2016 IL App (1st) 133204-U
No. 1-13-3204

THIRD DIVISION
September 28, 2016

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 09 CR 20719 (01)
	)	
DARRON BREWER,	)	
	)	The Honorable
Defendant-Appellant.	)	Stanley J. Sacks,
	)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Lavin concurred in the judgment.

ORDER

¶ 1 *Held:* defendant's first degree murder and aggravated kidnapping convictions affirmed where: the circuit court properly denied defendant's pretrial motions to quash his arrest and suppress his statements; the circuit court's evidentiary rulings and its denial of defendant's motion for a continuance did not amount to an abuse of discretion; and defendant was not denied his constitutional right to effective assistance of trial counsel.

¶ 2 Following a jury trial, defendant Darron Brewer was convicted of first degree murder and aggravated kidnapping. He was sentenced to 75 years' imprisonment for murder and 24 years' imprisonment for aggravated kidnapping, the sentences to be served consecutively. Defendant

appeals his convictions and the sentences imposed thereon, arguing that the circuit court erred in: (1) denying his motion to quash his arrest and suppress evidence; (2) denying his motion to suppress his statements; (3) allowing the State to admit hearsay statements made by his codefendant; (4) prohibiting him from introducing an exculpatory statement made by his codefendant; and (5) denying his request for a continuance. Defendant also contends that he was denied his constitutional right to effective assistance of trial counsel. For the reasons set forth herein, we affirm the judgment of the circuit court.

¶ 3 BACKGROUND

¶ 4 On October 26, 2009, defendant's wife, Kenyate Collier was killed. Her body was discovered in the trunk of defendant's car the following day. Defendant and his brother Dujuan Powe were subsequently both arrested and charged with multiple offenses in connection with Collier's death, including first degree murder and aggravated kidnapping.[1]

¶ 5 Pre-Trial Motions and Hearings

¶ 6 Following his arrest, defendant filed a motion to quash his arrest and suppress evidence. In his motion, defendant alleged that he was unlawfully arrested at his home absent a warrant or probable cause and subjected to questioning in contravention of his fourth amendment rights. The circuit court subsequently presided over a hearing on defendant's motion.

¶ 7 At the hearing, Chicago Police Detective Timothy McDermott testified that on October 26, 2009, at approximately 10:35 p.m., defendant placed a 911 call in which he relayed that his wife and his car had been missing since approximately 1 a.m. that day and that he just spotted his vehicle in an alley located in the vicinity of 2244 North Trip Avenue. The car was abandoned

[1] We note that codefendant Powe is not a party to this appeal. Powe filed his own appeal, which this court has already resolved in a separate Rule 23 order*: People v. Powe*, 2016 IL App (1st) 133205-U.

and the keys were not in the ignition. Defendant provided the 911 dispatcher with his phone number and indicated that he would remain with his vehicle and await the arrival of responding officers. Two beat officers were subsequently dispatched to that location and arrived sometime after midnight. The officers did not encounter defendant or any other person at the scene. They did, however, discover defendant's vehicle. The car was unlocked and two parking citations had been placed on the windshield. When one of the officers popped the trunk, they discovered Collier's dead body. The officers then reported their discovery over the police radio. As a result, Detective McDermott, his partner, Detective Joe Keller, and several other detectives were dispatched to the scene.

¶ 8 Upon their arrival at the alley, Detectives McDermott and Keller were directed to locate and interview defendant. At that time, Detective McDermott did not know that defendant was involved in Collier's death; he simply knew that defendant had reported her missing and placed a 911 call about his car. Detective McDermott testified that a Cricket Wireless phone document was found in defendant's abandoned vehicle and the document listed defendant's address as 3749 West Beldon Avenue. He and his partner then proceeded to that location. Four other detectives accompanied them to defendant's address. They arrived at approximately 1:20 a.m. on October 27, 2009. Detective McDermott testified that he had neither an arrest warrant nor a search warrant for defendant at that time. Upon their arrival, defendant invited the officers into his apartment and the officers "explained the situation" to him and "asked him to cooperate." Specifically, the officers explained that they had responded to defendant's 911 call and found his car. They also knew that he had tried to report his wife missing "and asked him if he would be willing to come into the Area 5 detective division to cooperate in the investigation." Defendant agreed to cooperate but indicated that he needed to make childcare arrangements for his two

children. Joshua Maddox, defendant's boyfriend, was also present for this conversation and agreed to cooperate with their investigation. Detective McDermott testified that after defendant made some phone calls to arrange for childcare for his children, he and Maddox were transported separately in police cars to Area 5. Neither man was handcuffed.

¶ 9 On cross-examination, Detective McDermott denied that any of the detectives had their guns out when they knocked on defendant's door. He also testified that defendant was never told he was under arrest. Detective McDermott confirmed that defendant was also not told that his wife's dead body had been recovered from the trunk of his car at that point. Instead, defendant was simply asked if he would cooperate with their investigation into his missing wife. He classified that conversation as "casual" rather than confrontational.

¶ 10 Chicago Police Homicide Detective Arthur Taraszkiewicz testified that sometime just after midnight on October 27, 2009, he and his partner, Detective Juan Morales, were also dispatched to the alley located in the vicinity of 2244 North Tripp Avenue. When they arrived at the location, they observed a blue Monte Carlo parked in the alley. They then "canvass[ed] some of the area" to "see if [they] could find any witnesses that saw anything." Afterwards, Detective Taraszkiewicz and his partner relocated to defendant's apartment along with four other detectives. He estimated that they arrived at the residence sometime between 1:00 and 2:00 a.m. on October 27, 2009. None of the detectives had their guns out. When defendant answered the door, one of the other detectives asked defendant if he was the individual who had called about the Monte Carlo in the alley. When defendant confirmed that he was the 911 caller, he was then asked if he would accompany them to Area 5 to help them with their investigation. Defendant responded that "he was willing to assist with the investigation" and Detective Taraszkiewicz and his partner drove him to the police station. Defendant's friend, Joshua Maddox, was also taken to

Area 5, but he was transported in a separate vehicle. Detective Taraszkiewicz testified that neither man was handcuffed. Once they arrived at Area 5, both men were put in separate interview rooms.

¶ 11 Detective Taraszkiewicz testified that defendant was not told that he was under arrest; rather, he was informed that he was free to return home whenever he wanted. Because defendant was not under arrest, Detective Taraszkiewicz did not inform defendant of his *Miranda* rights when he began talking to him sometime after 2 a.m. on October 27, 2009. Moreover, during this initial conversation, Detective Taraszkiewicz also did not inform defendant that Collier's dead body had been recovered from the trunk of his vehicle; rather, he simply asked defendant about his "comings and goings" on October 26, 2009. In response, defendant stated that he had not seen or heard from Collier since approximately 1 a.m. that day. Because he was concerned, defendant called Maddox later that morning and asked him to pick him up and drive him to the police station so that he could report her missing. Defendant also told Detective Taraszkiewicz that he and Maddox unexpectedly discovered his missing car parked in an alley later that evening; however, Collier was not in the vehicle. At that point, defendant called 911.

¶ 12 After conversing for approximately 30 minutes, Detective Taraszkiewicz testified that he stepped outside of the interview room and spoke to the detectives who had concluded their interview with Maddox. He learned that Maddox's account of the events of October 26, 2009, was "essentially the same" as the account provided by defendant, except that he mentioned that defendant's brother, codefendant Powe, was with defendant when he picked him that morning to report his wife missing.

¶ 13 Detective Taraszkiewicz testified that he re-interviewed defendant sometime around 5 a.m. He did not mention that Maddox had informed detectives that Powe had been with them the

previous morning. He did, however, ask if defendant would consent to a search of his apartment and defendant signed a form authorizing the search. Nothing noteworthy was found during the search. Detective Taraszkiewicz next spoke to defendant at approximately 8 a.m. Defendant continued to provide the same story and agreed to submit to a polygraph test. At approximately 11 a.m., defendant was taken to the facility where the polygraph machine was located. Detective Taraszkiewicz testified that he did not have any additional contact with defendant after that time. He subsequently learned that defendant was officially arrested at 4:56 a.m. on October 28, 2009, after he made an inculpatory statement about his participation in a fake carjacking and the murder of his wife.

¶ 14 Chicago Police Homicide Detective Donald Falk was also present during Detective Taraszkiewicz's conversations with defendant and he provided testimony consistent with the account provided by Detective Taraszkiewicz. In addition, he testified that defendant was told at the beginning of each interview that he was free to leave. Moreover, the door to the interview room remained unlocked during and after the interviews; however, Detective Falk explained that defendant was not permitted to freely roam around Area 5 because officers did not want him to have contact with Maddox or anyone else involved in the investigation. Defendant, however, was permitted to go to the bathroom and take smoke breaks while he was at the station. Detective Falk further testified that he was not party to any additional interviews with defendant after he was taken for a polygraph examination at approximately 11 a.m. on October 27, 2009. He was, however, updated about the progress of the investigation into Collier's murder.

¶ 15 Specifically, Detective Falk testified that he learned that defendant made references to a Marathon gas station located near 59th and Elizabeth in a subsequent interview. Following that statement, detectives spoke to an employee at the gas station and recovered surveillance footage.

The employee was then brought to the police station to view a lineup. Detective Falk testified that defendant never told him about the gas station or that he had been purportedly carjacked during his earlier interviews. Detective Falk also became aware that defendant told detectives during a subsequent interview that he believed that his brother, codefendant Powe, murdered his wife and that he needed protection from his brother.

¶ 16 Detective Falk testified that while defendant remained at Area 5, Taron Webb, defendant and codefendant Powe's cousin, called the police station with information pertaining to Collier's murder. He was then brought to Area 5 for an interview. Following Webb's interview, Detective Falk interviewed defendant's aunt, Tasha Nash. He testified that the interview took place at approximately 8:40 p.m. on October 27, 2009. During that interview, Nash told him about three recent conversations that she had with Powe. The first conversation occurred approximately two weeks prior to Collier's death. During that conversation, Powe told her that Collier was accusing him of rape and that he was upset about her accusation because the sex had been consensual. The second conversation occurred on the evening of October 25, 2009. Nash told Detective Falk that Powe had called her and inquired whether she had .38 caliber shells or whether she could purchase some .38 caliber shells for him. Nash, however, refused Powe's request. She next heard from Powe on October 26, 2009. During that conversation, Powe informed Nash that he had taken defendant's vehicle and had shot Collier in the head.

¶ 17 Detective Falk testified that following Nash's interview, other detectives involved in the case went to interview Benita Wallace, Powe's girlfriend. Her residence was also searched and a weapon was recovered. Following these events, an investigative alert was issued for Powe. Thereafter, sometime after 4 a.m. on October 28, 2009, defendant was interviewed again and was told that the murder weapon had been recovered and that they were "closing in on Powe." At

that point, defendant stated that he knew that Powe had killed his wife and that he had lied to the police earlier because he did not want to get in trouble. Defendant said that Powe had carjacked him and his family, had dropped him and his kids off at defendant's apartment, and then had "taken care of" Collier. Afterwards, Powe returned to defendant's apartment and instructed him to act as if nothing happened. When questioned further, defendant admitted that he and Powe had planned Collier's murder. Immediately after defendant incriminated himself, he was given his *Miranda* warnings and provided a videotaped statement to Detectives Gonzalez and Cardo. Detective Falk testified that defendant was treated as a witness rather than a suspect until he made his incriminating statement. He explained that up until that time, the detectives initially believed that Powe was the only suspect involved in Collier's murder.

¶ 18 Joshua Maddox testified that he was a "friend" of defendant's and admitted that they were engaged in a sexual relationship in October 2009. Their sexual relationship had been going on for "a couple months." Maddox testified that defendant called him on the morning of October 26, 2009, and informed him that his wife and his car were missing. At that point, Maddox had not known that Collier was defendant's wife; rather, he thought that she was simply the mother of defendant's two young children. After speaking with defendant, Maddox agreed to drive him to the police station so that he could file a police report. Maddox testified that he waited in the car with defendant's brother, codefendant Powe, while defendant went into the police station to file a report.

¶ 19 Maddox further testified that he and defendant were also together later that evening. They made trips to Wal-Mart and to Wendy's. At approximately 10:30 p.m., they were in Maddox's car with defendant's two children and were on their way to defendant's apartment. As Maddox drove, defendant, who was sitting in the front passenger seat, said that he thought he

had just seen his missing vehicle parked in an alley that they had just passed. Maddox circled the block and they returned to the alley. After confirming that defendant's blue Monte Carlo was the vehicle parked in the alley, Maddox testified that he approached the vehicle to see if defendant's wife was in the car. Collier was not present; however, Maddox noticed that various items were strewn throughout the interior of the vehicle. As a result, Maddox suggested that defendant call the police. After defendant called 911 they waited "about 30 to 45 minutes" for the police to arrive. When police had not arrived by that time, they decided to return to defendant's apartment because it was cold and defendant's kids were in the car. Sometime later that night, Maddox "heard a lot of people running up the stairs" of defendant's apartment building. Maddox looked out the window and saw "a detective car" double parked outside. Defendant then went to the front door to let the detectives into his apartment. Maddox testified that the detectives then "grab[bed]" both of them and "put [them] in handcuffs." When Maddox inquired why he was being handcuffed, the officers informed him that it was "protocol." He and defendant were then put in the back of separate vehicles and were transported to the police station. Maddox testified that he never saw any of the detectives present an arrest or search warrant to defendant. He acknowledged, however, that neither he nor defendant was told that they were under arrest.

¶ 20 When he arrived at the police station, Maddox testified the detectives took off his handcuffs and then locked him in a small room. He was then interviewed by detectives. Maddox stated that they "interrogated" him "like three different times" and became "more aggressive." He was not informed that Collier had been murdered until his third interrogation. He was then told that Collier had been shot in the head. In addition to being interrogated multiple times, Maddox testified that he also provided a statement to an Assistant State's

Attorney (ASA) and submitted to a polygraph exam. He was not released until sometime on October 28, 2009. Maddox acknowledged, however, that prior to his release, police officers took him back to defendant's apartment so he could get warmer clothes when he complained about being cold. He was also allowed to retrieve his laptop computer so that he could do some work while he was at the station. Maddox further acknowledged that he was also taken to McDonald's and provided with food. Although he was never told that he was under arrest, Maddox testified that during the time he was at the police station he did not feel free to leave.

¶ 21 On cross-examination, Maddox confirmed that defendant never relayed that he and his wife had been purportedly carjacked at a Marathon gas station on October 26, 2009, shortly before she went missing. Maddox also acknowledged that he continued to visit defendant regularly at the Cook County Jail after defendant was arrested for Collier's murder. In addition, he also talked to defendant regularly over the telephone. During some of those conversations, defendant discussed the illegality of his arrest and told Maddox that there would be a hearing where Maddox would testify. Defendant also informed him that if the trial judge concluded that his arrest was illegal, it would help his case. Maddox, denied, however, that defendant ever directed him what to say during the hearing.

¶ 22 After hearing the aforementioned evidence and the arguments of the parties, the circuit court denied defendant's motion to quash his arrest and suppress evidence. In doing so, the court rejected defendant's contention that he was arrested at his apartment sometime after 1 a.m. on October 27, 2009. The court noted that Maddox was the only witness who provided evidence in support of defendant's argument that he was handcuffed and subject to an "illegal arrest" at his apartment; however, the court concluded that Maddox was "not credible" because he "had a motive to testify in a certain way." Instead, the court found that there was no "show of force or

weapons" and no "physical restraint." Although defendant was at the police station for over 24 hours, the court concluded that "the mere fact that [defendant was] at the police station doesn't mean he [was] in custody." The court emphasized that defendant was repeatedly told he was free to leave, but elected to cooperate with police and divert suspicion away from himself. Accordingly, the court concluded that defendant was "not arrested at the house. He [was] arrested at the police station once he gave up a little bit of a ghost about the so-called plan or getting together about the hijacking. At that point when he was, in fact, arrested, the police ha[d] probable cause to arrest him, if not before that."

¶ 23 Following the court's ruling, defendant filed a motion to suppress "any and all oral or written communications, confessions, statements or admissions, whether inculpatory or exculpatory, made by the defendant prior to, at the time of, or subsequent to his arrest." In his filing, defendant argued that he had been subject to multiple custodial interrogations absent *Miranda* warnings while he was at Area 5. Moreover, only the statements that he made following his formal arrest were recorded in contravention of the express statutory requirements of section 103-2.1 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/103-2.1 (West 2008)), which mandates the recording of all statements made during the course of a custodial interrogation. In addition, one of the recordings lacked audio for a portion of the interview. As such, defendant argued that his statements, including the statements he provided after he was formally arrested, "did not meet the requirements for admission" under Illinois law.

¶ 24 The circuit court subsequently presided over a hearing on the defendant's motion. At the hearing, the parties stipulated to the testimony provided during the prior hearing on defendant's motion to quash his arrest and suppress evidence and then argued their respective positions before the court. After hearing the arguments of the parties, the circuit court denied defendant's

motion to suppress his statements, finding that his statements were all made voluntarily. In doing so, the court acknowledged, in pertinent part, that the audio portion of one of defendant's videotaped statements cut out for a period of time, but noted that there was no evidence that it was the result of anything other than a simple malfunction. More importantly, there was no evidence that defendant's statements were involuntary. The court explained:

> "In this case, the video of the interrogation, the questions, the conversation, whatever you want to call it with [defendant] clearly shows that he wasn't coerced, he wasn't beaten, threatened, whatever. In the part that you can see and hear, there is no evidence otherwise anything happened to him untoward during any questioning by the police whatsoever.
>
> His questioning by the police looks like it's pretty much a walk through the park for [defendant]. This is what happened. This is what happened next."

¶ 25 Following the circuit court's denial of defendant's motions to quash his arrest and suppress his statements, the cause proceeded to a simultaneous joint, but severed, jury trial.

¶ 26 Trial

¶ 27 At trial, Chicago Police Officer Mariusz Chojnacki testified that he and his partner were dispatched to an alley located near 2244 North Tripp Avenue sometime around midnight on October 26, 2009. They were responding to a 911 call about an abandoned vehicle parked in that alley and were expecting to meet the 911 caller at that location; however, when Officer Chojnacki and his partner arrived at the scene, the caller was not present. They did, however, find the vehicle. Officer Chojnacki testified that the car was unlocked. When they opened the trunk, they discovered Collier's dead body. She was lying face up in the trunk and had dried blood on her face and upper body.

¶ 28 Detective Anthony Nordin testified that he was the lead detective assigned to investigate Collier's murder and that he and his partner, Detective Falk, were dispatched to the 2244 North Tripp alley at approximately 12:10 a.m. on October 27, 2009. When they arrived, they spoke to Officers Czarniecki and Chojnacki, the two beat officers who discovered defendant's blue Chevrolet Monte Carlo parked in the alley. The trunk was open and Collier's body was visible. Detective Nordin observed "two gunshot wounds to [her] head." He and his partner ran the plates on the vehicle and found out that it was registered to defendant. The registered address was 3432 West Potomac; however, they found a Cricket Wireless cell phone rebate form inside of the vehicle and the address on the form was 3749 West Beldon. Detective Nordin testified that he then requested other detectives to proceed to both locations in an effort to locate defendant.

¶ 29 He was subsequently notified that defendant and another man, Joshua Maddox, were found at the West Beldon location, which was "approximately eight blocks" away from the alley. Both men agreed to talk to detectives and were interviewed at the Area 5 police station. While other detectives located and interviewed defendant, Detective Nordin remained with the vehicle until Investigator Rios from the Cook County Medical Examiner's Office arrived at the scene and removed Collier's body from defendant's trunk. Thereafter, the vehicle was towed to "Auto Pound 4," a lot located in back of the Area 5 police station so that it could be processed. Detective Nordin testified that he arrived back at the station at approximately 2:30 a.m. By that time, other detectives involved in the investigation had completed their initial interviews with defendant and Maddox. He confirmed that neither man was under arrest. Shortly after he arrived at the station and received updates from the other detectives, Detective Nordin spoke to

Collier's mother. Thereafter, at approximately 5 a.m. he took part in the search of defendant's apartment. Nothing of evidentiary value was discovered during the search.

¶ 30 Several hours later, at approximately 12:20 p.m., Taron Webb, defendant's cousin called the station with information pertaining to Collier's death. After speaking to Webb over the phone, Detective Nordin and Detective Morales picked up Webb from a Citgo gas station located at 135th and Kedzie and brought him back to Area 5 so that he could provide an official statement. Following his conversation with Webb, Detective Nordin testified that he was interested in speaking to two individuals: codefendant Powe and his aunt, Tasha Nash.

¶ 31 Detective Nordin testified that defendant and Maddox both participated in additional interviews throughout the morning and afternoon. Both men were provided with food and drink. Following a 2:40 p.m. conversation with defendant, Detectives Cardo and Gonzalez relocated to a Marathon gas station located at 59th Street and Elizabeth Avenue. Once the detectives returned to Area 5, arrangements were made for another officer to return to the gas station and make a copy of a surveillance video.

¶ 32 Detective Nordin testified that he spoke to Tasha Nash, whom he was looking to interview, at approximately 8:40 p.m. on October 27, 2009. Following that interview, he confirmed that he was "still looking for" codefendant Powe. As a result, a search of Powe's girlfriend's home was conducted at approximately 10 p.m. that evening and a .38 semi-automatic handgun was recovered during the search. Her residence was located approximately one block away from the Marathon gas station. Thereafter, at approximately 3:30 a.m. on October 28, 2009, Charles Reed, an employee from the Marathon gas station viewed a physical lineup. He identified defendant from that lineup as the man whom he believed was the victim of a recent carjacking at the gas station. Detective Nordin testified that detectives conducted another

interview with defendant following the lineup. Defendant was ultimately arrested for Collier's murder at 4:56 a.m. Codefendant Powe, in turn, subsequently turned himself into the Chicago Police Department at approximately 10 p.m. on October 29, 2009, and he was formally arrested at that time.

¶ 33 On cross-examination, Detective Nordin acknowledged that defendant was at Area 5 for over 24 hours before he was arrested. He testified, however, that defendant remained there willingly and voluntarily.

¶ 34 Detective Falk provided testimony that was consistent with the testimony he provided during the earlier hearing on defendant's motion to quash his arrest and suppress evidence. He testified that he conducted the first few interviews with defendant at Area 5. He acknowledged he did not advise defendant of his *Miranda* rights during those interviews because defendant was being treated as a husband rather than a suspect. He further acknowledged, however, that defendant was not told during those interviews that his wife's dead body had been recovered from the trunk of his car. Detective Falk confirmed that defendant made no references to his brother, codefendant Powe, or a recent carjacking during those initial interviews.

¶ 35 Detective Jose Cardo testified that he was assigned to assist other detectives with their investigation into Collier's murder when he commenced his shift at 8:30 a.m. on October 27, 2009. At approximately 1:15 p.m., he and his partner, Officer Gonzalez, interviewed defendant in a "quiet room" at the station. During that interview, defendant provided his account of the events preceding his wife's disappearance. Defendant mentioned that Collier had gotten off of work around 11 p.m. on October 25, 2009, and that she picked him and their kids up at defendant's mother's house located at 68th and Prairie. Because Collier was tired, defendant entered the driver's seat and began driving toward his West Beldon apartment. Defendant then

mentioned he had stopped at a Marathon gas station located at 59th and Elizabeth before they arrived at his apartment and put the kids to sleep. Defendant stated that Collier left his apartment sometime thereafter and that he had not seen or heard from her since. Detective Cardo testified that he thought that it was "odd" that defendant stopped for gas at the address he mentioned because "it was out of his way far off the expressway."

¶ 36 Detective Cardo testified that later that afternoon, at approximately 2:40 p.m., defendant left the quiet room and approached him "on the main floor of Area 5 Detective Division." Defendant then informed him that "he believed he needed police protection because he thought that his brother [Powe] *** was involved in the murder of his wife." Detective Cardo testified that this was the first time that defendant had mentioned his brother. Defendant then explained that Powe had stayed with him and Collier at defendant's West Beldon apartment approximately three weeks ago. During that time, Collier told him that Powe had raped her. Defendant then confronted his brother who explained that the sex had been consensual. Powe, however, seemed really concerned that Collier would involve the police. Defendant then provided Detective Cardo with the name of Powe's girlfriend and said that she lived around the general area of 59th and Racine, which was right around the corner from the Marathon gas station that defendant had mentioned during the previous interview. Detective Cardo testified that when defendant was talking about Powe, it seemed that he was scared of his brother.

¶ 37 Based on his conversations with defendant, Detective Cardo and his partner drove out to the Marathon gas station at approximately 7 p.m. He said he found it "a little strange" that Powe's girlfriend's house "was so close to the gas station." When they arrived at the gas station, Charles Reed, a gas station employee, immediately inquired, "Are you here for the carjacking that happened last night?" Detective Cardo testified that he and his partner had not heard about a

carjacking and asked Reed to explain what he had seen the previous night. Afterwards, they viewed surveillance footage from the gas station that showed the carjacking event that Reed described. Officer Cardo immediately recognized defendant from the surveillance footage as the victim of the carjacking; however, he had not referenced a carjacking during his prior interviews. Reed then came to Area 5 to view a lineup at approximately 3:30 a.m. on October 28, 2009. By that time, other detectives had interviewed defendant's aunt, Tasha Nash, and his cousin, Taron Webb, and had searched the home of Powe's girlfriend and recovered a gun from that location.

¶ 38 When Detective Cardo next spoke to defendant at approximately 4:30 a.m., he relayed some of the details of those recent investigative efforts to defendant. Defendant then indicated that he had not been entirely truthful when he spoke to them earlier. He stated that "he actually knew for a fact that Powe had killed his wife, and he didn't say anything, and he lied because he was scared he was going to get in trouble." Defendant explained that when he and Collier were at the Marathon gas station, they were approached by a man wearing coveralls and a mask from the horror movie *Scream*. The man pointed a gun at them, entered the front seat of defendant's car, and ordered defendant to drive to a nearby alley. The man then ordered Collier to get out of the car and into the trunk. During this encounter, defendant thought he recognized his brother's voice and inquired if Powe was the man behind the mask. In response, Powe took off the mask and showed his face. Detective Cardo told defendant that they would locate Powe and speak to him.

¶ 39 Immediately after defendant was told that police officers would be speaking with Powe, defendant made a statement that the carjacking "was supposed to happen in the alley and [Powe] fucked it all up" by carjacking them at the gas station where there were video cameras. Immediately after defendant made that statement, Detective Cardo testified that he formerly

arrested defendant for Collier's murder and then moved him from the quiet room to Interview Room C and activated the electronic recording system. Defendant was then advised of his *Miranda* rights and proceeded to provide a videotaped account of his involvement in Collier's murder. The videotaped statement commenced at 4:56 a.m. and concluded at approximately 5:30 a.m.

¶ 40 During his videotaped statement, defendant stated that Collier told him several weeks ago that Powe had raped her and that she was scared of him because he threatened to kill her if she reported the rape to the police. When defendant spoke to Powe, however, Powe acknowledged having sex with Collier, but said that the sex had been consensual. Thereafter, at approximately 2 p.m. on the day of the murder, Powe called defendant and asked where he and Collier were "going to be later on." Defendant said that Powe wanted him to "bring Collier to him" so that Powe could "take care of her." Defendant understood that to mean that Powe "was gonna kill" Collier. Defendant stated that he agreed to do it because Collier "was serious about the rape" charge and he "didn't wanna see [his] brother go to jail." Defendant explained that he met up with Collier that evening once she finished work and that he drove over to the Marathon gas station located at the corner of 59th and Elizabeth. He told Collier that he was going to pick up his brother. As they approached the area, defendant called Powe and told him that he was "on his way." Based on this conversation, Powe knew to get ready with a *Scream* mask and a gun. Once they arrived at the gas station, Powe approached them and entered the vehicle. Defendant then drove to a nearby alley and Powe ordered Collier to get out of the car and into the trunk. When she did not immediately comply, Powe fired his gun into the air. After Collier got into the trunk, defendant drove back to his apartment and he and his kids went upstairs and Powe "drove off" with Collier. Powe was gone for about 45 minutes. When he returned to defendant's

apartment, Powe told defendant that he had "offed" Collier. Powe then put the jumpsuit and mask he had been wearing into a bag.

¶ 41 The following day, defendant called Maddox, who agreed to pick him and up and drive him to the police station. Defendant explained that he wanted to "cover[] [his] tracks." He said that it was "[his] idea" to make it seem like Collier had left town. When he arrived at the station, however, defendant was told that he had to wait 24 hours before he could file a missing persons report. After leaving the police station, he and Maddox took Powe to his girlfriend's house. Maddox then went to school. While Maddox was at school, defendant used his car to go to his Aunt Tasha's house because he "really needed to, to talk to somebody about what had happened."

¶ 42 Later that day, defendant met up with Maddox again. As they were driving back to defendant's apartment that evening, defendant saw his car. He explained that Powe had told him that he had left defendant's car "somewhere in the neighborhood," but defendant did not know where Powe had left it until he saw it in an alley. Once he saw his car, defendant knew that Collier was dead and that she was in the car. He did not want to approach the vehicle because he "didn't wanna see her in there." Maddox "didn't know nothing at all" about what had happened, and approached defendant's vehicle and told defendant to call the police. Defendant called 911 and waited for a while for the police to arrive, but "they never did show," so he and Maddox left to put defendant's children to bed. Defendant acknowledged that he lied during the 911 call and stated that his wife was missing rather than dead. Later that evening, police arrived at his apartment.

¶ 43 During his statement, defendant said that Collier knew that he "had homosexual tendencies," and that they were going to be getting a divorce.

¶ 44 After providing this initial statement, Detective Cardo testified that two additional videotaped interviews were conducted with defendant that day as the investigation progressed. In a subsequent interview, defendant acknowledged that he was the beneficiary of several life insurance policies that he obtained during his employ with the Illinois National Guard and would receive over $100,000 if and when Collier died; however, defendant denied that he ever mentioned the policies to Powe. He further denied that the insurance money was a motive for Collier's murder. Defendant, however, did acknowledge that he had increased the amount of one of the insurance policies recently, but explained that he did so because he was expecting to be deployed. He further acknowledged that he had financial issues.

¶ 45 Chicago Police Officer Scott Korhonen testified that he and several other officers were assigned to locate codefendant Powe. Based on information that they had received, the officers believed that Powe might be staying with his girlfriend, Benita Wallace. As a result, at approximately 10 p.m. on October 27, 2009, they went to Wallace's house located at 5929 South Racine and knocked on the door. The officers explained the reason for their arrival to Wallace's mother, who signed a consent to search form. During the course of their search of the house, police recovered a loaded blue steel semi-automatic handgun in Wallace's downstairs bedroom. The gun had been hidden in between two mattresses. Edwin Jones, an evidence technician with the Chicago Police Department, recovered and inventoried the weapon and magazine clip in accordance with police protocol. Jones also recovered and inventoried additional items belonging to Powe, including some clothing, a bag, and a wallet containing identification cards.

¶ 46 Doctor Lawrence Cogan, a former medical examiner with the Cook County Medical Examiner's Office, testified that he performed Collier's autopsy. She had been shot twice in her head and had a bruise on her chin. He testified that it was apparent that Collier had been in close

proximity to the weapon when it was discharged. He estimated that the gun was held "18 inches or less" from Collier's head when it was fired. During the autopsy, Doctor Cogan recovered one "pretty much" intact bullet and fragments of another bullet from Collier's head. He placed the ballistics evidence in an envelope for subsequent analysis by personnel at the Illinois State Crime Laboratory. Doctor Cogan testified that Collier died from "multiple gunshot wounds" and he classified the manner of death as a "homicide."

¶ 47 Justin Barr, a firearms identification expert employed by the Illinois State Police Crime Lab, testified that he was responsible for analyzing the ballistics evidence recovered in connection with Collier's death. He confirmed that the bullet and bullet fragments recovered from Collier's head were .38 caliber bullets and further confirmed that they had been fired from the gun recovered at the residence of Wallace, codefendant Powe's girlfriend.

¶ 48 Matthew Savage, an evidence technician with the Chicago Police Department, testified that he processed the blue Monte Carlo for fingerprints. He testified that he was able to recover a print from the middle interior portion of the trunk lid. Savage indicated that the interior portion of the trunk lid was not a place that someone would normally touch if they were opening or closing the trunk of their vehicle. The fingerprint was "lifted" and sent to the Illinois State Police Crime Lab for fingerprint analysis.

¶ 49 Joseph Wohrstein, a latent fingerprint examiner with the Illinois State Police, testified that he analyzed the fingerprint evidence submitted in connection with this case. He confirmed that the latent print recovered from the interior portion of the Monte Carlo's trunk was left by Collier's left thumb.

¶ 50 Theresa Jones, Collier's mother testified that she spent the morning of October 25, 2009, with her daughter, until Collier left for work that afternoon. Her daughter was scheduled to work

until approximately 11 p.m. Jones further testified that defendant arrived at her house the following morning and informed her that he had not seen Collier since approximately 1 a.m. on October 26, 2009. Both agreed to call the other if they heard from Collier.

¶ 51 Charles Reed, an employee of the Marathon gas station located near the intersection of 59th Street and Elizabeth, testified that at approximately 12:30 a.m. on October 26, 2009, he heard someone screaming "help, help." When he looked in the direction of the gas pumps, Reed saw that defendant was the individual screaming and noticed that another man was approaching defendant. The other man was wearing a mask from the horror movie *Scream* and motioned to his pocket. Reed testified that it "looked like [the masked man] was going for a gun;" however, he did not actually see the man pull out a weapon. Reed then observed defendant enter the driver's seat of the vehicle and the masked man enter front passenger-side of the vehicle. After both men were seated in the vehicle, the car left the gas station. Reed then called the police to report a carjacking. Reed testified that investigating officers arrived at the gas station later that day and reviewed the gas station's surveillance footage. Reed testified that he was then called upon to view a lineup on October 28, 2009. During that lineup, Reed identified defendant as the man who he heard yelling for "help" at the gas station.

¶ 52 Taron Webb, defendant and codefendant Powe's first-cousin, detailed two conversations that he had with Powe, his "favorite cousin," relating to Collier's murder. The first conversation occurred sometime in early October 2009 when Powe came to Webb's house. At that time, Powe relayed that defendant wanted him to kill his wife so that defendant could cash in on the life insurance policy that he had acquired during his military career. Apparently, Collier had learned that defendant was gay and threatened to divorce him and take their kids away from him. Defendant believed that he would "get no money" and would lose his job if they divorced. Powe

told Webb that he had gone to Collier's house intending to strangle her; however, they ended up having sex and as a result, Powe "couldn't carry through" with killing her. Powe also told Webb that defendant was "mad as hell at him" when he found out that Powe failed to kill Collier. Webb did not call the police after having this conversation with Powe because he did not believe Powe was serious about intending to kill Collier

¶ 53 Webb testified that he next heard from Powe on October 26, 2009. On that date, Powe called him and said, "I got her, I got that bitch." Webb responded, "Oh, my god. Please don't tell me you did that." Powe responded that he needed to hang up, but that he would call Webb back later that day. Powe, however, never did so. Webb testified that he still did not believe that Powe was being truthful at that point. The following day, however, Webb saw a news segment about a woman whose dead body had been discovered in the trunk of a car. Based on his conversations with Powe, Webb believed the dead woman was Collier. After conferring with his Aunt Tasha and his pastor, Webb called the police and relayed his concerns. Webb then met several police officers at a Citgo gas station located near his residence and the police drove him to the station to make a statement. He explained that he did not want the police coming to his residence because he did not want his other family members to know that he was meeting with police officers who were investigating Collier's death. Webb confirmed that he had previously seen Powe in possession of a scary Halloween mask.

¶ 54 On cross-examination, Webb acknowledged that he never told detectives about the first conversation he had with Powe about the strangulation attempt. Accordingly, he never mentioned defendant's name or told detectives that defendant wanted Powe to kill his wife to collect insurance proceeds.

¶ 55 Tasha Nash, defendant and codefendant Powe's paternal aunt, testified that she knew that defendant was gay and was in a relationship with a man; however, not everyone in their family was aware of defendant's sexual orientation. She explained that defendant had been adopted when he was 2 years old and that he had reunited with members of the family in 2006. Nash testified that she and defendant had developed a "great" relationship since that time. Nash testified that Collier was also aware of defendant's sexual orientation; however, she told Nash that she wanted to make her marriage work.

¶ 56 Nash recalled that she met with both of her nephews approximately three weeks before Collier's murder. On that occasion, defendant told her that Collier was accusing Powe of raping her at gunpoint and intended to report the crime to the police. Powe, however, denied raping Collier and explained that they had had consensual sex. Powe was "upset" and "real sad" over Collier's rape allegation and stated, "I've got to do something." Nash instructed Powe to call Collier and she listened in on their phone call. Collier did not mention a rape and did not raise her voice during the call. After Powe concluded the phone call, the three of them agreed that Powe should avoid being alone with Collier.

¶ 57 Nash testified that she next heard from Powe on October 25, 2009. On that occasion, Powe called her and asked if she "had or knew someone with .38 shells." Nash, however, responded by saying "no." She did not ask Powe why he was trying to locate the ammunition. At approximately 10 p.m. the following evening, Nash received another phone call from Powe. He sounded "anxious" "agitated" and "hyper" and asked Nash if she would pick him up from his girlfriend's house. Because it was late, Nash refused. Powe then relayed that he had done "something stupid." After prodding Powe to tell her what he had done, he eventually told Nash that he "took [Collier's] car." When Nash suggested that he could "fix it" by simply returning

Collier's vehicle, Powe responded, "No, it's more than that." Powe then told her that he had pretended to carjack defendant, Collier, and their children at a gas station. After Powe entered defendant's vehicle, defendant drove to a nearby alley and stopped the car. Powe then put Collier in the trunk and they continued driving. Once they arrived at defendant's residence, defendant exited the vehicle with his children. Powe then drove to another nearby alley where he popped the trunk of the car and spoke to Collier. Powe told Nash that Collier expressed her love for her children and began "begging and pleading" for life. She then asked to use the bathroom, which Powe allowed. Powe then shot Collier in the back of the head as she was reentering the trunk.

¶ 58 After hearing Powe's account of Collier's death, Nash testified that she hung up the phone and called defendant. During their conversation, defendant told her that he and his family had been at a gas station and that Powe approached them wearing a mask and wielding a gun. When Powe said he was carjacking him, Collier told him to "stop playing." After Powe entered their vehicle, they drove to a nearby alley where Powe put Collier into the trunk of the car. Defendant told Nash that they then drove over to his residence. At that point, defendant and his kids exited the vehicle and Powe drove off with Collier in the trunk of his car. Powe returned sometime thereafter and told defendant that he had killed Collier. Defendant told Nash that he subsequently went to the alley where Powe had left his car to check on his wife and found her dead body in the trunk.

¶ 59 Nash testified that she did not call the police after speaking to her nephews. She explained that she "didn’t feel that it was real." In addition, she did not know the location of the alley in which defendant's vehicle was parked. After hearing about Collier's murder on the news the following day, Nash spoke to Webb, her other nephew. Nash subsequently spoke to detectives at the police station later that day.

¶ 60 On cross-examination, Nash acknowledged that during her conversations with detectives on October 27, 2009, she did not mention the phone call she had with defendant the previous day. She only mentioned her prior conversations with Powe. She also failed to mention her conversation with defendant when she previously testified before the grand jury. Nash further acknowledged that Powe never told her that he killed Collier because defendant wanted him to do so. In fact, Powe never told her that defendant was involved in any kind of plan to kill his wife. Similarly, defendant never told her that he knew that Powe was going to kill Collier; rather, he simply told her that Powe killed his wife.

¶ 61 Benita Wallace, codefendant Powe's girlfriend, testified that Powe periodically stayed at her residence, located at 5929 South Racine, the week before Collier's murder. Her home is located approximately half a block away from the Marathon gas station where Reed worked. Wallace recalled that Powe received a phone call sometime after 11 p.m. on October 25, 2009. After receiving the call, Powe left her house and did not return until approximately 8 a.m. the next morning. Wallace testified that police arrived at her residence sometime around 10 p.m. on October 27, 2009, and conducted a search of her home after her mother signed a form authorizing the search. During the search, police recovered a gun hidden between several mattresses. Wallace testified that she had never seen the gun before and did not know that it was there. Wallace, however, had seen Powe in possession of a *Scream* mask.

¶ 62 Joshua Maddox provided testimony consistent with the testimony he provided during the hearing on defendant's motion to quash his arrest, but provided additional detail about his interactions with defendant on October 26, 2009. Specifically, he testified that he spoke to defendant, with whom he had an "intimate" relationship, at approximately 7 a.m. that morning. During that conversation, defendant informed him that his wife and car were both missing and

that he had not received any responses from her via text message. Defendant also informed him that his kids needed to get to day care and Maddox offered to drive them. When Maddox arrived at defendant's residence, defendant, his kids, and Powe came out and entered Maddox's car. Maddox testified that he knew Powe, but that they were not good friends. After dropping off defendant's kids at daycare, the three men drove to a local police station so that defendant could report his wife missing. Defendant entered the police station alone and exited approximately 10 minutes later. Afterwards, the men drove to a "storefront church." Powe then exited the vehicle while carrying a balled up "jacket or something" and walked behind the church. Maddox testified that he was not paying close attention to Powe or what he was holding in his hands. Powe reentered the vehicle a few minutes later. Maddox did not notice whether Powe was holding anything in his hands when he returned to the vehicle. Maddox and defendant then dropped off Powe somewhere nearby.

¶ 63 Later that evening, Maddox was driving around the northwest side of the city with defendant and his kids. Maddox testified that he was not familiar with the exact area and was following defendant's directions. As they passed an alley, defendant stated: "I think I just saw my car." Maddox testified that they circled back to the alley and confirmed that defendant's car was parked in the alley. Maddox looked inside of the car and noted that it appeared to be "ransacked" and suggested that defendant call the police. Neither he nor defendant opened the trunk. Defendant then called 911 and they waited approximately 30 minutes for police to arrive. When police did not respond by that time, they left the alley and drove to defendant's apartment. Maddox acknowledged that defendant never told him or the 911 dispatcher that he had been the victim of a recent carjacking.

¶ 64 Maddox testified that police officers arrived at defendant's house later that night. Both men were taken to the Area 5 police station in handcuffs. He estimated that he was held at the station for over 24 hours and said that it was "inconvenient." However, he acknowledged that he wanted to assist the police with their investigation when he learned that Collier had been shot in the head.

¶ 65 Since defendant's arrest, Maddox testified that he has continued to talk to him via telephone approximately twice per week. He was initially unaware that the specific crime with which defendant was charged was murder.

¶ 66 The parties stipulated defendant was the named beneficiary of two insurance policies underwritten by New York Life Insurance Company that "covered the life of Kenyatae Collier." The policies were for $100,000 and $5,000 respectively. The parties further stipulated that records from the Illinois Secretary of State's Office established that a blue Monte Carlo with VIN number 2G1WX15KO19172843 was registered to defendant.

¶ 67 Sergeant Sarah Campbell with the Illinois National Guard confirmed that on June 10, 2009, defendant completed a form to increase the amount of spousal coverage in his insurance policy to $100,000. She testified that $100,000 is the maximum amount of money that a service member can take out on the life of his or her spouse. Sergeant Campbell further testified that $100,000 is also the default amount of coverage for anyone insured under the service member group life insurance policy.

¶ 68 After presenting the aforementioned evidence, the State rested its case-in-chief. Defendant elected not to testify and the defense called no witnesses. Upon receiving relevant instructions, the jury commended deliberations and returned with a verdict finding defendant guilty of first degree murder and aggravated kidnapping. The cause then proceeded to a

sentencing hearing where the circuit court heard evidence in aggravation and mitigation. After considering the aggravating and mitigating factors, the circuit court sentenced defendant to 75 years' imprisonment for first degree murder and 24 years' imprisonment for aggravated kidnapping, and ordered the sentences be served consecutively. Defendant's posttrial motions were denied. This appeal followed.

¶ 69 ANALYSIS

¶ 70 Motion to Quash Arrest and Suppress Evidence

¶ 71 Defendant first argues that the circuit court erred in denying his motion to quash his arrest and suppress evidence because he was unlawfully subject to arrest "where the police detained him at the station for 26 hours, while treating him as a suspect and working to develop probable cause." As a result, he argues that the court should have suppressed "the fruits of his unlawful arrest," including the discovery of Powe's gun and the Marathon gas station surveillance video as well as Reed's subsequent lineup identification.

¶ 72 The State responds that the circuit court properly denied defendant's motion to quash his arrest and suppress evidence. The State argues that "the evidence at the hearing on defendant's motion to quash arrest and suppress evidence demonstrated that defendant voluntarily went to the police station and cooperated with the police." Although defendant remained at the station for 26 hours, the State argues that he remained there voluntarily in an effort to try to "misdirect police," and as a result, the delay was due to defendant's own behavior. Accordingly, the State contends that defendant was not unlawfully seized in contravention of his constitutional rights.

¶ 73 A circuit court's ruling on a motion to quash arrest and suppress evidence, is subject to a two-part standard of review. *People v. Almond,* 2015 IL 113817, ¶ 55; *People v. Grant,* 2012 IL 112734, ¶ 12. The circuit court's factual findings and credibility determinations are accorded

great deference and will not be disturbed unless they are against the manifest weight of the evidence. *Almond,* 2015 IL 113817, ¶ 55; *Grant*, 2012 IL 112734, ¶ 12. The circuit court's ultimate ruling as to whether evidence should be suppressed, however, is subject to *de novo* review. *Almond*, 2015 IL 113817, ¶ 55; *Grant*, 2012 IL 112734, ¶ 12. A reviewing court may consider the testimony adduced at trial in addition to the testimony presented during the suppression hearing when considering the propriety of the circuit court's ruling. *Almond*, 2015 IL 113817, ¶ 55.

¶ 74 A person's right to be free from unlawful searches and seizures is protected by both the federal and Illinois state constitutions. U.S. Const., amend. IV; Ill. Const. 1970 art. I, § 6; *People v. Bartlett*, 241 Ill 2d. 217, 226 (2011). Our supreme court has typically construed the search and seizure provision contained in the Illinois state constitution in a manner consistent with the United State Supreme Court's fourth amendment jurisprudence. *People v. Gherna*, 203 Ill. 2d 165, 176 (2003); *People v. Anthony*, 198 Ill. 2d 194, 201 (2001). This constitutional guarantee "applies to all seizures of the person." *People v. Thomas*, 198 Ill. 2d 103, 108 (2001). It is well-settled, however, that "not every encounter between a police officer and a private citizen involves a seizure or restraint of liberty that implicates the fourth amendment." *Almond*, 2015 IL 113817, ¶ 56. For example, "consensual encounters do not implicate the fourth amendment." *Gherna*, 203 Ill. 2d at 177; see also *Almond*, 2015 IL 113817, ¶ 56.

¶ 75 For purposes of fourth amendment analysis, a person is "seized" when, considering the totality of the circumstances, a reasonable person would believe that he was not free to leave and terminate the encounter. *Almond*, 2015 IL 113817, ¶ 57; *People v. Wead*, 363 Ill. App. 3d 121, 132 (2005). A court may consider a number of factors when determining whether an individual was subject to a seizure under the fourth amendment, including: the threatening presence of

multiple police officers; the display of weapons by an officer; some physical touching of the person by the officer; the officer's use of language or a tone of voice suggesting that the individual is compelled to abide by the officer's requests; and the occurrences of practices that accompany an arrest such as searching, booking, handcuffing, photographing and fingerprinting the individual. *United States v. Mendenhall*, 446 U.S. 544, 554-55 (1980); *Almond*, 2015 IL 113817, ¶ 57; *Wead*, 363 Ill. App. 3d at 132.

¶ 76 In this case, the circuit court found that police lacked probable cause to believe defendant was involved in Collier's death until he made his incriminating statement at 4:56 a.m. on October 28, 2009, or at some unspecified time shortly before he made that statement. The circuit court further found that the lack of probable cause did not warrant granting defendant's motion to quash his arrest and suppress evidence because defendant voluntarily went to and remained at the police station, and was thus not the victim of an unlawful arrest. On review, we find no error.

¶ 77 As a threshold matter, we agree with defendant that police lacked probable cause to arrest him until he made an incriminating statement at 4:56 a.m. on October 28, 2009. Probable cause to arrest exists when the facts known to an officer at the time of the arrest are sufficient to lead a reasonably cautious person to believe that the arrestee has committed a crime. *People v. Wear*, 229 Ill. 2d 545, 563-64 (2008); *Wead*, 363 Ill. App. 3d at 135-36. Up until the time that defendant told police that Powe "fucked up" regarding the location of the staged carjacking, detectives had no reason to believe that defendant was involved in Collier's murder. Prior to defendant's statement, detectives conducted interviews with defendant's aunt, cousin and Powe's girlfriend. None of those witnesses mentioned defendant's involvement in Collier's murder; rather, each of them provided details implicating Powe. Even after Detective Cardo and his partner discovered the surveillance video of defendant getting "carjacked" at the Marathon gas

station, they did not know that the carjacking was related to Collier's murder. We note that the gas station's surveillance video is not part of the record on appeal; however, based on the testimony of Reed and Detective Cardo, it does not appear that Collier was ever visible on the surveillance footage. Therefore, although defendant's failure to mention the carjacking appeared strange to Detective Cardo it would not lead a reasonably cautious person to believe defendant was involved in Collier's murder. The lack of probable cause, however, is only problematic if the defendant's encounter with detectives was not consensual.

¶ 78 In this case, the evidence in the record established that six detectives dressed in plain clothes and riding in unmarked police cars went to defendant's residence a few hours after defendant placed a 911 call to report that he had found his missing vehicle abandoned in an alley, but that his wife's whereabouts were unknown. The detectives did not draw their weapons, but simply inquired whether defendant had placed the 911 call. After defendant confirmed his identity, defendant was asked if he would assist the detectives with their investigation and accompany them to the Area 5 police station. Detective McDermott classified the interaction as "casual" rather than confrontational and testified that defendant was not viewed as a suspect at this time. He explained that detectives simply knew that defendant had reported his wife missing and then made a 911 call about discovering his vehicle. After defendant agreed to assist with their investigation, he and Maddox, who was present at his apartment, were driven to the station. Although Maddox testified that he and defendant were handcuffed, Detectives McDermott and Taraszkiewicz denied that either man was handcuffed and further denied that defendant was placed under arrest. The circuit court expressly found Maddox's testimony to lack credibility given his close relationship with defendant, and we do not find the court's credibility determination to be against the manifest weight of the evidence. See *Almond*, 2015 IL 113817, ¶

63 (recognizing that when reviewing the circuit court's ruling on a motion to quash arrest and suppress evidence, the circuit court's credibility determinations will be afforded "great deference"). There is nothing about this initial encounter with police to suggest that defendant was seized at his apartment; rather, it is apparent from the record that this was a consensual encounter and that defendant willingly accompanied detectives to Area 5 in an effort to purportedly assist them with their investigation into his "missing" wife. This does not end our inquiry, however, as it is well established that "the fact that a defendant initially accedes to a police request to accompany them to the police station does not legitimize the treatment of defendant after he arrive[s] at the station." *People v. Young*, 206 Ill. App. 3d 789, 801 (1990); see also *Wead*, 363 Ill. App. 3d at 134 (recognizing that a defendant's voluntary act of going to the police station may become an involuntary act upon his arrival at the station where circumstances indicate that he was not free to leave).

¶ 79 In this case, the record establishes that once defendant arrived at the Area 5 station, he was not fingerprinted or photographed. Instead, he was simply put into a small interview room. Although defendant remained at the station for the next 26 hours, the mere passage of time does not automatically turn a voluntary encounter into a seizure under the fourth amendment. See, *e.g.*, *People v. Hill*, 272 Ill. App. 3d 597, 603-04 (1995) (finding that the defendant was not unlawfully seized where he voluntarily went to the police station and voluntarily remained there overnight until he made an inculpatory statement 23 hours later). In this case, defendant spoke to Detectives Taraszkiewicz and Falk on three separate occasions. Detective Falk testified that defendant was told at the beginning of each brief interview that he was free to leave; however, defendant repeatedly indicated that he wanted to assist the police with their investigation into Collier's whereabouts. Detective Falk further testified that the door to the room remained

unlocked during and after the interviews and that defendant was permitted to go to the bathroom and take smoke breaks while he remained at the station. *Cf. Young*, 206 Ill. App. 3d at 801 (finding that the defendant was seized after he consented to accompany the police where he was interviewed and then subsequently left alone in a "small, windowless room, lacking basic facilities, with the door closed" after his initial interview for approximately 16 hours and was never told he was free to leave). After speaking with Detectives Taraszkiewicz and Falk, defendant later conversed with Detective Cardo and his partner. Like his prior interviews, there was no evidence of coerciveness. Detective Cardo testified that the interview took place in a "quiet room" and that defendant was not locked or otherwise confined in the room during or after the interview. In fact, Detective Cardo testified that defendant left the quiet room after his first interview and approached him on the main floor of Area 5 in order to relay concerns that he had about his brother.

¶ 80 Defendant, however, emphasizes that his apartment was searched and that he submitted to a polygraph examination while he remained at the police station. Although he argues that the use of these investigatory procedures supports his contention that a reasonable person in his position would not feel free to leave, we note that the use of such procedures does not automatically turn a consensual encounter into an unlawful seizure. See, *e.g.*, *Hill*, 272 Ill. App. 3d at 563-64 (finding that the defendant was not unlawfully seized where he voluntarily went to the police station even though he remained there 23 hours and submitted to a polygraph examination). Here, based on the totality of the circumstances, we do not find that the circuit court erred in finding that defendant's entire encounter with police was voluntary or in denying his motion to quash his arrest and suppress evidence.

¶ 81 Motion to Suppress Statements

¶ 82 In a related claim, defendant argues that the circuit court further erred when it denied his pretrial motion to suppress his statements. He argues that "police interrogated him in custody several times without recording him or giving him *Miranda* warnings, rendering his statements inadmissible and involuntary under the fifth amendment." Moreover, because detectives only recorded his custodial interrogations after he was formally arrested, defendant argues that both his "unrecorded and recorded custodial statements alike require suppression under 725 ILCS 5/103-2.1 [(West 2008)]."

¶ 83 The State responds that defendant's statements were properly admitted. The State argues that the court properly found that defendant was not in custody until 4:56 a.m. on October 28, 2009, and as such his pre-custody interviews were not subject to the recording requirements of section 103-2.1 of the Code. Because defendant's post-custody interviews were recorded, all of defendant's statements were voluntary and admissible.

¶ 84 Section 103-2.1 of the Code sets forth the electronic recording requirements for statements made during the course of custodial interrogations and provides, in pertinent part, as follows:

> "(b) An oral, written or sign language statement of an accused made as a result of a custodial interrogation conducted at a police station or other place of detention shall be presumed to be inadmissible as evidence against the accused in any criminal proceeding *** unless:
>
> (1) an electronic recording is made of the custodial interrogation; and
>
> (2) the recording is substantially accurate and not intentionally altered." 725 ILCS 5/103-2.1 (West 2008).

¶ 85 This statutory provision was enacted by the Illinois legislature in 2003 and is designed to serve a "protective purpose" and ensure that any pretrial statements made by a defendant were not the result of the coercive pressures of custodial interrogation, but were instead given voluntarily. *People v. Harris*, 2012 IL App (1st) 100678, ¶¶ 51-52. Based on the plain language of this statutory provision, the electronic recording requirement applies only to statements made "during the course of *custodial interrogations*." (Emphasis added) 735 ILCS 5/103-2.1(b)(1) (West 2008). This court has already concluded that defendant was not in custody until 4:56 a.m. on October 28, 2009, when he was officially arrested for his wife's murder. Prior to that time, defendant was interviewed three times by Detectives Falk and Taraszkiewicz and three times by Detectives Cardo and Gonzalez; however, we do not find that those interviews amounted to custodial interrogations. When examining the circumstances of an interrogation, reviewing courts consider a number of factors to determine whether a statement was made in a custodial setting, including: (1) the location, time, length, mood and mode of the questioning; (2) the number of police officers present during the interrogation; (3) the presence or absence of family and friends of the individual; (4) any indicia of formal arrest procedure, such as the show of weapons or force, physical restraint, booking or fingerprinting; (5) the manner in which the individual arrived at the place of questioning; and (6) the age, intelligence, and mental makeup of the accused. *People v. Slater*, 228 Ill. 2d 137, 151 (2008); *People v. Buschauer*, 2016 IL App (1st) 142766, ¶ 26. No single factor is dispositive. *People v. Beltran*, 2011 IL App (2d) 090856, ¶ 37. After reviewing these factors, the relevant inquiry is whether a reasonable person innocent of any crime would have felt that he was free to terminate the encounter and leave. *Slater*, 228 Ill. 2d at 150; *Harris*, 2012 IL App (1st) 100678, ¶ 53.

¶ 86 As discussed above, defendant's pre-arrest interviews took place on October 27, 2009, at approximately 2 a.m., 5 a.m., 8 a.m., 1:15 p.m., 2:40 p.m., and on October 28, 2009, at approximately 4:30 a.m. Based on the testimony of the detectives, these interviews were non-confrontational and relatively short. It appears that the longest interview was the very first interview, which pursuant to Detective Taraszkiewicz's testimony, lasted approximately 30 minutes. Only two detectives were present for each interview, and thus defendant was not greatly outnumbered. Moreover, the detectives never showed their weapons or used force during any of these interviews. Although the interviews took place at Area 5, defendant was never subject to any booking procedures or physically restrained with handcuffs. The relevant factors therefore do not support defendant's contention that he was the subject subjected to custodial interrogations prior to his arrest at 4:56 a.m. on October 28, 2009. Therefore defendant was not required to be *Mirandized* and the electronic recording requirements contained in section 103-2.1 of the Code did not apply to his pre-arrest statements. See generally *Harris*, 2012 IL App (1st) 100678, ¶ 52 (recognizing that *Miranda* admonishments are only required in the context of custodial interrogations).

¶ 87 We turn next to defendant's post-arrest statements, which all indisputably occurred while he was subject to custodial interrogations. Based on the record, defendant was interviewed three times following his arrest. Those interviews were conducted at 4:56 a.m., 6:15 p.m. and 10:07 p.m. on October 28, 2009. There is no dispute that each of the interviews was electronically recorded. There is similarly no dispute that the audio portion of defendant's second post-arrest interview cut out for a period of time. Although there is no evidence that this malfunction was intentional, there is no dispute that the electronic recording is not "substantially accurate" as required by section 103-2.1(b)(2) of the Code (725 ILCS 5/103-2.1(b)(2) (West 2008)), and as

such, is presumed inadmissible. See, *e.g.*, *People v. Stolberg*, 2014 IL App (2d) 130963, ¶ 42 (recognizing that an electronic recording that contained several "inaudible passages" and "garbled entries" did not constitute a substantially accurate recording as required by section 103-2.1(b)(2) of the Code); see also *Harper*, 2013 IL App (4th) 130146, ¶ 43 (finding that an electronic recording that contained approximately 30 minutes of missing audio due to an unintentional equipment malfunction was not substantially accurate as required by section 103-2.1(b)(2) of the Code).

¶ 88 Section 103-2.1(f) of the Code, however, provides that "[t]he presumption of inadmissibility of a statement made by a suspect at a custodial interrogation at a police station or other place of detention may be overcome by a preponderance of the evidence that the statement was voluntarily given and is reliable, based on the totality of the circumstances." 725 ILCS 5/103-2.1(f) (West 2008). In this case, the circuit court found, and we agree, that all of defendant's statements were made voluntarily and were reliable. "The test for voluntariness is 'whether the defendant made the statement freely, voluntarily, and without compulsion or inducement of any sort, or whether the defendant's will was overcome at the time he or she confessed.' " *People v. Slater*, 228 Ill. 2d 137, 160 (2008) (quoting *People v. Gilliam*, 172 Ill. 2d 484, 500 (2996)). Relevant factors to consider when assessing the voluntariness of a defendant's statement include: (1) the defendant's age, intelligence, education, experience, and physical condition at the time of the detention and interrogation; (2) the duration of the interrogation; (3) the presence or absence of *Miranda* warnings; (4) the presence of any physical or mental abuse; and (5) the legality of the detention. *Slater*, 228 Ill. 2d at 160; *Harper*, 2013 IL App (4th) 130146, ¶ 20.

¶ 89 In this case, the circuit court was able to view all of defendant's interviews. In denying defendant's motion to suppress his statements, the court observed that "[h]is questioning by the police look[ed] like it [was] pretty much a walk through the park." This court has also viewed the four discs contained in the record on appeal.[2] The discs provide great detail as to defendant's state of mind and his treatment by Detectives Cardo and Gonzalez. There is no dispute that defendant was *Mirandized* and that he knowingly and intelligently waived his *Miranda* rights. Although he was confined to the interview room, he was not handcuffed or restrained while he was questioned and there is no evidence of mental or physical abuse. Defendant conversed clearly and calmly with the detectives. There is no evidence that defendant was mentally ill, lacked average intelligence or was under the influence of any substances that could affect the reliability of his statements. Rather, we conclude that the preponderance of the evidence establishes that defendant's post-arrest statements were both voluntary and reliable. Therefore, notwithstanding the lack of audio for a portion of defendant's second post-arrest interview, we find that all of his statements were properly admitted. See, *e.g.*, *Harper*, 2013 IL App (4th) 130146, ¶ 31 (finding that the defendant's statement was admissible even though 30 minutes of the videotaped interrogation were inaudible due to an unintentional equipment malfunction because the evidence established that the defendant's statement was voluntary and reliable). Therefore, the circuit court did not err in denying defendant's motion to suppress his statements.

¶ 90 Admission of Codefendant Powe's Hearsay Statements

¶ 91 Defendant next argues that the circuit "court erred in allowing the State to admit testimony of [his] codefendant's hearsay statements, which were not supported by independent

[2] We note that each of the four discs contain multiple files. A few of those files were not capable of being played by this court. We were, however, able to view the file containing the missing audio and have closely read the transcription of defendant's interviews.

proof that the conspiracy was yet pending or were not made in furtherance of the conspiracy, such that the testimony did not satisfy the coconspirator hearsay exception and did not comport with [his] sixth amendment right to confrontation."

¶ 92 The State responds that the circuit court properly admitted coconspirator statements made by codefendant Powe. The State argues that the statements that Powe made to Nash and Webb were made in furtherance of the conspiracy, and as such, were admissible pursuant to the coconspirator exception to the hearsay rule.

¶ 93 Although defendant suggests that his claim should be reviewed *de novo*, it is well-established that evidentiary rulings are within the sound discretion of the circuit court and will not be reversed absent an abuse of discretion. *People v. Caffey*, 205 Ill. 2d 52, 89 (2001); *People v. Hatchett*, 397 Ill. App. 3d 495, 506 (2009); *People v. Mullen*, 313 Ill. App. 3d 718, 730 (2000). More specifically, a trial court's ruling on the admissibility of hearsay testimony will not be disturbed unless the court abused its discretion. *Caffey*, 205 Ill. 2d at 89; *People v. Bailey*, 409 Ill. App. 3d 574, 583 (2011). An abuse of discretion will be found only where it can be determined that the trial court's ruling is arbitrary, fanciful or unreasonable or where no reasonable person would take the view adopted by the trial court. *People v. Illgen*, 145 Ill. 2d 353, 364 (1991); *People v. Rush*, 401 Ill. App. 3d 1, 13 (2010).

¶ 94 Hearsay is an out-of-court statement offered to prove the truth of the matter asserted and is generally inadmissible unless it falls within a specifically recognized exception. *Caffey*, 205 Ill. 2d at 88; *People v. Lawler*, 142 Ill. 2d 548, 557 (1991); *People v. Wright*, 2013 IL App (1st) 103232, ¶ 73. The general prohibition of hearsay evidence exists because there is no opportunity to cross-examine the declarant and therefore the admission of such evidence violates a defendant's constitutionally protected right to confrontation. U. S. Const., amends. VI, XIV; Ill.

Const. 1970, art. I, § 8; *People v. Peoples*, 377 Ill. App. 3d 978, 983 (2007); *People v. Jura*, 352 Ill. App. 3d 1090, 1085 (2004). The coconspirator exception to the hearsay rule, however, provides that any declaration by one coconspirator is admissible against all coconspirators where the declaration was made during the course of and in furtherance of the conspiracy. *People v. Kliner*, 185 Ill. 2d 81, 140-141 (1998); *People v. Donegan*, 2012 IL App (1st) 102325, ¶ 66. Statements made in furtherance of a conspiracy include those that have the effect of advising, encouraging, aiding or abetting the perpetration of a crime. *Kliner*, 185 Ill. 2d at 141; *Donegan*, 2012 IL App (1st) 102325, ¶ 66. In addition, statements made after the crime may also fall within this exception. *Kliner*, 185 Ill. 2d at 141; *Donegan*, 2012 IL App (1st) 102325, ¶ 66. Before a coconspirator statement may be admitted in a criminal trial, the State must first make a *prima facie* showing that a conspiracy existed and demonstrate that: (1) two or more persons intended to commit a crime; (2) they engaged in a common plan to accomplish that criminal goal; and (3) one or more acts were performed by one or more of the persons involved in furtherance of the conspiracy. *People v. Leak*, 398 Ill. App. 3d 798, 825 (2010). Given the "clandestine nature" of conspiracies, the existence of a conspiratorial agreement need not be established by direct evidence; rather it may be inferred from all the surrounding facts and circumstances, including the acts and declarations of the defendant. *People v. Cook*, 352 Ill. App. 3d 108, 125 (2004); *People v. Ervin*, 297 Ill. App. 3d 586, 592 (1998).

¶ 95 As a threshold matter, defendant argues that the State failed to set forth sufficient evidence independent of Powe's statements to Nash and Webb that defendant was engaged in a conspiracy with Powe to murder Collier. We disagree. Defendant's own statements established that he was engaged in a conspiracy with Powe. In his initial videotaped statement, defendant said that he wanted to protect his brother from Collier's rape accusation and agreed to bring

Collier to Powe so that Powe could "take care of her." He drove her over to a gas station located near Powe's girlfriend's house and phoned Powe as they neared that location. The purpose of this phone call was to signal Powe to put on the *Scream* mask, get his gun, and "carjack" defendant and his wife. After the staged carjacking, Powe drove off with Collier and "offed her." Defendant then sought to "cover his tracks" the following day and tried to file a missing person's report. Surveillance video corroborated defendant's account of the staged carjacking and forensic evidence confirmed that Collier was put into the trunk of defendant's vehicle and was then and shot twice at close range. Based on the aforementioned evidence, we find that there was sufficient evidence independent of Powe's statements, to establish defendant was party to a conspiracy to murder Collier. We now turn to the specific statements that defendant challenges on appeal.

¶ 96 At trial, Nash and Webb testified that they each had a conversation with Powe prior to Collier's murder. Webb testified that a few weeks before Collier's death, Powe told him that he had gone over to Collier's apartment with the intention of strangling her, but that he had sex with her instead. Powe also told Webb that defendant wanted him to kill Collier so that he could collect life insurance and avoid a divorce. Nash, in turn, testified that Powe called her on October 25, 2009, the day before the shooting, and asked if she had, or could procure, .38-caliber ammunition.

¶ 97 Nash and Webb also detailed conversations they had with Powe following Collier's murder. Specifically, Nash testified that Powe called her on the evening of October 26, 2009, sometime after he had killed Collier. She said that Powe was anxious and agitated and explained that he had done "something stupid" and needed Nash to pick him up from his girlfriend's house. When pressed for details, Powe admitted that he had shot Collier and told her he needed to "get

out of here." Webb, in turn, testified that he had a short conversation with Powe after the murder. During that phone call, Powe told Webb that he "got that bitch."

¶ 98 On review, we find that Nash's testimony pertaining to her pre-murder and post-murder conversations with Powe was properly admitted. Both of the conversations were made in furtherance of the conspiracy. During the first phone call, Powe requested ammunition to be used during the murder. During the second phone call, Powe relayed what he had done and told Nash he needed her to pick him up because he needed to "get out of here." See *Donegan*, 2012 IL App (1st) 102325, ¶ 66 (recognizing that statements made after the crime to conceal the crime and avoid punishment have the effect of furthering the conspiracy and fall within the coconspirator exception to the hearsay rule).

¶ 99 Turning to Powe's conversations with Webb, we find that the pre-murder conversation was properly admitted as it involved a prior attempt to kill Collier, and as such, Powe's statement was made in furtherance of the conspiracy. Although defendant suggests that he simply a part of the conspiracy to shoot Collier and was not part of an earlier conspiracy to strangle Collier, there is evidence that the first attempt was part of an ongoing conspiracy. Independent evidence corroborated the details that Powe provided to Webb prior to the murder, including the fact that defendant was gay, that defendant was the beneficiary of life insurance policies taken out on Collier's life, and that defendant and Collier were heading toward a divorce. Webb's post-murder conversation with Powe however, is more problematic. During that conversation, Powe simply relayed that he had committed the crime. He did not ask for Webb's help in concealing the crime, and as such, the statement was not made in furtherance of the conspiracy. The second conversation was thus not admissible under the coconspirator's exception to the hearsay rule. "However, another exception to the hearsay rule permits the introduction of otherwise

inadmissible hearsay if it constitutes an admission by a defendant, either express or tacit." *Donegan*, 2012 IL App (1st) 102325, ¶ 67. Here, Powe's post-murder statement was an admission and was therefore admissible. See, *e.g.*, *Donegan*, 2012 IL App (1st) 102325, ¶ 67 (finding that a coconspirator's post-murder statement that simply contained a recitation of the crime was not admissible under the coconspirator exception to the hearsay rule, but was admissible because it constituted an admission of guilt).

¶ 100 Even if any of the aforementioned conversations constitute inadmissible hearsay, we find that their admission was harmless beyond a reasonable doubt given the strength of the State's case against defendant. See *People v. Gonzalez*, 379 Ill. App. 3d 941, 955 (2008) (recognizing that the admission of hearsay testimony amounts to harmless error if there is no reasonable probability that the verdict of the trial would have been different had the hearsay been excluded).

¶ 101 Exclusion of Codefendant Powe's Exculpatory Statement

¶ 102 Defendant next argues that the circuit court erred in precluding him from introducing an exculpatory statement that Powe carved into the wall of the police station. Because the court allowed the State to introduce Powe's prior inculpatory statements, defendant argues that Powe's subsequent exculpatory statement was "admissible for impeachment" purposes.

¶ 103 The State responds that Powe's exculpatory statement was properly excluded. The State argues that Powe's statement contains ambiguities and was made after he relayed the details of his crimes to his relatives and after he had been arrested. As such, Powe had a reason to lie when he made the etching onto the wall of the police station.

¶ 104 As set forth above, evidentiary rulings are within the sound discretion of the circuit court and will not be reversed absent an abuse of discretion. *Caffey*, 205 Ill. 2d at 89. As a general

rule, out-of-court statements that are offered merely to impeach credibility do not constitute hearsay. *People v. Cookson*, 215 Ill. 2d 194, 213 (2005).

¶ 105 In this case, the record established that codefendant Powe turned himself into police on October 29, 2009, at approximately 10 p.m. He was then put in an interview room, where he invoked his right to remain silent. While Powe remained in the room, he used the zipper from his jacket to scratch a statement into the wall. That statement read:

> "Josh [Maddox] DID IT[.]
>
> He didn't want to share my brother[.] [S]ince the truth shall set me free me and [Collier] was creepin behind my brother['s] back[.] I told him before he found out[.] [S]he got mad because she found out he was gay[.] [T]hat's how we started creepin. Honestly she was a whore but she didn't deserve to die[.] Josh Mad[d]ox['s] jelousy [sic] and endvy [sic] of her made him furiously angry because he used to always say she was always an unfit mother[.] [T]he reason the gun was found at my girlfriend['s] house was he asked me to sell it but noone [sic] would buy it[.] I was gonna throw it away bit I was scared someone would catch me with it so I hid it under her bed[.] ***"

¶ 106 The circuit court found that Powe's statement constituted inadmissible hearsay. Defendant argues that the court's ruling was erroneous because he did not seek to introduce the exculpatory statement as substantive evidence, but only as impeachment. In support he cites, Illinois Rule of Evidence 806 which provides: "When a hearsay statement *** has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with the declarant's hearsay statement, is not subject to any requirement that the declarant may have been

afforded an opportunity to deny or explain." Illinois Rule of Evidence 806 (eff. January 1, 2011). Based on a plain reading of this rule, Powe's exculpatory statement was admissible for impeachment once the circuit court permitted Webb and Nash to provide testimony about their conversations with Powe prior to and after Collier's murder. Contrary to the State's argument, Powe's statement that "Josh DID IT" is inconsistent with the accounts of his involvement in Collier's murder that he provided to Webb and Nash. The fact that Powe's exculpatory statement was made after his statements to Webb and Nash is immaterial given that Illinois Rule of Evidence 806 refers to inconsistent statements given "at any time." Accordingly, Powe's exculpatory statement was not inadmissible hearsay. Nonetheless, any error in the court's exclusion of the statement was harmless given that Power's role in Collier's murder was corroborated by physical evidence, surveillance images, and defendant's own statement. Moreover, the evidence against defendant was substantial, and we are not persuaded that the exclusion of Powe's exculpatory statement had any impact on the trial result.

¶ 107 Continuance

¶ 108 Defendant next argues that the circuit court erred in denying his request for a continuance "where, on the first day of trial, the State announced that [defendant's] aunt newly recalled [defendant] calling and confessing to her."

¶ 109 The State responds that the circuit court's denial of defendant's request for a continuance was proper. The State argues that defendant was not entitled to a continuance and was not prejudiced by the circuit court's denial of his request for a continuance because his attorney was able to effectively cross-examine Nash about her failure to mention this call prior to trial.

¶ 110 The decision to grant or deny a party's request for a continuance is one that is left to the sound discretion of the circuit court and a reviewing court will not interfere with that decision

absent a clear abuse of discretion that clearly prejudiced the movant. *People v. Walker*, 232 Ill. 2d 113, 125 (2009); *People v. Tuduj*, 2014 IL App (1st) 092536, ¶ 100; *People v. Weeks*, 2011 IL App (1st) 100395, ¶ 30. The abuse of discretion standard is the "the most deferential standard of review available with the exception of no review at all." (Internal quotation marks omitted.) *People v. Coleman*, 183 Ill. 2d 366, 387 (1998). Because "[t]here is no mechanical test *** for determining the point at which the denial of a continuance in order to accelerate the judicial proceedings violates the substantive right of the accused to properly defend," the determination of whether an abuse of discretion exists will depend upon the facts and circumstances of each case. *People v. Lott*, 66 Ill. 2d 290, 297 (1977). Factors to consider include the movant's diligence, the interest of justice, the history of the case, the complexity of the matter, principles of docket management and judicial economy, and the potential inconvenience to the parties. *Walker*, 232 Ill. 2d at 125-26; *People v. Balfour*, 2015 IL App (1st) 122325, ¶ 48.

¶ 111 In this case, on the first day of jury selection, the State, in accordance with its continuing disclosure duties, informed the court that defendant's aunt, Tasha Nash, had recently recalled a conversation that she had with defendant following Collier's murder. The State indicated that Nash had not told the police about this phone call and had not referenced this call during her earlier grand jury testimony. Nash had, however, purportedly provided this information to Stephanie Turner, an investigator from the Public Defender's office, who had approached her prior to trial. Upon hearing this information, the circuit court inquired whether defense counsel had provided a copy of Turner's report to the State; however, counsel stated that Turner had not completed a report. Thereafter, defense counsel requested a continuance in order to acquire phone records that might impeach Nash's claim about the call that defendant purportedly made to her following Collier's murder. The circuit court denied defense counsel's request. In doing so,

the court expressed frustration over the practice of the Public Defender's Office not to prepare written reports in an effort to avoid disclosure. Moreover, the court reasoned that a continuance to obtain phone records was not warranted because defense counsel could cross-examine Nash and cast doubt on her credibility and recall given that she never mentioned the call with defendant prior to trial even though she had several opportunities to do so.

¶ 112 On review, we find no abuse of discretion. Initially, we note that although Nash's recollection of a phone call she had with defendant following Collier's death was brought up for the first time shortly before trial, defendant referenced a post-murder conversation he had with Nash in his videotaped confession. In his statement, defendant explained that he sought out his aunt after Collier's murder because needed "to talk to somebody about what had happened." Therefore, defense counsel had prior notice that defendant and Nash had conversed following Collier's murder. More importantly, however, defendant cannot establish that he was prejudiced by the circuit court's denial of his request for a continuance. At trial, defense counsel cross-examined Nash thoroughly and established that she never mentioned the conversation she had with defendant following Collier's murder until the eve of trial. When questioned by defense counsel, Nash conceded that she never mentioned the call to detectives, to the ASA, or to the grand jury. As the circuit court correctly observed, defense counsel did not need phone records to challenge Nash's credibility and recall with respect to the call. Given that defendant fails to establish that he was prejudiced by the circuit court's denial of his motion for a continuance, we conclude that the court did not abuse its discretion in this matter. See, *e.g.*, *Balfour*, 2015 IL App (1st) 122325, ¶ 49 (finding that the circuit court did not abuse its discretion when it denied the defendant's motion for a continuance even though the State tendered additional discovery related

to a witness on the eve of trial because the defendant failed to establish that he was prejudiced by the circuit court's denial).

¶ 113 Ineffective Assistance of Counsel

¶ 114 Finally, defendant argues that he was denied his constitutional right to effective assistance of trial counsel. He contends that his attorney failed to effectively cross-examine his aunt, Tasha Nash, and demonstrate that that the account that she provided of Powe's confession at trial differed from previous accounts that she provided to police and the grand jury. He argues that counsel's failure to show that Nash's previous recitations of Powe's confession contained no references to defendant being present at the time of the carjacking prejudiced him.

¶ 115 The State responds that defendant's claim that Nash's account of the details of Powe's confession that she provided at trial differed from her prior accounts is not supported by the record because defendant has failed to provide the necessary transcripts or reports to substantiate his claim. As such, the State argues that his ineffective assistance of counsel claim has no merit.

¶ 116 It is well-established that every criminal defendant has a constitutional right to receive effective assistance of counsel. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I § 8; *Strickland v. Washington*, 466 U.S. 668, 685, 104 S. Ct. 2052, 2063, 80 L. Ed. 2d 674, 691-92 (1984). The right to effective assistance of counsel entails "reasonable, not perfect, representation." *People v. Wilborn*, 2011 IL App (1st) 092802, ¶ 79. To prevail on a claim of ineffective assistance of trial counsel, the defendant must satisfy the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L.Ed. 2d 674 (1984) and establish that: (1) counsel’s performance fell below an objective standard of reasonableness, and (2) counsel’s deficient performance prejudiced defendant. *People v. Albanese*, 104 Ill. 2d 504, 525 (1984); *People v. Baines*, 399 Ill. App. 3d 881, 887 (2010). With respect to the first prong, the

defendant must overcome the "strong presumption" that counsel's action or inaction was the result of sound trial strategy. *People v. Jackson*, 205 Ill. 2d 257, 259 (2001); *People v. Shelton*, 401 Ill. App. 3d 564, 584 (2010). "In recognition of the variety of factors that go into any determination of trial strategy, * * * claims of ineffective assistance of counsel must be judged on a circumstance-specific basis, viewed not in hindsight, but from the time of counsel's conduct, and with great deference accorded counsel's decisions on review.' " *Wilborn*, 2011 IL App. (1st) 092802, ¶ 79, quoting *People v. Fuller*, 205 Ill. 2d 308, 330-31 (2002); see also *People v. Mitchell*, 105 Ill. 2d 1, 15 (1984) ("The issue of incompetency of counsel is always to be determined by the totality of counsel's conduct.") As a general rule, however, an attorney's decisions regarding whether and how to cross-examine a witness, will be afforded great deference and will not generally support an ineffective assistance of counsel claim. *People v. Pecoraro*, 175 Ill. 2d 294, 326-27 (1997). To satisfy the second prong, the defendant must establish that but for counsel's unprofessional errors, there is a reasonable probability that the trial court proceeding would have been different. *People v. Peeples*, 205 Ill. 2d 480, 513 (2002). A defendant must satisfy both the performance and prejudice prongs of the *Strickland* test to prevail on an ineffective assistance of counsel claim. *Evans*, 209 Ill. 2d at 220; *People v. McCarter*, 385 Ill. App. 3d 919, 935 (2008).

¶ 117 In this case, when Nash testified at trial and described the conversation she had with Powe after Collier's murder, she said that Powe told her that he pretended to carjack defendant, Collier, and their children. Defendant argues that Nash's previous recitations of Powe's confessions contained no prior reference to defendant's presence at the time of the carjacking and that counsel should have impeached her with her prior inconsistent accounts. In support of his claim, defendant points to excerpts of Nash's grand jury testimony and excerpts from police

reports that were included in one of the State's pre-trial filings. Although the excerpts purportedly support defendant's characterization of Nash's prior accounts of Powe's testimony, defendant has failed to provide this court with a full transcript of Nash's grand jury testimony or complete police reports. We note that it is well-established that it is the burden of the appellant to provide a sufficient record to allow for meaningful review of his claims and that any doubts arising from an incomplete record will be resolved against the appellant. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984); *People v. Allen*, 2016 IL App (1st) 142125, ¶ 9. Absent a complete accounting of Nash's prior testimony, this court cannot determine whether defense counsel's cross-examination of Nash was unreasonable. Even if were to assume that defense counsel's performance in this vein was unreasonable, defendant's ineffective assistance of counsel claim nonetheless necessarily fails because he cannot establish he was prejudiced by counsel's representation given the strength of the State's evidence against him, which included his own detailed confession that his attorney diligently, but unsuccessfully, sought to suppress.

¶ 118 CONCLUSION

¶ 119 The judgment of the circuit court is affirmed.

¶ 120 Affirmed.