

NOTICE

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2016 IL App (4th) 140067-U

NO. 4-14-0067

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

March 28, 2016
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Vermilion County
BILLY R. RICHARDSON,)	No. 12CF535
Defendant-Appellant.)	
)	Honorable
)	Craig H. DeArmond,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Turner and Pope concurred in the judgment.

ORDER

¶ 1 *Held:* Although it is arguable that the trial court erred in denying defendant's motion to suppress his videotaped statement, any error was harmless since the State's evidence overwhelmingly supported defendant's murder conviction.

¶ 2 Following a trial, a jury found defendant, Billy R. Richardson, guilty of first degree murder and aggravated battery with a firearm and the trial court sentenced him to 70 years in prison. Defendant appeals, arguing the court erred in denying his motion to suppress his videotaped statement. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On November 16, 2012, the State charged defendant by information with four counts of first degree murder (720 ILCS 5/9-1(a)(1) (West 2010)) for causing the death of Donnie L. Davis and one count of aggravated battery with a firearm (720 ILCS 5/12-3.05(e)(1) (West 2010)). The circumstances leading up to the incident resulting in Donnie's death involved

a protracted legal dispute between defendant and Donnie, who was defendant's uncle, involving the property where defendant resided. Ultimately, Donnie was awarded possession of the property by the circuit court and defendant was ordered to vacate no later than November 14, 2012—the date Donnie was fatally shot.

¶ 5 On October 2, 2013, defendant filed an amended motion to suppress a video-recorded statement he made to police, arguing that the statement, in relevant part, was made involuntarily and under coercion in violation of his fifth-amendment right to silence. Specifically, defendant asserted that Deputy Kirk Miller continued to question him after defendant made it clear he did not wish to proceed with the interrogation.

¶ 6 A. Hearing on Amended Motion To Suppress

¶ 7 At an October 3, 2013, hearing on defendant's amended motion to suppress, Billie Hurt, an investigator for the Vermilion County sheriff's department, testified that on November 14, 2012, he and Deputy Miller transferred defendant to an interview room equipped with audio and video capabilities. According to Hurt, as he and Miller escorted defendant to the interview room, defendant stated he "wasn't going to talk until he got his property." Hurt testified he did not know what property defendant was referring to, but he told defendant he would look into it. Hurt later located defendant's personal property, which included approximately \$5,000 in cash, three knives, and keys.

¶ 8 Deputy Miller testified that he first had contact with defendant at the police station. According to Miller, he and Hurt transferred defendant from a back interview room to a front interview room that had audio and video capabilities. Miller testified that while he and Hurt were transferring defendant to the front interview room, defendant inquired about some personal property and stated "he was not going to say anything until he seen [*sic*] his money, a

key, and some knives." Miller stated at that point, he did not know whether the property about which defendant inquired had anything to do with the murder investigation, and because defendant had not yet been given his *Miranda* warnings (see *Miranda v. Arizona*, 384 U.S. 436 (1966)), neither he nor Hurt questioned him about the property.

¶ 9 Miller testified that defendant again inquired about his property when they entered the front interview room, but he "had no idea what [property defendant] was referring to, if it had something to do with the crime that was being investigated." Miller then obtained defendant's "identifiers" and read him the *Miranda* warnings. According to Miller, defendant initialed each section on the *Miranda* warning and waiver form to indicate he understood his rights and had no questions. Miller testified defendant also agreed to waive his *Miranda* rights by signing the waiver. Deputy Miller stated that while he was going over the waiver part of the *Miranda* warning form, defendant again inquired about his property. At that time, Miller told defendant he "would speak with him about that specific—his inquiry, but he had to waive his rights at that time, speak with me, and I told him at any time, he could invoke his rights and stop talking to me if he wished to do so."

¶ 10 Defendant's video- and audio-recorded statement to Deputy Miller (videotaped statement), a transcript of defendant's statement, and a copy of the *Miranda* rights waiver form were all entered into evidence and the parties agreed the trial court could view the videotaped statement in its chambers.

¶ 11 Relevant parts of defendant's videotaped statement to Deputy Miller are as follows. Prior to anyone physically appearing in the video, the following conversation is heard:

"[DEFENDANT:] I want to see all of my stuff *** before I
talk, okay?"

All my stuff I had in my pocket.

I want to see my money, my keys, and my knives *** and I want to see that before I'm saying anything to nobody. *** Is that fair?

I just want to see my stuff because I've had things missing.

[DEPUTY MILLER:] We don't know what you're talking about right now. Can you explain it to the deputy and we'll work on that."

Following this exchange, defendant and Deputy Miller enter the interview room and appear on the video. The following exchange then occurs:

"[DEPUTY MILLER:] Before we do anything, I got something I got to take—you remember me right?

[DEFENDANT:] Yes, sir.

[DEPUTY MILLER:] Okay. I have a form I'm gonna go over with you and then we'll get into this, okay?

[DEFENDANT:] I'm not gonna say anything.

[DEPUTY MILLER:] Okay, well, hang on. Hang on.

[DEFENDANT:] What's your name again, I forgot?

[DEPUTY MILLER:] My name's Kirk.

[DEFENDANT:] Okay, Kirk.

[DEPUTY MILLER:] We've gotten along pretty good,
ain't we?

[DEFENDANT:] Fine—

[DEPUTY MILLER:] Okay.

[DEFENDANT:] But I'm not gonna do anything till I get a
witness *** you and me, with my property that I throwed [*sic*] on
that man's floor."

After Miller obtained identifying information from defendant, including his name, date of birth,
address, and phone number, the following colloquy ensued:

"[DEPUTY MILLER:] Okay, I'm going to go over this
[*Miranda* form] with you before we talk. All right?

[DEFENDANT:] I'm not gonna—

[DEPUTY MILLER:] Okay. Well hang on a second. I
need you to initial each one of these, that you understand what I'm
saying, okay?

[DEFENDANT:] Okay. With your warning—

[DEPUTY MILLER:] Then—then if you're willing to talk
with me, I need you to read both of these and sign your full name.
But let's get through these first, and if you have any questions
whatsoever, ask me, okay?

[DEFENDANT:] Okay."

The video then depicts Miller reading defendant his *Miranda* rights and defendant acknowledging his understanding of each right. Miller then proceeded to the waiver section of the *Miranda* form and the following conversation ensued:

"[DEPUTY MILLER:] *** 'Knowing and understanding these rights, I waive them at this time and agree to speak with the officer. I make this waiver freely, voluntarily, without any force, promises or threats.' Do you understand both of those?

[DEFENDANT:] Yeah.

[DEPUTY MILLER:] Okay, could you sign, stating that you understand those?

[DEFENDANT:] Mm-mm yeah.

[DEPUTY MILLER:] Are you willing to speak with me, and at any time you can quit talking to me.

[DEFENDANT:] I'm through.

[DEPUTY MILLER:] You're through? Well we haven't even talked yet.

[DEFENDANT:] We're through. I asked you—one thing for you to do for me.

[DEPUTY MILLER:] Oh, okay, Billy but what—what you got to understand—you could invoke your rights at any time, okay? I can't speak with you until you talk to me, and I—you explain to me what's going on. I don't understand what's going on here, and what you're talking about. *** If you're willing to speak

at this point in time, I just need you to sign your name right here.

At any time you can quit talk—you can invoke your rights at any time during our conversation, all right?

[DEFENDANT:] Do I get to ask a question first?

[DEPUTY MILLER:] Mmm—if—if you're gonna waive your rights and speak with me, and then we see if we're on the same page, and then if you tell me you wanna keep talking, we'll keep talking. If you wanna quit, you can quit. "

Defendant then read the *Miranda* rights waiver out loud and signed it.

¶ 12 After signing the *Miranda* rights waiver, defendant explained the property he was referring to was property he removed from his pocket and left at the house where he was taken into custody, including approximately \$5,000, a "quad" key, keys for his truck and cars, and three knives. Defendant then continued to speak with Miller regarding the underlying dispute between him and Donnie and the circumstances leading up to their confrontation that day.

Approximately 11 minutes after signing the *Miranda* waiver, the following colloquy occurred:

"[DEPUTY MILLER:] Well, let me—how'd you guys' interaction—what—what happened when [Donnie] walked up and said he wanted the keys?

[DEFENDANT:] Show me my keys. Show me my money. And then we'll talk some more. All my stuff, I want to see it right here on the table, 'cause I've been in here before, and I've lost money. So let's see it.

[DEPUTY MILLER:] Okay, well—I could go see if I can—see what's going on.

* * *

[DEPUTY MILLER:] Now, haven't we got along since you came in here with me?

[DEFENDANT:] We're fine. We're fine. But I've already told these people, I wanna see that—my stuff—I want to make sure that everybody knows what I've got.

[DEPUTY MILLER:] Billy, have I done anything to you since you and I have met that would make you think that I'm not a man of my word?

[DEFENDANT:] Yea, but I got in here before and I've lost—

[DEPUTY MILLER:] But you haven't done it with me though, right?

[DEFENDANT:] That's correct.

[DEPUTY MILLER:] Okay. Okay. If your stuff is out there, I'll do whatever I can to get your stuff. Okay?

[DEFENDANT:] I just wanna look at it.

[DEPUTY MILLER:] But I need to know what happened down there today, when Donnie walked up to you and said he needed the key. So—

[DEFENDANT:] Let's see—Let's see. 'You got the keys to the property?' I don't know what he said. I—I was so—working so hard trying to get things done and—

[DEPUTY MILLER:] Well, I can understand—so—well, what happened? I mean, he came and said he wanted the key. What'd you do?

[DEFENDANT:] Fell apart.

[DEPUTY MILLER:] Okay, how'd you fall apart?

[DEFENDANT: Bows head and is silent.]

[DEPUTY MILLER:] What happened, Billy?

[DEFENDANT: Covers eyes with hands.]

[DEPUTY MILLER:] Billy. Hey, look at me. Look at me here a second. Look at me. I want to ask you something. Now, wouldn't your grandma want everything to get straightened out here, whatever happened? And I don't know. I wasn't there. There's two sides.

[DEFENDANT:] They made her cry.

[DEPUTY MILLER:] Made who cry? Your grandma? Well, yeah you told me that. So—So what happened today between you and Donnie? When he came to get the key?

[DEFENDANT: No response. Head in hand.]

[DEPUTY MILLER:] Billy, what happened then?

[DEFENDANT: No response. Head still in hand.]

[DEPUTY MILLER:] Billy?

Billy, look at me. Look at me man. Get your side of it.

Get it out here. Tell me what happened. There's two sides to every story. Tell me what went on.

[DEFENDANT: No response.]

[DEPUTY MILLER:] You'll get your property, you know.

[DEFENDANT: Turns his body sideways and his head toward the wall, then turns his head back slightly, head in hand.]

[DEPUTY MILLER:] What happened, Billy? Come on, man. We've been getting along great since you came in here. So—Billy?

[DEFENDANT:] We're through. [Face in hand.]

[DEPUTY MILLER:] Billy. Tell me what happened. Get your side of the story out here.

[DEFENDANT:] I was in the wrong, period.

[DEPUTY MILLER:] You was in the wrong? For what?

[DEFENDANT:] For being—for falling apart!

[DEPUTY MILLER:] Oh, okay, well hang—hang on. Let me see what I can do with—just hang on a second."

The video then depicts Miller leaving the interview room and returning a few seconds later with defendant's personal property. After defendant verifies all his property is accounted for, he confesses to shooting Donnie.

¶ 13 The trial court reconvened on October 11, 2013, and heard arguments on defendant's amended motion to suppress. The court indicated it had reviewed the videotaped statement and then stated, in relevant part, as follows:

"On the way to the interview room, the [d]efendant can be heard telling the investigator that he wants to see his personal belongings before he talks to anyone. The right to remain silent is an absolute right, but the words have to be taken in context.

There is nothing in the tape or in the statements of [defendant] on tape which indicate any intention to remain silent. He simply wants as a condition precedent to his speaking the opportunity to see his stuff: the money, three knives, some other items that he had said that he'd put on the floor of the house of the person who he'd asked to call the police.

At one point in the conversation, in fact, he says, 'I'll tell you guys everything.' He just wanted it as a condition precedent to talking that he get a chance to see his stuff. That's not an invocation of the right to remain silent.

* * *

It's not that he's saying he won't talk. He's saying, 'I want to see this stuff before I will talk.' The intention is clear from the video when taken in its entirety that [defendant] has every intention of telling the police officers anything and everything they want to know. He just wants to see his stuff first. That's not

invoking a right to remain silent. That's simply creating a condition precedent to the giving of the statement."

Thereafter, the court denied defendant's amended motion to suppress his statement.

¶ 14 B. Jury Trial, Sentencing, and Posttrial Motions

¶ 15 At defendant's November 2013 jury trial, Donnie Tapscott, Jr., a friend of defendant's, testified that he had known defendant for approximately 30 years. According to Tapscott, in May 2011, defendant told him about a dispute involving the property where defendant lived and "made the comment that if he loses his land he's going to kill them."

¶ 16 Larry Cox testified that he was home alone on November 14, 2012, when a man, whom he identified as defendant, knocked on his door and asked him to call 9-1-1 "because the police are looking for me." Cox stated that he let defendant into his house and defendant sat on the floor. Cox called 9-1-1 and reported that defendant was at his house and wanted to turn himself in to the police.

¶ 17 Jerry Davis, a criminal investigator for the Vermilion County sheriff's department in November 2012, testified he viewed Donnie's body on November 14, 2012, and observed several injuries which appeared to be gunshot wounds, including three wounds to Donnie's upper chest and shoulder area and two wounds to his back.

¶ 18 Joseph Davis testified that Donnie was his father and defendant was his father's nephew. Joseph lived next door to the house that was the subject of the legal dispute between defendant and Donnie. Joseph stated that at 4 p.m. on November 14, 2012, he was outside his house cooking hotdogs. Also present were his son and daughter; his oldest brother Donnie M. Davis (Donnie M.) and Donnie M.'s son; Howard Davis (no relation); and a few neighbors, including Jerry Clemmons. According to Joseph, shortly after 4 p.m., Donnie told him and

Donnie M., " 'I'm just going to go tell [defendant] that you lost, I won, and I'll be back up in six or seven months. Please get the property cleaned up.' " Joseph testified that as Donnie "walk[ed] down," Joseph walked down to the edge of the driveway and he heard his father say to defendant, " '[h]ey, Billy, it's 4:00. Where's the keys?' " At that point, Joseph stated defendant "walked right over to [Donnie] and pulled a gun out of his *** hoodie" and shot Donnie three times in the chest before the gun jammed. Joseph testified that Donnie turned around and tried to run but fell to the ground. As Donnie was crawling away, defendant "came up and shot him twice more in the middle of the back." Joseph testified he was approximately 100 feet away. As he was calling 9-1-1, Joseph saw Donnie M. run past him, and by the time Joseph "went down there *** Donnie [M.] was trying to plug the [bullet] holes" and defendant had run into the woods. Joseph further testified that Donnie M. "fired two shots over his shoulder as he was plugging the holes in dad."

¶ 19 Donnie M. Davis testified that his father and defendant had been involved in a property dispute for approximately five years. Donnie M. stated that at 4:10 p.m., his father walked down Joseph's property line and into the street and yelled for defendant to come over. According to Donnie M., his father had the paper judgment ordering defendant's eviction from the property in his hand at the time. Donnie M. was sitting on the patio at Joseph's house and his father was in clear sight approximately 120 feet away. Donnie M. testified he heard his father yell, " 'Billy, I need to talk to you.' " Donnie M. stated he watched defendant approach his father, "and as [defendant] got closer to my father, he pulled out a pistol. He was about seven feet away from my dad." At that point, Donnie M. saw defendant shoot Donnie "about three times," at which time Donnie M. picked up his own gun and ran toward his father and defendant. Donnie M. stated, "[a]s I ran towards him after that, I shot in the direction—I didn't shoot at him, but I

shot in the direction to try and scare him away from my father. The next thing I know, my dad's on the ground and [defendant] stands directly over the top of him *** [a]nd shot two more times."

¶ 20 Jerry Clemmons testified that he was Joseph's neighbor. Clemmons stated that he was in Joseph's yard at 4 p.m. on November 14, 2012, when Donnie walked toward the house where defendant lived. According to Clemmons, he heard a scream and a shot, and when he looked over, he saw defendant chasing Donnie and shooting at him. Clemmons stated he heard at least three shots. Clemmons ran over to help Donnie, and he observed at least three bullet holes in Donnie's chest and stomach area.

¶ 21 Howard Davis testified he was at Joseph's house at approximately 4 p.m. on November 14, 2012. According to Howard, at approximately 4:10 p.m., Donnie walked toward Joseph's property line with some papers "he was going to serve" defendant. Once at the property line, he heard Donnie yell for defendant. Howard stated he observed defendant walk toward Donnie. According to Howard, defendant

"pulled a pistol out of his hoodie and shot [Donnie], and Donnie fell to the ground, and [defendant's] gun must have jammed or something. [Defendant] turned sideways and I saw him jacking with his gun. Donnie had started to crawl a little bit. Donnie had probably got three or four feet, and [defendant] must have got his gun cleared and he went up and just emptied the rest of it in his back and turned around and ran into the woods."

¶ 22 James Beddow, a Vermilion County deputy sheriff, testified that he was the first officer to arrive at the scene of the shooting on November 14, 2012, and "the half dozen people

that were standing around the male victim had directed me to the east, stating [defendant] shot him and he took off to the east, still armed with a handgun." At approximately 6:30 p.m., Beddow stated he was dispatched to the house of Larry Cox. When he arrived at Cox's house, he observed defendant and noticed his clothing was damp and soiled. Beddow stated that he took defendant into custody and defendant told him he was not armed and that he had not brought the firearm into the house. According to Beddow, he was concerned about public safety, so he asked defendant about the location of the firearm and defendant told him "he had dug a hole and buried it, but would take me to it." Beddow testified he did not participate in the recovery of the firearm.

¶ 23 Kyle Smitley, a Vermilion County deputy sheriff, testified that he was dispatched to Larry Cox's home on November 14, 2012, with "a least a half dozen" other officers, at which time defendant was taken into custody. Smith stated that he transported defendant to the public safety building. According to Smitley, while in transit, "[d]efendant made statements in regards to the incident that just occurred, referring to a property dispute that he had been in with a family member prior to all this." The following colloquy then occurred:

"Q. Did the [d]efendant go on to say what happened?

A. Yes.

Q. Describe that.

A. He stated when the victim arrived out at the scene, that he was holding a piece of paper and telling the subject, the [d]efendant, that the property was rightfully his, and that he needed to vacate the property immediately.

Q. Did the [d]efendant tell you what happened?

A. He said at that point, he had had enough, and that he had been in possession of a handgun, and at that point, he stated he did what [he] had to do to end the dispute."

Smitley testified that he and several other officers later accompanied defendant to a landfill, at which time defendant showed them where he had buried the handgun.

¶ 24 Todd Damilano, an investigator for the Vermilion County sheriff's department, testified that he participated in the search of the crime scene. Damilano located several nine-millimeter shell casings during the search.

¶ 25 Pat Ablinger, a Vermilion County sheriff deputy, testified that he participated in the search of defendant's house. During the search, Ablinger found two live rounds of ammunition, one of which was nine-millimeter ammunition.

¶ 26 Cynthia Linton, a 9-1-1 supervisor, testified that she was working on November 14, 2012, when she received an emergency call from Joseph Davis. According to Linton, Joseph told her his father had been in an argument with defendant and that defendant had shot his father. A recording of this call was entered into evidence and published to the jury.

¶ 27 Casi Bales, a 9-1-1 dispatcher, testified that she was working on November 14, 2012, when she received a call from Larry Cox. According to Bales, Cox told her defendant "came to his house and wanted to turn himself in and asked him to call the police." A recording of this call was entered into evidence and published to the jury.

¶ 28 Gary Havey, a forensic scientist with the Illinois State Police, testified that he examined the recovered nine-millimeter handgun and four shell casings but did not find any fingerprints suitable for comparison.

¶ 29 Carolyn Kersting, a forensic scientist with the Illinois State Police, testified that she examined the firearm and shell casings recovered in this case and determined the recovered casings were fired from the recovered firearm.

¶ 30 Amanda Youmans, a forensic pathologist, testified that she performed the autopsy on Donnie and observed four gunshot wounds to his body, including one to his abdomen, two to his chest, and one to his shoulder. According to Youmans, Donnie died as a result of the gunshot wounds to his chest and abdomen.

¶ 31 Deputy Miller testified about his interview of defendant. Miller stated he read defendant his *Miranda* rights and that defendant waived his rights. Miller testified that defendant then described the property dispute between him and Donnie. Defendant told Miller that a court had ordered him to vacate the property by 4 p.m. on November 14, 2012. Defendant stated a few minutes before 4 p.m., he heard Donnie call his name, so he walked over to the property line and shot Donnie after Donnie asked for the keys. Miller testified that defendant then told him he had hidden the firearm in a landfill. According to Miller, after the interview, he accompanied defendant to the landfill and recovered the firearm. Defendant identified the firearm as the one he used to shoot Donnie. Upon returning to the public safety building, Miller stated he told defendant that Donnie had died and that defendant was being charged with murder. According to Miller, defendant stated, " 'I'm glad he's dead, and I have no remorse.' "

¶ 32 The State then introduced defendant's videotaped statement and published it to the jury. In the video, defendant admitted that when Donnie walked up to him and asked him for the key to the house, he shot Donnie with a nine-millimeter gun. Defendant could not recall how many times he shot Donnie, but he said the gun had jammed at one point and that he cleared the jam and continued to shoot at Donnie until the bullets were gone and Donnie's son started

shooting at him. Defendant also stated that "all [Donnie's] family" was outside when he shot Donnie. Defendant further stated he "wanted [Donnie] dead."

¶ 33 Darlene Reardon, defendant's neighbor and best friend, was the sole witness for the defense. Reardon testified that on November 14, 2012, she was helping defendant move. At approximately 4 p.m., Reardon stated she was in a house located "just right across the lawn" from defendant's house when she heard a "boom, boom, boom, boom." She ran outside and saw "a guy with brown hair and a brown beard, he had a big black gun, pointed at me." Reardon stated she had never seen the person with the gun before and that it was not Donnie M. She also stated she did not see defendant anywhere. On cross-examination, Reardon confirmed she did not actually see the shooting.

¶ 34 The jury convicted defendant of first degree murder and aggravated battery with a firearm. In December 2013, the trial court denied defendant's motion for a new trial and sentenced him to 45 years in prison for first degree murder and an additional 25 years for personally discharging a firearm (see 730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2012)). The court found defendant's aggravated-battery-with-a-firearm conviction merged with his first degree murder conviction. In January 2014, the court denied defendant's motion to reconsider his sentence.

¶ 35 This appeal followed.

¶ 36 II. ANALYSIS

¶ 37 On appeal, defendant argues the trial court erred when it denied his motion to suppress his statement to Deputy Miller because Miller "ignored [his] unequivocal invocations of his right to remain silent." Specifically, defendant asserts that after initialing each of his *Miranda* rights on the form, but prior to signing the *Miranda* rights waiver, he unequivocally

invoked his right to remain silent when, in response to Deputy Miller's question of whether he was willing to talk, defendant stated, "I'm through." Defendant further argues that he again invoked his right to remain silent later in the interrogation by saying "we're through" following Miller's repeated questioning about the incident. The State contends that when viewed in context, defendant's statements were not unequivocal invocations of his right to remain silent, but were attempts to create a condition precedent to his continuing to speak, and that he merely conditioned his cooperation upon being able to see his personal property beforehand.

¶ 38 When reviewing a trial court's decision on a motion to suppress statements, we accord great deference to the court's fact and credibility determinations and will reverse those findings only if they are against the manifest weight of the evidence. *People v. Richardson*, 234 Ill. 2d 233, 251, 917 N.E.2d 501, 512 (2009). However, we review *de novo* the ultimate question posed by a defendant's legal challenge to the denial of a motion to suppress. *Id.* at 251, 917 N.E.2d at 513.

¶ 39 "To protect an individual's right not to be a witness against himself, found in both the United States and Illinois Constitutions (see U.S. Const. amend. V; Ill. Const. 1970, art. I, § 10), interrogation must cease once the individual indicates in any manner and at any time prior to or during a custodial interrogation that he wishes to remain silent [citations]." *People v. Hernandez*, 362 Ill. App. 3d 779, 785, 840 N.E.2d 1254, 1259 (2005). "[A]ny statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise." *Miranda*, 384 U.S. at 474. A defendant may invoke his right to remain silent verbally or through conduct that clearly indicates his desire to remain silent; however, a verbal invocation of a defendant's right to remain silent must be specific. *Hernandez*, 362 Ill. App. 3d

at 785, 840 N.E.2d at 1259. After reviewing the videotaped statement in this case, we find that defendant clearly and unequivocally invoked his right to remain silent.

¶ 40 Here, our focus is on three different instances during the interrogation where defendant said either "I'm through" or "we're through" in response to Deputy Miller's questions. First, after Deputy Miller read aloud the *Miranda* waiver, he asked defendant, "[a]re you willing to speak with me, and at any time you can quit talking to me," to which defendant responded, "I'm through." Then Miller asked, "[y]ou're through? Well we haven't even talked yet," at which point, defendant replied, "[w]e're through. I asked you—one thing for you to do for me." Finally, later in the interrogation but prior to defendant's confession, Miller asked, "[w]hat happened, Billy? Come on, man. We've been getting along great since you came in here. So—Billy?", to which defendant responded, "[w]e're through."

¶ 41 The State cites *People v. Kronenberger*, 2014 IL App (1st) 110231, ¶ 37, 7 N.E.3d 769, *People v. Cole*, 172 Ill. 2d 85, 97, 665 N.E.2d 1275, 1280 (1996), and *People v. Milner*, 123 Ill. App. 3d 656, 660-61, 463 N.E.2d 148, 152 (1984), for the proposition that, in determining whether an invocation to remain silent is unequivocal, a defendant's statement must be viewed in context. The State points out that defendant's "I'm through" and "[w]e're through" statements, the first two instances identified above, were made following a discussion in which defendant asked to see his personal property. It also points to defendant's statement after he first said "[w]e're through," *i.e.*, "I asked you—one thing for you to do for me." The State argues it is clear defendant's statement "[w]e're through" meant only that he "was through talking until he saw his personal property," rather than constituting a clear and unequivocal invocation of his right to remain silent.

¶ 42 In *Kronenberger*, the relevant issue was whether the defendant's " '[y]eah' " response to a detective's question " '[a]re you done talking' " was an unequivocal invocation of his right to remain silent. *Kronenberger*, 2014 IL App (1st) 110231, ¶ 37, 7 N.E.3d 769. In that case, the defendant had spoken to detectives minutes earlier, supplying some information about the crime and denying he shot the victim. *Id.* After leaving the defendant alone in the interview room for 10 minutes, one detective reentered the room to ask if the defendant needed to use the restroom. *Id.* The defendant shook his head no, at which time the detective asked, " '[n]o? Are you done talking to me? Are you done talking to all of us?' " *Id.* ¶ 36. Based on the defendant's conversation with detectives just 10 minutes earlier, the court concluded it was unclear whether the defendant's response was an invocation of his right to remain silent or merely an indication he "had nothing else to tell the detectives." *Id.*

¶ 43 In *Cole*, the court found the defendant's statement, " 'I don't want to talk to you guys,' " was not an unequivocal invocation of his right to remain silent, but rather, only a refusal to speak with officers from the Federal Bureau of Investigation (FBI). *Cole*, 172 Ill. 2d at 97, 665 N.E.2d at 1280. The *Cole* court found it significant that the defendant had told a Missouri police officer he would speak to the state troopers but not the FBI, and he was overheard on the phone telling his grandfather that he did not want to talk to the FBI but would tell the Missouri officers the truth. *Id.*

¶ 44 In *Milner*, the defendant voluntarily went to the police station carrying his deceased infant son's body in a duffel bag. *Milner*, 123 Ill. App. 3d at 660, 463 N.E.2d at 152. During his interrogation, the defendant stated, " 'I'm tired, I can't answer no more.' " *Id.* at 658, 463 N.E.2d at 151. The *Milner* court found defendant's statement was not an invocation of his right to remain silent, but rather, an indication he could not continue to answer questions at that

specific time due to his emotional state resulting from his son's death. *Id.* at 660-61, 463 N.E.3d at 152.

¶ 45 As discussed, the State argues that in context, the three instances where defendant said either "I'm through" or "we're through" simply indicate defendant was conditioning his cooperation during the interview on being able to see his personal property. Indeed, it was on this basis the trial court denied defendant's amended motion to suppress, finding "[h]e just wants to see his stuff first. That's not invoking a right to remain silent. That's simply creating a condition precedent to the giving of the statement." We find the trial court's contextual interpretation of the first two instances of "I'm through" or "we're through" to be reasonable. However, whether the third instance, defendant's second utterance of "we're through," identified in the following colloquy, can be similarly interpreted is a closer call.

"[DEPUTY MILLER:] What happened, Billy? Come on, man. We've been getting along great since you came in here.

So—Billy?

[DEFENDANT:] We're through. [Face in hand.]

[DEPUTY MILLER:] Billy. Tell me what happened. Get your side of the story out here.

[DEFENDANT:] I was in the wrong, period."

In this portion of the interview, it does not appear defendant's words, "we're through," are connected to any conditional language regarding his property. Arguably, this second utterance of "we're through" constituted defendant's invocation of his right to remain silent. Thus, defendant argues his amended motion to suppress should have been granted on that basis.

¶ 46 However, even if we were to find the trial court erred in denying defendant's amended motion to suppress his statement, we conclude the error was harmless. "In determining whether a constitutional error is harmless, the test to be applied is whether it appears beyond a reasonable doubt that the error at issue did not contribute to the verdict obtained." *People v. Patterson*, 217 Ill. 2d 407, 428, 841 N.E.2d 889, 901 (2005). To determine whether an error is harmless, a reviewing court may "(1) focus[] on the error to determine whether it might have contributed to the conviction, (2) examin[e] the other evidence in the case to see if overwhelming evidence supports the conviction, and (3) determin[e] whether the improperly admitted evidence is merely cumulative or duplicates properly admitted evidence." *Id.* at 428, 841 N.E.2d at 902.

¶ 47 In this case, the evidence presented by the State overwhelmingly supported defendant's conviction. Defendant told a friend that "if he los[t] his land he[] [was] going to kill them." Four witnesses who were at the scene identified defendant as the shooter. In particular, Joseph Davis was approximately 100 feet away when he saw defendant shoot Donnie three times in the chest and twice in the back. Donnie M. was approximately 120 feet away when he saw defendant "pull[] out a pistol" and shoot Donnie three times and then two more times as he stood directly over Donnie. After hearing a scream and a shot, Clemmons looked over and saw defendant chasing Donnie and shooting at him. Howard Davis also saw defendant "pull[] a pistol out of his hoodie and sho[o]t [Donnie]," and then Howard watched as defendant "emptied the rest" of the bullets into Donnie's back after defendant cleared the jammed gun. The evidence established that Donnie suffered four gunshot wounds and that he died as a result of the wounds. Several nine-millimeter shell casings were recovered at the scene and live nine-millimeter ammunition was found in a search of defendant's house. In addition, shortly after the shooting, defendant knocked on a man's door and asked him to call 9-1-1 "because the police [were]

looking for [him]." When officers arrived to take defendant into custody, defendant told one deputy sheriff that "he had dug a hole and buried [the firearm]." Then, on the ride to the police station, defendant told another deputy sheriff about the confrontation with Donnie, telling the deputy "he had had enough, and that he had been in possession of a handgun, and at that point he did what [he] had to do end the dispute." When defendant was later informed he was being charged with murder, he responded, "I'm glad he's dead, and I have no remorse." We conclude that, even absent his videotaped statement, the remaining evidence overwhelmingly supports defendant's conviction for the murder of Donnie L. Davis.

¶ 48

III. CONCLUSION

¶ 49

For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we grant the State's request that defendant be assessed \$50 as costs for this appeal.

¶ 50

Affirmed.