

NOTICE
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2015 IL App (5th) 130415-U

NO. 5-13-0415

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	St. Clair County.
)	
v.)	No. 11-CF-867
)	
STANLEY CHAIRS,)	Honorable
)	John Baricevic,
Defendant-Appellant.)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Stewart and Schwarm concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not err in denying the defendant's motion to suppress where, considering the totality of the circumstances, the defendant's confession was voluntary and where the defendant's statements to the interviewing police officers did not constitute an unambiguous invocation of his right to counsel. Also, the court did not abuse its discretion in sentencing the defendant to 40 years' imprisonment.

¶ 2 The defendant, Stanley Chairs, was charged with first-degree murder for the shooting of Joshua Miller while attempting to commit or committing armed robbery, a forcible felony. Prior to the trial, the defendant filed a motion to suppress statements he made during an interview conducted by the police. The trial court denied this motion following a hearing. At a jury trial, the defendant was found guilty of first-degree

murder. Thereafter, the trial court sentenced him to 40 years' imprisonment. On appeal, the defendant argues that the trial court erred in denying his motion to suppress and that his 40-year sentence was excessive. For the reasons which follow, we affirm the order of the circuit court.

¶ 3 The following factual recitation is taken from the video recording of the interview, which was entered into evidence at the suppression hearing, and also from testimony presented at the suppression hearing. In the early morning hours of April 23, 2011, Zachary Watts shot and killed Joshua Miller, a security guard, while Miller was sleeping inside his car located outside of a construction site in St. Clair County. After repeated police questioning, Watts implicated the defendant in the shooting. On June 21, 2011, the defendant, who had turned 18 four months earlier, was arrested and transported to the juvenile division of the East St. Louis police department to be interviewed. The record on appeal contains a video recording of the interview.

¶ 4 Orlando Ward, a detective with the East St. Louis police department, conducted the defendant's interview along with Special Agent Calvin Brown and Alcohol, Tobacco, and Firearms Agent Dan Owens. Detective Ward read the defendant his *Miranda* rights and gave the defendant the rights in written form, asking him to initial after each right if he understood it and to sign the form at the bottom if he understood his rights and did not have any questions. The defendant initialed the form as Detective Ward read the rights to him. After Detective Ward informed the defendant that he could be provided with a lawyer "for free" and the defendant had initialed next to that right on the preprinted form, the defendant interjected, saying "wait, um." Detective Ward continued reading the

rights, informing the defendant that he could ask questions at any time during the process.

Thereafter, the following colloquy occurred:

"The defendant: how could I get a free lawyer.

Detective Ward: it's called a public defender.

The defendant: I don't even know what I'm arrested for first.

Detective Ward: That's why when I read this to you, when I talked to you, when I explained it to you, say 'I want to talk or I don't want to talk,' you know what I mean? So I explained it to you, alright. So I'm not going to ask you any questions before I even get done with all this, then I'll say 'this is what you [*sic*] down here for,' and we'll go from there. Alright? You understand all that?"

¶ 5 Detective Ward then asked the defendant if he was "ready to move forward right now" and the defendant responded "yes sir." After Detective Ward finished reading the defendant his *Miranda* rights, the defendant indicated that he understood his rights. The defendant then signed at the bottom of the form. He did not indicate that he could not read or that he did not understand his rights. He appeared to read the rights before he initialed them.

¶ 6 The officers began the interview by questioning the defendant concerning his participation in an unrelated armed robbery.¹ During this questioning, the defendant asked the officers "how much time can I get for this stuff?" Detective Ward responded,

¹This incident involved the armed robbery of a convenience store in which Watts was shot and paralyzed.

"I ain't going to sugarcoat shit, *** it's all up to the State's Attorney man." Detective Ward then said that he would be lying to the defendant if he told him how many years that he would get. However, he added that "honesty goes a long way; I'll put it that way." Special Agent Brown added the following: "No one can promise you, you know, make promises that they're going to lessen the sentence or anything, but, you know, whenever somebody does something wrong, telling the truth, generally, you know, there's less of a penalty, than a person, you know, that lies, didn't tell the truth, you know what I'm saying?" Special Agent Brown further told the defendant not to worry about the possible sentence and instead worry "about the fact that what you tell can help yourself, you know, in being honest." After the exchange, the defendant became more forthcoming and he described the circumstances of the unrelated armed robbery.

¶ 7 During the course of the interview, the defendant discussed with the officers the fact that he had wanted to commit suicide. In response, the officers sought to reassure him that his life was not over because of the unrelated armed robbery case. Specifically, Detective Ward reminded him that he had two children to "live for" that would look up to him regardless of what he did and that he had a "long way to go." Special Agent Brown added that it would be in the defendant's best interest to give a statement because this was his chance "to get all that stuff out on the table, to get out in front of it. Because the only way you're going to be free of everything is you get everything out in front of you." The defendant then indicated that he was just trying to get home.

¶ 8 The officers continued the questioning, asking about the 10-millimeter handgun that Watts used to kill Miller. After hearing the defendant's initial story about the gun,

the officers questioned his truthfulness. The defendant indicated that he wanted to return home to his pregnant fiancée. Thereafter, Detective Ward stated "this is the point where you need to make sure you are extremely clear in what you say, and as truthful as a preacher in church."

¶ 9 After further questioning, the defendant was given a break that lasted approximately 20 minutes. When the interview resumed, Special Agent Brown told the defendant that he was being questioned about the gun because a young security guard had been killed and that the police had information that the defendant was involved. The defendant was told that Watts had implicated him in the shooting, adding that "it ain't time to protect [Watts] right now." Detective Ward cautioned the defendant to consider the fact that he has "one child and one on the way" and stated that "the only person you're supposed to protect is your kids right now." Detective Ward reiterated that Watts had implicated the defendant in the shooting and Agent Owens questioned the defendant as to what he thought Watts would have told them about the incident. Following this exchange, the defendant confessed to his role in the crime.

¶ 10 According to the defendant, on the night of Miller's death, he was walking down Cleveland Avenue with his brother, Calvin Carter, and Watts, when they noticed that Miller was asleep inside his security guard car. Watts and the defendant decided to rob Miller as he was sleeping. As they opened the car door, Miller began to stir and they ran away. They returned to the vehicle once it appeared that Miller had fallen back asleep. Instead of opening the door again, Watts reached inside the partially open rear driver's side window of the vehicle and shot Miller in the head. The defendant and Watts then

each went inside the car, searching for valuables. The defendant patted Miller's front pocket and looked inside the vehicle's center console, finding both empty. Watts and the defendant then proceeded to a nearby club where they drank and danced for a few hours before returning home. The defendant explained that they went to the club to get the shooting off of their minds. Watts later hid the gun behind a building in front of the club.

¶ 11 At the suppression hearing, Detective Ward testified that the officers were wearing plain clothes and no weapons were displayed during the interview. The defendant was not injured in any way and was not deprived of food, drink, or sleep. Also, Detective Ward testified that no force, threats, or promises were made to the defendant during the interview. He described the interview room as "not a very large room." He believed that the *Miranda* rights were put in terms that the defendant would understand. He opined that the defendant appeared to be an individual of reasonable intelligence and noted that the defendant did not display any emotional or mental problems or was not under the influence of any intoxicants. Detective Ward believed that the defendant's statement was freely and voluntarily given.

¶ 12 The defendant testified that when the officers first began questioning him about the alleged incidents, he was scared and did not want to talk. The defendant acknowledged that Detective Ward made it clear that he could not "choose what happens" when discussing the possible penalties. However, he noted that Detective Ward and Special Agent Brown assured him that it would be better if he was honest. He indicated that Special Agent Brown told him that he would get a lesser penalty if he was honest about the alleged incidents. He acknowledged that he was not told a specific number of

years that he would get if he gave a statement. However, after hearing the officers' assurances, he reasonably believed that he would be in a "better place" if he gave the officers a statement. Furthermore, when the defendant informed the officers that his fiancée was pregnant, they told him that he needed to "help them out so [he could] get home to her."

¶ 13 After considering the evidence, the trial court denied the defendant's motion to suppress, finding that the defendant's statement was not coerced and was made voluntarily after knowingly waiving his rights. In the order, the court noted that although it was uncontested that the officers told the defendant that "honesty helps get a lesser sentence and will let him get home to his girlfriend earlier," those statements were qualified by the officers saying that they did not have any control over the sentencing decision. The court explained that had the promises been made without the disclaimer, it would have likely suppressed the defendant's confession. However, the court considered the totality of the circumstances and concluded that the officers' disclaimer "save[d] the voluntariness of the confession." In addition, the court found that the police officers behaved professionally toward the defendant, there was no physical coercion, the interview was not lengthy, and the *Miranda* warnings were given and waived orally and in writing. At trial, the jury found the defendant guilty of first-degree murder. He was sentenced to 40 years' imprisonment.

¶ 14 In reviewing a circuit court's ruling on a motion to suppress evidence, including statements, we apply a two-part standard of review. *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006). Under this standard, a circuit court's findings of fact and credibility

determinations are accorded great deference and will be reversed only if they are against the manifest weight of the evidence. *People v. Richardson*, 234 Ill. 2d 233, 251 (2009). In contrast, the reviewing court reviews *de novo* the circuit court's ultimate legal ruling as to whether the suppression is warranted. *Id.*

¶ 15 The defendant's first argument on appeal is that his confession was involuntary in that it was compelled by the officers' promise of leniency. The admission of an involuntary confession into evidence is a violation of a defendant's constitutional right to due process. *People v. Veal*, 149 Ill. App. 3d 619, 622 (1986). In determining whether a confession was voluntarily made, the court must ascertain whether defendant's will was overborne at the time he made the confession or whether the confession was made freely, voluntarily, and without compulsion or inducement of any sort. *Id.* When making this determination, the court should consider the following factors: the defendant's age, intelligence, background, experience, mental capacity, education, and physical condition at the time of the questioning; the legality and duration of the detention; the presence of *Miranda* warnings; the duration of the questioning; and any physical or mental abuse by the police officers, which includes the presence of threats or promises. *Richardson*, 234 Ill. 2d at 253-54. The court must consider the totality of the circumstances in arriving at this determination as no single factor is dispositive. *Id.* at 253.

¶ 16 Confessions that are the product of promises or suggestions of leniency have been held involuntary. *People v. Heide*, 302 Ill. 624, 629 (1922); *People v. Ruegger*, 32 Ill. App. 3d 765, 771 (1975); *People v. Peck*, 18 Ill. App. 3d 112, 116 (1974). However, mere exhortations to tell the truth or to make a statement do not render a subsequent

confession inadmissible. *People v. Wipfler*, 68 Ill. 2d 158, 173 (1977); *People v. Taylor*, 58 Ill. 2d 69, 77 (1974). In order for the officer's statements to be considered a promise of leniency, which would render any subsequent confession inadmissible, the statements must be coupled with a suggestion of a specific benefit which would follow if the defendant confessed. *People v. Eckles*, 128 Ill. App. 3d 276, 278 (1984).

¶ 17 For example, in *Eckles*, 128 Ill. App. 3d at 277-79, the Third District concluded that the police officer's statements to defendant that it would be in his best interest to get the truth out as quickly as possible and that if defendant told the truth and cooperated, the police would inform the State's Attorney and testify in court as to defendant's cooperation were not a promise of leniency coupled with a specific benefit. Similarly, in *People v. Hartgraves*, 31 Ill. 2d 375, 381 (1964), our supreme court held that a police officer's statement to defendant that it would go easier for him in court if he made a statement did not render the confession involuntary. In *People v. Howard*, 139 Ill. App. 3d 755, 758-59 (1985), a police officer's promise that if a defendant told the truth that everything would "go right" for him also did not render the subsequent confession involuntary.

¶ 18 However, in contrast, the Fourth District in *People v. Ruegger*, 32 Ill. App. 3d 765, 771 (1975), concluded that defendant's confession was involuntary where the police officer told defendant that he would "go to bat" for him on such matters as recognizance bond and probation if he confessed. Likewise, in *People v. Travis*, 2013 IL App (3d) 110170, ¶¶ 19, 66, the Third District concluded that the juvenile defendant's confession was involuntary where the police officer made a statement to defendant that everyone

"gets a clean slate when they turn 17" and that defendant must take responsibility for his actions in order to get "those chances."

¶ 19 In this case, we find that the officers' statements to the defendant did not constitute a promise of leniency coupled with a specific benefit. Although the statements could be construed as implying a lesser sentence in exchange for the defendant's cooperation, the statements were qualified by the officers' specifically telling the defendant that only the prosecutor could make sentencing decisions. Therefore, looking at the totality of the circumstances, we conclude that the officers' statements cannot be reasonably construed as improper inducements. Furthermore, the remaining factors such as the defendant's age, intelligence, experience, and the intensity and duration of the interrogation do not show that the defendant's will was overcome at the time that he confessed. Thus, we conclude that the defendant made a voluntary confession and the circuit court did not err in denying the motion to suppress with regard to the voluntariness of the defendant's confession.

¶ 20 The defendant next argues that his videotaped confession should have been suppressed where the police officers refused to provide him with counsel after he invoked his constitutional right to have counsel present during the interrogation.

¶ 21 Initially, the State argues that the defendant has forfeited his argument concerning the invocation of his right to counsel. To preserve an issue on appeal, the defendant must raise the argument in the trial court at the motion to suppress stage as well as include it in the posttrial motion. *People v. Johnson*, 334 Ill. App. 3d 666, 672 (2002). "Such a requirement allows the court of review the benefit of the trial court's judgment on the

issue under contention." *Id.* Here, the defendant's motion to suppress argued that the "actions of the State violated [his] Fifth, Sixth, and Fourteenth Amendment right to remain silent, to be represented by counsel and to due process guaranteed to him by the U.S. Constitution and Article I Sections 2, 6, 10 of the Illinois Constitution." The defendant argues that this broad statement was sufficient to preserve the issue on appeal. Alternatively, the defendant maintains that if we conclude that he did forfeit this issue on appeal, we should review the issue under the plain-error doctrine.

¶ 22 The plain-error doctrine bypasses normal forfeiture principles and allows a reviewing court to consider an otherwise unpreserved error on appeal in certain circumstances. *People v. Thompson*, 238 Ill. 2d 598, 613 (2010). Under plain-error review, the reviewing court will consider an unpreserved error where (1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against defendant, or (2) a clear or obvious error occurred, and the error is so serious that it affected the fairness of the trial and undermined the integrity of the judicial process, regardless of the closeness of the evidence. *People v. Taylor*, 2011 IL 110067, ¶ 30. The first step of plain-error review is to determine whether any error occurred. *Thompson*, 238 Ill. 2d at 613. We therefore turn to whether any error occurred with regard to the defendant's argument concerning his invocation of his right to counsel.

¶ 23 "Under *Miranda*, and as a means to protect the fifth amendment right against self-incrimination, an individual subjected to custodial interrogation or under the imminent threat of interrogation is entitled to have retained or appointed counsel present during the

questioning." *People v. Harris*, 2012 IL App (1st) 100678, ¶ 69 (citing *Miranda v. Arizona*, 384 U.S. 436, 444-45 (1966)). Where a suspect requests counsel during any point in an interview by law enforcement officials, the questioning must cease and the suspect cannot be subjected to further questioning until a lawyer has been made available or the individual initiates further communication with the police. *Id.* When determining whether a defendant's constitutional right to counsel has been violated, a court must first decide whether the accused actually invoked his right to counsel. *In re Christopher K.*, 217 Ill. 2d 348, 376 (2005). Where the court determines that the accused invoked his right to counsel, it must next determine whether the accused initiated further conversation with the police and knowingly and intelligently waived his previously asserted right to counsel. *Id.*

¶ 24 This case involves the initial inquiry: whether the defendant invoked his right to counsel. This is an objective inquiry, which requires, at a minimum, some statement that can be reasonably construed as an expression of a desire for counsel. *Harris*, 2012 IL App (1st) 100678, ¶ 69. Where an accused makes reference to an attorney that is ambiguous or equivocal in that a reasonable officer in light of the circumstances would have understood only that the accused might have been invoking the right to counsel, the officer is not required to cease questioning the accused. *In re Christopher K.*, 217 Ill. 2d at 378. The suspect's desire for counsel must be articulated with sufficient clarity that a reasonable officer in the circumstances would understand the statement to be a request for counsel. *Id.* at 378-79. In other words, "the invocation must be sufficiently free from indecision or double meaning so as to reasonably inform authorities that the accused

wishes to speak to counsel." *Harris*, 2012 IL App (1st) 100678, ¶ 69. Although an assertion of the right to counsel need not be explicit, unequivocal, or made with unmistakable clarity, not every reference to an attorney, no matter how vague, indecisive, or ambiguous, should constitute an invocation of the right to counsel. *People v. Tackett*, 150 Ill. App. 3d 406, 418 (1986).

¶ 25 For instance, in *People v. Krueger*, 82 Ill. 2d 305, 311 (1980), where the accused was reported to have stated "Maybe I ought to have any attorney," "Maybe I need a lawyer," and "Maybe I ought to talk to an attorney," our supreme court found that the accused did not invoke his right to counsel as a more positive indication or manifestation of a desire for an attorney was required. Similarly, in *Tackett*, 150 Ill. App. 3d at 418-19, the First District concluded that defendant's reported statements of "I might be needing [an attorney]" or "I probably should" in response to the police officer's statement that an attorney would be made available were also insufficient to constitute an invocation of the right to counsel. Furthermore, in *People v. Polk*, 407 Ill. App. 3d 80, 98 (2010), the First District concluded that defendant's statements concerning talking to his aunt to see if she had money for an attorney and his statement that he was going to try to get an attorney were insufficient to invoke his right to counsel because a reasonable officer could have interpreted the statements as defendant's inquiring about the ability of his family to retain a private attorney rather than an unambiguous request for counsel.

¶ 26 In the present case, while the defendant was being read his *Miranda* rights, he inquired as to "how could [he] get a free lawyer?" A reasonable officer could conclude that the defendant's statement was only an inquiry about the process or the procedure for

obtaining a free attorney rather than an unambiguous declaration of the right to counsel. The defendant's query was not sufficiently clear that a reasonable officer would have understood it to be an unambiguous or unequivocal request for counsel. Accordingly, the defendant's statement did not constitute an unambiguous invocation of the right to counsel. Furthermore, the defendant argues that his counsel was ineffective for his failure to raise this issue in the motion to suppress and subsequent posttrial motion. However, as we have already concluded that the defendant's statement did not constitute an ambiguous invocation of the right to counsel, we conclude that the defendant was not provided ineffective assistance of counsel with regard to this issue.

¶ 27 Last, the defendant argues that his 40-year sentence of imprisonment was excessive. The trial court's sentencing decision must be based on the particular circumstances of each case and the court should consider such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. *People v. Fern*, 189 Ill. 2d 48, 53 (1999). It is well established that the trial court has broad discretionary powers to fashion an appropriate sentence within the statutory limits. *People v. Jones*, 168 Ill. 2d 367, 373 (1995). Thus, the trial court's sentencing determination is entitled to great deference. *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). The trial court is given such deference because it is in the best position to assess the credibility of the witnesses and to weigh the evidence presented at the sentencing hearing. *Jones*, 168 Ill. 2d at 373. When evaluating a trial court's sentencing determination, the reviewing court must not substitute its judgment for that of the trial court merely because it would have weighed the factors differently. *Fern*, 189 Ill. 2d at

53. A sentence within the prescribed statutory limits will not be disturbed absent an abuse of discretion. *People v. Coleman*, 166 Ill. 2d 247, 258 (1995).

¶ 28 In this case, the trial court sentenced the defendant to 40 years' imprisonment. The defendant was convicted of first-degree murder. The sentencing range for the defendant's first-degree murder conviction included a mandatory 15-year firearm enhancement. Thus, the applicable sentencing range was 35 to 60 years' imprisonment. See 730 ILCS 5/5-4.5-20(a), 5-8-1(a)(1)(d)(i) (West 2012). Consequently, the trial court's 40-year sentence was within statutory limits.

¶ 29 During the sentencing hearing, the following factors in mitigation were argued: that the defendant was 18 years old when the shooting occurred; that he was a father of two young children; that he had obtained his GED after he was arrested; and he had no prior criminal conviction. In contrast, the following aggravating factors were argued: the impact on the victim's family; the need for deterrence; the defendant's reaction after his friend shot the victim, *i.e.*, searching through the victim's pockets and vehicle and then going to a club; and that the defendant has had disciplinary problems while in jail, including violating the inmate disciplinary code for battery, fighting, and blackmail. In announcing the sentence, the trial court acknowledged that the defendant's actions affected two families, that his children would be growing up without a father; that he was convicted under an accountability theory; and that he had apologized for his actions. However, the court noted that at the time of the shooting, the defendant did not show any remorse. The court observed that someone was "laying on the ground with his life bleeding out, and [the defendant] did nothing." The court opined that the defendant

needed more than the minimum sentence and that he had "dramatically destroyed two families" and needed to be "punished for that."

¶ 30 Given that the trial court was in the best position to assess the credibility of the witnesses and that the record indicated that the trial court gave careful and appropriate consideration to all of the relevant sentencing factors, we conclude that the court did not abuse its discretion in sentencing the defendant to 40 years' imprisonment.

¶ 31 For the foregoing reasons the judgment of the circuit court of St. Clair County is hereby affirmed.

¶ 32 Affirmed.