ended up at Roger's girlfriend's house in Hopkins Park where they stayed for about two or three hours. Defendant picked up Michelle at Craig's house, dropped Roger off at Roger's house, and returned to the Greenview residence.

¶ 23 Defendant and Michelle entered the Greenview residence through the back door, which was unlocked as it usually was. Defendant went into his bedroom and noticed that his dresser drawers were open and that things were in disarray. He then heard Michelle scream. Defendant went to the laundry room and saw Hawkins, Jr., lying on the floor. Defendant bent down to listen for Hawkins, Jr.'s, heartbeat, but did not hear anything. Defendant ran upstairs and found Hawkins, Sr., and Patricia on the bed. Defendant listened to their hearts, but did not hear anything either. Defendant

saw his wallet and Hawkins, Sr.'s, wallet on the floor. Defendant picked up the wallets, put his on the dresser, and put Hawkins, Sr.'s, wallet in defendant's bedroom in the waterbed. While in his bedroom, defendant noticed Patricia's purse on his bed and put it in the bedroom closet because he got scared. Edwards called 911. Defendant's statement ended with defendant indicating who he thought may have committed the crimes. Following the interview, detective Etzel notified evidence technicians at the scene that Hawkins, Sr.'s, wallet could be found in defendant's waterbed and Patricia's purse could be found in defendant's bedroom closet.

¶ 24 On December 12, 1997, after learning that Hawkins, Jr.'s, DNA had been found in a blood stain on a pair of pants that were recovered from defendant's bedroom in the Greenview residence, Etzel again interviewed defendant. The interview lasted just over five hours, including breaks, and was tape recorded with both audio and video. During that interview, Etzel asked if everyone got along at the Greenview residence, and defendant responded that everything was good at the residence and that he did not have any problems with anybody. At the trial, that testimony was initially elicited by the State and then followed up upon in cross-examination by the defense. Etzel testified further that defendant maintained his innocence throughout the interview and that defendant first stated that the police had planted the pants in his bedroom and later denied that the pants were his. Etzel also testified that he discussed the presence of \$2 bills with defendant and defendant admitted that he had some \$2 bills that morning, but Etzel did not remember where defendant had said he got the \$2 bills. Defendant told Etzel that he had a key to the Greenview residence and that when he and Michelle arrived that morning, there was no sign of forced entry. Defendant also denied that he was in the area of the Greenview residence during the early morning hours in the blue Grand Prix with the loud muffler.

¶ 25 At some point, Etzel measured the distance from L.C. Speed's house and the Greenview residence. The distance was 16.8 miles and took about 24 minutes to drive, traveling at the speed limit.

¶ 26 At or near the conclusion of Etzel's testimony, defendant's written statement and the videotapes (the videotape) of defendant's December 12, 1997, interview were offered into evidence by the State and admitted into evidence by the trial court.¹ The videotape was admitted for the limited purpose to show that defendant had been read his *Miranda* rights, that the interview was recorded, and the length of the interview. The videotape, therefore, was not played for the jury.

¶ 27 Steven Geiger and Jesse Quigley testified that at the time of the murders, they lived two houses down from Hawkins, Sr., on Greenview Avenue. Both witnesses recalled that Hawkins, Sr., owned an older Grand Prix that had a very loud muffler. Quigley had seen defendant drive that car on previous occasions. Geiger testified that around 4 a.m. on December 7, he heard a car outside with a loud muffler. Geiger thought it might be his brother coming home, as one of his brother's friends owned a car with a loud muffler. Quigley estimated the time to be between 4 a.m. and 4:15 a.m. and stated that he looked outside after hearing the loud muffler and saw a Grand Prix he recognized as belonging to Hawkins, Sr., driving away from the area.

¶ 28 Donna Trost testified that at the time of the murders, she lived a few houses down and across the street from Hawkins, Sr. On December 7, at about 6 a.m. or 6:30 a.m., Trost was outside with her dog when she heard a lot of screaming coming from the Greenview residence, like a person yelling to try to get someone's attention. Based on the structure of the person's body and the sound

¹Because of the length of the interview, there was more than one videotape. We will simply refer to all of the tapes as the "videotape."

of the person's voice, Trost believed that the person was a man. Trost saw the man outside the Greenview residence standing near the middle of the front yard. The man appeared to be looking up at the upstairs window and trying to get someone's attention. Trost believed that the man was calling for "Pat." After about 5 or 10 minutes, the man left the front yard, went around the back of the Greenview residence momentarily, and then returned to the front yard and began yelling again. Eventually, the man left, walking down the street. Trost did not hear any gunshots while the man was there and stated that she could not see the man well enough to determine whether he was African-American or Caucasian. However, in a previous proceeding in 1999, Trost testified that the man was Caucasian.

¶ 29 Kathie Bush was also called as one of the State's witnesses. Prior to trial, the defense had filed a motion *in limine* to bar Bush's testimony regarding Patricia's state of mind. In the appeal from the third jury trial, this court found that such testimony, although generally inadmissible, was properly admitted in the third jury trial because the defense opened the door to the testimony by telling the jury in opening statement that everyone got along in the house and that defendant did not have any problems with anyone in the house. See *Piper*, No. 3-03-0200. Relying on that statement from this court, the defense asserted in arguing the motion *in limine* that it was not going to be making that representation to the jury in the fourth jury trial. The trial court, therefore, granted defendant's motion *in limine* as to Bush. In a later pretrial hearing, the trial court reversed itself after the prosecutor represented that he was going to open the door to the testimony himself by playing defendant's videotaped statement to police in which defendant told police that everything was good at the house and that he got along with everyone.

¶ 30 Bush testified that Patricia was her best friend and that they had known each other for about

15 years. Bush stated that about a week or two before Patricia's death, Patricia told Bush that things had changed at the Greenview residence, that she felt like an outsider there, and that she was starting to be afraid of defendant. Bush told Patricia to talk to Hawkins, Sr., and that if he really loved her, he would ask defendant and Michelle to move out of the house. Bush's testimony regarding Patricia's out-of-court statement was admitted over defendant's objection as evidence of state of mind. Twice during Bush's testimony, the trial court admonished the jury that it could only consider the statement for Patricia's state of mind and not for the truth of the matter. Bush testified further that around the time of the murders, Patricia told her that Curtis Sanders, the father of Patricia's daughter, Jasmine, was harassing her at work.

¶ 31 David Kraemer testified that he was Patricia's boss at the gas station and a close friend of Patricia's. According to Kraemer, he, Patricia and Hawkins, Sr., all collected \$2 bills. Kraemer and Patricia would purchase the \$2 bills from the register when they came in. Kraemer remembered Hawkins, Sr., discussing one particular \$2 bill with him that he thought might be of added value because there was a red ink smudge on the bill. Kraemer stated that about two to three weeks before her death, Patricia told him that she was having a problem with defendant verbally abusing her children. After Kraemer testified to Patricia's statement, the trial court admonished the jury that it was only to consider the statement as it related to Patricia's state of mind and not for the truth of the matter asserted.

¶ 32 Kraemer testified further that on December 5, 1997, Patricia received a harassing phone call at work from Curtis Sanders, a man with whom she had previously had a relationship. There was also a time after Patricia took the kids and left her husband, Mark Easter, that Mark came to the station and harassed Patricia. That incident resulted in Mark breaking one of the gas station

windows with his fist. Kraemer testified that Patricia and Mark had worked things out to some extent after that incident and prior to Patricia's death and that there was no longer anger involved in their relationship.

¶ 33 Patricia Easter's estranged husband, Mark Easter, passed away prior to the fourth trial, so his testimony from a 2003 proceeding was read to the jury. During that prior proceeding, Mark testified that he and Patricia were married in 1988 and had two children together—Jennifer, age nine at the time of Patricia's death; and Lindsey, age eight. A third child, Jasmine, was also born during the marriage, but was not Mark's biological child. In approximately August of 2007, Patricia took the three girls and moved out of the marital home on Osborn Street. Patricia would not tell Mark where she was going to live and that upset Mark. Eventually Mark learned that Patricia was living at the Greenview residence with Hawkins, Sr. During that time period, Mark wrote a letter to Patricia in which he indicated his desire to quit marijuana and beer. On two occasions, Mark went to see Patricia in an attempt to reconcile. Both occasions occurred during the early morning hours, involved Mark drinking alcohol, and resulted in Mark being asked to leave by Patricia. On one of the occasions, Mark broke a window at Patricia's place of work at about 5 a.m. On the other occasion, Mark went to the Greenview residence and rang the doorbell at about 4 a.m. or 5 a.m. in an attempt to talk to Patricia.

¶ 34 On the night of December 6, 1997, Patricia went to the Mark's home some time after 10 p.m. after she closed up the gas station. The three girls—Jennifer, Lindsey, and Jasmine—were there. Patricia fell asleep on the couch while watching a movie. Mark woke Patricia up because he did not want to have any problems with Patricia or with Hawkins, Sr., and Patricia left. Patricia was supposed to return at about 4 a.m. on December 7 and do a paper route with Jennifer. Patricia did

not show up. Mark called the Greenview residence numerous times and left messages. In total, Mark called the Greenview residence about 30 times that morning trying to find Patricia. Between 6 or 6:30 a.m., Mark walked to the Greenview residence and knocked on the front and back door, rang the door bell, and yelled for Patricia to try to wake her up. When Mark knocked on the back door, it popped open several inches. Mark pulled the door closed and left the residence. Mark went back home and completed the paper route with Jennifer. Later in the morning, between 10:30 and 11:30 a.m., Mark walked back to the Greenview residence after he learned that Patricia was not at work. By that time, there were numerous police cars at the residence and the residence was secured with police tape. At the request of the police, Mark accompanied officers to the station and gave a statement later that evening. After he gave his statement, Mark was informed that Patricia was dead. During his testimony, Mark denied that he called Danny between 10 and 11 a.m. on December 7 and told Danny that Patricia was dead. Mark testified further that upon request, he turned over to police the gloves that he had been wearing when he went to the Greenview residence early that morning. The gloves were later tested at the crime lab and blood was located on or in the gloves, but it was only Mark's blood.

¶ 35 L.C. Speed testified that at the time of the murders, he lived in Hopkins Park with Rob Smith. Hopkins Park was a small town that was a few miles away from Kankakee. On December 6, 1997, defendant came to L.C.'s house and helped L.C. work on a car all day. According to L.C., defendant was wearing beige pants. Some time after midnight, L.C. fell asleep on a chair in the front room of the house. Defendant was still at the house when L.C. fell asleep. During his trial testimony, L.C. stated that about 2 or 3 a.m., he woke up, and defendant was no longer there. However, in his prior statement to police, which was given about two days after the murders, L.C. told police that he had

fallen asleep about 2:45 or 3 a.m. and that when he woke up about 3:30 a.m., defendant was gone. L.C. testified further at the trial that he knew that he woke up at 3:30 a.m. because when he woke up, he looked at his watch.

¶36 Roger Speed, L.C.'s brother, testified that at the time of the murders, he lived in Hopkins Park with his girlfriend. On December 7, 1997, during the early morning hours, Roger was awakened by the sound of a car with a loud muffler followed by a knock on the door. Roger looked at the clock on the television set. It was 4 a.m. The person at the door was defendant. Roger let defendant into his house. According to Roger, defendant was wearing dark colored pants at the time. Defendant told Roger that it seemed earlier to him. Roger and defendant talked for a while. Defendant pulled out some money and handed Roger \$20 in \$2 bills and told Roger that was what friends did. Roger took that statement to mean that defendant was giving him the money to help Roger pay back a debt of which defendant was aware. Eventually defendant and Roger left Roger's house and went in defendant's car to a gas station in Momence. They bought some gas and something to drink, and Roger paid for the items with the \$2 bills. Defendant and Roger left the gas station, rode around in defendant's car, and bought and did some drugs. At some point, defendant asked Roger for the \$2 bills back, and Roger gave defendant what was left of the \$2 bills. At about 9 a.m., defendant and Roger picked up Michelle at her mom or brother's house in Hopkins Park. After picking up Michelle, defendant took Roger home and left with Michelle. During the five hours that defendant and Roger were together, Roger never saw defendant clean out the car they were riding in, take a shower, or clean himself up in any way. Roger testified further that he was a drug addict in 1997, but that he had since recovered. According to Roger, he and defendant were both high on the morning of December 7, 1997.

¶ 37 Roger's testimony regarding the trip to the gas station in Momence was corroborated to some extent by the testimony of the cashier who worked that morning and by the gas station's surveillance system. The cashier testified that Roger came into the gas station and purchased cigarettes, a soda, and gas, and that he paid for those items, at least in part, with \$2 bills. The surveillance system showed Roger in the gas station at about 6:30 a.m. on December 7, 1997.

¶ 38 Eddie Sarkozi testified that he was one of Patricia's sons. At the time of Patricia's death, when he was 23 or 24 years old, Eddie was working at the Citgo gas station with Patricia. Patricia had seven children in all: two were Sarkozis; two were Suprenants; and three were Easters, although the youngest Easter daughter was not fathered by Mark Easter. Eddie stated that Patricia collected \$2 bills and that she kept them in her purse, although she would spend them from time to time when necessary. About a week before the murders, Eddie had a conversation with Hawkins, Sr., at the gas station. During that conversation, Hawkins, Sr., told Eddie that he was tired of all the bickering at the Greenview residence and that the following weekend, he was going to ask defendant and Michelle to find a different place to stay. Eddie's testimony regarding Hawkins, Sr.'s, out-of-court statement was allowed over defendant's objection as evidence of state of mind. After Eddie testified about the statement, the trial court admonished the jury that the statement could only be considered for state of mind and not for the truth of the matter asserted.

¶ 39 Eddie testified further that during the evening hours of December 5, 1997, a man called for Patricia at the gas station. Eddie was working at the time and told the man not to call there anymore. Eddie testified that he did not know who the caller was, however, in his prior written statement to police, Eddie stated that he thought the caller might have been Curtis, Jasmine's father.

¶ 40 Jennifer Easter testified that she was Patricia's daughter and was 21 years old at the time of

defendant's fourth jury trial. At the time of the murders, Jennifer was nine years old. Jennifer had three brothers and three sisters: Julie Pombert (Suprenant), Lindsey Easter, Jasmine Easter, Eddie Sarkozi, Mike Sarkozi, and Danny Suprenant.

¶ 41 When Jennifer's mother (Patricia) and father (Mark) were still together, they lived on Osborn Street in Kankakee with Jennifer, Lindsey, and Jasmine. Prior to the start of the 1997-98 school year, Patricia, the three girls, and Danny moved into the Greenview residence. The Greenview residence was about 5 to 10 blocks from the Osborn residence, and it took at least 15 minutes to walk between the two residences. When Patricia, Danny, and the three Easter girls moved into the Greenview residence, Hawkins, Sr., Hawkins, Jr., defendant, and his girlfriend, Michelle Edwards, already lived there. Defendant went by the nickname of "Buddy." Jennifer and Hawkins, Jr., were both nine years old and were both in the fourth grade at the time. Jennifer shared one of the three upstairs bedrooms with Lindsey and Jasmine. Patricia and Hawkins, Sr., slept in the upstairs master bedroom. Initially, Danny and Hawkins, Jr., slept in the third upstairs bedroom. Later, however, Hawkins, Jr., was moved into the laundry room downstairs because of constant fighting between Danny and Hawkins, Jr. After that point, the laundry room was used as Hawkins, Jr.'s, place to sleep.

¶ 42 The day before the murders, Saturday, December 6, 1997, Patricia and Danny got into a big argument at the Greenview residence. Danny was yelling at Patricia. After the argument, Hawkins, Sr., told Danny that he had to move out. Danny packed his bags.

¶ 43 Later that same day, Jennifer and her sisters spent the night at the Osborn residence with their father (Mark). Patricia was there with them for most of the evening. According to Jennifer, Patricia went to Mark's house a lot, and there was no arguing going on between Patricia and Mark that

evening. During the course of the evening, Patricia fell asleep on the couch. Some time before midnight, Mark woke Patricia up, and she left. That was the last time Jennifer saw Patricia alive. The next morning, Patricia never showed up at 4 a.m. to do her paper route with Jennifer. Mark did the route with Jennifer instead. Mark called Patricia several times but there was no response.

¶ 44 Jennifer testified further that Patricia collected \$2 bills for as long as Jennifer could remember. Patricia would purchase the bills from the gas station when they came in and would keep them in her purse. Jennifer stated that the last time she saw defendant before the murders was either on December 5 or December 6, 1997. Defendant was at the Greenview residence downstairs in the front room sitting at the computer. Defendant was wearing a white shirt and light greenish-brown pants.

¶ 45 According to Jennifer, defendant and Hawkins, Jr., did not have a good relationship. Jennifer saw defendant discipline Hawkins, Jr., by making him do push ups over a pointy object. Jennifer also saw defendant hit Hawkins, Jr., with a belt. Hawkins, Jr., would run into the Easter girls' bedroom and hide in the closet. On one occasion, according to Jennifer, defendant made Hawkins, Jr., walk to school wearing a dress, lipstick, and heels as punishment. Hawkins, Jr., was crying at the time. Hawkins, Jr., never made it to school that way, however, because Hawkins, Sr., stopped and picked him up.

¶ 46 Jennifer testified that at one point, she overheard a conversation between Hawkins, Sr., and defendant. Hawkins, Sr., told defendant that it was time for him and Edwards to move out of the Greenview residence. Jennifer estimated that the conversation occurred within a week or a month of the murders, but was not exactly sure of the time frame. Jennifer stated that Hawkins, Sr., was teasing defendant at the time and that she did not think anything of the conversation.

¶ 47 The day after the murders, a police officer showed Jennifer a pair of pants. Jennifer identified the pants as ones she had seen defendant wearing before. In court, Jennifer identified a photograph of the blood-stained pants as the pants she had seen defendant wear on more than one occasion.

¶ 48 During the jury trial, after the State rested, the defense presented its case-in-chief. The defense called several witnesses. Of note was a former Kankakee police officer who testified that he interviewed Geiger and Quigley at about 10:30 a.m. on December 7. Both witnesses informed him that they were awakened at about 4:15 a.m. on the morning of the murders by a car with a loud muffler, but neither one of them saw the vehicle.

¶ 49 Tamara Williams-Hevi testified that she was Hawkins, Jr.'s, teacher at school from August of 1997 until the time of the murders. As Hawkins, Jr.'s, teacher, Williams-Hevi saw Hawkins, Jr., every weekday during school hours. During that time, Williams-Hevi never noticed any type of unusual cuts, scratches, bruises, lacerations, or marks of any kind on Hawkins, Jr., and never saw Hawkins, Jr., show up to school in any type of unusual clothing, such as a dress or lipstick. Williams-Hevi, however, had testified in a previous proceeding that Hawkins, Jr., was hyperactive and that hyperactivity could be a sign of child abuse. Williams-Hevi continued her testimony in the fourth jury trial by stating that she saw defendant pick Hawkins, Jr., up from school on one occasion and that Hawkins, Jr., was smiling and laughing, told Williams-Hevi that defendant was his Uncle Buddy, and ran up to defendant.

¶ 50 Michelle Edwards testified as a defense witness. Michelle was Hawkins, Sr.'s, sister and defendant's girlfriend at the time of the murders and was still defendant's girlfriend when she testified at defendant's fourth jury trial. Michelle stated that before she moved into the Greenview residence,

she had previously had brain surgery for an aneurysm. In 1996, she and defendant moved into the Greenview residence and lived with Hawkins, Sr. At the time of the murders, defendant was not working and was receiving workers' compensation for an injury. Michelle stated that defendant and Hawkins, Sr., were very close, like brothers, and that defendant loved Hawkins, Jr. Defendant had previously been married to Hawkins, Sr.'s, and Michelle's sister and was previously Hawkins, Sr.'s, brother-in-law and Hawkins, Jr.'s, uncle. Michelle previously saw Hawkins, Sr., discipline Hawkins, Jr., with a belt and saw defendant discipline Hawkins, Jr., by making him exercise. According to Michelle, defendant spent a lot of time with Hawkins, Jr. Defendant played video games with Hawkins, Jr., took him to school, and checked his homework. Michelle never saw Hawkins, Jr., being afraid of, or hiding from, defendant.

¶51 On the morning of December 6, 1997, Michelle and defendant went to the currency exchange and cashed defendant's workers' compensation check. They also went to the recycling center and cashed in some cans. For the cans, defendant was paid in \$2 bills as was the common practice of the recycling center. After the currency exchange and the recycling center, defendant and Michelle went back to the Greenview residence. During the evening hours, Michelle overheard an argument between Danny and Patricia. According to Michelle, after the argument, Danny seemed pretty upset with Patricia. Michelle was upset by the argument and left the residence with defendant. When defendant and Michelle left the Greenview residence that evening, their bedroom was in a neat and tidy condition and the door was locked. Defendant was wearing tan corduroy pants and a flannel shirt, which apparently was not the same pair of tan pants upon which the blood was later found. Michelle and defendant went to Hopkins Park. Defendant was driving a blue Grand Prix, which was very loud.

¶ 52 Later that same evening, Michelle and defendant returned to the Greenview residence for a short while to retrieve a pot roast that was cooking in the oven and to get a change of clothes for Michelle. They stayed at the Greenview residence for 5 or 10 minutes and then returned to Hopkins Park. Defendant dropped Michelle off at Craig Hawkins's trailer and left with Craig. Defendant and Craig returned a short while later because they forgot to unlock the door to the trailer for Michelle. After unlocking the door, defendant and Craig left, and Michelle did not see defendant again until the following morning. When Michelle saw defendant the next morning, he was still wearing the same tan corduroy pants and flannel shirt that he had been wearing the night before. At that time, defendant had Roger Speed with him. Michelle described defendant's demeanor that morning as jovial. In a previous proceeding, however, Michelle stated that defendant appeared to be high.

¶ 53 Upon their return to the Greenview residence on the morning of the murders, Michelle and defendant entered through the back door. Michelle got her keys out to open the door, but the door was unlocked. As they went into the residence, Michelle was in front and defendant was behind her. Michelle saw a red smear stain on the living room floor that looked like blood. Defendant went to their bedroom. Michelle turned on the lights in the hallway and saw Hawkins, Jr.'s, body in the laundry room. There was blood everywhere. Michelle screamed, and defendant came out to see what was the matter. Michelle could see their bedroom from the laundry room and saw that it was a mess.

¶ 54 Michelle could not remember if defendant checked Hawkins, Jr., for a pulse. Defendant ran upstairs to check on Hawkins, Sr., and Michelle followed behind him. In the master bedroom, they found the dead bodies of Hawkins, Sr., and Patricia. According to Michelle, defendant tripped over Hawkins, Sr.'s wallet when defendant was either going up or down the stairs. Michelle went

downstairs and called 911. Emergency services responded quickly. Michelle saw defendant with Hawkins, Sr.'s, wallet in his hand and told defendant that the police were on their way and not to touch anything. Michelle also told defendant to get her purse so that she could have a cigarette. Defendant came back with a purse that was not Michelle's. Defendant got rid of the purse and went outside to get cigarettes out of the trunk of the car.

¶ 55 Michelle testified further that Mark Easter was Patricia's husband at the time of the murders and that on one occasion after Patricia moved in, Mark showed up at the Greenview residence early in the morning and rang the doorbell. When Michelle looked to see what was going on, she saw Hawkins, Sr., shaking his fist at Mark, who was standing at the door. Hawkins, Sr., told Mark never to come back to the residence again, and Mark left immediately.

¶ 56 According to Michelle, Hawkins, Sr., was previously married to Wanda Hawkins. Shortly before Christmas of 1996, Wanda entered the Greenview residence wielding a steak knife at Hawkins, Sr. Defendant intervened. Wanda cut defendant on the arm with the knife and then ran away. The police were called. Michelle acknowledged that Wanda had since moved to Tennessee but stated that she was still around town at that time of the murders. As part of defendant's case, a certified copy of conviction was later admitted showing that Wanda had been convicted of committing aggravated assault against Hawkins, Sr., and defendant and that the conviction occurred on November 14, 1997.

¶ 57 Michelle acknowledged that she, defendant, and Hawkins, Sr., were the only people who had keys to the downstairs bedroom (Michelle's and defendant's bedroom). The downstairs bedroom was locked when defendant and Michelle left the night before but was unlocked when they returned the following morning. Michelle remembered that at some point that morning she saw a brown purse

that did not belong to her in the downstairs bedroom on the bed. When Michelle told defendant that the purse was not hers, defendant threw the purse in the closet. On cross-examination, Michelle admitted with some reluctance that the tan pants with the blood stains on them "appear[ed] to be" a pair of pants that belonged to defendant.

¶ 58 Danny Suprenant testified that he was one of Patricia's sons and that he was living at the Greenview residence on December 6, 1997, the day before the murders. On that day, Danny got into an argument with Patricia. During the argument, Danny and Patricia were yelling at each other. Danny packed all of his belongings, had a friend come pick him up, moved out of the Greenview residence, and went to his older sister's house. Danny left at the residence a bag of garbage, which he stated was stuff that he was throwing away. The bag was later recovered by police when they processed the crime scene.

¶ 59 One of the items in that bag was a story dated December 5, which Danny stated he had written for school. The story was about an elf who went crazy and stabbed another elf and shot and killed Rudolf the red-nosed reindeer. The story did not reference Hawkins, Sr., Patricia, or Hawkins, Jr., and according to Danny, was not meant to be a reference to them. Also contained in the bag, was a notebook in which Danny had wrote, "[f]--k the whole world for all eternity." Danny stated that he wrote that in the summer of 1996 after he broke up with his girlfriend and that the reference had nothing to do with Hawkins, Sr., Patricia, or Hawkins, Jr.

¶ 60 According to Danny, he found out the next morning that Patricia died when one of his sisters called him. Danny called back and spoke to Mark. Mark told Danny the same thing that his sisters had, that his mother was dead. Danny denied that he killed Hawkins, Sr., Patricia, or Hawkins, Jr. Danny did not remember exactly but stated that Hawkins, Sr., gave him a key to something, which

was probably a key to the Greenview residence.

¶ 61 As part of the defense's case, the parties stipulated that: (1) detective Etzel would testify that when he questioned defendant on December 12, 1997, defendant told him that defendant had cashed a workers' compensation check on December 6, 1997, for a little over \$400 at the currency exchange; (2) the president of the currency exchange would testify that the workers' compensation check in question was cashed at the currency exchange on December 6, 1997, in the amount of \$411.66; and (3) Jennifer Easter would testify that her father, Mark Easter, was unhappy that Patricia had left the home to take up with another man, that Mark wanted Patricia to come back, and that she saw Mark cry about the situation.

¶ 62 Also during the defense's case, the defense sought to play the videotape of defendant's December 12, 1997, police interview. The State objected, and the trial court denied the defense's request because the videotape contained exculpatory statements of defendant and defendant was not going to testify at trial.

¶ 63 During closing arguments, the defense brought up the videotape again, telling the jury that they were not going to see the videotape because the State did not want them to see it. The State objected to that comment, and the objection was sustained. During the course of deliberations, the jury sent a note to the trial court asking to see, among other things, the videotape. After discussing the matter with the attorneys, the trial court denied the request, telling the jury that it had heard the evidence and had been instructed on the law and that no further answer could be given on its request. The jury eventually concluded its deliberations and found defendant guilty of the first degree murders of Hawkins, Sr., Patricia, and Hawkins, Jr.

¶ 64 Defendant filed a posttrial motion, arguing, among other things, that he was not proven guilty

beyond a reasonable doubt, that the trial court erred in admitting the state of mind evidence, and that the trial court erred in not playing the videotapes for the jury. A hearing was held on the motion, which was subsequently denied. In denying the motion, the trial court made a specific factual finding that the prosecutor had not acted in bad faith when he stated in opening statements that the State would play the videotape for the jury but then later decided during the course of the trial that he was not going to play the videotape. After a sentencing hearing, defendant was sentenced to three concurrent terms of natural life imprisonment. Defendant appealed.

¶ 65

ANALYSIS

¶ 66 As his first point of contention on appeal, defendant argues that he was not proven guilty beyond a reasonable doubt of the first degree murder of the victims. Defendant asserts that there was no direct evidence—no murder weapon, no fingerprints, no eyewitnesses, and no confession—to link him to any of the three murders. Defendant asserts further that due to the lack of sufficient evidence, his convictions for first degree murder should be reversed outright. The State argues that the evidence was sufficient to prove defendant guilty and that defendant's convictions for first degree murder should be upheld.

¶ 67 Pursuant to the *Collins* standard, a reviewing court faced with a challenge to the sufficiency of the evidence must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found the elements of the crime proven beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985); *People v. Jackson*, 232 Ill. 2d 246, 280 (2009). The reviewing court will not retry the defendant. *People v. Jimerson*, 127 Ill. 2d 12, 43 (1989). Determinations of witness credibility, the weight to be given testimony, and the reasonable inferences to be drawn from the evidence are responsibilities of the trier of fact, not the

reviewing court. See *Jimerson*, 127 Ill. 2d at 43. Thus, the *Collins* standard of review gives " full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Jackson*, 232 Ill. 2d at 281 (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). This same standard of review is applied by the reviewing court regardless of whether the evidence is direct or circumstantial or whether defendant received a bench or a jury trial, and circumstantial evidence meeting this standard is sufficient to sustain a criminal conviction. *Jackson*, 232 Ill. 2d at 281; *People v. Kotlarz*, 193 Ill. 2d 272, 298 (2000). In applying the *Collins* standard of review, a reviewing court will not reverse a conviction unless the evidence is so improbable or unsatisfactory that it leaves a reasonable doubt of the defendant's guilt. *Jackson*, 232 Ill. 2d at 281; *People v. Flowers*, 306 Ill. App. 3d 259, 266 (1999).

¶ 68 In the present case, reviewed under the *Collins* standard, the evidence was sufficient to prove defendant guilty beyond a reasonable doubt in several respects. See *Collins*, 106 Ill. 2d at 261. First, contrary to defendant's assertion, there was physical evidence linking defendant to the three murders. Hawkins, Jr.'s, DNA was found on blood stains on defendant's pants. The pants were found a day after the murders in defendant's bedroom on defendant's waterbed rolled up under other clothes. The pants had several blood stains or splatters on them and various witnesses identified the pants as belonging to defendant. Additional witness testimony established that defendant was wearing that same color of pants during the time frame of the murders and that he may have changed his pants later that same morning. In addition, DNA analysis established that defendant could not be excluded as a contributor of the DNA found in certain other blood stains on the pants and on the sock that was used to strangle Hawkins, Jr., although all of the other household members of the Greenview

residence could be excluded. Second, the evidence established that defendant had an opportunity to commit the crimes. Defendant was a member of the household and as such, had a key to the household and would have known who was likely to be home at the time of the murders. Defendant's possession of a key would account for the absence of forced entry into the home itself and into defendant's bedroom. Defendant's whereabouts were unaccounted for during part of the time frame when the murders occurred, and a witness claimed to have seen defendant's car leaving the area during those early morning hours. Third, defendant was linked to the crimes through circumstantial evidence. Hawkins, Sr.'s, wallet was found hidden in defendant's waterbed and Patricia's purse was found in defendant's bedroom closet. Defendant himself admitted that he had placed those items there. The contents of Patricia's purse had been emptied on the couch, and witness testimony established that Patricia collected \$2 bills, which were kept in her purse, and that defendant was in possession of several \$2 bills during those early morning hours. And fourth, at least some proper evidence was presented to establish that defendant had a motive to commit the crimes.² Jennifer testified that defendant had a poor relationship with Hawkins, Jr., and that the manner in which he disciplined Hawkins, Jr., was essentially cruel and improper. In total, the evidence presented at defendant's fourth jury trial, considered in the light most favorable to the State, was not so improbable or unsatisfactory as to leave a reasonable doubt of defendant's guilt. See *Jackson*, 232 Ill. 2d at 281; *Flowers*, 306 Ill. App. 3d at 266. In reaching that conclusion, we note that the trial court allowed defendant to place before the jury evidence that two or three other people

²In making this statement, we do not consider the witness testimony regarding Patricia's and Hawkins, Sr.'s, state of mind, which, as indicated in the second issue, we believe was improperly admitted.

had motive, and possibly opportunity, to commit the crimes. The jury, with that evidence before it, found defendant guilty. We will not retry defendant on appeal. See *Jimerson*, 127 Ill. 2d at 43. For the above-stated reasons, we reject defendant's challenge to the sufficiency of the evidence.

¶ 69 As his second point of contention on appeal, defendant argues that the trial court erred in allowing the State to present testimony of the out-of-court statements of two of the victims as evidence of state of mind and to show the effect on the listener. Specifically, defendant complains of: (1) Bush's testimony that Patricia had told her that things had changed at the house and that Patricia was afraid of defendant; (2) Kraemer's testimony that Patricia had told him that defendant was verbally abusing her children; (3) Eddie's testimony that Hawkins, Sr., told Eddie that he was going to tell defendant and Michelle to move out of the residence; and (4) Jennifer's testimony that she overheard Hawkins, Sr., tell defendant that it was time for defendant and Michelle to move out. Defendant asserts that the testimony was irrelevant and unreliable since there was no indication that defendant felt the same way or that defendant was aware of the victims' feelings towards him. The defendant asserts further that he was prejudiced by the testimony because the evidence was closely balanced and because the testimony tended to inflame the jury against defendant and permitted the jury to make the unfounded and impermissible inference that defendant committed the murders as a result of being told he had to move out of the household. Defendant points out that during the trial, he did not make reference to the relationship between the members of the household and that he did not in any way open the door to this testimony. Defendant also points out that the statement elicited in Jennifer's testimony could not have had any probative value to show the effect on defendant as Jennifer testified that Hawkins, Sr., was teasing defendant at the time, the statement was made about a month before the murders, and there was no indication that defendant had moved out. Defendant

asks that we reverse his convictions and remand this case for a new trial. The State argues that the trial court's ruling did not constitute an abuse of discretion and should be affirmed. The State asserts that the out-of-court statements were relevant to show motive and were reliable under the circumstances. The State asks, therefore, that we deny defendant's request for a new trial.

¶ 70 A trial court's ruling on the admissibility of evidence, including hearsay statements, will not be reversed on appeal absent an abuse of discretion. *People v. Munoz*, 398 Ill. App. 3d 455, 479 (2010). An abuse of discretion occurs when the trial court's ruling is arbitrary, fanciful, or unreasonable, or when no reasonable person would take the view adopted by the trial court. *Munoz*, 398 Ill. App. 3d at 479-80.

¶ 71 Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. *Munoz*, 398 Ill. App. 3d at 479. Hearsay evidence is generally inadmissible unless it falls within an exception to the hearsay rule. *Munoz*, 398 Ill. App. 3d at 479. One such exception to the hearsay rule is the state-of-mind exception, which allows for the admissibility of a hearsay statement if it expresses the declarant's then-existing state of mind. See *Munoz*, 398 Ill. App. 3d at 479. Under the state-of-mind exception, an out-of-court statement is admissible, in the discretion of the trial court, if three conditions are satisfied: (1) the declarant is unavailable to testify, (2) there is a reasonable probability that the statement is truthful, and (3) the statement is relevant to a material issue in the case. *People v. Floyd*, 103 Ill. 2d 541, 546 (1984); *People v. Coleman*, 116 Ill. App. 3d 28, 33 (1983); *Munoz*, 398 Ill. App. 3d at 479.

¶ 72 In the instant case, after considering the applicable law as set forth above, we find that the trial court committed an abuse of discretion in allowing witness testimony regarding the out-of-court statements of Patricia and Hawkins, Sr. Patricia and Hawkins, Sr.'s, state of mind had no bearing

on the matters at issue as there was no indication that defendant felt the same way about them, that their statements had been communicated to defendant, or that defendant was aware of their feelings towards him. Thus, the statements were not relevant and should not have been admitted. See *Munoz*, 398 Ill. App. 3d at 481 (relevant evidence is evidence which has any tendency to make the existence of any fact in consequence more or less probable). As defendant points out the statements were highly prejudicial in that they allowed the jury to improperly infer from the evidence that defendant had a motive to commit the crimes. Indeed, the State argued in closing argument at trial and in this very appeal just such an inference. Nor was it in any way permissible for the State to elicit defendant's exculpatory statement to detective Etzel solely to allow it to open the door to, and present, the impermissible state of mind evidence. In addition, Jennifer's testimony had no relevance as to the effect that Hawkins, Sr.'s, statement had on defendant. Jennifer testified that Hawkins, Sr., was teasing defendant at the time and that she thought nothing of the conversation. Moreover, there was no evidence presented to suggest that defendant was angry after the statement or that the statement had any negative effect on defendant whatsoever.

¶ 73 On appeal, as to this issue, the State does not dispute defendant's contention that the evidence was closely balanced or defendant's implied contention that if error occurred, it was reversible error, which denied defendant a fair trial. Because we find that the trial court did in fact commit an abuse of discretion in admitting the testimony regarding the out-of-court statements of Patricia and Hawkins, Sr., and that defendant was prejudiced by that error, we reverse defendant's convictions for first degree murder and remand this case for a new trial.

¶ 74 Having determined that defendant's convictions must be reversed because of the improper admission of the out-of-court statements, we need not address the remainder of defendant's

arguments on appeal. We would note, however, as we did in the previous appeal, that the State's representation in opening statement that it will present certain evidence that it later fails to present may constitute reversible error under certain circumstances. See *People v. Kliner*, 185 Ill.2d 81, 125-27 (1998). However, in the instant case, the record indicates that the trial court was very skeptical throughout the pretrial and trial proceedings about whether the State would be able to redact the videotaped statement. The trial court cautiously accepted the State's representation in that regard and pointed out to the attorneys for both sides the difficulty involved with doing such a redaction. At some point well into the trial, the State apparently realized that redaction was not feasible. In later ruling upon the motion for new trial, the trial court specifically found that the State was naive in that regard and that it had not acted in bad faith in representing to the jury in opening statement that it was going to play defendant's videotaped statement. There is nothing in the record that would allow us to overturn the trial court's finding of no bad faith, although we would point out that such a finding would be difficult to maintain in a subsequent trial if the same circumstances occurred since the State is now clearly on notice as to the technical difficulties involved in trying to redact the videotaped statement.

¶ 75 We reject any suggestion by defendant that the videotape should have been played for the jury at defendant's or the jury's request. The portions of the videotape containing defendant's exculpatory statements to police were clearly inadmissible. See *People v. Olinger*, 112 Ill. 2d 324, 337-38 (1986) (a defendant generally may not introduce his own exculpatory statements without taking the stand and facing impeachment). Nor do we believe that the State opened the door to the playing of the videotape by admitting the videotape into evidence or by mentioning the videotape during opening statement. The videotape was clearly admitted only for a limited purpose and, as

noted above, there was no bad faith in the State's reference to the videotape in opening statements.

¶ 76 We would also comment briefly upon closing argument. In the instant case, the expert was very thorough in his testimony about the significance of the DNA evidence and what it meant to find that a person's DNA could not be excluded. We would caution both sides to be very careful in making assertions to the jury in closing argument that may go farther than the scientific evidence would allow.

¶ 77 For the foregoing reasons, we reverse defendant's convictions for first degree murder and remand this case for a new trial.

¶ 78 Reversed and remanded.

¶ 79 JUSTICE McDADE, specially concurring:

¶ 80 I concur in the decision to reverse defendant's conviction and to remand for a new trial. I write separately solely to make two observations.

¶ 81 First, relative to whether defendant was proven guilty beyond a reasonable doubt, it is worthy of note that while the evidence is focused within a time frame of 3:00 to 4:00 a.m. on December 7, 1997, and while the forensic pathologist, Dr. Sapala, opined that a time of death within that time period was not inconsistent with information found during the autopsies (¶ 12); he was unable medically to narrow the time range to less than 12 hours. The time of death is not known.

¶ 82 Second, with regard to the State's representation to the jury of its intent to play defendant's videotaped interrogation, I would point out that the State knew *during the defendant's prior trial* that it was unable to use the tape because it could not be redacted. This court actually touched upon this issue in the previous appeal. Specifically, we stated:

"Finally, we take this opportunity to comment on defendant's

concern regarding the videotape of his interview with the police, referenced by the State during opening arguments, but never shown to the jury. *The trial judge made a specific finding that, through no fault of either party, the tape could not be properly redacted and as such, it could not be referred to thereafter by either party.* Again, having already reversed defendant's convictions on other grounds, we need not address this issue. However, we do caution all parties that referring to evidence in opening statements that cannot be admitted at trial may constitute reversible error. [Citation.]" (Emphasis added.)

In light of the trial court's statement in the third trial and our own observation in the earlier appeal, I would disagree with the majority's conclusion that, "[t]here is nothing in the record that would allow us to overturn the trial court's finding of no bad faith,...". I believe there is clear indication of the State's bad faith in this regard in the record and would hold that the promise to the jury in opening statement that they would hear the videotaped interview is reversible error that forms yet another basis for reversing and remanding this case.