2013 IL App (3d) 110662-U

Order filed November 13, 2013

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2013

THE PEOPLE OF THE STATE OF ILLINOIS,	) Appeal from the Circuit Court) of the 12th Judicial Circuit,) Will County, Illinois,
Plaintiff-Appellant,	)
	) Appeal No. 3-11-0662
v.	) Circuit No. 09-CF-196
	)
BRIAN W. TRAINAUSKAS,	) Honorable) Richard C. Schoenstedt,
Defendant-Appellee.	) Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justice Schmidt specially concurred.
Justice McDade dissented.

ORDER

¶ 1 *Held:* The trial court erred in finding that the defendant's incriminating statements to the police were involuntary and not admissible for impeachment purposes.

¶ 2 The defendant, Brian W. Trainauskas, was charged with two counts of first degree murder (720 ILCS 5/9-1(a)(1), (a)(2) (West 2008)) and one count of concealing a homicidal death (720 ILCS 5/9-3.1(a) (West 2008)). The defendant filed multiple motions to suppress statements he made to the police. The trial court partially granted one motion, suppressing a portion of the

defendant's statements. The State appeals, arguing that the trial court erred when it found the defendant's statements involuntary and inadmissible for impeachment purposes. We reverse.

¶ 3 FACTS

¶ 4 The defendant was charged by indictment with two counts of first degree murder (720 ILCS 5/9-1(a)(1), (a)(2) (West 2008)) and one count of concealing a homicidal death (720 ILCS 5/9-3.1(a) (West 2008)). The charges alleged that on January 21, 2009, the defendant shot Monica Timar in the head with a shotgun, and he concealed her death by transporting her in the trunk of a vehicle to another location. The defendant filed a motion to quash arrest and suppress evidence and three motions to suppress statements he made to police on January 23, 2009. The motions to suppress were labeled A, B, and D for clarification purposes.[1]

¶ 5 In motion A, the defendant argued that any statements he gave to the police, prior to receiving his *Miranda* rights, should be suppressed. In motion B, the defendant argued that any statements he gave were involuntary due to physical coercion and threats by the police. Relevant to the issue on appeal is motion D, where the defendant argued that his statements should be suppressed because they were obtained after he invoked his right to an attorney and the right to remain silent.

¶ 6 The defendant's motion to quash arrest and suppress evidence also sought to suppress the defendant's statements to police, his signed *Miranda* waivers, witnesses' statements, his consent to search his person, clothing, a cellular telephone, computers, firearms and ammunition, buccal swabs, gunshot residue tests, photo lineups, and any additional evidence seized as a result of

[1] The defendant also filed a fourth motion labeled C; however, the defendant proceeded on motion B instead because it was an amended version of motion C.

executed search warrants. The defendant claimed that his arrest and the search of his personal effects and residence were without probable cause.

¶ 7 At the hearing on the defendant's motions, the evidence indicated that Timar was reported missing on January 21, 2009. The next day, Detective Daniel Troike began investigating this report, and Timar's partner told Troike to contact the defendant. Troike called the defendant, who said he had been in contact with Timar on January 19 through January 21, 2009.

¶ 8 On January 23, 2009, Timar was found dead in the trunk of her vehicle. While at the scene where the vehicle was located, Troike spoke with a witness, Greg Novelli. Novelli told Troike he recently saw Timar's vehicle pull up and park in the same area where it was located by police. Novelli then saw a white male with a large build wearing a jacket and a hat exit the vehicle and walk away. Troike testified that the physical description matched that of the defendant's. Additionally, the defendant's home was roughly four city blocks from where Timar's vehicle was located. Troike subsequently called the defendant, who agreed to meet Troike at a nearby gas station. Once at the gas station, the defendant, who was accompanied by his fiancée, agreed to speak with Troike at the Will County sheriff's department.

¶ 9 After arriving at the sheriff's department and waiting a few minutes, the defendant was placed into an interview room and agreed to a videotaped interview. The defendant's interview began at 12:25 p.m. on January 23, 2009, and after intermittent questioning, concluded at 12:45 a.m. on January 24, 2009. According to Troike, when the defendant first arrived, he was free to leave at any time. Defendant was not handcuffed during the interview.

¶ 10 From 12:25 p.m. until 1:05 p.m. Sergeant Steven Talmontes and Troike interviewed the defendant. The defendant stated that he saw Timar on January 19, 2009, when they discussed her

bankruptcy issues, and Timar said she wanted to commit suicide. On January 20, 2009, Timar came to the defendant's house and asked for a gun to kill herself. The defendant refused, but offered to help her get mental health services. The last contact the defendant had with Timar was on January 21, 2009, when she left the defendant a message that she was at his home. The defendant was at an Alcoholics Anonymous meeting, but when he came home in the afternoon, Timar was no longer there. The defendant stated that he did not have contact with Timar on January 22, 2009. At 1:05 p.m. the detectives left the interview room. Before leaving, the detectives asked if defendant needed a bathroom break or anything to drink. The defendant responded that he did not. During the break, Troike learned from another detective that the defendant's fiancée said the defendant sold his shotgun on January 21, 2009, to Chester Johnson, also known as Lenny, who worked at a gun shop. The defendant did not mention this during the interview, despite his claim that he told the detectives all of the events that day. Troike testified that Timar's preliminary cause of death was a shotgun wound to the head.

¶ 11 The defendant remained alone in the interview room from 1:05 p.m. until 1:55 p.m., when Troike and Talmontes returned. The defendant told the detectives that he had severe back pain. The detectives stated that they would get him Advil. The detectives then asked the defendant for consent to search his cellular telephone. The defendant stated that he was willing to cooperate, but he would like his attorney available before consenting. The defendant indicated that he previously had a bad experience when he was investigated for possible check fraud.

¶ 12 Troike then asked if the defendant would give consent to search his home and vehicle. The defendant again stated that he was told not to sign anything. The defendant also refused a buccal swab. The detectives then asked to take a break for a few minutes, and the defendant was

taken to the bathroom. Upon returning to the interview room, the defendant asked to lie on the floor to relieve his back pain. Troike testified that it was clear the defendant was at times in great discomfort due to his back pain.

¶ 13 At 2:11 p.m., the detectives left the room and locked the door. Troike testified that at this point, the defendant was no longer free to leave. Troike also testified that during this time, another detective confirmed that the defendant sold his shotgun to Lenny on January 21, 2009. From this, it was determined that a search warrant for defendant's residence was to be obtained.

¶ 14 The defendant remained alone on the floor of the interview room until 3:35 p.m., when he asked for back medication and a bathroom break. Detective Vernard Reed took the defendant to the bathroom at 3:37 p.m. During this time, the defendant told Reed that he informed Troike he needed to speak to his attorney. At 3:44 p.m., the defendant asked Reed if he could leave the sheriff's department and stated that he had asked for his attorney twice. Troike testified that Reed informed him that the defendant requested an attorney.

¶ 15 At 3:51 p.m., Troike and Talmontes returned to the interview room, and the defendant indicated he was in a lot of pain due to back spasms and that the one Aleve he had received was not helping. The defendant refused an ambulance. Talmontes then asked the defendant if he was still willing to talk to them without his attorney present. The defendant responded that he would prefer not to talk without his attorney. Talmontes told the defendant they just wanted him to listen.

¶ 16 Talmontes told the defendant they recovered the defendant's shotgun from Lenny. Talmontes told the defendant that if he wanted to explain this, he would need to waive his *Miranda* rights. After receiving an incomplete *Miranda* admonishment, the defendant still

refused to talk with the detectives. At 3:55 p.m., as the detectives were leaving the room, the defendant asked if he was free to leave. The detectives told the defendant not yet, and they left the room.

¶ 17 At 4:09 p.m., the detectives returned. Troike told the defendant he was not going to ask any questions because the defendant wanted his attorney present, but he asked the defendant to listen. Troike said he was in the process of obtaining a search warrant for the defendant's house, and the defendant would have to stay until that was completed. Troike also told the defendant they recovered his shotgun and had evidence that the defendant drove Timar's vehicle to the location where it was later found by police. Troike stated that someone identified the defendant exiting Timar's vehicle at that location. Troike testified that this information was false and admitted lying to the defendant. The evidence indicated that Novelli was the man who gave a physical description similar to the defendant's; however, Novelli was unable to positively identify the defendant from a photographic lineup.

¶ 18 The defendant denied Troike's allegations. Troike then told the defendant that they needed to get a search warrant because the defendant refused to talk to them. In response, the defendant said he was willing to talk to the detectives and requested his cigarettes. Talmontes explained that the defendant may be able to account for some of the evidence the detectives had discovered. Talmontes then brought the defendant his cigarettes.

¶ 19 At 4:13 p.m., Troike read the defendant his complete *Miranda* rights from a form, which the defendant signed. The defendant answered the detectives' questions periodically from 4:15 p.m. until 12:45 a.m. on January 24, 2009. The defendant stated that he never harmed Timar, but on January 21, 2009, Timar was at his house. The defendant said he was not home, but Timar

had called him numerous times. The defendant admitted that he had a shotgun in his house.

¶ 20 When the defendant arrived home, he smelled gunpowder and found Timar deceased on his bathroom floor. The defendant saw his shotgun lying next to Timar. The defendant stated that Timar had previously wrapped herself in a sheet, and he put her body in the trunk of her vehicle. The defendant then drove Timar's vehicle to where it was eventually located by police. The defendant admitted to cleaning up the bathroom afterwards. The defendant indicated that the clothes he was wearing were the same clothes he had worn on January 21, 2009, and he allowed the police to take them. At approximately 6 p.m., the defendant was subsequently allowed to eat and go to the bathroom.

¶ 21 A buccal swab was collected from defendant pursuant to a search warrant. At approximately 7 p.m., police also executed a search warrant of the defendant's residence and vehicle. According to Troike, crime scene investigators located blood on the wall of defendant's bathroom. Police also located $2,500 under a couch cushion, which the defendant claimed Timar needed to file for bankruptcy. A gunshot residue sample of the defendant's hands was also collected.

¶ 22 During his interview, the defendant changed his version of events several times. At approximately midnight, the defendant gave his final version of events. The defendant admitted that on January 21, 2009, he and Timar had gotten into an argument because she wanted to commit suicide. The defendant got frustrated and picked up his shotgun. The defendant put a shell into the shotgun and told Timar to go ahead and kill herself. Timar grabbed the gun and went into the bathroom. The defendant chased after Timar and struggled with her to get the shotgun. The defendant stated that the shotgun discharged during the struggle when the

defendant's finger was near the trigger. Timar was shot in the head. The defendant wrapped Timar's body in a bed comforter and placed her into the trunk of her vehicle. At approximately 12:45 a.m., the defendant was handcuffed and was advised that he was being placed under arrest.

¶ 23 The trial court denied motions A and B to suppress the defendant's statements, finding that prior to 3:55 p.m., the defendant voluntarily cooperated with the police and was not in custody, and the police did not physically abuse or threaten the defendant during the interrogation.

¶ 24 The trial court partially granted motion D and suppressed the statements the defendant made after 3:55 p.m., which included admissions that the defendant struggled with Timar when she was shot and later concealed her body. The court found those statements were made after the defendant invoked his right to an attorney and were involuntary. The trial court determined that initially, the defendant voluntarily cooperated with the detectives. The defendant subsequently requested an attorney, and at 3:51 p.m., the officers were aware that the defendant invoked his right to an attorney. The court found that at 3:55 p.m., when the defendant was not allowed to leave, he was officially in custody. When the officers left the interview room, they were deciding on a tactic to keep the defendant talking. When the officers returned to the room at 4:09 p.m., they lied to the defendant, telling him that a witness identified him in Timar's vehicle at the location where her body was found, in order to keep him talking.

¶ 25 The trial court also denied defendant's motion to quash arrest and suppress evidence, finding that the police had sufficient information to establish probable cause for a search warrant and to collect all the evidence, except as related to the court's ruling on motion D. The court further found that any evidence obtained from the search warrant was admissible under the

inevitable discovery doctrine.

¶ 26 In later clarification of its ruling on motion D, the court stated that the defendant's statements after 3:55 p.m. were involuntary and not admissible for impeachment purposes, due to a combination of the violation of the defendant's *Miranda* rights and the fact that the detectives continued to talk with the defendant as a ruse to get more statements from him.

¶ 27 The State filed a motion to reconsider the trial court's ruling, which the court denied. The State subsequently filed a certificate of substantial impairment and brought this interlocutory appeal to challenge the trial court's ruling.

¶ 28 ANALYSIS

¶ 29 On appeal, the State argues that in granting the defendant's motion to suppress, the trial court erred when it found that the defendant's statements were involuntary and could not be used for impeachment purposes. Specifically, the State argues that the trial court's finding that the police lied to the defendant to induce him to give a statement was against the manifest weight of the evidence. However, regardless of whether police lied to the defendant, the State further claims that the defendant's statements were voluntary and may be used for impeachment if the defendant testifies at trial.

¶ 30 Incriminating statements taken from the defendant in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966), may not be used as substantive evidence against the defendant at trial. *People v. Winsett*, 153 Ill. 2d 335 (1992). Notwithstanding a *Miranda* violation, if those statements are found to be voluntary, they may be used for impeachment purposes on cross-examination of the defendant. *Id.* In this case, the State concedes that the detectives continued the interrogation of the defendant after he invoked his right to counsel; therefore, the statements

the defendant made after 3:55 p.m. are inadmissible in their case in chief. The State contends, however, that those statements should be allowed as impeachment evidence because they were voluntarily made. Therefore, the issue on appeal is the voluntariness of the statements the defendant made after 3:55 p.m.

¶ 31 The State has the burden of establishing the voluntariness of a confession by a preponderance of the evidence. *People v. Gilliam*, 172 Ill. 2d 484 (1996). Upon review, we will uphold the trial court's factual findings unless they are against the manifest weight of the evidence. *In re G.O.*, 191 Ill. 2d 37 (2000). However, the ultimate legal question of whether the statement was voluntary is reviewed *de novo*. *Id.*

¶ 32 Whether a statement is voluntarily given depends on the totality of the circumstances. *People v. Armstrong*, 395 Ill. App. 3d 606 (2009). The test for voluntariness is whether the statement has been made freely, voluntarily, and without compulsion or inducement or whether the defendant's will was overcome at the time he confessed. *People v. Richardson*, 234 Ill. 2d 233 (2009); *People v. Bowman*, 335 Ill. App. 3d 1142 (2002). Among the factors to consider include the defendant's age, intelligence, education, experience, and physical condition at the time of questioning; the duration of the questioning; whether he was given *Miranda* warnings; the infliction of any mental or physical abuse, including threats or promises; and the legality and duration of the detention. *Richardson*, 234 Ill. 2d 233. The presence of affirmative acts of police fraud or deceit is another factor to consider in determining voluntariness. See *Bowman*, 335 Ill. App. 3d 1142.

¶ 33 In reviewing the totality of the circumstances and considering the relevant factors, we disagree with the decision of the trial court and conclude that the defendant's statements after

3:55 p.m. were given voluntarily. Initially, we conclude that the trial court's factual determination that police lied to the defendant was not against the manifest weight of the evidence. A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented. *People v. Urdiales*, 225 Ill. 2d 354 (2007). Here, the trial court was presented with a videotape of the defendant's interview, which revealed Troike telling the defendant that someone identified him exiting Timar's vehicle at the location where it was later discovered by police. Troike testified that this information was false and admitted lying to the defendant. The evidence indicated that Novelli was the man who gave a physical description similar to the defendant's; however, Novelli was unable to positively identify the defendant from a photographic lineup. Based on the misrepresentation of facts and Troike's admission that he lied to the defendant, we cannot say that the trial court's finding was arbitrary or unreasonable.

¶ 34 Despite the court's finding that the police had lied to the defendant, police deception, standing alone, does not render a statement involuntary. See *People v. Martin*, 102 Ill. 2d 412 (1984). Police deception is one factor that weighs against a finding of voluntariness. *Id.* The defendant asserts that it was not the police deception alone that rendered his statement involuntary, but the use of police deception in conjunction with the failure to honor his *Miranda* rights that caused his will to be overborne. Defendant relies on *Bowman*, 335 Ill. App. 3d 1142, to support his claim; however, *Bowman* is distinguishable from the instant case. The deception in *Bowman* was extensive and played on defendant's intense fear, such that his statement was not the product of rational intellect. See *Bowman*, 335 Ill. App. 3d 1142 (finding the defendant's statement involuntary where, after he invoked his right to counsel, police collaborated with his

cellmate to play on his intense fear of returning to Menard Correctional Center in order to create an incentive for him to confess).

¶ 35 Here, by contrast, the deception used by the police was merely an overstatement of the strength of the evidence against the defendant and did not overcome his free will. See *People v. Minniti*, 373 Ill. App. 3d 55 (2007) (finding the defendant's confession voluntary where the police falsely told a 17-year-old defendant that his DNA had been found inside the victim and that photographs showed him entering the victim's home); *Holland v. McGinnis*, 963 F.2d 1044 (1992) (stating that misrepresentations relating to the strength of the evidence of a defendant's guilt, as opposed to misrepresentations extrinsic to the crime, interfere little with a defendant's free and deliberate choice to confess). Similarly, the limited use of deception in the defendant's interview, even when coupled with the violation of the defendant's *Miranda* rights, did not rise to the level of an inherently coercive atmosphere such that it induced the defendant's statements. *Cf. People v. Strong*, 316 Ill. App. 3d 807 (2000) (holding that the officer's violation of the defendant's right to remain silent in conjunction with threats to jail the defendant's friends and take away his friend's baby rendered his confession involuntary).

¶ 36 Other factors weighing in favor of a finding of voluntariness include that the defendant was 33 years old, reasonably intelligent, had prior experience with law enforcement, was given opportunities for food and water, and was allowed to sleep and use the bathroom. Regarding the duration of the questioning, the defendant was detained approximately 12 hours; however, the actual questioning of the defendant was intermittent, and numerous breaks were taken. See *People v. House*, 141 Ill. 2d 323 (1990) (finding that the defendant's statements taken after 25 and 37 hours of detention did not render the statements involuntary). In addition, although the

defendant complained of back pain during the interview, this pain did not appear to affect the voluntariness of his statements, as he was alert and responsive throughout the interview.

¶ 37 We do not condone the use of deception as a ploy to obtain a confession, especially when the police are aware that the defendant had requested an attorney and previously refused to answer questions. However, under the circumstances of this case, the defendant's interview was not so coercive as to render his statements involuntary and inadmissible as impeachment evidence. Therefore, we hold that the defendant's incriminating statements after 3:55 p.m. were made freely and voluntarily, and they may be admissible as impeachment evidence if the defendant chooses to testify at trial. See *Winsett*, 153 Ill. 2d 335.

¶ 38 Contrary to the dissent's suggestion, we are not seeking to "vindicate" or excuse the police officers' violation of the defendant's Miranda rights. Because the defendant's confession was obtained in violation of the fifth amendment, the State may not use the confession in its case-in-chief. However, as both the United States Supreme Court and our supreme court have made clear, "statements [improperly] taken from a defendant after he invokes his Miranda right to counsel are admissible to impeach a defendant's conflicting testimony at trial, if those statements are voluntary." *Winsett*, 153 Ill. 2d at 364; *Oregon v. Hass*, 420 U.S. 714; see also *Harris v. New York*, 401 U.S. 222, 224 (1971). Like the fourth amendment, the fifth amendment may not be used as a shield for perjury. See generally *Harris*, 401 U.S. at 224 (ruling that it would be a "perversion of the Fourth Amendment" to permit a criminal defendant to "turn the illegal method by which evidence in the Government's possession was obtained to his own advantage, and provide himself with a shield against contradiction of his untruths").

¶ 39 The dissent's expansive discussion of "fairness" and alleged "systematic concerns"

appears to disregard this sound and well-established legal principle. See *infra* ¶¶ 56-57. Contrary to the dissent's suggestion, the only question presented in this appeal is whether the defendant's confession was made voluntarily. Because the evidence does not support a reasonable inference that the defendant's will was overcome by police coercion at the time he confessed, the law requires that the State be allowed to use the confession for impeachment purposes. *Winsett*, 153 Ill. 2d at 364.

¶ 40 CONCLUSION

¶ 41 For the foregoing reasons, the judgment of the circuit court of Will County is reversed.

¶ 42 Reversed.

¶ 43 JUSTICE SCHMIDT, specially concurring.

¶ 44 The dissenting justice chides us for asserting "without equivocation and without explaining how it could possibly know, that the lie ' did not overcome his free will.' " *Infra* ¶ 56. Two answers: (1) we watched the videotape of the entire interrogation; and (2) the dissent's comment raises the question: how could telling someone a lie such as this possibly overcome his free will? *Infra* ¶ 56. No court has ever suggested that bending the truth a little or, for that matter, even a lot, would, can, could or does overcome a defendant's free will. It would seem to me that the only kind of lie that could be reasonably said to overcome someone's free will might be something in the nature of, "we have your family locked up in a warehouse and we're going to do them harm unless you talk."[2]

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[2]For the sake of argument, I label what the police told defendant as a lie. However, it was not much of a lie. Had the police said, we have a witness who saw "someone matching your description" exit the victim's car, as opposed to we have a witness who saw "you" exit the

¶ 45 Likewise, with respect to the back pain issue, no reasonable adult could watch this video and conclude that defendant was suffering from severe back pain to a degree capable of overcoming his free will while being interviewed by police. Defendant's affect, body language and movement give no hint of even minor discomfort, let alone severe pain.

¶ 46 JUSTICE McDADE, dissenting.

¶ 47 The Will County circuit judge in this case suppressed, as involuntary, statements made by the defendant, Brian W. Trainauskas, after invoking his right to counsel and his right to remain silent. The evidence the defendant attempted to suppress was extensive. See ¶¶ 5-6, *supra.* After careful deliberation, the trial court denied the bulk of defendant's three motions but did suppress the statements Trainauskas made to Detective Troike and Sergeant Talmontes after 3:55 p.m. on January 23, 2009. The trial court found these statements had been made involuntarily and could not be used at defendant's trial for any purpose.

¶ 48 The State has appealed the partial suppression. It concedes the suppressed statements were improperly secured and cannot, therefore, be used as substantive evidence in defendant's trial. However, according to the State, the statements were still voluntary and can properly be used for impeachment.

¶ 49 The State has also filed a certificate of substantial impairment, apparently admitting that, despite all of the evidence the trial court did *not* suppress, it cannot convict the defendant without this evidence that the police garnered through their own violation of defendant's rights and of long-standing law.

¶ 50 Nonetheless, the majority finds there was no violation by the law enforcement officers in

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victim's car, the statement would have been absolutely accurate.

securing the statements that compels a finding that they were not, in fact, voluntary. I respectfully dissent from this finding for numerous reasons.

¶ 51 As recounted by the majority, the defendant willingly went to the sheriff's department and was placed in an interview room. His "interview" began at 12:25 p.m. on January 23 and his questioning concluded 12 hours and 20 minutes later at 12:45 a.m. on January 24. Although the questioning was sporadic, the defendant apparently remained in that room, except for bathroom breaks, for the entire time.

¶ 52 Very early in the interview, Trainauskas advised Detective Troike and Sergeant Talmontes that he was experiencing severe back pain and asked, first, for Advil and then later to be allowed to lie down on the floor to try to get some relief. Detective Troike attested, under oath, at the motion hearing that the defendant was clearly in great discomfort because of his back. After being at the station for about 3½ hours, defendant again complained of pain, telling the officers his back was in spasm, the pain was significant and the single Aleve he had been given was not helping.

¶ 53 Beginning at about 1:55 p.m., Defendant made repeated requests for his attorney, all of which were ignored by Detective Troike and Sergeant Talmontes. He was neither released nor taken to a cell. Rather the interview continued using deception, subterfuge and manipulation of his *Miranda* admonishments (see ¶ 16, *supra*) as a substitute for direct questions.

¶ 54 About four hours into his interview, the defendant was assured that he was *not* free to leave and was told (falsely) that he had been identified leaving the victim's car. It was only after he had agreed to answer their questions that the officers read him his complete *Miranda* rights and secured his signature on the waiver of those rights. He then answered questions, *without his*

attorney, off and on for the next 8½ hours.

¶ 55 The trial court found the defendant's statements after 3:55 p.m. were involuntary because of the violation of his *Miranda* rights coupled with the pretextual efforts of Detective Troike and Sergeant Talmontes to elicit more statements from him.

¶ 56 Despite the fact that Detective Troike testified under oath that he had lied to the defendant, the State contends that the trial court's finding in that regard was against the manifest weight of the evidence. The majority rejects that argument but generously characterizes the lie as "merely an overstatement of the strength of the evidence," and asserts, without equivocation and without explaining how it could possibly know, that the lie "did not overcome his free will." See ¶ 35, *supra.*

¶ 57 With only slightly less certitude, the majority finds that "although defendant complained of back pain during the interview, this pain did not appear to affect the voluntariness of his statements, as he was alert and responsive throughout the interview." See ¶ 36, *supra.* Again, one wonders how the majority can be confident that the defendant did not conclude, after several hours of being virtually sequestered in the room and intermittently, but persistently, questioned, that the only way he could get to a bed, get more medicine and ease his back pain was to answer the detectives' questions without his attorney and tell them what they wanted to hear. That is certainly as likely a reading of the circumstances of this case as is the majority's and is consistent with the result reached by the trial court.

¶ 58 There are also, in my opinion, systemic concerns with the majority's decision. In the instant situation, the issue of voluntariness arises because of an intentional, blatant violation of *Miranda* and the use of subterfuge the trial court found the officers surely intended to be

coercive. The primary law enforcement officers were a detective and a sergeant, presumably actually trained and experienced in proper police procedures. The majority, however, relies on the facts that "the defendant was 33 years old, reasonably intelligent, had prior experience with law enforcement, was given opportunities for food and water, and was allowed to sleep and use the bathroom" to vindicate the constitutional violations by the police and to declare the statements voluntary.

¶ 59 Finally, I, like the trial court, am extremely concerned about the police officers' complete disregard of proper interrogation protocol. I believe the trial court's determination that the defendant's challenged statements were made involuntarily and should be suppressed was correct, that such careful parsing and weighing on the part of the trial court should be encouraged both in fairness to this particular defendant and in the ultimate best interests of the criminal justice system, and that its decision should be affirmed in this court. I, therefore, dissent from the majority's contrary decision.